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STATE OF MINNESOTA

IN SUPREME COURT

ADM04-8001

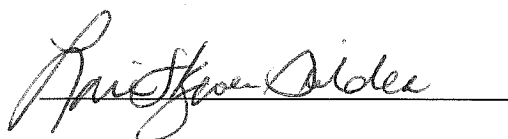
**ORDER ESTABLISHING DEADLINE FOR
SUBMITTING COMMENTS ON PROPOSED
AMENDMENTS TO THE MINNESOTA RULES
OF CIVIL PROCEDURE, GENERAL RULES OF
PRACTICE, AND RULES OF PUBLIC ACCESS
TO RECORDS OF THE JUDICIAL BRANCH, FOR
MANDATORY E-FILING AND E-SERVICE PILOT PROJECT**

The Minnesota Supreme Court Advisory Committee on the Rules of Civil Procedure filed a report on February 3, 2012, proposing amendments to the Minnesota Rules of Civil Procedure, General Rules of Practice for the District Courts, and the Rules of Public Access to Records of the Judicial Branch related to a mandatory e-filing and e-service pilot project. This court will consider the proposed amendments after soliciting and reviewing comments on the proposal.

IT IS ORDERED that any individual wishing to provide written statements in support of or opposition to the proposed amendments shall submit twelve copies addressed to Bridget Gernander, Clerk of the Appellate Courts, 25 Rev. Martin Luther King Jr. Blvd., St. Paul, MN 55155, no later than March 26, 2012. A copy of the committee's report is annexed to this order.

Dated: February 8, 2012

BY THE COURT:



Lorie S. Gildea
Chief Justice

**ADM04-8001
STATE OF MINNESOTA
IN SUPREME COURT**

In re:

**Supreme Court Advisory Committee
on Rules of Civil Procedure**

**Recommendations of Minnesota Supreme Court
Advisory Committee on Rules of Civil Procedure**

**Final Report
February 3, 2012**

**Hon. Francis J. Connolly
Chair**

**Hon. Christopher J. Dietzen
Liaison Justice**

**James Attwood, Preston
Stephanie A. Ball, Duluth
Paul A. Banker, Minneapolis
Kenneth H. Bayliss, III, St. Cloud
Charles A. Bird, Rochester
James P. Carey, Minneapolis
Rita Coyle DeMeules, Saint Paul
Amy J. Doll, Morris
Larry D. Espel, Minneapolis
Katherine S. Flom, Minneapolis**

**Thomas Fraser, Minneapolis
Phillip Gainsley, Minneapolis
Hon. Mary E. Hannon, Stillwater
Hon. David Higgs, Saint Paul
Richard A. Lind, Minneapolis
James F. Mewborn, Minneapolis
Thomas J. Radio, Minneapolis
Hon. Susan M. Robiner, Minneapolis
Hon. Galen Vaa, Moorhead
Hon. Mary R. Vasaly, Minneapolis**

**Michael B. Johnson, Saint Paul
Staff Attorney**

**David F. Herr, Minneapolis
Reporter**

ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

Summary of Committee Recommendations

The committee met to consider the proposal of the Fourth and Second Judicial District Courts entitled E-Filing Pilot Project, Proposal to the MN Supreme Court, Mandatory E-Filing Environment for Selected Civil Cases, dated October 21, 2011, and a supplemental report of the same name dated November 22, 2011. The committee met on several occasions with representatives of both the Fourth and Second Judicial District Courts and thoroughly addressed its questions regarding the intended operation of a mandatory e-filing and e-service environment (sometimes referred to collectively as “E-file”).

The committee believes that, given the number of actions that would be subject to mandatory use of E-file and the intention that this pilot project will lead to eventual statewide adoption, the rules for electronic filing and service should be set forth in rules of court, and not only in a pilot project order. The committee also adopted the twin drafting goals of having as many provisions as possible apply to both the traditional paper filing and service and the E-file systems and where the same rules did not apply, to locate the applicable rules together and in the same structure.

As a result of its deliberations, the committee believes that it is appropriate to implement the mandatory E-file pilot project by amending rules 5 and 6 of the Minnesota Rules of Civil Procedure (dealing with service of papers after the summons and filing, respectively) and by adopting a new rule 14 of the Minnesota General Rules of Practice to address many of the details of the E-file system. The committee also recommends making conforming changes to rule 11 (signing of pleadings) and 77.04 (notice by court administrators) of the civil rules and to rules 6 (form of pleadings), 7 (proof of service), 11 (submission of confidential

information), and 13 (requirement of advising court and parties of current address) of the general rules. The committee also recommends that the Rules of Access to Records of the Judicial Branch be amended to make it clear how electronic records that are electronically filed are treated for the purpose of remote (i.e., internet) access.

The committee has not comprehensively reviewed the technical requirements and capabilities being implemented with this pilot project, and has not been asked to do so. It is clear to the committee, however, that several features being implemented now should be reviewed for potential change as the process moves forward. The committee suggests that the following issues be reviewed at an appropriate time:

1. The current e-filing system requires attorneys to register for each case. When e-filing and e-service become the standard in the trial courts, or perhaps sooner, it would be much less cumbersome if mere appearance in a case, or identification as counsel of record, would automatically register the attorney for use of e-filing and e-service. This should become an integral part of membership in the bar or pro hac vice admission.

2. The storage of all e-filed documents as “.tif” or “TIFF” files is clearly not ideal. TIFF files record images of documents, and not the digital representation of the text, and are not searchable by the court or other users. Text cannot be readily cut and pasted in this format. Searchable PDF files are probably a superior format for court records, and are required for e-filing in federal court. Moving toward a widely-accepted and standard format would appear worthwhile.

Effective Date

The committee discussed the implementation process for these rules, and believes that the effective date should be at least 90 days after the court’s order

adopting the rules. The effective date itself is less important in the eyes of the committee than the allowance of sufficient time between an order adopting the rules and the effective date for users of the system to obtain the required training and familiarity with the operation of the system. Although the pilot project involves “only” two districts, it will require participation from users throughout Minnesota, and beyond.

Style of Report

The specific recommendation as to the existing rule is depicted in traditional legislative format, completely underscored to indicate new language and ~~lined through~~ to show deletions. Markings are omitted for the new advisory committee comments, regardless of their derivation.

Respectfully submitted,

MINNESOTA SUPREME COURT
ADVISORY COMMITTEE ON RULES
OF CIVIL PROCEDURE

Recommendation 1: Amend Minnesota Rules of Civil Procedure 5, 6, 11, and 77, and Minnesota General Rules of Practice 6, 7, 11, and 13, and adopt a new general rule 14 as set forth below.

Introduction

The committee recommends the following rule changes to implement a pilot project to adopt mandatory use of electronic filing and electronic service by attorneys and government agencies in certain categories of civil actions in the pilot districts, currently the Second and Fourth Judicial Districts. The committee has not independently designed or recommended how this expanded e-filing project should be implemented, but believes these rules will provide a mechanism for implementation that the committee believes will provide appropriate guidance to the courts and litigants on the procedures to be followed.

These rules comprise a single primary recommendation on e-filing and e-service, including amendments to four rules of civil procedure and four general rules of practice, and include an entirely new Rule 14 of the Minnesota General Rules of Practice. This new rule is derived in substantial part from provisions of the existing Judicial District E-Filing Pilot Project Provisions, adopted by the court on October 21, 2010, and amended on March 10, 2011. If the court adopts the recommendations in this report, those separate e-filing provisions can be vacated in their entirety.

It is important to note that the mandatory nature of e-filing and e-service applies only to attorneys and government agencies at this time. Pro se parties are

not mandated to use e-filing and e-service. The result is that there could be mixtures of e-filing and e-service with traditional paper filing and service in the same case.

The committee also recommends two other amendments that can be implemented without regard to the implementation of electronic filing and service. First, the committee believes the court should consider collecting e-mail addresses for attorneys using the court system. Second, the committee believes that for the purposes of public access, the status of electronic records when filed with the court should be clarified. This recommendation should be implemented to deal with documents being filed under the current pilot project provisions as well as those that may be voluntarily filed in any court.

The intent of these amendments is to adopt rules that will work during both the current pilot project and any expansion of that project or eventual statewide adoption of e-filing and e-service. The committee's drafting approach attempts to have rule provisions for e-filing and e-service mirror existing provisions for traditional paper service and filing.

Specific Recommendations

Rule 5, 6, 11, and 77 of the Minnesota Rules of Civil Procedure and Rules 6, 7, 11, and 13 of the Minnesota General Rules of Practice should be amended and a new Rule 14 of the Minnesota General Rules of Practice should be adopted as set forth below:

1 **MINNESOTA RULES OF CIVIL PROCEDURE**

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3 **RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS**

4 **Rule 5.01. Service; When Required; Appearance**

5 Except as otherwise provided in these rules, every order required by its terms to
6 be served, every pleading subsequent to the original complaint unless the court otherwise
7 orders because of numerous defendants, every written motion other than one that may be
8 heard ex parte, and every written notice, appearance, demand, offer of judgment,
9 designation of record on appeal, and similar paper shall be served upon each of the
10 parties. No service need be made on parties in default for failure to appear except that
11 pleadings asserting new or additional claims for relief against them shall be served upon
12 them in the manner provided for service of summons in Rule 4. A party appears when
13 that party serves or files any paper in the proceeding.

14 **Rule 5.02. Service; How Made**

15 **(a) Methods of Service.** Whenever under these rules service is required or
16 permitted to be made upon a party represented by an attorney, the service shall be made
17 upon the attorney unless service upon the party is ordered by the court. Written
18 admission of service by the party or the party's attorney shall be sufficient proof of
19 service. Service upon the attorney or upon a party shall be made by delivering a copy to
20 the attorney or party; transmitting a copy by facsimile machine to the attorney or party's
21 office; or by mailing a copy to the attorney or party at the attorney's or party's last known
22 address or, if no address is known, by leaving it with the court administrator. Delivery of
23 a copy within this rule means: Handing it to the attorney or to the party; or leaving it at
24 the attorney's or party's office with a clerk or other person in charge thereof; or, if there
25 is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or
26 the person to be served has no office, leaving it at the attorney's or party's dwelling
27 house or usual place of abode with some person of suitable age and discretion then
28 residing therein. If service is either authorized or required to be made by electronic
29 means by these rules, delivery shall be accomplished by compliance with subdivision (b)
30 of this rule.

31 **(b) E-Service.** Service of all papers after the original complaint may, and where
32 required by these rules shall, be made by electronic means other than facsimile
33 transmission if authorized by Rule 14 of the Minnesota General Rules of Practice and if
34 service is made in accordance with that rule. ~~Service by authorized electronic means is~~
35 ~~complete upon completion of the electronic transmission.~~

36 **(c) Effective Date of Service.** Service by mail is complete upon mailing.
37 Service by facsimile is complete upon completion of the facsimile transmission. Service
38 by authorized electronic means is complete upon completion of the electronic
39 transmission.

40 (d) Technical Errors; Relief for Sending Party. Upon satisfactory proof that
41 electronic filing or electronic service of a document was not completed because of:

42 (1) an error in the transmission of the document to the authorized electronic filing
43 and service system that was unknown to the sending party;

44 (2) a failure of the system to process the document when received, or

45 (3) other technical problems experienced by the sending party or system, the court
46 may enter an order permitting the document to be deemed filed or served as of the date it
47 was first attempted to be transmitted electronically. If appropriate, the court may adjust
48 the schedule for responding to these papers or the court's hearing.

49 **Rule 5.03. Service: Numerous Defendants**

50 If the defendants are numerous, the court, upon motion or upon its own initiative,
51 may order that service of the pleadings of the defendants and replies thereto need not be
52 made as between the defendants and that any cross-claim, counterclaim, or matter
53 constituting an avoidance or affirmative defense contained therein shall be deemed to be
54 denied or avoided by all other parties and that the filing of any such pleading with the
55 court and service thereof upon the plaintiff constitutes due notice of it to the parties. A
56 copy of every such order shall be served upon the parties in such manner and form as the
57 court directs.

58 **Rule 5.04. Filing; Certificate of Service**

59 All papers after the complaint required to be served upon a party, together with a
60 certificate of service, shall be filed with the court within a reasonable time after service,
61 except expert disclosures and reports, depositions upon oral examination and
62 interrogatories, requests for documents, requests for admission, and answers and
63 responses thereto shall not be filed unless upon order of the court or for use in the
64 proceeding.

65 The administrator shall not refuse to accept for filing any paper presented for that
66 purpose solely because it is not presented in proper form as required by these rules or any
67 local rules or practices. Papers may be rejected for filing if tendered without a required
68 filing fee or a correct assigned file number, or are tendered to an administrator other than
69 for the court where the action is pending.

70 **Rule 5.05. Filing; Facsimile Transmission**

71 Except where filing is required by electronic means by rule of court, Any paper
72 may be filed with the court by facsimile transmission. Filing shall be deemed complete at
73 the time that the facsimile transmission is received by the court and the filed facsimile
74 shall have the same force and effect as the original. Only facsimile transmission
75 equipment that satisfies the published criteria of the Supreme Court shall be used for
76 filing in accordance with this rule.

77 Within five days after the court has received the transmission, the party filing the
78 document shall forward the following to the court:

- 79 (a) a \$25 transmission fee for each 50 pages, or part thereof, of the filing;
80 (b) any bulky exhibits or attachments; and
81 (c) the applicable filing fee or fees, if any.

82 If a paper is filed by facsimile, the sender's original must not be filed but must be
83 maintained in the files of the party transmitting it for filing and made available to the
84 court or any party to the action upon request.

85 Upon failure to comply with the requirements of this rule, the court in which the
86 action is pending may make such orders as are just, including but not limited to, an order
87 striking pleadings or parts thereof, staying further proceedings until compliance is
88 complete, or dismissing the action, proceeding, or any part thereof.

89 **Rule 5.06. Filing Electronically**

90 Where authorized or required by rule promulgated by the Minnesota Supreme
91 Court, papers may be filed electronically by following the procedures of such rules and
92 will be deemed filed in accordance with the provisions of ~~that order~~ this rule.

93 **Advisory Committee Comment—2012 Amendment**

94 Rule 5.02 is amended to authorize service by use of an authorized e-filing
95 and e-service system where allowed or required by court rule or supreme court
96 order. This amendment takes effect in conjunction with the adoption of Rule
97 14 of the general rules of practice; that rule defines the cases in which
98 electronic filing and service are either required or permitted. Rule 5.02(d)
99 provides specific guidance for courts dealing with the rare, but probably
100 inevitable, circumstance of the e-filing system either not being available or not
101 functioning as intended. If applicable, the rule authorizes the court to deem
102 pleadings served or filed (or both) when attempted and to adjust the time to
103 respond as appropriate.
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105 Rule 5.04 is amended to specify the limited situations where courts are
106 not required to accept papers tendered for filing. These situations apply equally
107 to papers tendered for filing electronically, by mail, or by hand-delivery to the
108 court. Rejection for filing is not required in each of these situations, and it may
109 be possible that certain format defects might be “fixed” at the time of filing.
110 For example, if an incorrect file number is used on a document and it is
111 detected at the time of attempted filing, it might be corrected; the administrator
112 is still authorized to reject it for filing. An attempt to file a case using a new
113 case number when the case has previously been filed may also be treated as not
114 having the correct file number.

115 Rule 5.05 is amended to dovetail the facsimile filing and service
116 provisions to mandatory use of e-filing and e-service in certain cases. Where
117 the court rules require e-filing and e-service, filing and service by facsimile are
118 not authorized. When e-filing and e-service are in use throughout the state and

119 in all categories of cases, facsimile filing and service is likely to become
120 unavailable.
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RULE 6. TIME

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6.01. Computation

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(a) Computation of Time Periods. In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a

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- Saturday,
- Sunday,
- legal holiday, or,
- when the act to be done is the filing of a paper in court, a day on which weather or other conditions result in the closing of the office of the court administrator of the court where the action is pending, or
- where filing or service is either permitted or required to be made electronically, the computer system used by the court for electronic filing and service is unavailable,

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in which event the period runs until the end of the next day that is not one of the aforementioned days.

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(b) Periods Shorter than 7 Days. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

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(c) Definition of Legal Holiday. As used in this rule and in Rule 77(c), “legal holiday” includes any holiday designated in Minn. Stat. § 645.44, subd. 5, as a holiday for the state or any state-wide branch of government and any day that the United States Mail does not operate.

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6.05. Additional Time After Service by Mail or Service Late in Day

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Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party, and the notice or paper is served upon the party by United States Mail, three days shall be added to the prescribed period. If service is made by any means other than

154 United States Mail and accomplished after 5:00 p.m. local time on the day of service, one
155 additional day shall be added to the prescribed period.

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Advisory Committee Comment—2012 Amendment

Rule 6.01 is amended to add unavailability of the court-authorized e-filing and e-service system as a circumstance that would result in the extension of the time period. This extension applies only where the system problem occurs on the last day of the period and should only apply where the problem is not momentary.

164 **RULE 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS;**
165 **REPRESENTATIONS TO COURT; SANCTIONS**

166 **Rule 11.01. Signature**

167 Every pleading, written motion, and other paper shall be signed by at least one
168 attorney of record in the attorney’s individual name, or, if the party is not represented by
169 an attorney, shall be signed by the party. Each paper shall state the signer’s address and
170 telephone number, if any, and attorney registration number if signed by an attorney.
171 Except when otherwise specifically provided by rule or statute, pleadings need not be
172 verified or accompanied by affidavit. An unsigned paper shall be stricken unless
173 omission of the signature is corrected promptly after being called to the attention of the
174 attorney or party. If authorized by order of the Minnesota Supreme Court, a paper filed,
175 signed, or verified by electronic means in accordance with that order constitutes a signed
176 paper for the purposes of applying these rules.

177 The filing or submitting of a document using an E-Filing System established by
178 rule of court, constitutes certification of compliance with the signature requirements of
179 applicable court rules.

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181 **Rule 11.04. Inapplicability to Discovery**

182 Rules 11.01-.03 do not apply to discovery requests, responses, objections, and
183 motions that are subject to the provisions of Rules 26 through 37.

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Advisory Committee Comment—2012 Amendment

Rule 11.01 is amended to add the second paragraph. The sole purpose of the amendment is to make explicit the status of “signatures” affixed to pleadings and other papers that are electronically served. Whatever means is used to sign these papers, whether quill pen and ink, facsimile of a signature, or an indication that the document is signed (such as a “/s/ Pat Smith” notation), each will be treated the same way and deemed to be signatures for all purposes under the rule.

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RULE 77. DISTRICT COURTS AND COURT ADMINISTRATORS

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Rule 77.04. Notice of Orders or Judgments

Immediately upon the filing of an order or decision or entry of a judgment, the court administrator shall ~~serve~~ transmit a notice of the filing or entry by mail, e-mail, or by use of an e-filing and e-service system, ~~upon~~ to every party affected thereby or upon such party's attorney of record, whether or not such party has appeared in the action, at the party or attorney's last known mail or e-mail address, and shall ~~make a notice~~ note the transmission in the court records. ~~, but such a~~ Notice under this rule shall not limit the time for taking an appeal or other proceeding on such order, decision, or judgment.

Advisory Committee Comment—2012 Amendment

Rule 77.04 is amended to permit any notice required by the rule to be sent by electronic means in all cases. Although this will necessarily occur in cases using mandatory e-filing and e-service, the rule permits court administrators to use e-mail or electronic noticing in any other case where it is feasible.

212 **MINNESOTA GENERAL RULES OF PRACTICE**

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214 **RULE 6. FORM OF PLEADINGS**

215 **Rule 6.01. Format**

216 All pleadings or other papers required to be filed shall be double spaced and
217 legibly handwritten, typewritten, or printed on one side on plain unglazed paper of good
218 texture. Every page shall have a top margin of not less than one inch, free from all
219 typewritten, printed, or other written matter. Any pleading or paper either permitted or
220 required to be served or filed electronically must conform to the format requirements
221 contained in the court rules or orders relating to electronic filing.

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223 **Advisory Committee Comment—2012 Amendment**

224 Rule 6.01 is amended to dovetail the requirements for the form of paper
225 pleadings, as set forth in the prior text of this rule, with the fundamentally
226 different format required for documents electronically filed and served. Those
227 format requirements are generally set forth in new Rule 14.05.
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230 **RULE 7. PROOF OF SERVICE**

231 When service has been made before filing, proofs of service shall be affixed to all
232 papers so that the identity of the instrument is not obscured. If a document is filed before
233 service, proof of service shall be filed within 10 days after service is made. When service
234 is made electronically when authorized by and in accordance with Rule 14 of these rules,
235 the record of service on the e-service system shall constitute proof of service.

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237 **Advisory Committee Comment—2012 Amendment**

238 Rule 7 is amended to make it clear that a separate proof of service is not
239 required for documents served using the court's e-service system in cases
240 where that method is authorized by the rules. Proof of service exists in the
241 system's records and that record of service suffices to prove service for all
242 purposes.
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244 **RULE 11. SUBMISSION OF CONFIDENTIAL INFORMATION**

245 **Rule 11.01. Definitions**

246 The following definitions apply for the purposes of this rule:

247 (a) "Restricted identifiers" shall mean the social security number, employer
248 identification number, and financial account numbers of a party or other person.

249 (b) “Financial source documents” means income tax returns, W-2 forms and
250 schedules, wage stubs, credit card statements, financial institution statements, check
251 registers, and other financial information deemed financial source documents by court
252 order.

253 **Rule 11.02. Restricted Identifiers**

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

257 (i) on a separate form entitled Confidential Information Form (see Form
258 11.1 as published by the state court administrator) filed with the pleading
259 or other document; or

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

261 The parties are solely responsible for ensuring that restricted identifiers do not
262 otherwise appear on the pleading or other document filed with the court. The court
263 administrator will not review each pleading or document filed by a party for compliance
264 with this rule. The Confidential Information Form shall not be accessible to the public.

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

271 **Rule 11.03. Sealing Financial Source Documents**

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

281 **Rule 11.04. Failure to Comply**

282 If a party fails to comply with the requirements of this rule in regard to another
283 individual’s restricted identifiers or financial source documents, the court may upon
284 motion or its own initiative impose appropriate sanctions, including costs necessary to
285 prepare an appropriate document for filing.

286 **Rule 11.05. Procedure for Requesting Access to Sealed Financial Source Documents**

287 (a) **Motion.** Any person may file a motion, supported by affidavit showing good
288 cause, for access to Sealed Financial Source Documents or portions of the documents.
289 Written notice of the motion shall be required.

290 (b) **Waiver of Notice.** If the person seeking access cannot locate a party to
291 provide the notice required under this rule, after making a good faith reasonable effort to
292 provide such notice as required by applicable court rules, an affidavit may be filed with
293 the court setting forth the efforts to locate the party and requesting waiver of the notice
294 provisions of this rule. The court may waive the notice requirement of this rule if the
295 court finds that further good faith efforts to locate the party are unlikely to be successful.

296 (c) **Balancing Test.** The court shall allow access to Sealed Financial Source
297 Documents, or relevant portions of the documents, if the court finds that the public
298 interest in granting access or the personal interest of the person seeking access outweighs
299 the privacy interests of the parties or dependent children. In granting access the court
300 may impose conditions necessary to balance the interests consistent with this rule.

301 **Rule 11.06. When Documents May Be Filed as Confidential or under Seal**

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303 A party may submit a document for filing as “confidential” or “under seal” only if
304 one of these circumstances exist:

305 1. The court has entered an order permitting the filing of the particular document
306 or class of documents under seal or as confidential.

307 2. This rule or any applicable court rule, court order, or statute expressly
308 authorizes or requires filing under seal or as confidential.

309 3. The party files a motion for leave to file under seal or as confidential not later
310 than at the time of submission of the paper.

311 The court may require a filing party to specify the authority for asserting that a
312 filing may be made as “confidential” or “under seal.”

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315 **Advisory Committee Comment—2012 Amendment**

316 Rule 11.06 is a new rule intended to define the procedural prerequisites
317 for filing of documents under seal. This rule is not intended to expand or limit
318 the confidentiality concerns that might justify special treatment of any
319 document. The rule is intended to make it clear that filing parties do not have a
320 unilateral right to designate any filing as confidential, and that permission from
321 the court is required. This permission may flow from a statute or rule explicitly
322 requiring that a particular document or portion of a document be filed
323 confidentially or from a court order that papers be filed under seal. Rule 112 of
324 the Minnesota Rules of Civil Appellate Procedure contains useful guidance on
325 how confidential information can be handled. Where papers contain both
326 confidential and non-confidential information, it may be appropriate to file
327 redacted “public” versions of documents filed under seal.
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331 **RULE 13. REQUIREMENT TO PROVIDE NOTICE**
332 **OF CURRENT ADDRESS**

333 **Rule 13.01. Duty to Provide Notice**
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335 In all actions, it is the responsibility of the parties, or their counsel of record, to
336 provide notice to all other parties and to the court administrator of their current address
337 for delivery of notices, orders, and other papers in the case. Where a party or a party's
338 attorney has provided an e-mail address for the purpose of allowing service or filing, this
339 rule also requires that the party advise the court and all parties of any change in that e-
340 mail address. Failure to provide this notice constitutes waiver of the right to notice until
341 a current address is provided.
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343 **Rule 13.02. Elimination of Requirement to Provide Notice to Lapsed Address**

344 In the event notices, pleadings or other papers are returned by the postal service or
345 noted as undelivered or unopened by the e-mail system after the court administrator's
346 transmission by mailing (or e-mailing where authorized by rule) to a party or attorney's
347 address of record on two separate ~~mailings~~ occasions, the administrator should make
348 reasonable efforts to obtain a valid, current address. If those efforts are not successful,
349 the administrator may omit making further ~~mailings~~ U. S. Mail transmissions to that party
350 or attorney in that action, and shall place appropriate notice in the court file or docket
351 indicating that notices are not being transmitted to all parties.

352 **Advisory Committee Comment—2012 Amendment**
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354 Rule 13.01 is amended to add the requirement that a party or attorney
355 provide an updated e-mail address any time an attorney or party has submitted
356 an e-mail address to the court. This change is intended to ensure that e-noticing
357 under Minn. R. Civ. P. 77.04 and electronic filing and service under the rules
358 will function and provide meaningful notice. Rule 13.02 is amended to make it
359 clear that the giving of e-mail notice will not be ended upon two unsuccessful
360 attempts to serve or notify by e-mail. The committee believes that there is no
361 compelling reason to stop e-mailed notices given the minimal additional cost of
362 continuing them.

**[NOTE: BECAUSE RULE 14 IS ENTIRELY NEW, UNDERLINING TO SHOW NEW LANGUAGE
WILL BE OMITTED THROUGHOUT THIS RULE]**

363 **RULE 14. E-FILING AND E-SERVICE**

364 **Rule 14.01. Mandatory and Voluntary E-File and E-Service**

365 **(a) Definitions.** The following terms have the following meanings:

366 (1) "Designated Provider" means the electronic filing service provider
367 designated by the state court administrator.

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(2) “E-Filing System” means the Designated Provider’s Internet-accessible electronic filing and service system.

(3) “Pilot Project Case Types” means cases in the Fourth Judicial District and Second Judicial District, of the Selected Civil Case Types and Family Case Types as defined in this rule.

(4) “Selected Civil Cases Types” means all general civil cases, including examiner of title cases (in the Fourth Judicial District, in addition to Torrens cases this includes 5-week redemptions) except Conciliation Court and Probate/Mental Health case types, and Family Case Types as defined in this rule.

(5) “Family Case Types” means Annulments, Custody, Dissolutions with Children, Dissolutions without Children, Domestic Abuse, Family Other, Legal Separation, Paternity, Separate Maintenance, Summary Dissolution, Support, and Transfers of Legal Custody.

(b) Cases Subject to Mandatory E-Filing and E-Service. Effective September 1, 2012, attorneys representing parties in any case of the Pilot Project Case Types, and government agencies appearing in such cases, must register promptly upon filing of any paper by any party with the Designated Provider and file documents electronically with the court in Pilot Project Case Types. Registered attorneys and government agencies must also electronically serve all documents required or permitted to be served on other registered attorneys and government agencies in that case, provided that the attorney to be served has designated an e-mail address for receiving electronic service in the E-Filing System after the District Court has accepted the initial filing in the case. Electronic filing and electronic service shall be accomplished through E-Filing System.

(c) Request for Exception to Mandatory E-File and E-Service Requirement. An attorney or government agency required to file and serve electronically under this rule, may request to be excused from mandatory e-filing in a particular case by motion to the Chief Judge or his or her designee. An opt-out request may be granted for good cause shown. If an opt-out request is granted, the court shall scan all paper filings into the court’s computer system and may charge the filing party an appropriate fee for that service.

(d) Voluntary E-File and E-Serve. During the pilot project, attorneys, and parties designated by the Fourth Judicial District and Second Judicial District may, upon registering with the Designated Provider, electronically file documents with the court in civil cases designated by the respective judicial district. In any designated case in which the designated and registered attorneys or parties have electronically filed a document with the District Court, any other attorney or law firm representing a party in the case and any party designated by the District Court may also electronically file documents in the case after registering with the Designated Provider. Registered attorneys and parties may also electronically serve documents on other registered attorneys and parties in such cases

413 provided that the attorney or party to be served has designated an e-mail address for
414 receiving electronic service in the E-Filing System after the District Court has accepted
415 the initial filing in the case.

416 **(e) Relief from Operation of this Rule.**

417 **(1) Technical Errors; Relief for Sending Party.** Upon motion and a showing
418 that electronic filing or electronic service of a document was not completed because of:
419 (1) an error in the transmission of the document to the E-File System that was unknown
420 to the sending party; (2) a failure of the E-Filing System to process the document when
421 received, or (3) other technical problems experienced by the sending party or E-Filing
422 System, the court may enter an order permitting the document to be deemed filed or
423 served on the date and time it was first attempted to be transmitted electronically. If
424 appropriate, the court may adjust the schedule for responding to these papers or the
425 court's hearing.

426 **(2) Technical Errors; Relief for Other Parties.** Upon motion and a showing
427 that an electronically served document was not received by or unavailable to a party
428 served, the court may enter an order extending the time for responding to that document.

429 **Rule 14.02. Registration Process and Duty to Designate E-Mail Address for Service**

430 An attorney or party registers with the Designated Provider for each case by
431 entering into a subscriber agreement with the Designated Provider and obtaining a E-
432 Filing System user identification and password provided by the Designated Provider.
433 The registered attorney or party must also designate in the E-Filing System an e-mail
434 address for receiving electronic service in the case. Once an initial filing has been
435 accepted in a case, all other registered attorneys and parties shall, upon filing their initial
436 document in a case, designate in the E-Filing System an e-mail address for receiving
437 electronic service in the case. Registered attorneys and parties shall maintain a
438 designated e-mail address for receiving electronic service until all applicable appeal
439 periods have expired for the case.

440 **Rule 14.03. Document Format**

441 **(a) Document Types.** Documents filed electronically shall be in one of the
442 following electronic filed formats: Word, WordPerfect, PDF or .tif ("Tiff").

443 **(b) Format.** Documents filed electronically shall comply with the following
444 format requirements:

- 445 (1) 8½ x 11" size with a portrait orientation.
- 446 (2) No Optical Character Recognition (OCR) data shall be contained in or
447 associated with the document.
- 448 (3) At least 200 dot-per-inch ("DPI") resolution.
- 449 (4) No unintelligible images (e.g., no all-black images).

- 450 (5) Documents may not be secured, password-protected, or have other
451 features limiting access.
- 452 (6) Black and white images (no color images will be retained). Color
453 documents submitted via the E-Filing System are transformed into black and white
454 images.
- 455 (7) No document shall contain any external references (e.g., hyperlinks,
456 URLs, shortcuts).
- 457 (8) Only readable words, viewable pictures or images, and valid, non-
458 corrupted tables shall be included.
- 459 (9) Documents shall not be corrupted (e.g., a corrupt file having 0 bytes of
460 data).
- 461 (10) Documents may contain only standard fonts. No CID or Character
462 Identifier fonts are permitted.
- 463 (11) Only standard CCIT image compression is permitted.
- 464 (12) Documents must comprise the complete image or file. A file that
465 experiences an upload issue or time-out on file transfer from a submitting party
466 usually appears as an incomplete image or file when opened.

467 **(c) Document Size.**

- 468 (1) No single electronic document should be greater than 5 MB; and
469 (2) No single envelope or filing should be greater than 25 MB.

470 Larger documents may be filed in several parts or in multiple envelopes.

471 **(d) Non-conforming Documents.** With leave of court, a color document or
472 document containing color may be filed electronically with manual handling or in
473 paper form to be retained by the court in a color format. A motion to file a color
474 document or document containing color to be retained by the court in a color format
475 must be filed and served electronically.

476 **Rule 14.04 Signatures**

477 **(a) Judge and Administrator Signatures.** All electronically filed and served
478 documents that require a judge's, judicial officer's, or court administrator's signature
479 shall either capture the signature electronically under a process approved by the state
480 court administrator pursuant to judicial branch policy or begin with an actual signature on
481 paper that is then scanned into an electronic document format such that the final
482 electronic document has the judge's, judicial officer's, or court administrator's signature
483 depicted thereon. The final electronic document shall constitute an original.

484 **(b) Attorney or Declarant Signature.** A document electronically filed or
485 served using the E-Filing System shall be deemed to have been signed by the attorney or
486 declarant and shall bear a facsimile or typographical signature of such person, along with
487 the typed name, address, telephone number, and attorney registration number of a signing

488 attorney. Typographical signatures of an attorney or declarant shall be treated as a
489 personal signature and shall be in the form: */s/ Pat L. Smith.*

490 **(c) Notary Signature, Stamp.** A document electronically filed or served using
491 the E-Filing System that requires a signature of a notary public shall be deemed signed by
492 the notary public if, before filing or service, the notary public has signed a printed or
493 electronic form of the document and the electronically filed or served document bears a
494 facsimile or typographical notary signature and stamp.

495 **(d) Perjury Penalty Acknowledgement.** A document electronically filed or
496 served using the E-Filing System that requires a signature under penalty of perjury is
497 deemed signed by the declarant if, before filing or service, the declarant has signed a
498 printed form of the document and the electronically filed or served document bears the
499 declarant's facsimile or typographical signature.

500 **(e) Certification; Retention.** By electronically filing or submitting a document
501 using the E-Filing System, the registered attorney or party filing or serving is certifying
502 compliance with the signature requirements of these rules, and the signatures on the
503 document shall have the same legal effect as the signatures on the original document.

504 **Rule 14.05 Proof of Service**

505 The records of the E-Filing System indicating transmittal to a registered recipient
506 who has designated an e-mail address for service of process in the case shall be sufficient
507 proof of service on the recipient for all purposes.

508 **Rule 14.06 Sealed and Confidential Documents**

509 A person electronically filing a document that is not accessible to the public in
510 whole or in part under the Rules of Public Access to Records of the Judicial Branch or
511 other applicable law, court rules or court order, is responsible for designating that
512 document as confidential or sealed in the E-Filing System before transmitting it to the
513 court.

514 A document marked as "confidential" will not be accessible to the public, but will
515 be accessible to court staff. A document marked as "sealed" will not be accessible to the
516 public but will be accessible to court staff with only the highest security level clearance.

517 Upon review, the court may modify the designation of any document incorrectly
518 designated as sealed or confidential and shall provide prompt notice of any such change
519 to the filing party. A filing party must seek advance approval from the court to submit a
520 document designated as sealed or confidential if that document is not already inaccessible
521 to the public under the Rules of Public Access to Records of the Judicial Branch or other
522 applicable law, court rules or court order.

523 A document to be filed under seal or as confidential may be filed in paper form if
524 required or permitted by the court. A motion to file a document in paper form under seal
525 or as confidential must be filed and served electronically.

526 **Rule 14.07 Records: Official; Appeal; Certified Copies**

527 Documents electronically filed are official court records for all purposes.
528 Certified copies shall be issued in the conventional manner.

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Advisory Committee Comment—2012 Amendment

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Rule 14 is a new rule, drafted to provide a uniform structure for
532 implementation of e-filing and e-service in the district courts. The rule is
533 derived in substantial part, with modification, from the Judicial District E-
534 Filing Pilot Project Provisions, adopted by the Minnesota Supreme Court on
535 October 21, 2010, and amended on March 10, 2011.

536

Rule 14.01 defines the cases that are subject to mandatory e-filing and e-
537 service. This rule is intended to evolve by amendment by order of the supreme
538 court as additional case categories or additional judicial districts are added to
539 the pilot project. The other requirements for e-filing and e-service are not
540 intended to see frequent amendment, and the committee believes the rules for
541 e-filing and e-service, when authorized, should be maintained as uniform rules
542 statewide.

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Rule 14.01(c) provides for requests to be excused from required use of e-
544 filing and e-service, and creates a “good cause” standard for granting that relief.
545 There are few circumstances where the court should grant exemption from the
546 requirements.

547

Because cases in Minnesota may be commenced by service rather than by
548 filing with the court, the use of e-service under the court’s system is possible
549 only after the action has been commenced and is filed, and service may then be
550 effected electronically only on an attorney or party who registers with the
551 system and provides an e-mail address at which service from other parties and
552 notices from the court can be delivered. Rule 14.02 sets forth this procedure.

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The format requirements for documents are superficially the same as for
554 other documents—they should be based on an 8½ by 11 inch format, with a
555 caption at the top and signature block at the end. But they are in fact filed as
556 electronic records on a computer service and served on other parties by e-mail.
557 Rule 14.03 defines the available electronic format for these documents and
558 other requirements applicable to e-filed and e-served documents.

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Rule 14.04 establishes the means by which electronic documents are
560 “signed.” The rule explicitly states the standard that e-filed and e-served
561 documents as they reside on the computer system used by the court constitute
562 originals, and are not mere copies of documents. The rule does not require the
563 signing or retention of a paper copy of any filed document. It may be prudent
564 for a litigant to maintain copies of these documents as duplicate originals in
565 some limited circumstances, such as where an affidavit is signed by a non-party
566 who may not be available if a dispute were to arise over authenticity.

567

Rule 14.06 establishes a specific procedure for filing electronic
568 documents that either contain confidential information or are filed under seal.
569 This rule establishes the requirements for electronic documents that are
570 consistent with the requirements in Rule 11.06. Neither rule is intended to
571 expand or limit the confidentiality concerns that might justify special treatment

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of any document. Under Rule 11.06, filing parties do not have a unilateral right to designate any filing as confidential, and prior permission in some form is required. This permission may flow from a statute or rule explicitly requiring that a particular document or portion of a document be filed confidentially or from a court order that papers be filed under seal. Rule 112 of the Minnesota Rules of Civil Appellate Procedure contains useful guidance on how confidential information can be handled. Where papers contain both confidential and non-confidential information, it may be appropriate to file redacted “public” versions of confidential or sealed documents.

Rule 14.06 also permits a party to seek either permission or a requirement that certain sealed or confidential documents be filed in paper format. This provision recognizes that certain information may be so sensitive or valuable that placing it in a sealed envelope with a clear warning that it is not to be opened except by court order may be the appropriate means to assure confidentiality.

Recommendation 2: **The court should consider gathering attorney e-mail addresses as part of the attorney registration process and pro hac vice admission process in order to facilitate e-noticing.**

Introduction

The committee believes that the courts should make expanded use of electronic noticing. The appellate courts have taken this step and benefits include savings of postage and mailing expense, ease of noticing several attorneys for each side of a case, immediate delivery, and simultaneous delivery to all parties. This reports recommends that Rule 77.04 of the rules of civil procedure be amended to authorize administrators to give required notices by electronic means, but this rule change only authorizes the use of electronic noticing by court administrators, it doesn't do much to make it feasible to give notice electronically. One impediment to e-noticing is the lack of a reliable source for e-mail addresses for attorneys.

Specific Recommendation

The committee had not considered a specific mechanism or rule change, and believes this can be better accomplished by court staff working in conjunction with those responsible for the process for registration of attorneys.

An alternative mechanism that could easily be accomplished would be to require an e-mail address to be part of an attorney's signature on any pleading under rule 11 of the Minnesota Rules of Civil Procedure. This approach would presumably make it easier to determine if an attorney has a new e-mail address,

but it may also present privacy issues that should be addressed, as pleadings are generally publically accessible documents, while attorney registration records have limits on bulk distribution.

Recommendation 3: The Rules of Public Access to Records of the Judicial Branch should be amended to deal explicitly with the status of records filed electronically.

Introduction

Remote (i.e. internet) access to court records is governed by Rule 8 of the Rules of Public Access to Records of the Judicial Branch. In the Judicial District E-Filing Pilot Project Provisions, adopted by the court on October 21, 2010, and amended on March 10, 2011, the court permitted electronically filed or served records to be made remotely accessible to the filing or serving party, and to the party served. As the pilot project on e-filing and e-service continues, the committee feels that it is appropriate to codify these remote access provisions into permanent rules to make them more visible.

Specific Recommendations

Rule 8 of the Rules of Public Access to the Records of the Judicial Branch should be amended as set forth below:

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**RULE 8. INSPECTION, COPYING, BULK DISTRIBUTION
AND REMOTE ACCESS**

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Subd. 2. Remote Access to Electronic Records

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(e) Exceptions

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(1) *Particular Case.* After notice to the parties and an opportunity to be heard, the presiding judge may by order direct the court administrator to provide remote electronic

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access to records of a particular case that would not otherwise be remotely accessible under parts (a), (b) or (c) of this rule.

- (2) *Appellate Briefs.* The State Law Library may, to the extent that it has the resources and technical capacity to do so, provide remote access to appellate court briefs provided that the following are redacted: appendices to briefs, data listed in Rule 8, subd. 2(b) of these rules, and other records that are not accessible to the public.
- (3) *E-mail and Facsimile Transmission.* Any record custodian may, in the custodian’s discretion and subject to applicable fees, provide public access by e-mail or facsimile transmission to publicly accessible records that would not otherwise be remotely accessible under parts (a), (b) or (c) of this rule.
- (4) *E-filed Records.* Documents electronically filed or served using the E-Filing System designated by the state court administrator shall be remotely accessible to the person filing or serving them and the recipient of them, on the E-Filing System for the period designated by the court, and on the court’s case management system to the extent technically feasible.

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Advisory Committee Comment—2012 Amendment

The 2002 addition of Rule 8, subd. 2(e)(4), is intended to recognize that documents electronically filed with the courts or electronically served using the court’s internet-accessible electronic filing and electronic service system can be made remotely accessible to the parties filing or serving the same and to the recipients of such service. This continues remote access that was established through the Judicial District E-Filing Pilot Project Provisions, adopted by the court on October 21, 2010, and amended on March 10, 2011. Those provisions are being replaced by permanent rules.

