STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

ORDER FOR HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE CODE OF RULES FOR THE DISTRICT COURTS AND THE MINNESOTA RULES OF CIVIL PROCEDURE

ORDER

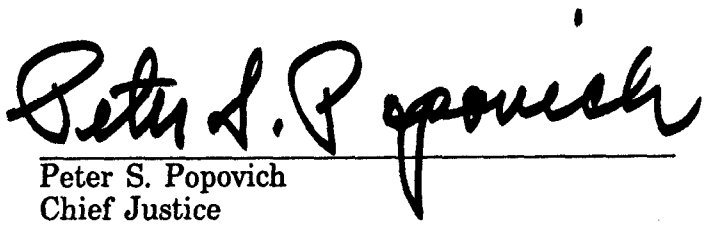
IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on February 1, 1991, at 9:00 a.m., to consider the recommendations of the Supreme Court Task Force on Uniform Local Rules to amend the Code of Rules for the District Courts and the Minnesota Rules of Civil Procedure. A copy of the recommendations is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, Room 245, Minnesota Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before January 28, 1991, and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before January 28, 1991.

Dated: November 28, 1990

BY THE COURT:



Peter S. Popovich
Chief Justice

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RUSSELL McLEOD MOSHER & PEZALLA

In The Practice Of Law

OFFICE OF
APPELLATE COURTS

JAN 15 1991

FILED

A Partnership Including
Professional Associations

JAMES H. RUSSELL*

R. JEFFREY McLEOD*

LEE W. MOSHER*

STEPHAN A. PEZALLA

*A Professional Association

January 11, 1991

Mr. Frederick Grittner
Clerk of the Appellate Courts
Room 245, Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Proposed Amendments to the Code of Rules for the District Courts and the Minnesota Rules of Civil Procedure, Proposed Rule 105.3

CX-89-1863

Dear Mr. Grittner:

Pursuant to the order dated November 28, 1990, I wish to submit this written statement concerning the recommendations of the Supreme Court Task Force on Uniform Local Rules. I do not wish to make an oral presentation at the hearing.

Proposed rule 105.3, regarding withdrawal of counsel, does not appear to consider Minnesota Statutes Section 481.11 and does not avoid the problems for the court, the parties, and counsel that occur when:

> 1. an attorney serves or files a notice of withdrawal without the consent of the client
> or
> 2. an attorney serves or files a notice of withdrawal without a new attorney being substituted.

Minnesota Statutes Section 481.11 states as follows:

> 481.11 Change of attorney
> The attorney in a civil action or proceeding may be changed at any time. When such change is made, written notice of the substitution of a new attorney shall be given to adverse parties; until such notice, they shall recognize the former attorney [emphasis added].

A recurring problem occurs when an attorney appears in a civil action and performs other services until the case reaches a critical point. At a critical point (for example, a motion for summary judgment or a motion to compel discovery), or shortly before that point, the lawyer will file or deliver to opposing counsel a notice of withdrawal.

Unless other counsel is substituted or the client agrees to appear pro se, the court and all other counsel are stymied in their ability to proceed because of the difficulties of proving good service and adequate notice against the former client and because of the problems that arise if the client does not agree that the former lawyer may withdraw or if the client asks for extensions of time to find a new lawyer because the client's former lawyer did not give the client adequate notice (or any notice) of the attorney's intent to withdraw.

I believe that the rule should follow the statute and require a substitution of attorney (by either a licensed attorney or by the client pro se). By requiring a substitution of attorney, the court and opposing counsel will know the name and address and phone number of the person who has agreed to act as attorney in a matter. If no such person is available, the attorney who voluntarily undertook representation of the client and who voluntarily undertook responsibility for the case should be required to obtain a court order regarding representation. Such an order would notify all attorneys, all parties, and the court, of the name and address and phone number of the person to whom notice of future hearings may be given. A motion for such an order would require notice to the client and to other counsel so any objections to substitution or withdrawal could be made in a timely fashion.

Consistent with Section 481.11, the practice of requiring a substitution of attorney or court order regarding representation and notice is followed in many criminal cases and is the practice mandated by current Rule 1.03 of the Family Court Rules and the Committee Commentary following that rule. Family Court Rule 1.03 provides as follows:

> RULE 1.03 SUBSTITUTION OR WITHDRAWAL OF COUNSEL
> No attorney of record shall withdraw from representation except upon order of the court or substitution of attorney. In the event an attorney has not withdrawn, service of all pleadings upon the attorney of record shall constitute proper service and adequate notice to the opposing party. When an attorney is no

> longer of record, the party shall be treated as a party pro se until a substitution of attorney or notice of appearance has been properly executed and filed for record. Where an attorney has been substituted for attorney of record, a notice of substitution of attorney and consent of attorney of record or notice of appearance shall be filed with the court administrator and served upon the opposing attorney of record.

I urge the court to consider the matters set forth above and require a "professional" standard of conduct. If attorneys know that they cannot unilaterally "dump" their clients and leave opposing counsel, opposing parties, and the courts in a quandary, perhaps they will be more careful in undertaking representation in the first place.

Very truly yours,

Lee W. Mosher

Lee W. Mosher

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STATE OF MINNESOTA
DISTRICT COURT, SECOND DISTRICT
SAINT PAUL 55102

MARY LOUISE KLAS
JUDGE

January 7, 1991

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

Re: Hearing on Proposed Uniform Local Rules
C X-89-1863

Dear Fred:

I hereby request the opportunity to speak to the Supreme Court on the proposals being submitted by the Minnesota Supreme Court Task Force on Uniform Local Rules.

Enclosed are 12 copies of my remarks.

Sincerely yours,

Mary Louise Klas

MLK/mcm

Enclosures

COMMENTS ON PROPOSED UNIFORM LOCAL RULES

Mary Louise Klas
2-1-91

As background to what I am about to say, let me explain that I graduated from William Mitchell College of Law in 1960 and was engaged in private practice from that point forward. For about six years prior to my being appointed to the Ramsey County District Court in 1986, I limited my practice to family law. I have served as chair of the Minnesota State Bar Association Family Law Section and as president of the Minnesota Chapter of the American Academy of Matrimonial Lawyers. In 1984 and 1985, I served as chair of the Minnesota Child Support Enforcement Commission, a body which federal law required each state to constitute. I served as family court judge in Ramsey County from 1988 to 1990.

I'll probably never have to hear family law cases again in Ramsey County. I am presently in the general rotation and expect that I may serve the remaining years of my judicial service on general rotation.

Why then do I care about the Uniform Local Rules relating to family court?

I care and am deeply concerned because as a lawyer, I worked with persons who were going through divorce and saw the pain they suffered. As a judge, I watched as litigants struggled with the anguish of their broken relationships. As both a lawyer and a judge, I saw the devastation divorce causes to children.

About the time that I chaired the Minnesota Child Support Enforcement Commission, Lenore Weitzman published her book entitled, A Divorce Revolution. As our commission submitted recommendations to the legislature, we referred to the data Ms. Weitzman had found when she studied the effects of no-fault divorce in California. We constantly met the rejoinder, "but that's California, what statistics do you have for Minnesota?"

In an attempt to come up with such statistics, Judge Marrinan persuaded first the Ramsey County District Bench and then the Ramsey County Commissioners to fund a study which originally was designed to look at the effects of divorce on men, women and children just in Ramsey County. It was thereafter expanded to include all ten judicial districts and examined 1,100 dissolution files which were closed in 1986. Minnesota's study confirmed what Ms. Weitzman had found in California: the standard of living for custodial parents and children plummeted after divorce while the standard of living for non-custodial parents

went up. Child support awards met 56 percent of subsistence level of living for children using the Federal Poverty Income Guidelines; 45 percent of the U.S.D.A.'s estimated cost of raising children; and 35.5 percent of costs of children using Espenshade's child-related expenditures. Permanent maintenance was awarded in four of the 1,100 cases.

A recent study revealed that 23 percent of America's children under the age of six are poor. That's the highest child poverty rate in any industrialized nation.

Okay, you say, that's an argument against divorce. But some people are going to divorce and what does that argument have to do with the Minnesota Supreme Court Task Force on Uniform Local Rules?

It has just this to do with it: proposed Rule 304.1 sets up a procedure whereby within 60 days of the filing of a dissolution action or 60 days after a temporary hearing, each party shall submit some information and ten days after the information is submitted, the court issues a scheduling order. In other words, this dissolution proceeding must hurry along--it must fit into the time standards we believe are desirable for all civil cases.

There is a fundamental flaw here. I believe strongly that the Minnesota State Legislature has over the years continued to support the preservation of the family as a public policy goal. The task force recommendation forces the court to intervene with a procedure which is designed to rip the family apart before either party has told the court that either is ready to have that "ripping-apart" occur. In other words, the task force is directing that the court get into this lawsuit with both feet before either party invites the court to do so by filing a note of issue.

Anyone who has done any family law and understands the dynamics of human relationships has recognized that when a marriage falls apart, one of the two parties has slowly, or precipitously, but over a period of time, come to the conclusion the marriage is dead. The other party is usually living in a dream world. Sure, the marriage isn't great; all is not laughter, fun and games, but it's okay. That other party is shaken and shocked when he/she is served with a summons and petition. That other party goes through the grieving process as surely as though he or she has lost a loved one. As all of us who've lost loved ones understand, the healing process takes time. Before that healing process takes place, the other party is angry, confused, a little bit crazy--in other words, in no position rationally to participate in preparation of a lawsuit which could determine his or her future for the rest of his or her life.

What's more, I have seen the service of the summons and petition act as a traumatizing event which promoted willingness to seek marital or individual counseling, alcohol or chemical dependency treatment or other interventions which the petitioning party may have sought unsuccessfully for years.

My question is simple: why not let the process of attempted reconciliation, mending of the family relationship, healing or acceptance of the divorcing process occur without the court's jumping in and immediately pushing the matter along the case management assembly line?

Whose interests are we serving by 304.1(b)? I submit we are serving case management experts who believe all cases should fit neatly into time standard boxes so that wonderful case processing statistics can be bandied about this nation and prove how efficient we in Minnesota are.

I think our judicial system was put in place to serve people. People are messy, untidy, not neat. Tearing apart people's human relationships causes pain, anguish, sleepless nights. It's not a process that fits neatly into time standards.

I'm proud to advocate that we should have one time standard for personal injury, products liability, contract or other cases and another one for the breakup of families, our basic unit of society. I hope the Minnesota Supreme Court will join me in that pride, will join me in understanding that there is a qualitative difference between family law civil cases and other civil cases, and have the courage to strike the task force proposed 304.1 and adopt instead the Family Law Section's new 303.5 and revision of 304.1.

I submit the following comments for your consideration as well:

Rule 303.2 and 305.1. I agree with the MSBA Family Law Section Rules Committee that pre-printed forms in these two areas (temporary hearings and prehearing conferences) are very desirable and can insure that the judicial officer receives all the information he/she needs to make a decision and that the information is presented in a way which can be efficiently and speedily used by that officer. Believe me, as a family law judge who handled prehearing conferences for two years in Ramsey County, the variety of individually typed or word-processor forms boggles the mind and confuses the issue.

Rule 303.3(e). There is no evidence which a child can give by testifying in his/her parent's divorce which is so crucial or so hard to obtain that it cannot be conveyed to the judicial officer through others or through an in camera interview. I agree most strongly with the Family Law Section's Rules Committee that no child should be allowed to testify in his/her parents' divorce. If any one member of the Supreme Court

has any doubt about the devastating effect of such a procedure on a child, please read Judith Wallerstein's Second Chances. This is a longitudinal study of parents and children that Ms. Wallerstein conducted beginning in about 1961. She has now had 15 to 20 years of work with the children of these divorcing families and she has some amazing and heart-rending stories to tell.

Rule 305.3. I believe strongly that at the conclusion of the prehearing conference, there should be a prehearing conference order so that game-playing and confusion can be minimized.

Thank you for your attention. Good luck.

mck

KENNETH A. SANDVIK
JUDGE OF THE DISTRICT COURT
SIXTH JUDICIAL DISTRICT
LAKE COUNTY COURT HOUSE
TWO HARBORS, MINNESOTA 55616
TELEPHONE (218) 834-5581

January 15, 1991

Fredrick Grittner
Clerk of the Appellate Courts
Room 245 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Mn. 55155-6102

Re: Proposed Local Rules Scheduled Hearing February 1, 1991
CX-89-1863

Dear Mr. Grittner:

Please consider this to be a written statement concerning the proposed local rules and kindly cause the same to be made a part of the record at the upcoming hearing scheduled thereon. Please be advised I do not desire nor intend to make an oral presentation.

I would indicate my background and experience and so that my comments may be judged from the perspective of that background. I have practiced law in the State of Minnesota since being admitted to the Bar in 1973. For approximately three years I practiced in southwestern Minnesota, officing in Luverne, Rock County, Minnesota. From 1975 through 1978 I served as a Judicial Officer in the old Rock and Nobles County Court District under the Hon. Gary L. Crippen, then a Judge of the County Court. I experienced during both my years of practice and my years on the bench down there the full range of Courtroom proceedings. From 1978 through 1984 I was in the private practice of law in Lake County, Minnesota. A substantial portion of my practice involved Courtroom work in the area of family law. I also was a part time municipal attorney and during that period was involved substantially in the prosecution of criminal matters on behalf of the municipality.

Since 1984 I have been initially a member of the Bench of the County Court and since 1986 and court unification in our District, a member of the District Court. I have since 1984 presided primarily in Lake and Cook Counties and, by virtue of the nature of the geography and the population involved, have experienced the full range of trial proceedings in all divisions of the District Court. While the bulk of my professional experience has been in the rural Courts of our State, both as an attorney practicing in Lake County and as a Judge p]residing in the Sixth Judicial District, I have had substantial opportunities to be involved in the more urban setting of St. Louis County and

believe myself to be not unappreciative of some of the differing concerns that exist in the larger more specialized Courthouses than exist in the rural areas.

I would start by observing that I think the goal of Uniform Local Rules is an admirable goal and I share the frustrations of many persons with the lack of uniformity and consistency in the many areas of our practice where there is no good reason for such differing practices and procedures. From my discussions with persons who have served on the Task Force, I am appreciative as well of the substantial efforts and energies put in by those individuals towards making this product meaningful. Notwithstanding such a noble goal and the substantial efforts of many persons, there are certain matters that I would raise with respect to the proposed Uniform Local Rules.

First of all, I do not think that the Minnesota Civil Trial Book, which is incorporated verbatim in a substantial number of areas, was ever intended to constitute a mandatory procedural guide. The introductory comments to the Trial Book emphasize that the drafters appreciated that by its nature it was a general guideline and that there would be times when justice would require that it not be followed. I think it is unfair and inaccurate of the Task Force to suggest that the adoption and inclusion of the Civil Trial Book into a mandatory rules document does not represent a substantial or significant change. It does constitute a substantial change when you go from guidelines to mandatory requirements.

I am convinced that one of the things that will happen is that a number of the requirements set out in those Rules will be routinely violated and those violation will not be sanctioned.

For example, Rule 139.2(b) requires final arguments to be concise. Mandating concise final arguments will not make them concise. I think it extremely unlikely that significant numbers of opposing counsel will object to final arguments as being rambling and not concise. I think as well that very few Judges will sua sponte interrupt a final argument and direct that counsel be concise. It makes sense as a guideline but seems to be likely to be routinely violated with no consequences.

In the Civil Trial Book, where it was as a guideline and a direction, it made sense to impress upon counsel the importance of final arguments being concise. Where the same is now required by Rule, it does not make sense.

A second problem with the inclusion of large parts of the Civil Trial Book is that much of what is made mandatory invites appellate review. It is unclear why things are mandated when they are not universally necessary or appropriate.

For example, Rule 151.1(d) requires the Court to request the parties to consider stipulating five different items. In my

experience there are cases where such stipulations are not all necessary or desirable. By requiring the Court to request the parties to so stipulate, the failure to so request and the failure of the parties to so consider has the potential for creating appealable issues.

A third problem with a number of those rules is that they are more appropriately included in the Rules of Civil Procedure. The well established process for the adoption of changes to the Rules of Civil Procedure is by-passed by having them lumped with a number of other matters. Not only do they appear to be more appropriately located there, but location of them there would provide both a body of experience and law as to what ought happen should the Rules not be complied with. I think Rule 139.1 and Rules 139.2 are good examples of the illustration of this dilemma. Rule 158.1 is perhaps the best example of what is not a practice issue but in fact a substantive procedure issue.

The dilemma of making mandatory what ought not necessarily be mandatory and the attendant invitation to disobedience that goes with it raises the whole problem of sanctions for disobedience and the consequences generally of failure to comply. Rule 139.1(3) mandating an instruction to the jurors regarding note taking, while perhaps desirable, is not uniformly agreed to be necessary or desirable in each and every case. Rule 149.3(b), mandating advising the jury about discussing the case likewise may be desirable but it's difficult to understand why it ought be mandated in each and every case.

Will the failure of the Trial Court to instruct jurors with respect to taking notes or to advise them about talking about their deliberations result in another opportunity for appellate review? What ought be the consequence of such failures? The format of the proposed Rules does not include clauses allowing exceptions or circumstances when they're inappropriate and where their application would, in the words of the drafters of the Civil Trial Book, result in form prevailing over justice, nor indeed is there any provision whereby the parties and the Court could provide by agreement that the invocation of a particular Rule was not appropriate in a particular case.

I would parenthetically note that two matters near and dear to me, and perhaps others, are not addressed at all in the Rules and are matters, given the state of technology and practice of law today, that I think ought be addressed.

First of all, given the ability of word processing equipment and given the accessibility of photocopying equipment, the time has come to start requiring written jury instructions be given to the jury in each and every case. I recognize that there are many Judges who are not eager to enter into such a practice and that there would in fact be substantial opposition to such. I do think that that's the kind of issue that ought be included in these kinds of Rules.

A second issue also has to do with the 1990 technology and that is the issue of cameras/electronic media. In terms of Judicial relations, I do not think that that ought be left to local option. I think that whatever Rule be adopted or procedures be promulgated be uniform and that Rule 183.1, which leaves to the local districts the ability to address that, ought be not adopted and that there in fact ought be a uniform Rule statewide.

The second general area that is troubling to me is the Family Court Rules. Again, notwithstanding your representations that no substantive changes or no significant substantive changes are proposed, I observe in several areas where substantial changes are in fact proposed and which are not necessarily practice related but indeed related to other subjects.

Rule 303.4(d), in allowing an interim ex-parte support order, clearly represents a substantive change in Minnesota law. Notwithstanding the desirability or undesirability of such a provision, it appears totally inappropriate for inclusion as a practice rule absent a modification of the statute allowing ex-parte relief of this type.

Even if the same is deemed appropriate for way of inclusion as a practice or procedural rule as opposed to a substantive statutory change, the Rule does not outline the circumstances under which such relief would be appropriate. The allowance of the same where "warranted" invites discretion. The exercise of discretion under these circumstances invites a variation of the practice. If in fact it is appropriate as a procedurally rule, the circumstances under which such relief is appropriate ought be spelled out in the Rule.

Rule 304.1, which requires scheduling orders in all Family Court matters, is also a substantial and substantive change and one that is not necessarily desirable. The Rule appears to require the parties early on in the proceedings to stake out positions when the same are not necessarily appropriate or desirable.

The Rules' attempt to treat civil matters the same as family matters is not appropriate. At least in our area, civil matters are not routinely filed at the time of commencement. In fact civil matters are routinely not filed for some substantial period after the proceedings are commenced. In family law matters such is not nearly so often the case and they are regularly and routinely filed early on in the proceedings. In addition, in family law matters, particularly dissolution proceedings, the parties routinely, in those matters where prompt Court action is desirable, seek temporary relief. Thus the Court is involved in the substance/merits of the case regularly much earlier on in family law matters.

When you force the parties, within 60 days after filing which is often close to commencement of the proceedings, to stake out positions with some specificity you make more difficult resolution of the matters by negotiation or settlement. Most practitioners in family law rapidly discover that when parties are forced to take positions, particularly formal legal positions, that it becomes harder to back down and settlement becomes more difficult.

I would suggest that if the civil rules provided for mandatory filing at the time of service that the use of a scheduling order such as set out here would be found objectionable under these kinds of time frames as well.

Rule 305.2 is a Rule that falls in the category of many of the Rules under the civil section and my concerns with respect to the same are similar. There exist many cases where it is not necessarily desirable or appropriate to prepare proposed findings in advance of the default hearing. When there is no written stipulation the Petitioner's attorney will often seek guidance from the Court with respect to the appropriateness of particular items of relief sought. The guidance and the requests from counsel is in many cases appropriate. To mandate proposed findings under those circumstances places the Court in the position of rejecting or accepting the requested relief as proffered. Such is clearly not desirable.

With respect to the Rules dealing with Conciliation Court, there is a procedure that we have used and I believe is used in a number of areas which is not the subject of a Rule but which may well be appropriate for the subject of a Rule. Our experience has shown that well over 90% of all Conciliation Court matters end up being uncontested and the plaintiffs proceed by default. Because of that we have adopted and use a procedure whereby persons named as Defendants in Conciliation Court are advised that if they do not give advance notice of their intention to appear and contest the proceedings, that the Plaintiffs may be advised that no appearance is necessary by them. We also advise the Plaintiffs that they may contact by phone the Court Administrator's Office to determine whether the Defendant has indicated any intention to appear and contest the claim, and if the Defendant does not indicate an advanced intention to do so that their appearance is not necessary.

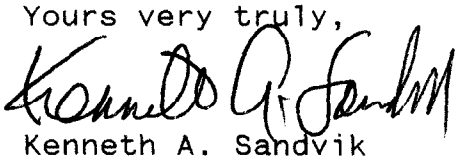
It is of substantial help to the Court Administrator's staff in terms of sorting through the files and the bodies on days when conciliation matters are scheduled we view it also as being substantially in the interests of the litigants. It eliminates a trip to the Courthouse.

Our practice provides further that when no advance notice is given by the Defendant of intention to appear and deny or contest, and when the Plaintiff elects not to appear and the

Defendant does in fact show up to contest or deny, that the matter is continued without cost to either party. While there are a few Defendants who fail to advise in advance and who do appear on the scheduled day, the numbers of such persons inconvenienced by having to return a second day is substantially smaller than the number of Plaintiffs who save the trip for an uncontested matter. I would encourage the consideration of the inclusion of such a provision in the proposed Rules.

Assuring you of my future cooperation in matters of mutual concern, I remain,

Yours very truly,



Kenneth A. Sandvik

KAS:rcb

1/9

OGURAK LAW OFFICES, P.A.

MELVIN OGURAK

SUITE 810, TOWLE BUILDING
330 SECOND AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55401

TELEPHONE (612) 339-2731
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January 8, 1991

Mr. Frederick Grittner
Clerk of Appellate Courts
Room 245 Minnesota Judicial Center
25 Constitutional Avenue
St. Paul, MN 55155-6102

Re: Recommendations of the Supreme Court Task Force on Uniform Local Rules to Amend the Code of Rules For the District Courts and the Minnesota Rules of Civil Procedure.
File No. CX-89-1863

Dear Mr. Grittner:

I request to make an oral presentation on February 1, 1991 at 9:00 a.m. regarding the enclosed materials.

Thank you.

Very truly yours,

OGURAK LAW OFFICES, P.A.

Melvin Ogurak

Melvin Ogurak

MO:sc
enc.

OGURAK LAW OFFICES, P.A.

MELVIN OGURAK

SUITE 810, TOWLE BUILDING
330 SECOND AVENUE SOUTH
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TELEPHONE (612) 339-2731
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January 8, 1991

Mr. Frederick Grittner
Clerk of Appellate Courts
Room 245 Minnesota Judicial Center
25 Constitutional Avenue
St. Paul, MN 55155-6102

Re: Recommendations of the Supreme Court Task Force on Uniform Local Rules to Amend the Code of Rules For the District Courts and the Minnesota Rules of Civil Procedure.
File No. CX-89-1863

Dear Mr. Grittner:

I request that Rule 63.03, Notice to Remove, have added to it the following language: "A request to show that the judge or judicial officer might be excluded for bias or prejudice from acting as a juror in the matter shall be heard and determined by the Chief Judge of the judicial district or the assistant chief judge if the chief judge is the subject of the request."

Rule 26.03, subd. 13(3) of the Minnesota Rules of Criminal Procedure has such language regarding interest or bias of a judge. (See attached Exhibit "A").

Thank you.

Very truly yours,

OGURAK LAW OFFICES, P.A.

Melvin Ogurak

Melvin Ogurak

MO:sc

b. The court may deliver preliminary instructions to the jury.

c. The prosecuting attorney may make an opening statement to the jury, confining the statement to the facts the prosecuting attorney expects to prove.

d. The defendant may make an opening statement to the jury, or may make it immediately before offering evidence in defense. The statement shall be confined to a statement of the defense and the facts the defendant expects to prove in support thereof.

e. The prosecution shall offer evidence in support of the indictment, complaint or tab charge.

f. The defendant may offer evidence in defense.

g. The prosecution may offer evidence in rebuttal of the defense evidence, and the defendant may then offer evidence in rebuttal of the prosecution's rebuttal evidence. In the interests of justice, the court may permit either party to offer evidence upon the party's original case.

h. At the conclusion of the evidence, the prosecution may make a closing argument to the jury.

i. The defendant may then make a closing argument to the jury.

j. On the motion of the prosecution, the court may permit the prosecution to reply in rebuttal if the court determines that the defense has made in its closing argument a misstatement of law or fact or a statement that is inflammatory or prejudicial. The rebuttal must be limited to a direct response to the misstatement of law or fact or the inflammatory or prejudicial statement.

k. The court shall charge the jury.

l. The jury shall retire for deliberation and, if possible, render a verdict.

Subd. 12. Note Taking. Jurors may take notes of the evidence presented at the trial and may keep these notes with them when they retire for deliberation.

Subd. 13. Substitution of Judge.

(1) *Before or During Trial.* If by reason of death, sickness or other disability, the judge before whom pretrial proceedings or a jury trial has commenced is unable to proceed, any other judge sitting in or assigned to the court, upon certification of familiarity with the record of the proceedings or trial, may proceed with and finish the proceedings or trial.

(2) *After Verdict or Finding of Guilt.* If by reason of absence, death, sickness or other disability, the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that those duties cannot be performed because of not presiding at the trial, such judge may grant a new trial.

(3) *Interest or Bias of Judge.* No judge shall preside over a trial or other proceeding if that judge is disqualified under the Code of Judicial Conduct. A request to disqualify a judge for cause shall be heard and determined by the chief judge of the judicial district or the assistant chief judge if the chief judge is the subject of the request.

(4) *Notice to Remove.* The defendant or the prosecuting attorney may serve on the other party and file with the court administrator a notice to remove the judge assigned to a trial or hearing. The notice shall be served and filed within seven (7) days after the party receives notice of which judge is to preside at the trial or hearing, but not later than the commencement of the trial or hearing. No notice to remove shall be effective against a judge who has already presided at the trial, Omnibus Hearing, or other evidentiary hearing of which the party had notice, except upon an affirmative showing of cause on the part of the judge. After a party has once disqualified a presiding judge as a matter of right, that party may disqualify the substitute judge only upon an affirmative showing of cause.

(5) *Recusal.* A judge without a motion may recuse himself or herself from presiding over a trial or other proceeding.

(6) *Assignment of New Judge.* Upon the removal, disqualification, disability, recusal or unavailability of a judge under this rule, the chief judge of the judicial district shall assign any other judge within the district to hear the matter. If there is no other judge of the district who is qualified to hear the matter, the chief judge of the district shall notify the chief justice. The chief justice shall then assign a judge of another district to preside over the matter.

Subd. 14. Exceptions.

(1) *Exceptions Abolished.* Exceptions to rulings or orders of the court or to the actions of a party are abolished. It is sufficient that a party, at the time the ruling or order of court is made or sought or the action of a party taken, makes known to the court the action which the party desires the court to take or the party's objections to the action of the court or of a party and the grounds therefor; and, if a party has no opportunity to object to a ruling or order or action at the time it is made or taken the absence of an objection does not thereafter prejudice the party.

(2) *Bills of Exception and Settled Cases Abolished.* The bill of exceptions and settled case shall not be required. The record of the case for the

Ex "A"

STATE OF MINNESOTA
DISTRICT COURT
SECOND JUDICIAL DISTRICT

BERTRAND PORITSKY
JUDGE

December 18, 1990

Frederick Grittner
Clerk of the Appellate Courts
Room 245
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Re: Proposed Amendments to the Code of Rules
for the District Courts

Dear Mr. Grittner:

I would like to request the opportunity to make an oral presentation at the hearing in connection with the above rules. Pursuant to the Supreme Court Order, I am enclosing 12 copies of my written statement.

I am specifically concerned with Rules 143.2(c) and 143.2(j).

Very truly yours,

Bertrand Poritsky

Bertrand Poritsky

cc: Prof. Peter Thompson

BP/dl

1551 Court House, Saint Paul, Minnesota 55102

(612) 298-5502

COMMENTS RE: PROPOSED UNIFORM LOCAL RULES

1. Rule 143.2(c)

The proposed rule reads:

> Caution to Witnesses. Before taking the stand and outside of the hearing of thejury, a witness called by counsel shall be cautioned by such counsel to be responsive to the questions and to wait in answering until a question is completed and a ruling made on any objection. Lawyers should advise their clients and witnesses of the formalities of court appearances.
>
> Counsel shall not caution a witness while on the stand as to the manner of answering questions but may request the court to do so.

The second paragraph of the proposed rule should be deleted. Notwithstanding Civil Trialbook Rule 51, lawyers routinely now caution witnesses on the stand to be responsive, to wait until the question is fully asked before answering, and not to testify while either a lawyer or the judge is speaking. Moreover, under present practice, lawyers are free to request the judge to caution a witness should the situation demand it.

I am not aware of any reason requiring a rule which would prohibit the lawyer from cautioning a witness while on the stand. If the lawyer does so in an abrasive or otherwise unprofessional manner, the trial judge has the discretion to prohibit further cautioning and to admonish the lawyer. To require the lawyer to ask the judge to caution a witness merely adds an unnecessary step and slows the proceeding. The appropriateness of the judge cautioning a witness, as opposed to the lawyer cautioning a witness, depends on many variables, such as the garrulousness of

the witness, the witness's readiness to follow instructions, and the lawyer's - as well as the witness's - force of personality. Because of the many variables, the decision as to whether or how a witness should be cautioned is a spur of the moment matter and cannot be the subject of an inflexible rule.

For these reasons, it is submitted that the second paragraph of the proposed rule should be deleted and the matter of cautioning the witness on the stand should remain where it is now, as a practical matter, in the discretion of the trial judge.

2. Rule 143.2(j)

The proposed rule reads:

> Questioning by Judge. The judge shall not examine a witness until the parties have completed their questions of such witness and then only for the purpose of clarifying the evidence. When the judge finishes questioning, all parties shall have the opportunity to examine the matters touched upon by the judge. If an attorney wants to object to a question posed by the court, he or she shall make an objection on the record outside the presence of the jury. The attorney shall make a "motion to strike" and ask for a curative instruction.

The proposed rule is taken intact from Rule 62 of the Civil Trialbook.

It is suggested that this rule be amended to read:

> Questioning by Judge. If the judge questions a witness, all parties shall have the opportunity to examine the witness on matters touched upon by the judge.

The matter of judicial interrogation of a witness is already governed by Rule 614 of the Rules of Evidence, which reads in part:

> (b) Interrogation by court. The court may interrogate witnesses, whether called by itself or by a party.
>
> (c) Objections. Objections to the calling of witnesses

> by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

The Evidence Rule contains a broad grant of authority to the trial judge to question witnesses. As the comment to the Evidence Rule points out:

> Trial courts have traditionally been vested with the power to call and interrogate witnesses. This right is consistent with the responsibility of the Court in insuring a just and speedy determination of the issues.

Case law has added a caveat that the trial judge should take care not to be partisan, or even appear to be partisan, in front of a jury. State ex rel. Hastings v. Denny, 296 N.W.2d 378 (Minn. 1980). The Evidence Rule and case law have nonetheless left with the trial judge a broad grant of authority to question witnesses, which the proposed rule severely limits.

The proposed rule is flawed in three respects. First, it does not distinguish between jury and non-jury trials. Obviously, in a non-jury trial, there can be no concern about the judge's actions influencing a jury. In a civil non-jury trial, there is absolutely no reason to prevent a trial judge from questioning a witness, particularly when the witness is an expert testifying on scientific or other complicated matters.

The second and third respects in which the proposed rule is flawed apply to both jury and non-jury trials. The second is that, while the propsed rule allows the judge to ask clarifying questions, judge may only do so after the parties have "completed their questions." This limitation would require a judge to sit by when the following, by way of example, occurs.

Q. What happened next?

A. Well, the defendant came into the room, and the guy saw him. He said to get the hell out, but he didn't get out and he hit him. Then he ran out of the room.

The lawyer may well ask who hit whom and who ran out. However, if the lawyer doesn't ask the question, the proposed rule absolutely prohibits the judge from asking it at the time it should be asked. I am unaware of any reason why the judge and jury should be required to wait until all the questions are concluded to find out who hit whom.

The third flaw is that the proposed rule limits the judge to clarifying questions only. The obvious intent is to prevent the judge from asking questions relating to substantive matters. This limitation is not present in Evidence Rule 614, which, as noted, grants the judge broad authority to ask questions and does not draw a distinction betweeen substantive or clarifying. The proposed rule and Evidence Rule 614 reflect different philosophies on the role of a judge in the trial. It is urged that the Court adopt the position that the trial judge should be part of the truth-seeking process.

McCormick points out that the power to question witnesses has been traditionally vested in the trial judge.

> Under the Anglo-American adversary trial system, the parties and their counsel have the primary responsibility for finding, selecting, and presenting the evidence. However, our system of party-investigation and party-presentation has some limitations. It is a means to the end of disclosing truth and administering justice; and for reaching this end, the judge may exercise various powers.

> Prominent among these powers is his power to call and question witnesses.
>
> Under the case law and the Federal Rules of Evidence, the judge in his discretion may examine any witness to clarify testimony or bring out needed facts which have not been elicited by the parties.
> McCormick, Evidence Sec. 8, pp. 14-5 (1984).

Wigmore describes the bias against questioning by the judge as a "degenerate tendency." 3 Wigmore Evidence, Sec. 784, p. 189 (Chadbourn rev. 1970). Wigmore goes on to quote Judge Sanborn:

> However, as has been stated before, the purposes (sic) of the trial is to get at the facts, and certainly a trial judge should not only permit a jury to have all the evidence which can be admitted under the rules of evidence, but should endeavor himself to elicit evidence, not elicited by counsel, which he would want to have possession of himself if he were acting as a trier of the facts.
> John B. Sanborn, United States Circuit Judge, 34 U. Minn. Bull. 17 (1932) quoted at Wigmore, op.cit., Sec. 784, p. 197.

In a footnote, Wigmore cites a number of cases in support of the judge's power to question witnesses. The footnote begins with the following language:

> The questioning was held proper [in the following cases], except as otherwise noted; in many of the modern utterances the abject surrender of the trial judge's function is repulsive in its misguided supineness.
> Wigmore, op. cit., Sec. 784, p. 190.

The Committee has advanced no reason, other than a reference to the Trialbook, for its attempt to repeal Evidence Rule 614(b). Is there any valid reason why a judge should not elicit the evidence, if an apparently relevant matter is not

brought out because an attorney does not ask the question, either through inexperience, oversight, or design? Both common sense and authority support the position that the fact finder, whether judge or jury, should base a decision on all admissible evidence, and verdicts should not be based upon mistake or oversight.

There is a portion of the Committee's proposed rule which should be retained. That is the language which makes clear that all parties have an absolute right to question a witness after the judge's questioning. The rule which is suggested herein retains that language.

Hamline UNIVERSITY

SCHOOL OF LAW

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January 28, 1991

Frederick Grittner
Clerk of the Appellate Courts
Room 245
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Hearing to consider proposed amendmentsto the Code of Rules for the District Courts in the Minnesota Rules of Civil Procedure

Dear Mr. Grittner,

I enclose for filing twelve copies of the response from the Supreme Court Committee on the Rules of Evidence. Judge Bertrand Poritsky has previously requested the opportunity to make an oral presentation at the hearing. Judge Poritsky will speak on behalf of the Evidence Committee with regard to Rule 143.2(j).

Very truly yours,

Peter N. Thompson

Peter N. Thompson
Chair, Supreme Court Advisory
Committee on Rules of Evidence

PNT:jc
Enclosures
/Misc.

1536 HEWITT AVENUE, ST. PAUL, MINNESOTA 55104 - 1284

STATE OF MINNESOTA

IN THE SUPREME COURT

CX-89-1863

In re Hearing to Consider Proposed Amendments to the Code of Rules for the District Courts and the Minnesota Rules of Civil Procedure

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TO: The Honorable Chief Justice and Associate Justices of the Minnesota Supreme Court

The Supreme Court Committee on Rules of Evidence opposes one section, Rule 143.2 (j) Questioning by the Judge, in the excellent proposal submitted by the Task Force. The Committee recommends that Rule 143.2(j) not be adopted by the Court because:

1. The proposed rule is inconsistent with Minn. R. Evid. 614 as well as proposed Rules 3.1 (d) and (f) also recommended by the Task Force.

2. The proposed rule is inconsistent with the past practice and good policy in Minnesota.

1.

Proposed Rule 143.1(2)(j) Is Inconsistent With Minn. R.Evid. 614 and Proposed Rules 3.1(d) and (f).

Proposed Rule 143.2(j) provides:

> (j) Questioning by Judge. The judge shall not examine a witness until the parties have completed their questions of such witness and then only for the purpose of clarifying the evidence. When the judge

finishes questioning, all parties shall have the opportunity to examine the matters touched upon by the judge. If an attorney wants to object to a question posed by the court, he or she shall make an objection on the record outside the presence of the jury. The attorney shall make a "motion to strike" and ask for a curative instruction.

The proposed rule purports to limit judicial questioning to questions asked to "clarify the evidence" once parties have finished questioning the witness. Minn. R. Evid. 614 has no similar limitations. It provides:

> Rule 614 Calling and Interrogation of Witnesses by Court.
>
> (a) Calling by court. The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.
>
> (b) Interrogation by court. The court may interrogate witnesses, whether called by itself or by a party.
>
> (c) Objections. Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

The evidence rule does not limit the time for judicial inquiry or the type of questions asked. The proposed rule is inconsistent with the Minn. R. Evid. 614.

Furthermore, pursuant to proposed Rule 3.1 (d), also recommended by the Task Force, the trial judge is directed to

intervene in the examination of witnesses "to prevent a miscarriage of justice or obvious error of law." Under proposed Rule 3.1 (f) the trial judge is charged with the duty to "see to it that everything is done to obtain a clear and accurate record of the trial...[that] witnesses testify clearly so that the reporter may obtain a correct record of all proceedings in court." If a witness clearly mispeaks, or uses vague or unintelligible language so that the testimony needs clarification, under proposed Rule 3.1 the trial judge must ask the clarifying questions. To obtain a clear and accurate record as required by Rule 3.1, the court should ask the clarifying questions immediately while the context is fresh in the minds of the witness, counsel and jurors, not several minutes or hours later at the conclusion of the witness' testimony as required by proposed Rule 143.2(j). The proposed Rule 143.2(j) is inconsistent with proposed Rules 3.1(d) and (f).

2.

The Proposed Rule 143.2(j) Is Inconsistent With Existing Practice and Good Policy in Minnesota.

Minn. R. Evid. 614 has been in effect in Minnesota for over 13 years with little difficulty in application. The law has been clear in Minnesota, that trial judges have the power to question witnesses, but the judge should exercise great caution in exercising that power so as not to appear to favor one party in the litigation or assume the role of advocate. State v. Denny, 296 N.W.23 378 (Minn.1980). The permissible scope of judicial questioning may vary depending on the nature of the proceeding, whether it involves a jury trial, or whether it is civil or criminal. The scope may vary depending on whether the

questions relate to preliminary matters or questions of foundation as opposed to the key contested issues in the case. State v. Denny, supra. This Court has discouraged trial judges from questioning witnesses in criminal cases tried to a jury, but has suggested that in a civil court trial without a jury, the trial judge has a duty to ask the necessary questions so that the testimony is fully and adequately explained. State v. Olissa, 290 N.W.2d 439 (Minn.1980); State v. Rasmussen, 268 Minn. 42, 128 N.W.2d 289 (1964) cert. denied, 379 U.S. 916; Olson v. Blue Cross and Blue Shield, 296 N.W.2d 697 (Minn.1978). The proposed rule does not distinguish between jury and non-jury trials, criminal or civil trials, or between preliminary or foundational issues and the key issues in the case. The proposed rule is inconsistent with sound policy as established by previous decisions of this Court and Minn. R. Evid. 614.

The Supreme Court Advisory Committee asks that the Court not approve proposed Rule 143.2(j).

Dated January 28, 1991

Supreme Court Committee on Rules of Evidence
by

Peter N. Thompson

Peter N. Thompson, Chair
Hamline University School of Law
1536 Hewitt Avenue
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(612) 641-2983
Attorney Registration Number 109356

/Misc.

MINNESOTA CONFERENCE OF CHIEF JUDGES
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

January 28, 1991

Mr. Frederick Grittner
Clerk of Appellate Courts
245 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

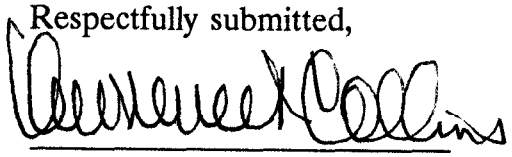
Re: **Hearing to Consider Recommendations of the Minnesota Supreme Court Task Force on Uniform Local Rules**

Dear Mr. Grittner:

I hereby submit the enclosed Resolution and Notice on behalf of the Minnesota Conference of Chief Judges and respectfully request that the same be made a part of the record for the above referenced hearing scheduled for February 1, 1991. Having been a member of the Task Force on Uniform Local Rules, I have requested the opportunity to make a brief oral presentation as part of the overall presentation by the Task Force. The enclosed materials supplement that presentation.

A total of twelve copies of the Resolution, Notice, and this request are enclosed. Thank you.

Respectfully submitted,



Honorable Lawrence T. Collins
Chair, Conference of Chief Judges

MINNESOTA CONFERENCE OF CHIEF JUDGES
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

RESOLUTION

RELATING TO ADOPTION OF UNIFORM LOCAL RULES

WHEREAS, the Minnesota Supreme Court Uniform Local Rules Task Force has recommended the adoption of uniform state-wide rules which are designed to improve the administration of justice by promoting uniformity in practice; and

WHEREAS, the Task Force's recommendations include abolition of the note of issue procedure for scheduling cases and replacing it with a court-directed process through use of scheduling orders in every case; and

WHEREAS, the efficient administration of justice requires that courts take an active role in processing cases, and the Conference of Chief Judges has been actively developing and implementing internal case management plans and policies for the trial courts since 1984; and

WHEREAS, the Conference of Chief Judges has recently adopted revised case-processing time objectives for family law cases to accommodate the concern that such cases would be forced to fit into time objectives applicable to all civil cases; and

WHEREAS, the revised family case-processing time objectives also permit the parties and attorneys to transfer a dissolution case to inactive status by stipulation, subject to a twelve-month review of case status by the court;

THEREFORE, IT IS HEREBY RESOLVED that the Conference of Chief Judges supports the rules recommended by the Uniform Local Rules Task Force and recommends that the same be adopted by the Supreme Court.

Dated January 25, 1991

Honorable Lawrence T. Collins
Chair, Conference of Chief Judges

NOTICE

NEW FAMILY LAW CASE-PROCESSING TIME OBJECTIVES

On January 25, 1991, the Minnesota Conference of Chief Judges adopted revised case-processing time objectives and procedures for transferring dissolution cases to inactive status and return to the active case calendar. Both the revised and initial timing objectives for family law cases are set forth below.

In addition, a new procedure was adopted in which parties and attorneys may transfer a dissolution case to inactive status by filing a stipulation of transfer with the court. The stipulation does not constitute a dismissal of the action, and the inactive case is subject to case management review by the court twelve months from the filing of the stipulation. Either party, at any time, may place the case on the active case calendar by filing and serving on the opposing party and their attorney an affidavit requesting removal of the case from inactive status.

Family Law Case-Processing Time Objectives

	Percent Complete in Months		
	90%	97%	99%
Initial Objectives:			
All Cases	3	6	12
Revised Objectives:			
Dissolution	12*	18*	24*
Support	6	9	12
Adoption	4	6	12
Other Family**	12	18	24
Domestic Abuse	2	3	4

* = Does not include time spent on inactive status.
** = Other family cases include marriage annulments and separate maintenance petitions.

MINNESOTA STATE BAR ASSOCIATION

MINNESOTA BAR CENTER • SUITE 403, 430 MARQUETTE AVE. • MINNEAPOLIS, MN 55401

OFFICE OF
APPELLATE COURTS

JAN 28 1991

FILED

January 28, 1991

Frederick Grittner
Clerk of Appellate Courts
25 Constitution Avenue #245
St. Paul MN 55155

Dear Mr. Grittner:

On January 19, 1991, the House of Delegates of the Minnesota State Bar Association considered the report of the Supreme Court Task Force on Uniform Local Rules. The House of Delegates commended the Task Force for its extensive work, accepted the report and endorsed its recommendations with one amendment. The House of Delegates recommended that Rule 116.1 of the Rules Governing Civil Actions be amended as proposed by the MSBA Court Rules Committee (see attached materials).

We hereby request permission to appear before the Court through Robert Guzy, MSBA Vice President-Outstate, to present the MSBA position at the hearing February 1, 1991.

The House of Delegates also authorized the Family Law Section to present its amendments to the Court for Rules 301.1 through 312.2 of the Rules of Family Court Procedure. The Family Law Section will file its amendments separately with the Court.

Sincerely,

Tim Groshens

Tim Groshens
Executive Director

TG:JG
Enclosures

OFFICE OF
APPELLATE COURTS

JAN 28 1991

FILED

Court Rules Committee Amendment (as adopted by the MSBA House of Delegates January 19, 1991)

2. Recommended that the MSBA commend the Minnesota Supreme Court Task Force on Uniform Local Rules for its work and adopt its report with the following amendment:

That Rule 116.1(b) and (c) of the Rules Governing Civil Action be amended as follows:

"**(b) Procedure.** ~~During the first sixty days after filing an action~~ Upon written request of any party, the court may order that each party shall submit scheduling information on a form to be available from the court. This statement shall include any of the following applicable to the action:

1. The status of service of the action;
2. Whether the statement is jointly prepared;
3. Description of case;
4. Discovery contemplated and estimated completion date;
5. Whether assignment to an expedited, standard, or complex track is requested;
6. Suggestions for deadlines pursuant to subsection (c) of this Rule;
7. The estimated trial time and a jury trial is requested or waived;
8. Any proposals for adding additional parties;
9. Other pertinent or unusual information that may affect the scheduling or completion of pretrial proceedings;
10. Whether alternative dispute resolution is recommended;
11. A proposal for establishing any of the deadlines or dates to be included in a scheduling order pursuant to subsection (c) of this rule.

~~After sixty days from filing,~~ Thereafter, the court may enter a scheduling order following a telephone or in-court conference of the attorneys and any unrepresented parties, or may do so without hearing.

(c) Contents of Order. ~~Within 90 days of the filing of every action, the court shall enter a scheduling order establishing~~ A scheduling order shall establish a date for the completion of discovery and other pre-trial preparation, and establishi~~ng~~ any of the following:

1. Deadlines for joining additional parties, whether by amendment or third-party practice;
2. Deadlines for bringing non-dispositive or dispositive motions;
3. Deadlines or specific dates for submitting particular issues to the court for consideration.
4. A deadline for completing any independent physical, mental or blood examination pursuant to Minn. R. Civ. P. 35;

5. A date for a formal discovery conference pursuant to Minn. R. Civ. P. 26.06, a pretrial conference or conferences pursuant to Minn. R. Civ. P. 16, or a further scheduling conference.
6. Deadlines for filing any pre-trial submissions, including proposed instructions, verdicts, or findings of fact, witness lists, exhibits lists, statements of the case or any similar documents;
7. Whether the case is a jury trial, or court trial if a jury has been waived by all parties;
8. A date for submission of a Joint Statement of the Case pursuant to Rule 116.2 of these rules; or
9. A trial date.

The Rule as proposed by the Task Force raises a significant philosophical issue and one that is one of some concern to the members of the Court Rules Committee as practicing members of the Bar. There has been an increasing tendency on the part of the Court to emphasize more active roles in "administration" of lawsuits. Their proposed Rule takes a further step in that direction by requiring, automatically, the parties to cases to prepare written materials, estimate time necessary to conduct the lawsuit, and initiate a process whereby Court deadlines are automatically issued shortly after the filing of a lawsuit. Moreover, such deadlines may be set by the court without any opportunity for the parties to be heard on the appropriateness of setting deadlines at the early stage of proceeding. We oppose a procedure that places additional and often unnecessary burdens of paperwork and procedural obstacles and deadlines upon the parties who may not desire such "case management." While it may be argued that such deadlines are always subject to revision and amendment, the process of seeking revision of such deadlines often generates further dispute and unnecessary hassle. We therefore propose that this procedure be made available to be initiated upon the request of the parties, but that otherwise the Court not be placed in the position of automatically setting deadlines. If an individual judge insists upon setting deadlines in a case, he or she may do so under the existing procedure available under Rules 16 and 26 of the Rules of Civil Procedure. These Rules, however, require that the Court have a hearing at which the parties may appear and engage in a give and take before the court issues its scheduling order. We think this is an important safeguard in the present Rules.

DORSEY & WHITNEY

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January 28, 1991

OFFICE OF
APPELLATE COURTS

JAN 29 1991

FILED

Frederick Grittner
Clerk of Appellate Court
245 Minnesota Judicial Center
6102 25 Constitution Avenue
St. Paul, Minnesota 55155

Re: Recommendations of Supreme Court Task Force on Uniform Local Rules
Court File No. CX-89-1863

Dear Mr. Grittner:

Enclosed herewith for filing are 12 copies of Dorsey & Whitney Trial Department's Comments regarding proposed amendments to Code of Rules for the District Courts and Minnesota Rules of Civil Procedure.

Very truly yours,

Tim Branson

Timothy E. Branson

TEB:mms
Enclosures

STATE OF MINNESOTA
IN SUPREME COURT
CX-89-1863

In Re: Supreme Court Task Force on Uniform Local Rules

DORSEY & WHITNEY TRIAL DEPARTMENT COMMENTS

Pursuant to this Court's November 28, 1990 Order, the Dorsey & Whitney Trial Department hereby respectfully submits its comments regarding the Supreme Court Task Force's Proposed Amendments to Code of Rules for the District Courts and Minnesota Rules of Civil Procedure. The Department believes the proposed amendments are generally sound and worthy of adoption. However, the Department strongly believes that the proposed changes to dispositive motion practice, Rule 107.1(c), are unsound and incomplete and should therefore be rejected, or adopted with modifications curing the deficiencies outlined below:

TIMING

Rule 107.1(c)(1) would require moving parties to serve and file dispositive motions at least thirty (30) days prior to the hearing. This notice period is too long. It unnecessarily lengthens the briefing and resolution of dispositive motions. It far exceeds the ten (10) days required by Minn. R. Civ. P. 56.03. The 21-day requirement in Fourth Judicial District Rule 2.04 provides more than sufficient notice to the party against whom relief is sought and time for judicial preparation. This period would work well on a state-wide basis. The Department also notes that if Rule 107.1(1) is adopted, which would require a party

obtaining a hearing date and time to promptly notify all parties, the party against whom dispositive relief is sought will usually have more than 21 days notice.

REPLY BRIEF

Rule 107.1(c) makes no provision for a reply brief and instead specifies only that a responsive brief must be served and filed at least nine (9) days before the hearing. Reply briefs are desirable because a responsive brief often makes a concession or raises an issue substantially altering the nature of the dispute. Moving parties should be allowed to reply in writing to such concessions and issues. Such replies would also facilitate judicial preparation and resolution of summary judgment motions. To insure a concise and helpful reply brief, the proposed 35-page limit in Rule 107.1(e) should be inclusive of any reply brief. See Fourth Judicial District Rule 2.05.

Particularly because reply briefs are allowed in the United States District Court for the District of Minnesota and have been previously allowed under various judicial district rules and by individual judges, attorneys in many instances will interpret the silence in the proposed rules as a license to serve and file a reply brief. This ad hoc situation is undesirable and should be replaced by a uniform rule allowing reply briefs. If reply briefs are to be allowed, they should have to be served and filed at least three (3) days before the hearing. This is consistent with Fourth Judicial District Rule 2.04. The proposal that responsive briefs be due nine (9) days before the hearing need not be changed.

STATEMENT OF FACTS AS TO WHICH THERE IS NO GENUINE ISSUE/STATEMENT OF DISPUTED FACTS

Rule 107.1(c)(3) requires parties seeking summary judgment to list separately each undisputed fact, complete with record citation, supporting summary judgment and opposing parties to list each disputed fact, complete with record citation, defeating summary judgment. The consensus of members of the Department who have encountered similar rules in other jurisdictions is that for the moving party, this is a make-work requirement that is of little utility to a court. Such a rule leads either to irrelevant disputes about facts omitted from a moving party's brief or a long list, complete with voluminous record citations and exhibits, of undisputed facts. Such a requirement also helps obscure what is most critical to the resolution of a summary judgment motion, namely whether the party opposing summary judgment has demonstrated that the record contains disputed material facts that need to be resolved by the factfinder. For these reasons, the Department believes there should be no additional requirements for a moving party.

If there are to be any changes to the presentation of summary judgment motions, the only change should be the requirement that a party opposing summary judgment prepare a separate list of disputed material facts, complete with supporting record citations. This admittedly asymmetrical requirement would facilitate resolution of dispositive motions without imposing needless burdens on parties moving for summary judgment.

RESOLUTION

Rule 107.1(j) provides that courts are ordinarily to rule on dispositive motions within thirty (30) days of the hearing. The Department suggests this rule be amended to formally encourage (if not require) trial judges denying summary judgment motions to identify the disputed material facts upon which their decisions are based. Such a requirement would be consistent with the substantive standard in Minn. R. Civ. P. 56.03. Decisions containing such identified fact disputes would help focus the parties' trial preparation and greatly enhance appellate review of an order denying summary judgment. Moreover, trial courts could readily comply with such a guideline or requirement by deciding which of the purported fact disputes listed by the party opposing summary judgment were indeed material or genuine and after reviewing any argument in a reply or initial brief regarding the immateriality or non-existence of the purported fact disputes.

Dated: January 28, 1990

DORSEY & WHITNEY

By 

Peter S. Hendrixson (#44027)
Timothy E. Branson (#174713)
2200 First Bank Place East
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January 28, 1991

Mr. Frederick Grittner
Clerk of Appellate Court
Room 245
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Dear Mr. Grittner:

With this letter, I request the opportunity to make an oral presentation on Friday, February 1, 1991, regarding Rule 116 of the proposed Code of Rules for District Courts.

Sincerely,

Nancy A. Welsh
Executive Director

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

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January 24, 1991

OFFICE OF
APPELLATE COURTS

JAN 25 1991

FILED

Mr. Frederick Grittner
Clerk of Appellate Courts
245 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Hearing To Consider Proposed Amendments To The Code Of Rules For The District Courts And The Minnesota Rules Of Civil Procedure C X-89-1863

Dear Mr. Grittner:

I hereby request the opportunity to make a brief oral presentation on behalf of the Office of the Attorney General at the above-referenced hearing scheduled for February 1, 1991. The subject of the oral presentation is described in the Statement of the Office of the Attorney General which accompanies this request. Pursuant to the Court's order of November 28, 1990, twelve copies of this request and the Statement are enclosed.

Thank you.

Sincerely,

John R. Tunheim

JOHN R. TUNHEIM
Chief Deputy
Attorney General

STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

In re: Proposed Amendments To The Code Of Rules For The District Courts And The Minnesota Rules of Civil Procedure

STATEMENT OF THE MINNESOTA ATTORNEY GENERAL'S OFFICE

TO: The Supreme Court of the State of Minnesota.

I. General Comments.

The Office of the Attorney General strongly supports the work of the Task Force on Uniform Local Rules and the specific rules proposed as amendments to the Code of Rules for the District Courts. Uniform procedures throughout the state can only be of benefit to both the bench and bar.

We made a number of suggestions concerning the rules initially proposed by the Task Force. Some of those suggestions were adopted and some were not. We appreciate the consideration of our input. At this stage we wish to reiterate one of our suggestions not adopted by the Task Force, as described in the following section.

II. Suggested Changes in Proposed Rule 107.1

The Attorney General's Office respectfully suggests that proposed Rule 107.1(c) concerning "Requirements for dispositive motions" be amended to include express provision for the filing and service of a reply memorandum by a moving party. The rule as currently proposed (copy attached as Exhibit 1) expressly requires a memorandum of law supporting a motion and a memorandum of law in response. (Rules 107.1(c)(1)(v) and 107.1(c)(2)(i), respectively.) The rule is silent, however, with respect to a reply memorandum by the moving party.

In our experience, the filing of a reply memorandum in support of a dispositive motion is common practice. As with a reply brief in appellate practice, by sharpening the issues before argument a reply memorandum can be a useful tool both for the litigant and the court.

The use of reply memoranda should not, in our view, be precluded by the rules. The lack of express mention of reply memoranda in a rule concerning documents **required** in motion practice may not necessarily prohibit their use. Nevertheless, it is likely the rule, as proposed, will be understood to impose such a prohibition.

That was the case with the Local Rules for the United States District Court for the District of Minnesota as initially adopted in 1985. Those rules established motion practice requirements substantially similar to those contained in proposed Rule 107.1. There was no specific mention of reply memoranda, and the rule was construed to prohibit reply memoranda. Within two years, in 1987, the federal bench amended its Local Rules to allow the filing of reply memoranda in support of dispositive motions. Local Rule 4.B.3, renumbered effective Feb. 1, 1991 as LR7.1(b)(3). (A copy of the renumbered rule is attached as Exhibit 2.)

We recommend that the Court add to proposed Rule 107.1(c) a provision similar to that added to the federal rule allowing the filing of reply memorandum in support of a dispositive motion. We suggest that the timing requirement for such a reply memorandum also parallel the federal rule, mandating that it be delivered to the court and counsel at least 5 days prior to the hearing. We believe "delivery" should be specifically required rather than service and filing to insure that the court and counsel will have the reply memorandum in hand an adequate amount of time before the hearing. If service and filing by mail were permitted, that would not be guaranteed. This proposal could be accomplished by adding a subsection (4) to Rule 107.1(c) as follows:

> (4) The moving party may submit a reply memorandum of law by delivering one copy to opposing counsel and the original to the court administrator at least 5 days prior to the hearing.

If this recommendation is accepted, a related change should be made in proposed Rule 107.1(e), which establishes a page limit for legal memoranda submitted in connection with a motion. We suggest that an additional sentence be added establishing a 15 page limit for reply memoranda. This is a departure from the local federal court rule that imposes a cumulative 35 page limit for both the initial and reply memoranda. Because we believe the federal rule is unnecessarily restrictive, we recommend the separate 15 page limit for reply memoranda.

We appreciate the Court's consideration of this proposal. We would be happy to provide any additional information that might be helpful.

Dated: January 25, 1991

Respectfully submitted,

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota

By: John R. Tunheim
JOHN R. TUNHEIM
Chief Deputy Attorney General

102 State Capitol
Saint Paul, Minnesota 55155
(612) 296-2351

the court administrator. The notice of withdrawal shall include the address and phone number where the party can be served or notified of matters relating to the action.

Withdrawal of counsel does not create any right to continuance of any scheduled trial or hearing.

Task Force Comment--1991 Adoption

The Task Force believes that uniformity in withdrawal practice and procedure would be desirable. Existing practice varies, in part due to differing rules and in part due to differing practices in the absence of a rule of statewide application. The primary concern upon withdrawal is the continuity of the litigation. Withdrawal should not impose additional burdens on opposing parties. The Task Force considered various rules that would make it more onerous for attorneys to withdraw, but determined those rules are not necessary nor desirable. Consistent with the right of parties to proceed pro se, they may continue to represent themselves where their attorneys have withdrawn. This rule establishes the procedure for withdrawal of counsel; it does not itself authorize withdrawal nor does it change the rules governing a lawyer's right or obligation to withdraw in any way. *See* Minn. R. Prof. Cond. 1.16. The rule does not affect or lessen an attorney's obligations to the client upon withdrawal. Those matters are governed by the Minnesota Rules of Professional Conduct. *See* Minn. R. Prof. Cond. 1.16. Enforcement of those rules is best left to the Lawyers Professional Responsibility Board.

The rule makes it clear that the withdrawal of counsel does not, in itself, justify continuance of any trial or hearing. Of course, withdrawal or substitution of counsel may be part of a set of circumstances justifying the exercise of the court's discretion to grant a continuance.

Rule 107.1 Motion Practice

(a) Applicability of Rule. This rule shall govern all civil motions, except those in family court matters governed by Rules 301.1 through 312.2 and in commitment proceedings subject to Rules 601 through 612. It governs both dispositive and non-dispositive motions, defined as follows:

(1) Dispositive motions are motions which seek to dispose of all or part of the claims or parties, except motions for default judgment. They include motions to dismiss a party or claim, motions for summary judgment and motions under Rule 12.02(a)-(f), Minnesota Rules of Civil Procedure.

(2) Non-dispositive motions are all other motions, including but not limited to discovery, third party practice, temporary relief, intervention or amendment of pleadings.

(b) Date for hearing motions. A hearing date and time shall be obtained by contacting the court administrator or a designated motion calendar deputy.

(c) Requirements for dispositive motions:

(1) **Moving party, supporting documents, time limits.** No motion shall be heard until the moving party serves one copy of the following documents on opposing counsel and mails to (or files with) the court administrator at least 30 days prior to the hearing:

(i) Notice of Motion;
(ii) Motion;
(iii) Proposed Order;
(iv) Any Affidavits and Exhibits to be submitted in conjunction with the motion;
(v) Memorandum of Law; and
(vi) In summary judgment motions, the statement required by subsection 3 of this rule.

(2) **Responding party, supporting documents, time limits.** The party responding to the motion shall serve one copy of the following documents on opposing counsel and shall file the original with the Court Administrator at least 9 days prior to the hearing:

(i) Memorandum of Law;
(ii) Affidavits and Exhibits; and
(iii) In summary judgment motions, the statement required by subsection 3 of this rule.

(3) **Additional Requirement for Summary Judgment Motions.** All motions for summary judgment shall contain a Statement of Facts as to Which There is No Genuine Issue, listing material facts which support the motion. Each such material fact shall be separately numbered and stated, with a direct reference to page and line of depositions, paragraph numbers of discovery, and direct and clear reference to other portions of the record which support the asserted fact. Papers opposing a motion for summary judgment shall contain a Statement of Disputed Facts, separately numbered, stating which of the propounded material facts are disputed, with a direct reference to page and line of depositions, paragraph numbers of discovery, and direct and clear reference to other portions of the record which contradict asserted facts or support facts in opposition to the motion. This rule applies to motions brought under Rule 56 and under Rule 12 if factual matter is to be considered.

(d) Requirements for Non-dispositive motions:

(1) **Moving party, supporting documents, time limits.** No motion shall be heard until the moving party serves one copy of the following documents on opposing counsel and mails the original to (or files it with) the court administrator at least 14 days prior to the hearing:

(i) Notice of Motion;
(ii) Motion;
(iii) Proposed Order;
(iv) Any Affidavits and Exhibits to be submitted in conjunction with the motion; and
(v) Any Memorandum of Law the party intends to submit.

(2) **Responding party, supporting documents, time limits.** The party responding to the motion shall serve one copy of the following documents on opposing counsel and shall file the original with (or mail it to) the court administrator at least 7 days prior to the hearing:

(i) Any Memorandum of Law the party intends to submit; and
(ii) Any relevant Affidavits and Exhibits.

(e) Page Limit. No memorandum of law submitted in connection with any motion shall exceed 35 pages except upon permission of the court. In the case of motions involving discovery requests, the moving party's memorandum shall set forth only the particular discovery requests which are the subject of the motion, the response and a concise recitation of why the response or objection is improper.

(f) Failure to comply. If the moving papers are not properly served and filed, the hearing may be cancelled. If responsive papers are not properly served and filed in non-dispositive motions, the court may deem the motion unopposed and may issue the proposed order without hearing. With respect to a dispositive motion, the court, in its discretion, may refuse to permit oral argument by the party not filing the required statement, may allow reasonable attorney's fees, or may proceed in such other manner as the court deems appropriate.

(g) Motions requiring emergency treatment. In the event the moving party seeks temporary relief where irreparable harm will result absent immediate action by the court, or where the court otherwise determines, the court may waive or modify the time limits established by this rule.

(h) Witnesses at motion. No testimony will be taken at motion hearings except under unusual circumstances. Any party seeking to present witnesses at a motion hearing shall obtain

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MINNESOTA

LOCAL RULES

FEBRUARY 1, 1991

As amended and revised effective February 1, 1991, under authority of Section 2071 of Title 28, United States Code and Rule 83 of the Federal Rules of Civil Procedure.

EXHIBIT 2

LR7.1 Civil Motion Practice

(a) Nondispositive Motions

Unless otherwise ordered by the district judge or magistrate, all nondispositive motions, including but not limited to discovery, third-party practice, intervention or amendment of pleadings, shall be heard by the magistrate to whom the matter is assigned. Hearings may be scheduled by contacting the calendar clerk of the appropriate magistrate.

(1) Moving Party; Supporting Documents; Time Limits

No motion shall be heard by a magistrate unless the moving party delivers one copy of the following documents to opposing counsel and an original and two copies to the Clerk of Court at least 14 days prior to the hearing:

(A) Notice of Motion
(B) Motion
(C) Proposed Order
(D) Affidavits and Exhibits
(E) Memorandum of Law

Affidavits and exhibits shall not be attached to the memorandum of law, and shall contain a title page designating the title and file number of the action.

(2) Responding Party; Supporting Documents; Time Limits

Any party responding to the motion shall deliver one copy of the following documents to opposing counsel and an original and two copies to the Clerk of Court at least 7 days prior to the hearing:

(A) Memorandum of Law
(B) Affidavits and Exhibits

Affidavits and exhibits shall not be attached to the memorandum of law, and shall contain a title page designating the title and file number of the action.

(b) Dispositive Motions

Unless otherwise ordered by the district judge, dispositive motions in any civil case shall be heard by the judge to whom the case is assigned. Hearings may be scheduled by contacting the calendar clerk of the appropriate judge.

(1) Moving Party; Supporting Documents; Time Limits

No motion shall be heard by a district judge unless the moving party delivers one copy of the following documents to opposing counsel and an original and two copies to the Clerk of Court at least 28 days prior to the hearing:

(A) Notice of Motion
(B) Motion
(C) Proposed Order
(D) Affidavits and Exhibits
(E) Memorandum of Law

Affidavits and exhibits shall not be attached to the memorandum of law, and shall contain a title page designating the title and file number of the action.

(2) Responding Party; Supporting Documents; Time Limits

Any party responding to the motion shall deliver one copy of the following documents to opposing counsel and an original and two copies to the Clerk of Court at least 9 days prior to the hearing:

(A) Memorandum of Law
(B) Affidavits and Exhibits

Affidavits and exhibits shall not be attached to the memorandum of law, and shall contain a title page designating the title and file number of the action.

(3) Reply Memorandum

The moving party may submit a reply memorandum of law by delivering one copy to opposing counsel and an original and two copies to the Clerk of Court at least 5 days prior to the hearing.

(c) General Rules

No party shall file a memorandum of law exceeding 35 pages except by permission of the court. If a reply memorandum of law is filed, the cumulative total of the original memorandum and the reply memorandum shall not exceed 35 pages, except by permission of the court. Affidavits and exhibits shall not be attached to the memorandum of law.

(d) Failure to Comply

In the event a party fails to timely deliver and serve a memorandum of law, the court may strike the hearing from its motion calendar, continue the hearing, refuse to permit oral argument by the party not filing the required statement, consider the matter submitted without oral argument, allow reasonable attorney's fees, or proceed in such other manner as the court deems appropriate.

Advisory Committee's Note to LR7

See LR1.1(f) for the method of computing time.

See LR37.2 for the form of discovery motions.

11/28

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January 28, 1991

BY MESSENGER

Mr. Frederick Grittner
Clerk of the Appellate Courts
Room 245
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Hearing on Supreme Court Task Force on Uniform Local Rules

Dear Mr. Grittner:

Enclosed please find the Request to Make an Oral Presentation with respect to proposed Rule 116 to the Code of Rules for the District Courts, and 12 copies of the materials to be presented.

Sincerely,

Janie S. Mayeron

JSM/cms
Encl.
1174ZJSM

STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

REQUEST TO MAKE ORAL PRESENTATION IN CONNECTION WITH PROPOSED RULE 116 TO THE CODE OF RULES FOR THE DISTRICT COURTS

Janie S. Mayeron, an attorney practicing with the law firm Popham, Haik, Schnobrich & Kaufman, Ltd., hereby requests the opportunity to make an oral presentation with respect to proposed Rule 116 to the Code of Rules for the District Courts. Attached to this request are the materials to be presented at the hearing.

Dated: January 28, 1991

POPHAM, HAIK, SCHNOBRICH
& KAUFMAN, Ltd.

By _____
Janie S. Mayeron, No. 69152
3300 Piper Jaffray Tower
222 South Ninth Street
Minneapolis, MN 55402
Telephone: (612) 333-4800

1174ZJSM

MEMORANDUM

TO: Minnesota Supreme Court

FROM: Janie S. Mayeron
Popham, Haik, Schnobrich & Kaufman Ltd.

RE: Proposed Uniform Local Rules Task Force Report

DATE: January 28, 1991

BACKGROUND

In June 1990, the Minnesota Supreme Court approved the Minnesota Supreme Court/Minnesota State Bar Association Task Force Report on Alternative Dispute Resolution.

Recommendation II of this Report States as follows:

II. ADMINISTRATION AND STRUCTURE

A. ATTORNEYS AND LITIGANTS SHOULD HAVE AVAILABLE TO THEM ALTERNATIVE DISPUTE RESOLUTION PROCESSES

B. NOTICE AND CONSIDERATION OF ADR PROCESSES

1. Upon filing of the lawsuit, the court administrator in the county shall give notice to attorneys of ADR provider available to the district.

2. ADR processes currently used by the court system shall be included in the options to be presented to the parties.

3. Attorneys shall be required to communicate the information to their clients at the commencement of the lawsuit.

C. MANDATORY PARTIES' CASE MANAGEMENT AND ADR SELECTION PROCESS

1. **Within 45 days of the filing of the case, the parties shall meet to discuss case management issues, including the selection of an ADR process and the timing of the ADR**

process. Within 60 days of the filing of the case the attorneys shall communicate the results, in writing, to the court. If any party believes that the case is one in which ADR is in appropriate, reasons to support this conclusion must be included in the communication to the court.

D. DISCRETIONARY JUDICIAL CONFERENCE

1. **If the parties cannot agree on the appropriate ADR process, or the timing of the ADR process, or if the court does not approve the parties' agreement regarding the ADR process, the court shall schedule a conference with the parties within the next 30 days.** The ADR processes available will be discussed. If no agreement on the process is reached or if the judge disagrees with the process selected, the judge may order the parties to utilize one of the non-binding ADR processes.

2. The decision to refer a case to an ADR process shall not be based on the type of case involved. The judge shall determine, on a case by case basis, whether a dispute is appropriate for resolution by an ADR process.

3. The Court shall encourage parties to participate in ADR processes. The court may impose sanctions only if there was failure to attend a scheduled ADR process in accordance with the attendance requirements set forth in recommendations I.G.3 and 4.

Thus, as highlighted by the language in bold type, Recommendation II requires:

- The parties to meet within 45 days of the filing of the case to discuss case management issues, including the selection and timing of an ADR process.

- The parties to communicate in writing to the Court the results of this discussion within 60 days of the filing of the case.

- The court to schedule a conference within 90 days of the filing of the case, if no agreement is reached on the appropriate ADR process to be used, the timing of the process, or if the court does not approve of the ADR process selected by the parties.

In order to ensure consistency between Recommendation II of the approved ADR Task Force Report and proposed Rule 116.1 of the Uniform Local Rules Task Force Report, it is recommended that proposed Rules 116.1(b) and (c) be modified prior to the issuance of the Uniform Local Rules Report to avoid confusion to the litigants.

The first amendment (Tab A) to proposed Rule 116(b) requires the parties to confer with each other regarding case management and scheduling issues, including ADR, prior to filing a written statement with the Court. The underlying premise of this provision is that the parties should have the opportunity to discuss among themselves scheduling and case management issues, prior to court intervention. It is believed that such participation may lead to better cooperation among the parties and a more positive attitude towards ADR specifically.

The second amendment (Tab B) to proposed Rule 116(b) requires the court to bring the parties together prior to issuing its order on scheduling and case management issues, in the event that no agreement was reached by the parties or the court disagreed with the recommendation of the parties on these matters. Under this procedure, the court can not enter an order without input from the parties where there is disagreement.

With these comments in mind, it is proposed that Rule 116 be modified as follows to take into account the procedure mandated by the Supreme Court approved ADR Report:

AMENDMENTS

Rule 116.1 Scheduling Orders

(a) Applicability of Rule. The requirements of this rule shall apply to all civil actions except the following:

(1) Conciliation court appeals where no jury trial is demanded and conciliation court actions;

(2) Family court matters arising under Minnesota Statutes, Chapters 257, 260, 518, 518A, 518B, and 518C;

(3) Public assistance appeals under Minn. Stat. § 256.045, subd. 7;

(4) Unlawful detainer actions pursuant to Minn. Stat. §§ 566.01, et seq.;

(5) Implied consent proceedings pursuant to Minn. Stat. § 169.123;

(6) Juvenile court proceedings;

(7) Civil commitment proceedings subject to Rules 601 through 612 of these rules;

(8) Probate court proceedings;

(9) Periodic trust accountings under Rule 172.1 of these rules; and

(10) Proceedings under Minn. Stat. § 609.748 relating to harassment restraining orders.

The court may invoke the procedures of this rule in any action where not otherwise required.

TAB A

(b) Procedure. **Within the forty-five days after the filing of an action, the parties shall confer regarding case management and scheduling issues.** ~~During the first sixty days~~ **Following this conference and within sixty days** after **the** filing ~~an~~ **of the** action, each party shall submit **to the court** scheduling **and case management** information on a form to be available from the court. This statement shall include any of the following applicable to the action;

(1) The status of service of the action;

(2) Whether the statement is jointly prepared;

(3) Description of case;

(4) Discovery contemplated and estimated completion date;

(5) Whether assignment to an expedited, standard, or complex track is requested;

(6) Suggestions for deadlines pursuant to subsection (c) of this Rule;

(7) The estimated trial time and a jury trial is requested or waived;

(8) Any proposals for adding additional parties;

(9) Other pertinent or unusual information that may affect the scheduling or completion of pretrial proceedings;

(10) ~~Whether~~ The appropriate alternative dispute resolution ~~is~~ process recommended **and the timing of the process, or if ADR is believed to be inappropriate, a statement of reasons supporting this conclusion;**

(11) A proposal for establishing any of the deadlines or dates to be included in a scheduling order pursuant to subsection (c) of this rule.

TAB B

~~After sixty days from filing, the court may enter a scheduling order following a telephone or in-court conference of the attorneys and any unrepresented parties, or may do so without hearing.~~ **If the parties cannot agree on the scheduling and case management issues set forth above, or if the court does not approve the parties' agreement, the court shall schedule a telephone or in-court conference of the attorneys and any unrepresented parties within the next thirty days to discuss scheduling and case management issues.**

(c) Contents of Order. Within 90 days of the filing of every action, the court shall enter a scheduling **and case management** order establishing a date for the completion of discovery and other pretrial preparation, and establishing any of the following:

(1) Deadlines for joining additional parties, whether by amendment or third-party practice;

(2) Deadlines for bringing non-dispositive or dispositive motions;

(3) Deadlines or specific dates for submitting particular issues to the court for consideration;

(4) A deadline for completing any independent physical, mental or blood examination pursuant to Minn. R. Civ. P. 35;

(5) A date for a formal discovery conference pursuant to Minn. R. Civ. P. 26.06, a pretrial conference or conferences pursuant to Minn. R. Civ. P. 16, or a further scheduling conference;

(6) The alternative dispute resolution process selected and the deadline for completing the procedure;

~~(6)~~(7) Deadlines for filing any pretrial submissions, including proposed instructions, verdicts, or findings of fact, witness lists, exhibits lists, statements of the case or any similar documents;

~~(7)~~(8) Whether the case is a jury trial, or court trial if a jury has been waived by all parties;

~~(8)~~(9) A date for submission of a Joint Statement of the Case pursuant to Rule 116.2 of these rules; or

~~(9)~~(10) A trial date.

(d) Amendment. A scheduling order pursuant to this rule may be amended at a pretrial conference or upon motion for good cause shown. Except in unusual circumstances, a motion to extend deadlines under a pretrial order shall be made before the expiration of the affected time period.

1124ZJSM

TENTH JUDICIAL DISTRICT

HONORABLE DALE E. MOSSEY
Judge of District Court

Sherburne County Courthouse
13880 Highway 10
Elk River, MN 55330
(612) 441-3844

January 25, 1990

Frederick K. Grittner
245 Minnesota Judicial Center
25 Constitutional Avenue
St. Paul, Minnesota 55155-6102

Dear Mr. Grittner,

I am writing to express my concerns regarding proposed Rule 116.1 of the Rules Governing Civil Actions and proposed Rule 304.1 of the Rules of Family Court Procedure.

At the present time, the Tenth Judicial District has approximately 1700 open files which would be subject to the scheduling order requirement. Both the Wright County and the Sherburne County Court Administrators have expressed their concern over the imposition of rules immediately affecting this number of files. The administrative workload created by the imposition of the rules would be unbelievable, and would impose further stress on the financial resources and the personnel resources of the counties.

Further, litigants should be allowed to conduct their own cases. The proposed rules create unnecessary paperwork, and procedural obstacles and deadlines for the parties. Further, the proposals are duplicative of Rule 16 of the Minnesota Rules of Civil Procedure. If deadlines are required or desired by litigants, an effective procedure currently exists under this rule.

Additionally, under the proposed rules, the Court will inevitably lack sufficient information to make determinations regarding scheduling requirements. Deadlines set by the Court without any opportunity for the parties to be heard on the appropriateness of a deadline or even the necessity of imposing a deadline will be arbitrary. Although the rule creates a procedure for amending the order, this process will inevitably create additional disputes, impose unnecessary attorneys fees on litigants and further strain financial, administrative, and judicial resources.

Yet another problem which I foresee is the inability of the Court to enforce the rule requiring scheduling information from each party. The Court has no ability to enforce the rule, or deadlines, as no provision for the imposition of sanctions exists.

Additionally, if the action is proceeding by default, the Court will never receive the necessary information from the parties to make scheduling determinations. A litigant proceeding pro se is

unlikely to know about the rule and thus may be penalized for failure to comply, or in the event an attempt is made to comply, for failing to understand or comprehend the requirements.

Additionally, the proposed change to Rule 304.1 of the Rules of Family Court Procedure requiring a scheduling order which establishes and imposes deadlines in a family court proceeding is in direct conflict with the fundamental goal of preserving the family, and allowing the parties involved to attempt reconciliation.

These are a few of my concerns in regards to the proposed rules. Thank you for your time and consideration.

Sincerely,

Dale E. Mossey

Dale E. Mossey
District Court Judge

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January 28, 1991

OFFICE OF
APPELLATE COURTS

JAN 28 1991

FILED

Mr. Frederick K. Grittner
Clerk of Appellate Courts
Supreme Court Administrator
245 Minnesota Judicial Center
25 Constitution Avenue
Saint Paul, MN 55155-6102

Re: Uniform Local Rules Task Force

Dear Fred:

I am enclosing for filing in the above-referenced action, the original and twelve copies of Supplemental Report/Response of Task Force on Uniform Local Rules and Request for Participate in Hearing.

Yours very truly,

David F. Herr

DFH:psp
Enclosures

cc: Michael B. Johnson

STATE OF MINNESOTA
IN SUPREME COURT

CX-89-1863

In re: Supreme Court Task
Force on Uniform Local Rules

Supplemental Report/Response of Task Force on Uniform Local Rules and Request to Participate in Hearing

INTRODUCTION

The Minnesota Supreme Court Task Force on Uniform Local Rules ("Task Force") understands that a number of comments have been, or will be, filed in response to this Court's request for comments at the Public Hearing scheduled for February 1, 1991. This Supplemental Report/Response incorporates response to two materials filed through Friday, January 25, 1991.

REQUEST TO PARTICIPATE IN HEARING

Because of the number and diversity of the comments received from the public and interested groups, the Task Force would propose to have the following individuals address the Court on the Task Force's work and position on the issues raised by those submitting materials and addressing the Court:

Former Chief Justice Peter S. Popovich, Task Force Chair	Introduction
David F. Herr, Task Force Reporter	Overview of Task Force Work and Review of Report

Charles T. Hvass, Jr., Task Force member	Trial lawyer's view on scheduling provisions

[Task Force suggests hearing any other public comments at this time]

Joan M. Hackel, Task Force Member	Family law recommendations
Hon. Lawrence T. Collins, Task Force Member and Chair of Conference of Chief Judges	Family and civil recommendations and Conference of Chief Judges' position
Hon. George O. Peterson,	Judge's view of scheduling, family court provisions
David F. Herr	Limited rebuttal and conclusion

AMENDED FINAL REPORT

The Task Force is in the process of finalizing an Amended Final Report which includes various "technical" corrections and adopts some minor substantive changes proposed by third persons, either formally to the Court or informally to the Task Force since the creation of the Report on file with this Court. The Amended Final Report will also delete the highlighting of additions and deletions, so that it will be in the form that it can be attached to an order for adoption. The Task Force will also submit the Amended Final Report to the Court in computer-readable format.

SUMMARY RESPONSE TO WRITTEN SUBMISSIONS

The Task Force considered many of the issues raised by the various written submissions of the public. In order to facilitate the Court's consideration of these matters, the Task Force's actions on those matters is set forth in a summary manner here.

Comments of Hon. Bertrand Poritsky. (Rules 143.2(c) & .2(j)).

The Task Force considered Judge Poritsky's comments, and essentially did not give them extensive substantive consideration because they represent significant substantive changes in existing provisions.

Judge Poritsky urges deletion of the second sentence of proposed Rule 143.2(c), which is derived verbatim from existing Civil Trialbook Rule 51. The Task Force discussed Judge Poritsky's suggested change, and rejected it. The Task Force believes that this provision serves a useful role in discouraging improper cautioning of witnesses. The Task Force was not made aware of any problems or difficulties under the existing provision.

Judge Poritsky's second suggestion seeks to change proposed Rule 143.2(j). This proposed rule is derived from existing Rule 62 of the Civil Trialbook, without change. The Task Force again considered Judge Poritsky's suggestion, and determined not to recommend the substantive change in existing practice reflected by the suggestion. Although the Task Force believe the existing rule represents a prudent provision on questioning by the judge, the Task Force also did not give extensive consideration to proposals made for substantive rule changes not the subject of conflicting local rule provisions. Thus, the Task Force would not consider it inappropriate for this existing rule to be reviewed by the Court or the Minnesota Supreme Court Advisory Committee on Rules of Evidence.

Comments of Melvin Ogurak. (Re: Minn. R. Civ. P. 63.03).

This letter suggests that additional language be added to Minn. R. Civ. P. 63.03 to provide for hearing on request to remove for actual bias or prejudice before the Chief Judge or the Chief Judge's designee.

The Task Force has proposed this mechanism by its proposed Rule 163.1. Thus, the Task Force agrees with the substance of Mr. Ogurak's suggestion, but believes it should be implemented as proposed by the Task Force. The Task Force also believes that this provision should not be included in Minn. R. Civ. P. 63.03 as proposed by Mr. Ogurak because that rule is devoted to notices to remove as of right, while removal for actual bias or prejudice is covered by Minn. R. Civ. P. 63.02.

Comments of Lee W. Mosher (Re: Rule 105.3)

The proposed Rule 105.3 relating to withdrawal of counsel was given extensive consideration by the Task Force. The Task Force believes its proposed rule is consistent with the requirements of the Rules of Professional Conduct and any applicable statutes. The statute cited by Mr. Mosher, Minn. Stat. § 481.11 (1990), deals with change of counsel, or substitution as it is commonly known. Giving the statute the reading urged by Mr. Mosher, a court order approving discharge of counsel would also violate the statute. The suggested rule derived from a provision of the existing family court rules would not comply with the statute.

The Task Force is aware of instances where trial judges have refused to allow withdrawal in circumstances where continued representation would itself be unethical and improper. The Task Force's proposal favors uniformity by providing simple

guidance on the procedure for withdrawal, and leaving the standards to be followed to the existing source of that law, the Rules of Professional Conduct.

Comments of Hon. Kenneth Sandvik (Re: Various Rules)

The comments made by Judge Sandvik were considered by the Task Force. The Task Force believes that the Minnesota Civil Trial Book provisions have an unfortunate, nebulous sort of authority, and are enforced by courts either as hard and fast rules in some cases, or ignored. The Task Force believes that uniformity and the applicability of these rules is desirable, and that they should be adopted as mandatory rules or should be amended if they are inappropriate as rules.

The Task Force considered the suggestion of numerous parties that amendments might be made to the Minnesota Rules of Civil Procedure rather than to the Code of Rules. The Task Force declined to recommend wholesale changes to the Rules of Civil Procedure, believing that uniformity with the Federal Rules in practice is desirable. Judge Sandvik suggests that the Local Rules do not incorporate a provision allowing trial courts to make exceptions for those cases where application of the rules is not fair or appropriate. Proposed Rule 1.1(b) specifically authorizes the Court to modify the application of the rules in any case to prevent manifest injustice. The Task Force believes this is an appropriate provision and expressly declined to add to each and every rule a similar "escape clause."

With respect to Judge Sandvik's suggestions on requiring written jury instructions in each and every case, the Task Force believes that a permissive rule is still appropriate, and that mandating written jury instructions in every case is not appropriate or wise.

Judge Sandvik's comments with respect to Proposed Rule 183.1 disagrees with allowing local option as to the specific geographic areas within courthouses within which use of cameras is regulated. The Task Force considered adopting a single blanket rule, but determined that the architectural differences in the various courthouses made such a rule impossible to draft with sufficient specificity and flexibility.

Judge Sandvik's comments on the Family Court Rules were discussed by the Task Force, and rejected. Proposed Rule 303.4(d) is based on an existing Local Rule provision in the Second Judicial District, and has worked well in that District. Discussion of use of scheduling orders in family court matters is discussed in response to the MSBA Family Law Section below.

The Task Force believes the proposed findings are useful in the family law default hearings, and Proposed Rule 305.2 reflects the preferred position of the parties. The Task Force does not believe that the existence of proposed findings limits the discretion of the trial court to suggest changes in any way, and should not be so viewed by trial judges. Preparation of proposed findings helped the vast majority of judges know what relief is requested and facilitates the entry of orders where the requested relief is determined to be appropriate.

Judge Sandvik also recommends a phone notice procedure for Conciliation Court matters. That procedure does not currently exist in any Local Rules, and might be a useful procedure for future consideration. The Task Force did not propose a comprehensive revision of the Conciliation Court Rules, and specifically recommended to this Honorable Court a combined legislative and rule-making effort be undertaken

to create all Conciliation Courts under a single statute and to implement appropriate uniform rules following that legislative action.

Statement of the Minnesota Attorney General's Office (Re: Rule 107.1)

These comments suggest including provision for a reply brief on dispositive motions.

The Task Force determined not to provide for reply memoranda for the reason that the experience of the trial judges on the Task Force was that reply memoranda had little or no value, and only served to increase the expense related to motion practice. In any situation where the court desires reply memoranda, they can be permitted.

Statement of Minnesota State Bar Association. (Re: Rule 116.1).

The Minnesota State Bar Association ("MSBA") has voted to endorse all the recommendations of the Task Force, with the sole exception of a recommended change to proposed Rule 116.1 (b) & (c). (The MSBA itself also determined not to take a position on the proposed family court rules, Rules 301-312, and one of the MSBA sections has offered its own comments, criticism, and recommendations. Those views are discussed separately below.)

The MSBA recommendations on Rule 116 would make the case management provisions of Rule 116 permissible only if one of the parties requests the court to enter a case scheduling order. The Task Force considered the MSBA proposal, then being advanced by the MSBA Court Rules Committee, and determined that a voluntary case management system was neither workable or desirable.

The Task Force believes that the trial courts can now adopt various case management orders under the authority of Minn. R. Civ. P. 16 and the courts' inherent authority, with or without hearing the parties. In practice, there has been tremendous diversity in these practices from district to district, from county to county within districts, and from judge to judge within counties and districts. The rule proposed by the Task Force would only create some uniformity in the case management practices and provide attorneys an opportunity to offer their suggestions on case management needs during the first sixty days of a case's pendency.

The MSBA suggestions also seem to ignore the purpose and effect of the proposed rules. First, the MSBA appears not to understand the basic premise of the rule: that lawyers be given a 60-day monopoly on initiating case management and on informing the court of the needs of the individual case. The purpose of this rule is to increase lawyer (and party) input into the case scheduling process now sometimes conducted without that information from the parties. Second, the rule favors case scheduling orders tailored to the needs of a individual case. The Task Force could not devise a means to require that this necessarily occur, but believes that the process of the proposed rule will encourage individual orders, entered in each case, will presumably incorporate the information submitted by the parties. Third, the proposed rule allows case scheduling orders to be entered by the court after full hearing, in court, but also permits entry, as is now often done, at the early stages of the case without an in-court hearing.

Comments of MSBA Family Law Section and of Hon. Mary Louise Klas. (Rules 301-312)

The MSBA Family Law Section ("MSBA Section") has filed extensive comments taking issue with the Task Force's recommendations relating to the family court rules, proposed Rules 301-312. Judge Klas has filed a letter supporting the MSBA Section position. She is former Chair of the section. These comments mirror comments considered by the Task Force and presented to the Task Force at its public hearing and again considered after that hearing. Many of the MSBA Section's original comments were adopted or modified and incorporated in the Task Force Report. Additionally, the Task Force has agreed to a number of the suggestions now advanced by the MSBA Section, and they are included in the Task Force's Amended Final Report.

As to the detailed suggestions made by the MSBA Section, the following is a very brief and tabular summary of the Task Force's consideration of the issues raised:

Rule 301.1	The Task Force believes it is very desirable to have the specific types of proceedings to which the rules apply identified. The Task Force also believes it is important to recite that these rules, though not repealing the Minnesota Rules of Civil Procedure, do provide more detailed rules on family law matters, and thus do properly supersede those rules in that event only. The Task Force does not believe it is wise to state that rules do not substitute for statutory or case law; that may be a useful drafting goal, but is not useful to guide interpretation. (Notes: N.1 does not affect the proposal in any way. N.2 reflects needless speculation about hypothetical conflicts in the rules and statutes. N.3--the Task Force will include the words "legal separation and annulment" to its Comment as suggested. Nn. 4, 7 & 8--the Task Force will change the word "actions" to "proceedings" to satisfy these technical observations. Nn. 5 & 6--these notes are true, but are also perfectly consistent with the proposed rule. No change should be made.)

Rule 302.1

The MSBA Section comments are neither useful nor accurate. Rule 302.1(b) provides specific procedural guidance on the commencement date for proceedings involving joint petitions, a subject not covered by the cited statute.

The Task Force has declined to follow the suggestion of the MSBA Section that this Court's Family Court Rules Advisory Committee Commentary relating to the adoption of the Family Court Rules be amended. It seems confusing and irregular to change that committee's comments now, and to change them as proposed. The Task Force has instead limited itself to including those comments verbatim for rules that are retained, and to deleting them in their entirety where the rule is not retained. The Task Force has also sought to delete mere restatement of the statutes. In certain cases, such as Rule 302.1(b), the statute's coverage is limited, and directly impinges on a procedural matter that already is the subject of inconsistent local rules.

(Notes: N.9--these rules reflect existing rules, as indicated in the Task Force Comment appended to the proposed rule. N.10--acknowledgement of service should not be notarized. Admission of service has never required any oath, acknowledgement of service by mail under Minn. R. Civ. P. 4.05 (and Form 22) need not be sworn to. The MSBA Section's comment is simply erroneous as to existing law; the Task Force is unaware of any reason to change the existing law. Nn. 10, 11, 12, 13--these changes to the original comments should be rejected.)

Rule 302.3

No changes are proposed by the MSBA Section.

(Notes: N.14--the Task Force does not believe that this rule conflicts with other rules creating time limits and calculation of time. Local rules have historically imposed different time limits for motions than those created by Minn. R. Civ. P. 6.04, and these additional requirements do not create any conflict or lack of clarity in practice. N.15--the Task Force has avoided recommending unnecessary changes to the Minnesota Rules of Civil Procedure.

Rule 302.4

The Task Force rejects the proposed deletion in Rule 302.4(a), and has added (b) to its Amended Final Report, with minor change. The Task Force also has changed all references to "paternity" to "parentage" in its Amended Final Report.

(Notes: N.16--the Task Force disagrees that all permissive language should be deleted from rules. There are numerous instances of appropriate rules embodying permissive language. N.17--The Task Force has incorporated this language into its Amended Final Report.)

Rule 303.1

The Task Force disagrees with the recommended deletions in Rule 303.1(a). The proposed rule does not encourage use of orders to show cause; it merely provides additional requirements in cases where they are authorized. Deleting this provision would seem to exempt orders to show cause from these requirements for motions, exacerbating the problems with their use. The revised version of the rule advanced by the MSBA Section would 1) conflict with the procedure in other civil actions under Rule 107.1(m) and 2) foster abuse by making a 3-day delay in giving notice presumptively permissible. The Task Force believes both results should dictate rejection of this suggestion.

The Task Force believes the proposed deletion of Rule 303.1(b) is ill-advised. This is an existing local rule, and a strong consensus favors its universal application.

The proposed addition of a new Rule 303.1(b)--Identification of Judicial Assignment was discussed at length by the Task Force. It represents a major substantive change in the rules. Although the majority of the courts in the state attempt to provide this notice, it is difficult or impossible to do it in all cases, in all counties, and in all districts. The avoidance on unnecessary continuances is a priority goal of efficient judicial administration; it is not a goal that can be achieved by this rule, at least not under current case assignment practices.

The proposed addition of a new Rule 303.1(c)--Prehearing Conference Motions was discussed and rejected by the Task Force. The experienced trial judges and lawyers on the Task Force agree that having motions routinely heard at pretrial settlement conferences serves to diminish the case management and case settlement agendas at these conferences and also to make scheduling more difficult. Judicial preparation for motion hearings is also different from that necessary for pretrial conferences, and a number of judges have expressed negative experiences in trying to do these two different tasks simultaneously.

(Notes: N.18--see above. N.19--this note appears to be an accurate statement, but does not argue for change in the rule proposed by the Task Force. N.20--the timing requirements of the federal bankruptcy court have little correlation to state court family law practice. The Task Force believes uniformity with the other state court motion practice requirements is more important. Nn. 21, 22 & 23--see above.)

Rule 303.2

The Task Force has added the word "initial" to its Amended Final Report as the second word of Rule 303.2(b).

The Task Force rejects the suggested addition of a requirement that papers be accepted for filing only if they are prepared on preprinted forms. This requirement would add

unnecessary costs and burdens on litigants. Preprinted forms are also cumbersome in practice, as much of the information is on attachments, exhibits, and addenda so that constant thumbing forward and back is required. Perhaps not as vocally as the judicial officers cited in the MSBA Section's comments, but quite clearly, the experienced judges and lawyers on the Task Force stated their views that preprinted forms are sometimes more efficient, sometimes less, but that they should never be required.

(Notes: N.24--the Task Force has adopted this change. See above. N.25--See above. The Task Force certainly does not condone the omission of any information required by the forms. Omitted information on a typed or word-processed form should be treated the same as the same omission on a preprinted form. N.26--This comment reflects a fundamental misunderstanding of the proposed rule. The rule does not require access to word processors, nor does it forbid use of preprinted forms. Any of these forms would be acceptable, giving maximum access to the courts.)

Rule 303.3

Most of these changes reflect simply alternative language without any desirable difference in meaning. The Task Force believes its proposed Rule is superior. The suggested deletion of proposed Rule 303.3(b) was debated by the Task Force and rejected. The proposed specific language was debated, and the Task Force believes it is useful and important.

The suggested new subsection on service by mail is redundant, and should therefore not be adopted.

The suggested deletion of Rule 303.3(c) should not be accepted. The requirement of an attempt to resolve disputes is common, and the collective experience of the Task Force dictated that such a provision be included in the rules. Similarly, the experience of the Task Force members suggests that many courts are not advised of the settlement of cases assigned to them or of issues in those cases, resulting in the unnecessary expenditure of time or resources in preparing to hear the cases. Although it is certainly a matter of courtesy or civility to advise the court of settlement, it is not only a matter of courtesy. This rule will impose an unambiguous requirement on counsel to provided this notice. The efficient administration of justice will be advanced by this rule, and it imposes no burdens on counsel except those who are not courteous or civil.

The Task Force considered the treatment of possible testimony of children, and determined that this practice, although not often appropriate, should at least be accompanied by a requirement of notice. Accordingly, the Task Force disagrees with the suggested deletion in Rule 303.3(e).

(Notes: Nn. 27 & 28--The Task Force does not believe this is an actual conflict. The Task Force considered the observations set forth regarding different practice in various counties regarding extra copies, and concluded that uniformity in this requirement is especially desirable. Nn. 29, 30, 31, 32 & 33--see above.

Rule 303.4

These changes were all discussed by the Task Force, and were all rejected as unnecessary and undesirable. The recommended reorganization of the rule is not useful. The suggested addition to (d)-Interim Support Order is not correct. The permissive language of this rule should apply even where the parties are not physically separated at the time of application for order to show cause. In some instances, separation has not occurred at the time of filing.

(Notes: N. 34, 35, 36 & 37--see above.)

Rule 303.5

The suggestion of adding a note of issue provision was discussed and rejected by the Task Force. The Task Force believes that numerous reasons exist for using a court-initiated and court-monitored procedure. The Task Force has recommended deletion of Minn. R. Civ. P. 38.03, thereby abolishing use of the note of issue in other civil action. Some benefit exists for having the assignment mechanisms to be similar in family and other civil actions. Moreover, the strong consensus of the Task Force is that the proposed scheduling mechanisms will serve the interests of all parties and the interests of justice.

Rule 304.1

See immediately preceding comments.

As to the suggested deletion of specific identification of the types of cases subject to the rule, the Task Force was strongly in favor of a specific list since the term "Family Court Matters" is not commonly or unambiguously understood.

Rule 305.1

See comments to Rule 303.2 above for discussion of the Task Force view on a requirement of use of preprinted forms

Rule 305.2

The MSBA Section appears not to understand the significance of the language it seeks to delete from the rule. The Task Force agrees that participation of parties and counsel is necessary and should in most case be required. Nonetheless, the Task Force believes its proposed rule allowing the parties or counsel to be excused by the court "for good cause" is appropriate, as there are circumstances where the interests of justice are served by relaxing the rule. The Task Force has amended its comment to this rule in its Amended Final Report to reflect the foregoing.

Rule 305.3

The Task Force has agreed to this recommended rule, and it is included in the Amended Final Report, except that the order would not address the substance of pending motions, only the scheduling of a hearing on them.

Rule 306.2

The Task Force considered the timing of required submissions, and concluded that the uniform requirement of filing at the time of a scheduled final hearing is both adequate for the court's needs and fair to the parties.

(Notes: N.45--the MSBA Section note seems to suggest that its rule somehow favors uniformity. The Task Force proposal will also achieve uniformity throughout the state.)

Rule 307.1

The Task Force drafted its proposed rule with some care. Its purpose was not to encourage obstructionist behavior, but to acknowledge that it does sometime exist and to provide for remedying it. The obstructionist can always achieve a measure of short-lived control; the proposed rule is intended to break up the obstruction and to make the obstructionist pay for causing it.

Rule 308.1

The suggestions relating to this rule were discussed and rejected by the Task Force. The Task force believes that the provisions of Rule 308.1(b) are useful and do not simply recodify a statutory requirement.

Rule 308.3

The recommended addition of a new rule should be rejected because it simply restates the clear common law requiring that findings of fact be made. The Task Force has avoided drafting a practice manual restating common law or statutory requirements.

Rule 309.3

The proposed new section (a) should not be adopted. It covers matters established by statute, and sets forth substantive requirements rather than rules of procedure.

Rule 310.1

These changes have been incorporated into the Amended Final Report of the Task Force.

Rule 310.7

These changes appear to embody statutory requirements. The Task Force did not undertake to make these substantive changes in the rules, and notes that there have not been local rules on this subject.

Rule 310.9

The Task Force questions whether a rule of procedure can, or should, attempt to establish the authority to impose fees.

Rule 312.2 The Task Force has incorporated these changes in its Amended Final Report.

Form ___ The Task Force has incorporated these changes in its Amended Final Report.

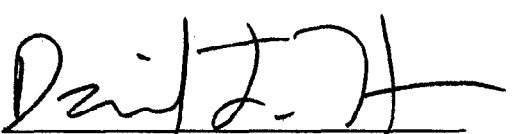
CONCLUSION

The Task Force respectfully suggests that the various matters raised by the parties appearing before the Court have been given careful consideration by the Task Force. The Task Force submits that its report represents the proper, balanced, just approach to the issues raised by the proposed rules, and that the rules should be adopted as recommended by the Task Force.

Dated: January 28, 1991.

Respectfully submitted,

MINNESOTA SUPREME COURT TASK FORCE ON UNIFORM LOCAL RULES

By 

David F. Herr, Reporter
1800 Midwest Plaza
Minneapolis, Minnesota 55402
(612) 339-8015

RAMSEY COUNTY
DISTRICT COURT

1215 Court House, St. Paul, Minnesota 55102-1652
(612) 298-5211

JOSEPH E. GOCKOWSKI
Court Administrator

December 12,1991

Fred Grittner
Supreme Court Administrator
245 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

RE: AMENDED RAMSEY COUNTY RULE 25

Dear Fred:

At the December 11, 1991, Ramsey County District Court Judges Meeting, the bench amended our Local Rule 25 to coincide with the newly approved General Rules of Practice.

The changes are:

II. Initiation A.

3. (should read) Attorneys/parties shall discuss ADR options and, by filing an informational Statement, inform the court of the result of said discussions.

4. (is totally deleted).

5. (is now renumbered to 4.) and should read: Upon motion by any party, by stipulation of the parties, at the case status conference or within the scheduling order , the court may issue an order for arbitration or mediation.

V.

B. (is changed to read) ADR proceedings shall be completed no later than 90 days after the order is issued by the court.

I am enclosing a copy of the script notes showing the changes as approved by the District Court Judges.

Should you have any questions, please give me a call.

Sincerely,

Joe Gockowski

Joe Gockowski
Court Administrator

JEG:sjj

attachments

cc: Lila M. Hambleton

RULES.01

of process, as in dealing

ective January 1, 1990.

WAL OF COUNSEL; EPRESENTATION

hdrawal from the case, dismissal by the client, ly notify the Court Adch withdrawal, substitut mailing address of the

of issue has been filed, a by:

nt to motion and notice and the affected client;

f attorney. Such substielay the trial, except by

n attorney representing defender, shall file with rance a "certificate of rm and substance as a Court from time to time

d a certificate of repremot withdraw from the have been completed in tten order of the Court n, or upon written subd by the Court ex parte. to withdraw from a tten motion and serve it pon the client and upon ttorney shall have the No motion of with30 days of a date certain e application for withfact.

withdrawal, it shall be as been served on the mail or personal service ice has been filed with urt.

fective January 1, 1990; ffective January 1, 1990.

ON TO REFEREE CASE

e hearing a contested tition shall be filed in nistrator and served on

trial, hearing, motion, or petition, but not later than the commencement of the matter.

Adopted November 8, 1989, effective January 1, 1990.

RULE 24. PETTY MISDEMEANOR APPEALS FROM REFEREES

In petty misdemeanor trials heard by a referee, except Housing Court matters, the referee shall either (1) announce the recommended findings, conclusions and order orally, on the record, at the conclusion of the trial or (2) take the matter under advisement and issue written recommended findings, conclusions and order within seven days after the trial.

The referee's recommendation shall be deemed adopted when a judge reviews and countersigns the referee's sentence report calendar or written findings, conclusions and order. It shall be the duty of the criminal chambers judge to review and, if appropriate, countersign the referee's recommendation.

A defendant may appeal from the referee's order by filing with the clerk of district court a notice of appeal. The notice of appeal must be filed within ten days after the oral announcement of the referee's recommended order or within thirteen days after service by mail of the adopted written order. Service of the written order shall be deemed complete and effective upon the mailing of a copy of the order to the defendant's last known address.

Upon the timely filing of a notice of appeal, the order shall be stayed pending the determination of the appeal.

Within 15 days after filing a notice of appeal the defendant shall, at the defendant's sole expense, purchase a transcript of the trial before the referee. The transcript shall be available within 45 days after its purchase.

The appeal shall be assigned to be heard by a judge on the criminal court calendar and shall be confined to the trial record before the referee.

The parties may, but shall not be required to, present oral or written arguments or both. Written arguments shall be filed at least one day before the hearing date.

Adopted effective April 11, 1990; amended effective February 13, 1991.

RULE 25. CIVIL ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAM

I. Authority. Pursuant to Minn.Stat. 484.73 and 484.74, subd. 4, the Second Judicial District has authorized the establishment of a system of Alternative Dispute Resolution (ADR) for civil cases. In

II. Initiation.

A. The Court shall mine current status a tion or mediation. I mail to all parties t concerning arbitration to litigation.

1. Plaintiff(s) sh ing to the court the

a. The curren

b. Whether c cussed an ADR c they have chosen

c. If the part written reason fc

2. Status confe

a. If no respc from the date of set a status con

b. The partie ence to discuss issues;

c. The court its own motion t related issues.

3. Attorneys/p tions and, by filing inform the court c

4. If, prior to memorandum, the cess and provide ADR provider (if proved) along wi parties, then the j 4 of the Special R District) shall be

5. Upon motio the parties, or at court may issue a tion.

III. Selection o

Once the parties or process, the court minimum of five court-approved pri tions or private me

A. Within fifte

1. Shall jointl as to the arbitra the list.

2. If no agre arbitrator and/c

II. **Initiation.**

A. The Court shall review all civil cases to determine current status and possible referral to arbitration or mediation. If appropriate, the court shall mail to all parties to a civil action information concerning arbitration and mediation as alternatives to litigation.

1. Plaintiff(s) shall be responsible for reporting to the court the following:

a. The current status of the case;

b. Whether or not the parties have discussed an ADR option and which form of ADR they have chosen.

c. If the parties decide NOT to enter ADR, written reason for this decision.

2. Status conference:

a. If no response is received within 30 days from the date of the court letter, the court shall set a status conference.

b. The parties may request a status conference to discuss ADR and other case-related issues;

c. The court may set a status conference on its own motion to discuss ADR and other case-related issues.

3. Attorneys/parties shall discuss ADR options and, by filing ~~a joint at-issue memorandum~~ an informational statement, inform the court of the result of said discussions.

4. If, prior to the filing of the joint at-issue memorandum, the parties agree to an ADR process and provide the court with the name of the ADR provider (if mediation, must be court-approved) along with a stipulation signed by all parties, then the joint at-issue memorandum (Rule 4 of the Special Rules of Practice, Second Judicial District) shall be waived.

4. Upon motion by any party, by stipulation of the parties, or at the case status conference, the court may issue an order for arbitration or mediation. or within the scheduling order,

III. **Selection of Arbitrators and/or Mediators.** Once the parties or the court have selected an ADR process, the court will send all parties a list of a minimum of five court-approved arbitrators or court-approved private dispute resolution organizations or private mediators.

A. Within fifteen days thereafter, the parties:

1. Shall jointly file with the court a stipulation as to the arbitrator and/or mediator drawn from the list.

2. If no agreement as to the selection of the arbitrator and/or mediator, shall separately file

Court shall, within five days, designate the trator and/or mediator from those persons stricken.

3. May request in writing an arbitrator an mediator from outside the court-approved Prior to issuing an order for either arbitratio mediation, the court may request a written s ment of the arbitrator's and/or mediator's qu cations, including educational background and evant training and experience in the field.

B. The Court shall issue and serve an o designating the arbitrator and/or mediator ch by the parties.

IV. **Qualifications of the Arbitrator an Mediator.** The Second Judicial District Bench the Ramsey County Bar Association Rules and cedures Committee shall cooperatively deter the qualifications of arbitrators and/or media

V. **ADR Proceedings.**

A. Within fourteen days after the order d nating the arbitrator and/or mediator, they/he shall inform the court of the initial arbitration ing or mediation session which shall be schedule more than 60 days from the date of the court o

B. Where a note of issue has been filed, proceedings shall be completed no later tha days after the order or no later than 180 days the order if no note of issue is filed.

C. Only the court may grant a continuanc the ADR proceedings beyond the time limits forth above.

D. The arbitrator and/or mediator shall d mine a suitable time and place for the ADR proc ings.

E. Pursuant to Rules 16 and 37 of the Rul Civil Procedure, failure to appear or refus participate in good faith and in a meaningful ner in a court-ordered ADR proceeding may r in sanctions.

VI. **Ex Parte Communication.**

A. Neither parties nor their counsel shall municate ex parte with the arbitrator.

B. Parties or their counsel may commun with the mediator so long as such communic encourages the facilitates settlement.

VII. **Fees.**

A. At the end of the proceeding, the pa shall divide equally and pay directly to the arb tor and/or mediator a fee of $125 per hour. later than at the time the final report is made t court, other related costs, such as administr fees and preparation costs, will be payable t

nitiation.

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Selection of Arbitrators and/or Mediators.
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If no agreement as to the selection of the
ator and/or mediator, shall separately file
Court shall, within five days, designate the arbitrator and/or mediator from those persons not stricken.

3. May request in writing an arbitrator and/or mediator from outside the court-approved list. Prior to issuing an order for either arbitration or mediation, the court may request a written statement of the arbitrator's and/or mediator's qualifications, including educational background and relevant training and experience in the field.

B. The Court shall issue and serve an order designating the arbitrator and/or mediator chosen by the parties.

IV. Qualifications of the Arbitrator and/or Mediator. The Second Judicial District Bench and the Ramsey County Bar Association Rules and Procedures Committee shall cooperatively determine the qualifications of arbitrators and/or mediators.

V. ADR Proceedings.

A. Within fourteen days after the order designating the arbitrator and/or mediator, they/he/she shall inform the court of the initial arbitration hearing or mediation session which shall be scheduled no more than 60 days from the date of the court order.

B. ~~Where a note of issue has been filed~~, ADR proceedings shall be completed no later than 90 days after the order ~~or no later than 180 days after the order if no note of issue is filed~~. is issued by the Court

C. Only the court may grant a continuance of the ADR proceedings beyond the time ~~limits~~ set forth above. No Change limits (ok)

D. The arbitrator and/or mediator shall determine a suitable time and place for the ADR proceedings.

E. Pursuant to Rules 16 and 37 of the Rules of Civil Procedure, failure to appear or refusal to participate in good faith and in a meaningful manner in a court-ordered ADR proceeding may result in sanctions. NO CHANGE

VI. Ex Parte Communication.

A. Neither parties nor their counsel shall communicate ex parte with the arbitrator.

B. Parties or their counsel may communicate with the mediator so long as such communication encourages the facilitates settlement.

VII. Fees.

A. At the end of the proceeding, the parties shall divide equally and pay directly to the arbitrator and/or mediator a fee of $125 per hour. No later than at the time the final report is made to the court, other related costs, such as administrative fees and preparation costs, will be payable to the

B. If the arbitrator and/or mediator is someone outside the court-approved list, the arbitrator and/or mediator and the parties will determine an agreeable fee.

VIII. Report or Decision to the Court.

A. *Arbitration.*

1. No later than ten days from the date of the arbitration hearing or receipt of post-hearing memorandum, the arbitrator shall file with the court the decision together with proof of service by first-class mail to all parties.

2. Upon the expiration of twenty days after the award is filed, if no party has during that time period filed a request for trial as provided in these rules, the court administrator shall enter the decision as a judgment. Promptly upon entry of the decision as judgment, the court administrator shall mail notice of entry to the parties. The judgment so entered shall have the same force and effect as and is subject to all provisions of the law relating to a judgment in a civil action or proceeding, except that it is not subject to appeal and, except as provided in Sect. 4 below, may not be attacked or set aside. The judgment so entered may be enforced as if it had been rendered by the court in which it is entered.

3. No findings of fact and conclusions of law or opinions supporting an arbitrator's decision are required.

4. Within six months after its entry, a party against whom a judgment is entered pursuant to an arbitration award may move to vacate the judgment on the grounds set forth in the Uniform Arbitration Act, Chapter 572, Minnesota Statutes, and upon no other ground.

B. *Mediation.*

In the case of mediation, the only report to the court shall be a letter indicating whether or not the parties have settled.

1. If the case has settled, the attorneys shall cooperate in completing the appropriate court documents to bring the case to a final disposition.

2. If there has been no settlement, the parties may request that the matter be placed on the trial calendar on the first available date. If not so placed, the case shall be restored to the civil calendar in the same position as it would have had had there been no ADR.

IX. Trial De Novo (for Arbitration only).

A. Within 20 days after the arbitraor files the decision with the court, any party may request a trial by filing with the court a request for trial with

B. If discovery is complete, the court matter for trial on the first available dat set, the case shall be restored to the civil the same position as it would have ha been no ADR.

C. Upon request for a trial de novo, of the arbitrator shall be sealed and pl court file.

D. If the party filing a demand for t does not improve his/her position, the party may move the court for payment c disbursements, including payment of t tor's fees.

E. A trial de novo shall be conducted had been no arbitration. Without the co parties and the approval of the court, n in the presence of the jury shall be ma arbitration proceedings.

X. Confidentiality.

A. Without the consent of all part order of the Court, no evidence that ther ADR proceedings or any fact concerning be admitted in a trial de novo or in any proceeding involving any of the issues in to the proceeding.

B. Arbitrators and attorneys for the p not be called to testify as to their parti the ADR proceeding in the trial de novo subsequent trial or motion.

C. Without the agreement of the par shall be no record made other than the decision of issues which are resolved.

D. Mediation proceedings under these privileged, not subject to discovery, and v written consent of both parties, inadmiss dence in any subsequent trial or motion.

XI. Rules of Evidence at Arbitration ing.

A. Except where any of the parties h the right to be present or is absent after of the hearing, the arbitrator and all parti present at the taking of all evidence.

B. The Rules of Evidence apply to th of the arbitration hearing and shall be liberally in favor of admission except:

1. Any party may offer and the shall receive in evidence written medica pital reports, records and bills (includir therapy, nursing and prescription bills,) tary evidence of loss of income, property repair bills or estimate, and police re cerning an accident which gave rise to t copies have been delivered to all other

court-approved list, the arbitrator
tor and the parties will determine an

ort or Decision to the Court.

ıtion.

ter than ten days from the date of the
hearing or receipt of post-hearing
m, the arbitrator shall file with the
ecision together with proof of service
ıs mail to all parties.

the expiration of twenty days after
is filed, if no party has during that
filed a request for trial as provided in
the court administrator shall enter
as a judgment. Promptly upon entry
ion as judgment, the court administra-
il notice of entry to the parties. The
) entered shall have the same force
s and is subject to all provisions of the
; to a judgment in a civil action or
except that it is not subject to appeal
as provided in Sect. 4 below, may not
or set aside. The judgment so en-
e enforced as if it had been rendered
; in which it is entered.

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e same position as it would have had
en no ADR.

e Novo (for Arbitration only).

0 days after the arbitraor files the
ne court, any party may request a
ith the court a request for trial with

B. If discovery is complete, the court will set the matter for trial on the first available date. If not so set, the case shall be restored to the civil calendar in the same position as it would have had had there been no ADR.

C. Upon request for a trial de novo, the decision of the arbitrator shall be sealed and placed in the court file.

D. If the party filing a demand for trial de novo does not improve his/her position, the prevailing party may move the court for payment of costs and disbursements, including payment of the arbitrator's fees.

E. A trial de novo shall be conducted as if there had been no arbitration. Without the consent of all parties and the approval of the court, no reference in the presence of the jury shall be made to prior arbitration proceedings.

X. Confidentiality.

A. Without the consent of all parties and an order of the Court, no evidence that there has been ADR proceedings or any fact concerning them may be admitted in a trial de novo or in any subsequent proceeding involving any of the issues in or parties to the proceeding.

B. Arbitrators and attorneys for the parties cannot be called to testify as to their participation in the ADR proceeding in the trial de novo or in any subsequent trial or motion.

C. Without the agreement of the parties, there shall be no record made other than the report or decision of issues which are resolved.

D. Mediation proceedings under these rules are privileged, not subject to discovery, and without the written consent of both parties, inadmissible as evidence in any subsequent trial or motion.

XI. Rules of Evidence at Arbitration Proceeding.

A. Except where any of the parties has waived the right to be present or is absent after due notice of the hearing, the arbitrator and all parties shall be present at the taking of all evidence.

B. The Rules of Evidence apply to the conduct of the arbitration hearing and shall be construed liberally in favor of admission except:

1. Any party may offer and the arbitrator shall receive in evidence written medical and hospital reports, records and bills (including physiotherapy, nursing and prescription bills,) documentary evidence of loss of income, property damage, repair bills or estimate, and police reports concerning an accident which gave rise to the case, if copies have been delivered to all other parties at

least ten days prior to the hearing. Any other party may subpoena as a witness the author of a report, bill or estimate, and examine that person as if under cross-examination. Any repair estimate offered as an exhibit as well as copies delivered to other parties shall be accompanied by a statement indicating whether or not the property was repaired and, if it was, whether the estimated repairs were made in full or in part, and by copy of the receipted bill showing the items of repair made and the amount paid. The arbitrator shall not consider any police report opinion as to ultimate fault.

2. The written statement of any other witness, including written reports of expert witnesses not enumerated above, and including statements of opinion which the witness would be qualified to express if testifying in person, may be offered and shall be received in evidence if:

a. It is made by affidavit or by declaration under penalty of perjury;

b. Copies have been delivered to all other parties at least ten days prior to the hearing; and

c. No other party has, at least five days before the hearing, delivered to the proponent of the evidence a written demand that the witness be produced in person to testify at the hearing. The arbitrator shall disregard any portion of a statement received pursuant to this rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

3. Subject to objections, the deposition of any witness may be offered by any party and shall be received in evidence, notwithstanding that the deponent is not "unavailable as a witness" and no exceptional circumstances exist if:

a. The deposition was taken in the manner provided for by law or by stipulation of the parties and within the time provided for in these rules; and

b. Not less than ten days prior to the hearing, the proponent of the deposition serves on all other parties notice of his/her intention to offer the deposition in evidence. Upon receiving the notice, the other party may subpoena the deponent and the arbitrator may admit or exclude the deposition into evidence. The party who subpoenaed the deponent may further cross-examine him or her. These limitations are not applicable to a deposition admissible under the terms of Minnesota. R.Civ.P. 32.01.

C. As provided in Minn.R.Civ.P. 45, subpoena shall issue for the attendance of witnesses at the arbitration hearings. It shall be the party requesting the subpoena to mo of subpoena to show that the appear the arbitrator and to give the time an the arbitration hearing. At the disc arbitrator, non-appearance of a pro naed witness may be grounds for an a continuance of the hearing. If any wi served with a subpoena fails to appe tration hearing or, having appeared, sworn or to answer, the court may co ings to compel compliance.

D. Notwithstanding any other these rules, a party offering opinion the form of an affidavit or other s deposition, shall have the right to v testimony and the attendance of the hearing shall not then be required.

XII. Conduct of the Arbitration

The arbitrator shall have the foll

A. To administer oaths or affirm nesses.

B. Upon the request of a party o own initiative, to take adjournments.

C. To permit testimony to be offe tion.

D. To permit evidence to be offe duced as provided by these rules.

E. To rule upon the admissibility of the evidence offered.

F. On reasonable notice, to invite submit pre-hearing or post-hearing hearing statements of evidence.

G. To decide the law and facts o make an award accordingly.

H. To award costs, within limit costs of the action.

I. To view any site or object relev and

J. Any other powers agreed upon

The arbitrator may make a record ings. Any record so made is deem tor's personal notes and is not subje The arbitrator shall not deliver the party to the case or to any other pers employee using the record under t supervision or pursuant to a subpo criminal investigation or prosecutio Except as expressly permitted by thi record shall be made. At the heari tor shall not permit the presence of or court reporter or the use of any r

Adopted June 13, 1990, effective Septem

party requesting the subpoena to modify the form of subpoena to show that the appearance is before the arbitrator and to give the time and place set for the arbitration hearing. At the discretion of the arbitrator, non-appearance of a properly subpoenaed witness may be grounds for an adjournment or continuance of the hearing. If any witness properly served with a subpoena fails to appear at the arbitration hearing or, having appeared, refuses to be sworn or to answer, the court may conduct proceedings to compel compliance.

D. Notwithstanding any other provisions in these rules, a party offering opinion testimony in the form of an affidavit or other statement or a deposition, shall have the right to withdraw such testimony and the attendance of the witness at the hearing shall not then be required.

XII. Conduct of the Arbitration Hearing.

The arbitrator shall have the following powers:

A. To administer oaths or affirmations to witnesses.

B. Upon the request of a party or upon his/her own initiative, to take adjournments.

C. To permit testimony to be offered by deposition.

D. To permit evidence to be offered and introduced as provided by these rules.

E. To rule upon the admissibility and relevance of the evidence offered.

F. On reasonable notice, to invite the parties to submit pre-hearing or post-hearing briefs or pre-hearing statements of evidence.

G. To decide the law and facts of the case and make an award accordingly.

H. To award costs, within limits of statutory costs of the action.

I. To view any site or object relevant to the case; and

J. Any other powers agreed upon by the parties.

The arbitrator may make a record of the proceedings. Any record so made is deemed the arbitrator's personal notes and is not subject to discovery. The arbitrator shall not deliver the record to any party to the case or to any other person except to an employee using the record under the arbitrator's supervision or pursuant to a subpoena issued in a criminal investigation or prosecution for perjury. Except as expressly permitted by this rule, no other record shall be made. At the hearing, the arbitrator shall not permit the presence of a stenographer or court reporter or the use of any recording device.

Adopted June 13, 1990, effective September 1, 1990.

STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

In Re: Supreme Court Task Force on Uniform Local Rules

Public Hearing Submission by George O. Petersen, Judge, Second Judicial District

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Introduction

At the outset of the work by this Task Force, achieving uniformity in local rules of procedure was the mandate, the goal to be reached. That was seen as most easily to be accomplished by eliminating the disparities in time limits, sanctions and processes from one district to the next. What became apparent soon after the task force began meeting was that its members shared the same motivation; **eliminate unfair surprise and advantage resulting from differences in practice from one court to another**.

Court administrators, trial attorneys and the chief judges or assistant chief judges of the judicial districts met on Saturdays at least monthly under the able leadership of the Honorable Peter S. Popovich, then - Chief Justice of this Court, and reached that goal. These rules represent much more than uniformity, however. In the process of removing disparities and achieving similarity in practice for attorneys who regularly move from one jurisdiction to another in their work, I believe we have accomplished much more. I believe we have created the opportunity to **promote greater "civility" in the profession**.

Civility Generally

The Proposed Code of Rules for the District Courts, particularly in civil and family matters, emphasizes:

Joint Conferences to Resolve Motion Disputes
Joint Conferences to Identify Issues
Settlement Conferences
Pre-trial Conferences
Advance Notice of Scheduling

These features require more frequent contact between attorneys during litigation and create more opportunities for resolution of conflict earlier in the proceedings. In this environment of increased frequency of exchanges among counsel, the likelihood of those interchanges remaining "civil" will be enhanced.

The rules emphasize preparation, and they create more and earlier opportunities for disputes to be resolved before positions, legally tenable or not, become hardened and fixed by the passage of time alone.

The rules encourage attorneys to jointly participate in planning the schedule by which a case progresses through the court. Cooperatively, issues are identified, deadlines for discovery which are realistic and fair are established in advance, and disclosures of evidence minimize the likelihood of later requests for continuances for further preparation.

The rules require disclosure of hearing dates when they are scheduled, and they require notice further in advance than previously of the scheduling of hearings in certain cases. Complaints of "ambush" will be reduced if not eliminated.

Tom Tinkham, president of the Minnesota State Bar Association, wrote on the subject of "Incivility Revisited ..." in the August, 1990 issue of Bench and Bar:

> "Continued incivility by members of our profession is contrary to our collective good, and we must do more to limit this negative aspect of our professional lives.
>
> * * *
>
> Incivility among lawyers inevitably leads to a substantial increase in tension.

* * *

> The personalization of the legal issues inevitably leads to an increase in legal fees paid by the client as the lawyers direct their attention and time to attacking each other rather than resolving the merits of the clients' disputes.

* * *

> One thing we do not need to combat incivility is more rules regarding the conduct of lawyers. ... We need a change in attitude and culture to eliminate this problem, and we need to work at that change to get it."

More cooperative participation in scheduling, more advance notice of hearings, more joint conferences among counsel and the court, and earlier, more thorough preparation will promote greater civility in the profession without a rule that mandates it subject to a laundry list of sanctions.

Family Cases

The Conference of Chief Judges supports the efforts of the Supreme Court Uniform Rules Task Force and recommends the adoption of the proposed Uniform Code of Rules. Its most recent Resolution of January 25, 1991 made particular mention of the "abolition of the note of issue procedure for scheduling cases and replacing it with a court-directed process through use of scheduling orders in every case ...;".

That Resolution also sets forth the specific action taken by the Conference to revise the "case processing time objectives for family cases to accommodate the concern that such cases would be forced to fit into time objectives applicable to all civil cases...;".

FAMILY MATTERS
CASE PROCESSING STANDARDS

PERCENT COMPLETE IN MONTHS

CASE TYPE	90%	97%	99%
Dissolution	12	18	24
Support	6	9	12
Adoption	4	6	12
Other Family	12	18	24
Domestic Abuse	2	3	4

(Note: "Other Family" cases includes marriage annulments and separate maintenance petitions.)

In addition, a process was approved by the Conference to "permit the parties and attorneys to transfer a dissolution case to inactive status by stipulation, subject to a twelve month review of case status by the court;".

The proposed rules place responsibility for case management on the courts while encouraging active participation by attorneys in the scheduling plans made to manage those cases. More realistic case processing standards for family cases with an additional option for inactive status in the unusual or necessary case will eliminate the suspicions of some that the rules were intended to attain unrealistic case processing standards.

Family Cases-Court Management

In Ramsey County, all active family cases were inventoried as of June, 1990. That inventory included 868 support cases and 921 dissolution matters.

As to the 921 dissolution matters, it was determined that 150 had not been properly closed after entry of the judgment and decree.

Another 430 cases remained active.

But 341 CASES REMAINED OPEN WITH NO ACTIVITY DURING THE PRIOR 6 TO 12 MONTHS

Parties to those 341 dormant cases were informed by letter that their matters would be dismissed unless a note of issue or letter of objection was filed. The responses included:

Requests to Dismiss	34
Objections to Dismissal or Requests for Case Conference	36
Filed Contested Note of Issue	25
Filed Default Note of Issue	21
Other (Objection to Dismissal, Close to Inactive Status)	8
Returned Mail	27
No Response	190
TOTAL	341

The court must assume a proactive role in the management of filed cases with the active cooperation of attorneys to assure that these vitally important family matters are not being allowed to fester and stagnate, intentionally or unintentionally.

Family Cases-Timing and Civility

The Rules Committee of the Family Law Section of the Minnesota State Bar Association submitted a final draft dated January 24, 1991 of its Response to The Minnesota Supreme Court Task Force on Uniform Rules.

In footnote 43 of that Response, a need is obviously seen:

> " We believe that an order identifying and, by implication, limiting, contested issues for trial prevents sandbagging and litigation by ambush." (emphasis added)

Yet, in footnote 32, the Committee questions " whether the Supreme Court wishes to make rules regarding professional civility."

Conclusion

I respectfully suggest that these uniform rules of local practice which emphasize cooperative participation in case scheduling, require greater periods of notice prior to hearings, and encourage earlier case preparation and dispute resolution will enhance civility in the profession without regulating lawyers' professional conduct.

Familiarity with one's own cause, familiarity with that of the opposition, and familiarity with rules of practice that are uniformly known about and made applicable to all create our greatest opportunity for professional civility.

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT COURT

JUDGE DEBORAH HEDLUND
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487
(612) 348-3401

January 31, 1991

Chief Justice A.M. Keith
25 Constitution Ave.
St. Paul, MN

RE: February 1, 9 A.M. Hearing

Dear Justice Keith:

I apologize for making this request after the January 28 deadline, however, on behalf of the Hennepin County and Ramsey County District Court Judges I am asking for five minutes or less to comment on the proposed Scheduling Form in the Uniform Rules of Civil Procedure that is on for hearing February 1, at 9 A.M.

Thank you for your consideration.

Sincerely yours,

Deborah Hedlund

DH:lj
cc Chief Judge JoAnne Smith

Attached is the scheduling form proposed by Hennepin County in conjunction with Ramsey County.

There are four major areas of proposed changes:

1. Most questions allow separate answer spaces for both Plaintiffs and Defendants.

2. Only cases designated as complex need to provide the estimated dates outlined by Question No. 10 of this proposed form.

3. Definitions are provided for expedited, standard and complex cases. The definitions provided in this proposed form were arbitrarily chosen. The drafters of this form, however, feel that some tangible definition should be chosen for these terms and that these definitions should be provided in the scheduling form.

4. The parties are asked to provide reasons why it would not be useful to send a case through alternative dispute resolution procedures.

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF HENNEPIN — FOURTH JUDICIAL DISTRICT

Plaintiff,

vs.

FILE NO.
Case Information

Defendants.

---

1. Please list the parties that joined in filing this form.

_____

_____

2. All parties (have) (have not) been served with process.

3. (a) Has a complaint been filed with the court? YES___ NO___
(b) Has an answer been filed with the court? YES___ NO___
(c) If a pleading has not been filed, please explain why:

_____

_____

4. (a) Brief description of Plaintiff's case:

_____

_____

_____

(b) Brief description of any defenses or counterclaims advanced by Defendant(s).

_____

_____

_____

5. In the blanks provided, each party shall indicate the estimated number of: interrogatories, document requests, depositions, evaluations, or experts subject to discovery.

Interrogatories:	Plaintiff(s):_____	Defendant(s):_____
Document Requests:	Plaintiff(s):_____	Defendant(s):_____
Factual Depositions:	Plaintiff(s):_____	Defendant(s):_____
Medical Evaluations:	Plaintiff(s):_____	Defendant(s):_____
Experts subject to discovery:	Plaintiff(s):_____	Defendant(s):_____

6. (a) Do you foresee any problems with obtaining discovery?
YES ____ NO ____

(b) If yes, please explain what problems you foresee.

_____

_____

7. It is estimated that all discovery associated with this case can be completed within _____ months of this form.

8. Please assign this case to one of the following categories:

_____ Expedited: cases which can be ready for trial within four months of the date this matter was initially filed.

_____ Standard: cases which can be ready for trial within nine months of the date this matter was initially filed.

_____ Complex: cases which require in excess of nine months from the date this matter was initially filed to get ready for trial.

9. If it is estimated that all discovery can not be completed and a matter will not be ready for trial within nine months of the date of initial filing, please explain why:

_____

_____

_____

10. In cases designated as complex, please provide estimated dates and deadlines for the following:

a. _____ Deadline for joining additional parties, whether by amendment or third-party practice.

b. _____ Deadline for bringing non-dispositive motions.

c. _____ Deadline for bringing dispositive motions.

d. _____ Deadline for submitting _____ to the court. (specific issue)

e. _____ Deadline for completing independent physical examination pursuant to Minn. R. Civ. P. 35.

f. _____ Date for formal discovery conference pursuant to Minn. R. Civ. P. 26.06.

g. _____ Date for pretrial conference pursuant to Minn. R. Civ. P. 16.

h. _____ Date for scheduling conference.

i. _____ Date for submission of a Joint Statement of the Case pursuant to Rule 116.2 of the Code of Rules.

j. _____ Trial Date.

k. _____ Deadline for filing (proposed instructions), (verdicts), (findings of fact), (witness list), (exhibit list).

l. _____ Deadline for:

_____
(specify)

11. Estimated trial time: _____ days _____ hours (estimates less than a day must be stated in hours).

12. (a) A jury trial is: ( ) waived by consent of _____ pursuant to R. Civ. P. 38.02
(b) A jury trial is: ( ) requested by _____.
(NOTE: The applicable jury fee must be enclosed).

13. Is alternative dispute resolution useful in this case?
YES ____ NO ____

(a) If you feel alternative dispute resolution is useful in this case, which method is preferred? (e.g.,binding or non-binding arbitration, mediation):

_____

(b) If you feel alternative dispute resolution is not useful in this case, please explain why:

_____

_____

14. Please list any additional information which might be helpful to the court in scheduling this matter.

_____

_____

Signed _____
(Attorney for)

Attorney Reg. # _____
Firm: _____
Address: _____
Telephone: _____
Date: _____

Signed _____
(Attorney for)

Attorney Reg. # _____
Firm: _____
Address: _____
Telephone: _____
Date: _____

IN SUPREME COURT
CX-89-1863

PROPOSED AMENDMENTS TO
THE CODE OF RULES FOR THE
DISTRICT COURTS AND THE
MINNESOTA RULES OF CIVIL

WRITTEN STATEMENT
OF THE LEGAL SERVICES
ADVOCACY PROJECT

I. INTRODUCTION

The purpose of this document is to submit comments regarding the above-referenced proposed amendments. I am not requesting an opportunity to make an oral presentation. The comments relate exclusively to Family Court procedure and rules that have a distinct impact on the practice of Family Court.

The Legal Services Advocacy Project is a public policy lobbying organization affiliated with the civil legal services programs throughout Minnesota. A significant portion of the practice of the various legal services programs is in the area of family law.

II. COMMENTS & RECOMMENDED AMENDMENTS

Proposed Rule 105.3 Withdrawal of Counsel

It is common for attorney retainer agreements in family court cases to contain language about the absolute right of the attorney to withdraw in situations where the professional fees and costs incurred are not paid on the scheduled basis set out in the retainer agreement.

It is, however, rare that those contractual provisions are enforced by attorneys except for persistent and willful refusal to make payments upon outstanding legal fees. Legal access of persons to representation in family law matters has been extremely limited due to the expense involved. This proposed rule guarantees the right to withdraw from representation, without court permission, upon exhaustion of the retainer.

Courts will be confronted by pro se litigants at critical stages of their cases. While the Task Force comment states enforcement of those rules is best left to the Lawyers Professional Responsibility Board, a sanction by the LPRB is of little benefit to the judicial system or to any litigant whose rights have been affected by such unilateral withdrawal.

I recommend that for proceedings in Family Court, withdrawal only be effective upon service of an order of discharge on all parties. The attorney of record should be required to make an affirmative showing of the reasons for withdrawal. This is consistent with current Family Court Rules.

Proposed Rule 117.4 Guardian ad Litem for Children

Although this rule restates existing Rule 1.02 of the existing Family Court Rules, we would suggest some changes.

Use of guardian ad litems has expanded greatly in the last few years. In many ways this is a welcome change. However, procedural protections for the parties have not always kept up with this increase in use. For example, some guardians and judges take the position that the guardian does not need to turn over any of the underlying data used in his or her report. There is a growing temptation to give guardians a larger role in custody litigation. Parties need the opportunity to thoughtfully consider the proposed duties of guardians. When these motions are made orally at a hearing that opportunity is denied. I recommend that in the first sentence of the second paragraph of this rule, after "upon" insert "notice and".

Proposed Rule 302.2 Continuances

The rule against continuances is unnecessarily harsh and will deprive many low income people of the opportunity to present their case. The typical practice in family law is to serve respondents with a motion for temporary relief at the same time they are served with a summons and petition. Furthermore, post-decree motions may be served without any recent activity on a case, and long after a party's attorney has withdrawn. Thus, there are many times that people will not already be represented at the time they are served with a motion. Low income people will have to then find out about the availability of legal services in their community and contact the correct office. When the motion hearing is scheduled several weeks in the future, the person would have no reason to insist on talking to an attorney in the first three days. And yet, if that contact is not made within the first three days the opportunity for a continuance -- regardless of the reason and regardless of the attorney's schedule -- will be forfeited. This will obviously also restrict the ability of legal services to find volunteer attorneys since they will have to meet with the client within three days or will have to turn down a case merely because of a scheduling conflict. And of course the problem is even further exacerbated when people don't have transportation to the legal services office, postage to send in their papers, and perhaps can't even read them.

Perhaps a better way to address unnecessary delay would be to set an outside limit on motion hearings (e.g. within 45 days after service) or give notice that continuances will only be considered if requested no later than 5 days before the hearing. As long as there is a good cause requirement, however, it seems that the better practice would be to leave the granting of continuances to the discretion of the court.

Proposed Rule 303.3 Motion Practice

The plan for sequential service of motion papers is a good one. Currently it is literally impossible to file a timely motion for temporary relief when the party is served only 5 days before the hearing. This results in last minute papers, requests for continuances, affidavits served and filed after the hearing, and generally an inadequate opportunity to address all issues thoroughly.

While the service deadlines are appropriate, it is not clear why filing must be done so far

in advance of a hearing. If service is accomplished by sheriff or process server there may be a delay in getting the affidavit of service back to the attorney's office. This rule will really mean that personal service will have to be accomplished 3 weeks before a hearing to allow adequate time for return of the affidavit. The problems of late service appear to be two-fold: the file may have already been sent to the judge's chambers, and/or the judge will not have adequate time to review the materials. A reasonable deadline of 3-5 days before the hearing should take care of both problems. As a practical matter, it has been my experience that judges read the file either the day before or the day of a hearing so that matters are fresh.

Currently there is no requirement that memoranda be served and filed in advance. Attorneys should be familiar with the law; service 3 days in advance of a hearing should be sufficient to inform the judge of the legal issues.

Proposed rule 303.1 Motion Practice

We agree with the proposal of the Family Law Section Rules Committee of the Minnesota State Bar Association regarding the scheduling of motions in conjunction with pre-trial hearings. It is an excellent opportunity to resolve matters. The present arrangement has the effect of unfairly denying a person timely access to the courts to resolve a problem.

Proposed Rule 303.4(d) Ex Parte Relief Interim Support Order

I strongly support the inclusion of this paragraph in the proposed rules. I urge the Court to not limit interim support orders to situations in which the parties have actually physically separated. Parties may only be able to separate after the award of interim support is made. The rule should remain as proposed.

Proposed Rule 304.1 Scheduling Orders

We strongly agree with the reasoning of the Family Law Section Rules Committee regarding scheduling orders. Family law cases involve our most intimate relationships -- to our spouses and to our children. To impose artificial timelines on these decisions is absolutely inappropriate. You will have additional anger and frustration among litigants if the system tries to make them complete their dissolution with a certain number of days. Additionally, there will undoubtedly be increased numbers of dismissals and later re-filings if people feel pressured to complete the court process before they are ready. This will be an increased cost to litigants and an additional pressure on already over-burdened legal services offices. An alternative to the solution proposed by the Family Law Section Rules Committee would be to have the scheduling order be triggered by the request of either party.

Proposed Rule 310.1(a)

The proposal to delete from the current rule the reference to "custody as a contested issue" is a significant change in practice and one that is not authorized by the relevant statute. Under Minn. Stat. § 518.619, the court's authority to order mediation is limited to custody

and visitation issues. There is no authority to expand the mediation to child support, maintenance, or property division issues. It is inappropriate for the court rules to expand the issues subject to mandatory mediation.

I recommend that the first sentence of proposed Rule 310.1(a) be amended by adding before the period: ", if it appears from documents filed with the court that custody or visitation is contested"

Proposed Rule 310.1(b) Order - Condition Precedent

Under proposed rule 310.6 and current rule 9.06, mediation may be terminated by either the mediator or either party. Participation in court ordered mediation should not be a condition precedent to obtaining a final hearing when mediation has been determined to be inappropriate. This paragraph of the proposed rules should recognize the later rule so that participation in mediation is not required when it is inappropriate.

I recommend the following amendment to this paragraph: after "mediation" insert ", unless terminated by the mediator or either party,"

Proposed Rule 310.3(a) Mandatory Orientation

Commentary to the current Rule 9.03 describes the purpose and content of the orientation session. The essential element of the orientation session is the assessment of the appropriateness of the parties for mediation. The proposed rule provides no description of the orientation session or guidance as to the purpose. Mediation will only work if the parties understand the process and the process is appropriate given the parties' circumstances.

I strongly recommend that the elements of the committee commentary to current rule 9.03 be incorporated in the proposed rule.

Proposed Rule 310.4 Scope of Mediation

As discussed above, the issues subject to court-ordered mediation are limited by statute. This rule should be clarified so that the scope of mediation is expanded only upon the agreement of the parties.

I recommend the following amendment to Rule 310.4: before "mediation" insert "Upon the agreement of the parties,"

Proposed Rule 310.7(a) Mediator's Memorandum Submissions

Minn. Stat. § 518.619, which governs court ordered mediation of custody and visitation, provides for the mediator to communicate 3 recommendations to the court: 1) that an investigation under Minn. Stat. § 518.167 be conducted, 2) that other actions be taken to help resolve the controversy, and 3) that mutual restraining orders be issued. There is no authority for the mediator to communicate to the court the agreement of the parties or the

issues on which there is no agreement. The changes made to Minn. Stat. § 518.619 by the 1990 legislature clarified that the agreement of the parties should be communicated to the court by the parties and their counsel, not the mediator. The proposed rule is contrary to the clear language of the statute and the legislative intent.

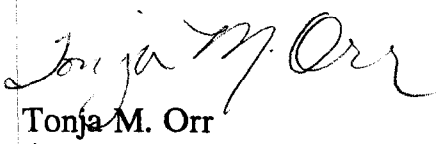
I recommend that paragraphs (a) & (b) of proposed rule 310.7 be deleted and that in paragraph (c) "shall" should be changed to "may" wherever it appears.

Proposed Rule 310.9 Fees

A significant number of low income families cannot afford to pay for mediation services. Since mediation may be required by the court as a condition precedent to a final hearing, the fees should be waived for very low income persons and reduced for other low-income families.

I recommend that this proposed rule be amended by inserting before the period "based on the parties' ability to pay"

Respectfully submitted,



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FAMILY LAW SECTION
MINNESOTA STATE BAR ASSOCIATION

January 24, 1991

Frederick Grittner
Clerk of the Appellate Courts
Room 245
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Re: Proposed Amendments to the Code of Rules for the District Courts and the Minnesota Rules of Civil Procedure

Dear Mr. Grittner:

Pursuant to Notice, we enclose herewith twelve (12) copies of our written statements concerning the proposed amendments to the Minnesota Rules of Family Court Procedure (proposed Rules 301.1, et seq.).

In addition thereto, we enclose herewith twelve (12) copies of our request to make an oral presentation.

Pursuant to the Bylaws of the Minnesota State Bar Association, the Family Law Section of the Minnesota State Bar Association hereby certifies that the proposals contained herein are germane to the business of the section; the proposals herein have been approved by a majority of the Executive Committee of the Family Law Section, pursuant to the Bylaws of the Section. The proposals set forth herein are not contrary to any current position of the Minnesota State Bar Association and do not address an issue pending consideration by the Minnesota State Bar Association.

Further, pursuant to the Bylaws of the Minnesota State Bar Association, no report or recommendation of any section shall

be considered as the action of the Minnesota State Bar Association unless and until it has been approved by the General Assembly, House of Delegates, Board of Governors or the Executive Committee.

Respectfully submitted,

PATRICIA A. O'GORMAN
CHAIR, FAMILY LAW SECTION
OF THE MINNESOTA STATE BAR ASSOCIATION

cc: **Tim Groshens, Executive Director**
Tom Tinkham, President

STATE OF MINNESOTA

IN SUPREME COURT

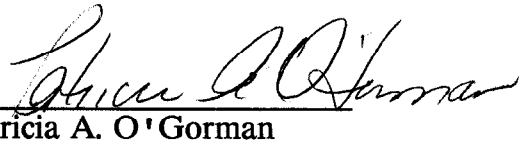
CX-89-1863

In Re the PROPOSED AMENDMENTS TO THE CODE OF RULES FOR THE DISTRICT COURTS AND THE MINNESOTA RULES OF CIVIL PROCEDURE

REQUEST TO MAKE ORAL PRESENTATION

The Family Law Section of the Minnesota State Bar Association hereby requests leave of Court to present an oral statement concerning the proposed Rules of Family Court Procedure, Proposed Rules 301.1, et seq.

FAMILY LAW SECTION OF THE MINNESOTA STATE BAR ASSOCIATION

By: 

Patricia A. O'Gorman
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8750 90th Street South
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Telephone: (612) 459-6644
Attorney I.D. No. 81097

FAMILY LAW SECTION
MINNESOTA STATE BAR ASSOCIATION

January 24, 1991

The Honorable Chief Justice
and the Associate Justices of
The Minnesota Supreme Court
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Re: Comments of the Family Law Section of the Minnesota State Bar Association to the Proposed Amendments to the Code of Rules for the District Courts and the Minnesota Rules of Civil Procedure.

The Honorable Chief Justice and Associate Justices of the Minnesota Supreme Court:

In 1985, the Minnesota Supreme Court appointed the Minnesota Supreme Court Advisory Committee on Family Court Procedures to advise the Court with respect to the promulgation of uniform Rules of practice in the family courts throughout this State. That Committee met through the first half of 1986. The Minnesota Supreme Court considered and later adopted those Rules, effective January 1, 1987.

The Minnesota Rules of Family Court Procedure have been in effect for only four years. During that time, we have been unaware of any complaints that the Rules of Family Court Procedure are deficient in any respect.

At the time the Supreme Court appointed the Task Force on Uniform Local Rules to review the various local rules of practice throughout the different districts of this State, we were not aware that the Task Force would be considering any rules other than the Special Rules of Practice for the District Courts in the various judicial districts. The Rules of Family Court Procedure are uniform and are in

force, by Order of the Supreme Court, in all 87 counties of this State.

We have thoroughly reviewed the proposals of the Supreme Court Task Force as those proposals relate to practice in Family Court since the preliminary draft of the proposed Rules was first issued in August, 1990. We testified before the Supreme Court Task Force and expressed our concerns about some of the Task Force proposals. The Task Force has adopted a few of our suggestions in its final draft. However, most of our suggestions were not adopted or given credence. We are particularly concerned that the Task Force suggests imposing case management objectives in proceedings where management is neither wanted nor desirable.

Family law proceedings often differ from other kinds of cases in that the petition is usually filed immediately following commencement of the action in order to have court intervention available on an immediate basis, if necessary. We do not spend long periods of time negotiating with insurance adjustors nor opposing counsel in an effort to reach a disposition or settlement <u>without</u> filing. All of our cases must be filed in order to achieve the objective - a Judgment and Decree of Dissolution, Separation or Custody.

While we respect the effort which the Task Force expended in its proposal, we do not believe the Minnesota Rules of Family Court Procedure should have been included in the scope of its mission.
However, if this Court determines that amendments to the Rules of Family Court Procedure are necessary, and that new rules should be adopted, then we request adoption of our proposal included herewith.

In preparing this response, we have implemented the original text of the Task Force, striking-out where indicated and using the Task Force's redlined revisions as our basic text. Our recommended revisions are in

italicized text. Our proposal includes strike-out of the Task Force's proposed rules and redlines our proposed revisions. To avoid document clutter, we did very little editing of the Task Force Comments - 1991 Adoption, where in many instances, our footnotes or revisions to the rules make clear we do not agree with the Task Force's stated rationale. Our rationale is footnoted, following the text or section in question.

Pursuant to the Bylaws of the Minnesota State Bar Association, the Family Law Section of the Minnesota State Bar Association hereby certifies that the proposals contained herein are germane to the business of the section; the proposals herein have been approved by a majority of the Executive Committee of the Family Law Section, pursuant to the Bylaws of the Section. The proposals set forth herein are not contrary to any current position of the Minnesota State Bar Association and do not address an issue pending consideration by the Minnesota State Bar Association.

Further, pursuant to the Bylaws of the Minnesota State Bar Association, no report or recommendation of any section shall be considered as the action of the Minnesota State Bar Association unless and until it has been approved by the General Assembly, House of Delegates, Board of Governors or the Executive Committee.

Respectfully submitted,

PATRICIA A. O'GORMAN
CHAIR, FAMILY LAW SECTION
OF THE MINNESOTA STATE BAR ASSOCIATION

cc: Tim Groshens, Executive Director
Tom Tinkham, President

RULES OF FAMILY COURT PROCEDURE

RULES OF FAMILY COURT PROCEDURE [1]

~~**Rule 301.1 Applicability of Rules**~~

~~Rules 301 through 312.4 apply to all proceedings in Family Court. These rules and, where not inconsistent, the Minnesota Rules of Civil Procedure shall apply to family law practice except where they are in conflict with applicable statutes.~~ [2]

Recommended Revision Rule 301.1 Applicability of Rules

Rules 301 through 312.4 apply to all proceedings in Family Court. The Minnesota Rules of Civil Procedure and, where applicable, these rules shall apply to family law practice. They are not intended as a substitute for statutory or case law.

Task Force Comment--1991 Adoption

These rules are derived primarily from the Rules of Family Court Procedure. Highlighting is included to show the changes from those rules. New provisions have been added from various local rules. (Highlighting has not been included on all numbering changes in order to avoid clutter.) The advisory committee comments from the Rules of Family Court Procedure are included except where inconsistent with new provisions or where applicable rules are not retained.

These rules apply to ~~the following specific types of actions that are generally treated as~~ family court actions:

~~1. Marriage dissolution~~ [3] ~~proceedings (Minn. Stat. ch. 518);~~

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[1] Please note that the Family Law Task Force of the Minnesota State Bar is recommending procedural and legislative changes to the commencement of proceedings for dissolution of marriage which will substantially affect rules and practice. (See Recommendations 2, 7, 10, 12, 13, and 14; at the time of this writing, the Draft Report of the Family Law Task Force of the Minnesota State Bar Association has not been approved by either the Board of Governors or the House of Delegates pursuant to the Bylaws.)

[2] We do not believe that the promulgation of these rules serves to supersede, repeal or otherwise alter statutes, Rules of Civil Procedure or appellate decisions.

[3] Minn. Stat. § 518 also includes legal separation and annulment proceedings.

~~2. Child custody enforcement proceedings (Minn. Stat. ch. 518A);~~ [4/]

~~3. Domestic abuse proceedings (Minn. Stat. ch. 518B);~~

~~4. Interstate support enforcement proceedings (Minn. Stat. ch. 518C R.U.R.E.S.A.);~~

~~5. Contempt actions in Family Court (Minn. Stat. ch. 588);~~ [5/]

~~6. Parentage determination proceedings (Minn. Stat. §§ 257.51-.74);~~

~~7. Actions for reimbursement of public assistance (Minn. Stat. § 256.87);~~

~~8. Withholding of refunds from support debtors (Minn. Stat. § 289A.50, subd. 5);~~ [6/]

~~9. Proceedings to compel payment of child support (Minn. Stat. § 393.07, subd. 9);~~ [7/] and

~~10. Proceedings for support, maintenance or county reimbursement judgments (Minn. Stat. § 548.091).~~ [8/]

[4/] There is no action for "enforcement" of child custody.

[5/] Chapter 588 defines contempt and establishes penalties therefore.

[6/] Minn. Stat. § 289A.50, Subd. 5 requires that notification be pursuant to the Rules of Civil Procedure.

[7/] This is a remedy, not a proceeding.

[8/] This is a support remedy, not a proceeding.

Rule 302.1 Commencement of Proceedings

~~(a)~~ **Service.** Marriage dissolution, legal separation and annulment proceedings shall be commenced by service of a summons and petition upon the person of the other party, or by publication pursuant to court order. Service in other family court proceedings shall be governed by the rules of civil procedure.

~~**(b) Joint Petition.** No summons shall be required if a joint petition is filed. Proceedings shall be deemed commenced when both parties have signed the verified petition.~~

~~**(c) Service by Publication.** Service of the summons and petition may be made by publication only upon an order of the court. If the respondent subsequently is located, personal service shall be made before the final hearing.~~

~~**(d) Service upon foreign nationals.** In every action for dissolution of marriage brought against a foreign national, in which summons and complaint are not served by handing them to the respondent within the continental United States, the attorney for petitioner shall be requested, upon the commencement of such action, to notify the nearest consul or vice-consul of the country of which respondent is a national of the title and venue of such action, the manner in which and date upon which jurisdiction was acquired and shall upon request furnish a copy of such summons and complaint.~~ 9/

Family Court Rules Advisory Committee Commentary

Proceedings for dissolution, legal separation and annulment are governed by Minn. Stat. ch. 518. Minn. Stat. § 518.10 sets out the requisites for the petition. Minn. Stat. § 518.11 governs service by publication and precludes substitute service or service by mail under Minn. R. Civ. P. 4.05. The respondent's answer must be served within 30 days. Minn. Stat. § 518.12. The joint proceeding is commenced on the date when both parties have signed the petition; no summons is required. Minn. Stat. §§ 518.09 & .11. Where a notarized acknowledgment of service is

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9/ We recommend the deletion of sections (b), (c) and (d).

Section (b) is derived from Minn. Stat. § 518.09. Section (c) is derived from Minn. Stat. § 518.11. See also Minn. R. Civ. P. 4.04, 4.042. Family law experiences ongoing annual legislative revision. To avoid necessary annual revisions to the rules, therefore, we have stricken all matters governed by statute.

We recommend the complete deletion of Section (d) because it is outdated, poorly worded and a misstatement of existing law. The proposed rule as drafted overlooks two states which are not within the "continental United States", as well as numerous territories and the Commonwealth of Puerto Rico held by the United States.

executed, service is valid for all purposes. [10/] ~~In cases involving foreign nationals, see Part I, Rule 30, Code of Rules for District Court.~~ In every family court proceeding brought against a person located outside the United States or its territories, service is governed by:

> The Convention on the Civil Aspects of International Child Abduction, done at the Hague on October 25, 1980, as adopted by the United States in Public Law 100-300 [H.R. 3971] as the International Child Abduction Remedies Act, approved April 29, 1988, effective July 1, 1988, and codified at 43 U.S.C. §§ 11601 through 11610. The regulations are found at 22 C.F.R. 94, et seq; and .
>
> The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at the Hague, November 15, 1965, ratification advised by the Senate of the United States of America on April 14, 1967; ratified by the President of the United States of America, April 24, 1967; ratification of the United States of America deposited with the Ministry of Foreign Affairs of the Netherlands, August 24, 1967; proclaimed by the President of the United States of America, January 8, 1969: entered into force February 10, 1969. [11/]

~~In cases involving foreign nationals, see [citation omitted].~~ [12/]

Custody proceedings under the Uniform Child Custody Jurisdiction Act are governed by Minn. Stat. 518A. ~~Interstate~~ service and notice upon parties outside Minnesota must be accomplished at least 20 days prior to any hearing in Minnesota. Service within the state is set forth in Minn. R. Civ. P. 4.

Domestic abuse proceedings are governed by Minn. Stat. Ch. 518B. Ex parte orders for protection must include notice of a hearing within 14 days of the issuance of the order. Personal service upon the respondent must be effected not less than 5 days prior to the first hearing.

Support proceedings under the revised Uniform Reciprocal Enforcement of Support Act are governed by Minn. Stat. Ch. 518C. The time for answer is governed by the law of the responding jurisdiction.

Actions to establish parentage are governed by Minn. Stat. Ch. 257. Actions for reimbursement for public assistance are governed by Minn. Stat § 256.87. Defendant has 20 days to answer the complaint in each action.

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. § 518.551.

~~A party appearing pro se shall perform the acts required by rule or statue in the same manner as an attorney representing a party. An attorney dealing with a party pro se shall proceed in the same manner, including service of process, as in dealing with an attorney.~~ [13/]

[10/] In many instances in family court proceedings, service of the summons and petition is acknowledged by a party who chooses to proceed pro se in a default proceeding. Just as an affidavit of service of all documents must be notarized, so must an acknowledgment of service.

[11/] We recommend the insertion of the redlined text as the United States is a signatory to the Hague Convention. Owing to the proliferation of parental abduction cases in the past decade, we recommend citation to the specific statutes above.

[12/] This line should be omitted in view of the recommended revision in the preceding footnote.

[13/] We recommend the deletion of this last provision as redundant to the provisions of the Task Force Proposed Rule 105.3.

Task Force Comment--1991 Adoption

Subsection (a) is derived from Rule 1.01 of the Rules of Family Court Procedure.

Subsection (b) is derived from Second District Local Rule 1.011.

Subsection (c) is derived from Second District Local Rule 1.013. *See* Minn. Stat. § 518.11 (1990). This is to protect the children and help avoid secret proceedings if the respondent is able to be located.)

Section (d) is derived from existing Rule 30 of the Code of Rules for the District Courts.

The Task Force considered a recommendation to delete subsection on the grounds it deals incompletely with subject matter covered by statute, specifically The Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Criminal Matters, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638, 658 UNTS 163 (entered into force for the United States Feb. 10, 1969).

Rule 302.2 Continuances

Rule 140.2 of the Code of Rules shall be followed in connection with continuances for pre-hearings and trial settings. No continuance of a motion shall be granted unless requested within 3 days of receiving notice under Rule 303.1(a) and unless good cause is shown.

Rule 302.3 Time [14/]

Time is governed by Minnesota Rules of Civil Procedure, except where a different time is specified by statute. Procedural time limits may be shortened for good cause shown. [15/]

Family Court Rules Advisory Committee Commentary

Family Court proceedings involve human considerations which may require expeditious judicial attention. The shortening of time should be the exception and not the rule. A motion to shorten time will be granted only upon demonstration of the unusual circumstances justifying this extraordinary relief. See Rule 2.05.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 1.04 of the Rules of Family Court Procedure.

[14/] These proposed rules explicitly claim to supersede the Minnesota Rules of Civil Procedure. See Proposed Rule 301.1 infra. (e.g., proposed Rule 303.3 has considerably different time requirements from those set forth in Minn. R. Civ. P. 6.04.)

It is obvious, therefore, that this proposed rule is inconsistent with the time limits established by other proposed rules by the Task Force.

[15/] There is strong sentiment on the Rules Committee to change Minn. R. Civ. P. 6.04 for initial service of documents to occur fourteen (14) days prior to the scheduled hearing and seven (7) days for responsive pleadings.

RULES COMMITTEE RESPONSE TO TASK FORCE RECOMMENDATIONS

Rule 302.4 Designation of Parties

(a) Parties to dissolution, legal separation, annulment, custody, domestic abuse, U.C.C.J.A., and R.U.R.E.S.A. proceedings shall be designated as petitioner (joint petitioners) and respondent. Parties to ~~paternity~~ parentage and Chapter 256.87 reimbursement actions shall be designated as plaintiff and defendant. ~~After so designating the parties, it is permissible to refer to them as husband and wife by inserting the following in any petition, order, decree, etc.:~~

~~Petitioner is hereinafter referred to as (wife/husband), and respondent as (husband/wife).~~ [16/]

(b) A guardian ad litem for minor children may be designated a party to the proceeding in the order of appointment. (See Rule 117.4) [17/]

Task Force Comment--1991 Adoption

A guardian appointed pursuant to Minn. Stat. § 257.60 becomes a party to the action if the child is made a party. The guardian then would be entitled to initiate and respond to motions, conduct discovery, call and cross-examine witnesses, make oral or written arguments or reports and appeal on behalf of a child without the necessity of applying to the court.

A guardian appointed under Minn. Stat. §518.165 is not a party to the proceeding and may only initiate and respond to motions and make oral statements and written reports on behalf of the child.

A party has the right to cross-examine as an adverse witness the author of any report or recommendation on custody and visitation of a minor child. Thompson v. Thompson, 288 Minn. 41, 55 N.W.2d 329 (1952) and Scheibe v. Scheibe, 308 Minn. 449, 241 N.W.2d 100 (1976).

Practice among the courts may vary with respect to appointments. Some courts maintain panels of lay guardians while other courts maintain panels of attorney guardians. If a lay guardian is appointed, an attorney for the guardian may also be

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16/ The language cited is permissive and should not therefore be a matter of rule.

17/ We recommend that the Supreme Court adopt the language from the Committee Commentary to Rule 1.02 of the Uniform Rules of Family Court Procedure in order to assure that the courts and counsel recognize that a guardian ad litem may be a party in a court proceeding, depending upon the order of appointment and the type of proceeding involved.

appointed. Guardians may volunteer or be paid for their services. An attorney requesting appointment of a guardian should inquire into local practice.

See Rule 117.4

Task Force Comment--1991 Adoption

This rule is derived from existing Second District R. 1.07.

Rule 303.1 Scheduling of Motions

(a) Notice.

(1) All motions shall be accompanied by ~~either an order to show cause or by~~ [18] a notice of motion which shall state, with particularity, the time and place of the hearing and the name of the judge, referee, or judicial officer, as assigned by the local assignment clerk.

~~(2) Except in cases in which the parties reside in the same residence and there is a possibility of abuse, a party who obtains a date and time for hearing a motion, shall promptly give notice of the hearing date and time and the name of the judge or referee, if known, to all other parties in the action.~~ [19]

Recommended Revision Rule 303.1 (a)(2) *Within three business days after a date and time for hearing has been obtained from the local assignment clerk, the party scheduling such hearing date shall give notice of the hearing date, time and the identity of the assigned judicial officer to all other parties in the case.* [20]

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[18] Since the Task Force has adopted, virtually verbatim, Rule 2.06 of the Uniform Rules of Family Court Procedure in its Rule 303.5, but has deleted the admonition contained in the Committee Commentary to Rule 2.06, we recommend striking the reference to Orders to Show Cause in the text of the proposed rule. The routine use of Orders to Show Cause should not be encouraged since their use can be abused by requiring a personal appearance where none is necessary.

[19] Rule 303.1(a) (2) as proposed by the Task Force is virtually identical to Proposed Rule 107.1 (m), with the only difference consisting of the reference to parties in the same residence and cases involving the possibility of abuse. We have two problems with the rule as drafted:

1) Where the possibility of abuse exists, the party who fears injury may obtain an order to show cause containing restraints against conduct. In cases where abuse has occurred, the party may seek an order for protection.

2) We believe that the term "promptly" is too vague. We recommend the adoption of the above revision to Section (2) italicized above.

[20] cf. Minnesota Local Bankruptcy Rules 107 (b).

[Requiring service of pleadings with notice of hearing within three business days of scheduling with the court].

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

> ~~All responsive pleadings shall be served and mailed to or filed with the court administrator no later than five days prior to the scheduled hearing. The court may, in its discretion, disregard any responsive pleadings served or filed with the court administrator less than five days prior to such hearing in ruling on the motion or matter in question.~~ [21/]

Recommended Addition to Rule 303.1 as New Subsection (b)

> ***(b) Identification of Judicial Assignment.*** *The Assignment Clerk shall identify the judicial officer assigned to any motion or court appearance when it is scheduled.* [22/]

[21/] We note that the time periods for response were continued into the Task Force's recommendations, notwithstanding the Task Force's proposed rule 107.1 (d) (2) recommended changes for time requirements for responsive service.

This rule is in direct conflict with Minn. R. Civ. P. 6.04.

[22/] We recommend the separate rule directed to compliance by the calendar or assignment clerk for identification of the assigned judicial officer when a hearing is scheduled. This practice would allow notices of removal to be filed in a timely fashion to allow for orderly re-scheduling.

This would be consistent with existing Rule 2.01, as amplified by the Committee Commentary.

Family lawyers experience continuances, delay in the disposition of cases and unnecessary expense to parties when a hearing is re-scheduled upon the filing of a notice to remove at the courthouse. For example, in Dakota County, the clerks will not identify the judge assigned to a satellite courthouse, even the afternoon before the hearing. Parties and their attorneys arrive at the courthouse for a temporary hearing. If one attorney files a notice to remove against the only judge present in that courthouse, the matter must be re-scheduled or the attorneys and parties travel to the Dakota County Government Center in Hastings. Even that effort may prove unsuccessful, necessitating the re-scheduling of the case weeks later. In the meantime, support orders are not established, occupancy and temporary custody remain undecided and the parties are put to the expense of still another trip to the courthouse, at an average increased cost of between $500 to $1,000 for the parties.

Recommended Addition to Rule 303.1 as New Subsection (c)

*(c) **Prehearing Conference Motions.** After a scheduling order has been made and notice of prehearing conference has been mailed to counsel, motions may be served and filed for hearing at the prehearing conference.* [23/]

Family Court Rules Advisory Committee Commentary

The scheduling of cases and the assignment of judges, judicial officers or referees is often a situation in which local calendaring practices prevail. Effective disposition of litigation requires immediate notice of the hearing officer's identity to preclude last minute filing of notices to remove or affidavits of prejudice.

Task Force Comment--1991 Adoption

Subdivision (a)(1) of this rule is derived from existing Rule 2.01 of the Rules of Family Court Procedure.

Subdivision (a)(2) is from the new Rule 107.1(m) of the Code of Rules. This provision is intended to make uniform the requirement that all hearing dates obtained from courts be disclosed to all parties in the action in order to facilitate the hearing of all matters then known to be ready for hearing.

Subdivision (b) of this rule is derived from Second Judicial District Rule 2.011.

[23/] Family law practitioners have been subjected to vitriolic attacks by the trial bench, the Court of Appeals and the legislature, all of which have been translated into media events and public issues, "requiring" the regulation of attorney fees in the practice.

Every trip to the courthouse costs a party at least three to five hundred dollars in attorney fees. Motions should be heard at the scheduled prehearing conference to promote judicial economy. A comprehensive pretrial order addressing any discovery, support or trial issues and the scheduling of identified events may then be entered.

Rule 303.2 Form of Motion

(a) Specificity and Supporting Documents. Motions shall set out with particularity the relief requested in individually numbered paragraphs. All motions must be supported by appropriate affidavits, relevant and material to the issues before the court. The paragraphs of the affidavits should be specific and factual; where possible, they should be numbered to correspond to the paragraphs of the motion.

(b) Application for Temporary Relief. When initial [24/] temporary financial relief is requested, such as child support, maintenance and attorney's fees, the application for temporary relief form set forth at Rule 311.1 shall be served and filed by the moving and responding parties. *Individually typed or word processor forms will not be accepted for filing.* [25/] Additional facts, limited to relevant and material matters, shall be added at paragraph 10 of the application form or by supplemental affidavit. Sanctions for failure to comply include, but are not limited to, the striking of pleadings or hearings.

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 2.02 of Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from Second Judicial District Rule 2.021.

[24/] When a party loses a job and an order for temporary relief exists, that party must bring a motion for modification of the terms of the support order. It would be expensive to the parties and duplicate pleadings already in the file to require the re-filing of an application for temporary relief by both parties.

[25/] The Minnesota Supreme Court Advisory Committee on Family Court Procedures, appointed in 1985, required that two forms, the application for temporary relief (Minn. R. Fam. Ct. P. 2.02) and the prehearing conference statement (Minn. R. Fam. Ct. P. 4.02) be completed on preprinted forms. That Committee was chaired by the Honorable Eugene L. Kubes, Referee of Family Court, Second Judicial District and included the Honorable Milton G. Dunham, Referee of Family Court, Fourth Judicial District. Both judicial officers were quite vocal on the need for uniformity in the submissions in order to assure that necessary information was available and readily accessible to the court in processing the high volume of cases. Prior to the adoption of the Uniform Rules, while the information necessary to formulate support awards may have been provided, it was not necessarily calculated by the statutory requirements. In addition, information necessary to assist the court in determining available resources for debt payment and attorney fee awards was often not provided.

The local rule from which subdivision (b) is derived included a requirement that information be filed on forms, and that typewritten or word-processed documents would not be accepted for filing. The Task Force considered the desirability of requiring information to be submitted on pre-printed forms, and determined that such requirements should not be retained. Many modern law offices cannot readily prepare such documents as word processing machines have displaced the typewriters for which the forms are designed. The Task Force also believes that these requirements only increase the cost of litigation and limit access to the courts. [26/]

[26/] A preprinted form is available at nominal cost at any legal stationers. Word processors and the volumes of material generated by them are not so readily available. A pro se litigant may purchase the preprinted form and complete it on a typewriter or in legible longhand. This gives greater access of the public to the courts.

Rule 303.3 Motion Practice

(a) Requirements for Motions.

(1) Moving Party, supporting documents, time limits. No motion shall be heard unless the initial moving party serves a copy of the following documents on opposing counsel and mails to (or files with) the court administrator at least 14 days [27/] prior to the hearing:

(i) Notice of motion in form required by Rule 302.1(a);

(ii) Motion;

(iii) Any ~~relevant~~ appropriate affidavits and exhibits, relevant and material to the issues; and

(iv) ~~Any memorandum of law the party intends to submit.~~ Such memorandum of law deemed appropriate or necessary for the judicial resolution of issues.

(2) Motion Raising New Issues. A responding party raising new issues other than those raised in the initial motion shall serve one copy of the following documents on opposing counsel and shall mail to (or file with) the court administrator at least 10 [28/] days prior to the hearing:

(i) Notice of motion in form required by Rule 302.1(a);

(ii) Motion;

(iii) Any ~~relevant~~ appropriate affidavits and exhibits, relevant and material to the issues; and

(iv) ~~Any memorandum of law the party intends to submit.~~ Such memorandum of law deemed appropriate or necessary for the judicial resolution of issues.

(3) Responding party, supporting documents, time limits. The party responding to issues raised in the initial motion, or the party responding to

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[27/] The fourteen day requirement is in conflict with Minn. R. Civ. P. 6.04. However, in Hennepin County, court documents mailed for filing to the Government Center five days before the scheduled hearing are unlikely to find their way to the court file. As a result, the Hennepin County bench has recommended that a courtesy copy be directly mailed to the assigned judicial officer, simultaneous with the filing of court documents by mail. In almost every other county in Minnesota, courtesy copies to the Judge are not appreciated and often regarded with outright hostility.

This is an example of the previously cited concern that counties other than Hennepin and Ramsey are inflicted with requirements simply designed to alleviate the problems of urban congestion.

[28/] This time requirement is in direct conflict with Minn. R. Civ. P. 6.04.

a motion which raises new issues, shall serve one copy of the following documents on opposing counsel and shall file the originals with the court administrator at least five days prior to the hearing, inclusive of Saturdays, Sundays, and holidays:

(i) ~~Any memorandum of law the party intends to submit~~ Such memorandum of law deemed appropriate or necessary for judicial resolution of the issues; and

(ii) Any ~~relevant~~ appropriate affidavits and exhibits~~.~~, relevant and material to the issues.

~~**(b) Failure to comply.** In the event an initial moving party fails to timely serve and file documents required in this rule, the hearing shall be canceled. If responsive papers are not properly served and filed, the court may deem the initial motion or motion raising new issues unopposed and may issue an order without hearing. The court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, may consider the matter unopposed, may allow reasonable attorney's fees, or may proceed in such other manner as the Court deems appropriate.~~ [29/]

Recommended Addition to Rule 303.3 as New Subsection (b)

(b) Service by Mail. *Where service of the pleadings occurs by United States mail, then three days shall be added to the applicable periods set forth above.* [30/]

[29/] We do not believe that such a rule is necessary. It appears to be a rule designed for the bench to implement existing rules. It also appears to be a warning to sloppy practitioners of the judicial sanctions available to the court. We believe that existing rules already provide the bench with the tools to enforce compliance.

[30/] We recognize that this is redundant to Minn. R. Civ. P. 6.05. Extensive debate has occurred and is ongoing as to whether these "local" rules overrule, supersede or eliminate the provisions of Minnesota Rules of Civil Procedure, which have not been revised, or vice versa. We note that the Rules of Civil Procedure recommended for revision by the Task Force do not include Minn. R. Civ. P. 6.05, an omission which must be addressed whether by bringing these proposed local rules in conformity with the Rules of Civil Procedure or vice versa.

As previously noted, all the time periods established by these rules are in conflict with Minn R. Civ. P. 6.04.

~~(e) **Requirement to attempt to resolve dispute.** No motion, except motion for temporary relief, will be heard unless the parties have conferred by telephone, face to face, or by exchange of correspondence in an attempt to resolve their differences prior to the hearing. The moving party shall initiate such conference. 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.~~[31/]

~~(d) **Settlement of Motion Issues.** Whenever any motion or issue that is part of a pending or submitted motion is settled, the moving party shall promptly advise the court of the fact of settlement.~~ [32/]

~~(e)~~(c) **Motion with Request for Oral Testimony.** Motions, except for contempt proceedings, shall be submitted on affidavits, exhibits, documents subpoenaed to the hearing, memoranda, and arguments of counsel unless otherwise ordered by the court for good cause shown. If demand is made for the taking of oral testimony, and if the matter cannot be heard adequately in the scheduled time, the hearing shall be utilized as a prehearing conference. Requests for hearing time in excess of one-half hour shall be submitted by written motion specifically setting forth the necessity and reason that evidence cannot be submitted by affidavit. The motion shall include names of witnesses, nature and length of testimony, including cross-examination, and types of exhibits, if any. The court may issue an order limiting the number of witnesses each party may call, the scope of their testimony, and the total time for each party to present evidence. Such an order shall be made only after the attorney for each party has had an opportunity to suggest appropriate limits. Any motion relating to custody or visitation shall additionally state whether either party desires the court to interview minor children. ~~No child under the age of~~

[31/] Prudent counsel always try to resolve disputes, without recourse to judicial resolution. This rule would impose an obligation that attorneys either become witnesses to their attempts to comply with this rule or complainants about the conduct of opposing counsel for non-compliance. Such complaints could even extend to the failure to return telephone calls.

[32/] We question whether the Supreme Court wishes to make rules regarding professional civility.

~~fourteen years will be allowed to testify without prior written notice to the other party and court approval.~~[33/]

Family Court Rules Advisory Committee Commentary

Minn. Stat. § 518.131, subd. 8 grants a party the right to present oral testimony upon the filing of a demand either in the initial application for temporary relief or in the response thereto.

The party demanding oral testimony should provide a list of the proposed witnesses, the scope of their testimony and an estimate of the required time.

Task Force Comment--1991 Adoption

Subdivisions (a)-(d) of this rule are new. They are derived from parallel provisions in new Rule 107.1 of the Code of Rules, and are intended to make motion practice in family court matters as similar to that in other civil actions as is possible and practical given the particular needs in family court matters.

Subdivision (e) of this rule is derived from Rule 2.04 of Rules of Family Court Procedure and from Second Judicial District Rules 2.041 and 2.042.

The requirement in subsection (c) of an attempt to resolve motion disputes requires that the efforts to resolve the matter be made before the hearing, not before bringing the motion. It is permissible under the rule to bring a motion and then attempt to resolve the motion. If the motion is resolved, subsection (d) requires the parties to advise the court immediately.

33/ Children of any age should not testify in their parents' divorce. Any evidence a child might provide can be obtained in other ways and be made of record in the trial through the use of Court Services and other reports, in camera interviews of children by the judge and the testimony of guardians, parties and experts.

Rule 303.4 Ex-parte Relief

(a) Motion. The court may grant ex-parte relief only if requested by a motion with ~~supporting~~ supportive affidavit, properly executed.

(b) Ex Parte Orders.

(i) Order to Show Cause. [34/] An order to show cause shall not be used to grant ex-parte relief except in those cases where permitted pursuant to Rule ~~303.5~~ 303.4 (ii).

(ii) Orders to show cause shall be obtained in the same manner specified for ex-parte relief. ~~Such orders may require production of limited financial information deemed necessary by the court.~~ An order to show cause shall be issued only where the motion seeks a finding of contempt or the ~~supporting~~ supportive affidavit makes an affirmative showing of:

(a) a need to require the party to appear in person at the hearing; or

(b), the need for interim support is warranted, or

(c) the production of limited financial information deemed necessary by the court, or

(d) such other limited relief and appropriate restraining orders, as addressed individually in the separate supportive affidavit for ex parte relief.

Recommended Addition to Rule 303.4 as New Subsection (b)(iii)

(iii) An ex parte order changing an existing custody, visitation or support order or granting injunctive relief shall not be issued by the court, absent an affirmative showing of notice provided to the other party and an opportunity for said party to appear before the court in opposition to the issuance of such an order. [35/]

(c) Filing. All ~~such~~ ex parte orders and ~~supporting~~ supportive documents must be filed with the order appropriately signed out for personal service. A conformed file copy of such order shall be retained by the court administrator in the file.

[34/] The incorporation of Ex Parte Orders in its appropriate category negates the need for the Task Force Proposed Rule 303.5. We believe that ex parte orders should be included in the section relating to ex parte relief rather than being set off separately.

[35/] This recommended addition clarifies that Minn. R. Civ. P. 65.01 applies to requests for ex parte relief in family court matters.

(d) Interim Support Order. *If the parties are physically separated,* [36/] ~~To~~ to insure support for an unemployed party or a party with children pending a full temporary hearing, an initial order to show cause may, if the situation warrants, contain the following:

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

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

There must be a showing in the Application for Temporary Relief or separate affidavit of the necessity for the interim order for support. *The court shall address the propriety and amount of an interim provisional support order in any subsequent order for temporary relief.*

~~**Rule 303.5**~~ [37/]

Family Court Rules Advisory Committee Commentary

Minn. R. Civ. P. 65.01 states the notice requirements for ex parte relief. Minn. Stat. § 518.131 controls ex parte temporary restraining orders.

Task Force Comment--1991 Adoption

Subdivisions (a), (b) and (c) of this rule are derived from existing Rule 2.05 of the Rules of Family Court Procedure.

Subdivision (d) of this rule is derived from Second District Local Rule 2.051.

Family Court Rules Advisory Committee Commentary

[36/] The Task Force derived proposed Subdivision (d) from Second District Local Rule 2.051. That rule exists to prevent interim financial crisis where a spouse and minor children may have been abandoned for the six week delay in the temporary hearing calendar.

[37/] This rule has been incorporated in the preceding section on Ex parte Relief.

RULES COMMITTEE RESPONSE TO TASK FORCE RECOMMENDATIONS

The use of orders to show cause can be abused by requiring a personal appearance where none is necessary. A timely notice of motion informing a party of the time to appear, if he or she wishes, is adequate in most proceedings.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 2.06 of the Rules of Family Court Procedure. The Family Law Section of the Minnesota State Bar Association recommended additional specific language limiting use of orders to show cause and the Task Force agrees that this clarification should be useful. Orders to show cause are specifically authorized, in limited circumstances, by statute. *See, e.g.*, Minn. Stat. §§ 256.87, subd. 1a & 393.07, subd. 9 (1990).

Recommended Addition of New Rule 303.5 Initiating Final Hearing

(a) Note of Issue. A final hearing shall be scheduled only upon the service and filing of the required a note of issue which shall contain the title of the proceeding and the names and addresses of all attorneys and parties. A Prehearing Conference is required in contested proceedings. Certificates of readiness shall not be required.

(b) Continuing Discovery. Discovery shall remain open notwithstanding the filing of a note of issue.

(c) Notice in Contested Proceedings. Upon the filing of a note of issue in a contested proceeding, the Court shall notify all parties of the scheduling of the pre-hearing conference.

Committee Commentary

Before or at the time of filing of the note of issue, the summons and petition, with proof of service (or the joint petition) and other required documents should be filed with the Court Administrator. Minn. R. Civ. P. 5.04. It must be shown affirmatively that the time to answer has expired or has been waived, or that the opposing party has otherwise appeared. See Rule 306.1.

The rule in Minnesota on the valuation date in dissolution proceedings has changed three times in the past few years. (See Minn. Stat. § 518.58, Subd. 1.) Other proceedings may be brought, where, due to the ongoing jurisdiction of the court, current information is required for adjudication of the issues presented.

Rule 303.6 Orders and Decrees Requiring Child Support or Maintenance

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

That both parties are hereby notified that:

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

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

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

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

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

Task Force Comment--1991 Adoption

This rule is derived from Rule 7.01 of the Rules of Family Court Procedure and Second District Rule 2.09.

Rule 304.1 Scheduling Orders

~~**(a) Applicability of Rule.** The requirements of this rule shall apply to all proceedings in family court except:~~

~~(1) Actions for reimbursement of public assistance (Minn. Stat. § 256.87;~~
~~(2) Contempt (Minn. Stat. ch. 588);~~
~~(3) Domestic abuse proceedings (Minn. Stat. ch. 518B;~~
~~(4) Child custody enforcement proceedings (Minn. Stat. ch. 518A);~~
~~(5) Support enforcement proceedings (Minn. Stat. ch. 518C R.U.R.E.S.A.);~~
~~(6) Withholding of refunds from support debtors (Minn. Stat. § 289A.50, subd. 5);~~
~~(7) Proceedings to compel payment of child support (Minn. Stat. § 393.07, subd. 9); and~~
~~(8) Proceedings for support, maintenance or county reimbursement judgments (Minn. Stat. § 548.091).~~

Recommended Revision to Rule 304.1 (a)

(a) Applicability of Rule. *The requirements of this rule shall apply to all family court matters governed by Minn. Stat. Chs. 518, 518A, 518B, 518C, §§ 257.51-257.74, and § 256.87.*

(b) Procedure. [38/] ~~During the first 60 days after filing an action or within 60 days after a temporary hearing, whichever is later,~~ [39/] *Within ten days of the filing of a*

[38/] Please note that more forms, conferences, motions or hearings imposed upon family litigants by the rules of court serve to escalate attorney fees and exacerbate the financial stress invariably suffered during divorce.

We also note the imposition upon the court of the requirement of yet another order to further strain the limited financial and judicial resources of the system.

[39/] We very strongly recommend our proposed revision.

Forcing court intervention in proceedings which have the effect of radically altering the family structure before either party has notified the court that s/he is ready to proceed with the pending action is directly contrary to the public policy goal of the preservation of a family. The process of attempted reconciliation(s) or acceptance of the family's changing relationship may not occur within case management assembly line time tables.

(continued...)

contested note of issue, each party shall submit scheduling information on a form to be available from the court. This information shall include any of the following applicable to the action:

(1) Whether minor children are involved, and if so:
  (i) Whether custody is in dispute; and
  (ii) Whether the case involves any issues seriously affecting the welfare of the children;
(2) Whether the case involves complex evaluation issues, and/or marital and non-marital property issues;
(3) Whether the case needs to be expedited, and if so, the specific supporting facts;
(4) Whether the case is complex, and if so, the specific supporting facts;
(5) Specific facts about the case which will affect readiness for trial; and
(6) A proposal for establishing any of the deadlines or dates to be included in a scheduling order pursuant to this rule.

~~After 60 days from initial filing or temporary hearing, whichever is later,~~ Within ten (10) days of the scheduling information forms or following a telephone or in-court conference of the attorneys and any unrepresented parties, the court may enter a scheduling order. ~~following a telephone or in court conference of the attorneys and any unrepresented parties, or may do so without hearing.~~

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[39]/(...continued)

If the parties are not ready to proceed, even more unnecessary attorney fees and personal anguish will be generated. At worst, this procedure could force into dissolution families that might otherwise reconcile, given sufficient time for separation.

Moreover, sixty days into a case is usually too soon to know how a particular family is going to approach the dissolution. The family may be troubled by chemical dependency issues, ongoing counselling, domestic abuse, children in trouble, etc. All of these problems can complicate matters in making a scheduling decision on an informed basis.

Many families engage in various forms of alternative dispute resolution, the length of which, by its terms, cannot be predicted.

All of the counties are dealing with insufficient court and support personnel. That shortage will make it impossible for some counties to comply with this requirement.

(c) Contents of Order. The court's ~~shall enter a~~ scheduling order ~~within 90 days after filing an action or within 90 days after a temporary hearing, whichever is later, of the filing of every action, and such order~~ may establish any of the following:

(1) Deadlines or specific dates for the completion of discovery and other pretrial preparation;

(2) Deadlines or specific dates for serving, filing or hearing motions;

(3) Deadlines or specific dates for completion and review of custody/visitation mediation and evaluation or property mediation and evaluation;

(4) A deadline or specific date for the prehearing conference; and

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

~~(d) Amendment. A scheduling order pursuant to this rule may be amended at a prehearing conference or upon motion for good cause shown, or upon approval by authorized court personnel if there is agreement of all parties.~~ [40/]

Task Force Comment--1991 Adoption

This rule is new. It is patterned after the similar new Rule 116.1 of the Code of Rules of Rules for the District Court. The Task Force believes that the scheduling information and procedures in family court and other civil matters should be made as uniform as possible, consistent with the special needs in family court matters.

Matters not scheduled under the procedures of this rule are scheduled by motion practice under Rule 303 of these rules.

[40/] We recommend the deletion of this provision as an unnecessary comment on the inherent power of judicial discretion. Further, judges amend orders, not authorized court personnel.

Rule 305.1 Prehearing Statement

Each party shall complete a prehearing conference statement substantially in the form set forth at Rule 311.1 which shall be served upon all parties and mailed to or filed with the court at least 10 days prior to the date of the prehearing conference. *Individually typed or word processor forms will not be accepted for filing.* [41/]

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 4.02 of the Rules of Family Court Procedure. The existing family court rule includes a requirement that information be filed on forms, and that typewritten or word-processed documents would not be accepted for filing. The Task Force considered the desirability of requiring information to be submitted on pre-printed forms, and determined that such requirements should not be retained. Many modern law offices cannot readily prepare such documents as word processing machines have displaced the typewriters for which the forms are designed. The Task Force also believes that these requirements only increase the cost of litigation and limit access to the courts.

Rule 305.2 Prehearing Conference Attendance

(a) Parties and Counsel. ~~Unless excused by the court for good cause,~~ [42/] the parties and attorneys who will try the proceedings shall attend the prehearing conference, prepared to negotiate a final settlement. If a stipulation is reduced to writing prior to the prehearing conference, the case may be heard as a default at the time scheduled for the conference. In that event, only the party obtaining the decree need appear.

[41/] See our prior footnoted comments to Rule 303.2 on the use of pre-printed forms.

[42/] A prehearing conference without both of the parties is a meaningless (and expensive) exercise. The prehearing conference must involve the attorney familiar with the case, with the necessary rapport with the client to enable meaningful negotiation and settlement.

Minn. R. Fam. Ct. P. 4.03 was specifically drafted to address the complaints of the bench that prehearing conferences were perfunctory rote exercises, where the newest associate in the firm was delegated to make the necessary court appearance, without any authority to discuss settlement.

The necessity of trial counsel's attendance at judicially managed settlement conferences has carried through to Hennepin County's Arbitration Case Management Program in family court.

(b) Failure to Appear--Sanctions. If a party fails to appear at a prehearing conference, the court may dispose of the proceedings without further notice to that party.

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

Family Court Rules Advisory Committee Commentary

In disposing of a proceeding, the Court may dismiss it entirely, grant relief to the party appearing, grant attorney fees, bifurcate the proceedings and grant partial relief, or grant any other relief which the court may deem appropriate. See Rule 306.2(c).

Task Force Comment--1991 Adoption

Subsection (a) of this rule is derived from existing Rule 4.03 of the Rules of Family Court Procedure.

Subsection (b) of this rule is derived from existing Rule 4.04 of the Rules of Family Court Procedure.

Subsection (c) of this rule is derived from existing Rule 4.05 of the Rules of Family Court Procedure.

Recommended Addition of New Rule 305.3

Rule 305.3 Prehearing Conference Order [43/]

If the parties are unable to resolve the case, in whole or in part, at the prehearing conference, the court shall issue an order which schedules any remaining discovery, identifies the contested issues for trial, and provides for the exchange of witness lists and exhibits to be offered at trial. The procedures set forth in Rule 116. 3 shall be followed to the extent relevant to the case.

The court shall also address any pending motions, including evidentiary rulings and motions in limine.

43/ We believe that an order identifying and, by implication, limiting, contested issues for trial prevents sandbagging and litigation by ambush.

Rule 306.1 Default Hearings [44/]

To place a matter on the default calendar for final hearing, the moving party shall comply with the following, as applicable:

(a) Without Stipulation-- No Appearance. In all default proceedings where a stipulation has not been filed, an affidavit of default and of non-military status of the defaulting party or a waiver by that party of any rights under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, shall be filed with the court.

(b) Without Stipulation--Appearance. Where the defaulting party has appeared by a pleading other than an answer, or personally without a pleading, and has not affirmatively waived notice of the other party's right to a default hearing, the moving party shall notify the defaulting party in writing at least ten (10) days before the final hearing of the intent to proceed to ~~J~~judgment. The notice shall state:

> You are hereby notified that an application has been made for a final hearing to be held not sooner than three (3) days from the date of this notice. You are further notified that the court will be requested to grant the relief requested in the petition at the hearing.

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

(c) Default with Stipulation. Whenever a stipulation settling all issues has been executed by the parties, the stipulation shall be filed with an affidavit of non-military status of the defaulting party or a waiver of that party's rights under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, if not included in the stipulation.

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

> I know I have the right to be represented by an attorney of my choice. I hereby expressly waive that right and I freely and voluntarily sign the foregoing stipulation.

Family Court Rules Advisory Committee Commentary

The stipulation should establish that one of the parties may proceed as if by default, without further notice to or appearance by the other party.

The waiver of counsel should be prepared as an addendum following the parties' signatures on the stipulation.

Task Force Comment--1991 Adoption

Subsections (a) and (b) of this rule are derived from existing Rule 5.01 of the Rules of Family Court Procedure.

[44/] See our recommended addition of Rule 303.5 for "Initiating Final Hearings". Without the use of notes of issue, the court will be inundated by transmittal letters that will omit critical information, vary widely in form and make impossible the routing of the paper flood by color-coded forms.

Subsection (c) of this rule is derived from existing Rule 5.02 of the Rules of Family Court Procedure.

Rule 306.2 Default Proceedings--Preparation of Decree

In a scheduled default matter, proposed findings of fact, conclusions of law, order for judgment and judgment and decree shall be submitted to the court five days in advance of~~, or at,~~ the scheduled final hearing. [45/]

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 5.03 of the Rules of Family Court Procedure.

[45/] We recommend this change for the sake of uniformity of practice requirements throughout the state.

Rule 307.1 Final Hearings

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

(b) Stipulations Entered in Open Court--Preparation of Findings. Where a stipulation has been entered orally upon the record, the attorney directed to prepare the decree shall submit it to the court with a copy to each party. ~~Unless a written, fully executed stipulation is filed or unless the decree contains the written approval of the attorney for each party, a transcript of the oral stipulation shall be filed by the attorney directed to prepare the decree. Responsibility for the cost of the transcript shall be determined by the court.~~ [46/] Entry of the decree shall be deferred for 14 days to allow for objections unless the decree contains the written approval of the attorney for each party.

Task Force Comment--1991 Adoption

Subsection (a) of this rule is derived from existing Rule 6.01 of the Rules of Family Court Procedure.

Subsection (b) of this rule is derived from existing Rule 6.02 of the Rules of Family Court Procedure.

[46/] We do not believe that parties who make their agreements in open court should be put to the expense of the preparation of a stipulation. Nor should they be put to the expense of the preparation and filing of a transcript of the agreement. Either side may order a transcript, in the event there is a dispute over the terms of the oral agreements or as an aid in the preparation of the order.

The last sentence of the rule was designed to allow adequate time for objection to any proposed decree. That language allows the court to enter the decree after adequate notice, but stops a difficult attorney holding entry of the decree hostage. The proposed rule, if adopted, places control of the case with an obstructionist, whether attorney or litigant.

RULES COMMITTEE RESPONSE TO TASK FORCE RECOMMENDATIONS

Rule 308.1 Final Decree

(a) Awards of Child Support and/or Maintenance. All judgments and decrees which include awards of child support and/or maintenance, unless otherwise directed by the court, shall include the provisions set forth in Rule 303.6.

(b) Public Assistance. When a party is receiving or has applied for public assistance, the party obtaining the judgment and decree shall serve a copy on the agency responsible for child support enforcement.~~, and the decree shall direct that all payments of child support and spousal maintenance shall be made to the agency providing the assistance for as long as the custodial parent is receiving assistance.~~ [47/]

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

(d) Supervised Custody or Visitation. A copy of any judgment and decree directing ongoing supervision of custody or visitation shall be provided to the appropriate agency by the party obtaining the decree.

Family Court Rules Advisory Committee Commentary

Minn. Stat. § 518.551 requires that maintenance or support must be ordered payable to the public agency so long as the obligee is receiving public assistance.

Agencies responsible for enforcement of child support ~~in private cases also~~ require a copy of the ~~judgment and decree~~ order establishing a support obligation. [48/]

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 7.01 of the Rules of Family Court Procedure. The list of provisions is not set forth in this rule, as it was set forth in full in new Rule 303.6.

Subdivision (b) is derived from Rule 7.02 of the Rules of Family Court Procedure, and also in part from Second District Local Rule 7.021.

Subdivision (c) is derived from Second District Local Rule 7.022.

Subdivision (d) of this rule, replacing existing Rule 7.03 of the Rules of Family Court Procedure, was recommended to the Task Force by the Minnesota State Bar Association Family Law Section.

[47/] We do not think it is necessary to recite statutory law within the ambit of a rule.

[48/] Support obligations may be imposed by orders as well as judgments and decrees.

RULES COMMITTEE RESPONSE TO TASK FORCE RECOMMENDATIONS

Rule 308.2 Statutorily Required Notices

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

Family Court Rules Advisory Committee Commentary

See Rule 10.01, Form 3, for the concept of the form of the attachment.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 7.04 of the Rules of Family Court Procedure.

~~**Rule 308.3 Sensitive Matters**~~

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

Rule 308.3 Findings

(a) Required. *All orders and decrees in family court proceedings shall contain particularized findings of fact sufficient to support the determination of custody and visitation, child support and/or maintenance, distributions of property, and other issues decided by the court.* [49/]

(b) Sensitive Matters. Whenever the findings of fact include private or sensitive matters, a party may submit a judgment and decree supported by separate documents comprising findings of fact, conclusions of law, and order for judgment.

Family Court Rules Advisory Committee Commentary

See Minn. R. Civ. P. 52.01; Wallin v. Wallin, 290 Minn. 261, 187 N.W.2d 627 (1971); Rosenfeld v. Rosenfeld, 311 Minn. 76, 249 N.W.2d 168 (1976); Moylan v. Moylan, 384 N.W.2d 859 (Minn. 1986).

[49/] We recommend that this rule be maintained, notwithstanding the Task Force's recommendation. The Rule might serve to educate the bench and bar, given the frequency of appellate admonitions for the need of findings.

Task Force Comment--1991 Adoption

The Task Force recommends repeal of existing Rule 7.05 of the Rules of Family Court Procedure because the requirement for findings is well established by the common law, and a rule recodifying the settled law is surplusage.

The recommended rule is patterned after Second District Rule 7.051. Its purpose is to allow sensitive factual and legal matters to be preserved in separate documents so that the need for disseminating confidential and sensitive matters can be minimized. This rule does not create a right to maintain the privacy of any portion of the findings; it allows the court to create documents that may be useful for some public purposes without including all other parts of the findings.

Rule 309.1 Contempt

(a) Moving Papers--Service; Notice. Contempt proceedings shall be initiated by an order to show cause served upon the person of the alleged contemnor together with motions accompanied by appropriate ~~supporting~~ supportive affidavits.

The order to show cause shall direct the alleged contemnor to appear and show cause why he or she should not be held in contempt of court and why the moving party should not be granted the relief requested by the motion.

The order to show cause shall contain at least the following:

(1) A reference to the specific order of the court alleged to have been violated and date of entry of the order;

(2) A quotation of the specific applicable provisions ordered; and

(3) The alleged failures to comply.

(b) Affidavits. The ~~supporting~~ supportive affidavit of the moving party shall set forth each alleged violation of the order with particularity. Where the alleged violation is a failure to pay sums of money, the affidavit shall state the kind of payments in default and shall specifically set forth the payment dates and the amounts due, paid and unpaid for each failure.

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

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

Family Court Rules Advisory Committee Commentary

Service of the order to show cause upon the person provides jurisdiction for the issuance of a writ of attachment or bench warrant, if necessary, and meets the requirement for an opportunity to be heard. See Clausen v. Clausen, 250 Minn. 293, 84 N.W.2d 675 (1976); Hopp v. Hopp, 279 Minn. 170, 156 N.W.2d 212 (1968).

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 8.01 of the Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from existing Rule 8.01 of the Rules of Family Court Procedure. The new language is derived from Second District Local Rule 8.011.

Rule 309.2 Contempt--Hearing Procedure

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

Family Court Rules Advisory Committee Commentary

For the right to counsel in contempt proceedings, see Cox v. Slama, 355 N.W.2d 401 (Minn. 1984).

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 8.02 of the Rules of Family Court Procedure.

Rule 309.3 Contempt--Sentencing

*(a) **Finding.** Where the court has made a finding of contempt, the court shall specify whether the contempt is civil or criminal, direct or constructive contempt. If the finding is criminal contempt, the hearing shall be terminated and the matter set for trial by jury. If the finding is civil contempt, the court shall make a further finding whether the contempt is direct or constructive. The sentencing order thereon shall provide a maximum term of commitment, the conditions of any stay of said term and the conditions for the contemnor to be purged of contempt.*

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

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

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 8.03 of the Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from existing Rule 8.03 of the Rules of Family Court Procedure, with the new language added from Second District Rule 8.031.

RULES COMMITTEE RESPONSE TO TASK FORCE RECOMMENDATIONS

Rule 310.1 Court-Ordered Mediation

(a) Initiation. The court may issue an order for mediation upon a motion by a party, by stipulation of the parties or upon the court's own initiative. The court shall not require mediation when it finds probable cause that domestic or child abuse has occurred, ~~or~~ Where the parties have made an unsuccessful effort to mediate with a qualified mediator, additional mediation need not be required.

(b) Order--Condition Precedent. When ordered by the court, participation in mediation shall be a condition precedent to the scheduling of a final hearing in a dissolution proceeding.

Task Force Comment--1991 Adoption

Subsection (a) of this rule is derived from existing Rule 9.01 of the Rules of Family Court Procedure.

Subsection (b) of this rule is derived from Second District Local Rule 9.011.

Rule 310.2 Mediators

(a) Appointment. The court shall appoint a mediator from its approved list, unless the parties stipulate to a mediator not on the list.

Each party shall be entitled to file a request for substitution within seven (7) days after receipt of notice of the appointed mediator. The court shall then appoint a different mediator with notice given to the parties.

(b) Qualification and Training. The court shall establish an approved list of mediators who qualify for appointment by statute.

Family Court Rules Advisory Committee Commentary

Co-mediation (mediation conducted by a mediator of each gender) may be available to the parties at the request of either party and with the approval of the court.

Task Force Comment--1991 Adoption

Subsection (a) of this rule is derived from existing Rule 9.02 of the Rules of Family Court Procedure.

Subsection (b) of this rule new. The Task Force believes that some specific provision should be made for qualification and training of mediators. Minn. Stat. § 518.619 (1990) sets forth qualifications for mediators.

Rule 310.3 Mediation Attendance

(a) Mandatory Orientation. Parties ordered by the court to participate in mediation shall attend the orientation session.

RULES COMMITTEE RESPONSE TO TASK FORCE RECOMMENDATIONS

(b) Mediation Sessions. Mediation sessions shall be informal and conducted at a suitable location designated by the mediator. Both parties shall appear at the time scheduled by the mediator, and attendance is limited to the parties, unless all parties and the mediator agree to the presence of other persons.

To assist in resolving contested issues, the parties may involve resource persons including attorneys, appraisers, accountants, and mental health professionals.

Family Court Rules Advisory Committee Commentary

In the orientation session the mediator should assess the appropriateness of the parties for mediation, describe the mediation process, elicit questions from the parties about how the process works, inquire if they have retained attorneys, advise them to consult their attorneys before and during the mediation process, distribute a copy of Rule ~~IX~~ 310 and obtain the parties' signatures on the agreement to mediate.

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 2.09 of the Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from existing Second District Rule 9.031.

Rule 310.4 Scope of Mediation

Mediation may address all issues of controversy between the parties, unless limited by court order.

Family Court Rules Advisory Committee Commentary

The parties may involve resource persons to assist in resolving contested issues. Resource persons may include both parties' attorneys, appraisers, accountants, and mental health professionals.

Only the parties and the mediator(s) should attend mediation sessions unless the parties and mediator agree otherwise.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 9.04 of the Rules of Family Court Procedure.

Rule 310.5 Confidentiality

Mediation proceedings under these rules are privileged, not subject to discovery, and inadmissible as evidence in family court proceedings without the written consent of both parties.

Mediators and attorneys for the parties, to the extent of their participation in the mediation process, cannot be called as witnesses in the family court proceedings.

No record shall be made without the agreement of both parties, except for a memorandum of issues that are resolved.

RULES COMMITTEE RESPONSE TO TASK FORCE RECOMMENDATIONS

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 2.09 of the Rules of Family Court Procedure.

Rule 310.7 Mediators' Memorandum

(a) ~~**Submissions.**~~ ***Completion of Mediation.*** *Upon termination of mediation, the mediator shall submit a memorandum to the parties* ~~*and the court*~~ *setting out* ~~*(1)*~~ *the complete or partial agreement of the parties and enumerating the issues upon which they cannot agree.* ~~*; or (2)*~~ *The mediator shall notify the court whether the case has been resolved, in whole or in part or that no agreement has been reached, without any explanation.*

(b) Copy to Attorney. Where a party is represented by an attorney, the mediator shall send a copy of the memorandum to that party's attorney as well as the party *prior to the submission of any mediation memorandum to the court.*

(c) Ratification by Counsel. No mediation memorandum shall be submitted to the court until the parties have had an opportunity to discuss the agreements with counsel, if any, and such agreements have been ratified by counsel. [50/]

~~**(c) Agreement.**~~ ***Submission of Stipulation to Court.*** The parties' agreement shall be reduced to writing by counsel for the petitioner, or counsel for the respondent with the consent of the petitioner, in the form of a marital termination agreement, stipulation, or similar instrument. The written agreement shall be signed by both parties and their counsel and submitted to the court for approval.

Family Court Rules Advisory Committee Commentary

Where the parties are represented by attorneys, the mediator should send a copy of the memorandum to the parties' attorneys.

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 9.07 of the Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from Second District Rule 9.071.

Subdivision (c) of this rule is derived from Second Judicial District Rule 9.072.

[50/] See Minn. Stat. § 518.619, Subd. 7 (1990).

RULES COMMITTEE RESPONSE TO TASK FORCE RECOMMENDATIONS

Rule 310.8 Child Custody Investigation

When the parties are unable to reach agreement on custody through mediation, the mediator may not conduct a custody investigation, unless the parties agree in writing executed after the termination of mediation, that the mediator shall conduct the investigation or unless there is no other person reasonably available to conduct the investigation or evaluation. Where the mediator is also the sole investigator for a county agency charged with making recommendations to the court regarding child custody and visitation, the court administrator shall make all reasonable attempts to obtain reciprocal services from an adjacent county. Where such reciprocity is possible, another person or agency is "reasonably available."

Family Court Rules Advisory Committee Commentary

Although Minn. Stat. § 518.619, subd. 6 permits the mediator to conduct the investigation, it is the intent of this rule to define when the mediator can reasonably do so. Minn. Stat. § 518.167, subd. 3 contemplates the bifurcation of mediation and the custody investigation to insure confidentiality. The rule acknowledges the difficulty of implementing such a requirement in those counties with only one court services staff member.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 9.08 of the Rules of Family Court Procedure.

Rule 310.9 Fees

Each court shall establish fees for mediation *and other Department of Court Services' programs.* ~~services.~~ The court may allocate payment of the fees among the parties and the county.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 9.09 of the Rules of Family Court Procedure.

Rule 310.6 Termination of Mediation

Mediation shall be terminated upon the earliest of the following circumstances to occur:

(a) a complete agreement of the parties;

(b) the partial agreement of the parties and a determination by the mediator that further mediation will not resolve the remaining issues; or

(c) the determination by the mediator or either party that the parties are unable to reach agreement through mediation or that the proceeding is inappropriate for mediation.

RULES COMMITTEE RESPONSE TO TASK FORCE RECOMMENDATIONS

Family Court Rules Advisory Committee Commentary

The mediator may determine that further mediation is inappropriate based upon information that one of the parties, or a child of a party, has been physically or sexually abused by the other party. See Minn. Stat. § 518.619, subd. 2.

These rules recognize that there may be a continuing concurrent obligation to report domestic, child, physical, or sexual abuse under different statutes.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 9.06 of the Rules of Family Court Procedure.

Rule 311.1 Forms

The forms contained in the Appendix of Forms are sufficient under these rules.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 10.01 of the Rules of Family Court Procedure.

The use of the forms for the application for temporary relief and the prehearing statement is mandatory under Rule 2.02 and Rule 4.02. The use of the other forms is recommended.

Rule 312.1 Notice of Assignment to Judge; Parties' Submissions

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

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

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

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

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

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

Task Force Comment--1991 Adoption

This rule is derived from Second District Rules 11.03 & 11.04.

Rule 312.2 Transcript of Referee's Hearing

~~If either~~ *Any* party ~~desires~~ *desiring* to submit a transcript of the hearing held before the referee~~;~~ *shall make* arrangements ~~must be made~~ with the court reporter at the earliest possible time. *The court reporter must advise the parties* and the court ~~must be advised~~ of the date by which the transcript will be filed. The ~~desire to submit a transcript and ordering~~ *order and submission* of the transcript shall not delay the due dates for submissions described in Rule ~~311.3~~ 312.1.

FORM ___ PROPOSED SCHEDULING INFORMATION (Family Court Matters)

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
_____ JUDICIAL DISTRICT
~~Case Type:~~ _____ [51/]

_____,
*Petitioner/*Plaintiff,

PROPOSED SCHEDULING FORM

v.

_____,
*Respondent/*Defendant.

---

1. All parties (have) (have not) been served with process.

2. All parties (have) (have not) joined in the filing of this form.

3. The case involves the following (check all that apply and supply estimates where indicated):

a. minor children No ____ Yes ____, number: ____

b. custody dispute No ____ Yes ____ Specify: _____

_____

_____

c. visitation dispute No ____ Yes ____ Specify: _____

_____

_____

Each party will submit an exhibit outlining custody and visitation proposals for each child.

[51/] This is not required under the identification of cases, with the FAMILY COURT DIVISION included in the caption.

d. marital property No ____ Yes ____, ~~estimated amount: $____~~ [52/]

Identify the asset and requested disposition: _____

_____

_____

e. nonmarital property No ____ Yes ____, ~~estimated amount: $____~~

Each party shall identify any nonmarital claims, their respective positions for the basis for the claim, the method(s) used to arrive at the claimed amount or trace the claim and the requested disposition: _____

_____

_____

f. complex evaluation issues No _____ Yes _____

4. It is estimated that the discovery specified below can be completed within _____ months from the date of this form. (Check all that apply and supply estimates where indicated.)

a. Interrogatories No _____ Yes _____

b. Document Requests No ____ Yes ____, ~~estimated number: ____~~

c. Factual Depositions No ____ Yes ____, ~~estimated number: ____~~

Identify the persons who will be deposed by either side:

_____

_____

d. Medical/*Vocational* Evaluations No ____ Yes ____, ~~estimated number: ____~~

*Identify the expert who will conduct such evaluations for either party:*_____

_____

_____

[52/] This is a meaningless question in family law. The dispute over property can range from the return of a rocking chair to whether a house should be sold or retained for occupancy by the custodial parent.

e. Experts No ___ Yes ___, estimated number: _____

Identify the expert who will conduct such evaluations for either party:

_____

_____

~~5. Assignment as an _____ expedited _____ standard _____ complex case is requested. (If not standard case assignment, include brief statement setting forth the reasons for the request.)~~ [53/]

6. The dates and deadlines specified below are suggested.

a. _____ Deadline for bringing motion regarding: _____.
(specify)

b. _____ Deadline for completion and review of property ~~mediation~~ *evaluation.*

c. _____ Deadline for completion and review of custody/visitation mediation.

d. _____ Deadline for completion and review of custody/visitation evaluation.

e. _____ Deadline for submitting _____ to the court.
(specify)

~~f. _____ Date for formal discovery conference.~~ [54/]

g. _____ Date for prehearing conference.

h. _____ Date for trial or final hearing.

7. Estimated trial or final hearing time: _____ days _____ hours
(Estimates less than a day must be stated in hours).

[53/] This is a meaningless standard in family law. The Supreme Court, in Sefkow v. Sefkow, 427 N.W. 2d 203 (Minn. 1988), emphasized the need for expedited hearing and decisions in custody cases, so that children's lives do not drift in the limbo of litigation. Under that mandate, every contested custody case should be expedited through the system.

[54/] This represents an expensive requirement, with the same issues and information commonly shared at the settlement conference.

8. Alternative dispute resolution (is) (is not) recommended, in the form of:_____ ~~e.g. arbitration, mediation)~~
(specify)

_____ *Date for completion of mediation/alternative dispute resolution expected to extend over a period of* ____ *(days/weeks).*
(##)

9. Please list any additional information which might be helpful to the court when scheduling this matter, including e.g. facts which will affect readiness for trial and any issues that significantly affect the welfare of the child(ren):

Dated: _____

_____
Name of Attorney
Attorney for (Plaintiff)
Attorney for (Petitioner)
Attorney Reg. #: _____
Firm: _____
Address: _____

Telephone: _____

Dated: _____

_____
Name of Attorney
Attorney for (Defendant)
Attorney for (Respondent)
Attorney Reg. #: _____
Firm: _____
Address: _____

Telephone: _____

STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

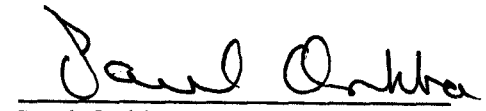
In re: Recommendations Of The Minnesota
Supreme Court Task Force On
Uniform Local Rules

Request to Make
Oral Presentation

The Legal Services Advocacy Project hereby requests the Minnesota Supreme Court to make an oral presentation to the Court concerning the Recommendations of the Court's Task Force On Uniform Local Rules particularly as the Recommendations relate to proposed amendments to Conciliation Court Rules (Rules 501-526).

The Legal Services Advocacy Project is a public policy lobbying organization affiliated with the civil legal services programs throughout Minnesota. The Project is currently working on legislation concerning consolidation of the conciliation courts statutes and revising current procedures to achieve uniformity. As more fully set out in the attached Statement, the Project feels that adoption of the proposed Rules as they affect conciliation court practice should not be adopted in their present form.

Respectfully Submitted



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STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

In re: Recommendations Of The Minnesota Supreme Court Task Force On Uniform Local Rules

Statement of The
Legal Services Advocacy Project

This is the written statement of the Legal Services Advocacy Project regarding proposed amendments to the Code of Rules relating specifically to Conciliation Court Rules (Rules 501-526).

For the reasons set forth below, the proposed Conciliation Court Rules (hereafter proposed rules) should not be adopted in their present form. One of three alternate courses of action should be taken: (1) they should be revised to make them consistent with legislation which the Minnesota Legislature may enact in the current session: (2) they should be substantially revised to address only those matters that are either not currently established under current statutes, or concern matters within the inherent authority of the courts; or (3) no rules should be adopted concerning conciliation court practice.

There are several reasons why this Court should not adopt the proposed rules in their present form at this time. First, the Minnesota Legislature will probably consider legislation this session to consolidate the three conciliation court statutes into one statute in order to make practice and procedure in these courts uniform throughout the state. Attached to this statement is a draft of proposed legislation to accomplish this goal.

Adoption of a consolidated, uniform conciliation court statute will quite possibly, even likely, result in changes from the current statutes. The proposed rules, however, largely incorporate the provisions found in those statutes. A new consolidated statute will almost certainly contain some discrepancies with the new rules. The Task Force's recommendation is that the legislature simply repeal the Hennepin and Ramsey County statutes in order to remove the statutory impediment to uniform statewide procedures. However, this seems unlikely, especially since those statutes contain at least one significant remedy, namely replevin, which is not contained in the proposed rules. Additionally, the legislature may well choose to set different fee amounts than those established in the proposed rules.

This illustrates a second major reason why the proposed rules should not be adopted in their present form. The fee amounts are subject to frequent changes and incorporation of the fees set out in current law into the new rules is almost certain to cause them to become quickly out of date. In fact, the discrepancies between the old conciliation court rules and statutory provisions, which has been chronic and which has lead to the need for the revisions proposed by the Task Force, will likely continue to plague this area of practice.

In 1971 the legislature enacted legislation to complete the establishment of conciliation courts throughout the state. Since that time the various conciliation court statutes have been amended 15 times in the intervening 19 years. In contrast, this Court consumed 4 years to adopt its final set of Conciliation Court rules in 1975 after being authorized to do so in 1971. Within two years they were out of date and have not been substantively amended since then despite major inconsistencies caused by legislative changes in the individual statutes.

The reason why these discrepancies have occurred, and are likely to continue, seems fairly evident. Conciliation courts are not used or managed by the bench or the bar. They are used and managed by the parties themselves. The impetus for change and improvement has come from the parties, not lawyers and judges. This is or it should be since these courts were established for use by non-lawyers and without the need to hire a lawyer to practice in them. Accordingly, lawyers and judges have typically not sought to make formal rule changes in the practices of these courts while the litigants have done so frequently through legislative modifications.

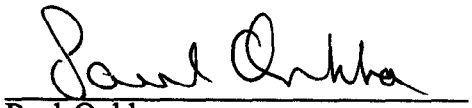
As noted earlier, the statutes have been modified 15 times in the past 19 years. The jurisdictional limit has been raised several times, an in forma pauperis procedure adopted, appeal times have been lengthened, services procedures modified, and a replevin remedy added, among others. The proposed rules essentially update the old rules to incorporate the statutory changes, but considering the frequency with which the statutes have been revised up to now there seems little reason to believe more changes will not continue to be made legislatively.

This presents the fundamental question whether rules in this area of practice are really necessary at all. And, if so, to what extent are they necessary. If practice in this area has proceeded for the past 19 or 20 years without effective and up-to-date rules, is there a need for them to be put in place now, especially if they seem likely to become as out of date as quickly as the old ones did? It seems plausible to simply leave this area to the legislature for its regulation of practice and procedures as has been the case for all practical purposes for many years.

Alternatively, this Court could adopt such rules as either do not conflict with current law or address matters not now covered by statutes. Additionally, this Court could identify those areas which it concludes are wholly within its sole authority to regulate regardless of whether the legislature has sought to exercise its authority previously. Making decisions as to what there areas are and what substantive provisions should be adopted in them does not seem to be an easy task. Thus, it would appear more reasonable to simply not adopt any rules in this area which are not clearly necessary to the operation of conciliation courts.

Lastly, if this Court feels impelled to adopt rules covering all aspects of conciliation court practice, such rules should be revised to integrate any changes made legislatively this year, a goal which can probably be accomplished by the Task Force's proposed effective date of July 1, 1991. However, in light of the history of frequent legislative change in this area there will be an on-going need to revise and update these rules as legislative changes occur. Thus it is important that this Court give serious consideration to the Task Force's recommendation that a standing committee be kept in place to carry out this function.

Respectfully Submitted,



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A bill for an act

relating to courts; conciliation court; merging court rules and statutes for the second and fourth judicial districts and other judicial districts into one statute; proposing coding for new law in Minnesota Statutes, chapter 484; repealing Minnesota Statutes 1990, sections 357.022; 487.30; 488A.12; 488A.13; 488A.14; 488A.15; 488A.16; 488A.17; 488A.29; 488A.30; 488A.31; 488A.32; 488A.33; and 488A.34.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [484.76] [CONCILIATION COURT; JURISDICTION; TERMS OF COURT.]

Subdivision 1. (a) There is established in each county throughout the state a conciliation court.

(b) Except actions involving title to real estate or as provided in paragraph (c), the conciliation court shall hear and determine civil claims if the amount of money or property which is the subject matter of the claim does not exceed $4,000. The claim shall be heard and determined without jury trial and by a simple and informal procedure. The territorial jurisdiction of a conciliation court shall be coextensive with the county in which the court is established.

(c) If the claim involves a consumer credit transaction, the amount of money or property that is the subject matter of the claim may not exceed $2,000. "Consumer credit transaction" means a sale of personal property, or a loan arranged to facilitate or refinance the purchase of personal property, in

which:

(1) credit is granted by a seller or a lender who regularly engages as a seller or lender in credit transactions of the same kind;

(2) the buyer is a natural person;

(3) the claimant is the seller or lender in the transaction; and

(4) the personal property is purchased primarily for a personal, family, or household purpose and not for a commercial, agricultural, or business purpose.

Subd. 2. [JURISDICTION; RENTAL DEPOSITS.] Notwithstanding the provisions of subdivision 1 or any rule of court to the contrary, the conciliation court of the county has jurisdiction to determine an action asserting a claim pursuant to sections 504.20, 504.245, 504.255, or 504.26, with respect to rental property located in the county, and the summons in the action may be served anywhere in the state.

Subd. 3. [JURISDICTION; STUDENT LOANS.] Notwithstanding the provisions of subdivision 1 or any rule of court to the contrary, the conciliation court has jurisdiction to determine a civil action commenced by an educational institution, including but not limited to, a state university or community college, with administrative offices in the county in which the conciliation court is located, to recover the amount of a student loan or loans even though the defendant or defendants are not residents of the county under the following conditions:

(a) the student loan or loans were originally awarded in the county in which the conciliation court is located;

(b) the loan or loans are overdue at the time the action is commenced;

(c) the amount sought in any single action does not exceed $4,000;

(d) notice that payment on the loan is overdue has previously been sent by first class mail to the borrower to the last known address reported by the borrower to the educational institution;

(e) the notice states that the educational institution may commence a conciliation court action in the county where the loan was awarded to recover the amount of the loan.

Notwithstanding any law or rule of civil procedure to the contrary, a summons in any action commenced under this subdivision may be served anywhere in the state.

Subd. 4. [JURISDICTION; DISHONORED CHECKS.] The conciliation court has jurisdiction to determine a civil action commenced by a plaintiff, resident of the county, to recover the amount of a dishonored check issued in the county, even though the defendant or defendants are not residents of the county, if the notice of nonpayment or dishonor described in section 609.535, subdivision 3, is sent to the maker or drawer as specified therein and the notice states that the payee or holder of the check may commence a conciliation court action in the county where the dishonored check was issued to recover the amount of the check. This subdivision does not apply to a check that has been dishonored by a stop payment order. Notwithstanding any law or rule of civil procedure to the contrary, the summons in any action commenced under this subdivision may be served anywhere in the state.

Sec. 2. [484.761] [COMMENCEMENT OF ACTIONS IN CONCILIATION COURT.]

Subdivision. 1 [COURT ADMINISTRATOR'S DUTIES.] Under the supervision of the conciliation court judges, the court administrator shall explain to litigants the procedures and functions of the conciliation court and alternative dispute options available and shall assist them in filling out all forms and pleadings necessary for the presentation of their claims or counterclaims to the court. The court administrator shall assist judgment creditors and judgment debtors in the preparation of the forms necessary to obtain satisfaction of a final judgment. The performance of duties described in this subdivision shall not constitute the practice of law.

Subd. 2. [COMPUTATION OF TIME.] In computing any period of time prescribed or allowed by this statute, the day of the act,

event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

Subd. 3. [COMMENCEMENT OF AN ACTION; FILING FEES.] An action is commenced against each defendant when the complaint is filed with the court administrator and the plaintiff pays a filing fee of $13 to the court administrator or files the affidavit prescribed under subdivision 4 in lieu of filing fee.

Subd. 4. [FILING FEE; AFFIDAVIT OF INABILITY TO PAY.] If the plaintiff or the defendant signs and files with the court administrator an affidavit claiming no money or property and inability to pay a filing fee, no fee shall be required for the filing of the affiant's claim or counterclaim. If the affiant prevails on a claim or counterclaim, the amount of the filing fee which would have been payable by the affiant shall be included in the order for judgment and paid to the court administrator by the affiant out of any money recovered by the affiant on the judgment.

Subd. 5. [FORM OF COMPLAINT.] A complaint or counterclaim in the uniform form prescribed by the supreme court pursuant to section 480.051 shall be available from any court administrator. It shall be accepted by any court administrator and shall be forwarded together with the entire filing fee, if any, to the court administrator of the appropriate conciliation court. Every conciliation court shall accept a uniform complaint or counterclaim which has been properly completed and properly forwarded to the court by another conciliation court.

Subd. 6. [CLAIM; VERIFICATION; CONTENTS.] The claim must be verified by the plaintiff or the plaintiff's attorney and shall contain a brief statement of the amount, date of accrual, and nature of the claim and the name and address of the

plaintiff, the plaintiff's attorney, if any, and the defendant. If the plaintiff is not represented by an attorney, the court administrator shall draw up the claim on request.

Subd. 7. [COUNTERCLAIM.] (a) The defendant may interpose as counterclaim any claim within the jurisdiction of the court which the defendant has against the plaintiff, whether or not arising out of the transaction or occurrence which is the subject matter of the plaintiff's claim.

(b) The counterclaim shall be filed with the court administrator and shall consist of a brief statement of the amount, date of accrual and nature of the counterclaim, verified by the defendant or the defendant's attorney. The defendant shall pay the same fee as for filing a complaint. If the defendant is not represented by an attorney the court administrator shall draw up the counterclaim on request.

(c) The court administrator shall note the filing of the counterclaim on the original claim, promptly notify the plaintiff or the plaintiff's attorney by mail of the filing, and set the counterclaim for hearing on the same date as the original claim.

(d) The counterclaim shall be filed not less than five days before the date set for hearing. The judge may thereafter allow the filing of a written or oral counter claim before or after hearing the merits of the claim and counterclaim. The judge may require the payment of absolute or conditional costs up to $25 by the defendant as a condition of allowing late filing, if a continuance is requested by the plaintiff and is granted because of the late filing.

Subd. 8. [COUNTERCLAIM IN EXCESS OF COURT JURISDICTION.] The court administrator shall strike an action from the calendar and so advise the plaintiff or the plaintiff's attorney by mail if the defendant personally or through an attorney files an affidavit with the court administrator not less than five days before the date set for hearing:

(a) stating that the defendant has a counterclaim arising out of the same occurrence or transaction which exceeds the

jurisdiction of the court; and

(b) showing that the defendant has filed with the court administrator of a court of competent jurisdiction a summons and complaint seeking recovery from the plaintiff on the counterclaim and stating the nature of the counterclaim.

The plaintiff may reinstate a stricken action not less than thirty days and not more than three years after the counterclaim is filed, upon filing an affidavit that the plaintiff has not been served with a summons in the other action or that the other action has been finally determined. Upon receiving such an affidavit, the court administrator shall set the case for trial and summon the defendant in the same manner as for the initial hearing. If no affidavit is filed by plaintiff, the plaintiff's original claim is dismissed without prejudice without any further action by the court administrator or any judge.

Subd. 9. [THIRD PARTY COMPLAINTS.] Third party complaints must be commenced within 20 days after service of summons or notice of counterclaim. The filing fee for a third party complaint shall be the same as for filing a complaint or counterclaim.

Subd. 10. [REPLEVIN.] If the controversy concerns the ownership or possession, or both, of personal property the value of which does not exceed $4,000 or $2,000 if the controversy concerns a consumer credit transaction, the judge may determine the ownership and possession of the property and order any party to deliver the property to another party. The order shall be enforceable by the sheriff of the county in which the property is located.

Sec. 3. [484.762] [CONCILIATION COURT TRIAL; JUDGMENT.]

Subdivision 1. [TRIAL DATE.] When an action has been properly commenced the court administrator shall set a trial date and inform the plaintiff of it. The court administrator shall summon the defendant by mail or the plaintiff may obtain personal service in the manner provided by the rules of civil procedure. The summons shall state the amount and nature of the claim; require the defendant to appear at the hearing in person

or, if a corporation, by officer or agent; specify that if defendant does not appear, judgment by default will be entered against the defendant for the relief demanded; and summarize the requirements for filing a counter claim. Unless otherwise ordered by a judge, the hearing date shall be not less than 15 days from the date of mailing or service of the summons.

Subd. 2. [TESTIMONY AND EXHIBITS; EVIDENCE ADMISSIBLE.] The judge shall hear testimony of the parties and their witnesses and shall consider exhibits offered by the parties. The judge shall receive only evidence under the rules of evidence, except that in the interests of justice, otherwise inadmissible evidence may be received.

Subd. 3. [CONCILIATION; JUDGMENT.] If the parties agree on a settlement the judge shall order judgment in accordance with it. If no agreement is reached, the judge shall summarily hear and determine the cause, and may order judgment at the conclusion of the hearing, unless in the discretion of the judge, additional time is required to determine the matter.

Subd. 4. [JUDGMENT UPON FAILURE TO APPEAR.] (a) If the defendant fails, after being summoned as provided by law, to appear at the time set for hearing, the judge may hear the plaintiff and order judgment by default or continue the matter to a later date for hearing.

(b) If the plaintiff fails to appear at the time set for hearing and the defendant does appear, the judge may hear the defendant and order judgment of dismissal on the merits, order the cause dismissed without prejudice, continue the matter for a later date, or make such other disposition as is just and reasonable. If a later date is set for hearing, the court administrator shall notify the defaulting party by mail.

Subd. 5. [CONTINUANCE; FURTHER HEARING; RESETTING.] Upon proper showing of good cause a continuance, further hearing, or resetting of the hearing may be ordered on motion of either party. The court may require conditional or absolute payment of costs not to exceed $25 to the other party as a condition of such an order. The court administrator shall give notice of any

continuance, further hearing or resetting of the hearing by mail to any party who does not have other notice of it.

Subd. 6. [NOTICE OF ORDER FOR JUDGMENT.] The court administrator shall promptly mail to each party a notice of the order for judgment which the judge enters. The notice shall state the number of days allowed for obtaining an order to vacate where there has been a default, or for removing the cause to district court.

Subd. 7. [ENTRY OF JUDGMENT.] The court administrator shall enter judgment immediately as ordered by the court. The judgment must be dated as of the date notice is sent to the parties. The judgment entered by the court administrator becomes finally effective 20 days after the mailing of the notice unless:

(1) otherwise ordered by the court;

(2) payment has been made in full;

(3) removal to district court has been perfected; or

(4) an order vacating the prior order has been filed.

Subd. 8. [VACATION OF ORDER FOR JUDGMENT WITHIN 20 DAYS.] When a default judgment or a judgment after dismissal on the merits has been ordered for failure to appear, the judge, within 20 days after notice of the judgment was mailed, may vacate the order for judgment ex parte and grant a new hearing, if the defaulting party shows that the failure to appear was due to lack of notice, mistake, inadvertence, or excusable neglect. Absolute or conditional costs not exceeding $25 to the other party may be ordered as a prerequisite to that relief. The court administrator shall notify the other party by mail of the new hearing date.

Subd. 9. [VACATION OF ORDER FOR JUDGMENT AFTER 20 DAYS.] When a defendant shows that the defendant did not receive a summons before the hearing within sufficient time to permit a defense and that the defendant did not receive notice of the order for default judgment within sufficient time to permit the defendant to make application for relief within 20 days, or shows other good cause, a judge may vacate a default judgment

with or without the payment of absolute or conditional costs. The court administrator shall notify the parties by mail of the new hearing date.

Subd. 10 [COSTS AND DISBURSEMENTS.] The judge, in the order for judgment, shall include any filing fee paid by the prevailing party, may include any disbursements incurred by the prevailing party covering items taxable in civil actions in the district court, and may include or adjust for any sum which the judge deems proper to cover all or part of conditional costs previously ordered to be paid by either party. No other costs shall be allowed to a prevailing party.

Sec. 4. [484.763] [PAYMENT; ENFORCEMENT OF JUDGMENTS.]

Subdivision 1. [DOCKETING AND ENFORCEMENT IN DISTRICT COURT.] When a judgment has become finally effective under section 3, subdivision 7, the court administrator shall file it as a judgment of the district court. After filing, the judgment becomes and is enforceable as a judgment of the district court.

Subd. 2. [DISCLOSURE OF ASSETS; FAILURE TO COMPLY.] If:

(a) a conciliation court judgment has been docketed in district court for a period of at least 30 days,

(b) the judgment is not satisfied, and

(c) the parties have not otherwise agreed,

the district court shall, upon the request of the judgment creditor, order the judgment debtor to mail to the judgment creditor information as to the nature, amount, identity, and location of all the debtor's assets, liabilities, and personal earnings. The information shall be provided on a form prescribed by the supreme court and shall be sufficiently detailed to enable the judgment creditor to obtain satisfaction of the judgment by way of execution on nonexempt assets and earnings of the judgment debtor. The form shall be written in a clear and coherent manner using words with common and everyday meanings, shall summarize the execution and garnishment exemptions and limitations applicable to assets and earnings, and shall permit the judgment debtor to identify on the form those assets and earnings that the debtor considers to be exempt

from execution or garnishment. The order shall contain a notice that failure to complete the form and mail it to the judgment creditor within ten days after service of the order may result in a citation for contempt of court, unless the judgment is satisfied prior to the expiration of that period. A judgment debtor who intentionally fails to comply with the order of the court may be cited for civil contempt of court. Cash bail posted as a result of being cited for civil contempt of court under this statute may be ordered payable to the creditor to satisfy the judgment, either partially or fully.

Sec. 5. [484.764] [REMOVAL OF CAUSE; APPEAL.]

Subdivision 1. [REMOVAL TO DISTRICT COURT.] Any person aggrieved by an order for judgment entered by a conciliation court after a contested hearing may remove the cause to district court for trial de novo.

Subd. 2. [PROCEDURE FOR REMOVAL OF CAUSE.] In order to remove the cause, the aggrieved party must complete all of the following acts within 20 days after the date the court administrator mailed to the aggrieved party notice of the order for judgment:

(a) Serve on the opposing party or the opposing party's attorney of record a demand for removal of the cause to the district court for trial de novo, stating whether trial demanded is by a jury of six persons or by the court. Service shall be made upon the opposing party or the party's attorney of record by personal service or by mail. The demand shall show the office address of the attorney of record, if any, for each party and the residence address of each party.

(b) File with the court administrator the original demand for removal and proof of service of it. If the opposing party or the opposing party's attorney of record cannot be found and service of the demand is made within the 20 day period, the aggrieved party may file with the court administrator within the 20 day period the original and a copy of the demand, together with an affidavit by the aggrieved party or the party's attorney showing that due and diligent search has been made and that the

opposing party or opposing party's attorney of record cannot be found. The filing of the affidavit shall serve in lieu of making service and filing proof of service. When an affidavit is filed, the court administrator shall mail the copy of the demand to the opposing party at the opposing party's last known residence address.

(c) Pay to the court administrator $2 when the demand is for trial by court or $7 when the demand is for trial by a jury of six persons.

Subd. 3. [LIMITED REMOVAL OF CAUSE; PROCEDURE.] When a motion for vacation of a judgment or an order for judgment under section 3, subdivisions 8 or 9, has been denied, the aggrieved party may demand limited removal to the district court for hearing de novo of the motion. The demand for limited removal and notice of the hearing de novo must be served by the aggrieved party on the other party in accordance with the provisions of subdivision 2, paragraph (a). The original demand and notice, with proof of service, must be filed with the court administrator within 20 days after the motion has been denied, or the original and one copy of the demand and notice, together with an affidavit similar to that required by subdivision 2, paragraph (b) must be filed with the court administrator within the 20 day period. When an affidavit is filed, the court administrator shall mail the copy of the demand and notice to the other party at the other party's last known residence address. The aggrieved party shall pay a fee of $3 to the court administrator for filing the demand and notice. This fee shall not be recoverable as a disbursement.

The notice shall set a date for hearing de novo at a special term of the district court not less than ten nor more than thirty days after the date of filing the original demand and notice. The court administrator shall file in district court the removal demand and notice together with all orders, affidavits, and other papers filed in conciliation court. The court administrator shall then place the motion on the special term calendar for hearing on the date set in the notice.

A district judge, other than the conciliation court judge who denied the motion, shall hear the motion de novo at special term and may deny the motion, without allowance of costs, or grant the motion, with or without the allowance of absolute or conditional costs. At the hearing de novo the district judge shall consider the entire file of the conciliation court and any subsequent affidavits of showing made by either party. The court administrator shall send a copy of the order made after the de novo hearing to both parties.

Subd. 4. [DEMAND FOR TRIAL BY JURY.] If the opposing party desires trial by a jury of six persons when none is demanded in the demand for removal, the opposing party shall:

(a) serve a demand for trial by a jury of six persons on the aggrieved party,

(b) file the demand with proof of service with the court administrator within ten days after the demand for removal was served upon the opposing party, and

(c) pay to the court administrator a filing fee of $5.

Subd. 5. [WAIVER OF TRIAL BY JURY.] If a jury of six persons is not demanded within the time limits and in the manner provided above, all parties waive trial by a jury of six persons.

Subd. 6. [REMOVAL PERFECTED; VACATING OF JUDGMENT.] When all removal papers have been filed properly and all required fees paid, the removal is perfected. The conciliation court judge shall then file an order vacating the order for judgment in conciliation court.

Subd. 7. [COURT ADMINISTRATOR'S DUTIES UPON REMOVAL.] After the judge's order has been filed, the court administrator shall file in district court all claims, orders, and other papers filed in conciliation court in connection with the cause and its removal to district court.

Subd. 8. [NOTE OF ISSUE NOT NECESSARY.] No note of issue shall be necessary upon removal to district court. The matter shall be set for trial as if a note of issue had been filed in conciliation court.

Subd. 9. [ISSUES FOR TRIAL; AMENDMENTS.] The issues for

trial in district court shall be those in conciliation court, but a party may be allowed to amend the issues in district court, including an amendment which increases the amount claimed by either party, as in any other civil proceeding. Granting or denial of motions to amend the issues shall be in the discretion of the judge.

Subd. 10. [COSTS AND DISBURSEMENTS ON REMOVAL.] (a) For the purposes of this subdivision, "removing party" means the party who demands removal to district court or the first party who serves or files a demand for removal, if another party also demands removal. "Opposing party" means any party as to whom the removing party seeks a reversal in whole or in part.

(b) If the removing party prevails in district court, the removing party may recover costs from the opposing party as provided by rules of the supreme court. If the removing party does not prevail, the court may award the opposing party an additional $200 as costs.

(c) The removing party prevails in district court if:

(1) the removing party recovers at least $500 or 50 percent of the amount or value of property that the removing party requested on removal, whichever is less, and the removing party was denied any recovery in the conciliation court;

(2) the opposing party does not recover any amount or any property from the removing party in district court, and the opposing party had recovered some amount or some property in conciliation court;

(3) the removing party recovers an amount or value of property in district court that exceeds the amount or value of property that the removing party recovered in conciliation court by at least $500 or 50 percent, whichever is less; or

(4) the amount or value of property that the opposing party recovers from the removing party in district court is reduced from the amount or value of property that the opposing party recovered in conciliation court by at least $500 or 50 percent, whichever is less.

(d) Costs or disbursements in conciliation or district

court shall not be considered in determining whether there was a recovery by either party in either court or in determining the difference in recovery under this subdivision.

Sec. 6. [484.765] [REFEREES.]

Subdivision 1. [APPOINTMENT AND QUALIFICATIONS.] A majority of the judges of each district may appoint attorneys to act as referees in conciliation court. A majority of the judges of each district shall establish qualifications for the office and specify the duties, compensation, and length of service of referees. This compensation is payable out of the county treasury.

Subd. 2. [COUNTY BOARDS.] The county boards in the respective judicial districts shall provide suitable chambers and courtroom space, clerks, reporters, bailiffs and other personnel to assist the referees, together with necessary library supplies, stationery and other expenses.

Sec. 7. [REPEALER.]

Minnesota Statutes 1990, sections 357.022; 487.30; 488A.12; 488A.13; 488A.14; 488A.15; 488A.16; 488A.17; 488A.29; 488A.30; 488A.31; 488A.32; 488A.33; and 488A.34 are repealed.