CX-89-1863

STATE OF MINNESOTA
IN SUPREME COURT

In re:

Supreme Court Advisory Committee on General Rules of Practice

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

Final Report

October 6, 2000

Hon. James H. Gilbert, Chair

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Hon. G. Barry Anderson, Saint Paul
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ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

Summary of Committee Recommendations

The Court's Advisory Committee on General Rules of Practice met twice in 2000 to discuss various issues relating to the operation of the rules. This report contains a small number of amendments that should not prove particularly controversial but which should improve the operation of the rules.

These amendments are briefly summarized:

1. Amend Rule 113 to make it presumptively appropriate to assign complex cases to a single judge for all hearings.
2. Adopt a formal procedure to request assignment by the Chief Justice of similar cases pending in more than one district court.
3. Consider adoption of a reduced-cost litigation track on a pilot project basis.
4. Amend Rule 145.06 to incorporate existing statutory requirements governing structured settlements.
5. Adopt a new Rule 313 to accommodate confidentiality of social security numbers and tax returns.
6. Modify Rule 114.13 to put the continuing education requirements for ADR neutrals on the same three-year reporting cycle as for CLE hours.
7. Amend Rule 521to include expressly the requirement that corporations appealing a conciliation court result be represented by an attorney at law.

One major set of issues did not yield to the committee's attempts to make recommendations to this court. A group of issues surrounding structured settlements in minor settlements requires further study either by this committee or by a referee reporting to this Court. These issues are complex, involve technical issues as well as insurance regulatory concerns that are beyond the experience or expertise of the committee. Further consideration of these issues should include more formal notice to attorneys involved in structured settlements (and their bar associations), insurers currently participating in the Minnesota structured settlement market, potential entrants, brokers involved in setting up structured settlements, the Minnesota Department of Commerce, and any other interested parties.

Effective Date

The committee believes that its recommended changes to the rules can be effected by order later this year, with an effective date of January 1, 2001. The committee continues to believe that amendments taking place with a January 1 effective date are most readily communicated and published to the bench and bar. None of these recommended amendments should require significant lead-time. Although the amendment to Rule 114 could literally have a January 1, 2001, effective date, the order adopting the rules should probably make it clear that Rule 114 would become applicable for the first time for attorney neutrals on the first June 30 CLE-year-end occurring for each attorney after the January 1, 2001, effective date.

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

Recommendation 1: **Existing Rule 113.01 should be amended to make it presumptively appropriate to order assignment of a single complex case to one judge for all proceedings.**

Introduction

Rule 113 was adopted in 1994, and has worked well in practice. It implements for complex cases the well-established tenet of modern case management that cases can best be managed when they are assigned the same judge for all purposes. The rule is amended to allow parties to demonstrate by motion that a case is appropriate for assignment to a single judge. If the trial court determines single-judge assignment is not appropriate, it should make findings for the reasons justifying a different assignment system. The amended rule also defines the term "enhanced judicial management techniques," a phrase used but not defined in the current rule.

Specific Recommendation

RULE 113. ~~ASSIGNMENT OF COMPLEX CASES TO SINGLE JUDGE~~ ASSIGNMENT OF CASE(S) TO A SINGLE JUDGE

Rule 113.01. Request for Assignment of A Single Case to a Single Judge

(a) In any case that the court or parties believe is likely to be complex, or where other reasons of efficiency or the interest of justice dictate, the ~~court~~ chief judge of the district or the chief judge's designee may order that all pretrial and trial proceedings shall be heard before a single judge. The court may enter such an order at any time on its own initiative or on the motion of any party, and shall enter such an order when the requirements of rule 113.01(b) have been met. The motion shall comply with these rules and shall be supported by affidavit(s). In any case assigned to a single judge pursuant to this Rule that judge shall actively use enhanced judicial management techniques, including, but not limited to, the setting of a firm trial date, establishment of a discovery cut off date, and periodic case conferences.

(b) Grounds. Unless the court finds that court management of the claims and/or issues involved has become routine or that the interests of justice require otherwise, the court shall

order that all pretrial and trial proceedings shall be heard before a single judge upon a showing that the action is likely to involve one or more of the following:

(1) numerous pretrial motions raising difficult or novel legal issues that will be time consuming to resolve;

(2) management of a large number of witnesses or substantial amount of documentary evidence;

(3) management of a large number of separately represented parties;

(4) coordination with related actions pending in one or more courts in other counties, states, or countries or in a federal court;

(5) substantial post-judgment judicial supervision.

Rule 113.02. ~~Complex Case Designation~~ Factors ~~Consolidation of Cases Within a Judicial District.~~

A motion for assignment of two or more cases pending within a single judicial district to a single judge shall be made to the chief judge of the district in which the cases are pending, or the chief judge's designee.

~~Factors to be considered in determining whether a case should be assigned to a single judge include the following:~~

~~(1) the number of parties;~~

~~(2) The nature of the claims;~~

~~(3) The anticipated length of trial;~~

~~(4) The likelihood of an unusually high number of pretrial court appearances;~~

~~(5) The presence of novel discovery issues; and~~

~~(6) The absence of effective communication between counsel.~~

Rule 113.03. ~~Motion~~ Consolidation of Cases in More Than One District

~~A motion for assignment to a single judge shall be made to the chief judge (or his or her designee) of the District in which the case is pending.~~ When two or more cases pending in more than one judicial district involve one or more common questions of fact or are otherwise related cases in which there is a special need for or desirability of central or coordinated judicial management, a motion by a party or a court's request for assignment of the cases to a single

judge may be made to the chief justice of the supreme court. A copy of the motion shall also be served on the chief judge of each district in which such an action is pending. When such a motion is made, the chief justice may, after consultation with the chief judges of the affected districts and the state court administrator, assign the cases to a judge in one of the districts in which any of the cases is pending or in any other district. If the motion is to be granted, in selecting a judge the chief justice may consider, among other things, the scope of the cases and their possible impact on judicial resources, the availability of adequate judicial resources in the affected districts, and the ability, interests, training and experience of the available judges. As necessary, the chief justice may assign an alternate or back-up judge or judges to assist in the management and disposition of the cases. The assigned judge may refer any case to the chief judge of the district in which the case was pending for trial before a judge of that district selected by the chief judge.

Advisory Committee Comment—2000 Amendment

Rule 113.01 applies to assignment of a single case within a judicial district or county that does not already use a so-called block assignment system whereby cases are routinely assigned to the same judge for all pretrial and trial proceedings. Although parties can request a single-judge assignment in the informational statement under Rule 111, this rule contemplates a formal motion with facts presented supporting the request in the form of sworn testimony. The grounds for the motion in Rule 113.01(b) were derived from rules 1800 -1811 of the California Special Rules for Trial Courts, Div. V, Complex Cases. If the court finds that management of the claims or issues has become routine, the matter would not rise to the level of requiring assignment to a single judge. A motion to certify a class, for example, would appear to be routine in terms of court management. Once a class has been certified and the matter becomes a class action, however, the complexity may rise to the level that requires a single judge assignment. Under Rule 113.01(a), the motion is to be made to the chief judge (or his or her designee) of the district in which the case is pending. Rule 113.02 recognizes that motions for consolidation of cases within a single judicial district may be heard by the chief judge of the district or his or her designee.

Rule 113.03 is new, and is intended merely to establish a formal procedure for requesting the chief justice to exercise the power to assign multiple cases in different districts to a single judge when the interests of justice dictate. The power to assign cases has been recognized by the supreme court in a few decisions over the past decade or so. *See, e.g.*, *In re Minnesota Vitamin Antitrust Litigation*, 606 N.W.2d 446 (Minn. 2000); *In re Minnesota Silicone Implant Litigation*, 503 N.W.2d 472 (Minn. 1993); *In re Minnesota L-tryptophan Litigation*, No. C0-91-706 (Minn. Sup. Ct., Apr. 24, 1991); *In re Minnesota Asbestos Litigation*, No. C4-87-2406 (Minn. Sup. Ct., Dec. 15, 1987). The power is derived from the inherent power of the court and specific statutory recognition of that power in MINN. STAT. §§ 480.16 & 2.724 (1998). The rule is intended to establish a procedure for seeking consideration of transfer by the chief justice. The procedure contemplates notice to interested parties and consultation with the affected judges so that the sound administration of the cases is not compromised. Transfer of cases for coordinated pretrial proceedings is an established practice in the federal court system under 28 U.S.C. § 1407. Although this rule is not as complex as its federal counterpart, its purpose is largely the same—to facilitate the efficient and fair handling of multiple cases. Practice under the federal statute has worked well, and is one of the most important tools of complex case management in the federal courts. See generally DAVID F. HERR, MULTIDISTRICT LITIGATION: HANDLING CASES BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

(1986 & Supp. 1996). A companion change is made to MINN. R. CIV. P. 63.03, making it clear that when a judge is assigned by order of the chief justice pursuant to this rule that the judge so appointed may not be removed peremptorily under Rule 63 or the statutory restatement of the removal power contained in MINN. STAT. § 542.16 (1998).

Recommendation 2: **Create a Formal Procedure for Multidistrict Assignment of Complex Cases.**

Introduction

The committee believes it is appropriate to adopt a formal mechanism to provide for seeking transfer of multiple cases pending in different judicial districts for coordinated case management. This recommendation was previously raised before the Court by the MSBA in its Petition on the Subject of Complex Litigation, filed on August 20, 1992. The petition was considered by the Court, but no action was taken on the recommendation relating to this issue. This issue was also raised in a previous recommendation of this committee. See Report of Minnesota Supreme Court Advisory Committee on General Rules of Practice, December 13, 1993.

The committee does not believe that special assignment by the Chief Justice under MINN. STAT. §§ 480.16 & 2.724 (1998), should necessarily become more prevalent, but the need continues to provide a mechanism to ask for this type of assignment, lest it seem like a secret or "back room" procedure.

If this amendment is made, the committee also recommends that Rule 63.03 of the rules of civil procedure be amended to make it clear that a judge specially assigned by the Chief Justice cannot be removed by the mere filing of a Notice to Remove. Proposed language for this amendment has been reviewed and approved by this Court's Advisory Committee on Rules of Civil Procedure, and is set forth below.

Specific Recommendation

1. [Text of proposed change to Rule 113 is included in Recommendation 1, lines 1-63]

2. Rule 63 of the Minnesota Rules of Civil Procedure.

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

* * *

Rule 63.03 Notice to Remove

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

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

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

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

Advisory Committee Comment— 2000 Amendments

The amendment to Rule 63.03 in 2000 is a companion to an amendment to the Minnesota General Rules of Practice to establish an explicit procedure for requesting the Chief Justice to exercise the power to assign multiple cases in different districts to a single judge when the interests of justice dictate. The power to assign cases has been recognized by the supreme court in a few decisions over the past decade or so. *See, e.g., In re*

Minnesota Vitamin Antitrust Litigation, 606 N.W.2d 446 (Minn. 2000); *In re Minnesota Silicone Implant Litigation*, 503 N.W.2d 472 (Minn. 1993); *In re Minnesota L-trypthophan Litigation*, No. C0-91-706 (Minn. Sup. Ct., Apr. 24, 1991); *In re Minnesota Asbestos Litigation*, No. C4-87-2406 (Minn. Sup. Ct., Dec. 15, 1987). The power is derived from the inherent power of the court and specific statutory recognition of that power in MINN. STAT. §§ 480.16 & 2.724 (1998). As part of this power, the assignment by the Chief Justice supercedes any right to remove a specially-assigned judge by Notice to Remove. This change applies only to "peremptory" notices to remove—removal for actual bias or prejudice is not affected.

Recommendation 3: **The court should consider implementing a low-cost litigation alternative as a pilot project.**

Introduction

The Committee considered a proposal for establishment of a low-cost litigation alternative as a pilot project. The Committee believes such a project may provide useful information about its feasibility as a potential means of handling cases. The Committee believes that such a program should include a formal alternative dispute resolution mechanism, should permit a party to propose dispositive motions at any time during the case, and believes that the pilot project should be truly voluntary, and that the courts should not be in a position to order submission of the case to a track where their rights are essentially abridged. It makes sense to do that as a matter of agreement; it does not make sense to this Committee to make that in any way compulsory. Some of these recommendations are already reflected in the draft rules set forth below; others will require further attention.

Other than these specific suggestions, this committee's recommendation does not encompass adoption of a particular program or the details for implementation of a program if adopted. The Committee believes this reduced-cost litigation proposal is particularly well suited to implementation as a pilot project. Although the details of the pilot project may possibly need to await implementation and modification to suit the needs of the individual district adopting it, the committee believes that the Rule "XXX" set forth below would be an appropriate way to establish procedures for the program. This advisory committee would be available to provide any assistance or advice in the implementation of such a program, however.

The committee believes that any pilot project using this rule have an express "sunset"provision, and that the test should run for two years. The pilot project should include a mechanism for evaluating the success of the project in meeting the goal of cost reduction, probably including a means of surveying both participants—judges, lawyers, and parties—and those electing not to participate in the process. After evaluation of these data, the committee recommends that the Court assess whether a state-wide process should be adopted.

The committee also recommends that any pilot project include specific guidance to courts and litigants on the types of cases that the Reduced-Cost Litigation program is intended to handle

and on types of cases where it should not be used. The committee believes the program should not be used, for example, in marriage dissolution and other family law matters, at least not during the pilot project phase. Any court adopting a pilot projects should provide this guidance in its order on these subjects.

Draft Pilot Project Rule

RULE XXX. REDUCED-COST LITIGATION

Rule XXX.01. Parties' Consent or Court Recommended Use of Reduced-Cost Litigation Track

(a) By consent of the parties expressed in their Rule 111.02 Joint Informational Statement that a case be adjudicated in a reduced-cost fashion, the procedures in these rules shall apply.

(b) Cases diverted to the reduced-cost litigation track shall be assigned to a single judge for all purposes.

(c) Cases on the reduced-cost litigation track should be managed to reduce the cost of hearings, motions, and any required conferences of counsel. Telephone and interactive video conferencing should be used where suitable.

Rule XXX.02. Scheduling Conference and Pre-Conference Meet and Confer

(a) Within 30 days of the filing of a Joint Informational Statement requesting assignment to the reduced-cost litigation track, the court shall hold a scheduling conference. All parties and their attorneys shall attend. At this conference, the parties shall agree to, or the court shall set by order, a discovery period not to exceed 75 days, including provisions for expert discovery where necessary, and a date for commencement of trial within 150 days.

(b) Prior to this conference, the parties and their attorneys shall meet and confer 1) to determine if the matter can be resolved by settlement and, 2) if not, to attempt to limit the matters

at issue. The parties shall, by affidavit filed prior to the conference, report the results of this meeting and define the remaining issues to be adjudicated by the court.

Rule XXX.03. Court Recommended Use of the Reduced-Cost Litigation Track

(a) If not requested in the Joint Informational Statement, the court may notify the parties at the Rule 111.03 scheduling conference that a case is appropriate for adjudication in the reduced-cost litigation track, and will be diverted to that track. Unless a party files the affidavit described in Rule XXX.03(b), the court shall adjudicate the case pursuant to these rules.

(b) If the court determines that the case is appropriate for adjudication in the reduced-cost litigation track, a party may elect that the case not be diverted to the track by submitting, within 10 days of the scheduling conference, an affidavit signed by both the party and its attorney. The affidavit shall state that the party has been notified of the court's recommendation that the case be adjudicated pursuant to the reduced-cost litigation rules, that the party is familiar with procedures set forth in the rules, and that the party chooses not to have the case adjudicated pursuant to those procedures. If no party files such an affidavit, the parties shall, within 14 days of the scheduling conference, meet and confer as described in Rule XXX.02 (b), and shall agree on a discovery period not to exceed 75 days from the date of the scheduling conference. The parties shall, by affidavit, report the results of this meeting and define remaining issues to be adjudicated by the court. The court shall set a trial date no later than 150 days form the date of the scheduling conference, and order a date for the close of discovery if the parties were not able to agree upon such a date.

Rule XXX.04. Reduced-Cost Discovery

(a) Each party shall, within 30 days of Rule 111.03 Scheduling Conference, disclose by affidavit:

(1) the name and location of persons who likely possess knowledge relevant to the claims and defenses, identifying the subjects of the information;

(2) a general description, including location, of documents, data, compilations in the possession, custody and control of the party that are relevant to the claims or defenses;

(3) a detailed computation of damages to which a party believes it is legally entitled; and

(4) the existence and contents of any insurance agreement from which it is possible proceeds will be available to pay any potential judgement.

(b) Once the case is assigned to the reduced-cost litigation track, no further interrogatories may be served. Any interrogatories that were served prior to the case being assigned to the reduced-cost litigation track must be answered. Interrogatory answers may be used as in any other action. However, once the case is assigned the reduced-cost litigation track, no further interrogatories may be served.

(c) Within 10 days of the receipt of disclosures under Rule XXX.04(a), the opposing party may request all or some of the documents, data and compilations identified by affidavit as relevant to the matter. If those documents, data and compilations have not already been produced in response to document requests propounded prior to the case being assigned to the reduced-cost litigation track, they shall be produced within 15 days of the request. No further requests for production of documents may be served.

(d) At the scheduling conference, the court shall determine whether all necessary depositions have already been taken. If not, the parties, after exchange of the affidavits provided for by Rule XXX.04(a), and exchange of any documents pursuant to Rule XXX.04(c), if any, shall agree on the necessary depositions. Depositions shall be limited in number and length. The parties shall make a good faith attempt to schedule depositions for the same day or days, at the same location. Any disagreements between the parties regarding the number or length of the depositions shall be brought to the attention of the court immediately by letter, and the court shall issue a deposition order within 5 days of receipt of the letter.

(e) Any request for relief with regard to any discovery matter shall be made within 10 days of incident giving rise to the request. The request shall contain a brief description of the relief sought, and shall not exceed 3 pages. Within 10 days of filing of the request, the court shall either decide the matter or set an expedited briefing schedule and state page limits for the briefs. There shall not be oral argument.

Rule XXX.05. Dispositive Motion Practice

(a) Motions for summary judgment shall be brought to the attention of the court and opposing parties upon a "Summary Judgement Proposal." The proposal shall not exceed 7 pages and shall describe the issues that the party wishes to have decided. Within 10 days of the filing of the proposal, the presiding judge shall issue an order identifying which of the issues, if any, will be heard and/or staying the determination of issues until the close of discovery. Summary judgment shall be deemed denied with regard to all remaining issues. If any issues are to be heard, the order will set an expedited briefing schedule, not to exceed a total of twenty days, and state page limits for the briefs. There will be no oral argument unless requested by the court. if requested by the court, oral argument shall be scheduled within 10 days of the filing of the last brief. The court shall issue a ruling within 10 days of the filing of the last brief or the date of oral argument, whichever is later.

Rule XXX.06. Pre-Trial/Evidentiary Conference

(a) Within 7 days prior to trial, the court shall hold a Pre-Trial/Evidentiary Conference. The parties shall exchange witness and exhibit lists 5 days prior to the conference. The parties shall attempt to stipulate to those facts about which there is no substantial controversy and to waive foundation and other evidentiary objections. All evidentiary matters, including matters traditionally brought upon a motion in limine or a motion to exclude, will be presented to the court at the conference.

(b) With regard to each evidentiary issue presented at the conference, the court shall either make a ruling or inform the parties that the issue will be addressed during the trial. The court shall also determine a maximum number of hours of testimony that each party will be allowed to present at trial. The court's determination should be made so as to shorten the trial as much as possible, and should be guided by the complexity of the matter.

(c) Settlement possibilities shall be explored at the conference.

Rule XXX.07. Modification of These Rules.

The rules will only be waived or modified for good cause shown.

Recommendation 4: **Amend Rule 145.06 to incorporate specific statutory requirements.**

Introduction

The committee considered a number of issues that had been raised regarding the use of structured settlements in minor settlements. Concerns raised with the committee or arising during the committee's study of these issues include the following:

- questions about the possible benefits of requiring, in some or all cases, that multiple structured settlement proposals be obtained and submitted to the court;
- a proposal to expand the definition of approved annuity issuers to ratings under other rating systems (in addition to A. M. Best, as contained in the current rule);
- a suggestion that the current insurer reserve-size requirement (A.M. Best Class VIII or better) be increased to reflect inflation, possibly to Class IX or possbily to Class X;
- criticism or concern about the occasional practice of settling casualty insurers that any structured settlement annuity be issued by an insurer affiliated with the casualty insurer;
- interest in requiring that a defendant who settles using a structured settlement device guarantee performance of the terms of the structure; and
- finally, the advisability of incorporating into the rule a

requirement that any structured settlement comply with provisions of MINN. STAT. § 549.30-.34 (1998), a statute adopted after the adoption of Rule 145.

After due consideration, including hearing presentations by representatives of the Minnesota Department of Commerce, the Minnesota State Bar Association Court Rules Committee, trial lawyers, a large annuity issuer, and a large, national insurer rating agency, the committee believe these issue require further study, either by this committee or by a referee appointed by the Court. This committee clearly lacks expertise in some of the significant

technical issues presented by the concerns brought to the committee's attention. It is possible that a referee should be appointed to conduct formal hearings on these questions. By way of illustration only, the question of whether the rule should require that a settling defendant or its liability insurer should remain "on the hook" until the structured settlement is fully performed is difficult. There is no question the added security of such a provision is desirable—it might prove to be of immense value to a minor otherwise left with a valueless claim against a defaulting insurer (or a claim limited to what could be recovered from a guaranty association). At least one insurer now offers such a provision as a competitive inducement. This committee could not assess the cost of requiring such a right. Would it increase the dollar cost of the annuity? Would it cause insurers not to offer such annuities for sale? These appear to be complex questions of market performance that should be answered, but cannot be answered competently by this committee.

The one question the committee feels can and should be addressed without further study is the desirability of having the rule require compliance with the statutory requirements that any annuity issuer be licensed to issue policies in Minnesota and the more recently-enacted provisions relating to structured settlements found in MINN. STAT. §§ 549.30-34 (1998). The committee understands these statutory provisions are not always complied with, and there is no good reason not to have the rule draw the attention of the parties and trial judges to these requirements.

The committee also heard concerns expressed about inconsistency in how evidence of deposit is provided to and maintained by court administrators. Although it appears that occasions of improper release of funds are infrequent, the committee recommends that this problem should also be addressed. The rule should reflect the reality of a banking world where "passbook savings" accounts are rarely available but the interests of protecting funds on deposit for minors are as strong as ever.

Specific Recommendation

RULE 145. ACTIONS ON BEHALF OF MINORS AND INCOMPETENT PERSONS

* * *

Rule 145.06. Structured Settlements

If the settlement involves the purchase of an annuity or other form of structured settlement, the court shall:

* * *

(b) Require the company issuing the annuity or structured settlement:

(1) Be licensed to do business in Minnesota;

(2) Have a financial rating equivalent to A. M. Best Co. A+, Class ~~8~~ VIII or better, and

(3) Has complied with the applicable provisions of MINN. STAT. § 549.30 to § 549.34;

or that a trust making periodic payments be funded by United States Government obligations;

* * *

Advisory Committee Comment—~~1995~~ 2000 Amendments

[Add at end of existing comments]

Rule 145.06 (b) is modified by amendment in 2000. The amendment is intended to require the court approving a minor settlement that includes a structured settlement provision to verify that the annuity issuer is licenced to do business and that MINN. STAT. § 549.30–.34 (1998) is followed. The amendment is not intended to impose any additional substantive requirements, as compliance with statutes is assumed under the current rule. The rule will require the trial court to verify the fact of compliance, however, and will probably require submitting this information to the court.

Recommendation 5: **Amend the General Rules of Practice to provide for confidentiality of Social Security number and tax return information when they are required for filing in bankruptcy court.**

Introduction

It is frequently necessary to file tax return information and Social Security numbers as part of the information submitted in family court. Because of the sensitive nature of this information, and confidentiality as required under both state and federal law (MINN. STAT. § 518.146 (1999 Supp.); 2000 MINN. LAWS ch. 403 (codified as MINN. STAT. § 518.5513, subd. 3); 42 U.S.C. § 666(a)(13), (c)(2)(A); 42 U.S.C. § 405(c)(2)(C)(viii)), this new rule requires that documents containing Social Security numbers should be filed in a form that either removes or obliterates these numbers and that tax returns be filed in a separate envelope labeled "Confidential Tax Return." The amendment to Rule 355.05, subd. 5, extended the provision of this rule to the expedited child support process.

As a corollary of the adoption of this new Rule 313, the cross-reference in Rule 301 should be corrected.

Specific Recommendation

RULE 301. APPLICABILITY OF RULES

Rules 301 through 31~~2~~3 apply to all proceedings in Family Court. These rules and, where applicable, the Minnesota Rules of Civil Procedure shall apply to family law practice except where they are in conflict with applicable statutes.

RULE 313. CONFIDENTIAL NUMBERS AND TAX RETURNS

Rule 313.01. Social Security Number.

Whenever an individual's social security number is required on any pleading or other paper that is to be filed with the court, the social security number shall be submitted on a separate

form entitled Confidential Information Form (see Form 11 appended to these rules) and shall not otherwise appear on the pleading or other paper. As an alternative, the filing party may prepare and file an original and one copy of the pleading or other paper if all social security numbers are completely removed or obliterated from the copy.

Rule 313.02. Tax Returns.

Copies of tax returns required to be filed with the court shall be submitted in a separate envelope marked "CONFIDENTIAL TAX RETURN OF _____ for YEAR(S)_____."

Rule 313.03. Failure to comply.

A party who fails to comply with the requirements of this rule may be deemed to have waived their right to privacy in their social security number or tax return filed with the court and the court may impose appropriate sanctions, including costs necessary to prepare an appropriate redacted copy, for a party's failure to comply with this rule in regard to another individual's social security number or tax return.

Advisory Committee Comment--2000

Rule 313 is new in 2000, and is designed to facilitate confidential treatment of social security numbers and tax returns) in family court proceedings. Confidentiality is required under both state and federal law. MINN. STAT. § 518.146 (1999 Supp.); 2000 MINN. LAWS ch. 403 (codified as MINN. STAT. § 518.5513, subd 3); 42 U.S.C. § 666(a)(13), (c)(2)(A); 42 U.S.C. § 405(c)(2)(C)(viii). This rule relieves court administration staff from the daunting task of assuring that social security numbers and tax returns are not inadvertently disclosed and places the primary responsibility for maintaining privacy with the persons submitting the information to the court.

State law also requires the social security number to be included in each child support order. See, e.g., MINN. STAT. §§ 256.87, subd. 1a; 257.66; 518.171, subd. 1(a)(2); 518.5853, subd. 5 (1998; 1999 Supp.). This rule contemplates that inclusion of social security numbers may appropriately be accomplished by relegating social security numbers to a separate page that is referenced in the order.

Rule 355.05. Filing of Pleadings, Motions, Notices and Other Papers.

* * *

Subd. 5. Confidential Numbers and Tax Returns. The requirements of Rule 313 of these rules regarding submission of social security numbers and tax returns shall apply to the expedited child support process.

FORM 11. CONFIDENTIAL INFORMATION FORM

(Gen. R. Prac. 313.01)

State of Minnesota **District Court**

County **Judicial District**

Case Type:_____

_____ **Case No. _____**

Plaintiff/Petitioner

and **CONFIDENTIAL INFORMATION FORM**

(Provided Pursuant to Rule 313.01 of the Minnesota General Rules of Practice)

_____

Defendant/Respondent

		NAME	SOCIAL SECURITY NUMBER
Plaintiff/Petitioner	1.	_____	_____
	2.	_____	_____
	3.	_____	_____
Defendant/Respondent	1.	_____	_____
	2.	_____	_____
	3.	_____	_____
Other Party (e.g.,	1.	_____	_____
minor children)	2.	_____	_____

Information supplied by:_____

(print or type name of party submitting this form to the court)

Signed_____

Attorney Reg. #:_____

Firm_____

Address: _____

Date: _____

Recommendation 6: **Rule 114.13 should be amended to require continuing education for "qualified neutrals" on the same three-year cycle as for other CLE requirements.**

Introduction

The requirements for continuing training of ADR neutrals are currently stated on an annual basis, with concomitant annual reporting. The committee recommends, and understands that the ADR Review Board and the Director concur in this recommendation, that the requirements be changed to a three-year requirement. The training requirements are not otherwise changed; they are simply stated as three times the current annual requirement for every three-year period. For ADR neutrals who are also attorneys, the reporting period is made to coincide with their CLE reporting periods under Rule 3, Rules of the Supreme Court for Continuing Legal Education of Members of the Bar and Rule 106, Rules of the Board of Continuing Legal Education. Other neutrals should be placed on a similar three-year reporting cycle by the Board. The committee believes that this change will make it easier for neutrals to attend appropriate training and will ease the record keeping and certification burdens both on neutrals and the Board.

Because of the special needs of this rule, and the fact that CLE reporting is conducted on a July 1 to June 30 "fiscal" year, it is recommended the rule be amended to become effective on July 1, 2001, even if the other amendments recommended in this report are adopted effective January 1, 2001. The order adopting the rule or a separate implementation rule by the Board should address the transition and implementation issues for lawyer and non-lawyer neutrals.

Specific Recommendation

RULE 114. ALTERNATIVE DISPUTE RESOLUTION

* * *

Rule 114.13. Training, Standards and Qualifications for Neutral Rosters

* * *

(g) Continuing Training. All neutrals providing facilitative or hybrid services must attend ~~6~~ eighteen hours of continuing education about alternative dispute resolution subjects ~~annually~~ within the three-year period in which the neutral is required to complete the continuing education requirements. All other neutrals must attend ~~3~~ nine hours of continuing education about alternative dispute resolution subjects ~~annually~~ during the three-year period in which the neutral is required to complete the continuing education requirements. These hours may be attained through course work and attendance at state and national ADR conferences. The neutral is responsible for maintaining attendance records and shall disclose the information to program administrators and the parties to any dispute. The neutral shall submit continuing education credit information to the State Court Administrator's office ~~on an annual basis~~ within sixty days after the close of the period during which his or her education requirements must be completed.

Advisory Committee Comment—~~1996~~ 2000 Amendments

The provisions for training and certification of training are expanded in these amendments to provide for the specialized training necessary for ADR neutrals. The committee recommends that six hours of domestic abuse training be required for all family law neutrals, other than those selected solely for technical expertise. The committee believes this is a reasonable requirement and one that should significantly facilitate the fair and appropriate consideration of the concerns of all parties in family law proceedings.

Rule 114.13(g) is amended in 2000 to replace the current annual training requirement with a three-year reporting cycle. The existing requirements are simply tripled in size, but need only be accumulated over a three-year period. The rule is designed to require reporting of training for ADR training on the same schedule required for CLE for neutrals who are lawyers. *See generally* Rule 3 of Rules of the Supreme Court for Continuing Legal Education of Members of the Bar and Rule 106 of Rules of the Board of Continuing Legal Education. Non-lawyer neutrals should be placed by the ADR Board on a similar three-year reporting scheduling

Recommendation 7: **Rule 521 should be amended to include the requirement that a demand for removal for a corporation be signed by an attorney at law, as required by the court.**

Introduction

Because the rules governing conciliation court procedure are often consulted by unrepresented parties, the committee believes it would be desirable to have the rule contain the important requirement that a notice to remove an action from conciliation court to district court be signed by an attorney at law. This change simply conforms the rule to the requirements of appellate court decisions. See World Championship Fighting v. Janos, 609 N.W.2d 263 (Minn. App. 2000), rev. denied, July 25, 2000. This Court has held that a corporation must be represented by a licensed attorney in district court regardless of the fact that the action originated in conciliation court. *See Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753 (Minn. 1992).

Specific Recommendation

RULE 521. REMOVAL (APPEAL) TO DISTRICT COURT

(a) Trial de novo. Any person aggrieved by an order for judgment entered in conciliation court after contested trial may remove the cause to district court for trial de novo (new trial). An "aggrieved person" may be either the judgment debtor or creditor.

(b) Removal Procedure. To effect removal, the aggrieved party must perform all the following within twenty days after the date the court administrator mailed to that party notice of the judgment order:

(1) Serve on the opposing party or the opposing party's lawyer a demand for removal of the cause to district court for trial de novo. Service shall be by first class mail. Service may also be by personal service in accordance with the provisions for personal service of a summons in district court. The demand for removal shall state whether trial demanded is to be by court or jury, and shall indicate the name, address, and telephone

number of the aggrieved party's lawyer, if any. If the aggrieved party is a corporation, the demand for removal must be signed by the party's attorney.

(2) File with the court administrator the original demand for removal with proof of service. The aggrieved party may file with the court administrator within the twenty day period the original and copy of the demand together with an affidavit by the party or the party's lawyer showing that after due and diligent search the opposing party or opposing party's lawyer cannot be located. This 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 party's last known residence address.

(3) File with the court administrator an affidavit by the aggrieved party or that party's lawyer stating that the removal is made in good faith and not for purposes of delay.

(4) Pay to the court administrator as the fee for removal the amount prescribed by law for filing a civil action in district court, and if a jury trial is demanded under Rule 521(b)(1) of these rules, pay to the court administrator the amount prescribed by law for requesting a jury trial in a civil action in district court. A party who is unable to pay the fees may apply for permission to proceed without payment of fees pursuant to the procedure set forth in Minnesota Statutes Section 563.01.

* * *

1993 Committee Comment

Rule 521(b) establishes a twenty-day time period for removing the case to district court. The twenty days is measured from the mailing of the notice of judgment, and the law requires that an additional three days be added to the time period when notice is served by mail. *Wilkins v. City of Glencoe*, 479 N.W.2d 430 (Minn. App. 1992) (construing rule 6.05 of the Minnesota Rules of Civil Procedure). Computing the deadline can be difficult and confusing for lay persons, and Rule 514 attempts to alleviate this problem by requiring the court administrator to perform the computation and specify the resulting date in the notice of order for judgment, taking into consideration applicable rules, including rule 503 of these rules and rule 6.05 of the Minnesota Rules of Civil Procedure.

In district court, personal service may only be made by a sheriff or any other person not less than 18 years of age who is not a party to the action. *Reichel v. Hefner*, 472 N.W.2d 436 (Minn. App. 1991). This applies to personal service under this Rule 521. Service may not be made on Sunday, a legal holiday, or election day. MINN.STAT. §§ 624.04, 645.44, subd. 5 (1990); MINN. CONST. art. VII, § 4.

Advisory Committee Comment — ~~1997~~ 2000 Amendments

Rule 521(e)(1), as amended in 1997, allows limited removal to district court from a denial of a motion to vacate the order for judgment or judgment made pursuant to Rule

520(a) or (b). To obtain limited removal under Rule 521(e)(1), a party must follow the same procedural steps for obtaining removal under Rule 521(b), except that the event that triggers the twenty-day time period for effecting removal is the date that the court administrator mails the notice of denial of the motion to vacate the order for judgment or judgment. The law requires that an additional three days be added to the time period when notice is served by mail. *Wilkins v. City of Glencoe*, 479 N.W.2d 430 (Minn. App. 1992).

Under Rule 521(b)(1) as amended in 2000, if the party seeking to remove (appeal) the case to district court is a corporation, the demand for removal must be signed by an attorney authorized to practice law in the district court. This requirement simply restates are requirement recognized by court decision. *See World Championship Fighting v. Janos*, 609 N.W.2d 263 (Minn. App. 2000), *rev. denied*, July 25, 2000. A corporation must be represented by a licensed attorney in district court regardless of the fact that the action originated in conciliation court. *Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753 (Minn. 1992).

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