

**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**

**September 17, 2003**

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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 three times in 2003 to discuss issues relating to the operation of the rules and to continue its consideration of the questions surrounding state-court enforcement of tribal court orders and judgments.

This report contains four recommendations for amendments to the rules.

These amendments are briefly summarized:

1. The committee spent a substantial amount of time following up on the court's March 5, 2003, order requesting further consideration of the issues relating to recognition of judgments, orders, or other actions by tribal courts. The committee meeting on August 13, 2003, included a public hearing segment to receive testimony from interested persons on the recommended amendments to the rules.

2. The committee also considered two recommendations from the MSBA Pro Se Implementation Committee, co-chaired by Chief Judge Edward Toussaint of the Minnesota Court of Appeals and attorney Eric J. Magnuson of Minneapolis. Those proposed changes would provide express authorization for establishment of self-help programs for pro se litigants and create a modified joint petition procedure for certain family law matters. The advisory committee recommends that these rules be adopted as new rule 110 and as amendments to rules 320.01 and 306.01 & .02.

3. The committee also looked at issues relating to a streamlined procedure for consideration of attorneys' fee awards in default judgment matters. The committee recommends adoption of an additional subsection of rule 119 to establish guidelines for such a streamlined procedure to obviate a formal hearing on attorneys' fees in many default situations.

### **Other Matters**

The committee is not aware of other matters that require attention at this time. The committee believes the general rules are working well.

**Effective Date**

The committee believes these amendments are not likely to present significant implementation issues and, accordingly, that it should be feasible to adopt them late in 2003 and have them take effect on January 1, 2004.

**Respectfully submitted,**

MINNESOTA SUPREME COURT  
ADVISORY COMMITTEE ON  
GENERAL RULES OF PRACTICE

**Recommendation 1: The Court recommends adoption of a rule on enforcement of tribal court orders and judgments.**

**Introduction**

During 2002, the committee considered in some detail a rule proposed by the Minnesota Tribal Court State Court Forum. That rule was intended to create a presumption that any judgment or order rendered by a tribal court of a tribe recognized by federal statute would be valid and enforceable in state court as though it had been rendered by a court of a sister state. The proposed rule essentially grafted principles of full faith and credit onto concepts of comity, resulting in mandatory application of criteria that are generally treated as highly discretionary. The committee recommended to the court that that rule not be implemented. By its order of March 5, 2003, this court accepted the committee's recommendation not to adopt the proposed rule and directed the committee to consider "rules to provide a procedural framework for the recognition and enforcement of tribal orders and judgments where there is an existing legislative basis for doing so."

The committee solicited input from all parties that had participated in the 2002 proceedings; conducted small group discussions with representatives of the State Court Tribal Court Forum and the County Attorneys' Association; and circulated drafts of a proposed rule with committee comments. The committee received written comments on the proposed rule from Randy V. Thompson, counsel for William J. Lawrence, Proper Economics Resources Management, Inc.; and various members of Minnesota Bands and Tribes; Maxine V. Eidsvig, a member of the Lower Sioux Reservation; and Hon. Andrew Small, Associate Judge, Lower Sioux Community in Minnesota Tribal Court, writing on behalf of the Minnesota Tribal Court Association. At the committee's meeting on August 13, 2003, the committee heard testimony concerning a draft of the recommended rule 10 from Randy V. Thompson; William J. Lawrence, publisher of the Native American Press/Ojibwe News; Maxine V. Eidsvig; and Hon. Margaret Treuer, Judge, Bois Forte Tribal Court and Leech Lake Band of Ojibwe Tribal Court. The committee has also forwarded proposed rule 10 to the Advisory Committees of the Rules of Criminal Procedure and Juvenile Protection and obtained their input.

The committee is of the view that there can be no one-size-fits-all procedural rule for enforcement of tribal orders and judgments as existing statutory mandates establish conflicting

measures. *Compare* the federal Violence Against Women Act, 18 U.S.C. § 2265(d) (no prior registration or filing as prerequisite for enforcement of a protection order, and no prior notice to other party as prerequisite unless notice is requested by the party protected under such order), *with* Minnesota Uniform Child Custody Jurisdiction and Enforcement Act, MINN. STAT. §§ 518D.101 *et seq.* (“shall recognize and enforce a child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of . . . chapter [518D];” not applicable to adoption or emergency medical care of child, not applicable to extent ICWA controls; establishes a voluntary registration process for custody determinations with 20-day period for contesting validity). The committee is also of the view, however, that a rule providing some direction to courts and litigants would serve a useful purpose.

The committee recommends a rule that is admittedly, in part, only hortatory in nature. Given the importance of the relationship between state and tribal courts, and the important rights that may be decided in both court systems, the committee believes this may be a circumstance where a rule that is not strictly a statement of court procedure may be appropriate. The new rule provides that state trial courts must follow the procedures created by statute and give tribal court orders and judgments effect where a statute requires it. The rule also provides some structure to the application of comity principles to those tribal court orders and judgments where there is no statutory requirement that they be enforced.

The committee was also encouraged to explore with the Minnesota Tribal Court/State Court Forum a tribal court/state court compact to assure reciprocal commitment to any new rule developed pursuant to paragraph 1 above. Due to the predominantly hortatory nature of the proposed rule, the committee felt that reciprocity was not an issue.

### **Specific Recommendation**

**A new Rule 10 should be adopted as set forth below. Because the rule is entirely new, no markings are included to show additions or deletions.**

## **RULE 10. TRIBAL COURT ORDERS AND JUDGMENTS**

**Rule 10.01. When Tribal Court Orders and Judgments Must Be Given Effect**

5 (a) **Recognition Mandated by Law.** Where mandated by state or federal statute, orders,  
6 judgments, and other judicial acts of the tribal courts of any federally recognized Indian tribe  
7 shall be recognized and enforced.

8 (b) **Procedure.**

9 (1) **Generally.** Where an applicable state or federal statute establishes a  
10 procedure for enforcement of any tribal court order or judgment, that procedure must be  
11 followed.

12 (2) **Violence Against Women Act; Presumption.** An order that is subject to the  
13 Violence Against Women Act, 18 U.S.C. § 2265 (2000), that appears to be issued by a  
14 court with subject matter jurisdiction and jurisdiction over the parties, and that appears  
15 not to have expired by its own terms is presumptively enforceable, and shall be honored  
16 by Minnesota courts and law enforcement and other officials so long as it remains the  
17 judgment of the issuing court and the respondent has been given notice and an  
18 opportunity to be heard or, in the case of matters properly considered ex parte, the  
19 respondent will be given notice and an opportunity to be heard within a reasonable time.  
20 The presumptive enforceability of such a tribal court order shall continue until terminated  
21 by state court order but shall not affect the burdens of proof and persuasion in any  
22 proceeding.

23  
24 **Rule 10.02. When Recognition of Tribal Court Orders and Judgments Is Discretionary.**

25  
26 (a) **Factors.** In cases other than those governed by Rule 10.01(a), the court shall enforce  
27 a tribal court order or judgment to the extent justified under the circumstances, and by  
28 consideration of the following factors or any other factors the court deems appropriate in the  
29 interests of justice:

30 (1) whether the party against whom the order or judgment will be used has been  
31 given notice and an opportunity to be heard or, in the case of matters properly considered  
32 ex parte, whether the respondent will be given notice and an opportunity to be heard  
33 within a reasonable time;

34 (2) whether the order or judgment appears valid on its face and, if possible to  
35 determine, whether it remains in effect;

36 (3) whether the tribal court possessed subject-matter jurisdiction and jurisdiction  
37 over the person of the parties;

38 (4) whether the issuing tribal court was a court of record;

39 (5) whether the order or judgment was obtained by fraud, duress, or coercion;

40 (6) whether the order or judgment was obtained through a process that afforded  
41 fair notice, the right to appear and compel attendance of witnesses, and a fair hearing  
42 before an independent magistrate;

43 (7) whether the order or judgment contravenes the public policy of this state;

44 (8) whether the order or judgment is final under the laws and procedures of the  
45 rendering court, unless the order is a non-criminal order for the protection or  
46 apprehension of an adult, juvenile or child, or another type of temporary, emergency  
47 order; and

48 (9) whether the tribal court reciprocally provides for recognition and  
49 implementation of orders, judgments and decrees of the courts of this state.

50 **(b) Procedure. The court shall hold such hearing, if any, as it deems necessary under the**  
51 **circumstances.**

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53 **Advisory Committee Comment—2003 Adoption**

54 Rule 10 is a new rule intended to provide a starting point for enforcing tribal  
55 court orders and judgments where recognition is mandated by state or federal  
56 law (Rule 10.01), and to establish factors for determining the effect of these  
57 adjudications where federal or state statutory law does not do so (Rule 10.02).

58 The rule applies to all tribal court orders and judgments and does not  
59 distinguish between tribal courts located in Minnesota and those sitting in other  
60 states. The only limitation on the universe of determinations is that they be from  
61 tribal courts of a federally-recognized Indian tribe. These courts are defined in  
62 25 U.S.C. § 450b(e).

63 Tribal court adjudications are not entitled to full faith and credit under the  
64 United States Constitution, which provides only for full faith and credit for  
65 “public acts, records, and judicial proceedings of every other state.” U. S.  
66 CONST. Art IV, § 1. Where applicable full faith and credit is mandatory, a state  
67 does not exercise discretion in giving effect to the proper judgments of a sister  
68 state. *See Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943)(foreign  
69 judgment must be enforced even though action barred by limitations in the  
70 jurisdiction). Through full faith and credit, a sister state’s judgment is given res  
71 judicata effect in all other states. *See, e.g., id.; Hansberry v. Lee*, 311 U.S. 32  
72 (1940). All other orders and adjudications, including tribal court determinations  
73 that are not entitled to full faith and credit under a specific state or federal  
74 statute, are governed by the doctrine of comity. Comity is fundamentally a  
75 discretionary doctrine. There is no requirement under constitutional or statutory  
76 authority, or generally even by common law, that requires comity be given to a  
77 judgment from the court of a foreign country. *See Aetna Life Ins. Co. v.*

78 *Tremblay*, 223 U.S. 185 (1912) (no right, privilege or immunity conferred by  
79 Constitution to judgments of foreign states and nations); *Hilton v. Guyot*, 159  
80 U.S. 113, 234 (1895).

81 Rule 10.02 reflects the normal presumption that courts will adhere to  
82 statutory mandates for enforcement of specific tribal court orders or judgments  
83 where such a statutory mandate applies. Statutes that do provide such mandates  
84 include:

85 1. Violence against Women Act, 18 U.S.C. § 2265 (2003) (full faith and  
86 credit for certain protection orders)..

87 2. Indian Child Welfare Act, 25 U.S.C. §§ 1911 (2003) (“full faith and  
88 credit” for certain custody determinations).

89 3. Full Faith and Credit for Child Support Orders Act, 28 U.S.C. §  
90 1738B (2003) (“shall enforce” certain child support orders and “shall not seek or  
91 make modifications . . . except in accordance with [certain limitations]”).

92 In addition to federal law, the Minnesota Legislature has addressed  
93 enforcement of foreign money judgments. The Minnesota Uniform Foreign  
94 Country Money-Judgments Act, MINN. STAT. § 548.35 (2002), creates a  
95 procedure for filing and enforcing judgments rendered by courts other than those  
96 of sister states. Tribal court money judgments fall within the literal scope of this  
97 statute and the statutory procedures therefore may guide Minnesota courts  
98 considering money judgments. *Cf. Anderson v. Engelke*, 287 Mont. 283, 289-90,  
99 954 P.2d 1106, 1110-11 (1998)(dictum)(statute assumed to allow enforcement  
100 by state courts outside of tribal lands, but question not decided). It is not  
101 necessary for the rule to provide additional guidance on how a money judgment  
102 is to be enforced in Minnesota. Because money judgments of tribal courts are  
103 not entitled to full faith and credit under the Constitution, the court is allowed a  
104 more expansive and discretionary role in deciding what effect they have. Rule  
105 10.01(b)(1) is intended to facilitate that process. The Minnesota Legislature has  
106 also adopted the Uniform Child Custody Jurisdiction and Enforcement Act,  
107 MINN. STAT. §§ 518D.101 et seq. which: (1) requires recognition and  
108 enforcement of certain child custody determinations made by a tribe “under  
109 factual circumstances in substantial conformity with the jurisdictional standards  
110 of” the Act; and (2) establishes a voluntary registration process for custody  
111 determinations with a 20-day period for contesting validity. MINN. STAT. §§  
112 518D.104, D.305 (2002) (not applicable to adoption or emergency medical care  
113 of child; not applicable to extent ICWA controls).

114 The facial validity provision in Rule 10.01(b)(2) fills in a gap in state law.  
115 MINN. STAT. § 518B.01, subd. 14(e)(2002), authorizes an arrest based on  
116 probable cause of violation of tribal court order for protection; although this law  
117 includes immunity from civil suit for a peace officer acting in good faith and  
118 exercising due care, it does not address facial validity of the order. Similar laws  
119 in other jurisdictions address this issue. *See, e.g.,* 720 ILL. STAT. 5/12-30(a)(2)  
120 (2003); 22 OKLA. STAT. ANN. § 60.9 (2002); WISC. STAT. § 813.128 (2003).

121 Where no statutory mandate expressly applies, tribal court orders and  
122 judgments are subject to treatment under Rule 10.02(a). This rule does not  
123 dictate a single standard for determining the effect of these adjudications in state  
124 court. Instead, it identifies some of the factors a Minnesota judge may consider  
125 in determining what effect such a determination will be given. Rule 10.02(a)  
126 does not attempt to define all of the factors that may be appropriate for  
127 consideration by a court charged with determining whether a tribal-court  
128 determination should be enforced. It does enumerate many of the appropriate  
129 factors. It is possible in any given case that one or more of these factors will not  
130 apply. For example, reciprocity is not a pre-condition to enforceability  
131 generally, but may be relevant in some circumstances. Notice of the proceedings  
132 and an opportunity to be heard (or the prospect of notice and right to hearing in  
133 the case of ex parte matters) are fundamental parts of procedural fairness in state



134 and federal courts and are considered basic elements of due process; it is  
135 appropriate at least to consider whether the tribal court proceedings extended  
136 these rights to the litigants. The issue of whether the tribal court is “of record”  
137 may be important to the determination of what the proceedings were in that  
138 court. A useful definition of “of record” is contained in the Wisconsin statutes.  
139 WIS. STAT. § 806.245(1)(c); *see also* WIS. STAT. § 806.245(3)(sets forth  
140 requirements for determining whether a court is “of record.”). The rule permits  
141 the court to inquire into whether the tribal-court proceedings offered similar  
142 protections to the parties, recognizing that tribal courts may not be required to  
143 adhere to the requirements of due process under the federal and state  
144 constitutions. Some of the considerations of the rule are drawn from the  
145 requirements of the Minnesota Uniform Enforcement of Foreign Judgments Act,  
146 MINN. STAT. §§ 548.26-.33 (2000). For example, contravention of the state’s  
147 public policy is a specific factor for non-recognition of a foreign state’s  
148 judgment under MINN. STAT. § 548.35, subd. 4(b)(3)(2000); it is carried forward  
149 into Rule 10.02(b)(6). Inconsistency with state public policy is a factor for non-  
150 recognition of tribal court orders under other states’ rules. *See* MICH. R. CIV. P.  
151 2.615(C)(2)(c); N.D. R. CT. 7.2(b)(4).

152 Rule 10.02(b) does not require that a hearing be held on the issues relating to  
153 consideration of the effect to be given to a tribal court order or judgment. In  
154 some instances, a hearing would serve no useful purpose or would be  
155 unnecessary; in others, an evidentiary hearing might be required to resolve  
156 contested questions of fact where affidavit or documentary evidence is  
157 insufficient. The committee believes the discretion to decide when an  
158 evidentiary hearing is held should rest with the trial judge.

**Recommendation 2: The Court should adopt a rule to authorize establishment of self-help programs for pro se litigants.**

**Introduction**

The advisory committee recommends adoption of two rules proposed by the MSBA Pro Se Implementation Committee, co-chaired by Chief Judge Edward Toussaint of the Minnesota Court of Appeals and attorney Eric J. Magnuson of Minneapolis. These two rules would facilitate access to the courts by pro se parties.

These proposals would provide guidance in the rules for self-help programs such as those now operating successfully in some urban district courts and would create a new procedure for commencement of certain marriage dissolution actions by a joint petition. This latter proposal is set forth in this committee’s Recommendation 3.

**Specific Recommendation**

**A new Rule 110 should be adopted as set forth below. Because the rule is entirely new, no markings are included to show additions or deletions.**

**RULE 110. SELF-HELP PROGRAMS**

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**110.01. Authority for Self-Help Programs.**

A District Court for any county may establish a Self-Help Program to facilitate access to the courts. The purpose of a Self-Help Program is to assist Self-Represented Litigants, within the bounds of this rule, to achieve fair and efficient resolution of their cases, and to minimize the delays and inefficient use of court resources that result from misuse of the court system by litigants who are not represented by lawyers. There is a compelling state interest in resolving cases efficiently and fairly, regardless the means of the parties.

11 **110.02. Staffing.**

12 The Self-Help Program may be staffed by lawyer and non-lawyer personnel, and  
13 volunteers under the supervision of regular personnel. Self-Help Personnel act at the direction of  
14 the district court judges to further the business of the court.

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16 **110.03. Definitions.**

17 (a) “Self-Represented Litigant” means any individual who seeks information to file,  
18 pursue, or respond to a case without the assistance of a lawyer authorized to practice before the  
19 court.

20 (b) “Self-Help Personnel” means lawyer and non-lawyer personnel and volunteers under  
21 the direction of paid staff in a Self-Help Program who are performing the limited role under this  
22 rule. “Self-Help Personnel” does not include lawyers who are providing legal services to only  
23 one party as part of a legal services program that may operate along side or in conjunction with a  
24 Self-Help Program.

25 (c) “Self-Help Program” means a program of any name established and operating under  
26 the authority of this rule.

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28 **110.04. Role of Self-Help Personnel.**

29 (a) **Required Acts.** Self-Help Personnel shall

30 (1) Educate Self-Represented Litigants about available pro bono legal services,  
31 low cost legal services, legal aid programs, and lawyer referral services;

32 (2) Encourage Self-Represented Litigants to obtain legal advice;

33 (3) Provide information about mediation services;

34 (4) Provide services on an assumption that the information provided by the  
35 litigant is true; and

36 (5) Provide the same services and information to all parties to an action, if  
37 requested.

38 (b) **Permitted, but Not Required, Acts.** Self-Help Personnel may, but are not required  
39 to:

40 (1) provide forms and instructions;

41 (2) assist in the completion of forms;

- 42 (3) provide information about court process, practice and procedure;
- 43 (4) offer educational sessions and materials on all case types, such as sessions
- 44 and materials on marriage dissolution;
- 45 (5) answer general questions about family law and other issues and how to
- 46 proceed with such matters;
- 47 (6) explain options within and without the court system;
- 48 (7) assist in calculating guidelines child support based on information provided
- 49 by the Self-Represented Litigant;
- 50 (8) assist with preparation of court orders under the direction of the court; and
- 51 (9) provide other services consistent with the intent of this rule and the direction
- 52 of the court, including programs in partnership with other agencies and organizations.

53 **(c) Prohibited Acts.** Self-Help Personnel may not:

- 54 (1) represent litigants in court
- 55 (2) perform legal research for litigants;
- 56 (3) deny a litigant's access to the court;
- 57 (4) lead litigants to believe that they are representing them as lawyers in any
- 58 capacity or induce the public to rely on them for personal legal advice;
- 59 (5) recommend one option over another option;
- 60 (6) offer legal strategy or personalized legal advice;
- 61 (7) tell a litigant anything she or he would not repeat in the presence of the
- 62 opposing party;
- 63 (8) investigate facts pertaining to a litigants case, except to help the litigant
- 64 obtain public records, or
- 65 (9) disclose information in violation of statute, rule, or case law.
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67 **110.05. Disclosure.**

68 Self-Help Programs shall give conspicuous notice that:

- 69 (a) no attorney-client relationship exists between Self-Help Personnel and Self-
- 70 Represented Litigants;
- 71 (b) communications with Self-Help Personnel are not privileged or confidential;

72 (c) Self-Help Personnel must remain neutral and may provide services to the other  
73 party; and

74 (d) Self-Help personnel are not responsible for the outcome of the case.

75 Program materials should advise litigants to consult with their own attorney if they want  
76 personalized advice or strategy, confidential conversations with an attorney, or if they want to be  
77 represented by an attorney in court.

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79 **110.06. Unauthorized Practice of Law.**

80 The performance of services by Self-Help Personnel in accordance with this rule shall not  
81 constitute the unauthorized practice of law.

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83 **110.07. No Attorney-Client Privilege or Confidentiality.**

84 Information given by a Self-Represented Litigant to court administration staff or Self-  
85 Help Personnel is not confidential or privileged. No attorney-client relationship exists between  
86 Self-Help Personnel and a Self-Represented Litigant.

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88 **110.08. Conflict.**

89 Notwithstanding ethics rules that govern attorneys, certified legal interns, and other  
90 persons working under the supervision of an attorney, there is no conflict of interest when Self-  
91 Help Personnel provide services to both parties.

92  
93 **110.09. Access to Records.**

94 All records made or received in connection with the official business of a Self-Help  
95 Program relating to the address, telephone number or residence of a Self-Represented Litigant  
96 are not accessible to the public or the other party.

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98 **Advisory Committee Comment—2003 Adoption**

99 Rule 110 is a new rule adopted in 2003 on the recommendation of a pro se  
100 implementation committee to facilitate access to and use of the courts by pro se  
101 litigants. It is modeled after similar family law provisions in other jurisdictions.  
102 *See. e.g.,* CA. FAMILY CODE §§ 10000 –100015 (West 2003); FLA .FAM. L. R. P.  
103 12.750 (West 2003); OR .REV. STAT. § 3.428 (West 2003); WASH. REV. CODE  
104 ANN. § 26.12.240 (West 2003); WASH. R. GEN. GR 27 (West 2003).

105 The rule defines and communicates to interested parties the role of self-help  
106 personnel. Definition of roles is important because of the potential for  
107 confusion. Rule 110.03(b) intentionally limits the definition of Self-Help

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Personnel to exclude lawyers who provide services to one party, as is commonly done by legal-service-program attorneys. Because of this definition, Rule 110.07 does not limit the creation of an attorney-client relationship in such attorney-client relationships.

**Recommendation 3: The Court should adopt a rule to create a modified joint petition procedure for certain family law matters .**

**Introduction**

This rule arose from the same MSBA Pro Se Implementation Committee process described in Recommendation 2. This recommendation would create a process to allow marriage dissolution actions to be commenced by a joint petition where there are no property disputes and no children of the marriage.

**Specific Recommendation**

Rule 302.01 should be amended as set forth below. If this amendment is made, Rule 306.01 & .02 should also be amended to provide internal consistency in the rules.

**RULE 302. COMMENCEMENT; CONTINUANCE; TIME; PARTIES**

\* \* \*

**Rule 302.01. Commencement of Proceedings.**

\* \* \*

(b) Joint Petition.

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

(2) Where the parties to a proceeding agree on all property issues, have no children together, the wife is not pregnant, and the wife has not given birth since the date of the marriage to a child who is not a child of the husband, the parties may proceed using a joint petition, agreement, and judgment and decree for marriage dissolution without children. Form 12 appended to these rules is a sufficient form for this purpose.

(3) Upon filing of the “Joint Petition, Agreement and Judgment and Decree,” and Form 11 appended to these rules, and a Notice to the Public Authority if required by Minn. Stat. § 518.551, subd. 5(a), the court administrator shall place the matter on the default calendar for approval without hearing pursuant to Minn. Stat. § 518.13, subd. 5. A Certificate of Representation and Parties and documents required by Rules 306.01 and

18 306.02 shall not be required if the “Joint Petition, Agreement and Judgment and Decree”  
19 provided in Form 12 is used.

20 (4) Court Administrators in each Judicial District shall make the “Joint Petition,  
21 Agreement and Judgment and Decree for Marriage Dissolution Without Children”  
22 available to the public at a reasonable cost, as a fill-in-the-blank form.

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24 **Advisory Committee Comment—2003 Amendment**

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

27 Subsection (b) is derived from Second District Local Rule 1.011.  
28 Subdivisions (2), (3), and (4) are new in 2003.

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

32 Subsections (2) and (3) of Rule 302.01(b) intended to provide a streamlined  
33 process for marriage dissolutions without children, where the parties agree on all  
34 property issues. These rule provisions essentially create a new process,  
35 commenced with a combined petition, stipulation and judgment and decree.  
36 Although intended to facilitate handling of cases by parties appearing without an  
37 attorney, it is available to represented parties as well. A new form is provided  
38 and should be made readily available to litigants. If either party to the  
39 proceedings is receiving public assistance, a Notice to Public Authority is also  
40 required. The Joint Petition, Agreement, and Judgment and Decree includes a  
41 statement regarding non-military status and a pro se waiver of right to be  
42 represented by a lawyer, thus satisfying the requirements of Rule 306.01(c).  
43 Court Administrators shall place the matter on the default calendar for final  
44 hearing without filing of Form 10 appended to the Rules. The Joint Petition,  
45 Agreement and Judgment and Decree may be used by parties represented by  
46 attorneys or parties representing themselves. The (Task Force) believes that the  
47 Joint Petition, Agreement, and Judgment and Decree procedure will reduce costs  
48 for litigants, reduce paper handling and storage expenses for the courts, and  
49 improve access to the courts. Subsections (2), (3) and (4) were recommended for  
50 adoption by the Minnesota State Bar Association’s Pro Se Implementation  
51 Committee, which also drafted Form 12.

52 Attorneys should approach the use of a Joint Petition with care. The  
53 amendment of this rule to allow use of a joint petition does not modify the  
54 professional liability constraints on joint representation of parties with divergent  
55 interests.

56 As part of this amendment, Rule 306.01 is also amended for internal  
57 consistency.  
58

59 **RULE 306. DEFAULT**

60 **Rule 306.01. Scheduling of Final Hearing**

61 Except when proceeding under Rule 302.01(b) by Joint Petition, Agreement and  
62 Judgment and Decree, ~~F~~to place a matter on the default calendar for final hearing or for approval  
63 without hearing pursuant to Minnesota Statutes, section 518.13, subdivision 5, the moving party



64 shall submit a default scheduling request substantially in the form set forth in Form 10 appended  
65 to these rules and shall comply with the following, as applicable:

66 **(a) Without Stipulation-No Appearance.** In all default proceedings where a  
67 stipulation has not been filed, an affidavit of default and of nonmilitary status of the defaulting  
68 party or a waiver by that party of any rights under the Soldiers' and Sailors' Civil Relief Act of  
69 1940, as amended, shall be filed with the court.

70 **(b) Without Stipulation-Appearance.** Where the defaulting party has appeared by a  
71 pleading other than an answer, or personally without a pleading, and has not affirmatively  
72 waived notice of the other party's right to a default hearing, the moving party shall notify the  
73 defaulting party in writing at least ten (10) days before the final hearing of the intent to proceed  
74 to Judgment. The notice shall state:

75 You are hereby notified that an application has been made for a final  
76 hearing to be held not sooner than three (3) days from the date of this notice.

77 You are further notified that the court will be requested to grant the relief  
78 requested in the petition at the hearing.

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

81 **(c) Default with Stipulation.** Whenever a stipulation settling all issues has been  
82 executed by the parties, the stipulation shall be filed with an affidavit of nonmilitary status of the  
83 defaulting party or a waiver of that party's rights under the Soldiers' and Sailors' Civil Relief  
84 Act of 1940, as amended, if not included in the stipulation.

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

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

90  
91  
92 **Family Court Rules Advisory Committee Commentary\***

93  
94 This stipulation should establish that one of the parties may proceed as if by  
95 default, without further notice to or appearance by the other party.

96 The waiver of counsel should be prepared as an addendum following the  
97 parties' signatures on the stipulation.

98  
99 \*Original Advisory Committee Comment--Not kept current.  
100

101 **Advisory Committee Comment – 2003 Amendment**

102 Subsections (a) and (b) of this rule are derived from existing Rule 5.01 of  
103 the Rules of Family Court Procedure. Rule 306.01 is amended in 2003 to add a  
104 new first clause. The purpose of this change is to include in the rules an express  
105 exemption of the proceedings from the requirements of the rule when the  
106 parties proceed by Joint Petition, Agreement and Judgment and Decree as  
107 allowed by new Rule 302.01(b).

108 Subsection (c) of this rule is derived from existing Rule 5.02 of the Rules of  
109 Family Court Procedure.

110 The default scheduling request required by Rule 306.01, as amended in  
111 1992, serves the purpose of permitting the court administrator's office to  
112 schedule the case for the right type of hearing. It is not otherwise involved in  
113 the merits. The affidavit of default is a substantive document establishing  
114 entitlement to relief by default.  
115

116 **Rule 306.02. Preparation of Decree**

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

121 **Task Force Comment – 2003 Adoption**

122 This rule is derived from existing Rule 5.03 of the Rules of Family Court  
123 Procedure. Rule 306.02 is amended in 2003 to add a new first clause. The  
124 purpose of this change is to include in the rules an express exemption of the  
125 proceedings from the requirements of the rule when the parties proceed by Joint  
126 Petition, Agreement and Judgment and Decree as allowed by new Rule  
127 302.01(b).  
128  
129

129 **FORM 12. JOINT PETITION, AGREEMENT, AND JUDGMENT AND**  
130 **DECREE FOR MARRIAGE DISSOLUTION WITHOUT**  
131 **CHILDREN**

132 (Gen. R. Prac. 302.01(b))  
133

**STATE OF MINNESOTA**

**DISTRICT COURT**

**COUNTY OF \_\_\_\_\_**

**\_\_\_\_\_ JUDICIAL DISTRICT**

134 In the Matter of:

**CASE TYPE: DISSOLUTION WITHOUT  
CHILDREN**

135 \_\_\_\_\_,  
136  
137 Name of Husband (First, Middle, Last)

Case No.: \_\_\_\_\_

138 and

**JOINT PETITION, AGREEMENT, AND  
JUDGMENT AND DECREE  
For  
Marriage Dissolution Without  
Children**

139 \_\_\_\_\_,  
140  
141  
142  
143  
144 Name of Wife (First, Middle, Last)

145  
146  
147 **1. Information about Husband:**

148 Full Name: \_\_\_\_\_  
149 First Middle Last

150 Address: \_\_\_\_\_  
151 Street Address Apt. No.

152 \_\_\_\_\_  
153 City County State Zip Code

154  
155 Date of Birth: \_\_\_\_\_  
156 Month Day Year

157  
158  
159 Husband's former or other names: \_\_\_\_\_  
160 First Middle Last

161  
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165 **2. Information about Wife:**

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Full Name: \_\_\_\_\_  
                                    First                                    Middle                                    Last

Address: \_\_\_\_\_  
                                    Street Address                                    Apt. No.  
\_\_\_\_\_  
                                    City                                    County                                    State                                    Zip Code

Date of Birth: \_\_\_\_\_  
                                    Month    Day    Year

Wife's former or other names: \_\_\_\_\_  
                                                            First                                    Middle                                    Last  
\_\_\_\_\_  
                                                            First                                    Middle                                    Last

**3.** Husband's and Wife's social security numbers have been filed with the Court Administrator using Confidential Information Form (Form 11).

**4. Children :** "Child" means a living person under age 18, or under age 20 and still in high school, or a person over 18 who by reason of a physical or mental condition is incapable of self support.

a. Are there any children born to or adopted by husband and wife together?  
 YES  NO. (If you answered YES, you are using the wrong form. Use Marriage Dissolution with Children.)

b. Has wife given birth since the date of marriage to a child who is not a child of the Husband.  
 YES  NO . (If YES, you are using the wrong form. Use Marriage Dissolution with Children.)

c. Is wife pregnant?  YES  NO. (If YES, you are using the wrong form. Use Marriage Dissolution with Children.)

**5. Our Marriage**

Husband and wife were married on : \_\_\_\_\_ at: \_\_\_\_\_  
                                                                                    date                                                                                    city  
\_\_\_\_\_  
                                    county                                    state                                    country

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**6. 180 Day Requirement**

Husband has been living in Minnesota for the past six (6) months:  YES  NO.  
Wife has been living in Minnesota for the past six (6) months:  YES  NO.

**7. Armed Forces**

Husband is a member of the armed forces:  YES  NO.  
Wife is a member of the armed forces:  YES  NO.

If YES, has the member of the armed forces been stationed in Minnesota for the past six (6) months?  YES  NO.

**8. Other Proceedings**

A separate proceeding for dissolution, legal separation or annulment has already been started by husband or wife in Minnesota or another state:  YES  NO. If YES, the type of proceeding is:  marriage dissolution  legal separation  annulment; the proceeding is in \_\_\_\_\_ County in the State of \_\_\_\_\_ and the Court file number is \_\_\_\_\_. (If a separate proceeding has been started, you must complete the other proceeding or have it dismissed before filing this Joint Petition.)

**9. Marriage Cannot be Saved**

There has been an irretrievable breakdown of our marriage relationship.

**10. Protection or Harassment Order**

An *Order for Protection* or a *Harassment/Restraining Order* is in effect regarding Husband and Wife:  YES  NO. If YES, the *Order* protects:  Husband  Wife.

The *Order* was filed in \_\_\_\_\_ County on the date: \_\_\_\_\_, \_\_\_\_\_  
Month Day Year  
and the Court file number is \_\_\_\_\_. **A copy of the Order is attached to this Joint Petition.**

238 **11. Name Change**

239  a. Neither person wants to change his/her name.

240  b.  Wife  Husband wants to change his/her name to: (*full name, not initials*)

241 \_\_\_\_\_  
242 *first middle last*

243 This name change request is made with no intent to defraud or mislead anyone:

244  True  False.

245 The person requesting the name change has been convicted of a felony :  YES  NO.

246 If YES:

247  i. Notice of this request for name change has been given to the proper authority as  
248 required by Minn. Stat. § 259.13. (**IMPORTANT NOTICE:** If you are a  
249 convicted felon and you request a name change without following the  
250 requirements of Minn. Stat § 259.13, using the new last name after  
251 your divorce is a gross misdemeanor.)

252  ii. An *Affidavit of Service of the Notice* marked Exhibit “A” has been attached to  
253 this Joint Petition.  
254

255  
256 **12. Public Assistance:** (Note: If either person is receiving public assistance from the State of Minnesota or  
257 applies for it after this proceeding is started, notice of this marriage dissolution action must be given to the county’s  
258 collections and support office. See Minnesota Statutes Section 518.551, subd. 5)

259 a. Husband receives public assistance from the State of Minnesota:  Yes  No.

260 If YES, the assistance is from \_\_\_\_\_ County. (check all that apply)

261  MFIP  Medical Assistance  IV-E Foster Care  Tribal TANF

262  Child Care Assistance  MinnesotaCare

263  
264 b. Wife receives public assistance from the State of Minnesota:  Yes  No.

265 If YES, the assistance is from \_\_\_\_\_ County. (check all that apply)

266  MFIP  Medical Assistance  IV-E Foster Care  Tribal TANF

267  Child Care Assistance  MinnesotaCare

268  
269 **13. Husband’s Income**

270 State Husband's gross income **per month**.

271  
272 *Source of Income* *Amount per month before taxes*

273  Job-----\$ \_\_\_\_\_

274  Unemployment -----\$ \_\_\_\_\_

275  Social Security -----\$ \_\_\_\_\_

276  MFIP-----\$ \_\_\_\_\_

277  General Assistance-----\$ \_\_\_\_\_

278  Investments or Rental Income ----\$ \_\_\_\_\_

279  Pension -----\$ \_\_\_\_\_

280  Other \_\_\_\_\_-----\$ \_\_\_\_\_

281 identify source

282  
283 **Gross Income Total** -----\$ \_\_\_\_\_ per month

284  
285 **14. Wife's Income**

286 State Wife's gross income **per month**.

287 *Source of Income* *Amount per month before taxes*

288  Job-----\$ \_\_\_\_\_

289  Unemployment -----\$ \_\_\_\_\_

290  Social Security -----\$ \_\_\_\_\_

291  MFIP-----\$ \_\_\_\_\_

292  General Assistance-----\$ \_\_\_\_\_

293  Investments or Rental Income ----\$ \_\_\_\_\_

294  Pension -----\$ \_\_\_\_\_

295  Other \_\_\_\_\_-----\$ \_\_\_\_\_

296 identify source

297  
298 **Gross Income Total** -----\$ \_\_\_\_\_ per month

299  
300 **15. Medical Insurance** (Medical Insurance does not include Minnesota Care or Medical  
301 Assistance.)

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- a. Wife has  medical  dental insurance **or**  no insurance.
- b. Husband has  medical  dental insurance **or**  no insurance.

**AGREEMENT OF HUSBAND AND WIFE**

1. We have made this agreement to settle once and for all what we owe to each other and what we can expect to receive from each other. Each of us states that nothing has been held back, and that we have honestly included everything we could think of in listing our assets (everything we own and that is owed to us) and our debts (everything we owe) and that we believe the other has been open and honest in writing this agreement.
2. We will sign and exchange any papers that might be needed to complete this agreement before or after the divorce.

**3. Real Estate**

Real estate includes a homestead, condominium, apartment building, vacant land, contract for deed interest, remainder interest, and more.

- a. Husband owns no real estate by himself or with anyone else.
- b. Wife owns no real estate by herself or with anyone else.
- c. Husband and/or Wife own real estate as described on the Real Estate Attachment(s).

(Use a separate Real Estate Attachment sheet for each parcel of real estate.) All Real Estate Attachments are part of this Joint Petition, Agreement, Judgment and Decree and we agree that the real estate shall be awarded as stated on the Real Estate Attachment(s).

Check one:

- There is one Real Estate Attachment **OR**
- There are \_\_\_\_\_ Real Estate Attachments.

**4. Non-Marital Property**

Non-marital Property means: (1) anything that you or your spouse owned before the marriage; (2) a gift, bequest, devise, or inheritance made by a third party to one but not to the other spouse; (3) anything that you or your spouse got in trade or in exchange for your non-marital property; (4) anything that is an increase in the value of non-marital property (STOP: Property can be part non-marital and part marital. Defining and valuing non-marital property can be complicated. If you have any concerns or questions, you should stop here and talk to an attorney.) (5) anything you or your spouse received after the valuation date set by the Court; or (6) anything defined as non-marital property by a valid antenuptial contract (STOP: If you have an antenuptial contract, you should stop here and talk to an attorney.)



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a. Husband owns non-marital property he wants awarded to him by the Court:  
 YES  NO. If YES, Husband and Wife agree that that the following property is  
Husband’s non-marital property and shall be awarded to Husband: \_\_\_\_\_  
\_\_\_\_\_

The total value of Husband’s non-marital property is \$\_\_\_\_\_

b. Wife owns non-marital property she wants awarded to her by the Court:  
 YES  NO. If YES, Husband and Wife agree that the following property is Wife’s  
non-marital property and shall be awarded to Wife: \_\_\_\_\_  
\_\_\_\_\_

The total value of Wife’s non-marital property is \$\_\_\_\_\_

**5. Division of Marital Property**

Marital Property means almost anything that you or your spouse own that you or your spouse  
received during the marriage, even during the times that you and your spouse were separated. This  
includes real estate, boats, cabins, household goods, furniture, jewelry, and other things.

*See attached Asset Sheet listing all assets. The Asset Sheet is part of this Joint Petition.  
The Asset Sheet must be attached to the Joint Petition, even if husband and wife have no  
assets.*

**6. Division of Marital Debts**

Marital Debts means debts incurred by you or your spouse during the marriage, even during the times  
that you and your spouse were separated. Do not include monthly expenses you pay in full each  
month, such as telephone and utilities.

*See attached Debt Sheet listing all debts. The Debt Sheet is part of this Joint Petition.  
The Debt Sheet must be attached to the Joint Petition, even if wife and husband have no  
debts.*

**7. Spousal Maintenance (alimony)**

368 No arrearages in maintenance due under any previous Order of the Court shall merge with  
369 this Judgment and Decree. This means that any past due amounts of spousal maintenance are  
370 still owed, no matter which option is checked below.

371 **Check One**

372 \_\_\_a. Each of us forever gives up any right to spousal maintenance (alimony) that we  
373 may have and the Court is divested of jurisdiction over spousal maintenance. This means  
374 we may never ask the court to order spousal maintenance, even if our financial situations  
375 change in the future or the law on spousal maintenance changes in the future.

376  
377 \_\_\_b. Spousal Maintenance is reserved. Neither husband nor wife shall pay or receive  
378 spousal maintenance at this time. Either person may ask the court to order spousal  
379 maintenance in the future through the motion process, if there are facts and law that  
380 support the request.

381  
382 \_\_\_c.  Husband  Wife shall pay temporary spousal maintenance to the other  
383 party in the amount of \$\_\_\_\_\_per month by the first day of the month, starting  
384 the first month after entry of the judgment for divorce and ending on  
385 \_\_\_\_\_(insert a date). Payment shall be through income  
386 withholding.

387  
388 \_\_\_d.  Husband  Wife shall pay permanent spousal maintenance to the other  
389 party in the amount of \$\_\_\_\_\_per month by the first day of the month,  
390 starting the first month after entry of the judgment for divorce. Payment shall be through  
391 income withholding. Permanent spousal maintenance is needed because: \_\_\_\_\_

392 \_\_\_\_\_  
393 \_\_\_\_\_  
394 \_\_\_\_\_  
395 \_\_\_\_\_  
396 \_\_\_\_\_

397 **Income Withholding:**

399            Husband's    Wife's employer, trustee, or other payor of funds shall withhold this  
400 monthly amount and mail it to Minnesota Child Support Payment Center. Until income  
401 withholding starts, the person ordered to pay maintenance shall send the payments to:  
402 Support Payment Center, P.O. Box 64326, St. Paul, MN 55164-0326. Checks must be  
403 payable to Minnesota Child Support Payment Center.  
404

405 **8. Insurance Coverage**

406 Husband and wife shall each provide for his or her own health and dental insurance.

407 Either party may be eligible to extend for a limited time, at his/her own expense, the  
408 dependent coverage available under the other party's insurance plan, pursuant to federal and  
409 state statutes.  
410

411 **9. Other:**

412           **We also agree to the following:**

413 \_\_\_\_\_  
414 \_\_\_\_\_  
415 \_\_\_\_\_  
416 \_\_\_\_\_  
417 \_\_\_\_\_  
418 \_\_\_\_\_  
419 \_\_\_\_\_  
420 \_\_\_\_\_

421           **BASED UPON THE ABOVE INFORMATION**, Husband and Wife request that the  
422 Court issue a final judgment and decree terminating our marriage and ordering the terms of this  
423 Agreement.  
424

425 **READ and SIGN the Verification and Acknowledgments**

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STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )  
(County where documents signed)

**Verification and Acknowledgments**

- a. I have read this document. To the best of my knowledge, information and belief the information contained in this document is well grounded in fact and is warranted by existing law.
- b. I have not been determined by any Court in Minnesota or in any other State to be a frivolous litigant and I am not the subject of an *Order* precluding me from serving or filing this document.
- c. I am not serving or filing this document for any improper purpose, such as to harass the other party or to cause delay or needless increase in the cost of litigation or to commit a fraud on the Court.
- d. I understand that if I am not telling the truth or if I am misleading the Court or if I am serving or filing this document for an improper purpose, the Court can order me to pay money to the other party, including the reasonable expenses incurred by the other party because of the cost of serving or filing this document, Court costs, and reasonable attorney’s fees.
- e. **WAIVER (Rule 306.01(c)):** I know I have the right to be represented by a lawyer of my choice. I hereby expressly waive that right and I freely and voluntarily sign the foregoing stipulation.

DATE: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Month Day Year

\_\_\_\_\_  
Signature of Husband  
**(Sign only in presence of notary public)**

(\_\_\_\_\_) \_\_\_\_\_  
Daytime Telephone Number of Husband

Notary Seal

Signed and sworn to before me on \_\_\_\_\_(date)

by \_\_\_\_\_  
Notary Public

469 **HUSBAND'S ATTORNEY**

470 Husband is  acting as his own attorney OR

471  is represented by the following attorney:

472 \_\_\_\_\_ (Name)

473 \_\_\_\_\_ (Street Address)

474 \_\_\_\_\_ (City ,State, Zip Code)

475 \_\_\_\_\_ (Telephone)

476 \_\_\_\_\_ (Atty. Reg. #)

478 DATE: \_\_\_\_\_  
479                   /           /             
480                   Month Day Year

\_\_\_\_\_  
481 Signature of Wife  
(Sign only in presence of notary public)

482  
483 ( ) \_\_\_\_\_  
484 \_\_\_\_\_ Daytime Telephone Number of Wife

485  
486 Notary Seal

Signed and sworn to before me on \_\_\_\_\_(date)

487  
488 by \_\_\_\_\_  
489 Notary Public

490 **WIFE'S ATTORNEY**

491 Wife is  acting as her own attorney OR

492  is represented by the following attorney:

493  
494 \_\_\_\_\_ (Name)

495 \_\_\_\_\_ (Street Address)

496 \_\_\_\_\_ (City ,State, Zip Code)

497 \_\_\_\_\_ (Telephone)

498 \_\_\_\_\_ (Atty. Reg. #)

499 **COURT ORDER**

500 This case came before the Court without a hearing on the parties' Joint Petition for  
501 Dissolution of Marriage. The Court, having reviewed the file, makes the following Order:

502  
503 1. The parties' Joint Petition and Attachments contains the necessary facts and includes an  
504 agreement on all issues before the Court. The real estate, if any, and the personal property of  
505 the parties is hereby awarded according to the division set out in their foregoing Joint  
506 Petition, which is made part of this final judgment. Debts and liabilities of the parties must be  
507 paid as provided in their foregoing Joint Petition. The parties are ordered to obey all of its  
508 provisions.

509 2. The marriage between the parties is dissolved and the parties are single.

510 3.  Husband's  Wife's name is changed to:

511 \_\_\_\_\_  
512 *first middle last*

513 3. Each party shall execute any documents necessary to transfer real estate and personal  
514 property as awarded herein without further order of the Court. Should either party fail to  
515 execute the necessary documents, a certified copy of the Judgment and Decree shall operate  
516 to transfer title as awarded herein.

517 4. General Rule of Practice 125 notwithstanding, let Judgment be entered immediately.

518  
519 Dated: \_\_\_\_\_  
520 \_\_\_\_\_  
521 Judge of District Court

521 The foregoing facts were found by me after due  
522 hearing and the Order thereon is recommended.

523 \_\_\_\_\_  
524 Dated

525  
526 \_\_\_\_\_  
527 Referee of District Court

531 **Judgment**

532 I certify the above constitutes the Judgment of the Court.

533

534

535 \_\_\_\_\_  
Court Administrator

536 **Real Estate Attachment**

537 Fill out a separate Attachment for each parcel of real estate

538  
539 1. Real Estate belongs to :

540 \_\_\_\_\_  
541 \_\_\_\_\_ (List all owners)

542  
543 2. Street Address of the real estate is:

544 \_\_\_\_\_  
545 City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
546 The property is in \_\_\_\_\_ County.

547  
548 3. Legal Description is: (Use the full legal description from the deed. If the legal description is  
549 long, you may use an attachment. Type or print neatly.)

550 \_\_\_\_\_  
551 \_\_\_\_\_  
552 \_\_\_\_\_  
553 \_\_\_\_\_  
554 \_\_\_\_\_  
555 \_\_\_\_\_

556  
557 4. Purchase date \_\_\_\_\_ (month , day, year) and purchase price:\$ \_\_\_\_\_

558  
559 5. Mortgages or loans: (Write "NONE" if there is no mortgage)

560 1<sup>st</sup> Mortgage: Amount currently owed \$ \_\_\_\_\_ and name of lender \_\_\_\_\_

561  
562 2<sup>nd</sup> Mortgage: Amount currently owed \$ \_\_\_\_\_ and name of lender \_\_\_\_\_

563  
564 6. Current Market Value of this property: \$ \_\_\_\_\_

565  
566 7. This property is the homestead: \_\_\_\_\_ Yes \_\_\_\_\_ No

567  
568 **Agreement of the Parties**

569 1. All right, title, and interest of husband and wife in the real estate described above shall be  
570 awarded to:

571  Husband  Wife

572  
573 2. Husband and Wife also agree that: (Describe any liens in favor husband or wife, or other  
574 agreements about the use, sale of, or award of the property. Attach additional pages if  
575 needed. If there are no other agreements, write "None".)

576 \_\_\_\_\_  
577 \_\_\_\_\_  
578 \_\_\_\_\_  
579 \_\_\_\_\_



581  
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584

**3.** 3. The Mortgage(s) or Loan(s) described above shall be paid by  Husband  Wife  
starting on the following date: \_\_\_\_\_ (write "NONE"  
if there is no mortgage or loan.)

**Attachment "A"**  
**DIVISION OF ASSETS AND VALUE**

**Husband's Name:** \_\_\_\_\_

**Wife's Name:** \_\_\_\_\_

1. We agree on how to divide our assets (everything we own and that is owed to us).
2. Each person shall receive as their own all assets in their column.

**Definitions: Current Fair Market Value** is an estimate of the amount of money you could get if you sold the item to a stranger, such as through a newspaper advertisement. It does **not** mean what you paid for it originally, and it does **not** mean what it would cost you to replace it if you lost it. If you are still paying for an item, list it in husband's or wife's column at the *present value*.

**Present value** means the current fair market value minus the amount you still owe.

**Who Gets the Item and What is the Value**

<b>DESCRIPTION OF ASSETS</b> <input type="checkbox"/> If you do not have the type of property described, enter a zero in the columns for Husband and Wife.  <input type="checkbox"/> To avoid confusion at a later date, describe each item as clearly as possible. For example, include the last 4 digits of account numbers (xxx2873), names of banks, & whose name is on the title or account, if applicable.  <input type="checkbox"/> List all property owned separately or together, no matter when it was acquired, except do not list the non-marital property described at #4 of the Joint Petition.	*Enter the current fair market value or present value of the item in the column of the person getting the item.	
	*HUSBAND	*WIFE
<b>Cash on hand:</b>	\$	\$
<b>Cash in banks/credit unions:</b> (Name of bank, last 4 digits of account number, whose name is on the account)		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<b>Stocks/Bonds:</b>		
	\$	\$
	\$	\$
	\$	\$
	<b>Husband</b>	<b>Wife</b>
<b>Notes</b> (money owed to you in writing):		

	\$	\$
	\$	\$
<b>Money owed to you</b> (not evidenced by a note):		
	\$	\$
	\$	\$
	\$	\$
<b>Business interests:</b> (Name of business, who owns it)		
	\$	\$
	\$	\$
<b>Automobiles:</b> (Year, Make, Model) (Reminder: Use present value if you are still paying for the items.)		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<b>Boats:</b>		
	\$	\$
	\$	\$
<b>Other vehicles:</b> (Snowmobiles, 4-Wheelers, etc.)		
	\$	\$
	\$	\$
	\$	\$
<b>Retirement plans</b>		
<input type="checkbox"/> Profit Sharing or Pension: (Enter "present value". Contact plan administrator for the present value. Include name of employer/group providing the plan, and type of plan.)		
	\$	\$
	\$	\$
<input type="checkbox"/> 401(k), IRAs or other: (Enter current account balance, name of bank where funds are held, whose name is on the account.)		
	\$	\$
	\$	\$
	\$	\$
<b>Furniture &amp; furnishings:</b>		
<input type="checkbox"/> We have already divided the furniture and furnishings in a fair manner. (Enter in each spouses' column the total value of their share of the furniture and furnishings already divided);	\$	\$
<input type="checkbox"/> We agree to divide the furniture and furnishings as follows: (List items not included above.)		
	\$	\$

	<b>Husband</b>	<b>Wife</b>
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<b>Collectibles &amp; Jewelry:</b>		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<b>Life insurance:</b> (cash surrender value) (Name of insurance company and last 4 digits of policy number.)		
	\$	\$
	\$	\$
<b>Sporting &amp; entertainment &amp; electronic equipment:</b> (TV, stereo, guns, etc.)		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<b>Real Estate:</b>		
Do Not List Here. Use Real Estate Attachment.		
<b>Other assets:</b>		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<b>Total Value of Property To Each Person:</b> (Excluding Real Estate, and any Non-Marital Property listed at Paragraph #4 of the Joint Petition.)	<b>Husband</b> \$	<b>Wife</b> \$

**Attachment "B"**  
**DIVISION OF LIABILITIES/DEBTS**

**Husband's Name:** \_\_\_\_\_

**Wife's Name:** \_\_\_\_\_

**Date we filled out this form:** \_\_\_\_\_

1. We agree on how to divide our marital debts (debts we have incurred since our marriage date, either separately or together).
2. Each person shall pay as their own the debts listed in their column, and shall not ask the other person to pay these debts/bills.
3. We have listed all marital debts we know of on this Attachment. Any debts incurred by one of us alone and not listed on this Attachment shall be paid by the person whose name is on the debt/bill.

<b>DESCRIPTION OF DEBT(S)</b> <input type="checkbox"/> If you do not have the type of debt described, enter a zero in the columns for Husband and Wife.  <input type="checkbox"/> To avoid confusion at a later date, describe each debt as clearly as possible. For example, state who the debt is owed to, whether husband's or wife's name is on the debt, and the last 4 digits of account numbers (xxx3094), if applicable.  <input type="checkbox"/> List all debts in husband's name alone and in wife's name alone and in both names together. Include debts incurred during the marriage and after separation. Do not include bills you pay in full each month.	*Write the current amount owed in the column of the person who will pay it.	
	*HUSBAND	*WIFE
<b>Mortgages and loans on Real Estate:</b> Do not list here. Use the Real Estate Attachment.		
<b>Charge/credit card accounts:</b>		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<b>Auto loans:</b>		
	\$	\$
	\$	\$
	\$	\$
<b>Bank/credit union loans:</b>		
	\$	\$
	<b>Husband</b>	<b>Wife</b>

	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<b>Student loans:</b>		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<b>Money you owe: (not evidenced by a note )</b>		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<b>Judgments:</b>		
	\$	\$
	\$	\$
	\$	\$
<b>Other debts:</b>		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<b>Total Debts to be Paid by Each Person:</b> (Excluding Real Estate mortgages and loans.)	<b>Husband</b> \$	<b>Wife</b> \$

615

616

616 **Instructions: Joint Petition for Dissolution of Marriage Without Children**

617  
618 **Where Do We File?**

619 File in the County where you or your spouse live now. To file for Marriage Dissolution  
620 (Divorce) in Minnesota, you must have lived in Minnesota for at least the past 180 days.

621  
622 **Who Can Use this Form?**

623 You can use this form if you and your spouse agree on everything and there are no children.  
624 This form may not address all of your needs or concerns. Real estate, pensions, businesses, and  
625 other types of property can be handled many different ways. There may be serious negative  
626 consequences and tax implications from your decisions on how to divide your property and  
627 handle the issues in your divorce.

628  
629 These forms and instructions do not explain the many legal and financial issues involved in  
630 divorce and cannot warn you of specific problem. Please see an attorney if you have questions.

631  
632 Do not use this form if:

- 633 a) you and your spouse have children together, or
- 634 b) the wife has given birth to a child since the marriage date, or
- 635 c) wife is pregnant.

636  
637 **Filling out the forms:**

- 638 • Print very neatly or the court may return your forms to you. Use black or dark blue ink.
- 639 • Answer every question completely. You must disclose all financial information so the Judge  
640 can determine if your proposed division of property and debt is “fair and equitable.” Include  
641 property/debts you own separately and together. For example, if you have a car and only  
642 your name is on the title, you still must list the car.

643  
644 **Information you will need:**

- 645 Pay stubs or tax return for you and your spouse
- 646 Medical Insurance information
- 647 Records of bank accounts and investments
- 648 Pension information
- 649 Legal description of any real estate and details about the mortgage and value of the real  
650 estate
- 651 Descriptions of vehicles, their value and monthly payment amounts and total owed
- 652 Information about credit card and other debt.

653  
654 **Do You Want to Change Your Name?**

655 You and/or your spouse can ask for a legal change of name in the Joint Petition. If you want to  
656 change your name and you have been convicted of a felony, you must get the handout “Felon  
657 Name Change Instructions” and follow the steps in the handout.

658  
659 **Do You or Your Spouse Own Real Estate?**

660 You must include real estate that you and your spouse own together, separately, or with other  
661 people. Use a separate real estate attachment for each parcel of real estate. Use the correct legal

662 description – do not guess or abbreviate. There are many ways to handle real estate and many  
663 potential problems. You should talk to an attorney if you own real estate. For example, you may  
664 want the real estate awarded to one person with a lien in favor of the other person. An attorney  
665 can help you understand the legal consequences and necessary language.

### 666 667 **Answering the Income Questions:**

668 Questions 13 and 14 ask for monthly gross income (before taxes and deductions).

669 Do not guess at income. Look at your pay stub or tax return.

670 If you are paid monthly, enter the amount shown on your paycheck for gross income.

671 If you are paid twice a month, multiply gross income by 2 to get the monthly amount.

672 If you are paid every two weeks, multiply gross income by 2.17 to get the monthly amount.

673 If you are paid every week, multiply gross income by 4.33 to get the monthly amount.

674  
675 If you are self-employed, or you work only part of the year, or your earnings vary, divide your  
676 yearly income by 12 to reach an average monthly income figure and write on the petition that  
677 you are averaging your income.

### 678 679 **Modifying the Joint Petition**

680 You may make changes to the Joint Petition to fit your situation, but do not omit any paragraphs.  
681 It is recommended that you consult with an attorney before making any changes to the Joint  
682 Petition.

### 683 684 **What to Do After Completing the Forms**

685 Sign and Notarize: Both wife and husband must sign the “Joint Petition, Agreement, and  
686 Judgment and Decree”. It is not necessary for both spouses to sign the document at the same  
687 time, but both signatures must be notarized. You may go to a notary public, or to the courthouse.  
688 A deputy court administrator can notarize your signature at the courthouse. Picture identification  
689 will be required.

#### 690 File:

691 1. The completed “Joint Petition, Agreement, and Judgment and Decree”, the Asset Sheet, and  
692 the Debt Sheet. If there is real estate, also file the Real Estate Attachment(s).

693 2. “Form 11: Confidential Information” with names and social security numbers.

694 Pay: The District Court filing fee.

695 Wait: You are not divorced until the Judge signs the Decree and the Court Administrator  
696 “enters” the Decree. Wait to receive a letter from the Court telling you that you are divorced.  
697 You will not attend a court hearing unless the Judge decides a hearing is necessary.

698  
699 **If you have real estate**, there are additional steps required to transfer the title, including filing  
700 the “Joint Petition, Agreement, and Judgment and Decree” and all Attachments in the Real Estate  
701 Records, after the Decree is signed by the Judge and entered by the Court Administrator. In the  
702 alternative, you can file a Summary Real Estate Disposition Judgment and avoid putting all of  
703 your asset and debt information into the Real Estate Records. For more information about the  
704 Summary Real Estate Disposition Judgment, see Minnesota Statutes §518.191.



706 **Questions?**

707 If you have questions about the Joint Petition , you probably need to ask an attorney or  
708 accountant. Court staff can give you limited help with procedures. Only an attorney can give  
709 you legal advice.

**Recommendation 4: The Court should amend Rule 119 to establish a streamlined procedure to obviate a formal hearing in many default situations .**

**Introduction**

The committee considered a standing order adopted in the Fourth Judicial District effective on August 1, 2003, regarding the application for “attorneys’ fees related to default judgments requested pursuant to the Minnesota Rules of Civil Procedure, Rule 55.01(a).” Without reaching the question of whether this standing order violates Minn. R. Civ. P. 83, the committee concluded that the provision addresses an important issue. After consideration of the rule’s potential usefulness throughout the state, the committee believes that a modified rule allows a fair and efficient means of determining attorneys’ fees in default matters.

**Specific Recommendation**

**Rule 119 should be amended to add a new subsection 119.05 as set forth below. Because the rule is entirely new, no markings are included to show additions or deletions.**

**RULE 119. APPLICATIONS FOR ATTORNEYS’ FEES**

\* \* \*

**Rule 119.05. Attorneys’ Fees in Default Proceedings.**

(a) A party proceeding by default and seeking an award of attorneys’ fees that has established a basis for the award under applicable law may obtain approval of the fees administratively without a motion hearing, provided that:

(1) the fees requested do not exceed fifteen percent (15%) of the principal balance owing as requested in that party’s pleadings, up to a maximum of \$3,000.00. Such a party may seek a minimum of \$250.00; and

(2) the requesting party’s pleading includes a claim for attorneys’ fees in an amount greater than or equal to the amount sought upon default; and

13 (3) the defaulting party, after default has occurred, has been provided notice of  
14 the right to request a hearing under section (c) of this rule and a form for making such a  
15 request substantially similar to Form 119.05.

16 (b) A party may request a formal hearing and seek fees in excess of the amount  
17 described herein if that party provides the court with evidence relevant to the amount of  
18 attorneys' fees requested as established by the factors a court considers when determining the  
19 reasonableness of the attorneys' fees.

20 (c) A defaulting party may request a hearing and further judicial review of the attorneys'  
21 fees requested by completing a "Request for Hearing" provided by the plaintiff substantially  
22 similar to Form 119.05. A party may serve the form, at any time after a default has occurred,  
23 provided that the defaulting party is given at least twenty (20) days notice before the request for  
24 judgment is made. A defaulting party must serve the Request for Hearing upon the requesting  
25 party or its counsel within twenty (20) days of its receipt. Upon timely receipt of a Request for  
26 Hearing the party seeking fees shall request a judicial assignment and have the hearing  
27 scheduled.

28 (d) Rule 119.05 does not apply to contested cases, ancillary proceedings (*e.g.*, motions to  
29 compel or show cause) or proceedings subsequent to the entry of judgment.

30  
31 **Advisory Committee Comment—2003 Adoption**

32 Rule 119.05 is a new rule to establish a streamlined procedure for  
33 considering attorneys' fees on matters that will be heard by default. The rule  
34 does not apply to situations other than default judgments, such as motions to  
35 compel discovery, motions to show cause, sanctions matters, or attorneys' fees  
36 in contested matters. This subsection is modeled on a rule adopted by the Fourth  
37 Judicial District and implemented as a local standing order. A simpler procedure  
38 for defaults is appropriate and will serve to conserve judicial resources, and it is  
39 appropriate to have a uniform rule throughout Minnesota.

40 New Form 119.05 is intended to provide useful information to the defaulting  
41 party and some care has gone into its drafting. Although use of the form is not  
42 required, the requirement that any notice conform "substantially" to the form  
43 should be heeded. The committee has attempted to use language that fairly  
44 advises the defaulting party of the procedure under Rule 119.05 without  
45 threatening consequences or confusing the defaulting party on the effect of  
46 either contesting or not contesting the fee award. The rule requires that notice be  
47 given after the defendant has defaulted. Notice given earlier is not effective to  
48 comply with the rule, as such notice is likely to confuse the recipient as to the  
49 differing procedures and timing for response to the Summons and responding to  
50 the request for fees.

51  
52  
53  
54  
55  
56  
57

The rule does not affect the amounts that may be recovered for attorneys' fees; it allows either side to obtain a hearing on the request for fees; the rule supplies an efficient mechanism for the numerous default matters where a full hearing is not required. Similarly, the rule does not remove the requirement that a party seeking fees file a motion; it simply provides a mechanism for resolution of some motions without formal hearings.

57 **FORM 119.05 NOTICE AND REQUEST FOR HEARING TO DETERMINE**  
58 **ATTORNEYS' FEES AWARD**

59 STATE OF MINNESOTA  
60  
61 COUNTY OF HENNEPIN

DISTRICT COURT  
62 FOURTH JUDICIAL DISTRICT

63 \_\_\_\_\_  
64  
65 \_\_\_\_\_ (Plaintiff)

66  
67 vs.

**NOTICE AND REQUEST  
FOR HEARING TO DETERMINE  
ATTORNEYS' FEES AWARD**

68  
69  
70 \_\_\_\_\_ (Defendant(s))

Court File No.: \_\_\_\_\_

71  
72  
73  
74 TO: \_\_\_\_\_, JUDGMENT DEBTOR:  
75 (Provide Name)

76  
77 The above-named plaintiff is seeking an award of attorneys' fees in addition to the principal,  
78 interest and court costs in this case. If you do not contest the fee award by completing this form  
79 and returning it to the plaintiff's attorney within twenty (20) days, the court will award fees in  
80 the amount of \$\_\_\_\_\_, calculated as fifteen percent (15%) of the principal  
81 balance owing as requested in the Complaint up to a maximum of \$3,000.00 but not less than  
82 \$250.00. If you contest the reasonableness of the fees, the plaintiff may seek an award of fees in  
83 excess of the previous amount, and the Court may award an amount larger or smaller than the  
84 amount stated here.

85  
86 **You must return this form to the plaintiff's within twenty (20) days of its receipt.** Failure to  
87 timely return the form may result in judgment for the requested fees being granted.

88  
89 NOTE: This form is not a substitute for an Answer to the Complaint and will not preclude the  
90 entry of judgment for the principal claim. This form is limited solely to requesting a judicial  
91 review of the attorneys' fees requested by the plaintiff. Please contact legal counsel for advice  
92 related to serving an Answer to the Complaint.

93  
94 **REQUEST FOR COURT HEARING**

95 I request a hearing to determine the reasonableness of the attorneys' fees requested by the  
96 plaintiff.

97  
98  
99 \_\_\_\_\_  
(Defendant(s))

100 Return this form to:

101 \_\_\_\_\_  
102 (Plaintiff's Attorney)

103

104

105

106

---

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(Address)