STATE OF MINNESOTA

IN SUPREME COURT

ADM04-8001

ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS ON PROPOSED AMENDMENTS TO THE RULES OF CIVIL PROCEDURE

The Supreme Court Advisory Committee on the Rules of Civil Procedure in a report dated and filed November 16, 2009 has recommended amendments to the Rules of Civil Procedure; and

This court will consider the proposed amendments without a hearing after soliciting and reviewing comments on the proposal;

IT IS HEREBY ORDERED that any individual wishing to provide statements in support or opposition to the proposed amendments shall submit twelve copies in writing addressed to Frederick K. Grittner, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Blvd, St. Paul, Minnesota 55155, no later than February 10, 2010. A copy of the committee's report containing the proposed amendments is annexed to this order.

Dated: December 10, 2009

BY THE COURT:

Eric J. Magnuson
Chief Justice

ADM04-8001
STATE OF MINNESOTA
IN SUPREME COURT

In re:

Supreme Court Advisory Committee
on Rules of Civil Procedure

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

Final Report
November 16, 2009

Hon. Francis J. Connolly
Chair

Hon. Christopher J. Dietzen
Liaison Justice

Stephanie A. Ball, Duluth
Paul A. Banker, Minneapolis
Kenneth H. Bayliss, III, St. Cloud
Charles A. Bird, Rochester
Leo I. Brisbois, Minneapolis
James P. Carey, Minneapolis
Larry D. Espel, Minneapolis
Katherine S. Flom, Minneapolis
Thomas Fraser, Minneapolis
Phillip Gainsley, Minneapolis
Hon. Mary E. Hannon, Stillwater
Hon. David Higgs, Saint Paul
Richard A. Lind, Minneapolis
James F. Mewborn, Minneapolis
Michael G. Moriarity, Anoka
Hon. Susan M. Robiner, Minneapolis
Richard S. Slowes, Saint Paul
Michael W. Unger, Minneapolis
Hon. Galen Vaa, Moorhead
Mary R. Vasaly, Minneapolis

Michael B. Johnson, Saint Paul
Staff Attorney

David F. Herr, Minneapolis
Reporter

ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

Summary of Committee Recommendations

The committee met three times in 2009 to consider additional issues not addressed in the committee's previous report to the Court, dated October 15, 2007. These issues include consideration of the changes in timing rules that have been adopted in federal court and scheduled to take effect on December 1, 2009, as well as several ongoing issues in Minnesota practice, particularly relating to subpoena practice and taxation of costs.

The committee recommends that the Court should amend three rules to make them function better in practice, to curtail misuse of subpoenas, and to modernize the form of Summons used in the rules.

The committee's specific recommendations are briefly summarized as follows:

1. Rule 45 should be amended to make it clear that the rule should not be used for ex parte investigation or discovery.
2. The Court should amend Rule 54, to modify the procedure for seeking and assessing costs and disbursements.
3. The form of summons in the appendix of forms should be amended to modernize its language to make it more readily understood by recipients, particularly pro se litigants. The committee believes this will lead to fewer motions by unrepresented parties to vacate default judgments and free up scarce judicial time.

Recommendations Not Requiring Action

The committee considered several recommendations for rule changes that the committee concludes either should not be made, or should not be made at this time. These matters include the following:

1. **Use of E-mail for Court Notices.** The committee considered a suggestion by court administrators that the rules be amended to allow

for use of e-mail for providing of notice of orders, hearings, or other court events. The committee concluded that while this process works well in courts where comprehensive electronic filing systems have been adopted, such as the United States District Court for the District of Minnesota, it works well specifically because of its broad-based and universal adoption. The committee concluded that this means of giving notice should not be implemented until the district courts adopt electronic filing for all or most civil cases.

The committee is aware that a pilot project is underway in Hennepin County to implement electronic filing in that court and to evaluate it for use in other districts. Other districts are also studying this issue. The committee will work with the implementation committees for any such projects to develop rules that would work for those projects and potentially serve as models for state-wide adoption upon completion of the project.

2. **Duplicate Filings When Facsimile Filing Is Used.** The committee was advised of the continuing practice of some lawyers to file a document by facsimile as allowed by Minn. R. Civ. P. 5.05 but nonetheless file the original as well. This is done despite the clear language of that rule ("If a paper is filed by facsimile, the sender's original must not be filed. . ."). This duplicate filing either imposes a burden on court administrators to return the offending document if they catch the error or imposes a burden on court files to have duplicate copies filed, indexed, and retained in court files. The committee does not believe the rule can be made clearer and doesn't favor the addition of specific sanctions in this rule. The committee concludes this is a matter that should be the subject of ongoing efforts for education of the bar.

3. **Uniform Unsworn Foreign Declarations Act.** The committee considered whether a uniform act to permit declarations under penalty of perjury where the declarant is located outside the United States should be adapted for adoption as a court rule. *See* UNIFORM UNSWORN FOREIGN DECLARATIONS ACT (2008), *available for download at* http://www.law.upenn.edu/bll/archives/ulc/cufda/2008final.pdf. The committee has mixed views about the relative value of the solemnity of formal notarization and the efficiency of mere declaration, but in any event, believes that any action on this front should be taken either by legislation or by court rule coordinated with appropriate statutory changes.

Hearing and Effective Date

The committee does not know of any expected controversy over the three rules amendments recommended for adoption in this report, but the changes are not insubstantial, and may have impacts both on litigants and court administrators. The committee does not have a specific recommendation as to the best effective date for these amendments.

Amendment of Timing Rules

The committee has considered the issue of whether the Minnesota rules should be amended to follow the changes made in the federal court rules regarding the calculation of time and deadlines. The committee recommends generally that the federal amendments are sensible and that there is significant advantage to having time counted by the same means in state and federal court. The committee further recommends that if the federal timing changes are adopted, they should be adopted uniformly across all court rules, and that appropriate review of Minnesota Statutes should be conducted to identify deadlines imposed by statute that should be adjusted at the same time the rules are amended.

The committee will submit a detailed report of recommended rule changes not later than April 1, 2010, and will recommend that the effective date of the timing rule amendments should probably be not earlier than July 1, 2010, in order that the Minnesota Legislature can address any legislative issues.

Style of Report

The specific recommendation as to the existing rule is depicted in traditional legislative format, completely ~~struck-through~~ because it is replaced in its entirety by a new rule. For ease of reading, underscoring of the new rule text is omitted.

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

Recommendation 1: **Rule 45 Should Be Amended to Create an Explicit Requirement to Prevent the Use of Court Process for Ex Parte Investigation or Discovery.**

Introduction

The committee continues to confront reports of misuse of subpoenas for ex parte discovery—issuance without notice to the other parties to the action or the rescheduling of noticed production in such a manner that other parties are deprived of any opportunity either to object to the discovery or to participate in the production. In some instances, parties obtained documents from non-parties by subpoena and have refused requests to make the documents available to other parties.

The committee believes Rule 45 should be amended to require expressly that the party issuing a subpoena is responsible to allow all parties to participate in any production that occurs after issuance of a subpoena to a non-party. If a production occurs as noticed in the subpoena, the parties may be expected to participate based on receipt of notice as require by Rule 45.01(e). If the party issuing the subpoena agrees to some other production—whether at a different time or with a different scope of production—the parties are entitled to notice of that change as well, and are still allowed to participate.

The amended rule also recognizes that it may be possible that the other parties to the litigation do not want to participate in a production from non-parties, but rather have a legitimate reason, often sounding in protection of privacy rights, to seek a protective order against the discovery occurring. The amended rule creates a seven-day period after service of a subpoena during which the production cannot take place.

Specific Recommendation

Rule 45 should be amended as follows:

RULE 45. SUBPOENA

Rule 45.01. Form; Issuance

* * *

(e) Notice to Parties, Rescheduling, Modification. Any ~~use of a~~ subpoena, other than to compel attendance at a trial, must be served on the subject of the subpoena and the parties to the action at least 7 days before any required production for inspection, copying, testing, or sampling of designated books, papers, documents, or electronically stored information, tangible things, or inspection of premises. It is improper to issue such a subpoena without prior notice to all parties to the action, ~~is improper~~ and doing so may subject the party or attorney issuing it, or on whose behalf it was issued, to sanctions. The party issuing such a subpoena shall make available to all parties any books, papers, documents or electronically stored information obtained from any person following issuance of a subpoena to that person. If production or inspection is made at a time or place, in a manner, or to an extent and scope, different from that commanded in the subpoena, the party issuing the subpoena must give notice to all parties to the action at least 7 days in advance of the rescheduled production. Any party may attend and participate in any noticed or rescheduled production or inspection and may also require production or inspection within the scope of the subpoena for inspection or copying.

Rule 45.03. Protection of Persons Subject to Subpoena

(a) Requirement to Avoid Undue Burden. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction,

which may include, but is not limited to, lost earnings and a reasonable attorney fee.

(b) Subpoena for Document Production Without Deposition.

(1) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

(2) Subject to Rule 45.04(b), a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

* * *

Rule 45.04. Duties in Responding to Subpoena

(a) Form of Production.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(3) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(4) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26.02(b)(3). The court may specify conditions for the discovery.

Advisory Committee Comment—2009 Amendment

Rule 45 is amended in several ways to prevent misuse of subpoenas. These amendments are consistent with the purpose of two provisions of the existing rule. Under Rule 45.01(e), notice of issuance of a subpoena is required in order that all parties have an opportunity to participate in the production and to curtail use of a subpoena for ex parte investigation. Rule 45.03(a) explicitly recognizes that the costs of discovery from non-parties should be borne, to the extent feasible, by the parties to the action and the burden on subpoenaed parties should be minimized. The amendment in 2009 adds the second sentence to Rule 45.01(e), and is intended to make the rule even more explicit on the proper use of a subpoena: to obtain information for litigation use by all parties to the litigation, and not for ex parte use by a single party. Once a subpoena is issued to a non-party, information produced or testimony by that non-party must be made available to all parties.

Rule 45.04(a)(1) is amended in 2009 to facilitate the orderly production of information. Rule 45 was amended in 2006 to permit use of subpoenas to require production of documents and other information from non-parties

without requiring a deposition to be scheduled and, indeed, without even requiring a personal appearance. *See* Rule 45.03(b). Where the non-party and party arranging for issuance a subpoena make alternative arrangements for production in response to the subpoena—which may be entirely proper—the potential exists that the production would occur without the knowledge of the other parties to the action. That production, without notice to the parties, is improper and essentially prevents participation by the parties who had received notice of another time of production. The amended rule places a duty on issuing the subpoena either to arrange production at a time agreeable to all parties and the non-party or to give notice to the other parties.

The amended rule is intended to create a streamlined process that minimizes the burdens of discovery on non-parties and reinforces the rights of all parties to participate in court-sanctioned discovery on an equal footing. There may still be circumstances where other parties will want to serve separate subpoenas to the same non-party, either to request additional documents or inspection or copying, or to obtain documents in a different format. Ideally, the parties will coordinate their efforts to minimize the costs and other burdens of production on the person receiving a subpoena.

Notice of the intention to comply with a subpoena in some manner other than noticed in the subpoena is important because one of the parties may have valid objections to the production taking place at all. Under the revised rule, no production can properly occur without all parties having at least seven days notice, providing any party the opportunity either to participate in the production or to seek a protective order to prevent the production from taking place.

Recommendation 2: **The Court Should Amend Rule 54 to Modify the Procedure for Seeking and Assessing Costs and Disbursements.**

Introduction

Rule 54.04 as it currently exists is not a model of clarity, and creates a procedure for taxation of costs that is not always workable or readily understood. The committee has undertaken to create a rule that establishes a procedure that should be readily understood by reading the rule. The committee also recommends that the State Court Administrator be charged with producing a standard form for taxation of costs and disbursements, much like the form used in the appellate courts, that allows the prevailing party to itemize the costs and disbursements sought, give notice to and prove service upon the non-prevailing party, and allows the administrator to act on the requested costs. The committee believes such a form will significantly streamline this process.

The committee believes that the current process is both confusing and unduly cumbersome. This information comes from judges, attorneys, and court administrators. It also inflexibly requires initial taxation of costs by the court administrator and then automatic, and in some cases essentially mandatory, review by a district court judge. Additionally, the current rules do not set any deadline for applying for the taxation of costs. Although this is not frequently problematic, there is no good reason not to have some established deadline, and because the pendency of a cost bill does not affect the finality of a judgment for appeal purposes, there is some efficiency to be gained by having costs determined reasonably promptly after the conclusion of other proceedings.

The revised process provides greater guidance on what has to be done, when it must be done, and how the taxation of costs should be handled by the court. The rule allows the filing of the bill of costs for decision, in the court's discretion, by either the administrator or district court judge. If the application is decided by a judge, the resulting decision is final in the trial court; if the

administrator decides the application, then an appeal may be taken to the district judge as is now allowed.

The committee recommends that Rule 127 of the Minnesota General Rules of Practice be modified. That rule limits the taxation of expert witness fees by the court administrator to $300 per day of testimony. Some courts have formally adopted the practice of allowing the administrator to tax up to $1,000 per day. The committee believes neither restriction serves a necessary role under the revised process. Either the administrator or judge may tax appropriate costs in the first instance, and in any event the issue can be decided by the district court judge. Under the current rules, many cost orders by administrators are nearly required to be appealed to the district court by the rule that says only the district court judge can award more than $300 per day.

Finally, the committee recommends that a revised form be developed by the State Court Administrator and made available on the judicial branch website. The committee has developed the broad outlines of a form that would be useful, modeled generally on the form used in Minnesota's appellate courts, containing sections for setting forth the amounts sought (with some structure as to the specific items that might properly be sought), notice to the parties of the amounts sought, of their right to respond, and for the administrator to allow or disallow particular items. That draft form is attached to this recommendation for information purposes and the Court's convenience.

Specific Recommendation

The committee recommends that

1. Rule 54.04 be amended as follows:

RULE 54. JUDGMENTS; COSTS

* * *

Rule 54.04. Costs

~~Costs and disbursements shall be allowed as provided by statute. Costs and disbursements may be taxed by the court administrator on two days' notice, and inserted in the judgment. The disbursements shall be stated in detail and verified by affidavit, which shall be filed, and a copy of such statement and affidavit shall be served with the notice. The party objecting to any item shall specify in writing the ground thereof; a party aggrieved by the action of the court administrator may file a notice of appeal with the court administrator who shall forthwith certify the matter to the court. The appeal shall be heard upon eight days' notice and determined upon the objections so certified.~~

This is an entirely new version of Rule 54.04, so underscoring is omitted in this draft of the report.

(a) Costs and disbursements allowed. Costs and disbursements shall be allowed as provided by law.

(b) Application for costs and disbursements. A party seeking to recover costs and disbursements must serve and file a detailed sworn application for taxation of costs and disbursements with the court administrator, substantially in the form as published by the state court administrator. The application must be served and filed not later than 45 days after entry of a final judgment as to the party seeking costs and disbursements. A party may, but is not required to, serve and file a memorandum of law with an application for taxation of costs and disbursements.

(c) Objections. Not later than 7 days after service of the application by any party, any other party may file a separate sworn application as in section (b), above, or may file written objections to the award of any costs or disbursements sought by any other party, specifying the grounds for each objection.

(d) Decision. Costs and disbursements may be taxed by the court administrator or a district court judge or at any time after all parties have been

allowed an opportunity to file applications and to object to the application of any other party as provided in this rule. The judge or court administrator may tax any costs and disbursements allowed by law.

(e) Review by Judge. If costs and disbursements are taxed by the court administrator, any party aggrieved by the action of the court administrator may serve and file a notice of appeal not later than 7 days after the court administrator serves notice of taxation on all parties. Any other party may file a response to the appeal not later than 7 days after the appeal is served. The appeal shall thereupon be decided by a district court judge and determined upon the record before the court administrator.

(f) Judgment for Costs. When costs and disbursements have been determined, whether by a district court judge or by the court administrator with no appeal taken to a district court judge, they shall promptly be inserted in the judgment.

Advisory Committee Comment—2009 Amendment

Rule 54.04 is amended both to clarify its operation and to improve the procedure for taxing costs by the court administrator and the review of those decisions by the district court judge. The amended process is commenced by filing an application on a form established by the State Court Administrator and made available on the Judicial Branch website (or in substantially the same form).

2. Rule 127 of the Minnesota General Rules of Practice should be modified to remove the $300 limit on the amounts allowed for expert witness fees.

Minnesota General Rules of Practice

RULE 127. EXPERT WITNESS FEES

~~On affidavit showing that a fee equaling or exceeding $300 per day has been billed, the court administrator may tax $300 per day for an expert witness fee~~

~~as a disbursement in a civil case, subject to increase or decrease by a judge.~~ The amount allowed for expert witness fees shall be in such amount as is deemed reasonable for such services in the community where the trial occurred and in the field of endeavor in which the witness has qualified as an expert. No allowance shall be made for time spent in preparation or in the conducting of experiments outside the courtroom by an expert.

Advisory Committee Comment—2009 Amendment

This rule is amended in 2009 to remove the $300 limit on expert fees contained in the former rule. This change is part of the new procedure established for taxation of expert costs established by amendment of Minn. R. Civ. P. 54.04 by amendment in 2009. The rule allows taxation of costs by either the court administrator or district court judge, and there is no reason to continue a rule that limits the amount the court administrator can order, thereby making a two-step taxation process inevitable. The $300 limit in the former rule also had not been changed for several decades, so was unduly miserly in the 21st century.

Task Force Comment—1991 Adoption

This rule is derived from Rule 11 of the Code of Rules for the District Courts.

3. The State Court Administrator should make a form available on the Judicial Branch website to facilitate the taxation of costs. A sample form (in rough outline form and undoubtedly requiring further development) is set forth below.

STATE OF MINNESOTA _____ COUNTY	DISTRICT COURT _____ JUDICIAL DISTRICT
Case Number: *Case Title:* *v.*	***Notice, Statement and Claim of Costs and Disbursements Incurred*** *Party applying for costs and disbursements:* _____ Plaintiff Defendant Other (specify)

I. COSTS AND DISBURSEMENTS

	Amount Claimed	Amount Allowed
Statutory Costs (Minn. Stat. § 549.02, subd.1)	$_____	$_____
Court Filing Fees	$_____	$_____
Motion Fees	$_____	$_____
Jury Fee	$_____	$_____
Medical Record Fees	$_____	$_____
Cost of Service	$_____	$_____
Subpoena Fees	$_____	$_____
Postage	$_____	$_____
Transcript	$_____	$_____
Pre-judgment Interest (attach calculation)	$_____	$_____
Experts (specify total amount sought and list in Attachment)	$_____	$_____
Reproduction of Exhibits	$_____	$_____
Other (specify or attach separate sheet in this form)	$_____	$_____
TOTAL CLAIMED:	$_____	
TOTAL ALLOWED:		$_____

This above bill of Costs and Disbursements taxed and allowed as indicated in the right-hand column, above.

_____ _____
Date Court Administrator or District Court Judge

_____ By _____
District Court Administrator Deputy Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

Being duly sworn, I the attorney for a party in the above-entitled action, state that the above is a true and correct statement of costs incurred and disbursements made and which that party is entitled to recover in this action.

Respectfully,

_____
Attorney's Name

_____
Address

_____
Signature

Notary Stamp, Signature and Date:

_____
Dated

NOTICE TO ATTORNEY FOR ADVERSE PARTY(S):

ADVERSE PARTY(S) BEING TAXED:

Costs and disbursements will be taxed pursuant to Rule 54.04 (Rules of Civil Procedure), objections hereto may be filed pursuant to Rule 54.04(c).

_____
Attorney

For _____
(Name of Party)

_____
Attorney

For _____
(Name of Party)

_____
Attorney

For _____
(Name of Party)

_____
Attorney

For _____
(Name of Party)

(use additional page to identify additional parties)

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

I, _____, of the City of _____, County of _____, State of Minnesota, being duly sworn, says that on the _____ day of _____, _____, (s)he served the Notice, Statement and Claim of Costs and Disbursements Incurred by Prevailing Party on _____, the attorney for _____, the _____ in this action, by mailing to him/her a copy thereof, enclosed in an envelope, postage prepaid, and by depositing the same in the post office at _____, directed to said attorney at the following address(es):

_____	_____
Name	Name
_____	_____
Address	Address
_____	_____
City, State, Zip	City, State, Zip

☐ and to the parties and counsel set forth on the attached list.
(Check if applicable)

The last known address(es) of said attorney(s).

_____

Subscribed and sworn to before me this ____
day of _____, 20____

_____
Notary Public

Recommendation 3: **The Form of Summons in the Appendix of Forms Should be Substantially Revised to Modernize Its Language and to Make it More Readily Understood by Recipients.**

Introduction

The committee considered requests that the form of summons included in the Appendix of Forms be modified to address several similar problems attributable, at least in part, to the language of the current summons. These problems include overall opacity of the language, due to its archaic phrasing, and the failure to address some of the issues a summons recipient may need to know.

The committee has reworked the summons to modernize its language and to expand the notice contained in the summons to address these issues. The archaic language is confusing. A particular problem is created by the fact that the summons is often issued by an attorney, and contains blanks for the court file number because the action is not filed, and won't necessarily ever be filed. It is not an isolated occurrence for a summoned defendant to call the court and be told that there is no such action on file, as Minnesota's rules do not require filing of the action in order to commence it. The revised form of summons attempts to make this clearer.

Many of the problems with the language of the summons, and particularly confusion over whether a lawsuit is even pending, result in the entry of default judgments. The committee believes that the changes recommended will reduce the number of default judgments that result from lack of understanding of the summons, and will therefore reduce the number of motions to vacate these default judgments and will therefore reduce wasted court time.

Specific Recommendation

Form 1 in the Appendix of Forms should be replaced in its entirety by the following:

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. 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* 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* 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* 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.

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 Dated

Served on _____ _____

Date Name and title

* Use 20 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.

Grittner, Fred ADM04-8001

From: Johnson, Michael
Sent: Monday, January 11, 2010 11:57 AM
To: Grittner, Fred
Subject: FW: proposed changes to rules of civil procedure

Hi Fred,

Below are comments on the recent civil rules proposals from Judge Aldrich.

Mike

Michael B. Johnson
Senior Legal Counsel
Legal Counsel Division, State Court Administration
Minnesota Judicial Branch
140-C Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155
direct dial 651.297.7584
facsimile 651.297.5636
e-mail michael.johnson@courts.state.mn.us

From: Aldrich, Stephen (Judge)
Sent: Monday, January 11, 2010 11:51 AM
To: Johnson, Michael
Subject: RE: proposed changes to rules of civil procedure

I hope the new subpoena rule permits less than 7 days notice if the hearing is to be in less than seven days. Also, a procedure for subpoenaing people whose depositions need to be taken but are leaving the state for an extended period. This could be more of a problem in family court where the facts are constantly changing, unlike most accident or business litigation.

Please pass these comments on to the Court. Thank you.

/s/ Stephen C. Aldrich, District Judge

From: Johnson, Michael
Sent: Tuesday, January 05, 2010 9:46 AM
To: State All Judges and Employees
Subject: proposed changes to rules of civil procedure

This note is being sent to all judges and judicial branch staff.

Proposed recommendations for amending the rules of civil procedure have been filed with the Supreme Court. The Court has scheduled a comment period with a submission deadline of February 10, 2010.

COTTRELL LAW FIRM, P.A.

WILLIAM G. COTTRELL*
ATTORNEY AT LAW

JOSHUA W. CARLSON
ATTORNEY AT LAW

JOSEPH B. BACHMAN **
OF COUNSEL

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OFFICE ASSISTANT

ADM04 8001

January 6, 2010

OFFICE OF
APPELLATE COURTS

JAN 11 2010

FILED

Frederick K. Grittner
Clerk of Appellate Courts
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

RE: Proposed modification to Summons

Dear Mr. Grittner:

I have reviewed the proposed new "Summons" and have the following comments regarding the document.

It seems awfully repetitive to have to type in the name of the defendant(s) twice within an inch of each other. If John Smith is handed a Summons and if he is the defendant, he does not need to see that the Summons is directed to him. The phrase in the first paragraph "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" is simply not accurate and could cause a lot of confusion. The person to whom the Summons is directed is not, under any circumstances, compelled to respond to the lawsuit. They have every right to simply not respond and allow a default judgment to occur. The phrase implies a legal obligation to respond. "You must respond…" is certainly not the case. Many defendants do not want to respond because they have no defenses and they would prefer to avoid a trip to court, which could be embarrassing, difficult, or nonproductive. Telling the defendant they must respond will result in thousands of defendants struggling to decide how to respond when they do not want to do so. Why not be more clear and advise them that if they choose not to respond a default judgment may be obtained by the plaintiff without a hearing?

Number 2 again tells them they must REPLY, again implying that they have been ordered to REPLY when in fact they do not have to send any REPLY or response.

The Summons seems to be almost urging the defendant to respond by telling them in number 3 that in the Answer the defendant must state whether they disagree or agree with each paragraph. I thought in Minnesota a general denial is all you need to do and that you are not required to respond to every paragraph. It seems to me with the new language that the Plaintiff's attorney is now giving precise legal advice to the opposition in this proposed Summons and, furthermore, the legal advice is not even accurate. How can the Plaintiff's attorney give legal advice to the defendant?

In paragraph 4 the defendant is told yet again that they need to send a written response. Why in this Summons isn't the defendant advised that if they do not dispute the claims made in the complaint that they can choose not to respond at all? That would free the Court up quite a bit, as the way this Summons is worded you are going to get a tremendous amount of pro se answers from individuals who think they must respond in writing since the very first paragraph, and every other paragraph thereafter, basically tells them they must respond—no other options are even suggested.

Why is the word "lose" used twice in the Summons? No one wants to be a loser. Just because they do not respond does not mean they are a loser. They simply are accepting that the claims are truthful and that a Judgment for the amount requested may be obtained. The "loser" might actually be the plaintiff who has not been paid the amount claimed owed.

Nowhere in the proposed Summons is the word judgment mentioned, even though the only relief a Plaintiff can get from serving a Summons and Complaint is a Judgment. The plaintiff is not "awarded everything asked for in the complaint" as stated in paragraph 4. The plaintiff typically wants a Judgment for the amount owed. Paragraph 4 implies much worse –that the Plaintiff will actually be awarded the money it is seeking. A pro se litigant may believe the Court will force them to pay the debt thru an award, which is not true. Only through garnishments, bank levies and other post-judgment collection efforts can any assets actually be taken from the defendant.

Paragraphs 5 and 6 also continue to admonish the defendant that a written response is needed to "protect your rights." A defendant might think they lose all their rights by not responding i.e citizenship, freedom, government assistance etc. Since the Summons is so repetitive in telling the person who is Summoned no less than six times that a response is needed, why not gently let the defendant know that a response actually is not required, needed, nor even recommended in all situations. It seems to me that this Summons is encouraging litigation and if the goal is to not burden the Court with excessive litigation I would think (just to be a little repetitive) that the person reading this two page Summons should be told they are under no legal obligation to respond to the Summons and that only a Judgment for the amount demanded in the Complaint may be entered by the Court.

Finally, and not at all of least importance, there is a place for the attorney to sign and a place for the process server to write the date and the name of the defendant. The process server will not be able to accomplish this goal as they will not know who they served until it is actually served—so this could cause a lot of confusion unless clarified.

In summary, I think a lot of thought was given to the Summons previously used. While some minor changes may be in order, these wholesale changes are not appropriate. I do like the fact the Summons points out a Court file may not exist, however the overall tenor of the newly proposed Summons almost seems to command the person summoned to respond, and I object to that language.

Respectfully Submitted,

William G. Cottrell
Attorney at Law

WGC/pjh

MESSERLI & KRAMER

ADM-04-8001

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February 5, 2010

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Writer's contact:
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Frederick K. Grittner
Clerk of the Appellate Courts
25 Rev. Dr. Martin Luther King Jr. Blvd
St. Paul, MN 55155

RE: **Revisions to Minnesota's Summons**

Dear Supreme Court Advisory Committee,

This letter is in response to the Minnesota Supreme Court's Order allowing individuals to provide statements in support or opposition to the proposed changes to Minnesota's Summons. The committee's introduction explains that the proposed modifications are intended to reduce the amount of default judgments that are vacated, thus reducing judicial workloads. For the reasons below, we believe that the proposed changes will likely increase judicial workloads by encouraging contested cases for otherwise uncontested matters. The undersigned believe that there is a balance that will achieve the Committee's goals of a more understandable summons without unnecessarily increasing contested cases.

Motion to Vacate

The Committee points to motions to vacate as a source of wasted court time, without any numeric evidence. The undersigned's considerable experience is that motions to vacate are in fact rare and represent less than 1% of all default judgments. The sub-set of default judgments that are actually vacated is even less and the sub-set of judgments vacated as a result of a party's misunderstanding of the summons, is even less.

The risk of changing the Summons to command the recipient, "you must respond to this lawsuit" is that courts will see an increase of contested cases that would not otherwise be contested. This will not only increase the court's workload, but also increase the expense of litigation to the litigants. Contesting uncontested cases will double a defendant's costs. Pursuant to Minnesota Statutes section 549.03-.04, the prevailing party has a right to tax its costs and disbursements. Attorney fees would also increase the cost of litigation. Attorneys' fees, for example, are limited in default cases (Rule 119.05 of the Minnesota General Rules of Practice, District Court) and defaults do not have hearing fees or formal motion requirements. (Rule 117.01 of the Minnesota General Rules of Practice, District Court and Rule 55.01 of the Minnesota Rules of Civil Procedure.) Notwithstanding, updating the Summons to make it easier to understand without providing legal advice[1] can be accomplished.

Archaic Phrasing

The Committee seeks to remove the overall opacity of the language due to allegedly "archaic phrasing" in the current Summons. The current phrasing adds a definitive aspect to the process of commencing and defending a lawsuit. Throughout the proposed changes, words such as "respond" and "reply" are introduced into the Summons to replace what the Minnesota Rules of Civil Procedure and Minnesota case law already define, an Answer. *Lodahl v. Hedburg*, 184 Minn. 154, 238 N.W.41 (1931); *Howard v. Frondell*, 387 N.W.2d 205 (Minn. Ct. App. 1986).

[1] Minnesota Rules of Professional Conduct, Rule 4.3 states, " In dealing on behalf of a client with a person who is not represented by counsel: (d) a lawyer shall not give legal advice to the unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of the unrepresented person are or have a reasonable possibility of being in conflict with the interests of the client.

According to the relevant rules of Minnesota Civil Procedure. Minnesota Rule of Civil Procedure 8.02 provides what is needed to Answer a Complaint and it state as follows:

> A party shall state in short and plain terms any defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. A pleader who intends in good faith to deny only a part or to qualify an averment shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits. However, a pleader who intends to controvert all its averments may do so by general denial subject to the obligations set forth in Rule 11. (Emphasis added.)

Although the term Answer may not be common knowledge among lay people, its definition is readily ascertainable. To the contrary, words like "reply" and "response" do not have any legal significance and are subject to interpretation. A potential solution might be to reference or include some or all the language form Rule 8.02 of the Minnesota Rules of Civil Procedure.

It is more likely that by using the terms "reply" and "respond" in the Summons, that more judicial resources are going to be squandered in determining if a letter, email, voicemail or other "response" is an Answer. The issue is if the Defendant *Answered*; consequently, it seems more appropriate to promote terms that have a definitive legal definition.

Service of Answer

Paragraph 2 of the proposed Summons states that, "you must send a copy of your Answer to **the person who signed this Summons** at : _____." It is foreseeable that if the Defendant cannot read an illegible signature of the person who signed the Summons that s/he might not take the time to Answer the Complaint or properly address it. As a proposed change, we recommend just providing a blank for where the Answer would need to be submitted without reference to a signature.

Service of Process Information

At the end of the proposed Summons, there is a place to enter the service date, name, and title of the person served. This information is simply not known prior to service. Consequently, a person serving a Summons and Complaint typically executes an Affidavit of Service under oath after serving the Summons. A large percentage of these Affidavits of Service contain more information than the date, name, and title of the person served. Currently, if the Plaintiff wants to file the case with the Court System an affidavit of service is required. We recommend striking the service of process information on the Summons.

Increased Burden on Court System

Paragraph 5 of the of the proposed Summons states in part that, "the Court Administrator may have information about places where you can get legal assistance." This sentence alone will likely add an abundance of phone calls for an already overburdened Court System. As a recommendation, it might be more efficient and practical, to direct a party in need of legal help to the Minnesota Court's On-line Self-Help Center at http://www.courts.state.mn.us/selfhelp/ and or the local County Law Library.

Length of the Summons

It is also foreseeable that the length of the Summons is going to discourage some of its readers. As a suggestion and observation, the three changes that are most likely to progress the committee goal are (1) to make it clear that an Answer has to be in writing and (2) the Answer should address each paragraph of the Complaint, and (3) explain that a court file number is not necessary to have a valid court document.

One balancing act that needs to be measured, when deciding what amendments to adopt, is what changes are going to help those who truly have a contested file versus encouraging the

loose practice of law. *Eckerly v. Lake Region Sign Co.,* 275 Minn. 520, 520, 148 N.W.2d 158, 158 (1967). The more contested files that the proposed Summons creates, the larger judicial dockets will grow with more complicated motions and trials. By clogging the system with cases that are not contested, the goal of insuring access to our courts could be negatively impacted.

One suggestion for an addition to the Summons is language encouraging settlement. The Alternative Dispute Resolution (ADR) paragraph has been helpful, but why not encourage the parties to discuss settlement without formal ADR or Court? Attached is our proposed amended Summons for your consideration. Thank you.

Very truly yours,

MESSERLI & KRAMER P.A.

Derrick N Weber
Attorney at Law

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MCMAHON LAW FIRM LLC
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ST PAUL, MN 55101

FORM 1. SUMMONS

State of Minnesota **District Court**
County of _____ **_____Judicial District**

_____, **Court File Number:_____**

Plaintiff, **Case Type: _____**

_____,

Defendant.

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. Do not throw these papers away. They are official papers that affect your rights. If you wish to oppose or defend the lawsuit, you must Answer 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. **AN ANSWER 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. You must respond to each claim.

3. **YOU MUST ANSWER WITHIN 20* DAYS TO PROTECT YOUR RIGHTS.** You must give or mail within 20* days of the date on which you received this Summons to Plaintiff or Plaintiffs attorney:

_____

_____

4. **YOU WILL LIKELY LOSE YOUR CASE IF YOU DO NOT SEND AN ANSWER TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20* days, you will likely lose this case and the Court may decide against you and award the Plaintiff everything asked for in the Complaint.

5. **LEGAL ASSISTANCE**. You may wish to get legal help from a lawyer. If you do not have a lawyer, please visit the Court's Self-Help Center http://www.courts.state.mn.us/selfhelp or your local law library about places where you can get legal assistance.

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. **You may wish to talk to**

the other party about settling your case and avoiding the expense of dispute resolution and/or Court. Upon receipt of this Summons, call the Plaintiff or Plaintiff's attorney at _____ to discuss resolution of the case.

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 Dated

* Use 20 days, except that in the exceptional situations where a different time is allowed by the Court or required by law in which to answer, the different time should be inserted.

THE MINNESOTA
COUNTY ATTORNEYS
ASSOCIATION

ADM-04-8001

February 4, 2010

Frederick K. Grittner
Clerk of Appellate Courts
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: Proposed Amendments to Rules of Civil Procedure—Advance Notice for Use of Subpoenas to Obtain Records in Civil Commitment Cases

Dear Mr. Grittner:

I am writing on behalf of the Civil Commitment–Human Services Committee of the Minnesota County Attorney Attorneys Association ("MCAA"). County attorneys represent the commitment petitioners in all civil commitment cases in this State.

On December 10, 2009, the Supreme Court issued an order proposing changes to the Rules of Civil Procedure. Our committee is concerned about one of the proposed changes, and requests that the Court modify the proposal in the rule finally adopted.

Proposed Amendment to Minn. R. Civ. P. 45.01(e)—Notice of Subpoenas for Records

The rule in question is Rule 45, which addresses use of subpoenas. The current Rule 45.01(e) requires "prior notice to all parties to the action" where a subpoena is used to obtain the production of records without requiring the appearance of a witness at trial. The proposed rule changes would amend Rule 45.01(e) to read, in relevant part:

> Any subpoena, other than to compel attendance at a trial, *must be served* on the subject of the subpoena and the parties to the action *at least 7 days before any required production* for inspection, copying, testing, or sampling of designated books, papers, documents, or electronically stored information . . . .

(Emphasis added.) We understand the reasons for the proposed change. However, because of the timelines under which civil commitment cases are handled, the seven-day advance-service requirement would be unworkable in most cases, and we believe a shorter period will adequately protect the rights of the involved parties.

100 Empire Drive, Suite 200 • St. Paul, MN 55103 • 651-641-1600 • Fax: 651-641-1666
www.mcaa-mn.org

Timelines and Use of Subpoenas in Civil Commitment Cases

Civil commitment cases are handled according to a schedule that is much more expedited than a regular lawsuit. Under Minn. Stat. § 253B.07, subd. 7, a "preliminary hearing" to consider whether the court's hold order should be continued pending trial must be held within 72 hours (excluding Saturdays, Sundays and holidays) after the petition is filed and the court's hold order is issued. Under Minn. Stat. § 253B.08, subd. 1(a), the commitment trial must then be held within 14 days after the petition is filed, unless there is good cause to extend this period.

When possible, commitment hearings are scheduled sooner than the 14 days allowed by statute, particularly when (as in most cases) the patient is subject to a hold order. This minimizes the time the person is on hold status before active treatment can begin. Except in an emergency, psychiatric medications cannot be administered to an incompetent patient until the court authorizes the treatment following the commitment hearing. Moreover, while hospitals and detoxification facilities that hold patients before commitment can protect the patients from harm and meet medical needs, they often do not have the programming to address the patients' mental and chemical health treatment issues. It is only after the commitment hearing and issuance of a commitment order that the patient can be transferred to the program that will ultimately provide treatment. Conversely, if the person is found not to meet the commitment requirements, a prompt hearing will minimize the time the person is confined. Holding hearings promptly also minimizes financial expenditures for the courts and the counties including costs of court-appointed counsel, court-appointed examiners, sheriff's transport and the patients' confinement.

Counties have developed various scheduling methods to accommodate these interests. For example, the Mental Health Court in Hennepin County (which handles about a third of the civil commitments in the state) schedules the commitment trial three business days after the preliminary hearing. Many cases are settled through voluntary treatment agreements (stayed commitments or continuances for dismissal) at the preliminary hearing, and the commitment trial is waived. When cases are not settled, the issues to be addressed at trial are clarified. *Therefore, it is only after the preliminary hearing—just three business days before trial—that the parties know whether the case will actually go to trial and are in a position to decide what witnesses and records will be needed.*

As the commitment rules recognize, medical and other records regarding the proposed patient play a central role in civil commitment cases. *See* Minn. Commitment & Treatment Act R. 13. County attorneys often use subpoenas to obtain records for trial in these cases, and then provide copies of all records obtained to the patients' attorneys. In most cases, however, there is not enough time to comply with a seven-day advance-service requirement. Imposition of this requirement would result in commitment trials being delayed or the parties seeking court orders for documents in order to avoid the seven-day advance-service requirement for subpoenas. The first solution would work to the detriment of all parties including the proposed patient; the second would result in unnecessary work (i.e., cost) for the trial court and the parties.

A similar issue regarding advance notice to use available procedures in commitment cases recently arose with respect to Minn. Commitment & Treatment Act R. 14 ("Commitment Rule 14"). Commitment Rule 14 allows the use of electronic testimony in commitment cases

with advance notice and the approval of the trial court. From its adoption in 1999 until a somewhat inadvertent change in 2008, Commitment Rule 14 required 24 hours advance notice for the use of electronic testimony, recognizing the short timeline under which these cases come to trial. The 2008 change lengthened this required notice to seven days. When the county attorneys learned of the change, we requested that the notice period be changed back to 24 hours, because the seven-day notice period was unworkable in commitment matters (for the reasons described above). After notice and opportunity for comment, the Supreme Court issued an order on November 19, 2009, amending Commitment Rule 14 to again require only 24 hours advance notice for use of electronic testimony.

The same need for a shorter advance notice period applies to the use of subpoenas to obtain records in commitment cases. In this era of limited funding for the courts, the mental health system and other participants in the civil commitment process, it is particularly important to conduct these hearings in the most cost-effective manner, while also protecting the due process interests of proposed patients.

Our Proposed Solution

Accordingly, we request that the proposed rule amendment be revised to require only *24 hours advance service* of subpoenas *in civil commitment cases* or that a change to that effect be incorporated into the civil commitment rules. The attached page contains suggested language for both of these alternative amendments.

Thank you for your consideration. We would be happy to provide any other information or explanation that you, the rules committee or the Court may wish. Also, please note that I am providing a copy of this letter to the head of the Hennepin County Commitment Defense Panel so that he can let you know if that group sees any problem with our proposal.

Sincerely,

JOHN L. KIRWIN
Assistant Hennepin County Attorney
Telephone: (612) 596-7704

On behalf of MCAA Civil Commitment–
Human Services Committee

JLK
Cc: Charles C. Glasrud, President, MCAA
Coleen M. Brady, MCAA Civil Commitment–Human Services Committee Co-Chair
Terry Frazier, MCAA Civil Commitment–Human Services Committee Co-Chair
John Kingrey, Executive Director, MCAA
Douglas F. McGuire, Coordinator, Hennepin County Commitment Defense Panel

COUNTY ATTORNEYS ASSOCIATION'S PROPOSED CHANGE TO RULE 45.01(e) SUBPOENA ADVANCE-SERVICE REQUIREMENT

Alternative 1:

Amend proposed Minn. R. Civ. P. 45.01(e) by adding a sentence at the end of that paragraph, reading:

> In proceedings under Minn. Stat. ch. 253B, the advance-service and advance-notice provisions in this paragraph shall be 24 hours, rather than seven days.

Alternative 2:

Amend the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act, by adding a Rule 25, reading:

> **Rule 25. Subpoenas for Production of Records.**
>
> Where a party in a proceeding under Minn. Stat. ch. 253B uses a subpoena to obtain the production of records, the advance-service and advance-notice provisions under Minnesota Rules of Civil Procedure 45.01(e) shall be 24 hours, rather than seven days.

12th Floor Courts Tower
Hennepin County Government Center
Minneapolis, Minnesota 55487-0421
(612) 348
FAX (612) 348

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT
HENNEPIN COUNTY GOVERNMENT CENTER
300 SOUTH SIXTH STREET
MINNEAPOLIS, MN 55487

ADM-04-8001

Frederick K. Grittner
Clerk of the Appellate Courts
25 Rev. Dr. Martin Luther King Jr. Blvd
St. Paul, Minnesota 55155

February 9, 2010

Dear Mr. Grittner:

I am writing to comment on the new Form 1. Summons.

I strongly support making changes to the existing summons to better notify defendants of the action they need to take to defend against the claims. My support is based on my experience as manager of the Self Help Centers for the 4th Judicial District and the Statewide Self Help Center which provide information to self-represented litigants.

The Self Help Centers regularly receive questions from people who are surprised to receive a *Notice of Entry of Judgment*. Some believe they were never served, but many report that they received the papers and they did not serve an Answer. Most commonly, they were waiting to tell their story at a court hearing, they called the attorney and were told to "pay" or they left a message, they felt the case was a sham because there was no court file number on the pleadings and no record of the case at the courthouse, or they sent a letter (and have no copy of it.)

The proposed new Summons provides far greater information, and addresses the common misperceptions we see at the Self Help Centers.

I also have suggested changes:

The new Summons may need revision to address cases involving service by publication. In the current Summons, the plaintiff selects between two parenthetical: one if the Complaint is attached to the Summons and served with the Summons, and one if the Complaint is filed with the court and the Summons will be published. Rules of Civil Procedure, Rule 4.04 (a) provides that the Summons may be published in the cases enumerated when the Complaint has been filed with the court. The choice between attaching or filing the Complaint should be preserved in the new Summons Form for cases involving publication, along with a version of the "N.B." instruction on the current Summons form.

Paragraph 5 on Legal Assistance directs people to the Court Administrator for lawyer referral. Although there may be reluctance to include website addresses in a court form, I suggest revising this paragraph to direct people first to the court's website. This will save most people

a phone call or visit to the courthouse, and will reduce workload for court staff. "Find a Lawyer" information is at: www.mncourts.gov/selfhelp/?page=252

Finally, the purpose of this line on the new Summons is not obvious to me, and it may create unintended problems.

"Served on _____ _____"
Date Name and Title

My questions and concerns include:

- Is the server supposed to write the date/name on the Summons, and then hand it to the individual served? I assume the "name and title" refers to the person served, but it could also be interpreted as requiring the process server to disclose her name to the defendant.

- What if the date written on the Summons conflicts with the date of service on the Affidavit of Service? What if no date is filled in on the Summons?

- What if the date on the Summons is incorrect? If John is served with a Summons on January 2, but the server mistakenly writes the date as January 4, what happens if John relies on that date and serves his answer on January 24?

In summary, I applaud the efforts to modernize the Summons Form, but suggest that the drafting committee consider revisions to address service by publication, lawyer referral, and ramifications of the addition of a line for "Served on (date) and (name/title)."

Please note that this letter expresses my personal opinions, and should not be construed to represent the views of the 4th District Court.

Sincerely,

Susan Ledray

Susan Ledray, JD

WORKING TOWARD
JUSTICE FOR ALL

MID-MINNESOTA LEGAL ASSISTANCE
Galen Robinson ▪ (612) 746-3750 ▪ grobinson@midmnlegal.org

ADM-04-8001

February 10, 2010

Frederick K. Grittner
Clerk of Appellate Courts
Minnesota Judicial Center, #305
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155-6102

RE: Supreme Court Advisory Committee on Rules of Civil Procedure

Dear Mr. Grittner:

The Legal Aid Society of Minneapolis (Legal Aid) writes in support of the proposed rule relating to legal summons. Legal Aid bases its support on decades of experience providing legal advice and representation to disadvantaged and low-income Minnesotans across multiple areas of law.

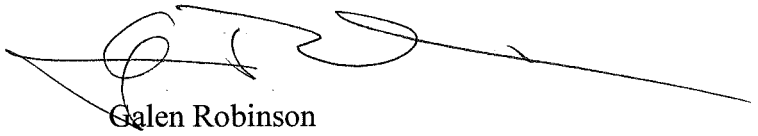
The current form creates three general areas of confusion. First, the current language does not effectively communicate the significance of the summons to the average Minnesotan particularly in the area of consumer collections. Legal Aid has many clients who assume the summons is just another generic attempt to collect the debt and do not understand a lawsuit has begun. The proposed revision corrects this with a plain statement about the effect of the summons.

Second, new language is needed to make clear that the summons is legitimate even though the action has not been filed in court. Many individuals assume that a summons which lacks a court file number is either ineffective or fraudulent. Minnesota is unusual in permitting an action to be served on a defendant before filing it in court. Therefore, Legal Aid clients often assume that no response is needed. Additionally, given heightened concerns regarding identity theft, some Legal Aid clients assume the documents are merely an attempt to obtain personal information by an identity thief. The proposal addresses this problem by explaining that a response is required even though the action has not been filed.

Third, the new language will help defendants understand what is required or expected of them. Even when Legal Aid clients know they have been sued, they often incorrectly assume there will be a court hearing during which they may argue their defenses. As a result, the defendants simply wait to be contacted by the court without answering. The only notice these defendants receive from the court is of the subsequent default judgment. The proposed revision provides defendants an explanation of the type of response required to prevent a default and tells them a response is required to protect their rights. This language should alert the defendant that s/he may need an attorney. Even if the defendant does not obtain representation, the proposed form gives him or her sufficient information to prevent an unintended default.

The resolution of disputes should turn on the merits of the case, not the relative sophistication or reading level of the defendant. A legal summons should contain enough information to allow the pro se individual, who is unfamiliar with litigation or with Minnesota's unique procedural rules, to understand the significance of the document served. Because the current form creates much confusion and causes Minnesotans to inadvertently allow default judgments to be entered against them, Legal Aid supports the committee's recommendation to replace the Summons Form in its entirety. Legal Aid believes that the proposed revision will advance the goal of resolving cases on their merits and also enhance the efficiency of the courts.

Very truly yours,



Galen Robinson
Litigation Director

GDR:nlb

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