

Meeting Summary

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

Thursday, August 28, 2014
Minnesota Judicial Center Room 230

Members present:

Hon. Stephen Halsey, Chair

Hon. Wilhelmina Wright, Liaison Justice

Kevin Curry

Jill Frieders

Phillip Gainsley

Jason Hutchison

Heather Kendall

Lisa Kontz

Rhonda Magnussen

Lynae Olson

Henry Parkhurst

Timothy Pramas

Susan Rhode

Galen Robinson

Hon. Mark Starr

Hon. Mary Vasaly

David Herr, Reporter

Michael Johnson, Staff Attorney

Patrick Busch, Staff Attorney

Guests present: Carla Heyl, Judy Nord, Aaron Zurek, Sarah Novak, Rita DeMeules, and Karen Mareck.

Welcome and Introductions. Committee chair Judge Stephen Halsey welcomed all members and guests, and all members introduced themselves. Judge Halsey thanked members for their

service and explained that their service was generally *pro bono*. He indicated that documents exchanged and presented to the committee will be primarily in electronic form and that members should prepare accordingly.

Committee Charge. Liaison Justice Wilhelmina Wright echoed Judge Halsey's appreciation for the time and service of the committee members and provided an overview of the supreme court's charge to the committee. The court has asked the committee to review and propose amendments to the general rules in order to implement the eCourtMN Steering Committee's recommendation to move forward with expansion of mandatory eFiling and eService across all case types for attorneys and certain parties and case participants. Justice Wright noted that the focus of the committee will be the eFiling and eService matter but that the committee would have the opportunity to review the general rules for other tangential amendments related to the eCourtMN project, and if time and resources permitted, to request authorization to review the rules for amendments unrelated to the eCourtMN project.

Role of the Advisory Committee. Committee Reporter David Herr provided a brief overview of the committee's role and the proposed rule amendment process. He noted that the committee serves as an advisor to the supreme court and that members are encouraged to broadly deliberate the issues and consider how various proposals will affect all involved in the court system, not just particular individuals or viewpoints. He explained that the reporter essentially serves as a law clerk to the committee, drafting or fine-tuning proposed rule language as instructed by the committee.

eFS Demonstration. Business Process Specialist Chris Channing demonstrated the basic functionality of the E-Filing System ("eFS"), including the following: user registration and personalization of the system, registration for eService, adding service contacts, the filing and service function, and post filing/service information.

Draft Rule Amendments. Committee Staff Mike Johnson briefly explained what went into the drafting process. Legal Counsel conducted a comprehensive review of the e-filing rules of other states and federal district courts under the Pacer System for reference and perspective on the

issues and sought input on certain issues from other interested groups, including the eCourtMN Judge Team, the Court Operations Advisory Workgroup, and the eCourtMN Steering Committee. The proposed amendments reflect the practical reality that self-represented litigants are currently using the E-Filing System even though they are not expressly authorized to use the system under the rules. Six other rules advisory committees have been similarly charged by the supreme court to review and propose amendments related to the eCourtMN eFile/eServe project. Rule 14 will have global influence, and the six other rules advisory committees will be looking to this committee and its proposed amendments to Rule 14 and Rule 11 as a key point of reference.

Next the committee reviewed and considered the proposed amendments to Rule 14 sequentially. Among the points made were:

Rule 14.01 (a) (1). A committee member commented that limiting the term “conventionally” to the filing or serving of documents or other materials through the mail or “other non-electronic means” excludes service via facsimile or email outside the E-Filing System. The member suggested that the phrase, “other non-electronic means,” be modified to “other means outside the E-Filing System.” Another member commented that facsimile filing and service is outdated and it is just a matter of time before it is eliminated altogether. Mike Johnson noted that the draft of proposed amendments eliminated reference to facsimile filing and service.

Rule 14.01 (a) (6). Judge Halsey commented that the definition of “Self-Represented Litigants” should be inclusive of businesses and corporations appearing without counsel in conciliation court and housing court, and that the language should be modified accordingly.

Rule 14.01 (b) (1). There was a comment that the proposed language mandating “attorneys representing parties” to eFile can be interpreted to exclude attorneys appearing *pro se* from the mandate and that the language should be modified so that it applies to all attorneys appearing in a case.

Rule 14.01(b) (2). Mike Johnson explained that existing rule 14.01 (c), prohibiting eFiling in specific case types, was simply renumbered to 14.01 (b) (2). Reporter David Herr solicited input from members as to whether other case types should be prohibited from electronic filing. The committee agreed to consider and report back on the matter.

Mike Johnson explained that, in drafting the proposed amendments, the Legal Counsel team was a little heavy-handed in proposing the entire strikethrough of existing Rule 14.01 (e) regarding voluntary eFile and eServe. He explained that in rolling-out the mandate across all case types in pilot counties, there will need to be a period of voluntary eFile/eServe in select counties, and that this change will appear in the next draft.

Rule 14.01 (b) (5). A member asked if this rule would apply to guardian ad litem. Mike Johnson indicated that guardian ad litem would likely fall under the mandate as a government partner.

Rule 14.01 (b) (6). Mike Johnson noted that this rule, regarding Court Integration Services, is intended to encompass integrations projects still in development. The language must be clarified so that it permits service by the court through the integrations. The rule must also address how signatures will be handled for documents transmitted through the integrations.

Rule 14.02 (a) Becoming a Registered User. Mike Johnson noted that this rule is a variation from the current procedure where a user must sign-up for service and designate an e-mail address in each case. A member asked if the rule eliminated the ability to input a service contact. The committee agreed that this rule would not prevent a user from inputting a service contact. It merely requires a Registered User to consent to electronic service at his or her designated e-mail address upon filing into a case.

Rule 14.02 (b) (4). A member raised concern regarding the requirement that a Registered User maintain a designated e-mail address for the duration of the case until all applicable appeal periods have expired. Some case types (e.g. dissolutions) may continue indefinitely even after the attorney has withdrawn or been relieved by court rule. The language should reflect this and

permit attorneys to be released from the obligation to maintain a designated email account after the attorney has withdrawn.

Rule 14.03 (c) Effective Time of Filing. A member commented that it is unnecessary to specify “local Minnesota time” as Minnesota is in one time zone.

Rule 14.03 (e) Effective Date of Service. A member asked if this rule should be read together with Minn. R. Civ. P. 6.05, requiring the addition of one day to the prescribed period to do or perform some act after service by means other than U.S. mail. The committee agreed that the rules must be read together and that a cross reference in the rule or in the comments would be appropriate.

Rule 14.03 (d) (2) & (3) Service. A concern was raised about permitting service as agreed by the parties via internet email outside of the E-Filing System and what constitutes “agreed” or an “agreement” to serve by alternative means. The member noted that county attorney’s offices frequently have problems with self-represented litigants in family law matters e-mailing filings and service documents to the county attorney’s office. This creates difficulties for county attorney’s offices, especially because they may or may not want to intervene in the cases. The general consensus was that this is an issue which must be addressed by the affected parties in practice, not by rule. The proposed rule merely caters to the widespread practice of agreed upon service of documents and discovery via internet e-mail.

Reporter David Herr noted that it may be necessary to incorporate a clarification somewhere in Rule 14 regarding the public access classification of drafts of documents electronically stored in eFS but not filed and/or documents electronically served through eFS but not filed.

Rule 14.03 (g) Document Requirements and Format. Mike Johnson explained that the proposed rule amendments omit all document format and technical requirements and instead reference a User Guide established by the State Court Administrator wherein such requirements will be contained. Document format and size requirements are dependent upon ever evolving technology and may require frequent amendment. For that reason, it is not practical to maintain

document specifications and technical requirements in rule form. A member noted support for this approach but inquired whether there would be a notice and comment period prior to the State Court Administrator's adoption or amendment to the guide. It was noted that any significant change to document format or technical requirements would be carefully considered and preceded by advance notice.

Rule 14.03 (i) Proposed Orders. Mike Johnson introduced proposed rule 14.03 (i), which would generally prohibit the electronic filing of proposed orders and direct that proposed orders be transmitted in editable format to an e-mail address designated by the presiding judge. The ensuing committee discussion was extensive. Among the points made were:

- The proposed rule amendment will create confusion for attorneys and court administration as some proposed orders will continue to be filed while others will not depending upon specific court rule. It will be difficult at best for court administration to determine which proposed orders must be filed and which must be submitted to the presiding judge outside of the E-Filing System.
- Although some proposed orders are boilerplate and unhelpful, others following a contested hearing or trial can be very helpful for the presiding judge, and the proposed rule may discourage attorneys from submitting proposed orders altogether.
- Stipulated proposed orders should not be submitted separately from the stipulation but as one document.
- It would be helpful to require parties to submit proposed orders in editable, Word format to permit ease of modification by the judge, but a PDF version of the document should still be filed.
- The Second District Bench considered this issue a while back and initially agreed that proposed orders should be filed so they are preserved as part of the record.
- The proposed rule language does not require that the opposing counsel or party be served with a copy of the proposed order, which invites *ex parte* communications. Although attorneys will know to serve opposing counsel, pro se parties may need clarification.
- The eCourt Judge Team supported the rule change in part because the filing of proposed orders congests the register of actions and it becomes difficult to distinguish proposed orders from other proposed orders or from actual orders.

- A member suggested that the rule require the document be captioned “proposed” or be electronically watermarked or flagged as proposed upon filing.
- If a judge or judicial officer reviews a proposed order and it has any bearing on the decision, the order should be filed and preserved for review by the appellate courts.
- Mere convenience to a judicial officer does not justifiably offset the interest of the public in knowing what was received and reviewed by the judicial officer in rendering a decision.
- A large number of cases are never assigned to a judge; it may be difficult to practically implement the requirement that the proposed orders be submitted via email to an unknown presiding judge or email address.
- Verbatim adoption of a proposed order has historically been an appellate concern. Without filing the proposed orders, the appellate courts have no way of knowing whether or not a proposed order was adopted verbatim.
- A committee member proposed the following alternative language: “Unless otherwise required by specific court rule, or requested by the presiding judge, proposed orders must not be submitted. If a proposed order is requested and submitted to the court, it must be clearly identified as a proposed document, identify its author, and be served on the opposing party at the same time it is filed with the court. ”
- The requirement in Rule 115 mandating the submission of proposed orders with dispositive and non-dispositive motions should be eliminated. There was discussion whether such a proposal is beyond the scope of the charge by the supreme court. The committee agreed that such an action is within the scope of the charge.

The committee agreed, to the extent any member had additional comments on the proposed order issue, to submit the comment to Mike Johnson by September 5th.

Rule 14.06 In Camera Review. There was a question regarding what the proposed language, “sealed as a court exhibit,” means. A member explained that the proposed rule would require documents submitted for in camera review to be sealed unless otherwise ordered and retained by the court as an exhibit and returned to the submitting party upon expiration of the appeal period.

The committee agreed that any such explanation should be included in the committee's comments to the rule.

Committee Chair Judge Halsey instructed the committee to review the remaining rules and to send any comments directly to Mike Johnson by September 5th.

MSBA Probate and Trust Law Section Proposal. Mike Johnson briefly called the committee's attention to the MSBA Probate and Trust Law Section's proposed rule 419 concerning electronic service in appropriate cases. Mike Johnson will attempt to work the proposal into the next draft. Reporter David Herr noted that the probate rules have not been reviewed for amendment in 25 years and, if it is just a matter of updating citations, the committee ought to consider requesting permission from the court to take up the matter.

Consecutive Numbering of Exhibits. Reporter David Herr explained that in its November 15, 2013, committee report the Advisory Committee on the Rules of Civil Appellate Procedure recommended that the General Rules of Practice specify that all documents in the trial court, including exhibits, be consecutively paginated before submission to the court. Consecutive pagination will assist attorneys, judges and court administration in easily locating and referencing exhibits. David Herr requested permission from the committee to draft a proposed rule on consecutive pagination. The committee approved.

Rule 11 Submission of Confidential Information. Mike Johnson directed the committee's attention to a few areas for the committee's consideration in Rule 11. He noted that the civil rules committee will consider whether to permit the court to reject a document for filing because it contains confidential information or restricted identifiers. One related issue for the general rules committee to consider is whether to specify that a restricted identifier includes the social security numbers of deceased persons. Until recently, the federal government placed all names and social security numbers of deceased persons on a public death master file. The federal law was amended last year, and the names and SSN of those who have been deceased for less than three years is no longer public but available only to certain, certified individuals or entities.

Mike Johnson next directed the committee's attention to the proposed additional language to Rule 11(c), requiring that all filings contain a certification that they are free of restricted identifiers. One member noted that the proposed language, as written, could be read to apply to all communications to the court, including letters from parties. The member suggested that the proposed language be moved to Civil Procedure Rule 11; Reporter Herr suggested that the proposed language remain in the General Rules so that it would apply to all case types. Reporter Herr emphasized the need to promote greater respect for individuals' privacy.

Finally, Mike Johnson asked the committee to consider the possibility of requiring electronic filers to click a button certifying that the filings were in compliance with the Rule 11 redaction requirements. One member suggested that the button would be clicked mostly by administrative staff doing the work of filing. Reporter Herr suggested that administrative staff would talk with their attorneys about whether the filings were in compliance with Rule 11. It was noted that the federal PACER system incorporates a click-button certification.

Next Meeting. Judge Halsey explained that the committee would complete its review of the general rules at the next meeting on Wednesday, September 24, 2014. He reminded members to submit all comments and questions in the interim to Mike Johnson and not the entire committee, and to do so by September 5th. Judge Halsey asked if any member had conflicts with the committee meeting schedule for the remainder of the calendar year. No member indicated a conflict. Staff will work with Reporter David Herr to incorporate the discussed modifications into a second proposed draft to be circulated to the committee in advance of the next meeting.

There being no further business, the meeting was adjourned.

Meeting Summary¹

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

Wednesday, September 24, 2014
Minnesota Judicial Center Room 230

Members present:

Hon. Stephen Halsey, Chair
Hon. Wilhelmina Wright, Liaison Justice
Kevin Curry
Jill Frieders
Phillip Gainsley
Jason Hutchison
Heather Kendall
Kenneth Kimber
Lisa Kontz
Rhonda Magnussen
Lynae Olson
Henry Parkhurst
Timothy Pramas
Susan Rhode
Galen Robinson
Hon. Mark Starr
Hon. Mary Vasaly
David Herr, Reporter
Michael Johnson, Staff Attorney
Patrick Busch, Staff Attorney

Guests present: Carla Heyl, Rita DeMueles, Heather Scheuerman, Aaron Zurek, and Deanna Dohrmann.

Opening Remarks: Chair Judge Halsey welcomed the committee members, and thanked them for their service. Judge Halsey asked staff attorney Michael Johnson and reporter David Herr to walk through the committee's draft report to the Supreme Court.

Draft Rule Discussion: David Herr explained that the purpose of dividing the draft report into separate recommendations was to divide the issues by subject area and present them to the Supreme Court in a coherent manner. Staff attorney Michael Johnson explained that the report is

¹ Unofficial summary prepared by committee staff.

a draft, and will be updated. The style of the report is the typical strike-through and underline. He walked through the draft report to the Supreme Court, with remarks on several of the proposed recommended amendments to the General Rules of Practice:

Rule 2. The proposed amendment, which expressly gives judges discretion to regulate the use of electronic devices in courtrooms, was based upon a suggestion by Judge Halsey. The proposed amendment does not alter or change the use of cameras in the courtroom, which will continue to be governed by General Rule of Practice 4.

Rule 5. Reporter Herr has suggested amending the rule slightly to state that attorneys admitted *pro hac vice* “are subject” to all rules governing attorneys who are admitted in Minnesota. The rule currently reads “shall be subject”; the recommended amendment is intended to make it clearer that the rule is mandatory. There were no objections to the amendment, although a committee member noted the importance of having subject-verb agreement in the rule.

Rule 6. The proposed amendment clarifies that the rule’s formatting requirements apply only to conventionally-filed (i.e., non-electronically filed) documents. Format requirements for electronically-filed documents will be put in a guide published by the State Court Administrator’s Office. This will allow for technological developments, such as increases in file size limits, to be accommodated without amending the rules.

Rule 7. The proposed amendment establishes proof of service requirements for all means of service authorized under the rules. It was suggested that “instrument” be changed to “document” to promote clarity; no one objected.

Rule 11. It was noted that the proposed new certification language, if adopted, would have to be added to each of the numerous court forms published by the State Court Administrator’s Office. The proposed admonition amendment to General Rule of Practice 11 is set forth separately in Recommendation 2 of the draft report.

It was noted that the term “pleading” in 11.03 does not technically include a “motion” or some other documents that may be filed. The Rules of Civil Procedure define “pleading” as including only complaint, answer, reply to counterclaim and answer to cross-claim. It was suggested that “motions and other documents” be added to the rule. There was no objection to this proposed change. It was also suggested that the rule be reorganized by creating a separate paragraph for the discussion of charged-off accounts.

The committee discussed whether it would be appropriate to have the language in Rule 11.06 (on when documents may be filed as confidential or under seal) appear in Rule 14 instead. Some members suggested retaining the language in Rule 11.06, and have a cross-reference in Rule 14: Rule 14 applies only to e-filing, while Rule 11 applies to all cases. No one objected.

Rule 14. The committee has received numerous comments on the proposed revisions to Rule 14 from members and from the child protection advisory committee. Reporter Herr and Staff Attorney Johnson have revised the proposed rule in light of those comments.

The committee discussed whether the proposed definition of “self-represented litigant” needed to be refined and revised. For example, the definition should clarify that attorneys who represent themselves are subject to mandatory e-filing rules. A related issue is whether people who are attorneys but are not admitted to practice law should be within the definition of self-represented litigants. Staff Attorney Mike Johnson queried whether the rule needs to clarify the status of non-attorneys who appear on behalf of corporations, such as in eviction actions or conciliation court. The committee members did not believe that there needed to be a separate rule on these issues as most high volume filers are already e-filing and e-serving and are encompassed by the rules as a Registered User. It was also noted that the rules should not be drafted in a way that would create barriers to accessing the court system.

Rule 14.01(b)(1). It was noted that the language “government agency appearing in any case” may need to be revised to require government agencies who file documents (such as sheriffs filing affidavits of service) to file electronically as some have argued that they

are not “appearing” in the case. Also, the language “attorneys representing parties and government agencies appearing in any case” needs to be revised to clarify its meaning. Reporter Herr and Staff Attorney Johnson will work on revising the language.

A committee member inquired about the possibility of having the Tax Court participate in the e-filing system. It was noted that the Tax Court is part of the executive branch and is not subject to the rules of court. Staff Attorney Johnson stated that it was his understanding that the Tax Court was preparing to implement its own case management system using the same vendor that provides the judicial branch case management and e-filing system, and may mean that use of an e-filing system by the tax court may soon be on the horizon.

It was also noted that it is not clear how the proposed rule applies to a guardian ad litem, and that there are two different kinds of guardians ad litem. Reporter Herr and Staff Attorney Johnson will work on redrafting the language to address this issue.

Staff Attorney Johnson explained that a reference to service had been added upon to the rule based upon several comments. A committee member asked if there should be a requirement that parties add themselves as service contacts to a case. Staff Attorney Johnson explained that although such language is in the current rule, the technology is being changed so that upon filing by a party that party will then also be able to be served. Parties will continue to be able to designate who in their own firm are to be listed as service recipients, but a party will no longer be able to avoid e-service after e-filing the first document in a case by failing to designate an email address for receipt of service. It was noted that a prohibition on adding service recipients for opposing parties or attorneys has been added to another part of rule 14.

Reporter Herr suggested changing references to “may” or “shall” to “must” to make it more clear that Rule 14.01(b)(1) is mandatory.

Rule 14.01(b)(2). It was noted that additional grammatical clean-up was needed in this rule.

Rule 14.01(b)(7). Staff Mike Johnson explained that “Court Integration Services” encompasses a broad range of computer system-to-computer system data transfers that

bypass the E-Filing System. A four page listing of such integrations is posted on the main state court web site and includes e-charging and e-complaints delivered directly from a county database into the court's case management system. Most are in criminal and juvenile cases, including a new integration with the statewide probation system called "CSTS," which will soon be transmitting pre-sentence investigation and bail evaluation reports directly into the court's case management system. He suggested that integrations could be better defined by providing some examples in the advisory committee comment, as it is expected that use of integrations will continue to grow so the scope is intentionally broad. There was no objection to this.

It was noted that use of integrations is not currently mandatory but at some point certain integrations might need to be mandatory. If the need arises, that can be dealt with by rule amendment, Supreme Court order, or perhaps by a provision in an integration services contract.

Rule 14.01(c). Several committee members had concerns over the technical errors relief provision. One committee member stated that filers should be deemed to know that a technical error prevented filing. Some committee members pointed out that the rule could be read to excuse failures to comply with jurisdictional filing deadlines. The committee members agreed that the words "unknown to the sending party" should be deleted from the rule. It was also suggested that the rule should cross-reference the service rules.

Rule 14.02(a). Staff Mike Johnson explained that rule 14.02(a) may need to be expanded to recognize that the court sends many notices outside of the E-Filing System as it can take as many as 20 steps to get an electronic document from the case management system to the E-Filing System electronically, while the case management system allows a two step process to send a document via email. Reporter Herr suggested that every attorney should be required to maintain an e-mail address as a condition of licensure; it was noted that this requirement, if adopted, would be outside Rule 14 and included as part of the attorney registration rules. A committee member pointed out that government agency attorneys should be allowed to use group e-mail addresses for service if this requirement

is adopted. Another committee member suggested the act of appearing in a case should be deemed consent to receive service of documents by mail and e-mail.

One committee member said that the existing practice in her county was for attorneys to receive all court notices through the E-Filing System. Another committee member questioned whether it was actually any easier to send notices outside of the E-Filing System. He also argued that court administrators should be required to use the same service mechanisms that litigants are required to use.

A committee member expressed concern that the proposal could frustrate internal office organization: some attorneys may wish to direct some types of notices to attorneys and other types of notices to support staff.

Some members also suggested that the words “his or her” should be revised to reflect that some parties are non-human entities, such as corporations.

Lines 430 and 431: The following typographical errors were noted: “email” rather than “e-mail” in line 430, and that the word “is” is missing in line 431.

Rule 14.03(b): The committee members discussed the proposed language regarding the date of filing. Some committee members stated that word “stamped” was out of place in a reference to electronic filing. It was noted that the Civil Procedure Advisory Committee is considering expanding the reasons for administrative rejection of filings in R. Civ. P. 5, and a cross reference to that rule is used in Gen. R. Prac. 14 rather than attempting to summarize or repeat what may become a complicated rule of civil procedure.

Rule 14.03(d). It was suggested that the proposed rule should include an exception for personal service being required by statute.

Lines 471-78: Some committee members suggested that the proposed rule should reference particular rules that require specific methods of service.

Line 479: A committee member noted that the “S” in “Service” needed to be bolded.

Rule 14.03(f). The committee members discussed the potential need for having a record of the transmission of notices from the court to parties. It was noted that the lack of such a record has not been a problem in the past, and that existing notices are often perfunctory. One committee member suggested serving all notices through the E-Filing System in order to have a clean record, but stated that he did not believe that it would be appropriate to mandate this at this time. Another committee member noted that in child support magistrate cases, the date of service of the notice by the court is what starts the appeal period.

Rule 14.03(i). The committee had a detailed discussion on the manner of submission of proposed orders. Major points included:

- The current “reporter’s alternative” has duplicative “unless otherwise ordered” language.
- Any proposed order that a judge receives should be both served upon other parties and filed.
- The “reporter’s alternative” would require a change to General Rule of Practice 115.
- Sometimes proposed orders are useless, other times they are extremely helpful to judges.
- If some judges are having trouble with proposed orders cluttering the file, that could be dealt with by technological means rather than a change in the rule.
- A Court of Appeals judge remarked at a recent continuing education program that it was acceptable to sign proposed orders verbatim if they were supported by the record.
- The “reporter’s alternative” might be more palatable if it were amended to exclude ex parte proposed orders, although existing rules for ex parte relief require that proposed orders be submitted.
- Second District judges on the eCourtMN Judge Team are opposed to the Judge Team’s recommendation on proposed orders.
- Proposed orders must be served on all parties, and that proposed orders must on their face identify their authors.

- There might need to be separate rules for “routine” cases such as name change applications or uncontested probate matters.
- There have been instances where court clerks have mistakenly routed proposed orders in contested cases to the signing box, where they have been inadvertently signed without much consideration.
- Increased access by non-lawyers merits a clear prohibition on ex parte proposed orders.
- Stipulated orders drafted by attorneys are rarely sent to the other party, but perhaps this practice should stop.
- Lines 564 and 565 should be revised to read “The subject line of the e-mail message shall include ‘Proposed Order’ and the relevant case number.”
- It would be useful to know whether there is a notation in the court’s record system that an order is a proposed order.

Judge Halsey asked committee members to consider the issue for further discussion and a vote at the next committee meeting.

Rule 14.04(f). Several committee members expressed concern over the proposed language that would impose a 14-day deadline on challenges to authenticity of signatures. Some members questioned why it was necessary; others argued that it would create a new type of motion practice. One member asked why it was appropriate to put a burden on parties who had done nothing wrong. Another noted that the proposed rule did not specify the procedure after an objection to a signature was filed. One member said that he would support the language if the deadline ran from the date that the challenger knew or should have known that there was reason to doubt the authenticity of the signature. Staff was directed to research how these types of deadlines have worked out in jurisdictions that have enacted them.

Rule 14.06 The committee agreed that the in camera review provision (line 653) should be revised to begin with the words “Any interested person must seek and obtain, with notice to all parties, advance approval from the court to submit a document for in camera review.” The intent is to prevent ex parte communications. A committee member

pointed out that guardians ad litem will often submit counseling reports to the court without disclosing them to the parties; other committee members suggested that this practice should be changed.

Rule 14.07 A committee member noted that there is a typographical error in line 666 (the word “or” is missing).

Rule 15: The committee agreed that the word “both” should be removed from line 692.

Line 759: A committee member pointed out that the word “provide” should be “provided.”

Rule 308.01: A committee member expressed concern that the proposed added language could open a floodgate of e-mail service that would burden government agencies. It was agreed that this should be changed to: “When a private party has applied for or is using the services of the local child support enforcement agency, a copy of the decree shall be served by mail or other authorized means by the party submitting the decree for execution upon the county agency involved.”

Rule 303.05. A committee member questioned how the rule would be followed, as it makes reference to service of original orders to show cause. It was noted that original orders to show cause might continue to be required. The reporter and staff attorney will review this issue further before the next meeting.

Rule 355.03. It was noted that the language “please consult” would need to be rewritten. It was also noted that the expedited child support process rules were originally written to be a “one-stop shop” for self-represented litigants that would include all relevant procedural requirements. Due to the detailed nature of rule 14, cross-references to Rule 14 will be used instead.

Some committee members expressed concern about removing service by facsimile, and stated that fax service should remain as a contingency. It was noted that some of the

concerns may have been based upon the belief that self-represented litigants would not be allowed to e-file. A memo was circulated summarizing concerns raised by victim assistance programs about the need for domestic abuse victims to fax in order for protection (“OFP”) petitions. It was noted that while Rule 355.03 does not apply to OFPs, other general rule apply and that the initial effort to remove facsimile filing permeates the draft rules. The proposed removal of fax filing was compared to an earlier proposal to prohibit court clerks from accepting cash payments: both are a significant access barrier. It was also noted that OFP petitioners are not charged filing fees. Committee members suggested several alternatives for phasing out fax filing; other committee members noted that eliminating fax filing could unfairly reduce access to the courts due to issues arising from geography or socioeconomic status. Chair Judge Halsey noted that the issue of fax filing will need further thought.

Recommendation 2: The committee briefly discussed Recommendation 2. There was general support for the idea of an admonition against filing restricted identifiers.

Recommendation 3: The committee members agreed that it would be helpful to have consecutive pagination. It was agreed that the proposed Rule 16 should be reworded as “Each document filed with the court must, to the extent feasible, be consecutively paginated from beginning to end, including any attachments. Trial or other exhibits must be similarly numbered.”

A committee member noted that line 1912 should begin with the words “record will be able to be identified”. He also suggested that line 1914 should be amended to read “filed or served as page ‘1’”.

Another committee member inquired if consecutive page numbers could be added automatically. Other committee members stated that the rule should clarify the requirement for consecutively paginating affidavits and exhibits.

It was noted that consecutive pagination could be significantly more difficult for self-represented litigants.

Recommendation 4: The committee had no objections to the proposed amendments in Recommendation 4.

Recommendation 5: The committee did not discuss Recommendation 5.

Wills Deposited for Safekeeping: Staff Mike Johnson remarked that the Access to Records committee would be considering recommendations for how to access wills that had been filed with the court for safekeeping. Gen. R. Prac. 418 currently addresses who gets access to the will when the testator remains alive, but it is not clear whether the public access component belongs in rule 418 or in the Rules of Public Access. For now it is being included in the Access Rules.

Probate rule: Reporter Herr asked the committee members to review page 92 of the meeting materials, which is a suggestion by the probate committee that a reporting requirement for trust assets that realized a net income of less than 1% of inventory values or acquisitions costs should be eliminated. He said that the committee should consider the wisdom of the change, and he noted that judges on past advisory committees wanted to be made aware of such low-performing assets.

Closing remarks by Judge Halsey: Judge Halsey asked the committee members to send any additional comments to staff Michael Johnson. The next meeting is on October 30. There being no further business, the meeting was adjourned.

Meeting Summary²

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

Thursday, October 30, 2014
Minnesota Judicial Center Room G-06

Members present:

Hon. Stephen Halsey, Chair
Kevin Curry
Jill Frieders
Jason Hutchison
Heather Kendall
Kenneth A. Kimber
Lisa Kontz
Rhonda Magnussen
Lynae Olson
Henry Parkhurst
Susan Rhode
Galen Robinson
Hon. Mary Vasaly
David Herr, Reporter
Michael Johnson, Staff Attorney
Patrick Busch, Staff Attorney

Guests present: Rita Coyle DeMeules, Karen Mareck, Aaron Zurek.

Welcome: Judge Halsey welcomed the committee members, and asked Reporter David Herr and Staff Attorney Michael Johnson to review the draft report, which is divided into five recommendations.

Recommendation #1:

The term “paper” is being replaced with “document” throughout the General Rules of Practice. There will be one advisory committee comment at the first change, explaining that no substantive change is intended. Due to the large number of changes, the comment will not be repeated throughout but may be repeated at the start of each separate section of the rules.

Rule 11:

² Informal summary prepared by committee staff.

The committee supported changing Rule 11.02(c)'s certification language to provide that filing a document "constitutes" a certification that the document is free of restricted identifiers. Under the revised rule, there will not be a requirement that documents have a written certification of compliance. For some documents that may mean a separate piece of paper, and court staff do not need more things to look for. The change does not prevent the E-Filing System from requiring that filers check a box certifying compliance with the restrictions on restricted identifiers, and the report should encourage the check box approach. It was noted that the Civil Procedure Committee will be adding corresponding certification language to Rule of Civil Procedure 11 regarding signatures. The civil rules committee is also rejecting the eCourt Steering proposal for automatic rejection of filings that do not comply with General Rule of Practice 11, and that committee recognized that rejection of a filing for failure to include a certification statement seems inappropriate particularly where the document has no restricted identifiers such as social security numbers or financial account numbers. The civil rules committee consensus appears to be to accept the filing but issue a deficiency notice requiring payment of a fee and submission of properly redacted document for filing within 10 days, or filing of a motion seeking relief within 10 days, or the improperly redacted document will be stricken.

Committee members raised the following points about General Rule of Practice 11:

- It's important to ensure that self-represented litigants understand that the redaction requirements.
- The improper inclusion of restricted information is not a basis for rejecting a filing.
- Historically, self-represented litigants have been more likely to comply with General Rule of Practice 11, simply because they are given instructions by court staff.
- Enforcement of the redaction requirements will be a big step for many attorneys and self-represented litigants. This is a necessary change; all that is needed is sufficient impetus to make it happen.
- The duty of court staff to segregate documents containing confidential information is triggered when staff becomes aware of the confidential information. Court staff is given authority to segregate documents that contain confidential information, but are not responsible for doing so.

Rule 14:

The committee discussed proposed changes to Rule 14 and the comments and questions submitted by the Self Help Center staff. Points and decisions made included:

- The word "means" should be added to the definition of "court integration services."
- The term "e-mail" should be used instead of "Internet e-mail." The 4 of the 5 provisions in the rule that use the term specify that it refers to electronic transmission

of messages outside the E-Filing System; this makes the word “Internet” redundant. The fifth provision can be modified to conform to the other 4.

- The rule should be clarified to state that a self-represented litigant who elects to file and serve electronically is obligated to continue electronic filing and service for the remainder of the case, but that this obligation does not extend to other cases.
- Rule 14.01(b)(5) should be amended to add a brief statement alerting self-represented litigants that case-initiating documents must be served pursuant to statute or court rule. Due to the complexity and importance of service requirements, the rule will not describe the requirements in detail. The intent is to help ensure that self-represented litigants know that it is their responsibility to effectuate service. It was noted that some self-represented litigants do not know that they are responsible for service, and that some believe that the court takes care of service, as is the case with most conciliation court proceedings. It was noted that most self-help literature in family law cases is very clear regarding service obligations.
- The Self-Help Center staff request that the rules acknowledge the existence of the MyCourtMN portal which is a separate portal being tested for use by self-represented litigants in order for protection and harassment restraining order cases in the Fourth Judicial District. At this time the portal is essentially an initial filing mechanism for these cases but could evolve into service and filing beyond the initial petition and/or beyond the Fourth Judicial District. The committee would like more information on the MyCourtMN portal. Staff Mike Johnson will distribute copies of the order authorizing the pilot project for the portal. The portal is currently in the pilot stage, so it is premature to consider codifying all applicable requirements of the pilot into the General Rules of Practice. The rules will need to recognize the portal as an alternative to the E-Filing System.
- The authorization for the Fourth Judicial District’s “Porter order” (a standing order requiring review of *pro se* family law pleadings by the self-help center) is unclear, and may conflict with the e-filing rules. This issue can be most efficiently addressed by the Fourth Judicial District judges.
- It is not appropriate to add a list of factors that a judge should consider when determining whether a self-represented litigant should be required to use the E-Filing System or be prohibited from using the E-Filing System. It may be premature to codify all relevant factors. Some will also view any list as all-inclusive but judges are free to consider all relevant factors.
- Rule 14.01(b)(5), as currently written, prohibits self-represented litigants from e-filing while they are in custody. It’s not clear whether other litigants are required to electronically serve a self-represented litigant who falls under this rule. This should be addressed. The last sentence should be modified to read: “Self-represented litigants are ~~excused~~ prohibited from using the E-Filing System while in custody in jail or prison.” The underlying concern is that people in custody do not have access

to computers, and may not be able to use the E-Filing System. The deletion of the words “in jail or prison” makes it clear that the provision applies to people who are in custody on immigration holds, on work release, under quarantine for infectious diseases, or in other situations.

- Rule 14.01(b)(5), as currently written, does not address self-represented litigants who are prohibited from accessing the Internet as part of a criminal case (for example, as part of conditions of probation).
- The definition of non-party participants does not include sheriffs, who fall within the definition of “select users.” Sheriffs will be subject to mandatory use of the E-Filing System.
- The authorization for the court to deliver notices by e-mail outside the E-Filing System is added only because of current technological limitations. It is not a preferred process.
- The existing rules on proposed orders should not be changed. The alternative proposals create more problems than they solve, but it is good to have proposed orders filed clearly labelled as “proposed”, and to have the filer identified. Also, there should be a prohibition on issuing certified copies of proposed orders.

The committee had no concerns about permitting signatures under penalty of perjury in lieu of notarizations.

The committee agreed to strike proposed Rule 14.04(f), which would have established a 14-day deadline for raising challenges to the authenticity of signatures.

Rule 114:

The committee agreed that the proposed amendments to Rule 114 should be amended to allow arbitrators to serve documents by any means agreed upon by the parties.

Rule 303.05; Orders to Show Cause:

The committee considered whether the order to show cause reference in Rule 303.05 should be changed. The committee decided to leave the provision unchanged, but noted that the issue should be revisited in the future. The longstanding practice is for the server to show the recipient the original order to show cause, even though the recipient is given a copy of the order. This practice appears to be archaic and does not have a clear basis in law. However, the committee will require very thorough research before recommending a departure from this practice.

Rule 308.01; Consent to service by electronic means:

The draft advisory committee comment to Rule 308.01 contains language regarding consent to service by electronic means outside of the E-Filing System. A committee member suggested

adding this language to Rule 14 comments. The members agreed that this should be done. This will help clarify when service by electronic means outside of the E-Filing System is permitted.

Typographical correction:

A committee member noted that the word “by” should be removed from line 2026.

Recommendation #2:

The committee members approved Recommendation #2 which adds an admonition to Rule 11.

Recommendation #3:

The committee members approved Recommendation #3, which would require consecutive pagination of exhibits. It was noted that there might be an issue if certified copies of documents were filed as exhibits. The committee members did not come to an agreement on whether it would be appropriate to apply consecutive page numbers to a certified copy, but noted that the language “to the extent feasible” provides flexibility to address it. One committee member suggested adding the words “by the submitting party” to make it clear that filers are responsible for providing consecutive page numbers.

Recommendation #4:

The committee members approved Recommendation #4 without comment.

Statutorily-required notices (Appendix A):

The committee discussed a concern raised by one of the members: how to incorporate statutorily-required notices in family law orders without invalidating electronic signatures. A suggestion was made to consider amending rule 308.02 to permit the notices to be incorporated by reference to a web site posting. The committee determined that this is not an issue that can be addressed through a rules change as the statutes require the notice to be attached to the order. Judges will need to ensure that the notices are incorporated before they sign orders. The Second District sends the orders and statutory notices out via the E-Filing System as two separate documents in the same envelope, much like in the paper world.

Recommendation #5:

The committee discussed Recommendation #5, the MSBA Probate and Trust Law Section proposal regarding probate rules. The majority of the proposed rule changes were approved without concern; the reporter and staff attorney will review the changes to ensure that the language conforms to the other rule changes.

The committee discussed at length the proposal to revise the requirement for reporting underperforming assets. There was a suggestion by non-member probate attorneys that the

threshold of 1% is problematic in a down market, and that perhaps there could be a rate tied to Consumer Price Index or some other relevant measure that could be published. Members commented that a five-year accounting would look incomplete if in some years the same asset would have to be reported but not for other years. The committee members concluded that it would be appropriate to advise the court to seek additional comments before deleting the requirement.

Future work:

The reporter and staff attorney will circulate a draft report by e-mail and members will be asked to vote on it by email. It is not likely that the next scheduled meeting will need to be held. Committee members are asked to review the draft report carefully for any mistakes.

The meeting adjourned.