

FILED

June 9, 2023

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM04-8001

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

In a report filed December 20, 2022, the Minnesota Supreme Court Advisory Committee on the Rules of Civil Procedure recommended the following amendments to the Minnesota Rules of Civil Procedure: (1) amending Rule 4.03(a) to allow service on judges, justices, and court staff at their office; (2) amending Rule 17.02 to organize the rule and clarify when notice is required due to adversity of parties; and (3) amending Rule 30.04(b) to correct a cross reference. *See* Recommendations of Minnesota Supreme Court Advisory Committee on Rules of Civil Procedure, ADM04-8001 (filed Dec. 20, 2022).

By order filed on January 24, 2023, we established a period for the public to file written comments in response to the report filed by the committee. Order Establishing Public Comment Period for Proposed Amendments to the Minnesota Rules of Civil Procedure, ADM04-8001 (Minn. filed Jan. 24, 2023). One comment, filed by the Minnesota State Bar Association, supported the committee's recommended amendments and provided one suggestion regarding the proposed amendment to Rule 4.03, a suggestion with which the Advisory Committee voiced its agreement.

Having carefully considered the Advisory Committee's recommendations and the comment filed by the Minnesota State Bar Association, we agree with the proposed amendments.

First, we agree and adopt the recommendation to amend Rule 4.03(a) to allow personal service for judges, justices, and court staff at their office if the complaint is related to the individual's office, employment, or agency. The amendment provides an alternative means of service upon judges, justices, and court staff; it does not replace any of the means of service otherwise permitted under the rule. Providing this alternative means of service is designed to minimize service on judicial branch personnel at their home and to address corresponding security concerns. Such service may be made upon the court administrator of the district court for district court judges and employees, or upon the Clerk of the Appellate Courts for appellate court judges and employees, as well as State Court Administration employees. At the MSBA's recommendation, service is also permitted upon the designee of the court administrator or Clerk of the Appellate Courts. This additional change will help ensure that someone capable of being served will generally be available in the office, particularly to the extent that at the district court level, a single court administrator may oversee multiple counties.

Second, we adopt the Advisory Committee's recommendation to amend Rule 17.02 to organize the rule and clarify when notice is required due to adversity of parties. As the Advisory Committee explained, this clarification to Rule 17.02 is in response to the court of appeals' decision in *Vander Wiel v. Wahlgren*, 934 N.W.2d 125 (Minn. App. 2019). In that case, the court of appeals concluded that, "[a]lthough the text of rule 17.02 allows, in limited

circumstances, a district court to appoint a guardian ad litem without notice and a hearing, . . . such a limited exception does not apply when an adverse party seeks the appointment of a guardian ad litem for a party, regardless of familial relationships.” *Id.* at 128. As the court of appeals further summarized, “we read the rule as implicitly requiring a district court to provide notice when an adverse party seeks the appointment of a guardian ad litem, even if the adverse party is one of the identified immediate family members.” *Id.* The amendment to Rule 17.02 makes explicit what the court of appeals held to be implicit in Rule 17.02. The court also agrees that the organizational and other changes to the rule will improve readability and are thus adopted. The only modification by the court to the Advisory Committee’s proposal is to clarify that an application must be “made” under oath, rather than that it must be “signed” under oath. This modification is to acknowledge the possibility that an application could be made under oath in open court.

Finally, the court agrees with and adopts the Advisory Committee’s proposal that Rule 30.04(b) be amended to correct a cross reference. Rule 30.04(b) addresses the duration of depositions and currently contains an express cross-reference to Rule 26.02(a). But while the scope and limits of discovery were previously covered in Rule 26.02(a), that rule was amended in 2007, and those limits moved to Rule 26.02(b). The cross-reference in Rule 30.04(b) was not amended when Rule 26.02 was renumbered, and the cross-reference should be updated now.

IT IS HEREBY ORDERED that the attached amendments to the Rules of Civil Procedure are prescribed and promulgated as shown below. The amendments to Rule 4.03(a) are effective as of January 1, 2024. The amendments to Rule 17.02 and Rule

30.04(b) are effective immediately. These amendments shall apply to all cases pending on, or filed on or after, the effective date, unless the district court concludes that application of the rule as amended in a case pending as of the effective date is not feasible or would work an injustice in the pending matter. *See* Minn. R. Civ. P. 86.01(b). The Advisory Committee comments are included for convenience and do not reflect court approval of the comments.

Dated: June 9, 2023

BY THE COURT:

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

G. Barry Anderson
Associate Justice

AMENDMENTS TO THE RULES OF CIVIL PROCEDURE

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

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4.03. Personal Service

Service of summons within the state shall be as follows:

- (a) **Upon an Individual.** Upon an individual by delivering a copy to the individual personally or by leaving a copy at the individual's usual place of abode with some person of suitable age and discretion then residing therein.

If the individual has, pursuant to statute, consented to any other method of service or appointed an agent to receive service of summons, or if a statute designates a state official to receive service of summons, service may be made in the manner provided by such statute.

If the individual is confined to a state institution, by serving also the chief executive officer at the institution.

If the individual is a judicial officer or employee of the Minnesota judicial branch, and the complaint is related to the individual's office, employment, or agency, service may be made by delivering a copy to: (1) the court administrator of the district court or their designee, for district court judges and employees; or (2) the Clerk of the Appellate Courts or their designee, for Court of Appeals judges and employees, Supreme Court Justices and employees, and the State Court Administrator and the administrator's employees.

If the individual is an infant under the age of 14 years, by serving also the individual's father or mother, and if neither is within the state, then a resident guardian if the infant has one known to the plaintiff, and if the infant has none, then the person having control of such defendant, or with whom the infant resides, or by whom the infant is employed.

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Advisory Committee Comment—2023 Amendment

Rule 4.03(a) is amended to permit judges, justices, and court staff to be served at their office, if the complaint is related to the individual's office, employment, or agency. The purpose of the rule change is to minimize service of judicial branch personnel at their home, and corresponding security concerns, by establishing an alternative means of service.

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17.02. Infants or Incompetent Persons

(a) Representative. Whenever a party to an action is an infant or is incompetent and has a representative duly appointed under the laws of this state or the laws of a foreign state or country, the representative may sue or defend on behalf of such party. A party who is an infant or is incompetent and is not so represented shall be represented by a guardian ad litem appointed by the court in which the action is pending or is to be brought. The guardian ad litem shall be a resident of this state, shall file a consent and oath with the court administrator, and shall give such bond as the court may require. A guardian ad litem appointed under this Rule is not a guardian ad litem within the meaning of the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court and is not governed by those Rules.

(b) Who May Apply; Priority. Any person, including an infant party over the age of fourteen (14) years and under no other legal disability, may apply under oath for the appointment of a guardian ad litem. The application of the party or the party's spouse or parents or testamentary or other guardian shall have priority over other applications. If no such appointment is made on behalf of a defendant party before answer or default, the adverse party or a party's attorney may apply for such appointment, and in such case the court shall allow the guardian ad litem a reasonable time to respond to the complaint.

(c) Application Contents. The application for appointment shall be made under oath or penalty of perjury in accordance with Minn. Stat. § 358.116 and show (1) the name, age and address of the party, (2) if the party is a minor, the names and addresses of the parents, and, in the event of their death or the abandonment of the minor, the name and address of the party's custodian or testamentary or other guardian, if any, (3) the name and address of the party's spouse, if any, and (4) the name, age, address, and occupation of the person whose appointment is sought, and (5) all facts and circumstances of the adversity or potential adversity of the person whose appointment is sought to the party, if any.

(d) Notice.

(1) Discretionary. If the appointment is applied for by the party or by a spouse, parent, custodian or testamentary or other guardian of the party who is not adverse or potentially adverse to the party, the court may hear the application with or without notice to the party, the party’s spouse, parent, custodian, testamentary or other guardian, or, if the party is an inmate of a public institution, the chief executive officer thereof.

(2) Mandatory. In all other cases written notice of the hearing on the application shall be given at such time as the court shall prescribe, and shall be served upon the party, the party’s spouse, parent, custodian and testamentary or other guardian, if any, and if the party is an inmate of a public institution, the chief executive officer thereof. If the party is a nonresident or, after diligent search, cannot be found within the state, notice shall be given to such persons and in such manner as the court may direct.

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Advisory Committee Comment — 2023 Amendment

Rule 17.02 is revised to organize the rule with headings to improve readability, and to highlight the holding in Vander Wiel v. Wahlgren, 934 N.W.2d 125 (Minn. Ct. App. 2019), that an application for appointment of a guardian ad litem by a spouse who is an adverse party in a dissolution case required notice and an opportunity to be heard. Additional changes clarify that the application must be under oath and provide the facts necessary for the court to determine any potential adversity and the resulting implications of whether notice is or is not provided. The rule retains the discretion of the court to require notice in any case.

30.04. Schedule and Duration; Motion to Terminate or Limit Examination

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- (b) **Duration.** Unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours. The court must allow additional time consistent with Rule 26.02(~~a~~**b**) if needed for a fair examination of the deponent or if the deponent or another person, or other circumstance, impedes or delays the examination.

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Advisory Committee Comment—2023 Amendment

Rule 30.04(b) is amended to correct a cross reference to Rule 26.02.