STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS ON PROPOSED AMENDMENTS TO THE MINNESOTA GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

The Supreme Court Advisory Committee on the General Rules of Practice for the District Courts has proposed changes to the General Rules of Practice. This Court will consider the proposed changes without a hearing after soliciting and reviewing comments on the proposed changes. A copy of the committee's report containing the proposed changes is annexed to this order.

IT IS HEREBY ORDERED that any individual wishing to provide statements in support or opposition to the proposed changes shall submit twelve copies in writing addressed to Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Boulevard, St. Paul, Minnesota 55155, no later than 'Monday, November 9, 2009.

DATED: September 10, 2009

BY THE COURT:

Eric J. Magnuson
Chief Justice

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
August 31, 2009

Hon. Elizabeth Anne Hayden
Chair

Hon. Lorie Skjerven Gildea
Liaison Justice

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Hon. Joseph T. Carter, Hastings
R. Scott Davies, Minneapolis
Hon. Mel I. Dickstein, Minneapolis
Francis Eggert, Winsted
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Hon. Jon Stafsholt, Glenwood
Erica Strohl, Minneapolis
Hon. Robert D. Walker, Fairmont

Michael B. Johnson, Saint Paul
Staff Attorney

David F. Herr, Minneapolis
Reporter

Introduction

This report recommends the amendment of several rules of the Minnesota General Rules of Practice, and also provides the court a status report on its efforts on the issues relating to cameras in courtrooms.

Summary of Committee Recommendations

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

1. Form 5 should be removed from the rules and maintained as a form on the court's website.
2. Forms 11.1 and 11.2 should be removed from the rules and maintained as a form on the court's website.
3. Rule 12, adopted in 2009, should be amended to clarify that it does not require filing of pleadings earlier than heretofore required and does not override the 21-day "safe harbor" provision in Minn. R. Civ. P. 11.
4. A new Rule 13 should be adopted to require parties and counsel to provide a current address to the parties and court administrator.
5. Rule 111 should be amended to exclude consumer credit contract cases and mechanics' lien actions from the requirement for filing an information statement.
6. Rule 304.02 should be amended to include reference to the requirement for disclosure to the court of the need for interpreter services.
7. Rule 309 should be amended to permit contempt proceedings to be commenced either by motion or by order to show cause.
8. Rule 503(c) should be amended to confirm its time computation rules to mechanism in the Rules of Civil Procedure.
9. Rule 517 should be amended to modify the procedure for payment of conciliation court judgments into court.
10. Rule 518 should be amended to remove the 30-day stay requirement.

11. The forms appended to the conciliation court rules should be removed from the rules and maintained by the State Court Administrator's Office on the Court's website.
12. Rule 707 should be amended to clarify how stenographic notes and transcription of grand jury proceedings are handled.
13. Rule 14 of the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act should be amended.

Effective Date

The committee believes the rule amendments in this report should not be controversial, and could probably be considered fairly and fully with a public comment period and adopted to take effect on January 1, 2010, or on an earlier date if desired.

Status of Cameras in Courtroom Issue

The advisory committee is moving forward with the design of a pilot project to implement this Court's February 11, 2009, Order on the use of cameras and audio recording equipment in Minnesota courtrooms. We believe we are making adequate progress towards having a report to the Court in January 2010.

Amendment of Timing Rules

Pursuant to the May 15, 2009, Memorandum from Justice Dietzen to several advisory committees, the committee has considered the issue of whether the Minnesota rules should be amended to follow the changes made in the federal court rules regarding the calculation of time and deadlines. The committee recommends generally that the federal amendments are sensible and that there is significant advantage to having time counted by the same means in state and federal court. The

committee further recommends that if the federal timing changes are adopted, they should be adopted uniformly across all court rules, and that appropriate review of Minnesota Statutes should be conducted to identify deadlines imposed by statute that should be adjusted at the same time the rules are amended.

The committee will submit a detailed report of recommended rule changes not later than October 1, 2009, and will recommend that the effective date of the timing rule amendments should probably be not earlier than July 1, 2010, in order that the Minnesota Legislature can address any legislative issues that should be addressed in conjunction with the rule changes.

Recommendation for Referral to Other Committees

The committee has addressed one issue that it believes should be considered by either the advisory committee on rules of evidence or criminal rules advisory committee. The committee continued its consideration of concerns initially expressed about a Ninth Judicial District Policy requiring transcription of audio/visual recordings submitted as exhibits. (This issue was reported on in the advisory committee's September 25, 2008, Report as an issue receiving ongoing study.)

This issue relates to several local (*i.e.*, those of the Second, Fourth, Seventh, Eighth and Ninth Districts) "policies" relating to the transcription of recordings offered as evidence (and requiring the proponent of this evidence to pay for the transcription). The advisory committee believes it is appropriate to have a uniform, statewide rule on how these matters are handled. Unfortunately, the issues relate primarily to evidence in criminal cases, and the evidence, criminal, and civil appellate rules committees are probably better suited to answer the question of what form a uniform rule should take. The issue may also present concerns that might benefit profitably from review by appellate lawyers or judges on the appellate rules committee.

The diversity of approaches in the existing local policies makes the case for a uniform rule. The policies of the Second, Fourth, Seventh, Eighth and Ninth Districts are duplicated as an Appendix, at 7-8. Most require disclosure of the format of the recorded statement. *See* Second, Fourth, Eighth, and Ninth District policies. Some require transcription prior to trial and state that failure to comply "may" result in exclusion of the statement. *See* Second, Fourth, and Eighth District policies. One requires transcription at time the recorded exhibit is offered into evidence. *See* Seventh District policy. One requires transcription prior to trial when requested by the court, and at pretrial when requested by the court or an opposing party. *See* Ninth District policy. This evidence presents challenges to the court reporter when a case reaches trial, as it is quite difficult to transcribe 911 call recordings, "*Scales*" tapes, answering machine messages, child interview recordings, and similar events that are presented at trial as an audio recording. There may be significant differences between evidence presented at testimony and evidence presented in audio or audiovisual form but which is not essentially testimonial.

There is also an apparent inconsistency in the criminal rules, which can best be addressed by the criminal rules advisory committee. Minn. R. Crim. P. 11.02 and 12.04 indicate that if either party offers into evidence videotape or audiotape exhibit, they "may" also provide the court with a transcript. Minn. R. Crim. P. 28.02, subd. 9, relating to criminal appeals, provides that any videotape or audiotape exhibits submitted at trial or hearing shall, if not previously transcribed, be transcribed at the request of either the appellant or respondent unless the parties have already stipulated to the accuracy of a transcript of such exhibit previously made a part of the record. None of these rules directly answers the question of who pays for transcription. There is also lack of consistency in the rules as to when in case transcription is to be completed, and the cost of transcription provides good reason not to require transcription before the transcript is actually needed.

A related recommendation of the general rules advisory committee is that the criminal rule provisions in the Minnesota General Rules of Practice be relocated to

the criminal rules and incorporated into those rules at appropriate locations. This advisory committee believes there is no good principled reason to have those criminal provisions separate from the Rules of Criminal Procedure and believes they are much more likely to be located and adhered to if they are so relocated. The committee's reporter has raised this matter directly with the chair of the criminal rules advisory committee.

Recommendations Not Requiring Rule Amendments

In addition to the recommendations for rule amendments, which are discussed in detail later in this report, the committee addressed one other subject where it concluded that no rule amendment is warranted at this time.

Gen. R. Prac. 603. The committee considered a suggestion that the housing court rules be amended to permit corporations to appear in district court eviction action without representation by a licensed attorney. The suggestion was made to the committee by the Minnesota Multi-Housing Association (MMHA), and was made in response to *Walnut Towers v. Schwan*, A07-1311 (Minn. Ct. App. Sept. 16, 2008) (unpublished)(no PFR filed), which held that the district court erred in allowing corporation to appear without counsel. Because of the decision of this issue in *Nicollet Restoration, Inc. v. Turnham*, 475 N.W.2d 508 (Minn. Ct. App. 1991), *aff'd* 486 N.W.2d 753 (Minn. 1992), the advisory committee does not arrogate to make any recommendation on this issue.

Recommendations for Further Study

The committee is undertaking two projects that will require further study by the committee.

1. **Juror Notification.** The committee considered a suggestion that would modify the jury management rules to permit notification of prospective jurors by postcard. The statewide postage savings from the proposal is

estimated at $25,000 to $30,000. The committee is concerned about confidentiality of the proposed communications, and is recommending to the state court administration that this issue receive further analysis.

2. **Jury Trials in Conciliation Court Appeals.** The committee considered a suggestion that the court rules be amended to remove the right to a jury trial in matters decided first in conciliation court and then removed to district court for trial de novo. Although the committee believes there may be value in a conciliation court process that would either decide cases without a jury in conciliation court or effect the early removal of cases to district court for a single trial there, because this would probably require statutory amendments and would not fundamentally be a rules issue, the committee believes it should be reviewed by the Court, the Judicial Council, or the State Court Administrator for further action.

3. **Family Court Rules**. The advisory committee is aware of an ongoing review of the family court rules being conducted by members of the American Academy of Matrimonial Lawyers, culminating in extensive discussions of these rules at its annual "Divorce Camp" in October 2009. The advisory committee's Reporter and Staff have been invited to participate in this meeting, as have judges from each judicial district and representative district administrators. The committee has deferred consideration of several issues relating to the family court rules until the AAML process is completed.

Style of Report

The specific recommendation is reprinted in traditional legislative format, with new wording underscored and deleted words ~~struck through~~. Because the advisory

committee comments are entirely new for these recommendations, underscoring is omitted for the comments.

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

APPENDIX OF LOCAL POLICIES

Second District Policy

AUDIO/VIDEO TRANSCRIPTS

The party intending to introduce a recorded statement (video and/or audio)* must, at the time the rules require disclosure of the statement, advise the opposing party of the format in which the statement is reserved (video, audio) and must, prior to trial timely prepare, serve and file a verbatim transcript of the recorded statement. The proponent of the recorded statement is responsible for its accurate transcription. Failure to comply with either requirement may result in exclusion of the recorded statement at trial.

* This order applies to, but is not limited to 911 calls, answering machine messages, Scales tapes, child interviews, crime scene walk-throughs and depositions.

Fourth District Policy

Policy Number:	D.01
Category:	Case Related Policies: All Courts
Title:	Audio and Video Taped Evidence
Effective Date:	January 1, 2001
Revision Date(s):	
(Supersedes:	Policy effective January 1, 2000

Audio and Video Taped Evidence

The party intending to introduce a recorded statement (video and/or audio)[(1)] must, at the time the rules require disclosure of the statement, advice the opposing party of the format in which the statement is preserved (video, audio) and must, prior to the trial, timely prepare, serve and file a verbatim transcript of the recorded statement. The proponent of the recorded statement is responsible for its accurate transcription. Failure to comply with either requirement may result in exclusion of the recorded statement at trial.

[(1)] This order applies to, but is not limited to all 911 calls, answering machine message, Scales tapes, child interviews, crime scene walk-throughs and depositions.

Seventh District Policy

ADMINISTRATIVE POLICY NO. 11.5

Transcript of Videotapes and Audiotapes

Any audiotape, videotape or other prerecorded evidence or testimony, whether an exhibit, deposition, interview, statement, or otherwise, offered by a party shall be accompanied by a written transcript thereof, which transcript, upon acceptance or redaction by the parties, shall constitute the record thereof for all purposes, including appeal.

Approved: December 2, 1998
Recodified: May 31, 2002

Eighth District Policy

ADMINISTRATIVE POLICY 10

Video/Audio Statements

The party intending to introduce a recorded statement must, at the time the rules require disclosure of the statement, advise the opposing party of the form in which the statement is preserved and must, prior to trial, timely prepare, serve and file a verbatim transcript of the recorded statement. The proponent of the recorded statement is responsible for its accurate transcription. Failure to comply with either requirement may result in exclusion of the recorded statement at trial.

Ninth District Policy

Policy Regarding Transcripts of Audio/visual Recordings

A party intending to introduce an electronically or digitally recorded statement* must, at the time the rules require disclosure of the statement, advise the opposing party of the format (audio or video tape, CD, DVD, etc.) in which the statement is preserved, and upon the request of the court must, prior to trial, timely prepare, serve and file a verbatim transcript of the recorded statement. The proponent of the recorded statement is responsible for its accurate transcription. Failure to comply with these requirements may result in exclusion of the recorded statement at trial.

If during a pre-trial hearing a party uses or offers as evidence an audio or video recording, and other parties wish to have a transcript of that hearing to assist in the preparation of memoranda of law to be filed with the court, the party submitting the recording will have a verbatim transcript of it prepared and provided in a timely fashion to the requesting party or parties, as well as to the court. The court may also order such transcript *sua sponte.*

In the event of an appeal, the offering party must produce and file a verbatim transcript of the recorded statement within 30 days of the filing of the notice of appeal, if such transcript was not previously provided to the court.

**This policy applies, but is not limited, to recordings of 911 calls, answering machine messages, scale tapes, child interviews, crime scene walk-throughs and depositions.*

Recommendation 1: **Form 5 should be removed from the rules and maintained as a form on the court's website.**

Introduction

Form 5, Motion for Admission Pro Hac Vice, is a form that can be maintained by the State Court Administrator's Office and is currently available on the Court's website. The form is not mentioned in either the rules or the advisory committee comments; it is merely appended to the rules. It is appropriate that this form simply be deleted from the rules by order of this Court.

Specific Recommendation

Form 5 should be deleted from the rules and maintained in the future on the court's website.

Recommendation 2: **Forms 11.1 and 11.2 should removed from the rules and maintained as a form on the court's website.**

Introduction

Forms 11.1, Confidential Information Form, and 11.2, cover sheet designated "Sealed Financial Source Documents," are also forms that can be maintained by the State Court Administrator's Office and accessed through the Court's website. Because they are specifically referenced in the rules as being appended to the rules, Rules 11.02 and 11.03 should be amended to reflect the deletion of the forms from the rules themselves.

Specific Recommendation

Rule 11 should be amended as follows:

RULE 11. SUBMISSION OF CONFIDENTIAL INFORMATION

* * *

Rule 11.02. Restricted Identifiers

(a) Pleadings and Other Documents Submitted by a Party. No party shall submit restricted identifiers on any pleading or other document that is to be filed with the court except:

(i) on a separate form entitled Confidential Information Form (see Form 11.1 ~~appended to these rules~~ as published by the state court administrator) filed with the pleading or other document; or

(ii) on Sealed Financial Source Documents under Rule 11.03.

The parties are solely responsible for ensuring that restricted identifiers do not otherwise appear on the pleading or other document filed with the court. The court administrator will not review each pleading or document filed by a party for

compliance with this rule. The Confidential Information Form shall not be accessible to the public.

(b) Records Generated by the Court. Restricted identifiers maintained by the court in its register of actions (i.e., activity summary or similar information that lists the title, origination, activities, proceedings and filings in each case), calendars, indexes, and judgment docket shall not be accessible to the public. Courts shall not include restricted identifiers on judgments, orders, decisions, and notices except on the Confidential Information Form (Form 11.1), which shall not be accessible to the public.

Rule 11.03. Sealing Financial Source Documents

Financial source documents shall be submitted to the court under a cover sheet designated "Sealed Financial Source Documents" and substantially in the form set forth as Form 11.2 ~~appended to these rules~~ as published by the state court administrator. Financial source documents submitted with the required cover sheet are not accessible to the public except to the extent that they are admitted into evidence in a testimonial hearing or trial or as provided in Rule 11.05 of these rules. The cover sheet or copy of it shall be accessible to the public. Financial source documents that are not submitted with the required cover sheet and that contain restricted identifiers are accessible to the public, but the court may, upon motion or on its own initiative, order that any such financial source document be sealed.

* * *

Advisory Committee Comment—2009 Amendment

Rule 11 is amended to remove Forms 11.1 and 11.2 from the rules and to correct the reference to the forms in the rule. This amendment will allow for the maintenance and publication of the form by the state court administrator. The form, together with other court forms, can be found at http://www.mncourts.gov/.

Forms 11.1 and 11.2 should be deleted from the rules and maintained in the future on the court's website.

Recommendation 3: **Rule 12, adopted in 2009, should be amended to clarify that it does not require filing of pleadings earlier than heretofore required and does not override the 21-day "safe harbor" provision in Minn. R. Civ. P. 11.**

Introduction

This court adopted Rule 12 of the general rules by its order dated December 22, 2008. Following its adoption, the committee became aware of two situations where the rule was not intended to apply. The amendment recommended explicitly exempts those two situations from the rule. As is well known, Minnesota is one of a small number of states that allow for "hip-pocket" service—deeming actions commenced by service and not requiring filing of pleadings unless one of the parties files the action, in which case every party is required to file pleadings promptly after service. Similarly, Rule 11 of the rules of civil procedure contains a 21-day "safe harbor" provision, requiring service of a motion for sanctions but prohibiting filing of the motion for 21 days. The amendment to Rule 12 of the general rules was not intended to modify that important provision.

Specific Recommendation

Rule 12 should be amended as follows:

RULE 12. REQUIREMENT FOR COMPARABLE MEANS OF SERVICE

In all cases, a party serving a paper on a party and filing the same paper with the court must select comparable means of service and filing so that the papers are delivered substantially contemporaneously. This rule does not apply to service of a summons or a subpoena. Pleadings and other papers need not be filed until required by Minn. R. Civ. P. 5.05 and motions for sanctions may not be filed before the time allowed by Minn. R. Civ. P. 11.03(a).

In emergency situations, where compliance with this rule is not possible, the facts of attempted compliance must be provided by affidavit.

Advisory Committee Comment—2009 Amendment

Rule 12 is amended to add the last sentence of the first paragraph. The amendment is intended to clarify that the rule does not modify two facets of practice established before its adoption. It does not require that pleadings be filed before the time allowed under Rule 5.05, which generally makes it unnecessary to file pleadings until after a party files a pleading, thereby opening a court file. This rule is a part of Minnesota's "hip-pocket" service regime as established by Minn. R. Civ. P. 3. Rule 11 of the Minnesota Rules of Civil Procedure contains a 21-day "safe harbor" provision, requiring service of a motion for sanctions but prohibiting filing of the motion for 21 days. The amendment to Rule 12 of the general rules was not intended to modify that important provision.

Recommendation 4: **A new Rule 13 should be adopted to require parties and counsel to provide a current address to the parties and court administrator.**

Introduction

The committee considered the suggestion that court administrators be relieved of the requirement that they mail notices to a party after the administrator has received two previous mailings back as "undeliverable" by the post office. The committee believes that there is merit in this suggestion, but also believes that attorneys and parties to litigation should be put on notice of the requirement to provide a current address and the likely consequences of failure to provide it.

The rule doesn't require Herculean efforts by court administrators to attempt to determine a current address, but does require "reasonable efforts" to obtain a valid, workable address. This requirement is intended to recognize the importance of notice from the court, and to encourage some serious effort to obtain a valid address.

Specific Recommendation

A new Rule 13 should be adopted as follows:

RULE 13. REQUIREMENT TO PROVIDE NOTICE OF CURRENT ADDRESS

Rule 13.01. Duty to Provide Notice

In all actions, it is the responsibility of the parties, or their counsel of record, to provide notice to all other parties and to the court administrator of their current address for delivery of notices, orders, and other papers in the case. Failure to provide this notice constitutes waiver of the right to notice until a current address is provided.

Rule 13.02. Elimination of Requirement to Provide Notice to Lapsed Address

In the event notices, pleadings or other papers are returned by the postal service after the court administrator's mailing to a party or attorney's address of record on two separate mailings, the administrator should make reasonable efforts to obtain a valid, current address. If those efforts are not successful, the administrator may omit making further mailings in that action, and shall place appropriate notice in the court file or docket indicating that notices are not being mailed to all parties.

Advisory Committee Comment—2009 Amendment

Rule 13 is a new rule intended to make explicit what has heretofore been expected of parties and their counsel: to keep the court apprised of a current address for mailing notices, orders, and other papers routinely mailed by the administrator to all parties. Where the court does not have a valid address, evidenced by two returned mailings, and cannot readily determine the correct address, the rule makes it unnecessary for the administrator to continue the futile mailing of additional papers until the party or attorney provides a current address.

The purpose of this rule is to require meaningful notice. If a party is a participant in the Secretary of State's address confidentiality program, there is no reason not to permit the use of that address to satisfy the requirement of this rule. *See* MINN. STAT. §§ 5B.01-.09 (2008).

Recommendation 5: **Rule 111 should be amended to exclude consumer credit contract cases and mechanics' lien actions from the requirement for filing an information statement.**

Introduction

Rule 111 contains numerous exceptions from the scheduling requirements of the rule. The advisory committee considered suggestions that two categories of cases also be exempted from the normal case scheduling requirements, and concluded that these suggestions were well-taken. The committee therefore recommends that consumer credit contract actions and mechanics lien actions be added to the list of actions exempted from the rule.

Consumer credit contract actions are a distinct case type under Form 23 of the Minnesota Rules of Civil Procedure (see Minn. R. Civ. P. 10.01 requiring case type indicator to be included in caption of every pleading). These cases have historically generally been handled as default matters, and though they must now be filed pursuant to an agreement between the attorney general and certain health care providers, they retain their nature of being likely to be default matters. Normal case scheduling procedures for contested cases to not make sense for these cases.

Mechanics lien actions are commenced by filing and often involve numerous parties who are not served with process at the same time. The result is that these cases are often not ready for case scheduling at the same time other civil actions would be. The proposed amendment simply exempts these cases from Rule 111, recognizing that the court may then establish scheduling guidelines by order in a particular case, or can make a particular case subject to the normal Rule 111 procedures pursuant to the last sentence of Rule 111.01.

Specific Recommendation

Rule 111.01 should be amended as follows:

RULE 111. SCHEDULING OF CASES

Rule 111.01. Scope

The purpose of this rule is to provide a uniform system for scheduling matters for disposition and trial in civil cases, excluding only the following:

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

(b) Family court matters governed by Minn. Gen. R. Prac. 301 through 312;

(c) Public assistance appeals under Minnesota Statutes, section 256.045, subdivision 7;

(d) Unlawful detainer actions pursuant to Minnesota Statutes, sections 504B.281, et seq.;

(e) Implied consent proceedings pursuant to Minnesota Statutes, section 169.123;

(f) Juvenile court proceedings;

(g) Civil commitment proceedings subject to the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment Act of 1982;

(h) Probate court proceedings;

(i) Periodic trust accountings pursuant to Minn. Gen. R. Prac. 417;

(j) Proceedings under Minnesota Statutes, section 609.748 relating to harassment restraining orders;

(k) Proceedings for registration of land titles pursuant to Minnesota Statutes, chapter 508;

(l) Election contests pursuant to Minnesota Statutes, chapter 209; ~~and~~

(m) Applications to compel or stay arbitration under Minnesota Statutes, chapter 572~~.~~ ;

(n) consumer credit contract actions (see Case Type 3A, Minn. R. Civ. P. Form 23); and

(o) mechanics' lien actions.

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

Advisory Committee Comment—2009 Amendment

Rule 112.01 is amended to exempt consumer credit contract actions and mechanics lien actions from the case scheduling regime generally followed in civil proceedings. These changes are made because these cases are required to be filed but are often either not ready for case scheduling or are unlikely ever to require it. "Consumer credit contract actions" refer to those cases properly carrying the case type identifier "3A. Consumer Credit Contracts," which as specified in Form 23 of the Minnesota Rules of Civil Procedure requires three things: (1) that the plaintiff is a corporation or other business organization, not an individual; (2) that the defendant is an individual; and (3) that the contract amount does not exceed $20,000.

Recommendation 6: **Rule 304.02 should be amended to include reference to the requirement for disclosure to the court of the need for interpreter services.**

Introduction

As part of the amendments adopted to the general rules by order dated December 22, 2008, the Court required modification of several rules to provide for the identification of the need for interpreter services in case handling documents. The committee believes it is appropriate that that requirement be extended to the parties' informational statement filed in family court matters, and the recommended amendment to Rule 304.02 accomplishes that single purpose.

Specific Recommendation

Rule 304.02 should be amended as follows:

RULE 304. SCHEDULING OF CASES

* * *

Rule 304.02. The Party's Informational Statement

(a) Timing. Within 60 days after filing an action or, if a temporary hearing is scheduled within 60 days of the filing of the action, then within 60 days after a temporary hearing is initially scheduled to occur, whichever is later, each party shall submit, on a form to be available from the court and developed by the state court administrator, the information needed by the court to manage and schedule the case.

(b) Content. The information provided shall include:

(1) Whether minor children are involved, and if so:

(i) Whether custody is in dispute; and

(ii) Whether the case involves any issues seriously affecting the welfare of the children;

(2) Whether the case involves complex evaluation issues, and/or marital and nonmarital property issues;

(3) Whether the case needs to be expedited, and if so, the specific supporting facts;

(4) Whether the case is complex, and if so, the specific supporting facts;

(5) Specific facts about the case which will affect readiness for trial;

(6) Recommended alternative dispute resolution process, the timing of the process, the identity of the neutral selected by the parties or, if the neutral has not yet been selected, the deadline for selection of the neutral. If ADR is believed to be inappropriate, a description of the reasons supporting this conclusion; ~~and~~

(7) Identification of interpreter services (specifying language and, if known, particular dialect) any party anticipates will be required for any witness or party; and

(~~7~~8) A proposal for establishing any of the deadlines or dates to be included in a scheduling order pursuant to this rule.

(c) Unrepresented Parties. Parties not represented by a lawyer may use forms developed specially by the state court administrator for unrepresented parties.

Advisory Committee Comment—2009 Amendment

Rule 304.02 is amended to include section (b)(7) adopted to implement the gathering of information about the potential need for interpreter services in a case, either for witnesses or for a party. *See* Minn. Gen. R. Prac. 8.13.

Recommendation 7: **Rule 309 should be amended to permit contempt proceedings to be commenced either by motion or by order to show cause.**

Introduction

Rule 309 presently contemplates commencement of contempt proceedings only by order to show cause. Minnesota Statutes allows the court to impose contempt sanctions upon either notice or order to show cause. *See* Minn. Stat. § 588.04. Because of the increased expense involved in obtaining and serving an order to show cause, including the burden it places on the court for issuance of the order, and because an order to show cause is no longer required by statute, the committee believes Rule 309 should be amended similarly to allow contempt to be sought either by motion or order to show cause.

Specific Recommendation

A new Rule 309.01 should be adopted as follows:

RULE 309. CONTEMPT

Rule 309.01. Initiation

(a) Moving Papers-Service; Notice. Contempt proceedings ~~shall~~ may be initiated by notice of motion and motion or by an order to show cause served upon the person of the alleged contemnor together with motions accompanied by appropriate supporting affidavits.

The order to show cause shall direct the alleged contemnor to appear and show cause why he or she should not be held in contempt of court and why the moving party should not be granted the relief requested by the motion. If proceeding by notice of motion and motion, the motion may seek that relief directly.

The notice of motion, motion, or order to show cause shall contain at least the following:

(1) a reference to the specific order of the court alleged to have been violated and date of entry of the order;

(2) a quotation of the specific applicable provisions ordered; and

(3) the alleged failures to comply.

(b) Affidavits. The supportive affidavit of the moving party shall set forth each alleged violation of the order with particularity. Where the alleged violation is a failure to pay sums of money, the affidavit shall state the kind of payments in default and shall specifically set forth the payment dates and the amounts due, paid and unpaid for each failure.

The responsive affidavit shall set forth with particularity any defenses the alleged contemnor will present to the court. Where the alleged violation is a failure to pay sums of money, the affidavit shall set forth the nature, dates and amount of payments, if any.

The supportive affidavit and the responsive affidavit shall contain numbered paragraphs which shall be numbered to correspond to the paragraphs of the motion where possible.

* * *

Advisory Committee Comment—2009 Amendment

Rule 309.01 is amended in 2009 to remove an apparent requirement that any contempt proceeding be commenced by order to show cause. Although an order to show cause is an available mechanism for initiating contempt proceedings, the authorizing statute also recognizes that these proceedings may be commenced by motion accompanied by appropriate notice. *See* MINN. STAT. § 588.04. The amendment to Rule 309.01 is intended simply to recognize that both mechanisms are available. In many situations, proceeding by order to show cause is preferable. Use of an order to show cause, which is court process served with the same formality as a summons, permits the court to impose sanctions directly upon failure to comply. *See* MINN. STAT. § 588.04. It is the preferred means to commence a contempt proceeding if there is significant risk that the alleged contemnor is likely not to appear in response to a notice of motion.

Recommendation 8: **Rule 503(c) should be amended to conform its time computation rules to mechanism in the Rules of Civil Procedure.**

Introduction

The committee previously recommended to the Court that Rule 6.01 of the Rules of Civil Procedure be amended to reflect the Court's holding in *Commandeur, LLC v. Howard Hartry, Inc.*, 724 N.W.2d 508 (Minn. 2006). The committee did not recommend modification of the conciliation court rules at that time. It does appear appropriate, however, that Rule 503 of the conciliation court rules be modified also to reflect this development in Minnesota law.

Specific Recommendation

Rule 503 should be amended as follows:

RULE 503. COMPUTATION OF TIME

(a) General. All time periods shall be measured by starting to count on the first day after any event happens which by these rules starts the running of a time period. If the last day of the time period is anything other than a working week day, then the last day is the next working week day.

(b) Time Periods Less Than Seven Days. When the time period is less than seven days, only working week days shall be counted.

(c) Working Week Day. A "working week day" means a day which is not a Saturday, Sunday or legal holiday. For purposes of this rule, a legal holiday includes all state level judicial branch holidays established pursuant to law and any other day on which county offices in the county in which the conciliation court is held are closed pursuant to law~~.~~ or court order. With respect to service or filing by U. S. Mail, a day that the United States Mail does not operate is not a "working week day."

Advisory Committee Comment—2009 Amendment

Rule 503(c) is amended to clarify that for service or filing by mail, if U. S. Postal Service offices are closed on a particular day, that day is not deemed a "working week day" for the purpose of the rule, effectively permitting the mailing to be made on the next day that is a "working week day." This change conforms the rule to the time calculation provision of Minn. R. Civ. P. 6.01, which in turn was amended in 2008 to conform the rule to the Minnesota Supreme Court decision in *Commandeur LLC v. Howard Hartry, Inc.*, 724 N.W.2d 508 (Minn. 2006)(holding that where the last day of a time period occurred on Columbus Day, service by mail permitted by the rules was timely if mailed on the following day on which mail service was available).

Recommendation 9: **Rule 517 should be amended to modify the procedure for payment of conciliation court judgments into court.**

Introduction

The conciliation court rules presently allow the losing party in a conciliation court proceeding simply to pay the judgment into court. Although there may be circumstances where this is necessary, in many cases it would be easier for the parties and less burdensome for the court to allow payment directly to the prevailing party. The proposed amendment to Rule 517 accomplishes that result by requiring that more direct process, but retaining the payment-of-the-court option if those efforts are either unsuccessful or the prevailing party refuses to accept tendered payment.

Specific Recommendation

Rule 517 should be amended as follows:

RULE 517. PAYMENT OF JUDGMENT

Rule 517. Payment of Judgment

A nonprevailing party must make arrangements to pay the judgment directly to the prevailing party. In the event good faith efforts to pay the judgment are not successful or the prevailing party refuses to accept tendered payment, the nonprevailing party may bring a motion to allow payment into court. Upon order of the court, ~~T~~the nonprevailing party may then pay all or any part of the judgment to the court administrator for benefit of the prevailing party. ~~or may pay the prevailing party directly.~~

The court administrator shall enter on the court's records any payment made to the administrator or to the prevailing party directly when satisfied that the direct payments have been made.

Advisory Committee Comment—2009 Amendment

Rule 517 is amended to modify the procedure for payment of a conciliation court judgment directly to the court administrator. As amended, the rule requires that payment be made directly be the nonprevailing party to the prevailing party, and permits payment into court only if reasonable attempts to make that payment are not successful or the prevailing party will not accept payment, in which case the nonprevailing party must bring a motion to allow payment into court.

Recommendation 10: Rule 518 should be amended to remove the thirty-day stay requirement.

Introduction

The conciliation court rules currently provide for an automatic thirty-day stay following docketing of a judgment in district court and the commencement of discovery regarding the judgment. The thirty-day stay does not serve a useful purpose in court administration, and simply results in a thirty-day delay in resolution of these matters. Accordingly, the committee recommends that it be removed from Rule 518. This change also makes the rule consistent with statute. See MINN. STAT. § 491A.02, subd. 9.

Specific Recommendations

Rule 518 should be amended as follows:

RULE 518. DOCKETING OF JUDGMENT IN DISTRICT COURT; ENFORCEMENT

(a) Docketing. Except as otherwise provided in Rule 519 with respect to installment judgments, when a judgment has become finally effective as defined in Rule 515 of these rules the judgment creditor may obtain a transcript of the judgment from the court administrator on payment of the applicable statutory fee and file it in district court. Once filed in district court the judgment becomes and is enforceable as a judgment of district court, and the judgment will be docketed by the court administrator upon presentation of an affidavit of identification. No writ of execution or garnishment summons shall be issued out of conciliation court.

(b) Enforcement. Unless the parties have otherwise agreed, if a conciliation court judgment has been docketed in district court ~~for a period of at least 30 days~~ and the judgment is not satisfied, the district court shall upon request of the judgment creditor order the judgment debtor to mail to the judgment creditor information as to

the nature, amount, identity, and location of all the debtor's assets, liabilities, and personal earnings. The information shall be provided on a form prescribed by the Supreme Court (see form UCF-22 ~~appended to these rules~~ as published by the state court administrator), and the information shall be sufficiently detailed to enable the judgment creditor to obtain satisfaction of the judgment by way of execution on nonexempt assets and earnings of the judgment debtor. The order shall contain a notice that failure to complete the form and mail it to the judgment creditor within ten days after service of the order may result in a citation for civil contempt of court. Cash bail posted as a result of being cited for civil contempt of court order under this rule may be ordered payable to the creditor to satisfy the judgment, either partially or fully.

Advisory Committee Comment—2009 Amendment

Rule 518 is amended to modify the procedure for payment of a conciliation court judgment directly to the court administrator. As amended, the rule requires that payment be made directly be the nonprevailing party to the prevailing party, and permits payment into court only if that process is unavailing.

Recommendation 11: **The forms appended to the conciliation court rules should be removed from the rules and maintained by the State Court Administrator's Office on the Court's website.**

Introduction

The committee believes the conciliation court forms are particularly suitable for removal from the rules and maintenance by the State Court Administrator on the Court's website. These forms are particularly prone to amendment and improvement, and will function best on that site. Removal of the forms requires amendment of several of the conciliation court rules merely to modify how the forms are referred to in the rules.

Specific Recommendations

Rules 507, 508, and 518 should be amended as set forth below; and Forms UCF-8, UCF-9, UCF-10, UCF-22, and 508.1 should be deleted from the rules:

1. Rule 507 should be amended as follows:

RULE 507. STATEMENT OF CLAIM AND COUNTERCLAIM; CONTENTS; VERIFICATION

* * *

(b) Uniform Statement of Claim or Counterclaim; Acceptance by Court. A statement of claim or counterclaim in the uniform form ~~prescribed in the appendix to these rules~~ as published by the state court administrator shall be accepted by any conciliation court administrator when properly completed and filed with the applicable fees, if any.

2. Rule 508 should be amended as follows:

RULE 508. SUMMONS; TRIAL DATE

* * *

(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~~ as published by the state court administrator. 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.

3. Rule 518 should be amended as set forth in Recommendation 10, on pages 28-29, above.

The following forms should be deleted from the Rules and then be maintained by State Court Administration.

1. Form UCF-8 Statement of Claim and Summons
2. Form UCF-9 Judgment and Notice of Judgment
3. Form UCF-10 Defendant's Counterclaim
4. Form UCF-22 Financial Disclosure Form
5. Form 508.1 Conciliation Court Affidavit of Service

Advisory Committee Comment—2009 Amendment

Rules 507, 508, and 518 11 are amended to remove Forms UCF-8, UCF-9, UCF-10, UCF-22, and 508.1 from the rules and to correct the reference to the forms in the rule. This amendment will allow for the maintenance and publication of the form by the state court administrator. The form, together with other court forms, can be found at http://www.mncourts.gov/.

Forms UCF-8, UCF-9, UCF-10, UCF-22, and 508.1 should be deleted from the rules and maintained in the future on the court's website.

Recommendation 12: **Rule 707 should be amended to clarify how stenographic notes and transcription of grand jury proceedings are handled.**

Introduction

Rule 707 deals with transcription of several criminal proceedings, but omits explicit reference to grand jury proceedings. Rule 18 of the Minnesota Rules of Criminal Procedure also addresses the right of access to grand jury transcripts. The committee believes it appropriate to amend Rule 707 to deal with some of the mechanical aspects of transcription of grand jury proceedings consistent with how those subjects are addressed for other phases of criminal proceedings currently addressed in Rule 707.

The issues leading to this recommendation are not fully resolved by the amendment set forth here. The committee understands that Rule 707 is not being consistently followed in practice, and that court reporters are reluctant to file their notes with the courts. This occurs for several reasons, but an underlying issue relates to the view that reporters' notes are their personal property. Rule 3, subd. 5, of the Rules of Public Access to Records of the Judicial Branch requires that court reporter notes "shall be available to the court" but does not expressly require that they uniformly be filed. Because many facets of grand jury proceedings are conducted under the authority of prosecutors and not directly under court supervision, this rule may also be of more limited impact that might be expected.

Specific Recommendation

Rule 707 should be amended as follows:

RULE 707. TRANSCRIPTION OF PLEAS, SENTENCES, AND REVOCATION HEARINGS IN FELONY, GROSS MISDEMEANOR, AND EXTENDED JUVENILE JURISDICTION PROCEEDINGS, AND GRAND JURY PROCEEDINGS

The following provisions relate to all pleas, sentences, and revocation hearings in all felony, gross misdemeanor, and extended juvenile jurisdiction proceedings, and all grand jury proceedings. Grand jury proceedings are secret as provided in Rule 18 of the Minnesota Rules of Criminal Procedure and this rule must be construed to maintain secrecy in accordance with that rule.

(a) Court reporters and operators of electronic recording equipment shall file the stenographic notes or tape recordings of guilty plea, or sentencing and revocation hearings with the court administrator within 90 days of sentencing, and the stenographic notes or tape recordings of grand jury proceedings shall be filed with the court administrator and maintained in a non-public portion of the file at the conclusion of grand jury hearings. The reporter or operator may retrieve the notes or recordings if necessary. Minn. Stat. § 486.03 (2002) is superceded to the extent that it conflicts with this procedure.

(b) All original grand jury transcripts shall be filed within 60 days of request by the court or prosecutor or receipt of an order from the appropriate court directing transcription and shall be made available to parties other than the court or prosecutor only in accordance with that court order. The court administrator must file and maintain all grand jury transcripts in a non-public portion of the file. The court may allow extension of this 60-day deadline upon a showing of good cause.

(~~b~~c) No charge may be assessed for preparation of a transcript for the district court's own use; any other person ~~may~~ ordering a transcript as allowed under the rules shall be at the expense of that person. Transcripts ordered by the defendant or defense counsel shall be prepaid except when the defendant is represented by the public defender or assigned counsel, or when the defendant makes a sufficient

affidavit of an inability to pay and the court orders that the defendant be supplied with the transcript at the expense of the appropriate governmental unit.

(d) If no district court file exists with respect to a grand jury proceeding, the administrator shall open a grand jury file upon the request of the prosecutor.

(~~e~~e) The maximum rate charged for the transcription of any proceeding shall be established, until July 1, 2005, by the Conference of Chief Judges, and thereafter by the Judicial Council. Minn. Stat. § 486.06 (2002) is superceded to the extent that it conflicts with this procedure.

Advisory Committee Comment—2009 Amendment

Grand jury proceedings in Minnesota are secret. See Minn. R. Crim. P. 18.08. The court and prosecutors may obtain access to grand jury records and may order a transcript; any other transcription may occur only pursuant to Minn. R. Crim. P. 1805, subd. 1. Rule 707 is amended to provide the rules for filing and maintaining transcripts of grand jury proceedings in the limited circumstances where the transcription is permitted or ordered. The court may also enter a protective order to prohibit further disclosure of the grand jury transcript. Minn. R. Crim. P. 18.05, subd. 2.

Rule 707(d) recognizes that there are circumstances where a grand jury is not separately convened for a particular case, and there is no separate file for that grand jury. This subdivision allows the prosecutor to request that a file be opened to serve as the repository for notes, records, or transcript from that proceeding.

Recommendation 13: **Rule 14 of the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act should be amended.**

Introduction

The advisory committee recommended in 2008 that Rule 14 of the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act be amended as part of the more extensive amendments implementing administrative procedures for use of interactive television (ITV). That amendment changed the notice requirement in Commitment Act Rule 14 from 24 hours to 7 days for all requests to appear by electronic means. The intent was only to recognize that setting up an ITV proceeding can take longer than that, whereas a telephone appearance, also authorized by Commitment Act Rule 14, does not. County attorneys who participate in such matters requested that the advisory committee reconsider the deadline and return it to 24 hours in all cases as the shorter notice period has not proven problematic. The advisory committee believes that it is appropriate to restore the 24-hour notice requirement in the rule.

Specific Recommendation

Rule 14 of the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act should be amended as follows:

SPECIAL RULES OF PROCEDURE GOVERNING PROCEEDINGS UNDER THE MINNESOTA COMMITMENT AND TREATMENT ACT

RULE 14. LOCATION OF HEARING, RULES OF DECORUM, ALTERNATIVE METHODS OF PRESENTING EVIDENCE

The judge or judicial officer shall assure the decorum and orderliness of any hearing held pursuant to Minn. Stat. ch. 253B. The judge or judicial officer shall

afford to respondent an opportunity to be dressed in conformity with the dignity of court appearances.

A hearing may be conducted or an attorney for a party, a party, or a witness may appear by telephone, audiovisual, or other electronic means if the party intending to use electronic means notifies the other party or parties at least ~~seven days~~ 24 hours in advance of the hearing and the court approves. If a witness will be testifying electronically, the notice must include the name, address, and telephone number where the witness may be reached in advance of the hearing. This rule does not supersede Minn. Stat. §§ 595.02 – 595.08 (competency and privilege). Respondent's counsel will be physically present with the patient. The court shall insure that the respondent has adequate opportunity to speak privately with counsel, including, where appropriate, suspension of the audio recording or allowing counsel to leave the conference table to communicate with the client in private.

Advisory Committee Comment—2009 Amendment

Rule 14 is amended to change the amount of notice required to be given by a litigant desiring to have a matter heard by electronic means, typically either telephone or interactive television. The 24 hours required by the rule represents the bare minimum of what may be necessary to allow for necessary electronic equipment to be made available. This deadline can be adjusted by the court if necessary.