

FILED

July 2, 2018

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8009

**ORDER PROMULGATING AMENDMENTS TO THE
GENERAL RULES OF PRACTICE
FOR THE DISTRICT COURTS**

A petition to amend Rule 10 of the General Rules of Practice for the District Courts, which governs recognition of tribal court judgments and orders, *see* Minn. Gen. R. Prac. 10.01–.02, was filed on November 30, 2016, by the Minnesota Tribal Court/State Court Forum. We referred the petition to the Supreme Court Advisory Committee on the General Rules of Practice, which considered the Forum’s petition and the proposed amendments over the course of several meetings in 2017. In addition to discussion at public meetings, the Advisory Committee accepted oral and written public comments on the current operation of Rule 10, which has not been amended since its adoption in 2003, and the need for amendments to that rule.

The committee filed its report and recommendations regarding the Forum’s petition on October 27, 2017. The committee recommends amendments to Rule 10, modified in some respects from those proposed by the Forum. The committee also recommends amendments to several other rules, primarily for housekeeping purposes. We opened a public-comment period and on March 14, 2018, held a public hearing.

We have carefully considered the petition, the recommended amendments, and the oral and written comments regarding those recommendations. Based on that review, we grant the Forum’s petition to the extent that it requests amendment of Rule 10 of the General Rules of Practice for the District Courts, and adopt for the most part the

amendments to that rule as recommended by the Advisory Committee on the General Rules of Practice. We also adopt the recommended amendments to Rules 2, 14.01–.03, 301.01(b), 308.02, 361.02, 361.05, 379.04, and 403 of the General Rules of Practice for the District Courts.

Based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The petition of the Minnesota Tribal Court/State Court Forum to amend Rule 10 of the General Rules of Practice is granted.

2. The attached amendments to Rule 10 of the General Rules of Practice for the District Courts are prescribed and promulgated to be effective as of September 1, 2018, and shall apply to all cases filed on or after the effective date.

3. The attached amendments to Rules 2, 14.01–.03, 301.01(b), 308.02, 361.02, 361.05, 379.04, and 403 of the General Rules of Practice for the District Courts are prescribed and promulgated to be effective as of September 1, 2018, and shall apply to all cases pending on, or filed on or after, the effective date.

4. The Advisory Committee comments are included for convenience and do not reflect court approval of the comments.

Dated: July 2, 2018

BY THE COURT:



Lorie S. Gildea
Chief Justice

THISSEN, J., not having been a member at the time of submission, took no part in the consideration or decision of this matter.

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8009

MEMORANDUM

PER CURIAM.

We first adopted Rule 10 of the General Rules of Practice on December 11, 2003, effective January 1, 2004. *See Order Promulgating Amendments to the Gen. R. of Prac. For the Dist. Cts.* (Minn. filed Dec. 11, 2003). Adoption of this rule was preceded by substantial work, beginning in 2000 by the Minnesota Tribal Court/State Court Forum, which developed, and later filed a petition proposing, a rule to govern recognition of tribal court orders and judgments. The Supreme Court Advisory Committee for the General Rules of Practice studied the proposed rule, held meetings, and solicited public input between 2002–2003. Following a public-comment period and public hearing, we adopted Rule 10, effective January 1, 2004, which established two grounds for state-court enforcement of tribal-court orders and judgments: “recognition mandated by law,” and “discretionary” recognition. Minn. Gen. R. Prac. 10.01–.02. Discretionary recognition was governed by ten factors that a district court could “consider” when deciding whether to enforce a tribal court order or judgment, including “any other factors the court deems appropriate in the interests of justice.” *See* Minn. Gen. R. Prac. 10.02(a)(10).

The Forum filed a petition on November 30, 2016, proposing amendments to both portions of Rule 10, mandatory recognition (Rule 10.01) and discretionary recognition (Rule 10.02). The Forum’s petition proposed amendments to Rule 10.01 to move the list

of statutes that mandate enforcement of tribal court orders and judgments from the Advisory Committee Comment into the body of the rule. Regarding the discretionary recognition and enforcement provided by Rule 10.02, the Forum proposed amendments intended to avoid confusion that may result from the current “complex and non-exhaustive list of considerations,” provide greater certainty in the finality of orders and judgments, and avoid delays in the enforcement of orders and judgments, particularly in time-sensitive matters such as conservatorships.

We referred the Forum’s petition to the Advisory Committee, which invited written and oral comments on the Forum’s proposed amendments to Rule 10. Following a series of meetings and with the benefit of a wide range of comments, the committee ultimately adopted a compromise proposal, which included proposed amendments to clarify the procedures for recognition of tribal court orders and judgments, and also adopt a presumption in favor of recognition of some tribal court orders and judgments.

We opened a public-comment period and held a public hearing on March 14, 2018. Seven comments were filed. Committee member Judge Mary Vasaly and committee reporter David Herr spoke at the public hearing. Also speaking at the public hearing were Judge Sally Tarnowski, co-chair of the Forum, Senior Judge John Smith, George Soule, and Jessica Ryan. Unanimous support for the committee’s recommended amendments to Rule 10 was expressed at the hearing. After careful consideration of the petition, the Committee’s recommendations, the written comments, and the remarks at the public hearing, we have decided to grant the Forum’s petition and adopt the Advisory

Committee's recommended amendments, with certain changes in those amendments for new Rule 10.03 as explained below.

First, concerning the committee's recommended amendments to Rule 10.01, the mandatory-recognition rule, we agree with those recommendations. The proposed amendments retain, but slightly re-frame, the mandatory nature of the rule and move several statutory references from the Advisory Committee comments into the body of the rule. In addition, two new statutory citations are added to the list of laws mandating recognition of tribal court orders and judgments. *See* 25 U.S.C. § 3106 (2012) (requiring "full faith and credit" for judgments regarding forest trespass for tribes that adopt certain federal regulations); 25 U.S.C. § 3713 (2012) (requiring "full faith and credit" for judgments regarding agricultural trespass for tribes that adopt certain federal regulations). These amendments clarify the language of Rule 10.01 and appropriately guide the district courts' decisions by identifying specific laws that mandate recognition of tribal court judgments and orders. We therefore adopt the amendments to Rule 10.01.

Second, we agree with the Advisory Committee's recommendation to re-write Rule 10.02 to focus specifically on the recognition of tribal court orders and judgments governing civil-commitment proceedings. As the Advisory Committee noted, "civil commitment cases are more urgent," and the mental-health and financial issues that may also be of concern in those proceedings favor adopting a separate rule that provides specific guidance to the district courts. The committee's proposed amendments identify the circumstances that require enforcement of civil-commitment orders entered by certain tribal courts, or the circumstances in which the enforcement determination will be made

under the discretionary-recognition rule. *See also* Minn. Stat. § 253B.212, subds. 1–1b (2016) (explaining the procedures for civil commitment as ordered by the tribal courts of the Red Lake Band of Chippewa Indians, the White Earth Band of Ojibwe Indians, or tribal courts that are subject to a contract with the Minnesota Commissioner of Human Services).

Recognizing that civil-commitment proceedings are governed by separate procedures, *see* Minn. Commitment & Treatment Act R. 1(a), we referred this specific recommendation to the Advisory Committee on the Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act. After consideration of the proposed rule, this Advisory Committee reported no concerns with the recommended language.¹

The Advisory Committee for the General Rules of Practice discerned from the considerable input it received during its meetings that a rule focused on recognition and enforcement of tribal-court orders and judgments in civil-commitment proceedings would provide helpful guidance to the district courts. No objections were raised during the public-comment period regarding the proposed amendments to Rule 10.02 to provide this guidance. Thus, we adopt the committee’s recommended amendments to Rule 10.02.

Third, the committee recommends amendments to the discretionary-recognition rule, to be promulgated as new rule 10.03. As recommended by the committee, the party that seeks recognition or enforcement must proceed by motion or petition, and the district

¹ The committee reported that, by consensus, it was neutral on the recommended amendments. One committee member reported a concern that the reference in the proposed rule to Minnesota Statutes § 253B.212 misconstrues the nature of the statute, which the committee member concluded is not about enforcement of tribal court orders.

court must (“shall”) recognize or enforce the order unless a party subject to the order demonstrates that the court should not do so. With these amendments, the Advisory Committee aimed to streamline and focus the current list of 10 factors relevant to the enforceability determination; provide language that specifically imposes the burden on the party that opposes recognition to demonstrate why the order of a sovereign court should not be recognized; and establish a presumption of recognition if the party does not carry that burden.

The Advisory Committee’s recommended amendment to focus the list of relevant factors is responsive to the consistent concern expressed regarding the operation of the current rule. In particular, the committee heard that the final factor—“any other factors” appropriate to consider in assessing “the interests of justice”—effectively swallowed the rule. Thus, the proposed amendments reduce the range of relevant information by focusing the district court’s consideration on specific inquiries, which in turn will promote consistency in outcomes.

After consideration, we have also decided that a separate existing factor—contravention of “the public policy of this state”—is not necessary in a recognition determination given the other factors in the rule. We therefore delete this factor for consistency with the committee’s objective: focusing the inquiry on specific factors relevant to enforceability. We also decline to adopt the qualifier, “fundamental” in the due-process factor.

Next, placing the burden on the party that opposes enforcement clarifies procedures for the district courts by improving the operation of the current law, which does not identify

who has that burden. In addition, this approach is consistent with other laws that address enforcement of foreign judgments and orders. *See, e.g.*, Minn. Stat. §§ 548.29 (allowing a judgment debtor to show reasons to stay enforcement of a foreign judgment); 548.57(d) (2016) (“A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition” exists). *See also Nicol v. Tanner*, 256 N.W.2d 796, 801–02 (Minn. 1976) (identifying considerations in evaluating whether a judgment of a foreign nation should be enforced).

Finally, the presumptive-recognition language is a more robust acknowledgement of the independent sovereignty of the Tribal Nations that have established tribal courts, while retaining the comity-based nature of the rule. *See Cohen’s Handbook of Federal Indian Law*, § 7.07[2][a] (explaining that the comity doctrine is based in part “on the policy of granting repose to litigants, preventing endless relitigation of issues”).

We disagree with the dissent’s conclusion that these clarifying amendments convert our existing rule into a substantive law. Recognition of a tribal court order or judgment does not intrude upon a legislative declaration of the law, and applying the factors and procedures provided in the rules to reach a decision, even if it is outcome-determinative, does not make the rule substantive. *See Litterer v. Rushmore Loan Mgmt. Servs.*, 905 N.W.2d 623, 627–27 (Minn. 2018); *see also State v. Castillo-Alvarez*, 836 N.W.2d 527, 542 (Minn. 2013) (Page, J., concurring) (explaining that rules of procedure are “often adopted with substantive policy considerations in mind” but a “substantive effect” does not make a rule substantive). We conclude instead that the recommended amendments to the discretionary-recognition rule address the concerns that have been expressed with the

current rule and enhance the guidance provided to the district courts. We therefore adopt the recommended amendments as promulgated in new Rule 10.03.

Fourth, we adopt the amendments recommended to Rules 2.01, 14.01–.03, 301.01(b), 308.02, 361.02, 361.05, 379.04, and 403. These amendments are primarily non-substantive changes to the rules to conform the language of the General Rules of Practice to other rules, and simply clarify the rules, which will promote consistency in procedures. We therefore adopt the recommended amendments.

We appreciate the work of the Forum, which fostered a discussion on the proposed amendments to Rule 10 of the General Rules of Practice. We also acknowledge the thorough and thoughtful work of the Supreme Court Advisory Committee on the General Rules of Practice on this petition and the other recommended amendments.

DISSENT

GILDEA, Chief Justice (dissenting in part).

I agree with the majority on the amendments to all of the General Rules addressed in the Order except for the amendments to Rule 10.03 (and consequently to Rule 10.02(c)). At the public hearing on the proposed amendments, one of the co-chairs of the Tribal Court/State Court Forum, District Court Judge Sally Tarnowski, explained the rationale behind the amendments to Rule 10.03. Essentially, Judge Tarnowski said that when the district court issues an order, the court expects the order to be followed, and she explained that tribal courts are entitled to the same expectation. While I agree with Judge Tarnowski, separation of powers concerns compel me to disagree with the proposed amendments to Rule 10.03.

The report that the court received from the Supreme Court Advisory Committee on the General Rules of Practice noted that some members of the committee were concerned that “the changes sought [to Rule 10] are substantive in nature, and not procedural, and should therefore be left to the legislature.” I share those concerns.

Based on separation of powers principles, *see* Minn. Const., art. III, § 1, “[t]he judicial branch governs procedural matters, while the creation of substantive law is a legislative function.” *State v. Lemmer*, 736 N.W.2d 650, 657 (Minn. 2007) (citing *State v. Johnson*, 514 N.W.2d 551, 554 (Minn. 1994)). Our precedent recognizes that “[a] rule is procedural ‘when it neither creates a new cause of action nor deprives defendant of any defense on the merits.’” *Id.* (quoting *Johnson*, 514 N.W.2d at 554). Procedural rules “govern[] the procedure in the . . . courts of this state.” *In re Welfare of the Child of R.S.*

& L.S., 805 N.W.2d 44, 55 (Minn. 2011) (alteration in original) (quoting *Anderson v. Twin City Rapid Transit Co.*, 84 N.W.2d 593, 604 (Minn. 1957)). Substantive rules, by contrast, “create[], define[], and regulate[] rights” *Id.*

In my view, the amendments to Rule 10.03 are substantive. Rules 10.01 and 10.02 confirm the substantive nature of Rule 10.03. In Rules 10.01 and 10.02, a number of statutes are identified. In these statutes, the legislative branches of the State and Federal governments direct that tribal court orders be enforced.

In contrast to the legislative mandates found in Rules 10.01 and 10.02, Rule 10.03 reflects a judicial branch mandate and authorizes Minnesota courts to require enforcement of tribal court orders. Specifically, the new rule requires that state courts recognize and enforce tribal court orders unless the person subject to the tribal court order proves that the tribal court order is invalid for one of six listed reasons. There is no question that the new rule “creates, defines and regulates rights.” *Child of R.S. & L.S.*, 805 N.W.2d at 55.

Previously, Minnesota state courts were not required to enforce tribal court orders, unless a statute required enforcement. Now, a court rule presumptively requires enforcement. This is substantive law.

We have “emphasize[d] that we may never use rules of civil procedure to create substantive law” because “we lack the constitutional authority to do so.” *Litterer v. Rushmore Loan Mgmt. Servs., LLC*, 905 N.W.2d 623, 627 (Minn. 2018); *see also Child of R.S. & L.S.*, 805 N.W.2d at 56 (“Because transfer of the preadoptive placement proceeding to tribal court would create, define, and regulate the rights of the parties, we conclude that

Rule 48.01 [of the Minnesota Rules of Juvenile Protection Procedure] is substantive.”).

Because the new Rule 10.03 creates substantive law, I respectfully dissent.

ANDERSON, Justice (dissenting in part).

I join in the dissent of Chief Justice Gildea.

AMENDMENTS TO THE GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

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

Rule 2.01 Behavior and Ceremony in General

(a) **Acceptable Behavior.** Dignity and solemnity shall be maintained in the courtroom. There shall be no unnecessary conversation, loud whispering, newspaper, electronic device or magazine reading, or other distracting activity in the courtroom while court is in session. The court or presiding judicial officer has discretion to limit or prohibit the use of electronic devices in the courtroom. The court or presiding officer's discretion is limited by Rule 4 of these Rules as it pertains to electronic devices used to photograph or record the proceedings. Permitted electronic devices must in all instances be set to silent mode, and must be used in an unobtrusive manner.

* * *

RULE 10. TRIBAL COURT ORDERS AND JUDGMENTS

Rule 10.01. When Tribal Court Orders and Judgments Must Be Given Effect Recognition Governed by Statute or Regulations.

~~(a) Recognition Mandated by Law. Where mandated by state or federal statute, The courts of this state shall follow applicable state and federal statutes, regulations, and rules that either mandate or provide procedures for recognition and enforcement of orders, judgments, and other judicial acts of the tribal courts of any federally recognized Indian tribe shall be recognized and enforced. Applicable statutes include but are not limited to:~~

- ~~(1) Violence Against Women Act, 18 U.S.C. § 2265;~~
- ~~(2) Indian Child Welfare Act, 25 U.S.C. § 1911;~~
- ~~(3) National Indian Forest Resources Management Act, 25 U.S.C. § 3106;~~
- ~~(4) American Indian Agricultural Resources Management Act, 25 U.S.C. § 3713;~~
- ~~(5) Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B;~~
- ~~(6) Minnesota Indian Family Preservation Act, Minn. Stat. § 260.771;~~
- ~~(7) Uniform Interstate Family Support Act, Minn. Stat. §§ 518C.101–905;~~
- ~~(8) Uniform Custody Jurisdiction and Enforcement Act, Minn. Stat. § 518D.104;~~
- ~~(9) Minnesota Uniform Foreign-Country Money Judgments Recognition Act, Minn. Stat. §§ 548.54–.63.~~

~~(b) Procedure.~~

- ~~(1) Generally. Where an applicable state or federal statute establishes a~~

procedure for enforcement of any tribal court order or judgment, that procedure must be followed.

~~(2) Violence Against Women Act; Presumption. An order that is subject to the Violence Against Women Act of 2000, 18 U.S.C. section 2265 (2003), that appears to be issued by a court with subject matter jurisdiction and jurisdiction over the parties, and that appears not to have expired by its own terms is presumptively enforceable, and shall be honored by Minnesota courts and law enforcement and other officials so long as it remains the judgment of the issuing court and the respondent has been given notice and an opportunity to be heard or, in the case of matters properly considered ex parte, the respondent will be given notice and an opportunity to be heard within a reasonable time. The presumptive enforceability of such a tribal court order shall continue until terminated by state court order but shall not affect the burdens of proof and persuasion in any proceeding.~~

Rule 10.02. Enforcement of Civil Commitment Orders.

The enforcement of orders for civil commitment issued by tribal courts is governed by Minn. Stat. § 253B.212. The district court may enter an order enforcing a tribal court order in accordance with this rule.

(a) Civil commitment orders entered by the tribal courts of the Red Lake Band of Chippewa Indians and the White Earth Band of Ojibwe Indians shall be enforced in accordance with Minn. Stat. § 253B.212, subdivisions 1 or 1a.

(b) Civil commitment orders entered by the tribal courts that are subject to a contract for the care and treatment between a tribe (or the Indian Health Service of the United States Department of Health and Human Services for the benefit of members of a tribe) and the commissioner of human services shall be enforced in accordance with Minn. Stat. § 253B.212, subdivision 1b.

(c) For all other civil commitment orders entered by a tribal court, or in any case where directed by the court, the party seeking to enforce the order must proceed by petition to the Minnesota District Court under Rule 10.03, and in addition must serve a copy of that petition on each of the parties to the tribal court proceedings as well as the Minnesota Commissioner of Human Services and the director of the facility where the person is proposed to be committed. The court may determine when a response to that petition is due and whether a hearing is required or permitted if requested, but shall not hear the matter without notice to all other interested parties except as allowed under Rule 3 of these Rules.

Rule 10.023. When Recognition Enforceability of Other Tribal Court Orders and Judgments, Is Discretionary

~~(a) Factors. In cases other than those governed by Rule 10.01(a), enforcement of a tribal court order or judgment is discretionary with the court. In exercising this discretion, the court may consider the following factors:~~

~~(1) whether the party against whom the order or judgment will be used has been given notice and an opportunity to be heard or, in the case of matters properly considered ex parte, whether the respondent will be given notice and an opportunity to be heard within a~~

reasonable time;

- ~~(2) whether the order or judgment appears valid on its face and, if possible to determine, whether it remains in effect;~~
- ~~(3) whether the tribal court possessed subject-matter jurisdiction and jurisdiction over the person of the parties;~~
- ~~(4) whether the issuing tribal court was a court of record;~~
- ~~(5) whether the order or judgment was obtained by fraud, duress, or coercion;~~
- ~~(6) whether the order or judgment was obtained through a process that afforded fair notice, the right to appear and compel attendance of witnesses, and a fair hearing before an independent magistrate;~~
- ~~(7) whether the order or judgment contravenes the public policy of this state;~~
- ~~(8) whether the order or judgment is final under the laws and procedures of the rendering court, unless the order is a non-criminal order for the protection or apprehension of an adult, juvenile or child, or another type of temporary, emergency order;~~
- ~~(9) whether the tribal court reciprocally provides for recognition and implementation of orders, judgments and decrees of the courts of this state; and~~
- ~~(10) any other factors the court deems appropriate in the interests of justice.~~

(a) Applicability. Rule 10.03 applies to tribal court orders and judgments that are not subject to Rules 10.01 or 10.02(a) or (b).

(b) Procedure. The court shall hold such hearing, if any, as it deems necessary under the circumstances. A party seeking enforcement of an order or judgment of the tribal court of any federally recognized Indian tribe that is not governed by Rules 10.01 or 10.02 shall proceed by petition, or in a pending action by motion. That party must serve a copy of the petition or motion on each of the parties to the tribal court proceeding in which the judgment or order was entered. The court may determine how soon after service of the petition any response is due. The court may determine whether to hold a hearing on the petition. The court shall not determine the matter without notice to all other interested parties except as allowed under Rule 3 of these rules.

(c) Enforceability and Exceptions. Courts of this state shall recognize and enforce an order or judgment of a tribal court of record of a federally recognized Indian tribe, unless a party subject to the order or judgment demonstrates any of the following:

- (1) the order or judgment is invalid on its face or no longer remains in effect;
- (2) the tribal court lacked personal or subject-matter jurisdiction;
- (3) the affected party was not afforded due process rights;
- (4) the order or judgment was obtained by fraud, duress, or coercion; or
- (5) the tribal court does not reciprocally recognize and enforce orders, judgments and decrees of the courts of this state.

Advisory Committee Comment—2018 Amendments

Rule 10.01 moves the list of statutes out of the comments and into the rule itself to provide greater visibility. The list is non-exhaustive to allow for future enactments.

Former Rule 10.01(b) is deleted because the Violence Against Women Act is now expressly included in Rule 10.01 and the historic issues that prompted the former rule have been addressed by legislation. *See* Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (March 7, 2013).

Rule 10.02 is a new rule intended to provide clear procedural guidance for enforcement by state courts of tribal court orders for civil commitment. The rule is structured to implement the requirements created by statute, Minn. Stat. § 253B.212. The primary purpose of the rule is to provide a requirement for notice and an opportunity to be heard for all parties to the tribal court proceeding as well as the Minnesota Commissioner of Human Services and the director of a facility where the person is proposed to be committed. This requirement applies in Rule 10.02(c) to commitment orders that are not otherwise covered by Rule 10.02(a) and 10.02(b).

Rule 10.03(b) recognizes two methods for asking a court for an order enforcing a tribal court adjudication. Most often, a petition seeking recognition will be necessary. The rule also allows a motion in a pending action. This would allow use of a tribal court adjudication, for example, in an existing action to establish res judicata or collateral estoppel based on the tribal court adjudication.

Rule 10.03(c) identifies specific factors under which a state court can decline to enforce a tribal court order of judgment. These factors restate those formerly set forth in Rule 10.02. Several of the former factors are combined under the broad category of Rule 10.03(c)(3), failure to afford “due process.” This is an inherently flexible standard, guided by the interests of the parties. The rule establishes that process is due, but does not define the specific process due. Courts may fairly look to what process would be due in analogous state or federal court proceedings. Common requirements of due process include notice of the proceedings, the right to heard, the right to appear and both examine and compel the attendance of witnesses, and the right to a fair hearing before an independent judge. The rule does not include the “catch-all” provision of former rule 10.02(10). This deletion is not intended to limit the ability of courts to consider an opposing party’s claim that enforcement is not in the interest of justice. *See* Minn. Gen. R. Prac. 1.02 (“A judge may modify the application of these rules to any case to prevent manifest injustice.”)

Rule 10.03(c)(5) retains the provision of the current version of Rule 10 allowing the court to consider reciprocity as part of its comity-based standard for enforcement of tribal court orders and judgments. The Minnesota Supreme Court has declined to make reciprocity a part of the showing needed to enforce a foreign judgment for child support payments, but has not rejected it as a proper consideration in all cases, or in the context of tribal court adjudications. *See Nicol v. Tanner*, 310 Minn. 68, 75–79, 256 N.W.2d 796, 800–02 (1976).

Rule 14.01 Mandatory and Voluntary E-File and E-Service

* * *

(b) **Scope and Effective Date of Mandatory and Voluntary E-File and E-Service.**

* * *

(2) **Prohibited E-Filing.** The following documents may not be filed electronically:

(i) Wills deposited for safekeeping under Minnesota Statutes, section 542.2-515 or original wills filed in probate cases under Rule 403(e); and

(ii) All documents in parental notification bypass proceedings under Minnesota Statutes, section 144.343.

* * *

Rule 14.02. Registration Process and Duty to Designate E-Mail Address for Service

(a) **Becoming a Registered User.** Only a Registered User may electronically file or serve documents through the E-Filing System. To become a Registered User, a Select User, self-represented litigant, or non-party participant must complete the registration process, as established by the state court administrator, and designate an e-mail address (“designated e-mail address”) for receipt of electronic service and court notices. By registering with the Designated Provider and either electronically transmitting a document for filing in a case or designating an email address for receiving electronic service in the E-Filing System for the case, a Registered User consents to receive electronic service and court notices from the court and other Registered Users in the case through the E-Filing System at a designated e-mail address. This designated e-mail address may also be used by the court (but not other parties) to deliver notices by means other than the E-Filing System.

* * *

Rule 14.03 Filing and Service of Documents and Court Notices

* * *

(d) **Service by Registered Users.** Unless personal service is otherwise required by statute, these rules, other rules of court, or an order of the court, a Registered User shall serve all documents required or permitted to be served upon another party or person in the following manner:

(1) **Service on Registered Users.** Except as otherwise permitted in subpart (3) below, where the party or person to be served is a Registered User, who has either electronically filed a document in the case or designated an email address for receiving electronic service in the E-Filing system for the case and the Court has accepted the initial filing in the case, service shall be accomplished through the E-Filing System by utilizing the electronic service function of the E-Filing System.

(2) **Service on Other Parties or Participants.** Where the party or participant to be served is not a Registered User or has not either designated an email address for receiving electronic service in the E-Filing system for the case or electronically filed a document in the case but has agreed to service by electronic means outside the E-Filing System (such as by e-mail), service may be made in the agreed upon manner. The presiding judge or judicial officer may also order that service on the non-Registered User be made by electronic means outside of

the E-Filing System. Where service by electronic means is not required or permitted, another method of service authorized under applicable rules or law must be used.

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Advisory Committee Comment—2018 Amendments

Rule 14.03(d) is amended in 2018 to address issues relating to service using the e-filing system of the courts.

TITLE IV. RULES OF FAMILY COURT PROCEDURE

* * *

Rule 301.01 Applicability of Rules

* * *

(b) Included Proceedings. The following types of proceedings are referred to in these rules as Family Court Actions:

1. Marriage dissolution, legal separation, annulment proceedings, and child custody actions (Minnesota Statutes, chapter 518, ~~and section 260C.201, subd. 11(d)(1)(iii)~~);

* * *

Rule 308.02 Statutorily Required Notices

Where statutes require that certain subjects be addressed by notices attached to ~~in~~ an order or decree, the notices may be set forth in an attachment and incorporated by reference. The attachment may be physically attached (e.g., by staple) if in paper form or, if in electronic form, it may be set forth in the same electronic document or in a separate electronic document that accompanies the order or decree when filed with or distributed by the court. Notwithstanding the absence of language referencing the attachments, they shall be deemed incorporated by reference.

* * *

Advisory Committee Comment—2018 Amendments

The amendment to Rule 308.02 in 2018 establishes an electronic corollary to stapling an attachment to a signed order. When orders are signed without the attachments being included as a referenced attachment to an order or decree, the historical practice has been to simply staple the attachments to the orders when distributed by the court. When the order or decree is in electronic form, physically adding the attachments to the same document after a judge electronically signs

will render the signature subject to challenge as the document will indicate that it has been changed. The electronic corollary to stapling the order to the already signed order or decree is to set it forth in a separate electronic document and add it to the case record, and send a notice to the parties that explains this.

Rule 361.02 Exchange of Documents

* * *

Subd. 4. Treatment of Confidential Information. To retain privacy, restricted identifiers as defined in Rule 11 (such as Social Security numbers, employer identification numbers, financial account numbers) must be removed from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11. In addition, financial source documents as defined in Rule 11 (such as tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Confidential Sealed Financial Source Documents" as required in Rule 11.

* * *

Rule 361.05 Filing of Discovery Requests and Responses Precluded

Copies of a party's request for discovery and any responses to those requests shall not be filed with the court unless:

- (a) ordered by the child support magistrate;
- (b) filed in support of any motion;
- (c) introduced as evidence in a hearing; or
- (d) relied upon by the magistrate when approving a stipulated or default order.

To retain privacy, restricted identifiers as defined in Rule 11 (such as Social Security numbers, employer identification numbers, financial account numbers) must be removed from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11. In addition, financial source documents as defined in Rule 11 (such as tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Confidential Sealed Financial Source Documents" as required in Rule 11.

* * *

Rule 379.04 Acknowledgment

Subdivision 1. Generally. Each complaint or motion served and filed in the expedited process shall set forth an acknowledgment by the party or the party's attorney. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other document, an attorney or self-represented litigant party is certifying to the best of the person's knowledge, information and belief:

* * *

TITLE V. PROBATE RULES

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RULE 403. DOCUMENTS

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(e) Original Will Deposit. Where a will or codicil is to be filed with the court in any probate proceeding under these rules, the party with possession of the original will or codicil shall promptly deposit the original with the court. Alternatively, an authenticated copy of a will probated in another jurisdiction may be deposited with the court.

Advisory Committee Comment—2018 Amendments

Rule 403(e) is new in 2018 and appears to reflect near statewide practice designed to preserve what often becomes a central piece of evidence in probate cases. Statutes also appear to direct the submission of the original paper document. Minn. Stat. §§ 524.3-301 (informal probate); 524.3-402 (formal probate); and 524.2-516 (upon request).

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