

FILED

November 1, 2024

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM04-8001

**ORDER PROMULGATING AMENDMENTS TO
THE RULES OF CIVIL PROCEDURE**

In a report filed May 10, 2024, the Minnesota Supreme Court Advisory Committee on the Rules of Civil Procedure recommended the following amendments to the Minnesota Rules of Civil Procedure: (1) amending Rule 4.03(e) to clarify who can accept service on behalf of public corporations; (2) amending Rule 15.01 to mirror a change adopted in the corresponding Federal Rule; and (3) amending Rule 30.02 to authorize the party taking the deposition to choose the method by which the deposition will be taken, including using remote technology. *See Recommendations of Minnesota Supreme Court Advisory Committee on Rules of Civil Procedure*, No. ADM04-8001 (May 10, 2024).

By order filed on May 23, 2024, we established a period for the public to file written comments in response to the report filed by the committee. Establishing Public Comment Period for Proposed Amendments to the Minnesota Rules of Civil Procedure, No. ADM04-8001, Order (Minn. filed May 23, 2024). No comments were filed.

Having carefully considered the Advisory Committee's recommendations, we agree with the proposed amendments.

IT IS HEREBY ORDERED that the attached amendments to the Rules of Civil Procedure are prescribed and promulgated as shown below, effective January 1, 2025.

These amendments shall apply to all cases pending on, or filed on or after, the effective date, unless the district court concludes that application of the rule as amended in a case pending as of the effective date is not feasible or would work an injustice in the pending matter. *See* Minn. R. Civ. P. 86.01(b). The Advisory Committee comments are included for convenience and do not reflect court approval of the comments.

Dated: November 1, 2024

BY THE COURT:

A handwritten signature in black ink, appearing to read "Natalie E. Hudson", written in a cursive style.

Natalie E. Hudson
Chief Justice

AMENDMENTS TO THE RULES OF CIVIL PROCEDURE

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

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4.03. Personal Service

Service of summons within the state shall be as follows:

* * *

- (e) **Upon Public Corporation.** Upon a municipal or other public corporation by delivering a copy
- (1) To the county attorney or chair of the county board ~~or to the county auditor~~ of a defendant county;
 - (2) To the chief executive officer or to the clerk of a defendant city, village or borough, or, if the entity lacks such officer or clerk, to an officer performing a corresponding function under another name;
 - (3) To the chair of the town board or to the clerk of a defendant town, or, if the town lacks such chair or clerk, to an officer performing a corresponding function under another name;
 - (4) To the chair any member of the board or other governing body of a defendant school district, or if the school district lacks such chair, clerk, treasurer, or superintendent, to an officer performing a corresponding function under another name; or
 - (5) To any member of the board or other governing body of a defendant public board or public body not ~~hereinafter~~ enumerated above.

If service cannot be made as provided in this Rule 4.03(e), the court may direct the manner of such service.

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Advisory Committee Comment—2025 Amendment

Rule 4.03(e)(1) is amended in 2025 to remove the county auditor as a service recipient and to add the county attorney instead. County attorney offices may authorize front desk personnel or others to accept service of process. Counties and county attorney offices are encouraged to include information on their websites regarding how individuals can properly effectuate service.

Rule 4.03(e)(2) is amended in 2025 to add that if the defendant city, village or borough lacks a chief executive officer or clerk, service may be effected by delivering a copy to an officer performing a corresponding function under another name.

Rule 4.03(e)(3) is amended in 2025 to add that if the defendant town lacks a board chair or clerk, service may be effected by delivering a copy to an officer performing a corresponding function under another name.

Rule 4.03(e)(4) is amended in 2025 to remove language allowing service on any member the board or other governing body, and to add the chair of the board or other governing body as a service recipient. The rule is further amended to add that if the defendant school district lacks such a chair or lacks a clerk, treasurer, or superintendent, service may be effected by delivering a copy to an officer performing a corresponding function under another name.

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15.01. Amendments

A party may amend a pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it ~~at any time within~~ no later than 21 days after it is served. Otherwise a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 14 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

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Advisory Committee Comment — 2025 Amendment

Rule 15.01 is amended in 2025 to clarify that if a pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may amend it as a matter of course no later than 21 days after it is served.

30.02. Notice of Examination: General Requirements: ~~Special Notice~~ Notice of Method of Recording; Non-Stenographic Method of Additional Recording Method; Production of Documents and Things; Deposition of Organization; Depositions by Telephone Remote Technology

(a) **Notice.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the name and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. The notice shall further state whether the deposition shall be conducted in person or by remote technology.

1) A party or party-deponent may object to the noticing party's election of an in person or remote-technology deposition. A party objecting to the noticing party's election must meet and confer in good faith with the noticing party promptly after objecting. If, after the meet-and-confer, the parties are unable to resolve their dispute, the objecting party may bring a motion for a protective order before the court in which the action is pending. The court shall not sustain the objection unless the objecting party demonstrates good cause that the noticing party's election should be overruled.

2) A non-party deponent may also object to a noticing party's election of an in person or remote-technology deposition. An objecting non-party has the same obligation as an objecting party to meet and confer in good faith with the noticing party prior to intervention by the court. If the objecting non-party deponent and the noticing party are unable to resolve their dispute, the noticing party may move for an order to compel the deposition consistent with the noticing party's election. The court shall grant the motion unless the objecting non-party deponent demonstrates good cause that the noticing party's election should be overruled.

(b) **Notice of Method of Recording.** The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by ~~sound-audio~~, ~~sound-audio-and-visual~~, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by non-stenographic means.

(c) **~~Additional Video Conference Recording Method.~~** With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the ~~person~~ party taking the

deposition. The additional record or transcript shall be made at ~~that party's~~ the expense of the party designating the additional recording method unless the court otherwise orders.

Any deposition pursuant to these rules may be taken by means of simultaneous audio and visual electronic recording without leave of court or stipulation of the parties if the deposition is taken in accordance with the provisions of this rule. ~~In addition to the specific provisions of this rule, the taking of video depositions is governed by all other rules governing the taking of depositions unless the nature of the video deposition makes compliance impossible or unnecessary.~~ A deposition conducted via remote technology may be recorded via a recording technology provided by the same remote technology, as an additional recording method. The additional remote-technology recording shall be enabled by the party taking the deposition, unless otherwise agreed by the parties. A copy of any such videoconference recording shall be promptly provided to any party or the deponent upon request. The party taking the deposition shall maintain a copy of any such videoconference recording for the pendency of the action, and for a reasonable amount of time thereafter.

(d) **Role of Officer.** Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. ~~If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium.~~ The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound- recording techniques, but a background filter or other virtual background may be enabled in a deposition conducted via videoconferencing technology. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(e) **Production of Documents.** The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(f) **Notice or Subpoena Directed to an Organization.** In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. Before or promptly after the notice or subpoena is served, the serving party and the

organization must confer in good faith about the matters for examination. A subpoena must advise a non-party organization of its duty to confer with the serving party and to make such a designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (f) does not preclude a deposition by any other procedure allowed by these rules.

(g) **Remote-Technology Telephonic Depositions.** ~~The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means.~~ For the purposes of this rule and Rules 28.01, 37.01(a), 37.02(a) and 45.03, a deposition taken by ~~such means~~ remote technology is taken in the district and at the place where the deponent is to answer questions. In addition to the specific provisions of this rule, a deposition taken by remote technology is governed by all other rules governing the taking of depositions unless the nature of the remote-technology deposition makes compliance impossible or unnecessary.

Advisory Committee Comment—2025 Amendment

Rule 30.02(a) is amended to allow a party seeking to conduct a deposition to elect the method by which the deposition shall be conducted, and to allow parties to conduct depositions via remote technology. As a discretionary choice, no showing of good cause, or requirement of an agreement, or any other prerequisite is necessary prior to the noticing party's election to conduct a deposition in person or by remote technology. The new rule provides that the noticing party's election shall be the presumptive method for conducting the noticed deposition, but that a party or the deponent may rebut that presumption through a showing of good cause.

Rule 30.02(b) is amended to expressly permit the recording of remote-technology depositions via the recording technology provided by the videoconference platform, as an additional recording method. Such a recording should be viewed no differently than a recording taken by a videographer in person. The rule also makes clear that the party taking the deposition may itself enable the recording, and that there is no requirement that a certified videographer press the record button or otherwise enable the recording feature of the remote technology being utilized for the deposition.

Additionally, Rule 30.02(b) places the responsibility of maintaining a copy of any videoconference recording on the party taking the deposition. This amendment modernizes the procedure referenced in the Advisory Committee Comment to the 1993 Amendment, in which the lawyer for the party taking the deposition was to retain custody of a physical videotape.

Rule 30.02(b) is also amended to delete the statement that the taking of video depositions is governed by all other rules governing the taking of depositions unless the nature of the video deposition makes compliance impossible or unnecessary. A similar but broader statement, which includes depositions taken by any remote technology, has been added to Rule 30.02(g).

Rule 30.02(g) is further amended to delete the requirement that the Court approve a remote deposition by motion, since that may be done now on notice. Additionally, the rule provides that the officer before whom the deposition is taken need only be authorized to administer oaths in the place that the officer is present, rather than restricting the officer to one who is authorized to administer oaths in the jurisdiction in which the deposition is deemed taken.

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