STATE OF MINNESOTA

IN SUPREME COURT

ADM04-8001

ORDER REGARDING PROPOSED AMENDMENTS TO THE MINNESOTA RULES OF CIVIL PROCEDURE

ORDER

The Minnesota Supreme Court Advisory Committee on the Rules of Civil Procedure has recommended amendments to the Minnesota Rules of Civil Procedure to promote uniformity with rules that govern procedures in federal courts, including with respect to timing provisions in those rules. The Committee also recommends amendments to Rule 63 of the Rules of Civil Procedure, regarding judicial disqualification, and other minor amendments to various rules. Finally, the Committee's report addresses the petition of the Minnesota State Bar Association, which proposed an amendment to Rule 23 of the Rules of Civil Procedure, to address the use of unclaimed funds in class action settlements. The Committee's report with the proposed amendments to the Rules of Civil Procedure is attached to this order, and can also be accessed on P-MACS, the public access site for the Minnesota Appellate Courts, under case number: ADM04-8001 - *Rules Report - Proposed Amendments to the Rules of Civil Procedure* (filed August 1, 2017). The court will consider the proposed amendments to the Minnesota Rules of Civil Procedure after reviewing any comments on the Committee's recommendations.

IT IS HEREBY ORDERED THAT:

1. Any person or organization wishing to provide comments in support of or in opposition to the proposed amendments shall file one copy of those comments, electronically, using the appellate courts' e-filing application, E-MACS, so as to be received no later than November 28, 2017.

2. A hearing will be held before this court to consider the proposed amendments to the Rules of Civil Procedure. The hearing will take place in Courtroom 300, Minnesota Judicial Center, 25 Reverend Dr. Martin Luther King, Jr. Blvd., Saint Paul, Minnesota, on December 19, 2017, at 10 a.m. Any person or organization wishing to make an oral presentation at the hearing, in support of or in opposition to the proposed amendments, shall file, electronically, a request to appear at the hearing, along with one copy of the material to be presented, on or before November 28, 2017.

Dated: September 29, 2017

BY THE COURT:

G. Barry Anderson
Associate 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
August 1, 2017

Hon. Eric Hylden, Duluth
Chair

Hon. G. Barry Anderson, Saint Paul
Liaison Justice

Hon. Jerome Abrams, Hastings
James Attwood, Preston
Shannon Awsumb, Minneapolis
John Cotter, Bloomington
Rita Coyle DeMeules, Saint Paul
Hon. Jennifer Frisch, Saint Paul
Barton Gernander, Minneapolis
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Lawrence Rocheford, Lake Elmo
Daniel Rogan, Minneapolis
Markus Yira, Hutchinson
Hon. Edward Wahl, Minneapolis

Michael B. Johnson, Saint Paul
Patrick Busch, Saint Paul
Staff Attorneys

David F. Herr, Minneapolis
Reporter

ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

Summary of Committee Recommendations

The committee met three times in 2017 to consider several issues relating to the rules. The primary focus of the committee's work this year was to revisit the recommendation made to the Court in 2009 that would amend the timing provisions of the rules to count all days—including weekends and holidays—in calculating all time periods and make appropriate adjustments to time periods to accommodate that change. The committee also reviewed the operation of the changes made in federal court to make uniform the majority of the time limits in the rules that are expressed in days. The committee continues to recommend that these changes be made to the rules. These changes should be implemented so as to accomplish the greatest uniformity across practice areas and sets of rules, so the committee recommends that the timing changes only be implemented after other advisory committees and State Court Administration have reviewed other sets of rules and the Court may implement a comprehensive revision to all affected rules.

In addition, the committee reviewed various amendments in the federal rules since the committee's last review, and also considered other issues raised in the MSBA Petition and a Petition from the Board of Judicial Standards relating to the standard stated in Rule 63 for the disqualification or recusal of judicial officers.

In summary, the committee's recommendations are:

1. The Rules of Civil Procedure should be amended to modify the timing mechanisms under the rules. These amendments should only be made after consideration of and in conjunction with parallel amendments to other sets of rules (in particular, the General Rules of Practice, the Rules of Criminal Procedure, and the Rules of Civil Appellate Procedure). These changes should only be implemented after other advisory committees and State Court Administration have reviewed other sets of rules to identify and recommend similar amendments to timing provisions, so the court may implement a comprehensive revision to all

affected rules. The recommended amendments to the civil rules are therefore set forth in an entirely separate set of amendments found in Attachment 1.

2. The Court should reject the request of the MSBA to amend Rule 23 to require that unclaimed funds in class action settlements be dedicated to fund legal aid providers.

3. The Court should amend several rules relating to waiver of service, discovery, summary judgment, and third-party practice to conform them to their federal counterparts.

4. The Court should amend Rule 63 to incorporate as the disqualification or recusal standard for judges the specific and applicable standards established in the Code of Judicial Conduct.

5. The Court should amend Rule 10 to provide explicitly for confidential filings pursuant to law or court order.

6. The Court should make housekeeping amendments to Rules 31.01 and 67.04 to correct minor errors.

7. The Court should add an advisory committee comment to Rule 12.01 to advise litigants of a new statutory provision that creates a different time to answer than that stated in the rule.

Effective Date

The committee believes that the rule amendments recommended in this report should generally be ready to be adopted to take effect on January 1, 2018. However, the committee recommends that the changes to the timing rules set forth in Recommendation 1 and Attachment 1 should only be adopted to take effect simultaneously with appropriate amendments to other court rules that deal with deadlines and counting days.

Style of Report

The specific recommendation as to the existing rule is depicted in traditional legislative format, 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: The Rules of Civil Procedure, As Well as Other Affected Rules, Should be Amended to Modify the Timing Mechanisms Under the Rules.

Introduction

The advisory committee recommended to this Court in 2009 that it would be appropriate for Minnesota to amend the court rules to adopt changes in timing to remove differences in the counting of days for long and short periods and adopt uniform time periods using a 7-, 14-, 21-, and 28-day system. Similar changes had been made in the federal rules in 2009, and the committee believed that those changes worked well in federal court and that it would be advantageous to use the same methods of counting in days for state and federal court actions. *See* Recommendations of Minnesota Supreme Court Advisory Committee on Rules of Civil Procedure, Final Report, No. ADM04-8001 (Nov. 6, 2009), at 3-4. The committee continues to believe that recommendation is sound and that amendment of the rules to effectuate it would be wise.

The critical change made in this recommendation is the amendment of Rule 6.01 to delete subsection (b). This change would result in all days being counted for all time calculations, in accordance with the accepted rule of excluding the initial day and including the final day, unless the final day falls on a weekend or holiday. That counting rule is currently contained in Rule 6.01(a) and is consistent with the provisions of Minn. Stat. § 645.15. The proposed change would then allow relevant deadlines in the rules to occur on a 7-, 14-, 21-, and 28-day system, which would also make the majority of deadlines occur during the Monday-Friday work week, as a reply to a document served on a Tuesday would, generally, be due on another Tuesday, either 7, 14, 21, or 28 days later. Existing periods longer than 28 days would not be changed under the proposed amendments. The changes similarly would not affect any deadline or period measured in hours, weeks, months, or years.

One of the primary goals of this recommendation is uniformity, and the committee believes it should only be implemented after consideration of how the changes would operate in conjunction with the Minnesota General Rules of Practice, Minnesota Rules of Criminal Procedure, Minnesota Rules of Civil Appellate Procedure, and other rules. Ideally, the uniform counting rules would apply in all proceedings, but the committee recognizes that the extension of deadlines to seven days where the periods are currently shorter may not be feasible in some instances. Thus, the committee recommends that the effective date of this particular set of amendments be coordinated with review by other advisory committees of other sets of rules and a single effective date implemented. The proposed draft of Rule 6 includes a "saving" provision that would allow any other rule or statute expressly to provide for a period shorter than seven days, defined to exclude Saturdays, Sundays, and legal holidays.

It is also important to give full consideration to the recommended changes to Rule 6 because it is either incorporated by reference or repeated verbatim in other rules. *See, e.g.*, Minn. R. Civ. App. P. 126.01 (mandating use of Minn. R. Civ. P. 6.01 & 6.05 to compute time); Minn. Gen. R. Prac. 354 (restating and applying Rule 6 for Expedited Child Support Process cases).

Under these revisions in the civil rules, the shortest time periods measured in days become seven-day periods, and this works well for the civil rules. The committee understands that many events in state court proceedings occur with deadlines that are shorter than seven days and that changing them to seven days may not be appropriate. The potential impact should be considered by the Court's other advisory committees before these changes are implemented.

The committee is also aware that the ultimate decision on the implementation of these changes will need to consider the costs to the judicial branch in implementing them. By way of example only, it will be necessary to adjust the trial and appellate courts' case-management systems to accommodate the new timing rules. The committee has not analyzed these costs.

Because these changes would best be considered for separate implementation, they are set forth in Attachment 1, and the changes are not reflected in any other proposed language in this report.

Specific Recommendations

The Minnesota Rules of Civil Procedure should be amended as set forth in Attachment 1. This recommendation should be considered in tandem with consideration of similar changes in the Minnesota General Rules of Practice, Minnesota Rules of Criminal Procedure, Minnesota Rules of Civil Appellate Procedure, and other rules.

Recommendation 2: The Court Should Reject the Request of the MSBA to Amend Rule 23 to Require Unclaimed Funds in Class-Action Settlements be Dedicated to Fund Legal Aid Providers

Introduction

The Minnesota State Bar Association petitioned the Court, among other things, to amend Rule 23 to require that in any class-action settlement or judgment that resulting in the collection of funds that are not claimed and distributed in the claims process, the dedication of one-half of those unclaimed funds to finance legal services organizations. The committee gave careful consideration to this proposal, and invited the representatives of the petitioning MSBA as well as two prominent members of the class-action bar to speak to the committee and answer questions about the proposal.

The specific MSBA proposals would amend Rule 23.05 to require inclusion in any order approving settlement of a class action a provision to provide for the distribution of "residual funds." That provision has no counterpart in the Federal Rules of Civil Procedure dealing with class actions. The proposal would also create a new Rule 23.11, requiring in all class actions that at least 50% of any residual funds be distributed to the Minnesota Legal Services Advisory Committee ("LSAC"). This mandatory provision would apply in all class actions, without regard to the nature of their claims or of any relationship to LSAC's or legal aid's role in the litigation or interest in the issues litigated. This proposed provision also has no counterpart in the federal rules, and is in fact inconsistent with numerous federal class-action decisions. *See, e.g.*, *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866–67 (8th Cir. 2017) (*cy pres* distribution permitted only to extent distribution to parties not feasible, and then only to purpose as close as possible to goals of the class action); *Oetting v. Green Jacobson, P.C. (In re BankAmerica Corp. Securities Litigation)*, 775 F.3d 1060 (8th Cir. 2015) (same); *Schwartz v. Dallas Cowboys Football Club, Ltd.*, 362 F. Supp. 2d 574, 577 (E.D. Pa. 2005) (distribution to worthy charity, a law school clinical program, not allowed under

cy pres doctrine where charity had no relation to Sherman Act issues in class action).

The starting point of the advisory committee's consideration was to recognize that the LSAC is a worthwhile fund supporting an underfunded cause. The committee does not view, however, that automatic dedication of unclaimed funds from all class action settlements is an appropriate action.

As to the more mechanical aspects of class action settlements, the committee believes that two overarching principles warrant the Court's attention in reviewing this recommendation. They both relate to uniformity.

First, this Court has, wisely in the opinion of the committee, traditionally favored uniformity of the state and federal rules, particularly in matters where the state courts do not frequently encounter the issues. Class action litigation is probably the paradigm example of the benefit of uniformity. There have historically been relatively few class actions litigated in Minnesota and consequently few published opinions to guide the courts. This paucity of cases has only been exacerbated by the adoption of the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1453, & 1711–15, which has shifted many class actions to the federal courts. Having Minnesota's Rule 23 conform closely to its federal counterpart has the substantial benefit to Minnesota litigants and judges of providing a robust body of law that is persuasive, if not precedential, on class actions in Minnesota. *See generally* WILLIAM RUBENSTEIN, ALBA CONTE & HERBERT G. NEWBERG, NEWBERG ON CLASS ACTIONS (4th & 5th editions) (multiple volumes).

In addition to not hewing to the federal rules, and probably more significantly, the MSBA proposal does not adhere to the well-established common law relating to *cy pres* distributions in the class action context. The *cy pres* doctrine arose in equity, specifically in the law of trusts. From the Norman French, *cy près comme possible* means "as near as possible." *See In re Airline Ticket Comm'n Antitrust Litigation,* 307 F.3d 679, 682 (8th Cir. 2002). The doctrine in

equity provided a means for effectuating the intent of a trust grantor, rather than allowing a grant or bequest to fail, when the express purpose of a bequest was impossible to achieve. Minnesota law provides expressly for the *cy pres* doctrine in the context of charitable trusts, authorizing modification of an instrument to enforce its original intent in limited circumstances, *see* MINN. STAT. § 501B.31, subd. 4(c), and requiring notice to the Attorney General of any effort to modify or depart from the original purposes of the trust. *See* MINN. STAT. § 501B.41, subd. 2(2). Under the statute, the threshold requirements for any redirection of funds under the *cy pres* doctrine are 1) the impossibility or impracticality of effectuating the trust according to its terms and 2) the availability of an alternate means that will "as nearly as possible, accomplish the general purposes of the instrument and the intention of the grantor." MINN. STAT. § 501B.31, subd. 4(c).

The use of *cy pres* principles in the class-action context is a newer development, but has become a frequent part of class action litigation. The authoritative ALI PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION § 3.07 (2010) addresses and distills the substantial federal case law on this subject:

> **§ 3.07 Cy Pres Settlements**
>
> A court may approve a settlement that proposes a cy pres remedy even if such a remedy could not be ordered in a contested case. The court must apply the following criteria in determining whether a cy pres award is appropriate:
>
> > (a) If individual class members can be identified through reasonable effort, and the distributions are sufficiently large to make individual distributions economically viable, settlement proceeds should be distributed directly to individual class members.
> >
> > (b) If the settlement involves individual distributions to class members and funds remain after distributions (because some class members could not be identified or chose not to participate), the settlement should presumptively provide for further distributions to participating class members unless the amounts involved are too small to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair.

> (c) If the court finds that individual distributions are not viable based upon the criteria set forth in subsections (a) and (b), the settlement may utilize a cy pres approach. The court, when feasible, should require the parties to identify a recipient whose interests reasonably approximate those being pursued by the class. If, and only if, no recipient whose interests reasonably approximate those being pursued by the class can be identified after thorough investigation and analysis, a court may approve a recipient that does not reasonably approximate the interests being pursued by the class.

The ALI Principles have been employed by many courts. The requirement of a nexus between the issues in the class action and the recipients of any *cy pres* distribution is well-recognized in federal court class-action litigation. *See, e.g., In re BankAmerica Corp. Sec. Litig.*, 775 F.3d at 1067; *Dallas Cowboys Football Club, Ltd.*, 362 F. Supp. 2d at 577.

The mandatory and rigid application of a *cy pres* distribution rule that would require distribution of the class's funds to a predetermined charity, untethered to the nature of the class action or the interests of class members, is inconsistent with *cy pres* law. The alternative suggestion for a rule that would merely provide that it is *permissible* to include LSAC as a potential recipient of unclaimed funds in class action settlements would not be helpful, as it would be merely hortatory in nature and would codify only a part of the existing practice: under the current rule and common law parties may designate LSAC (or other entities that may be related to the particular litigation) as a recipient of funds. Moreover, the MSBA's petition acknowledges that legal aid providers have received substantial *cy pres* distributions in three cases. *See* MSBA Petition at 38, ¶ 38.

Additionally, several members of the advisory committee would reject the proposed rule as raising the potential of violation of separation-of-powers principles. They believe that the MSBA's proposal is properly considered by the legislature, not by this Court.

Specific Recommendation

For these reasons, the committee does not recommend the adoption of the proposed amendments to Rule 23.

Recommendation 3: The Court Should Amend Several Rules Relating to Waiver of Service, Discovery, Summary Judgment and Impleader to Conform Them to Their Federal Counterparts

Introduction

The committee reviewed several sets of amendments to the federal rules that have been adopted since the committee's last such review. Some of the amendments are either irrelevant to Minnesota practice or are not compatible with the differing case assignment systems and case management resources in state court. Many are, however, worthwhile and appear to have worked well in federal court practice. Because the federal amendments were adopted in several different "batches," and relate to different general subjects, this report groups the recommendations by subject matter.

The current state court provision for service by mail does not work well. There is little incentive for a defendant to accept service in this manner, and the rule suggests that service by mail is legally valid. Under the current rule, the defendant is free to ignore the attempt to serve by mail.

Please note: the recommendations in this section do not reflect other amendments recommended elsewhere in this report. If all are adopted by the court, they will need to be dovetailed into a single adoption order, either with or without the timing changes recommended in Recommendation 1.

This recommendation 3 is set forth in five parts:

A. Waiver of Service,

B. Discovery Rules,

C. Summary Judgment Rule,

D. Impleader Rule, and

E. Specific MSBA Proposals Not Recommended for Adoption.

Specific Recommendations

A. Waiver of Service.

Rule 4.05 should be amended to replace the current process of "Acknowledgment of Service by Mail" with a more effective and reliable process using "Waiver of Service." A companion change should be made to Rule 3.

~~**4.05. Service by Mail**~~

~~In any action service may be made by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 22 and a return envelope, postage prepaid, addressed to the sender.~~

~~If acknowledgment of service under this rule is not received by the sender within the time defendant is required by these rules to serve an answer, service shall be ineffectual.~~

~~Unless good cause is shown for not doing so, the court shall order the payment of the costs of personal service by the person served if such person does not complete and return the notice and acknowledgment of receipt of summons within the time allowed by these rules.~~

4.05. Waiving Service of Summons

(a) Requesting a Waiver. An individual, corporation, or association that is subject to service under Rule 4.03 has a duty to avoid unnecessary expenses of serving the summons. A plaintiff may request that the defendant waive service of a summons. The notice and request must:

(1) be in writing and be addressed:

(A) to the individual defendant; or

(B) for a defendant subject to service under Rule 4.03(b)-(e) to the agent authorized to receive service;

(2) be accompanied by a copy of the complaint, two copies of Form 22B or a substantially similar form, and a prepaid means for returning a signed copy of the form;

(3) inform a defendant, using Form 22B or a substantially similar form, of the consequences of waiving and not waiving service;
(4) state the date when the request is sent;
(5) give a defendant 30 days after the request was sent—or 60 days if sent to a defendant outside the United States—to return the waiver; and
(6) be sent by first-class mail or other reliable means.

(b) Failure to Waive. If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:
(1) the expenses later incurred in making service; and
(2) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(c) Time to Answer After a Waiver. A defendant who, before being served with process, timely returns a signed waiver need not serve an answer to the complaint until 60 days after the request was sent to that defendant—or until 90 days after it was sent to that defendant outside the United States.

(d) Results of Filing of a Waiver. When a plaintiff files a waiver of service, proof of service is not required and these rules apply as if a summons and complaint had been served at the date of signing of the waiver.

(e) Jurisdiction and Venue Not Waived. Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

Advisory Committee Comment—2017 Amendments

Rule 4.05 is completely revamped to replace the somewhat unreliable procedure relying on the "Acknowledgement of Service" form with a more straightforward procedure, used in federal court since 1993, relying on a "Waiver of Service" form. New Rule 4.05 is modeled closely on its federal counterpart.

The former procedure created the illusion that valid service could be accomplished by U.S. Mail, but it was a procedure that gave control over the process completely to the defendant and little incentive to a plaintiff to make use of it. This rule does not authorize service by mere mailing—it is necessary for the defendant to waive formal service and return the waiver-of-service form. Service is accomplished and proven by the waiver, not the mailing. Additionally, the new procedure is not limited to delivery by mail or any other means expressly authorized by these rules—it allows valid service to be accomplished by any means that is agreed to the defendant being served—mail, private courier, email, or even social media would all be acceptable if the defendant agreed to waive service under this rule. The only requirement is that the defendant sign and return a waiver-of service form.

3.01. Commencement of the Action

A civil action is commenced against each defendant:

(a) when the summons is served upon that defendant~~,~~; or

(b) at the date of ~~acknowledgement of service if service is made by mail or other means consented to by the defendant either in writing or electronically~~ signing of a waiver of service pursuant to Rule 4.05; or

(c) when the summons is delivered to the sheriff in the county where the defendant resides for service; but such delivery shall be ineffectual unless within 60 days thereafter the summons is actually served on that defendant or the first publication thereof is made.

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

Advisory Committee Comment—2017 Amendments

Rule 3.01 is amended to implement the amendment to Rule 4.05, which replaces the somewhat unreliable procedure involving the "Acknowledgement of Service" form with a more straightforward procedure relying on a "Waiver of Service" form. Rule 3.01 defines the date of commencement of an action using the wavier of process procedure.

APPENDIX OF FORMS

~~FORM 22 - NOTICE AND ACKNOWLEDGMENT OF SERVICE BY MAIL~~

~~NOTICE~~

~~TO: (insert the name and address of the person to be served.)~~

~~The enclosed summons and complaint are served pursuant to Rule 4.05 of the Minnesota Rules of Civil Procedure.~~

~~You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days.~~

~~Signing this Acknowledgment of Receipt is only an admission that you have received the summons and complaint, and does not waive any other defenses.~~

~~You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.~~

~~If you do not complete and return the form to the sender within 20 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.~~

~~If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.~~

~~I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint was mailed on (insert date).~~

~~_____~~
~~Signature~~

~~_____~~
~~Date of Signature~~

~~ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT~~

~~I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above-captioned matter at (insert address).~~

~~_____~~
~~Signature~~

~~_____~~
~~Relationship to Entity/Authority to Receive Service of Process~~

~~_____~~
~~Date of Signature~~

Proposed Forms 22A and 22B

(Note: Forms 22A and 22B are new, but underscoring to indicate

what is being added in these forms is omitted from this Report to improve readability)

FORM 22A. NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: (insert the name and address of the person to be served.)

Why Are You Getting this?

A copy of a Summons and Complaint is attached to this notice. This is not formal service of the summons on you, but rather is my request that you sign and return the enclosed waiver of service in order to avoid the cost of serving you. The cost of service will be avoided if I receive a signed copy of the waiver within __ days after the date designated below as the date on which this Notice and Request is sent.

I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records. If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is signed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is outside the United States).

What Happens Next?

If you do not return the signed waiver form within the time indicated, I will arrange to have the summons and complaint served on you (or the party on whose behalf you are addressed) and will then, to the extent authorized by court rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. Your duty to waive the service of the summons is explained on the reverse side (or at the foot) of this waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this ___ day of _____, 20___.

_____

Signature

FORM 22B. WAIVER OF SERVICE OF SUMMONS

TO: _____ (name of plaintiff's attorney or unrepresented plaintiff)

I received your request that I waive service of a summons in the lawsuit of ____(caption of action)____, in the District Court for the ____ District of Minnesota, _____ County. I have also received a copy of the complaint in the lawsuit, two copies of this document, and a means for returning the signed waiver to you without cost to me. I agree to save the cost of service of the summons and complaint in this lawsuit.

I understand that I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons. I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after ___ (date request was sent) ____, or within 90 days after that date if the request was sent outside the United States.

_____

Date

_____

Signature

_____

Printed/typed name:

[Note: To be printed on reverse side of the waiver form or set forth at the foot of the form]:

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Minnesota Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver. It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property.

A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought. A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

♦ ♦ ♦

B. Discovery Rules.

Several amendments to the discovery rules that have been made in the federal rules should be adopted in Minnesota. These amendments adopt, to the extent compatible with Minnesota's case management processes and court workload, changes that further amplify the importance of proportionality in discovery and also diminish the opportunities for obfuscation in responding to discovery requests. These amendments affect Rules 26, 34, and 37.

Rule 26 should be amended as follows:

RULE 26. DUTY TO DISCLOSE; GENERAL PROVISIONS GOVERNING DISCOVERY

* * *

26.02. Discovery Methods, Scope and Limits

Unless otherwise limited by order of the court in accordance with these rules, the methods and scope of discovery are as follows:

* * *

(b) ~~Scope and Limits.~~ ~~Discovery must be limited to matters that would enable a party to prove or disprove a claim or defense or to impeach a witness and must comport with the factors of proportionality, including without limitation, the burden or expense of the proposed discovery weighed against its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues. Subject to these limitations, parties may obtain discovery regarding any matter, not privileged, that is relevant to a claim or defense of any party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. Upon a showing of good cause and proportionality, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information sought need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.~~

(b) Scope and Limits. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery

outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

* * *

(3) Limits Required When Cumulative; Duplicative; More Convenient Alternative; and Ample Prior Opportunity. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; or

(ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) the burden of proposed discovery is outside the scope permitted by Rule 26.02(b).

The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26.03.

Advisory Committee Comment—2017 Amendments

Rule 26.02 is amended to adopt the changes made to Fed. R. Civ. P. 26(b) in 2015. The amendments are intended to improve the operation of the rule and to avoid some of the problems that were encountered under the former rule.

26.03. Protective Orders

(a) In General. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(~~a~~ 1) that the discovery not be had;

(~~b~~ 2) that the discovery may be had only on specified terms and conditions, including a designation of the time or location or the allocation of expenses, for the disclosure or discovery;

(~~c~~ 3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(~~d~~ 4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(~~e~~ 5) that discovery be conducted with no one present except persons designated by the court;

(~~f~~ 6) that a deposition, after being sealed, be opened only by order of the court;

(~~g~~ 7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or

(~~h~~ 8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

(b) Ordering Discovery. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

(c) Awarding Expenses. Rule 37.01(d) applies to the award of expenses incurred in connection with the motion.

Advisory Committee Comment—2017 Amendments

Rule 26.03 is amended to adopt a change made to Fed. R. Civ. P. 26(c) in 2015. The amendment explicitly provides that cost-shifting is one option available to the court in implementing protective relief, where appropriate. The rule is not intended to make cost-shifting a routine part of discovery motions, but recognizes that there are some situations where it is appropriate. The rule is also subdivided and numbered to make it easier to use and cite; the headings are not intended to affect the interpretation of the rule.

26.04. Timing and Sequence of Discovery

(a) Timing. Notwithstanding the provisions of Rules 26.02, 30.01, 31.01(a), 33.01(a), ~~34.02,~~ 36.01, and 45.01, parties may not seek discovery from any source before the parties have conferred and prepared a discovery plan as required by Rule 26.06(c) except in a proceeding exempt from initial disclosure under Rule 26.01(a)(2), or when allowed by stipulation or court order.

(b) Early Rule 34 Requests.

(1) Time to Deliver. More than 21 days after the summons and complaint are served on a party, a request under Rule 34 may be delivered:
(A) to that party by any other party, and
(B) by that party to any plaintiff or to any other party that has been served.

(2) When Considered Served. The request is considered to have been served when the parties have conferred and prepared a discovery plan as required by Rule 26.06(c).

(~~b~~c) Sequence. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(~~c~~d) Expedited Litigation Track. Expedited timing and modified content of certain disclosure and discovery obligations may be required by order of the supreme court adopting special rules for the pilot expedited civil litigation track.

* * *

Advisory Committee Comment—2017 Amendments

Rule 26.04 is amended to adopt a change made to Fed. R. Civ. P. 26(d) in 2015, which allows the service of Rule 34 requests before other discovery is permitted. The rule permits a party responding to the request additional time to prepare an appropriate response, but does not compel earlier response or production. The service of an earlier request may also provide earlier notice to a party of the need to preserve evidence for use in the case, and thus eliminate some disputes over spoliation of evidence. The effect of the rule is to authorize earlier service of Rule 34 requests but the rule does not allow a serving party to accelerate the response deadline by doing so.

26.06. Discovery Conference and Discovery Plan

* * *

(c) Discovery Plan. A discovery plan must state the parties' views and proposals on:

(1) what changes should be made in the timing, form, or requirement for disclosures under Rule 26.01, including a statement of when initial disclosures were made or will be made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(3) any issues about disclosure ~~or~~, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;

(4) any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order;

(5) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

(6) any other orders that the court should issue under Rule 26.03 or under Rule 16.02 and .03.

* * *

Advisory Committee Comment—2017 Amendments

Rule 26.04 is amended to adopt a change made to Fed. R. Civ. P. 26(d) in 2015, which allows the service of Rule 34 requests before other discovery is permitted. The rule permits a party responding to the request additional time to prepare an appropriate response, but does not compel earlier response or production. The service of an earlier request may also provide earlier notice to a party of the need to preserve evidence for use in the case, and thus eliminate some disputes over spoliation of evidence. The effect of the rule is to authorize earlier service of Rule 34 requests but the rule does not allow a serving party to accelerate the response deadline by doing so.

Rule 26.06(c) is amended to provide expressly for inclusion of preservation of evidence as a subject to be addressed in the discovery plan in every case. This requirement recognizes both the importance of document-preservation issues and the benefits of addressing the issue early in the case.

* * *

RULE 34. PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

34.01. Scope

(a) In General. Any party may serve on any other party a request within the scope of Rule 26.02:

(1) to produce and permit the party making the request, or someone acting on the requesting party's behalf, to inspect and copy, test, or sample:

(A) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images~~, phono records,~~ and other data or data compilations stored in any medium from which information can be obtained—translated, if necessary~~,~~ by the respondent through detection devices into reasonably usable form, or

(B) to inspect and copy, test, or sample any designated tangible things that constitute or contain matters within the scope of Rule 26.02 and that are in the possession, custody or control of the party upon whom the request is served, or

(2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26.02.

Advisory Committee Comment—2017 Amendments

Rule 34.01 is amended to incorporate the scope of discovery set forth in Rule 26.02. This change is made to make that limitation on the scope of any Rule 34 discovery obligation clear to litigants, and is not intended to expand or narrow the scope of discovery.

34.02. Procedure

(a) Timing. The request may, without leave of court, be served upon any party with or after service of the summons and complaint.

(b) Contents of the Request. The request:

(1) ~~shall~~ must set forth with reasonable particularity ~~the items~~ each item or category of items to be inspected ~~either by individual item or by category, and~~;

(2) ~~describe each item and category with reasonable particularity. The request shall~~ must specify a reasonable time, place, and manner ~~of making~~ for the inspection and performing the related acts~~.~~; and

(3) ~~The request~~ may specify the form or forms in which electronically stored information is to be produced.

(c) Responses and Objections.

(1) **Time to Respond**. The party upon whom the request is served ~~shall~~ must serve a written response within 30 days after ~~the service of the request,~~ the party is served (or deemed served pursuant to Rule 26.04(b)). ~~except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant.~~ The court may allow a shorter or longer time.

(2) **Responding to Each Item.** The response shall state, with respect to each item or category, either that inspection and related activities will be permitted as requested, or ~~unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, stating the reasons for objection~~ state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.

(3) **Objections.** An objection must state whether any responsive materials are being withheld on the basis of that objection. If objection is made to part of an item or category, that part shall be specified and inspection permitted of the remaining parts.

(4) **Responding to a Request for Production of Electronically Stored Information.** The response may state an ~~If~~ objection ~~is made~~ to ~~the~~ a requested form ~~or forms~~ for producing electronically stored information. If no form was specified in the request, the responding party must state the form or forms it intends to use.

~~(5) The party submitting the request may move for an order pursuant to Rule 37 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.~~

(5) **Producing the Documents or Electronically Stored Information.** Unless ~~the parties otherwise agree, or the court~~ otherwise ~~orders~~ stipulated or ordered by the court, these procedures apply to producing documents and electronically stored information:

(A~~a~~) A party ~~who produces documents for inspection shall~~ must produce ~~them as~~ documents as they are kept in the usual course of business at the time of the request and may ~~or, at the option of the producing party, shall~~ organize them to correspond ~~with~~ to the categories in the request;

(B~~b~~) If a request does not specify the form ~~or forms~~ for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a ~~form or forms that are~~ reasonably usable form; and

(C~~c~~) A party need not produce the same electronically stored information in more than one form.

Advisory Committee Comment—2017 Amendments

Rule 34.02 is amended to adopt the changes made to Federal Rule 34 in 2015. The most significant change is the provision in Rule 34.02(c)(3) that requires a party asserting an objection to a request for production to disclose whether any document is being withheld from production based on those objections. This rule change has curtailed one aspect of game-playing from federal practice and has worked well in federal court. It is adopted in state court practice to accomplish the same purpose. The rule does not require a detailed log of all documents withheld, but the objecting party must make it clear that documents are being withheld based on the objections asserted. This disclosure can then support dialogue over the nature of withheld information and a motion to resolve the appropriateness of the objections asserted.

The rule is also reformatted to make it clearer and easier to use by adding subdivisions and headings. These formatting changes are not intended to affect the interpretation of the rule.

34.03. Persons Not Parties

(a) Subpoenas. As provided in Rule 45, a nonparty may be compelled to produce documents and electronically stored information and to permit an inspection.

(b) Independent Actions. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

Advisory Committee Comment—2017 Amendments

Rule 34.03(a) is a new section that makes clear that Rule 34 requests may be enforced against nonparties though use of subpoenas issued pursuant to Rule 45.

*** * ***

RULE 37. FAILURE TO MAKE DISCLOSURES OR TO COOPERATE IN DISCOVERY: SANCTIONS

37.01. Motion for Order Compelling Disclosure or Discovery

(a) Appropriate Court. An application for an order to a party shall be made to the court in which the action is pending. An application for an order to a person who is not a party shall be made to the court in the county where the discovery is being, or is to be, taken.

(b) Specific Motions.

(1) To Compel Disclosure. If a party fails to make a disclosure required by Rule 26.01, any other party may move to compel disclosure and for appropriate sanctions.

(2) To Compel a Discovery Response. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(A) a deponent fails to answer a question propounded or submitted under Rules 30 or 31;

(B) a corporation or other entity fails to make a designation under Rule 30.02(f) or 31.01(c);

(C) a party fails to answer an interrogatory submitted under Rule 33; or

(D) ~~if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested~~ a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34.

The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(c) Evasive or Incomplete Answer, or Response. For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(d) Expenses and Sanctions.

(1) If the motion is granted, or if the requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified or that other circumstances make an award of expenses unjust.

(2) If the motion is denied, the court may enter any protective order authorized under Rule 26.03 and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(3) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26.03 and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

Advisory Committee Comment—2017 Amendments

Rule 37 is amended to adopt changes made to Federal Rule 37 in 2015. Rule 37.01(b)(2)(D) is amended to provide express authority for a motion for an order compelling discovery when a party fails to respond to a request either by the production of requested information or by the agreement to permit inspection. This amendment provides the means for enforcing the obligations under amended Rule 34.02.

* * *

~~**37.05. Electronically Stored Information**~~

~~Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.~~

37.05. Failure to Preserve Electronically Stored Information.

If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(a) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(b) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(1) presume that the lost information was unfavorable to the party;

(2) instruct the jury that it may or must presume the information was unfavorable to the party; or

(3) dismiss the action or enter a default judgment.

Advisory Committee Comment—2017 Amendments

Rule 37.05 is amended to redefine the sanctions available for the failure to preserve electronically stored information ("ESI"). The amendment follows closely the amendment made to Fed. R. Civ. P. 37(e) in 2015 and is intended to create a clearer standard for imposition of sanctions for the failure to preserve electronically stored information. First, the rule looks to ameliorating any prejudice by allowing discovery to restore or replace the missing information. This might be accomplished by locating alternate copies of the information, or reconstructing backed up copies. In the absence of prejudice, the rule does not authorize the imposition of sanctions for loss of information. The rule does not limit other sanctions based on conduct other than failure to preserve ESI. If prejudice does occur, the amended rule requires that a remedial sanction be implemented—one that is designed and limited to curing the prejudice. Most often, this would be an order limiting precluding evidence or limiting claims or defenses affected by the missing ESI. If the missing ESI was intentionally destroyed or otherwise made unavailable, the rule allows the more drastic sanctions of imposition of a presumption or either allowing or requiring a jury either to draw an adverse inference that the information was unfavorable to the party or, in egregious situations, dismiss the action or grant a default judgment.

By its terms, this rule applies only to failure to produce ESI where there is a duty to preserve it. There is no reason, however, that the courts should not, in the exercise of their discretion, follow this rule where there is the failure to preserve other evidence, such as physical evidence or documents in non-electronic form.

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C. Summary Judgment Rule.

Rule 56 relating to summary judgment should be amended to conform to its federal counterpart, including modernizing the language of the rule.

RULE 56. SUMMARY JUDGMENT

~~**56.01. For Claimant**~~

~~A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the service of the summons, or after service of a motion for summary~~

~~judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.~~

56.01. Motion for Summary Judgment or Partial Summary Judgment.

A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court shall state on the record or in a written decision the reasons for granting or denying the motion.

~~56.02. For Defending Party~~

~~A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.~~

56.02. Time to File a Motion.

Service and filing of the motion must comply with the requirements of Rule 115.03 of the General Rules of Practice for the District Courts, provided that in no event shall the motion be served less than 14 days before the time fixed for the hearing. Unless the court orders otherwise, a party may not file a motion for summary judgment more than 30 days after the close of all discovery.

~~56.03. Motion and Proceedings Thereon~~

~~Service and filing of the motion shall comply with the requirements of Rule 115.03 of the General Rules of Practice for the District Courts, provided that in no event shall the motion be served less than ten days before the time fixed for the hearing. Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.~~

56.03. Procedures.

(a) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(1) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(2) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(b) Objection That a Fact Is Not Supported by Admissible Evidence. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(c) Materials Not Cited. The court need consider only the cited materials, but it may consider other materials in the record.

(d) Affidavits. An affidavit used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated.

~~**56.04. Case not Fully Adjudicated on Motion**~~

~~If, on motion pursuant to this rule, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing on the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.~~

56.04. When Facts Are Unavailable to the Nonmovant.

If a nonmovant shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(a) defer considering the motion or deny it;

(b) allow time to obtain affidavits or to take discovery; or

(c) issue any other appropriate order.

~~**56.05. Form of Affidavits; Further Testimony; Defense Required**~~

~~Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all documents or parts thereof referred to in an affidavit shall be attached thereto or served therewith. A "sworn copy" includes documents that are authenticated by a signature under penalty of perjury, pursuant to Minn. Stat. § 358.116. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. When a motion for summary judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere averments or denials of the adverse party's pleading but must present specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.~~

56.05. Failing to Properly Support or Address a Fact.

If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56.03, the court may:

(a) give an opportunity to properly support or address the fact;

(b) consider the fact undisputed for purposes of the motion;

(c) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(d) issue any other appropriate order.

~~**56.06. When Affidavits are Unavailable**~~

~~Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present, by affidavit, facts essential to justify the party's opposition, the court may refuse the application for judgment or may order~~

~~a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.~~

56.06. Judgment Independent of the Motion.

After giving notice and a reasonable time to respond, the court may:
(a) grant summary judgment for a nonmovant;
(b) grant the motion on grounds not raised by a party; or
(c) consider summary judgment on its own initiative after identifying for the parties material facts that may not be genuinely in dispute.

~~56.07. Affidavits Made in Bad Faith~~

~~Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party submitting them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits causes the other party to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.~~

56.07. Failing to Grant All the Requested Relief.

If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

56.08. Affidavit Submitted in Bad Faith.

If satisfied that an affidavit under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

Advisory Committee Comment—2017 Amendments

Rule 56 is extensively revamped to improve its operation. These amendments closely follow the amendments to Rule 56 of the Federal Rules of Civil Procedure

in 2010. They are not intended to change substantially practice under the rule, and very carefully preserve the familiar test of "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law" in Rule 56.01.

Rule 56.03(c) makes it clear that the court is not required to consider any matters beyond those filed in conjunction with the motion for summary judgment—filed by either the movant or any other parties. Rule 115.03(d) of the Minnesota General Rules of Practice sets forth specific requirements for what must be filed for summary judgment motions and responses. Rule 56.03 also retains, however, the traditional rule allowing the court to base either the grant or denial of summary judgment on any factual material contained in the record—this means the entire court file record, including all pleadings, other filings, and transcripts of arguments or hearings.

Rule 56.03(d) refers to "affidavits" as that term is defined for all proceedings by Rule 15 of the Minnesota General Rules of Practice. That rule encompasses both statements signed, sworn to, and notarized and statements signed under penalty of perjury in accordance with the rule.

Rule 56.06 carries forward the existing procedure allowing entry of judgment in favor of the movant or nonmovant, granting the motion on grounds other than those argued, or considering summary judgment on its own initiative. *See, e.g., Del Hayes & Sons, Inc. v Mitchell*, 304 Minn. 275, 230 N.W.2d 588 (1975) (sua sponte grant of summary judgment allowed). Where the court acts on its own initiative, the rule specifies that the parties are entitled to notice of its view about fact issues that may not be in dispute. That notice should precede any order for summary judgment by the 14-day minimum notice period specified in Rule 56.02.

If the Court adopts the foregoing amendments to Rule 56, and particularly, adopts recommended Rule 56.02, then it should also amend Rule 115.01(b) of the Minnesota General Rules of Practice to correct the cross-reference to the renumbered rule:

MINNESOTA GENERAL RULES OF PRACTICE

PART C. MOTIONS

*** * ***

Rule 115.01. Scope and Application

This rule shall govern all civil motions, except those in family court matters governed by Minn. Gen. R. Prac. 301 through 379 and in commitment proceedings

subject to the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act.

(a) Definitions. Motions are either dispositive or nondispositive, and are defined as follows:

(1) Dispositive motions are motions which seek to dispose of all or part of the claims or parties, except motions for default judgment. They include motions to dismiss a party or claim, motions for summary judgment and motions under Minn. R. Civ. P. 12.02(a)-(f).

(2) Nondispositive motions are all other motions, including but not limited to discovery, third party practice, temporary relief, intervention or amendment of pleadings.

(b) Time. The time limits in this rule are to provide the court adequate opportunity to prepare for and promptly rule on matters, and the court may modify the time limits, provided, however, that in no event shall the time limited be less than the time established by Minn. R. Civ. P. ~~56.03~~ 56.02. Whenever this rule requires documents to be filed with the court administrator within a prescribed period of time before a specific event, and the documents are not required to be filed electronically, filing may be accomplished by mail, subject to the following: (1) 3 days shall be added to the prescribed period; and (2) filing shall not be considered timely unless the documents are deposited in the mail within the prescribed period. If service of documents on parties or counsel by mail is permitted, it is subject to the provisions of Minn. R. Civ. P. 5.02 and 6.05.

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D. Impleader Rule

Rule 14 relating to third-party practice should be amended to conform to its federal counterpart, including modernizing the language of the rule.

RULE 14. THIRD-PARTY PRACTICE

~~14.01. When Defendant May Bring in Third Party~~

~~Within 90 days after service of the summons upon a defendant, and thereafter either by written consent of all parties to the action or by leave of court granted on motion upon notice to all parties to the action, a defendant as a third-party plaintiff may serve a summons and complaint, together with a copy of plaintiff's complaint upon a person, whether or not the person is a party to the action, who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff and after such service shall forthwith serve notice thereof upon all other parties to the action. Copies of third-party pleadings shall be furnished by the pleader to any other party to the action within five days after request therefor. The person so served, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. A third-party defendant may proceed in accordance with this rule against any person who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.~~

~~14.02. When Plaintiff May Bring in Third Party~~

~~When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which, pursuant to Rule 14.01, would entitle defendant to do so.~~

~~14.03. Orders for Protection of Parties and Prevention of Delay~~

~~The court may make such orders to prevent a party from being embarrassed or put to undue expense, or to prevent delay of the trial or other proceeding by the assertion of a third-party claim, and may dismiss the third-party claim, order separate trials, or make other orders to prevent delay or prejudice. Unless~~

~~otherwise specified in the order, a dismissal pursuant to this rule is without prejudice.~~

14.01. When a Defending Party May Bring in a Third Party.

(a) Timing of the Summons and Complaint. A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain consent of all parties to the action or the court's leave granted on notice to all parties to the action if it files the third-party complaint more than 90 days after service of the summons upon that defending party.

(b) Service of Complaint with Third-Party Complaint. The third-party plaintiff must serve a copy of the plaintiff's complaint with the third-party summons and complaint.

(c) Service on Other Parties. A copy of the third-party summons and complaint must be promptly served on all other parties to the action.

14.02. Third-Party Defendant's Claims and Defenses.

The person served with the summons and third-party complaint—the "third-party defendant":

(A) must assert any defense against the third-party plaintiff's claim under Rule 12;

(B) must assert any counterclaim against the third-party plaintiff under Rule 13.01 and may assert any counterclaim against the third-party plaintiff under Rule 13.02 or any crossclaim against another third-party defendant under Rule 13.07;

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

14.03. Plaintiff's Claims Against a Third-Party Defendant.

The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant must then assert any defense under Rule 12 and any counterclaim under Rule 13.01, and may assert

any counterclaim under Rule 13.02 or any crossclaim under Rule 13.07. With leave of the court, the third-party defendant may assert counterclaims permitted under Rule 13.05 or Rule 13.06.

14.04. Motion to Strike, Sever, or Try Separately.

Any party may move to strike the third-party claim, to sever it, or to try it separately.

14.05. Third-Party Defendant's Claim Against a Nonparty.

A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

14.06. When a Plaintiff May Bring in a Third Party.

When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

14.07. Defending Against a Demand for Judgment for the Plaintiff.

The third-party plaintiff may demand judgment in the plaintiff's favor against the third-party defendant. In that event, the third-party defendant must defend under Rule 12 against the plaintiff's claim as well as the third-party plaintiff's claim; and the action proceeds as if the plaintiff had sued both the third-party defendant and the third-party plaintiff.

14.08. Protective Orders for Parties and Prevention of Delay

The court may make such orders to prevent a party from being embarrassed or put to undue expense, or to prevent delay of the trial or other proceeding by the assertion of a third-party claim, and may dismiss the third-party claim, order separate trials, or make other orders to prevent delay or prejudice. Unless otherwise specified in the order, a dismissal pursuant to this rule is without prejudice.

Advisory Committee Comment—2017 Amendments

Rule 14 is substantially reorganized and reformatted to include paragraphing and headings. The amended rule is modeled on Fed. R. Civ. P. 14 after its restyling amendment in 2007. The committee believes that the current Rule 14.01, set forth in a single (and long) paragraph, is not particularly readable. These changes are intended to make the rule easier to use and understand, but are not intended to change the substantive interpretation of the rule. Because the rule closely follows its federal counterpart, federal court decisions on third-party practice will have greater value in interpreting the state rule.

Rule 14.08 is new in number, but identical to the former Rule 14.03, except for the change of title. "Orders for Protection" is replaced with the more familiar "Protective Orders" for limitations on discovery. This change is made to avoid confusion with restraining orders to prevent personal abuse or harassment.

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E. Specific MSBA Proposals Not Recommended for Adoption

Although the foregoing recommendations address the majority of the recommendations advanced by the MSBA in its Petition, there are several MSBA proposals the committee does not endorse. Those are identified here to give the Court the benefit of the committee's views on the issues raised.

1. The MSBA petitioned the Court to make scheduling orders mandatory in all cases and to require that scheduling orders compel the attendance at all pretrial conferences of an attorney armed to make stipulations and admissions. MSBA Petition at 12, ¶ 16. The MSBA proposal is derived from the federal rules, but the committee believes this recommendation is not appropriate for Minnesota court proceedings. The change would be burdensome in state court, given the dramatically higher caseload in state court compared to federal court and the greater availability of judicial adjuncts in federal court. The recommended requirement that "lead" attorneys be required to attend every conference is also too broad in reach—some judges hold conferences where this level of preparation is helpful or needed; for many cases, this requirement would only increase the cost to the litigants. Courts are free to impose this requirement if deemed appropriate in a particular case or for a specific

pretrial conference and frequently do so under the current rule. The committee believes the current rule allows the appropriate amount of district court discretion over these case management issues.

2. The MSBA requests that the current timing mechanism for automatic disclosures be modified to defer disclosures until the parties hold a discovery conference. MSBA Petition at 14, ¶ 17. The time for automatic disclosures runs from the due date of an answer. The current rule was established on the recommendation of this Court's Task Force on Civil Justice Reform in 2011. See Recommendations of the Minnesota Supreme Court Civil Justice Reform Task Force, Final Report, No. ADM10-8051 (Minn. Sup. Ct. Dec. 23, 2011). The current rule facilitates prompt early disclosures, and the advisory committee believes that the current rule is working well. The committee accordingly recommends that the requested changes should not be implemented.
3. The MSBA petitioned the Court to amend Rule 63.03 to change the deadline to remove a judge from 10 to 14 days. The committee considered that proposal, as well as the alternative of shortening the time period from 10 to 7 days in order to expedite the assignment of the judge who will actually preside over the case, but decided at the minimum it would not recommend lengthening the time period. (This comment relates to MSBA Petition at 34, ¶ 31.)
4. The MSBA Petition includes several requests that would amend references to "affidavits" to become "affidavits or declarations." Rule 15 of the Minnesota General Rules of Practice expressly defines, for all trial court proceedings, "affidavit" to include both documents signed under penalty of perjury and those signed, sworn to, and notarized. The committee does not recommend using the additional phrasing "or declarations" in these rules.

Recommendation 4: The Court Should Amend Rule 63 to Incorporate the Standard Established in the Code of Judicial Conduct as the Standard for Disqualification or Recusal of Judges.

Introduction

The advisory committee reviewed the Petition of the Board of Judicial Standards to amend Rule 63 to incorporate the disqualification standard of the Code of Judicial Conduct, replacing the archaic standard of disqualification in circumstances that would require a juror to be excused.

Specific Recommendations

Rule 63.02 and 63.03 should be amended as follows:

RULE 63. DISABILITY OR DISQUALIFICATION OF JUDGE; NOTICE TO REMOVE; ASSIGNMENT OF A JUDGE

*** * ***

63.02 Interest or Bias

No judge shall sit in any case if ~~that judge is interested in its determination or if that judge might be excluded for bias from acting therein as a juror~~ disqualified under the Code of Judicial Conduct. If there is no other judge of the district who is qualified, or if there is only one judge of the district, such judge shall forthwith notify the Chief Justice of the Minnesota Supreme Court of that judge's disqualification.

63.03 Notice to Remove

Any party or attorney may make and serve on the opposing party and file with the administrator a notice to remove. The notice shall be served and filed within ten days after the party receives notice of which judge or judicial officer is to preside at the trial or hearing, but not later than the commencement of the trial or hearing.

No such notice may be filed by a party or party's attorney against a judge or judicial officer who has presided at a motion or any other proceeding of which the party had notice, or who is assigned by the Chief Justice of the Minnesota Supreme Court. A judge or judicial officer who has presided at a motion or other

proceeding or who is assigned by the Chief Justice of the Minnesota Supreme Court may not be removed except upon an affirmative showing ~~of prejudice on the part of~~ that the judge or judicial officer is disqualified under the Code of Judicial Conduct.

After a party has once disqualified a presiding judge or judicial officer as a matter of right, that party may disqualify the substitute judge or judicial officer, but only by making an affirmative showing ~~of prejudice. A showing that the judge or judicial officer might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice~~ that the judge or judicial officer is disqualified under the Code of Judicial Conduct.

Upon the filing of a notice to remove or if a litigant makes an affirmative showing ~~of prejudice against~~ that a substitute judge or judicial officer is disqualified under the Code of Judicial Conduct, the chief judge of the judicial district shall assign any other judge of any court within the district, or a judicial officer in the case of a substitute judicial officer, to hear the cause.

Advisory Committee Comment—2017 Amendments

Rule 63 is amended to apply the disqualification standard of the Minnesota Code of Judicial Conduct to disqualification under the civil rules. The standard in the existing rule—whether the judicial officer would be excused from service as a juror and tying that determination to an affirmative showing of prejudice—does not accurately state the correct standard. Rule 26.03, subd. 14(3) of the Minnesota Rules of Criminal Procedure uses the Code of Judicial Conduct standard, and the Minnesota Supreme Court has applied the Code of Judicial Conduct for deciding questions of disqualification of judges on the Minnesota Court of Appeals. *See Powell v. Anderson*, 660 N.W.2d 107, 114–15 (Minn. 2003). The juror-based standard dates back to Minnesota's Territorial days. *See* Minn. Rev. Stat. 1851, ch. 69, art. 2, § 5. The standard has not been modified in the civil rules since, including upon the adoption of the Code of Judicial Conduct by the Minnesota Supreme Court in 1974.

This amended rule adopts a standard for disqualification or recusal of a judge that is clearer and readily accessible to judges and litigants. Although close questions of disqualification may properly be resolved in favor of disqualification, the Code of Judicial Conduct also recognizes that a judicial officer has an affirmative duty to hear matters properly assigned where disqualification is not required by the Code. *See* Rule 2.7 of the Code of Judicial Conduct.

Recommendation 5: The Court Should Amend Rule 10 to Provide Explicitly for Confidential Filings Pursuant to Law or Court Order

Introduction

This recommendation was prompted by the Minnesota Legislature's adoption of Minn. Laws 2016, ch. 126, §§ 1 & 2, codified as Minn. Stat. § 604.30–31. The law creates a civil cause of action for the nonconsensual dissemination of private sexual images (so-called "revenge porn"). Among its other provisions, the law mandates that "The court shall allow confidential filings to protect the privacy of the plaintiff in cases filed under this section." Minn. Stat. § 604.31, subd. 5. Although the courts can comply with this statute without requiring amendment of the rules, the committee believes that it will make confusion less likely if Rule 10 is amended to address the statute directly. Even this unusual statute, which appears to require the court to allow anonymity in cases arising under it, does not create a right simply to proceed without leave of court. In addition, because issues do arise because of a desire to proceed anonymously in litigation, the committee believes that a general provision that alerts litigants to the need to obtain leave of court to proceed in this exceptional manner will be helpful.

This recommendation does not include the committee's recommendation to remove the reference to Form 23 from Rule 10. On July 14, 2017, the Court adopted that recommendation effective on September 1, 2017.

Specific recommendation

Rule 10.01 should be amended as follows:

1081

RULE 10. FORM OF PLEADINGS

10.01. Caption; Names of Parties

Every pleading shall have a caption setting forth the name of the court and the county in which the action is brought, the title of the action, the court file number if one has been assigned, and a designation as in Rule 7, and, in the upper ~~right hand~~ right-hand corner, the appropriate case type indicator as set forth in the subject matter index included in the appendix as Form 23. If a case is assigned to a particular judge for all subsequent proceedings, the name of that judge shall be included in the caption and adjacent to the file number. In the complaint, the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the first party on each side with an appropriate indication of other parties. A party may be identified by initials or pseudonym only where authorized by law or court order.

Advisory Committee Comment—2017 Amendments

Rule 10.01 is amended to add the final sentence to clarify that, although actions must normally be brought in the name of the real party in interest (see Rule 17.01), in certain limited circumstances the court may allow a party to proceed anonymously. In actions brought pursuant to Minn. Stat. § 604.31 for the nonconsensual dissemination of private sexual images (so-called "revenge porn"), the party is entitled to an order allowing anonymity (such as by using the pseudonym "John Doe" or "Jane Doe" or a party's real or substituted initials), but a court order is still required. In other exceptional circumstances, a party must obtain leave of court to proceed either under a pseudonym or by initials, and that relief is governed by the court's discretion.

Recommendation 6: The Court Should Make Housekeeping Amendments to Rules 31.01 and 67.04

Introduction

The committee has identified three minor mistakes in the rules that should be corrected at this time. The first would correct a cross-reference to comport with the original intent of the rule; the second would modify the rule to delete a reference to a repealed statute. None of these changes is intended to modify the intended operation of the rule and the committee does not believe this recommendation is at all controversial.

Specific recommendations

1. Rule 31.01 should be amended in two places as follows:

RULE 31. DEPOSITIONS OF WITNESSES UPON WRITTEN QUESTIONS

31.01 Serving Questions; Notice

(a) A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (~~2~~ b). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45.

(b) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26.02(~~a~~ b), if the person to be examined is confined in prison or if, without the written stipulation of the parties, the person to be examined has already been deposed in the case.

* * *

Advisory Committee Comment—2017 Amendments

Rule 31.01(a) is amended to correct the cross-reference to paragraph 2(b) of the rule. Rule 31.01(b) is similarly amended only to correct the cross-reference to the correct paragraph of Rule 26.02. These amendments are not intended to change the operation or interpretation of either rule.

2. Rule 67.04 should be amended as follows:

RULE 67. DEPOSIT IN COURT

*** * ***

67.04. Money Paid into Court

Where money is paid into the court pending the result of any legal proceedings, the judge may order it deposited in a ~~designated state or national~~ bank <u>account maintained by the court administrator.</u> ~~or savings bank. In the absence of such order, the court administrator is the official custodian of all moneys, and the judge, on application of any person paying such money into court, may require the court administrator to give an additional bond, conditioned as the bond authorized in Minnesota Statutes, section 485.01, in such amount as the judge shall order.~~

Advisory Committee Comment—2017Amendment

Rule 67.04 is amended to reflect the abrogation of the statutory bond requirement for court administrators found in the prior version of the rule. *See* 2006 Minn. Laws, ch. 260, art 5, § 40. Because of that legislative change, the rule is amended to allow deposit in court by order of the court. The court can determine the appropriate terms for that deposit. As a practical matter, an order is necessary to authorize the administrator to accept the funds and to provide for release of the funds upon further order.

Recommendation 7: The Court Should Include an Advisory Committee Comment to Rule 12 to Advise Litigants of a Statute that Establishes an Extended Period for Responding to a Complaint

Introduction

The Minnesota Legislature enacted a statute in 2017 that establishes a longer period to respond to certain actions. Minn. Laws 2017, ch. 80, section 3. The advisory committee does not believe this recommendation is at all controversial.

Specific recommendations

The court should include an advisory committee comment following Rule 12 to advise litigants of the 60-day time to respond established by the Legislature for certain actions involving claims of architectural barriers to public access to buildings. *See* Minn. Laws 2017, ch. 80, §§ 7 & 3, to be codified as Minn. Stat. § 363A.331, subds. 2 & 2a.

RULE 12. DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED; BY PLEADING OR MOTION; MOTION FOR JUDGMENT ON PLEADINGS

* * *

Advisory Committee Comment—2017Amendment

Rule 12.01 establishes the time to respond to a complaint. In 2017 the Minnesota Legislature adopted a statute that extends the time to respond to certain actions relating to architectural barriers to public access to buildings. *See* Minn. Laws 2017, ch. 80, §§ 7 & 3, to be codified as Minn. Stat. § 363A.331, subds. 2 & 2a. The statute applies to actions brought on or after May 24, 2017.

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ATTACHMENT 1

AMENDMENTS DIRECTED TO TIMING UNDER THE CIVIL RULES

In the interest of simplicity, this Attachment 1 contains the amendments to the Minnesota Rules of Civil Procedure in effect on July 1, 2017, with only the amendments relating to timing that are the subject of Recommendation 1 of the report to which they are appended. **This Attachment does not incorporate any of the other recommendations set forth in the Report.**

The advisory committee comments included here are tentative only, and should be reviewed and updated at the time of implementation of these amendments.

MINNESOTA RULES OF CIVIL PROCEDURE

*** * ***

RULE 4. SERVICE

*** * ***

4.042. Service of the Complaint

If the defendant shall appear within ~~ten~~ 14 days after the completion of service by publication, the plaintiff, within ~~five~~ 7 days after such appearance, shall serve the complaint, by copy, on the defendant or the defendant's attorney. The defendant shall then have at least ~~ten~~ 21 days in which to answer the same.

Advisory Committee Comment—2017 Amendments

Rule 4.042 is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule.

The amendment to Rule 4.042 also lengthens the time to respond to a Complaint served following service of the Summons by publication to 21 days. This is the same period a party has following other forms of service of the Complaint, and there is no reason to require a shorter period. See Rule 12.01. This amendment is intended to obviate at least some motions for extension of the time to answer that are encountered under the shorter deadline in the previous rule.

* * *

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER ~~PAPERS~~ DOCUMENTS

*** * ***

5.05. Filing; Facsimile Transmission

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

Within ~~five~~ 7 days after the court has received the transmission, the party filing the document shall forward the following to the court:

(a) a $25 transmission fee for each 50 pages, or part thereof, of the filing;

(b) any bulky exhibits or attachments; and

(c) the applicable filing fee or fees, if any.

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

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

Advisory Committee Comment—2017 Amendments

Rule 5.05 is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule.

*** * ***

RULE 6. TIME

6.01. Computation

~~**(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~~

- ~~Saturday,~~
- ~~Sunday,~~
- ~~legal holiday, or,~~

~~when the act to be done is the filing of a document 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, a day on which unavailability of the computer system used by the court for electronic filing and service makes it impossible to accomplish service or filing, in which event the period runs until the end of the next day that is not one of the aforementioned days.~~

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) Period Stated in Days or a Longer Unit of Time. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;
(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and
(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) Periods Shorter than 7 Days. Only if expressly so provided by any other rule or statute, a time period that is less than 7 days may exclude intermediate Saturdays, Sundays, and legal holidays.

(3) Period Stated in Hours. When the period is stated in hours:
(A) begin counting immediately on the occurrence of the event that triggers the period;
(B) count every hour, including hours occurring during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(4) Inaccessibility of the Court Administrator's Office. Unless the court orders otherwise, if the court administrator's office is inaccessible:

(A) on the last day for filing or service under Rule 6.01(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6.01(a)(1), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

~~(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.~~

(b) "Last Day" Defined. Unless a different time is set by a statute, local rule, or court order, the last day ends:

(1) for electronic filing, at 11:59 p.m. local Minnesota time; and

(2) for filing by other means, when the Court Administrator's office is scheduled to close.

(c) "Next Day" Defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(~~c~~d) 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.

(e) Additional Time After Service by Mail or Service Late in Day. 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 document upon the party, and the notice or document is served upon the party by United States Mail, 3 days shall be added to the prescribed period.

If service is made by any means other than United States Mail and accomplished after 5:00 p.m. local Minnesota time on the day of service, 1 additional day shall be added to the prescribed period.

*** * ***

6.04. For Motions; Affidavits

~~A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served no later than five~~ 5 ~~days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59.04, opposing affidavits may be served not later than one~~ 1 ~~day before the hearing, unless the court permits them to be served at some other time~~. The deadlines for service and filing of motions, as well as affidavits and other documents in support of or responding to motions, are governed by the Minnesota General Rules of Practice.

6.05. [Abrogated]. ~~Additional Time After Service by Mail or Service Late in Day~~

~~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 document upon the party, and the notice or document 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 United States Mail and accomplished after 5:00 p.m. local Minnesota time on the day of service, one additional day shall be added to the prescribed period.~~

Advisory Committee Comment—2017 Amendments

The amendments to Rule 6.01 are important and are the key to the amendments to several other rules relating to timing. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The most important change is found in Rule 6.01(a)(1)(B), which establishes "a day is a day"—all days during a period under the rules, regardless of length, are included, including weekends and legal holidays. This change mirrors a set of changes made in the Federal Rules of Civil Procedure, and is intended to create substantial similarity between "state days" and "federal days." Minnesota and the federal government recognize slightly different legal holidays.

Rule 4.06 has for years required that proof of service include the time of service for all forms of service other than service by publication. Compliance with Rule 4.06 is especially important because of the need to know the time of service in order to calculate response deadlines.

Rule 6.01(c) is also an important provision that will affect many deadlines. It establishes an explicit rule for how days are counted when counting "backwards" from a deadline. The rule requires that, when counting backwards from an event, and the last day falls on a weekend or holiday, the counting continues to the next earlier date that is not a weekend or holiday. This rule is modeled on its federal counterpart and is intended to create greater uniformity in timing between state and federal court matters.

Rule 6.01(e) appears as new text, but is the former Rule 6.05 relocated to Rule 6.01 because it addresses the same timing matters.

Rule 6.04 is rewritten because it is superseded by the more specific provisions of Rule 115 of the Minnesota General Rules of Practice. Additionally, Rule 56 of

the civil rules establishes a very important deadline for summary judgment motions—"in no event shall the motion be served less than 10 days before the time fixed for the hearing." Minn. R. Civ. P. 56.03. This limit on shortened notice recognizes the power of the summary judgment motion and its potential to be case- or defense-terminating and provides an opportunity for the responding party to prepare a response and be heard.

Rule 6.05 is abrogated only because its text is now incorporated in Rule 6.01(e).

III. PLEADINGS AND MOTIONS

*** * ***

RULE 12. DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED; BY PLEADING OR MOTION; MOTION FOR JUDGMENT ON PLEADINGS

12.01. When Presented

Defendant shall serve an answer within ~~20~~ 21 days after service of the summons upon that defendant unless the court directs otherwise pursuant to Rule 4.043. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within ~~20~~ 21 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within ~~20~~ 21 days after service of the answer or, if a reply is ordered by the court, within ~~20~~ 21 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows unless a different time is fixed by order of the court: (1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ~~ten~~ 14 days after service of notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within ~~ten~~ 14 days after the service of the more definite statement.

*** * ***

12.05. Motion for More Definite Statement, for Paragraphing and for Separate Statement

If a pleading to which a responsive pleading is permitted violates the provisions of Rule 10.02, or is so vague and ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a compliance with Rule 10.02 or for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ~~ten~~ 14 days after service of notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

12.06. Motion to Strike

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within ~~20~~ 21 days after the service of the pleading upon the party, or upon its own initiative at any time, the court may order any pleading not in compliance with Rule 11 stricken as sham and false, or may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

* * *

Advisory Committee Comment—2017 Amendments

Rule 12.01 is amended as part of the amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The changes to this rule change only the time limits, and are not intended to have any other effect.

Rule 12.05 is amended as part of the amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule lengthens the 10-day period to respond to an order under the rule to 14 days. This changes only the time limit, and is not intended to have any other effect.

Rule 12.06 is amended as part of the amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule lengthens the 20-day period to file a motion to strike to 21 days. This changes only the time limit to make it consistent with the deadline to answer contained in Rule 12.01, and is not intended to have any other effect.

*** * ***

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

15.01. Amendments

A party may amend a pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within ~~20~~ 21 days after it is served. Otherwise a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ~~ten~~ 14 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

*** * ***

Advisory Committee Comment—2017 Amendments

Rule 15.01 is amended as part of the amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only changes to this rule lengthen the 20-day limit to 21 days and the 10-day limit to 14 days. These changes affect only the time limits, and are not intended to have any other effect.

IV. PARTIES

* * *

V. DEPOSITIONS AND DISCOVERY

RULE 26. DUTY TO DISCLOSE; GENERAL PROVISIONS GOVERNING DISCOVERY

* * *

26.06. Discovery Conference

* * *

(d) Conference with the Court. At any time after service of the summons, the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(4) Any issues relating to claims of privilege or of protection as trial-preparation material, including—if the parties agree on a procedure to assert such claims after production—whether to ask the court to include their agreement in an order.

(5) Any limitations proposed to be placed on discovery;

(6) Any other proposed orders with respect to discovery; and

(7) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matter set forth in the motion. All parties and attorneys are under a duty to participate in good faith in the framing of any proposed discovery plan.

Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than ~~ten~~ 14 days after the service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any, and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

Advisory Committee Comment—2017 Amendments

Rule 26.06(d) is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule lengthens the 10-day limit to 14 days to respond to a motion for a discovery conference. This change affects only the time limit, and is not intended to have any other effect.

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RULE 27. DEPOSITION BEFORE ACTION OR PENDING APPEAL

27.01. Before Action

(a) **Petition.** A person who desires to perpetuate testimony regarding any matter may file a verified petition in the district court of the county of the residence of an expected adverse party. The petition shall be entitled in the name of the petitioner and shall show

(1) that the petitioner expects to be a party to an action but is presently unable to bring it or cause it to be brought;

(2) the subject matter of the expected action and the petitioner's interest therein;

(3) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it;

(4) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known; and

(5) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each.

The petition shall ask for an order authorizing the petitioner to take the deposition of those persons to be examined as named in the petition, for the purpose of perpetuating their testimony.

(b) **Notice and Service.** The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least ~~20~~ 21 days before the date of hearing, the notice shall be served either within or outside the state in the manner provided in Rule 4.03 for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4.03, an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent, the provisions of Rule 17.02 apply.

*** * ***

Advisory Committee Comment—2017 Amendments

Rule 27.01(b) is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule lengthens the 20-day notice requirement before hearing a petition to 21 days. This change affects only the time limit, and is not intended to have any other effect.

RULE 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS

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32.04. Effect of Errors and Irregularities in Depositions

(a) **As to Notice.** All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) **As to Disqualification of Officer.** Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) **As to Taking of Deposition.**

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written questions submitted pursuant to Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within ~~five~~ 7 days after service of the last questions authorized.

*** * ***

Advisory Committee Comment—2017 Amendments

Rule 32.04(c)(3) is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule lengthens the 5-day deadline for objections to the form of written questions to 7 days. This change affects only the time limit, and is not intended to have any other effect, and because weekend days and holidays are now included in the counting of days, the old 5-day period will most often be the same as the new 7-day period.

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RULE 35. PHYSICAL, MENTAL, AND BLOOD EXAMINATION OF PERSONS

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35.04. Medical Disclosures and Depositions of Medical Experts

When a party has waived medical privilege pursuant to Rule 35.03, such party within ~~ten~~ 14 days of a written request by any other party,

(a) shall furnish to the requesting party copies of all medical reports previously or thereafter made by any treating or examining medical expert, and

(b) shall provide written authority signed by the party of whom request is made to permit the inspection of all hospital and other medical records, concerning the physical, mental, or blood condition of such party as to which privilege has been waived.

Disclosures pursuant to this rule shall include the conclusions of such treating or examining medical expert.

Depositions of treating or examining medical experts shall not be taken except upon order of the court for good cause shown upon motion and notice to the parties and upon such terms as the court may provide.

*** * ***

Advisory Committee Comment—2017 Amendments

Rule 35.04 is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule lengthens the 10-day period to respond to written requests to a 14-day period. This change affects only the time limit, and is not intended to have any other effect.

*** * ***

VI. TRIALS

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RULE 53. MASTERS

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53.07. Action on Master's Order, Report, or Recommendations

(a) **Action.** In acting on a master's order, report, or recommendations, the court must afford an opportunity to be heard and may receive evidence, and may: adopt or affirm; modify; wholly or partly reject or reverse; or resubmit to the master with instructions.

(b) **Time To Object or Move.** A party may file objections to—or a motion to adopt or modify—the master's order, report, or recommendations no later than ~~20~~ 21 days from the time the master's order, report, or recommendations are served, unless the court sets a different time.

*** * ***

Advisory Committee Comment—2017 Amendments

Rule 53.07(b) is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule changes the 20-day period to file a response to a master's decision to 21 days. This change affects only the time limit, and is not intended to have any other effect.

* * *

RULE 55. DEFAULT

55.01. Judgment

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

(a) When the plaintiff's claim against a defendant is upon a contract for the payment of money only, or for the payment of taxes and penalties and interest thereon owing to the state, the court administrator, upon request of the plaintiff and upon affidavit of the amount due, which may not exceed the amount demanded in the complaint or in a written notice served on the defendant in accordance with Rule 4 if the complaint seeks an unspecified amount pursuant to Rule 8.01, shall enter judgment for the amount due and costs against the defendant.

(b) In all other cases, the party entitled to a judgment by default shall apply to the court therefor. If a party against whom judgment is sought has appeared in the action, that party shall be served with written notice of the application for judgment at least ~~three~~ 14 days prior to the hearing on such application. If the action is one for the recovery of money only, the court shall ascertain, by a reference or otherwise, the amount to which the plaintiff is entitled, and order judgment therefor.

(c) If relief other than the recovery of money is demanded and the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment, it may take or hear the same or order a reference for that purpose, and order judgment accordingly.

(d) When service of the summons has been made by published notice, or by delivery of a copy outside the state, no judgment shall be entered on default until the plaintiff shall have filed a bond, approved by the court, conditioned to abide such order as the court may make concerning restitution of any property collected or obtained by virtue of the judgment in case a defense is thereafter permitted and sustained; provided, that in actions involving the title to real estate or to foreclose mortgages thereon such bond shall not be required.

(e) When judgment is entered in an action upon a promissory note, draft or bill of exchange under the provisions of this rule, such promissory note, draft or bill of exchange shall be filed with the court administrator and made a part of the files of the action.

*** * ***

Advisory Committee Comment—2017 Amendments

Rule 55.01(b) is amended as part of the amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The change to this rule lengthens the 3-day notice provision of the rule to 14 days because the 3-day notice period has proven too short to allow a meaningful response from the party receiving notice.

*** * ***

RULE 56. SUMMARY JUDGMENT

56.01. For Claimant

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of ~~20~~ 21 days from the service of the summons, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

*** * ***

56.03. Motion and Proceedings Thereon

Service and filing of the motion shall comply with the requirements of Rule 115.03 of the General Rules of Practice for the District Courts, provided that in no event shall the motion be served less than ~~ten~~ 14 days before the time fixed for the hearing. Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

*** * ***

Advisory Committee Comment—2017 Amendments

Rules 56.01 and 56.03 are amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days

regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to Rule 56.01 changes the 20-day period during which a summary judgment motion cannot be filed to 21 days. The only change to Rule 56.03 changes the 10-day period for serving the motion in advance of the hearing to 14 days.

These changes affect only the time limit, and are not intended to have any other effect.

RULE 59. NEW TRIALS

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59.04. Time for Serving Affidavits

When a motion for a new trial is based upon affidavits, they shall be served with the notice of motion. The opposing party shall have ~~ten~~ 14 days after such service in which to serve opposing affidavits, which period may be extended by the court pursuant to Rule 59.03. The court may permit reply affidavits.

59.05. On Initiative of Court

Not later than ~~15~~ 14 days after a general verdict or the filing of the decision or order, the court upon its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

*** * ***

Advisory Committee Comment—2017 Amendments

Rules 59.04 and 59.05 are amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to Rule 59.04 changes the 10-day period for serving opposing affidavits to 14 days. The only change to Rule 59.05 changes the 15-day period for issuing a court initiated new trial to 14 days. These changes affect only the time limit, and is not intended to have any other effect.

VII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

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RULE 68. OFFER OF JUDGMENT OR SETTLEMENT

Rule 68.01. Offer.

(a) **Time of Offer.** At any time more than ~~10~~ 14 days before the trial begins, any party may serve upon an adverse party a written damages-only or total-obligation offer to allow judgment to be entered to the effect specified in the offer, or to settle the case on the terms specified in the offer.

(b) **Applicability of Rule.** An offer does not have the consequences provided in Rules 68.02 and 68.03 unless it expressly refers to Rule 68.

(c) **Damages-only Offers.** An offer made under this rule is a "damages-only" offer unless the offer expressly states that it is a "total-obligation" offer. A damages-only offer does not include then-accrued applicable prejudgment interest, costs and disbursements, or applicable attorney fees, all of which shall be added to the amount stated as provided in Rules 68.02(b)(2) and (c).

(d) **Total-obligation Offers.** The amount stated in an offer that is expressly identified as a "total-obligation" offer includes then-accrued applicable prejudgment interest, costs and disbursements, and applicable attorney fees.

(e) **Offer Following Determination of Liability.** When the liability of one party to another has been determined by verdict, order, or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than ~~10~~ 14 days before the commencement of a hearing or trial to determine the amount or extent of liability.

(f) **Filing.** Notwithstanding the provisions of Rule 5.04, no offer under this rule need be filed with the court unless the offer is accepted.

Rule 68.02. Acceptance or Rejection of Offer.

(a) **Time for Acceptance.** Acceptance of the offer shall be made by service of written notice of acceptance within ~~10~~ 14 days after service of the offer. During the ~~10~~ 14-day period the offer is irrevocable.

(b) **Effect of Acceptance of Offer of Judgment.** If the offer accepted is an offer of judgment, either party may file the offer and the notice of acceptance, together with the proof of service thereof, and the court shall order entry of judgment as follows:

(1) If the offer is a total-obligation offer as provided in Rule 68.01(d), judgment shall be for the amount of the offer.

(2) If the offer is a damages-only offer, applicable prejudgment interest, the plaintiff-offeree's costs and disbursements, and applicable attorney fees, all as accrued to the date of the offer, shall be determined by the court and included in the judgment.

(c) **Effect of Acceptance of Offer of Settlement.** If the offer accepted is an offer of settlement, the settled claim(s) shall be dismissed upon

(1) the filing of a stipulation of dismissal stating that the terms of the offer, including payment of applicable prejudgment interest, costs and disbursements, and applicable attorney fees, all accrued to the date of the offer, have been satisfied or

(2) order of the court implementing the terms of the agreement.

(d) **Offer Deemed Withdrawn.** If the offer is not accepted within the ~~10~~ 14- day period, it shall be deemed withdrawn.

(e) **Subsequent Offers.** The fact that an offer is made but not accepted does not preclude a subsequent offer. Any subsequent offer by the same party under this rule supersedes all prior offers by that party.

* * *

Advisory Committee Comment—2017 Amendments

Rules 68.01(a), 68.02(a) & (d) are amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule extends the time to make an offer of judgment from 10 days before trial begins to 14 days before trial begins. These changes to Rule 68.02 extend the time to respond to an offer of judgment from 10 days to 14 days. These changes affect only the time limit, and are not intended to have any other effect.

* * *

VIII. DISTRICT COURTS AND COURT ADMINISTRATORS

* * *

APPENDIX OF FORMS

* * *

1940

FORM 1. SUMMONS

State of Minnesota **District Court**

County of _____ **_____ Judicial District**

_____,

Plaintiff,

vs.

_____

__,

Defendant.

Court File Number: _____

Case Type: _____

Summons

THIS SUMMONS IS DIRECTED TO_____.

1. **YOU ARE BEING SUED**. The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you [is attached to this summons] [is on file in the office of the court administrator of the above-named court].* Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

2. **YOU MUST REPLY WITHIN ~~20~~ 21** DAYS TO PROTECT YOUR RIGHTS**. You must give or mail to the person who signed this summons **a written response** called an Answer within ~~20~~21** days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this summons located at:

_____**.**

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS. If you do not Answer within ~~20~~ 21** days, you will

lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint. If you do not want to contest the claims stated in the complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the complaint.

5. LEGAL ASSISTANCE. You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case**.

6. ALTERNATIVE DISPUTE RESOLUTION. The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

[7. To be included only if this lawsuit affects title to real property:

THIS LAWSUIT MAY AFFECT OR BRING INTO QUESTION TITLE TO REAL PROPERTY located in _____ County, State of Minnesota, legally described as follows:

[Insert legal description of property]

The object of this action is _____.**]**

_____ _____

Plaintiff's attorney's signature Dated

_____

Print or type plaintiff's attorney's name

* Use language in the first bracket when the complaint is served with the summons, language in the second bracket when the complaint is filed and the summons is served by publication.

** Use ~~20~~ 21 days, except that in the exceptional situations where a different time is allowed by the court in which to answer, the different time should be inserted.

*** * ***

FORM 17 - SUMMONS AND COMPLAINT AGAINST THIRD-PARTY DEFENDANT

STATE OF MINNESOTA		District Court
COUNTY OF _____		_____ Judicial District
A.B.,	)	
Plaintiff	)	
	)	
vs.	)	
	)	
C.D.,	)	
Defendant and	)	SUMMONS
Third-Party Plaintiff	)	
	)	
vs.	)	
	)	
E.F.,	)	
Third-Party Defendant	)	

State of Minnesota to the Above-Named Third-Party Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney whose address is _____, and upon _____, who is attorney for C.D., defendant and third-party plaintiff, and whose address is _____, an answer to the third-party complaint which is herewith served upon you within ~~20~~ 21 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint.

There is also served upon you herewith a copy of the complaint of the plaintiff which you may answer.

Signed: _____,
Attorney for Defendant
and Third-Party Plaintiff.
Address: _____.

***

[***Third-Party Complaint is not included because there are no changes to it***]

[Form 22—Notice and Acknowledgement of Service by Mail is not included here, as the Committee is recommending its replacement before timing changes would be implemented, but it has 20-day provisions as well]