

STATE OF MINNESOTA
IN SUPREME COURT
ADM04-8001

FILED

June 29, 2020

**OFFICE OF
APPELLATE COURTS**

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

In a report filed on June 4, 2019, the Advisory Committee on the Rules of Civil Procedure recommended that amendments be made to the rule governing documents submitted for filing with the district court that include confidential information, restricted identifiers, or other non-public information, amending as well the stated reasons for rejecting such filings. *See* Minn. R. Civ. P. 5.04(c). The Advisory Committee also recommended amendments to Rule 3.01, to clarify service of a summons and complaint by delivery to a sheriff, and the use of certified mail for the process authorized by Rule 67.

We opened a public comment period and received several written comments. Having carefully considered the Advisory Committee's recommendations and the reasons for the proposed amendments, as well as the related amendments recommended by the advisory committees for the General Rules of Practice for the District Courts and the Rules of Public Access to Records of the Judicial Branch and the written comments filed regarding those proposed amendments, we conclude that the Advisory Committee's recommended amendments will clarify filing and service procedures.

Based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Rules of Civil Procedure are prescribed and promulgated as shown below.

2. The amendments to Rule 3.01 and Rule 67.02 are effective as of September 1, 2020, and shall apply to all cases filed on or after that date.

3. The amendments to Rule 5.04 are effective as of January 1, 2021, and shall apply to all documents filed on or after that 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 case. *See* Minn. R. Civ. P. 86.01(b).

4. The Advisory Committee comments are included for convenience and do not reflect court approval of the comments.

Dated: June 29, 2020

BY THE COURT:



Lorie S. Gildea
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.]

RULE 3. COMMENCEMENT OF THE ACTION; SERVICE OF THE COMPLAINT; FILING OF THE ACTION

3.01. Commencement of the Action

A civil action is commenced against each defendant:

- (a) when the summons is served upon that defendant; or
- (b) at the date of signing of a waiver of service pursuant to Rule 4.05; or
- (c) when the summons is delivered ~~for service~~ to the sheriff in the county where the defendant resides ~~for service~~personally, by U.S. Mail (postage prepaid), by commercial courier with proof of delivery, or by electronic means consented to by the sheriff's office either in writing or electronically; but such delivery shall be ineffectual unless within 60 days thereafter the summons is actually served on that defendant or the first publication thereof is made.

Filing requirements are set forth in Rule 5.04, which requires filing with the court within one year after commencement for non-family cases.

Advisory Committee Comments—2020 Amendments

Rule 3.01 is amended to clarify the forms of delivery to sheriffs that may be used to commence an action. It does not restrict or change how service on the defendant is accomplished.

The committee expects that most sheriffs will make available on their websites or will provide information upon inquiry as to how they prefer to receive requests for service under this rule. Transmittal by U.S. Mail is expressly authorized, and a party may use Certified Mail, Return Receipt Requested in order to obtain proof of receipt. The rule also authorizes delivery to the sheriff by commercial courier (e.g., Federal Express, UPS), which may be most effective in getting the required documents in the sheriff's hands and would also create a record of delivery (although the rule does not require a proof of delivery).

The amended rule intentionally does not authorize delivery to the sheriff in the proper county by facsimile. As anachronistic and inconvenient as facsimile is for most purposes in 2020, it is particularly ill-suited for this purpose. Minn. R. Civ. P. 3.02 requires service of the complaint with the summons and that may result in lengthy facsimile transmissions. Moreover, faxes impose undue burdens on sheriffs' offices. Sheriffs in most counties will accept delivery by hand delivery, U.S. Mail, commercial courier, or email to a designated email address.

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RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER DOCUMENTS

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5.04. Filing; Certificate of Service

(a) **Deadline for Filing Action.** Any action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties unless the parties within that year sign a stipulation to extend the filing period. This paragraph does not apply to family cases governed by rules 301 to 378 of the General Rules of Practice for the District Courts.

(b) **Filing of Documents After the Complaint; Certificate of Service.** All documents after the complaint required to be served upon a party, together with a certificate of service specifying the details of how and when service was accomplished and signed under oath or penalty of perjury by the person effecting service, shall be filed with the court within a reasonable time after service, except disclosures under Rule 26, expert disclosures and reports, depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless authorized by court order or rule. If a document is electronically filed and electronically served together using the district court's e-service system, no separate proof of service is required.

(c) **Rejection of Filing.** The administrator shall not refuse to accept for filing any ~~documents~~ document presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices. Documents may be rejected for filing if:

- (1) tendered without a required filing fee or a correct assigned file number;
- (2) tendered to an administrator other than for the court where the action is pending; ~~or~~
- (3) the document constitutes a discovery request or response submitted without the express permission of the court; or
- (4) the document contains a restricted identifier or other non-public information submitted in violation of Rules 11.02, 11.03, or 11.04 of the General Rules of Practice for the District Courts. This clause (4) shall not apply to criminal, civil commitment, juvenile protection, or juvenile delinquency cases, or to medical records in any type of case.

(d) **Relation Back.** On motion and in the interests of justice, the court may deem a filing rejected under paragraphs (c)(1) and (c)(4) of this rule to be filed as of the time and date it was originally tendered to the appropriate administrator for filing.

Advisory Committee Comment—2020 Amendments

Rule 5.04(b) is amended to expressly require that proof of service be provided either by: (1) both eFiling and eServing a document together using the court's e-Filing System (with the system-generated proof of service eliminating the need to file separate proof of service); or (2) by filing a separate

certificate of service. The amended rule specifies that a certificate of service must be signed under oath or penalty of perjury by the person effecting service. The certificate must also establish the specific time and manner of services, as this information is often required to determine the deadline for response.

Rule 5.04(c) is amended to add the new subdivision (4), to authorize court administrators to reject for filing any document containing restricted identifiers or other information that may not properly be filed in a public document. The specific definitions of what information may not be filed are contained in Rules 11 and 14 of the Minnesota General Rules of Practice for the District Courts.

Rule 5.04(d) is new and is intended to prevent a rejection for filing from having case-ending or other severe consequences for a timely attempt to file a document that contains non-public information. Relief is not automatic under the rule, and in most cases the document will not be deemed filed until a version that complies with the rules is filed. If the filing date is crucial, however, the rule authorizes a motion to have the filing of a compliant version deemed filed as of the time of the original attempted filing. The rule requires that the moving party demonstrate that relief is required "in the interests of justice." This standard does not focus on whether there is a good excuse for the initial, non-compliant document being tendered for filing so much as whether the consequences of rejection are severe or irreparable. This might occur for those relatively rare cases where an action is commenced by filing the complaint. *See, e.g.*, Minn. Stat. § 514.11 (requiring timely filing of mechanic's lien foreclosure action).

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VII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

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RULE 67. DEPOSIT IN COURT

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67.02. When No Action is Brought

When money or other personal property in the possession of any person, as bailee or otherwise, is claimed adversely by two or more other persons, and the right thereto as between such claimants is in doubt, the person in possession, though no action is commenced against that person by any of the claimants, may place the property in the custody of the court. The person in possession shall apply to the court of the county in which the property is situated, setting forth by petition the facts which bring the case within the provisions of this rule, and the names and places of residence of all known claimants of such property. If satisfied of the truth of such showing, the court, by order, shall accept custody of the money or other property, and direct that, upon delivery and upon giving notice thereof to all persons interested, personally or by ~~registered~~ certified mail as prescribed in such order, the petitioner is relieved from further liability on account thereof. This rule shall apply to cases where property held under like conditions is garnished in the hands of the possessor; but in such cases the application shall be made to the court in which the garnishment proceedings are pending.

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Advisory Committee Comment—2020 Amendments

Rule 67.02 is amended to remove the requirement that notice by mail be given by registered mail. The archaic specification of mailing by registered mail imposes only additional expense. Use of certified mail provides a record of the actual delivery, which is what is needed for the notice under this rule. The court may, but need not, require that delivery be restricted to the particular person or entity entitled to notice. A party serving notice under the rule may use certified mail with return receipt requested in order to obtain evidence of receipt, and may have the postal service restrict delivery to a particular individual. If service is to be made pursuant to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, as allowed under Rule 4.04(c)(1), a different form of service may be required.