CX-89-1863
STATE OF MINNESOTA
IN SUPREME COURT

In re:

Supreme Court Advisory Committee
on General Rules of Practice

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

Final Report

September 26, 2005

Hon. Lawrence T. Collins
Chair

Hon. G. Barry Anderson
Liaison Justice

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Lawrence K. Dease, Saint Paul
Hon. Elizabeth Ann Hayden, St. Cloud
Scott J. Hertogs, Hastings
Karen E. Sullivan Hook, Rochester
Hon. Lawrence R. Johnson, Anoka
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Michael B. Johnson, Saint Paul
Staff Attorney

David F. Herr, Minneapolis
Reporter

ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

Summary of Committee Recommendations

The Court's Advisory Committee on General Rules of Practice met twice in 2005 to review comments from Minnesota judges and lawyers and developments in practice under these rules. In addition, the committee considered issues relating to collaborative law processes and held a public hearing on these issues as contemplated by this Court's December 7, 2004, Order in this file, at ¶ 5.

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

1. The Court should amend Rule 8 to add a provision relating to the role of interpreters assigned to assist jurors with sensory disabilities.

2. The Court should amend Rule 302.01 to conform the service requirement of the rule to Minn. Stat. § 518.11, which has been amended to provide for service "by alternate means."

3. The Court should amend Rule 306.01 to provide for notice to defaulting non-appearing parties of a looming request for judgment by default and to improve the form of notice required by the existing rule. The committee will continue its review of this rule to consider the overall role of notice to parties in default and what should happen in the event such party wants to act.

4. The Court should amend Rule 372.07 to conform it to more recent legislation.

5. The Court should amend Rule 508 to provide greater clarity to service of process and proof of service methods in conciliation court proceedings.

6. As set forth below, the Court should defer action on collaborative law issues at this time.

Collaborative Law

The committee was directed by the Court to consider and gather additional information on collaborative law. The committee gave notice to interested parties of its August 19, 2005, public hearing by posting on the Minnesota state courts' website, and by notice sent to the ADR Review Board via its staff because the ADR Review Board made last year's collaborative law proposal. Notice was also sent to the ADR section of the state bar, which had opposed the ADR Review Board proposal last year. The committee heard from a number of speakers on the role of collaborative law under the rules.

Ultimately, the collaborative law proponents requested additional time to submit a proposal to the committee, and have advised the committee that they do not intend to have a specific proposal to the committee until February 2006. The committee believes that interested bar associations or bar committees may want to respond to that submission. As a result, the committee is not in a position to make definitive recommendation to the Court at this time. It will be able to do so not later than December 31, 2006, and possibly by June 30, 2006. The committee believes it is desirable to defer action until it can consider the promised submission from the Collaborative Law Institute or others. If the Court believes action on collaborative law is appropriate at this time, however, the committee would renew the recommendation made in its Report and Recommendations dated October 28, 2004, with one exception: the recommendation made then should be modified to include a specific provision in Rule 304 to provide in family cases (the primary current arena for the use of collaborative law) relief from scheduling pressures as recommended by the committee in its recommended Rule 111.05.

Other Matters

The committee considered a decision of the Minnesota Court of Appeals that identified a conflict between Minn. Gen. R. Pract. 355.01, subd. 2, and a practice form promulgated be the Conference of Chief Judges. *See Maki v.*

Hansen, 694 N.W.2d 78 (Minn. Ct. App. 2005). That form was promptly amended administratively, and the committee does not believe that the rule requires amendment, nor that any further action is necessary.

The committee is aware of work that is underway to prepare for use of electronic service and filing in the districts courts of Minnesota, and will be prepared to recommend appropriate amendments when the courts are ready to implement e-filing and e-service in any systematic and state-wide way. Until that time, however, the committee does not believe the general rules ought to be amended to anticipate this future contingency. To the extent e-service or e-filing are implemented on a pilot-project basis, the Court's implementation order should deal with these issues until a statewide rule is appropriate.

The committee also received a proposal from the MSBA Probate and Trust Law Committee to make a number of changes to the rule governing trust accounts, Rule 417. Because this proposal was made just as the committee was wrapping up its work on this report, and because there appear to be differing views within the bench and bar on the need for these amendments, the committee intends to study the proposal and make a recommendation on it to the Court in its next report.

The committee is not aware of other issues relating to the Minnesota General Rules of Practice that require substantive attention now.

Effective Date

The committee believes these amendments can be adopted, after public hearing if the Court determines a hearing is appropriate, in time to take effect on January 1, 2006.

Comment on Style of Report

The specific recommendations are reprinted in traditional legislative format, with new wording underscored and deleted words ~~struck-through~~.

Respectfully submitted,

MINNESOTA SUPREME COURT
ADVISORY COMMITTEE ON CIVIL
RULES OF PROCEDURE

Recommendation 1: **The Court should amend Rule 8 to provide for the role of interpreters assigned to assist jurors with sensory disabilities.**

Introduction

The civil and general rules are silent about the special role of interpreters assigned to assist jurors with a sensory disability, but an interpreter is regularly appointed in this circumstance. The committee recommends that Rule 8 be amended to include a provision drawn from Rule 26.03, subd. 16, of the Minnesota Rules of Criminal Procedure to provide for this situation. The advisory committee recommends in its note that the interpreter be given a special oath to govern the role in the jury room.

This recommendation results from a request from the Implementation Committee on Multicultural Diversity and Racial Fairness in the Courts (Implementation Committee). The advisory committee believes this recommendation is a helpful one that should be implemented in the general rules.

Specific Recommendation

A new Rule 8.04 should be adopted as follows:

RULE 8. INTERPRETERS

* * *

Rule 8.04. Interpreters to assist jurors

Qualified interpreters appointed by the court for any juror with a sensory disability may be present in the jury room to interpret while the jury is deliberating and voting.

Advisory Committee Comment – 2006 Amendment

Rule 8.04 is intended to provide guidance on the role of interpreters appointed for the benefit of jurors with a sensory disability. The requirement that such interpreters be allowed to join the juror in the jury room is logical and necessary to permit the juror to communicate in deliberations. In this situation the interpreter should be given an oath to follow other constraints placed on jurors (*e.g.*, not to discuss the case, not to read or listen to media accounts of the trial, etc.) and also that the interpreter will participate only in interpreting the statements of others, and will not become an additional juror. An interpreter in this situation should also not be allowed or required to testify as to any aspect of the jury's deliberations in any context a juror would not be allowed or required to testify.

This amendment is drawn from the language of Minn. R. Crim. P. 26.03, subd. 16.

The rule is limited by its terms to interpreters appointed for the benefit of jurors with a sensory disability only because that is the only condition generally resulting in the appointment for jurors. In other, unusual, situations where such an interpreter is appointed, these procedures would presumably apply as well.

Recommendation 2: The Court should amend Rule 302.01 to conform service requirement to statutory changes.

Introduction

Rule 302.01 was adopted in 1991 and has not been amended to reflect amendment to the statute authorizing methods of service of process in family law actions. Minn. Stat. § 518.11 was amended in 1994 to deemphasize "service by publication" and to create a broader category of "service by alternate means." This rule should therefore be amended to deal with service under this statute, as amended. The rule retains provision for service by publication because this form is expressly authorized by statute in actions involving title to real property.

Specific Recommendation

Rule 302.01 should be amended as follows:

RULE 302. COMMENCEMENT; CONTINUANCE; TIME; PARTIES

Rule 302.01. Commencement of Proceedings

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

(b) Joint Petition.

(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 306. 02 shall not be required if the "Joint Petition, Agreement and Judgment and Decree" provided in Form 12 is used.

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

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

Advisory Committee Comment—2006 Amendment

Rule 302 is amended to incorporate procedures to deal with service "by alternate means" as authorized by statute. Minn. Stat. § 518.11 expressly provides authority for service by various other means. The rule retains provision for service by publication as well, because publication is authorized for a summons and petition that may affect title to real property. *See* Minn. Stat. § 518.11(c) (2004).

Recommendation 3: The Court should amend Rule 306.01 to provide for notice to defaulting party and to improve form of notice required by existing rule.

Introduction

Rule 306.01 provides detailed guidance on scheduling a hearing where a case is expected to proceed by default. Rule 306, a longstanding rule in family law practice, provides for notice to parties who, though in default, have "appeared" by some means other than an Answer. Because that notice is not specific as to what the notice must say, nor how the recipient should respond to it, the committee believes the notice should be modified. Additionally, the notice does not provide for the situation of a default being entered administratively and without a hearing, as allowed by Minn. Stat. § 518.13, subd. 5 (2004); the proposed rule adds a separate form of notice for this situation.

Specific Recommendation

Rule 306 should be amended as follows:

RULE 306. DEFAULT

Rule 306.01. Scheduling of Final Hearing

Except when proceeding under Rule 302.01(b) by Joint Petition, Agreement and Judgment and Decree, to place a matter on the default calendar for final hearing or for approval without hearing pursuant to Minnesota Statutes, section 518.13, subdivision 5, the moving party shall submit a default scheduling request substantially in the form set forth in Form 10 appended to these rules and shall comply with the following, as applicable:

(a) Without Stipulation—No Appearance. In all default proceedings where a stipulation has not been filed, an affidavit of default and of nonmilitary

status of the defaulting party or a waiver by that party of any rights under the ~~Soldiers' and Sailors'~~ Servicemembers' Civil Relief Act ~~of 1940~~, as amended, shall be filed with the court.

(b) Without Stipulation—Appearance. Where the defaulting party has appeared in by a pleading other than an answer, or personally without a pleading, and has not affirmatively waived notice of the other party's right to a default hearing, the moving party shall notify the defaulting party in writing at least ~~ten (10)~~ fourteen (14) days before the final hearing of the intent to proceed to Judgment. The notice shall state:

> You are hereby notified that an application has been made for a final hearing to be held on _____, 20__, at __:__ .m. at _____ [a date not sooner than ~~three (3)~~ fourteen (14)] days from the date of this notice. You are further notified that the court will be requested to grant the relief requested in the petition at the hearing. You should contact the undersigned and the District Court Administrator immediately if you have any defense to assert to this default judgment and decree.

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

If the case is to proceed administratively without a hearing under Minn. Stat. § 518.13, then the notice shall be sent after the expiration of the 30-day answer period, but at least fourteen (14) days before the case is submitted to the administrative review, and shall state:

> You are hereby notified that an application will be made for a final judgment and decree to be entered not sooner than fourteen (14) days from the date of this notice. You are further notified that the court will be requested to grant the relief requested in the Petition. You should contact the undersigned and the District Court

Administrator immediately if you have any defense to assert to this default judgment and decree.

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

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

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

Advisory Committee Comment—2006 Amendment

Rule 306 is amended to clarify the role of the notice required to be given to parties who are in default but who have "appeared" in some way. A party is not entitled to prevent entry of judgment if that party is in default by not serving and filing a timely written answer to the Petition. Nonetheless, the court may, in its discretion, consider some appropriate measures to prevent the case from being decided on a default basis and to obviate a motion for relief from the default judgment and decree. Accordingly, the rule is amended to afford more useful notice as to the request for a default.

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

The Soldiers' and Sailors' Civil Relief Act of 1940 was amended and renamed in 2003, and the rule is amended to use the new name as a matter of convenience. *See* 50 App. U.S.C.A. § 521, as amended by Pub.L. 108-189, § 1, 117 Stat. 2840. The former rule would still apply, however, because it included the "as amended" extension of the citation.

Recommendation 4: The Court should amend rule 372.07 to correct a statutory reference.

Introduction

In 2005 the Minnesota Legislature changed the modification fee referred to in rule 372.07 to $55.00 and the statutory reference was changed. Rule 372.07 is amended to reflect the correct citation, and an advisory committee note is included to remind litigants of the need to determine the correct amount of this fee.

Specific Recommendation

Rule 372.07 should be amended as follows:

Rule 372.07. Fees

*** * ***

Subd. 2. Modification Fee. Pursuant to Minn. Stat. § 357.021, subd. 2(13~~2~~), a separate fee shall also be collected upon the filing of the motion to modify and a responsive motion or counter motion.

Advisory Committee Comment – 2006 Amendment

Rule 372.07, subd. 2, is amended to correct the statutory reference. In 2005, the legislature set t~~T~~he modification fee to be collected under Rule 372.07 at $55.00. 2005 Minn. Laws ch. 164, § 2. Litigants are advised to review the statute or contact the court administrator for current fee amounts. ~~is $20.00. (Order setting fee, File C9-85-1134, filed March 31, 1993).~~

Recommendation 5: **The Court should amend Rule 508 to provide greater clarity to service of process and proof of service in conciliation court proceedings.**

Introduction

This committee heard concerns from conciliation court officials that the rules do not expressly provide a rule as to whether service by mail is effective upon mailing, or upon receipt (or on any other date). Additionally, although the rule requires proof of service, the rules nowhere specify how service should be proven. Service by first-class or certified mail is relied on in conciliation court proceedings, and service is sometimes effected by the court and sometimes by non-court personnel acting on behalf of the parties. Certified mail may provide evidence of receipt, although in practice many parties simply fail or refuse to take delivery of the certified mailing. The committee also learned that there is significant divergence of practice through Minnesota that is not consistent with the goals of these rules (some courts pay no attention to the certified mail receipts; others require addressing of the receipts to the administrator). The committee believes a standard form of proof of service is desirable, and recommends that Rule 508 be amended to accomplish this goal. To implement this amendment, a new Form 508.1 should be adopted as part of these rules.

Specific Recommendation

Rules 508 should be amended as follows:

RULE 508. SUMMONS; TRIAL DATE

(a) Trial Date. When an action has been properly commenced, the court administrator shall set a trial date and prepare a summons. Unless otherwise ordered by a judge, the trial date shall not be less than 10 days from the date of mailing or service of the summons.

(b) Contents of Summons. The summons shall state the amount and nature of the claim; require the defendant to appear at the trial in person or if a corporation, by officer or agent; shall specify that if the defendant does not appear judgment by default may be entered for the amount due the plaintiff, including fees, expenses and other items provided by statute or by agreement, and where applicable, for the return of property demanded by the plaintiff; and shall summarize the requirements for filing a counterclaim.

(c) Service on Plaintiff. The court administrator shall summon the plaintiff by first class mail.

(d) Service on Defendant.

(1) If the defendant's address as shown on the statement of claim is within the county, the administrator shall summon the defendant by first class mail, except that if the claim exceeds $2,500 the summons must be served by the plaintiff by certified mail, and proof of service must be filed with the administrator. If the summons is not properly served and proof of service filed within 60 days after issuance of the summons, the action shall be dismissed without prejudice.

(2) If the defendant's address as shown on the statement of claim is outside the county but within the state, and the law provides for service of the summons anywhere within the state, the administrator shall summon the defendant by first class mail, except that if the claim exceeds $2,500 the summons must be served by the plaintiff by certified mail, and proof of service must be filed with the administrator. If the summons is not properly

served and proof of service filed within 60 days after issuance of the summons, the action shall be dismissed without prejudice.

(3) If the defendant's address as shown on the statement of claim is outside the state, the administrator shall forward the summons to the plaintiff who, within 60 days after issuance of the summons, shall cause it to be served on the defendant and file proof of service with the administrator. If the summons is not properly served and proof of service filed within 60 days after issuance of the summons, the action shall be dismissed without prejudice. A party who is unable to pay the fees for service of a summons may apply for permission to proceed without payment of fees pursuant to the procedure set forth in Minnesota Statutes Section 563.01.

(4) Service by mail, whether first-class or certified, shall be effective upon mailing.

(e) Proof of Service.

Service by first class mail or certified mail shall be proven by an affidavit of service in form substantially similar to that contained in Form 508.1. Service may be alternatively proven, when made by the court administrator, by any appropriate notation in the court record of the date, time, method, and address used by the administrator to effect service.

Advisory Committee Comment – 2006 Amendment

Rule 508(d)(4) is a new provision, intended to remove any confusion in the rule over when service by mail is deemed complete. This question is important in determining questions of timing. Making service effective upon mailing is consistent with the provisions of Minn. R. Civ. P. 5.02 and Minn. R. Civ. App. 125.03

The rule has historically required proof of service, but has not specified how service is proven. Rule 508(d) specifies that an affidavit of service should be prepared in form substantially similar to new Form 508.1 to prove service by anyone other than the court administrator. Where the rule requires the administrator to effect service by mail or certified mail, it is not necessary to require an affidavit of the administrator to prove serve, and Rule 508(e) recognizes that a notation of the facts of service in the court's file will suffice to prove that service was effected.

Some courts follow the practice of using certified mail receipts as proof of service. In fact these receipts generally only prove receipt of the mailing, not the mailing itself. Although proof of receipt may be important if a question

arises as to the effectiveness of service, but it is not an adequate substitute for proof of the facts of service, including the date of mailing.

FORM 508.1 Affidavit of Service

State of Minnesota **District Court**

County	Judicial District: _____
	Court File Number: _____
	Case Type:

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

_____
Plaintiff

vs.

_____
Defendant

Affidavit of Service

_____, being sworn/affirmed under oath, states:

1. I am over eighteen years of age and not a party in the above-entitled action.
Check and complete one of the following:

2a. ☐ On the _____day of _____, 20___, I served the
☐ Summons
☐ Demand For Limited Removal
☐ Other Document _____(specify)
upon _____, (plaintiff/defendant or attorney for _____), by placing a true and correct copy of it in an envelope addressed as follows:

_____
_____
_____

which is the last known address of said party or attorney and depositing it,
☐ first-class postage or) ***specify one or both***
☐ Certified Mail, Return Receipt Requested postage)
prepaid, in the United States mail.

2b. ☐ I served a copy of the
☐ Summons
☐ Demand For Limited Removal
☐ Other Document _____(specify)
upon _____, (title) _____,
by delivering a copy personally to him/her at _____
at _____ am/pm, on _____, 20 ___.

2c. ☐ After diligent search and inquiry, I was unable to locate _____
_____(name of party to be served), or any residence or business address for him/her at which service could be attempted.

Dated: _____ _____

Signature of Server

(Sign only in front of notary public or court administrator.)

Sworn/affirmed before me this

_____ day of _____, 20___. Telephone (___) _____

_____

Notary Public \ Deputy Court Administrator