

STATE OF MINNESOTA
IN SUPREME COURT
ADM04-8001



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

In a report filed September 8, 2020, the Advisory Committee on the Rules of Civil Procedure recommended amendments to the rules to update and clarify several provisions. We opened a public comment period and received several written comments. One comment was filed, by the Minnesota State Bar Association, which supports the committee's recommended amendments. Having carefully considered the Advisory Committee's recommendations and the reasons for the proposed amendments, as well as the comments filed by the Minnesota State Bar Association, we agree with the Advisory Committee that the recommended amendments will provide useful clarification and updates to the rules.

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. The amendments are effective as of July 1, 2021, and 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 case. *See* Minn. R. Civ. P. 86.01(b).

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

Dated: February 24, 2021

BY THE COURT:

A handwritten signature in black ink, appearing to read "G. Barry Anderson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

G. Barry Anderson
Associate 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 4. SERVICE

4.01. Summons; Form

The summons shall state the name of the court and the names of the parties, be subscribed by the plaintiff or by the plaintiff's attorney, give an address within the ~~state~~United States where the subscriber may be served in person and by mail, state the time within which these rules require the defendant to serve an answer, and notify the defendant that if the defendant fails to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

Advisory Committee Comments—2021 Amendments

Rule 4.01 is amended to remove the requirement that a plaintiff have a Minnesota address for mail and personal service. The committee believes that this provision suited the needs of a different time, and that no compelling reason exists to require a Minnesota address to commence litigation. The committee believes that any address in the United States would provide a workable means of effecting either personal or mailed service. This conclusion is particularly applicable to signing of a summons by a member of the Minnesota Bar who may happen to have an office outside of Minnesota.

With the implementation of e-filing and e-service, the role of this requirement for an address for the signer of the summons is undoubtedly diminished. This provision nonetheless is an important backstop to e-service for cases where the plaintiff is either self-represented or represented by an attorney licensed in Minnesota but not maintaining an office in Minnesota.

* * *

RULE 26. DUTY TO DISCLOSE; GENERAL PROVISIONS GOVERNING DISCOVERY

* * *

26.05. Supplementation of Disclosures and Responses

(a) In General. A party who has made a disclosure under Rule 26.01—or who has responded to a request for discovery an interrogatory, request for production, or request for admission—must ~~is under a duty to~~ supplement or correct the its disclosure or response to include information thereafter acquired if ordered by the court or in the following circumstances:

(1) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing;
or

(2) as ordered by the court.

(b) *Expert Witness.* For an expert whose report must be disclosed under Rule 26.01(b)(2), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 26.01(c) are due.

~~A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert, the duty extends to information contained in interrogatory responses, in any report of the expert, and to information provided through a deposition of the expert.~~

Advisory Committee Comments—2021 Amendments

Rule 26.05 is amended to apply the rule's duty to supplement to initial and expert disclosures as well as other discovery responses. The amendments are substantially modeled on Fed. R. Civ. P. 26(e).

* * *

26.07. Signing of Disclosure and Discovery Requests, Responses, and Objections

~~In addition to the requirements of Rule 33.01(d), every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address and e-mail address shall be stated. A self-represented litigant shall sign the request, response, or objection and state the party's address and e-mail address. The signature constitutes a certification that the attorney or party has read the request, response, or objection, and that to the best of the signer's knowledge, information and belief formed after a reasonable inquiry it is:~~

(a) *Signature Required; Effect of Signature.* Every disclosure under Rule 26.01(a) or 26.01(c) and every discovery request, response, or objection must be signed by a least one attorney of record in the attorney's own name—or by the party personally if self-represented—and must state the signer's address, e-mail address, and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(1) _____ with respect to a disclosure, it is complete and correct as of the time it is made;

and

(2) _____ with respect to a discovery request, response, or objection, it is:

(A) _____ consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) _____ not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) _____ not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(b) Failure to Sign. Other parties have no duty to act on an unsigned disclosure. If a request, response, or objection ~~until it is not signed, and the court must strike it shall be stricken~~ unless ~~it is signed~~ a signature is promptly supplied after the omission is called to the attorney's or party's attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

(c) Sanction for Improper Certification. If a certification is ~~made in violation of this rule, the court, upon motion or upon its own initiative, shall~~ must impose an appropriate sanction on the signer, upon the person who made the certification, the party on whose behalf the signer was acting, response, or objection is made, or both. ~~The an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable attorney's fees, caused by the violation.~~

Advisory Committee Comments—2021 Amendments

Rule 26.07 is amended to extend the signing requirement for automatic disclosures under Rule 26.01 and to conform to the federal rule, Fed. R. Civ. P. 26(g)'s, guidance on the effect of an unsigned disclosure or discovery response and the potential sanction for violating the rule.

* * *

RULE 45. SUBPOENA

* * *

45.04. Duties in Responding to Subpoena

* * *

(b) **Claims of Privilege.**

- (1) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (2) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve

it. The person who produced the information must preserve the information until the claim is resolved.

- (3) For depositions taken in Minnesota under Rule 45.06 in connection with litigation pending in another jurisdiction, the procedure for assertion of claims of privilege is governed by Rule 45.04(b). The law of privilege, or other questions of substantive law, to be applied in such a deposition depends on the application of Minnesota's conflict-of-law principles.

Advisory Committee Comment—2021 Amendments

Rule 45.04 is amended to clarify the application of privilege law in depositions taken under Rule 45.06 for depositions taken for litigation pending in a jurisdiction outside of Minnesota. The procedure for obtaining or issuance of a subpoena under Rule 45.06 is governed by Minnesota law, but the rule is amended to make it clear that in situations involving a conflict of substantive law, such as whether a question is governed by a recognized privilege, resolution depends on the application of Minnesota's conflict-of-law principles. This analysis might, in some cases, require the application of another jurisdiction's substantive law. *See, e.g., Milkovich v. Saari*, 295 Minn. 155, 161–71, 203 N.W.2d 408, 414–17 (1973); *see generally* William B. Danforth, *Developments in the Minnesota Law of Conflict of Laws*, 8 Wm. Mitchell L. Rev. 785 (1982).

Rule 45.06 itself is amended to provide for the issuance of a subpoena by a Minnesota attorney of record in a case, obviating issuance of the subpoena by the court administrator. This procedure is already allowed for subpoenas in cases pending in Minnesota state courts. The rule does not modify in any way the requirements for issuance of a subpoena; it merely allows a Minnesota attorney to sign and issue it if those requirements are met.

* * *

Rule 45.06. Interstate Depositions and Discovery

* * *

(b) Issuance of Subpoena.

- (1) To request issuance of a subpoena by the court administrator under this section, a party must submit a foreign subpoena to the district court administrator of the court in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this act does not constitute an appearance in a proceeding pursuant to Rule 5.01 of these rules, but does subject the filer to the jurisdiction of the court and to Minnesota law and rules, including the Minnesota Rules of Professional Conduct. Alternatively, an attorney admitted to practice in Minnesota as an officer of the court may issue and sign a subpoena pursuant to this rule and Rule 45.01(c).
- (2) A district court administrator in this state, upon submission of a foreign subpoena, shall, in accordance with that court's procedure, promptly issue

a subpoena for service upon the person to which the foreign subpoena is directed.

- (3) A subpoena under Rule 45.06(b) ~~subsection (1) or (2)~~ must:
- (A) incorporate the terms used in the foreign subpoena; and
 - (B) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.
- (c) **Service of Subpoena.** A subpoena issued ~~by a district court administrator~~ under Rule 45.06(b) ~~Section (b)~~ must be served in compliance with Rule 45.02 of these rules.
- (d) **Deposition, Production, and Inspection.** All Minnesota rules and statutes applicable to compliance with subpoenas to attend and give testimony, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises apply to subpoenas issued under Rule 45.06(b) ~~Paragraph (b)~~. Resolution of substantive issues about privilege, competence of a witness, or the obligation of a witness to answer particular questions depends on the application of Minnesota's conflict-of-law principles under Rule 45.04(b)(3).
- (e) **Application To Court.** An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a district court administrator under Rule 45.06(b) ~~Paragraph (b)~~ must comply with the rules and statutes of this state and be submitted to the district court in the county in which discovery is to be conducted.

Advisory Committee Comment—2021 Amendments

Rule 45.06 is amended in two important ways. The amended rule extends the authority for Minnesota attorneys to sign and issue subpoenas to those used for discovery for cases pending in other states. The rule does not modify the procedural prerequisites for issuance of a Minnesota subpoena, other than allowing a Minnesota lawyer to take those steps and issue the subpoena. This authority to issue subpoenas is not extended to self-represented litigants.

* * *

RULE 55. DEFAULT

55.01. Judgment

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed therefor by these rules or by statute, and that fact is made to appear by affidavit, judgment by default shall be entered against that party as follows:

* * *

- (d) When service of the summons has been made by published notice, or by delivery of a copy outside the state, default judgment must not be entered until the plaintiff, if required by the court, has filed a court-approved bond that conforms to a court order regarding the restitution of the property obtained from the judgment if a defense is later permitted and sustained. A bond is not required in actions involving the title to real estate or to foreclose mortgages or other liens ~~judgment shall be entered on default until the plaintiff shall have filed a bond, approved by the court, conditioned to abide such order as the court may make concerning restitution of any property collected or obtained by virtue of the judgment in case a defense is thereafter permitted and sustained; provided, that in actions involving the title to real estate or to foreclose mortgages thereon such bond shall not be required.~~

* * *

Advisory Committee Comment—2021 Amendments

Rule 55.01(d) is amended to make it clearer and to update the phrasing of the provisions in the rule. This amended rule is modeled on N.D.R.Civ.P. 55(a)(4). The provision for a bond as a potential prerequisite for obtaining a default judgment is important where service has been made by publication or service outside Minnesota. The amended rule recognizes, however, that a bond may be of little value if the judgment creditor was of sufficient financial standing that requiring a bond would only impose additional expense in the case, and would offer no additional security to the defaulting defendant.

RULE 59. NEW TRIALS

* * *

59.04. Time for Serving Affidavits

When a motion for a new trial is based upon affidavits, they shall be served with the notice of motion. The opposing party shall have 14 days after such service in which to serve opposing affidavits, which period may be extended by the court pursuant to Rule 59.03. The court may permit reply affidavits. Except as limited by Rule 59.03, the deadlines for serving any permitted affidavits may be established or modified by order under Minn. Gen. R. Prac. 115.01(c).

Advisory Committee Comment—2021 Amendments

Rule 59.04 is amended to specify that the deadlines for service of affidavits relating to a motion for a new trial may be modified by order of the court. The deadlines contained in Rule 59.04 are presumptively appropriate while the deadlines in Rule 59.03 are controlling.