Meeting Summary[1]

MINNESOTA SUPREME COURT ADVISORY COMMITTEE
ON THE RULES OF CIVIL PROCEDURE
Friday, September 12, 2014
Minnesota Judicial Center Room G-06

Members present:

Hon. Eric L. Hylden, Chair

Hon. Christopher J. Dietzen, Liaison Justice

James D. Attwood

John A. Cotter

Hon. Jennifer L. Frisch

Barton Gernander

William D. Harper

Alethea M. Huyser

Anna Lamb

Cindy Lehr

Joseph Leoni

Hon. Mary Mahler

Nicholas N. Nierengarten

Eric J. Nystrom

Lawrence Rocheford

Daniel Rogan

Hon. Edward T. Wahl

David F. Herr, Reporter

Michael Johnson, Staff Attorney

Patrick Busch, Staff Attorney

Sarah Novak, Staff Attorney

Guests present: Carla Heyl

[1] Unofficial summary prepared by advisory committee staff.

Welcome and Introductions: Committee chair Judge Hylden welcomed all members of the committee, and thanked them for their *pro bono* service. He asked the members of the committee to introduce themselves; the committee members did so. Judge Hylden reminded the committee that the tight deadline will require it to focus on the eCourtMN rules changes. Robust discussion is helpful and productive, but the committee should remember that much of the eCourtMN advisory rulemaking will be done by the General Rules of Practice Committee.

Justice Dietzen's Charge to the Committee: Justice Dietzen thanked the committee members for participating. The diversity of perspectives on the committee is very valuable to the Court. All members of the committee should feel free to participate fully in the discussion, but should not advocate for any particular cause during the discussions. The committee members' terms will extend beyond the eCourtMN rules changes, and the committee members should continue to participate after the December 31, 2014 deadline for a report to the Court. The committee is generally charged with reviewing rules for modifications necessary to enable an electronic court process. A separate order also specifically directs the committee to focus on Rule of Civil Procedure 5 in light of the concerns outlined by former committee members that are reflected in the letter from former chair Judge Francis Connolly to the Chief Justice. Committee members should talk to their colleagues to identify any other areas of concern, and should inform staff Mike Johnson of any additional concerns that they identify.

Reporter's Remarks. Reporter David Herr explained that:

- The purpose of Rule of Civil Procedure 5 is to specify the reasons for which filings can be rejected. This is an important and positive development in the practice of law in Minnesota's state courts. Rule 5 attempts to enforce General Rule of Practice 11, which is very important in light of the transition to e-filing.
- The committee members should remember that this is an *advisory* committee: the Court appreciates its advice, but may or may not follow it. There will also be a period for public comment, and the public comments are also valuable to the Court.
- The role of the reporter is to prevent the committee meetings from dragging out into lengthy drafting sessions. The role of the committee is to reach consensus on what the

rules should be, but it is fine if there is disagreement among the committee. In the past, the Court has at times followed the minority report of an advisory committee.

- The committee is free to identify other issues for future discussion. It's unlikely that the eCourtMN rule changes will require the committee to hold all of the scheduled meetings.
- The committee should endeavor to anticipate all questions that will be raised by the transition to eCourtMN, and should try to eliminate any potential issues. It's not helpful to produce half-baked ideas.

eFS Demonstration: Chris Channing gave the committee a live demonstration of the eFS system. The following points were noted:

- Filers can receive automatic notices if the court clerks change the security classifications of their filings.
- People who are on a service list for a case only have access to documents that have been served upon them.
- You do not receive an automatic notice if you are added as a service contact in a case. You do receive an automatic notice if you are removed as a service contact in a case.
- Rejection notices are sent only to the filer.
- If you have a time-sensitive filing and are not sure if the clerks will reject it, it's prudent to call the clerks and ask if they will expedite it.
- Parties cannot stipulate to documents' being filed as confidential.
- The fourth judicial district publishes on its website statistics on how long it takes court staff to review filings and reach a decision to accept or reject a filing. The statistics for some filings such as those that involve a default judgment, for example, also include the time it takes to completely process the filing including the entry of the judgment. The Fourth Judicial District will shortly be starting a second shift pilot program that will have court clerks working until 12:30 a.m. with a view to have all documents filed by noon fully processed by midnight that same day.

Proposed modifications to the Rules of Civil Procedure:

Staff Mike Johnson explained that the proposed timeline to make e-filing mandatory for attorneys and government agencies in all lines of business in the 11 pilot counties is July 1, 2015.

The roll-out will continue for all other counties according to a schedule to be developed by State Court Administration with counties initially permitting voluntary use of e-filing but all mandating e-filing by July of 2016.

Changing "paper" to "documents" and "mail" to "transmit." The committee had no concerns about the proposals to change references to "papers" to "documents"; and no concerns in general about amending references to service by mail.

Rule 4.01: staff Mike Johnson asked if anyone had any comments on whether the proposed added language was necessary. There were no comments.

Rule 4.04: Staff Mike Johnson asked if there were any situations where notarization was preferable to signatures under penalty of perjury. There is no difference regarding penalties, and the elimination of the in-person notarization requirement has not been a problem in federal court. Some committee members expressed concerns about false affidavits in family court cases and by unethical process servers. There was discussion over whether there is additional risk with self-represented litigants.

Rule 5.05; Facsimile Filing: There was extensive discussion on the proposal to eliminate the rule that authorizes filing of documents by facsimile:

- Some committee members stated that facsimile transmission should remain as a backup in case the e-filing system is unavailable, or if internet access is unavailable. For example, in parts of outstate Minnesota it's not uncommon for internet access to be unavailable for multiple days at a time.
- Abrupt elimination of facsimile filing may be an undue hardship in counties that have fewer resources available to transition to e-filing. There was also concern that the elimination of facsimile filing could unfairly affect self-represented litigants, who may not have ready access to the e-filing system.
- Domestic abuse advocacy agencies sometimes file petitions for restraining orders by facsimile. There was discussion over whether the e-filing system will be available to the agencies and to petitioners, and over whether the agencies are acting as attorneys when

they file petitions for restraining orders. Some committee members expressed concern that if domestic abuse petitioners use the e-filing system, they are disclosing a means by which they can be contacted. Currently, petitioners have the option of using a facsimile machine at a library or FedEx store to submit filings.

Rule 5.04; Administrative Rejection of Filings: There was extensive discussion over the proposal to expand the list of reasons for rejecting filings:

- Many committee members thought that rejecting a filing for failure to redact restricted identifiers was too harsh.
- All acknowledged the importance of forcing compliance with the rule as most filings will be immediately available in 87 counties.
- Some members advocated for giving filers an opportunity to remedy redaction issues: *e.g.* the filer is given 10 days from notice that a submission has not been redacted to resubmit a redacted version; otherwise the submission is not filed. Some of the judges on the committee described issuing sanctions or orders to show cause; it was noted that other judges have levied substantial monetary sanctions or ordered attorneys to pay for credit monitoring.
- There was also discussion about the burden that the proposed rule could place upon court administration and about the possibility of using software to screen for restricted identifiers.
- Some members expressed concern that the added rejection reasons would make the court system harder to navigate, and would interfere with the policy of resolving disputes on their merits.
- One committee member asked why civil cover sheets were necessary.
- One issue with the current rule is that it states that documents "may be rejected." This language appears to give the court administrator discretion. It's important to clarify how this discretion is to be exercised.

The committee will have additional discussions about Rule 5.04 at its next meeting.

Rule 5.06 and General Rule of Practice 14: There was discussion over whether the "completion of transmission" standard for filing was too vague. For example, what happens if a filer hits the "submit" button and nothing happens? Some committee members have dealt with this issue by monitoring the status of the submission in the eFS system, or by sending themselves courtesy copies of filings. The committee found the proposed "may or shall" language to be confusing. It was acknowledged that this is a drafting issue that needs to be addressed.

Rule 5A: The representative from the attorney general's office will determine what the attorney general's position is on the proposal to allow notices of constitutional challenges to statutes to be sent to the attorney general by means other than U.S. mail.

Rule 11: There was discussion over the proposal to add e-mail addresses to attorney signature blocks. The committee comment should reflect that providing an e-mail address under Rule 11 does not constitute consent to receive service at that e-mail address. One committee member noted that providing e-mail addresses can lead to onerous levels of communications from self-represented litigants. The reporter suggested that ideally all attorneys should be required to provide an e-mail address at which they consent to receive service as part of the attorney registration process. Another member noted that the prior clerk of the appellate courts had spoken of difficulty in obtaining other required information from attorneys, such as whether they handle client funds.

Rule 26.07: A committee member questioned the purpose of the proposal to add e-mail addresses to discovery response signature blocks.

Rule 33: The committee agreed that Rule 33 should have a reference to Minn. Stat. § 358.116.

Rule 53.02: The committee by consensus approved of the proposed amendment that would allow trial judges to determine the extent to which special masters participate in e-filing.

Rule 77: There was discussion over the use of the word "transmit" instead of "mail." There was discussion over whether "transmit" or "provide" was a broader term. It may be appropriate to

include in the committee comment an explanation that “transmit” includes all lawful means by which a court administrator may deliver documents to case participants. Some committee members expressed concern that including the words “transmit, provide or otherwise distribute” in the text of the rule would make the rule unwieldy.

Conclusion: Judge Hylden asked the committee members to prepare for the next meeting by considering the discussion and identifying any points of concern with their colleagues. The next committee meeting is expected to focus on Rule 5.04 and other revisions prepared by the Reporter and staff.

There being no further business, the meeting was adjourned.

Meeting Summary[1]

MINNESOTA SUPREME COURT ADVISORY COMMITTEE
ON THE RULES OF CIVIL PROCEDURE
Friday, October 10, 2014
Minnesota Judicial Center Court of Appeals Conference Room

Members present:

Hon. Eric L. Hylden, Chair
Hon. Christopher J. Dietzen, Liaison Justice
James D. Attwood
John A. Cotter
Barton Gernander
William D. Harper
Alethea M. Huyser (*via telephone*)
Anna Lamb
Joseph Leoni
Hon. Mary Mahler
Nicholas N. Nierengarten
Eric J. Nystrom
Lawrence Rocheford
Daniel Rogan
Hon. Edward T. Wahl
Michael Johnson, Staff Attorney
Patrick Busch, Staff Attorney

Guests present: Carla Heyl, Aaron Zurek, Peggy Kuisle, Heather Scheuerman.

Draft Report. After the committee members introduced themselves, Chair Judge Eric Hylden asked Staff Michael Johnson to review the proposed report to the Minnesota Supreme Court. Points made during the discussion included:

Rule 3.01: Judge Frisch submitted written comments suggesting that the rule require that consent to receive service by electronic means outside of the E-Filing System must be in writing and dated so that there are no disputes over when the consent occurred. Among thr points made were:

- The issue could be discussed in the comment to the rule.

[1] Unofficial summary prepared by advisory committee staff.

- The issue might fit better in the text of the rule itself such as by amending the rule to read "consented to in writing or electronically."
- Consent to electronic service outside the E-Filing System could be made by e-mail.
- Rule 4.01 includes a reporter's note suggesting a related, global approach that would require all attorneys to maintain as part of their annual attorney registration a designated e-mail address for service in addition to their postal mailing address.

The consensus was to amend the rule to read "consented to in writing or electronically," and have members consider the revised draft for the next meeting.

Rule 4.01: Comments made included:

- The proposed rule would add to the summons a requirement to include the plaintiff's attorney's responsive email address for receipt of service, and that where the E-Filing System is being used, this may come into play for service of discovery outside the E-Filing System, for example.
- The reporter's note in the draft is suggesting a change to the attorney registration requirement that would require attorneys to annually designate an email address for service of process. This suggestion has appeared in other recent advisory committee reports, and would take advantage of the existing connection between the MARS attorney registry and the trial court case management system (MNCIS). This annual designation would require vendor-made changes and the state court technology division had at one time started investigating this but that project did not have resource priority to be moved forward.
- This is required in the federal court system.
- Gen. R. Prac. 13.01 already requires attorneys and parties to provide updates to any email address provided for purposes of receipt of notice.
- The proposal is not intended to create a new rejection reason for filings.

The committee members agreed that the proposal should remain in the report for now.

Rule 4.04: The committee discussed the proposal to permit non-notarized signatures under Minn. Stat. § 358.116 for proof of service made outside of the state. Comment made included:

- Judge Frisch's written comments included concerns opposing the general use of signature under penalty of perjury in place of a notarized signature as without the notary there is no one to swear that the witness actually made the statement.
- Section 358.116 was adopted at the request of the Judicial Council, and had been approved by the eCourtMN steering committee. The statute was designed to facilitate e-filing, especially by *pro se* litigants to effectively submit by electronic means petitions in order for protection and harassment restraining order cases and conciliation court cases, and to help ensure that the transition to electronic filing would not be a barrier to accessing the court system.
- Access to justice is a paramount concern, while the availability of a notary is "evidentiary" in nature.
- A committee member asked how it would be possible to determine the identity of the signer without a notary?
- Of the practicing attorneys on the committee, only one could recall having to call in a notary to verify the identity of a signer, and calling the notary was not particularly helpful to the case. That committee member supported eliminating the notarization requirement. He pointed out that scanned notarized documents would not be searchable PDFs. He also suggested that the rules or comments point out the statutory requirement that the non-notarized signature indicate the date of signing.
- State prosecutors rarely prosecute perjury.
- The use of the term "perjury" might be more effective at emphasizing the importance of telling the truth than the use of a notary.
- Even when the identity of the signer and the fact of singing are not in doubt, it will not eliminate arguments that the signer did not read the document, and such arguments are not uncommon.
- In regard to the goal of ensuring truthfulness in signed documents, the effectiveness of requiring a notary is doubtful or at least 50-50.
- A rule and a statement above the signature line that indicates the statement is made under penalty of perjury will be at least if not mopre effective in ensuring truthfulness.

- The rule should include both a reference to the statute and a reference to the penalty of perjury so that pro se parties, in particular, will understand the solemnity of the process and the consequences of the representation that their signature has.

The consensus of the committee was that general use of the new statute should be permitted but that for proof of service outside the state under rule 4.04, a notary should continue to be required.

Rule 5.02: Mike Johnson explained that the changes move language around in the rule but also delete facsimile as an authorized means of service. Among the points made in the ensuing discussion were:

- Eliminating service by facsimile might be premature. Such service will be needed during the transition to e-filing as E-service may not be an option in all places until e-filing and e-service become mandatory.
- We should be confident that lawyers would be able to adapt, and they should be required to do so.
- Members disagreed on whether lawyers in the Twin Cities or in outstate Minnesota were more likely to use facsimile service and filing
- According to court administrators in the First, Seventh, and Eighth Judicial Districts, fax machines are used mainly by non-resident attorneys and some nonprofit organizations. Self-represented litigants do not use fax machines but file in person and have questions they want to ask court staff in person when they file.
- Facsimile filing was always intended to be a means of last resort, and this should be enforced
- Mixing filing and service clouds the issue here; taking away service, at least in the absence of mandatory e-filing, takes away an option that does not involve the courts.

The committee decided by vote of 8-5 against eliminating fax service. The issue will require further discussion.

A committee member expressed concern that the language on line 69 refers to a rule or order that "authorizes or requires" service electronically is ambiguous and does not match up with the mandatory "shall be" served electronically on line 70. Staff commented that the draft will be clarified.

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A committee member noted that the language in Rule 5.02(d) differed from the language in proposed General Rule of Practice 14.01(f). He suggested that Rule 5.02(d) should either mirror 14.01(f) or simply reference it. It was noted that final report review will ensure that the cross references are as up to date as possible, as both sets of rules are being modified.

It was noted that under part (c) there will be different times for service by postal mail and service via the e-filing system when the other side is unwilling or unable to use the E-filing System. Some members questioned how often judges would strike filings for failure to timely serve, given the policy of deciding issues on their merits. The differing deadlines will require additional consideration. It was noted that the changes in part (c) reflect the fact that the technology to allow immediate service and filing using the E-Filing System is already in testing phase and according to court technology staff will be ready for production use by the intended July 1, 2015, effective date of the rules.

Rule 5.04: The committee reviewed statistics from the eleven pilot e-filing courts indicating that a very small percentage of filings were currently rejected. The committee considered whether to add the inclusion of restricted information to the list of rejection reasons. The committee reviewed approaches taken by other jurisdictions: these approaches included among other things rejection of filings, requiring filers to certify that their filings are free of restricted information, and requiring filers to file correctly redacted versions of filings, and requiring an affirmative motion to obtain relation back of filing date. In the ensuing discussion, comments included:

- Court staff already have more than enough work to do. The rules should minimize the number of decisions that court staff have to make.
- Improperly included restricted information usually pops up in exhibits. This may be less of a concern because exhibits generally can't be searched electronically.
- The burden of redaction should be upon attorneys, especially with labor-intensive redactions such as medical records.
- The approach taken by Oregon, which gives judges the discretion to strike pleadings for failure to redact, is appropriate.

- Currently there is no real punishment for failure to redact. There needs to be an incentive.
- The rules need to respect access rules, and common law and constitutional rights to review court records. This needs to be weighed against the need to protect personal information.
- The provisions in other jurisdictions that parties waive protection by filing their own confidential information are inappropriate. They simply punish a client for a lawyer's misconduct.
- It's appropriate to put the initial burden on the attorneys by requiring them to certify that the filings are free of confidential information. Court administration should also have the ability to direct attorneys to file redacted versions of documents if they discover confidential information, but court administration should not have an affirmative duty to verify that filings are free of confidential information.
- Parties should have the opportunity to cure mistakes in redaction.
- Penalties are appropriate. A federal judge recently fined an attorney $5,000 for failure to redact personal information. This encourages compliance, which is necessary because a person whose identity is stolen will not be made whole by suing an attorney who does not have malpractice coverage.
- One proposal is to impose a fine and give parties 10 days to correct mistakes in redaction.
- Some committee members wanted the cure period to be shorter.
- Administrative fines for failure to redact will go to the General Fund rather than remaining with the Judicial Branch.
- Parties with pauper status will not be subject to administrative fines.
- The proposed rule should be reworded: "Documents that include restricted identifiers that have not been submitted in a confidential manner as required by rule 11 of the General Rules of Practice for the District Courts may be ~~rejected for filing or~~ filed with a temporary non-public status subject to further court order ~~pending redaction or court order providing that they be filed under seal.~~"
- There should be a limit on the amount of time that documents can spend on temporary non-public status.

- The certification requirement won't deter willful violations, and will add a needless burden to the many cases that involve no confidential information.
- Attorneys should have three days to either redact filings or have them rejected. Attorneys would have the ability to move for documents' being filed nunc pro tunc – this allows for judicial review.
- Attorneys should be able to report to court administration the improper inclusion of information in materials filed by other parties.
- Clerks should be able to act without going to a judge, especially because the majority of filings are handled administratively and are not sent to judges.
- If a complaint is stricken, court administration needs a mechanism to close a case.
- Allowing a filing to be filed nunc pro tunc could complicate motion filing deadlines.
- Suits for damages by people whose confidential information is filed publicly are beyond the scope of the committee.
- Identity theft is a problem; this is based in part on reports that the street value of a name and Social Security Number is $1,000. The eCourt committee's proposal to add this as an administrative filing rejection reason explained in a memo form Judge Cahill the danger if restricted identifiers get out into the public, and that this danger too great to completely ignore, and the public expects the courts to do more than just expect parties do it right.
- Court staff do catch some, and are performing due diligence review of documents, just not reading each and every word.

Following a brief break Judge Hylden indicated that there may be a few alternatives that members want to consider. He asked Mike Johnson to clarify his earlier proposal. Mike Johnson indicated that once it is brought to the attention of court staff (either as a result of their own due diligence filing reviews or by phone call or other notice from any other party or person) that a filing improperly includes restricted identifiers, the court staff will immediately classify the document as confidential and send out a deficiency notice directing the filer to, within ten days, either (a) file a properly redacted filing plus a monetary fee (e.g., $300 to $500) to the court; or (b) file a motion for relief from the court. If no action is taken in the ten days, the filing is either stricken or the court will not consider it when deciding the issue/case. Staff will include

this approach among the alternatives in the next draft and the committee will again consider the issue at its next meeting.

Members indicated no opposition to including the filing of discovery as a reason for administrative filing rejection. It was also suggested that rule 5.04 could be improved by breaking it into separate, lettered clauses.

Civil cover sheet options: Anna Lamb gave the committee an overview of three options she had prepared relating to civil cover sheets and what to do when they are not provided. She explained that failure of counsel and parties to submit these in a timely manner slows down the orderly processing of cases. The options will be included in the draft for the next committee meeting.

Hip Pocket filing. One member raised a concern about the dismissal of actions not filed within a year, and its result in having to file embarrassing and private facts cases in cases that previously would have resolved without court involvement, and that there have been a few inconsistent results from trial courts and at one matter under appeal. The member asked if the issue was within the committee's current scope. Justice Dietzen indicated that the issue is not within the committee's current charge, particularly given the short time frame for e-filing. He added that the hip pocket filing rule was fully vetted in a task force and in a published rule process, and that the rule has been in place for a relatively short time, but that the committee might revisit the issue at some point in the future after any initial legal challenges have resolved.

Rule 5.05: Mike Johnson explained that the draft continues facsimile filing as an option where e-filing is not mandatory. In light of the earlier discussion of facsimile service and filing, the committee will review Rule 5.05 at its next meeting.

Rule 5.06: It was noted that the reference to "may or shall" could cause some confusion. This should be clarified in a comment.

Rule 5A: Lea Huyser explained that the Attorney General's Office would likely prefer that the rule continue to require that postal mail notice of constitutional challenges be sent to the Attorney General.

Rule 11.01: A committee member noticed a typographical error in line 269.
A committee member suggested adding a certification requirement to this rule regarding confidential information. Among the points made were:

- A separate certification document submitted with a motion and affidavit, for example, would simply add to the amount of "paper" in the file.
- Court staff do not want to search for one more piece of paper in every file.
- Many filings do not include restricted identifiers, for example, so the absence of the certification may be meaningless and rejection for failure to include it is not appropriate.
- Certification can be added to the list of items in rule 11 that a signature signifies without creating the need for a separate certification document.
- Prior committee reports have recommended an electronic click box like the one used in the federal PACER system that requires a filer to acknowledge that they have complied with restrictions on filing social security numbers, etc.; such an electronic certification may be more effective and would not burden court staff.

The consensus was that adding the certification within the existing rule 11 list is appropriate.

Line 546: A committee member noticed a typographical error in line 546.

Recommendation #2: New Rule 45.06

Mike Johnson explained that the Reporter included a concern about language in the proposal that appears to exclude non-admitted attorneys from complying with ethics codes and the jurisdiction of the court. One member commented that the model act appears to be aimed at the inexpensive and efficient means of being able to obtain a subpoena duce tecum, and that if there is some need to enforce a subpoena, or to appear in a deposition in Minnesota, at that time a Minnesota admitted attorney would be required, or formal pro hac vice application process approved. Utah's response to the issue was distributed and discussed. The consensus was that something like Utah's approach should be added to the rules and discussed in the comments.

One member queried which state's rules govern the discovery once a Minnesota subpoena is issued? All agreed that Minnesota's rules would govern.

Mike Johnson noted that the optional language in the model act that would include tribal courts was intentionally left out. The General Rules of Practice for the District courts have provisions that address the effect of tribal court orders and judgments.

Committee members noted typographical errors in subsections (b)(1) and (b)(3) of the proposed rule.

Judge Hylden thanked the committee members for their service. There being no further business, the meeting was adjourned.

Meeting Summary[1]

MINNESOTA SUPREME COURT ADVISORY COMMITTEE
ON THE RULES OF CIVIL PROCEDURE
Friday, November 14, 2014
Minnesota Judicial Center Room G06

Members present:

Hon. Eric L. Hylden, Chair
Hon. Christopher J. Dietzen, Liaison Justice
James D. Attwood
John A. Cotter
Hon. Jennifer L. Frisch
Barton Gernander
William D. Harper
Alethea M. Huyser
Anna Lamb
Cindy Lehr
Joseph Leoni
Hon. Mary Mahler
Nicholas N. Nierengarten
Eric J. Nystrom
Lawrence Rocheford
Daniel Rogan
Hon. Edward T. Wahl (*via telephone*)
Michael Johnson, Staff Attorney
Patrick Busch, Staff Attorney

Introduction: Judge Hylden welcomed the committee members, and expressed hope that the committee's business could be concluded without holding the meeting scheduled for December 12. He asked members to simply hold the December 12 meeting time on their calendars for now. It may be possible to resolve all matters by having the reporter circulate a draft report. Judge Hylden thanked committee members John Cotter and Lawrence Rocheford for submitting written comments.

Review of draft report: Reporter David Herr presented the draft report to the committee:

Rule 4.01: The proposed change would require that e-mail addresses be included in summonses. David Herr explained that he is opposed to the change because it is not clear why it is necessary

[1] Unofficial summary prepared by committee staff.

and what the consequences would be. If it is necessary, then why not require it in all pleadings by all parties? Regarding consequences, inclusion of an e-mail address in a summons does not constitute consent to service at that e-mail address, but individuals may reasonably believe that it does. A requirement to keep an updated email address will already exist in the E-Filing system. Some committee members echoed the reporter's concern; others noted that the other rules committees have considered requiring e-mail addresses in signature blocks, and that having an e-mail address in a summons could help court staff contact parties. Although a summons may not be the first document filed in a case, in the high volume unlawful detainer and conciliation court matters if it is not in the initial pleading there may be no other way to obtain it. The committee agreed that it would be more appropriate to have a broad e-mail requirement in Rule of Civil Procedure 11 as is proposed on line 352, and that the proposed added language in rule 4.01 could be deleted. Committee members also noted the possibility of having to amend court forms to reflect changes in the rules, particularly in high volume matters such as unlawful detainers and conciliation court matters.

Rule 4.04: The committee discussed the proposal to require that service of process outside Minnesota be proved by a notarized affidavit. Committee members expressed different views on the value of maintaining the notarization requirement, and of the value of notaries in preventing fraud. Some committee members were in favor of retaining the notarization requirement, while others favored allowing statements under penalty of perjury to substitute for notarized signatures. The reporter's comments note that General rules of Practice 15 generally addresses affidavits and suggests that establishing an exception for the narrow subcategory of affidavit should be carefully considered. Judge Hylden stated that the issue should be resolved by the General Rules of Practice committee. The consensus was to model civil rule 4.04 after general rule 15.

Rule 5.02: A committee member asked if the proposed changes to Rule 5.02 would allow service by facsimile. Reporter Herr stated that the intent is to allow facsimile service to continue in its current state except where e-service using the E-filing System is mandated.

Rule 5.04(b): Staff Mike Johnson noted that the existing language "for use in the proceeding" is ambiguous. The language does not clearly restrict the filing of discovery documents, which is a

problem and a burden for court staff. The committee members discussed various ways of addressing this issue, and agreed to adopt the reporter's proposal on line 165 which would be consistent with the change on line 182.

Rule 5.04(d): The committee members discussed at length the proposal to reject documents for filing if they contained restricted identifiers. Points of discussion included:

- Court staff need clear guidelines on how to process stricken documents. It may be necessary to address the specifics in a Court Administrative Process.
- There needs to be a mechanism for having a filing relate back to the original filing date. Otherwise, rejection for improper inclusion of restricted identifiers could lead to expiration of jurisdictional statutes of limitations. This is too harsh a penalty.
- Court staff will need to retain "stricken" documents in case the striking is challenged on appeal, and MNCIS should reflect that the document has been stricken.
- The "oppose the motion" sentence should be moved to the end of the paragraph.
- Stricken documents could be retained in the confidential portion of the file.
- The rule should clarify when the ten-day cure period begins to run.
- The amount of the fine should be deleted from the rule because the appropriate amount will change over time.
- Most civil rules don't have provisions for imposition of fees. It may be appropriate to impose a second filing fee.
- Having a fine would encourage compliance with the rule, but would also interfere with the judicial branch's budget. It might also have a disproportionate impact on self-represented litigants.
- Litigants will still be required to pay a motion fee if they wish to challenge the striking of the document.

The committee agreed on the following points (votes indicated where applicable, otherwise consensus):

- The cure period should be extended to 21 days (by vote of 11 to 3).
- The rule should not contain a fine (by vote of 9 to 4).
- Line 201 delete the words "where appropriate"
- Line 183 change "if brought to the attention of" to "upon discovery by."

- Lines 194-195, separate first sentence on striking the pleading from the rest of the paragraph which discusses the relation-back procedure.
- refer to "court administration" rather than "court staff."
- Edit sentence where the word "timely" appears three times.

Discussion of Anna Lamb's memorandum on rejecting filings for lack of a civil cover sheet: The committee discussed Anna Lamb's memorandum on the possibility of rejecting filings for a lack of a civil cover sheet. The committee agreed that lack of a civil cover sheet should not be a basis for rejecting a filing, and that it would be appropriate to add some language to General Rule of Practice 104 establishing consequences for failure to provide a cover sheet.

Rule 5.06: Because the existing Rule 5.05 is not being deleted, the reference should be changed back to Rule 5.06.

Rule 11: Justice Dietzen raised two concerns about Rule 11: the effect on self-represented litigants, and whether the rule required attorneys to provide updated e-mail addresses. The committee members reached consensus on three points:

- the signature requirements should not apply to every document filed with the court, thus the language "or other similar document" should remain in the rule on line 348;
- email addresses should be required for attorneys and self-represented litigants; and
- requiring that a party provide an e-mail address is sufficient to require the party to keep the address updated. It was noted that e-mail addresses may be more stable over time than street addresses.

It was noted that lines 379-383 should be underlined.

Rule 26.07: line 459 add a requirement for self-represented party to include email address.

Rule 17.02. It was noted that this rule uses the phrase "apply under oath" which may not be clear regarding whether a signature under penalty of perjury is sufficient. Reporter David Herr will clarify this in the next draft.

Rule 54.04: A committee member suggested that the reference to an "application" be changed to "affidavit" as a shorthand means of incorporating the signing under penalty of perjury under Genreral Rule of Practice 15. Reporter Herr pointed out that an "application", even if sworn or signed under penalty of perjury, is not the same as an "affidavit." The reporter will add a comment referencing General Rule of Practice 15.

Rule 56: The committee discussed John Cotter's written comments regarding the use of affidavit in civil rule 56 without any reference to a requirement of it being under oath or sworn as creating a third type of affidavit: one that is unsworn and unsigned. Proposed General Rule of Practice 14.04states that documents need not be notarized unless specifically required by court rule, and Proposed General Rule of Practice 15 defines affidavit to "include" a notarized, signed and sworn document or a document signed under penalty of perjury. Reporter David Herr will consider clarifying language.

Recommendation #2: A committee member suggested that the words "constitutes an undertaking to comply with" should be deleted. The amended language would be: "A request for the issuance of a subpoena under this act does not constitute an appearance in a proceeding pursuant to Rule 5.01 of these rules but does subject the filer to the jurisdiction of the court and to Minnesota law and rules, including the Minnesota Rules of Professional Conduct."

The committee agreed that the map of states that have adopted the Interstate Depositions and Discovery Act should be included in the materials sent to the Court.

Circulation of Report: Judge Hylden asked if any of the committee members had any additional concerns. No additional concerns were expressed. Staff Mike Johnson and Reporter David Herr will circulate a draft final report for the committee to review. Committee members are asked to use "reply all" to suggest substantive changes, and to report technical changes directly to the reporter without using "reply all."

Concluding remarks by Justice Dietzen: After the report is sent to the Supreme Court, the Court will decide whether to hold a public hearing or simply solicit written comments. If a hearing is held, the Court will likely ask the chair and the reporter to present the report. Committee members are not obligated to attend the hearing. Justice Dietzen thanked the members, chair, reporter and staff for their contributions to the important work of the court.

There being no further business, the meeting was adjourned.