Minnesota Rules of Civil Procedure

Revised Effective January 1, 1989
With amendments effective through October 1, 2021

TABLE OF HEADNOTES

TEXT OF RULES

Rule 4. Service

4.01 Summons; Form

The summons shall state the name of the court and the names of the parties, be subscribed by the plaintiff or by the plaintiff's attorney, give an address within the United States where the subscriber may be served in person and by mail, state the time within which these rules require the defendant to serve an answer, and notify the defendant that if the defendant fails to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

(Amended effective July 1, 2021.)

Advisory Committee Comment - 2021 Amendments

Rule 4.01 is amended to remove the requirement that a plaintiff have a Minnesota address for mail and personal service. The committee believes that this provision suited the needs of a different time, and that no compelling reason exists to require a Minnesota address to commence litigation. The committee believes that any address in the United States would provide a workable means of effecting either personal or mailed service. This conclusion is particularly applicable to signing of a summons by a member of the Minnesota Bar who may happen to have an office outside of Minnesota.

With the implementation of e-filing and e-service, the role of this requirement for an address for the signer of the summons is undoubtedly diminished. This provision nonetheless

is an important backstop to e-service for cases where the plaintiff is either self-represented or represented by an attorney licensed in Minnesota but not maintaining an office in Minnesota.

[For text of 4.02 to 4.07, see M.S.2020, Volume 15]

Rule 23. Class Actions

[For text of 23.01 to 23.04, see M.S.2020, Vol. 15]

23.05 Settlement, Voluntary Dismissal, or Compromise

(a) Court Approval.

(1) A settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class is effective only if approved by the court.

(2) The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.

(3) The court may approve a settlement, voluntary dismissal, or compromise that would bind class members only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate.

(b) Disclosure Required. The parties seeking approval of a settlement, voluntary dismissal, or compromise under Rule 23.05(a) must file a statement identifying any agreement made in connection with the proposed settlement, voluntary dismissal, or compromise.

(c) Additional Opt-Out Period. In an action previously certified as a class action under Rule 23.02(c), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(d) Objection to Settlement.

(1) Any class member may object to a proposed settlement, voluntary dismissal, or compromise that requires court approval under Rule 23.05(a)(1).

(2) An objection made under Rule 23.05(d)(1) may be withdrawn only with the court's approval.

(e) Distribution of Residual Funds, If Any. In the event there are residual funds that remain after payment of all approved class member claims (including any supplemental distributions to the class), expenses, litigation costs, attorney's fees, and other court-approved disbursements, the court shall direct notice regarding the distribution of these funds and establish a deadline by which potential recipients must submit a statement asserting a basis to designate the organization as a recipient of the residual funds. This notice shall be provided as directed by the court to any potential recipient of residual funds identified by the parties or the court and to the Legal Services Advisory Committee for the purpose of informing qualified legal services programs within the meaning of Minnesota Statutes, section 480.24, subdivision 3. The notice must include the deadline established by the court for submission of statements by potential recipients. Notice given to the Legal Services Advisory Committee shall be made using the form and delivery method required by State Court Administration.

In approving the distribution or other disposition of residual funds, the district court shall consider all relevant factors, including the recommendations of the parties, the nexus between the nature, purpose, and objectives of the class action and the interests of the class members, and the interests of potential recipients of the residual funds.

(Amended effective January 1, 2006; amended effective July 1, 2018; amended effective October 1, 2021.)

[For text of 23.06 to 23.10, see M.S.2020, Vol. 15]

Rule 26. Duty to Disclose; General Provisions Governing Discovery

[For text of 26.01 to 26.04, see M.S.2020, Volume 15]

26.05 Supplementation of Disclosures and Responses

(a) In General. A party who has made a disclosure under Rule 26.01 - or who has responded to an interrogatory, request for production, or request for admission - must supplement or correct its disclosure or response:

(1) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(2) as ordered by the court.

(b) Expert Witness. For an expert whose report must be disclosed under Rule 26.01(b)(2), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 26.01(c) are due.

(Amended effective July 1, 2000; amended effective July 1, 2021.)

Advisory Committee Comment - 2021 Amendments

Rule 26.05 is amended to apply the rule's duty to supplement to initial and expert disclosures as well as other discovery responses. The amendments are substantially modeled on Fed. R. Civ. P. 26(e).

[For text of 26.06, see M.S.2020, Volume 15]

26.07 Signing of Disclosure and Discovery Requests, Responses, and Objections

(a) Signature Required; Effect of Signature. Every disclosure under Rule 26.01(a) or 26.01(c) and every discovery request, response, or objection must be signed by a least one attorney of record in the attorney's own name - or by the party personally if self-represented - and must state the signer's address, e-mail address, and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(1) with respect to a disclosure, it is complete and correct as of the time it is made; and

(2) with respect to a discovery request, response, or objection, it is:

(A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(b) Failure to Sign. Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(c) Sanction for Improper Certification. If a certification violates this rule, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose bahalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

(Amended effective July 1, 2015; amended effective July 1, 2021.)

[For text of Advisory Committee Comment, see M.S.2020, Volume 15]

Advisory Committee Comment - 2021 Amendments

Rule 26.07 is amended to extend the signing requirement for automatic disclosures under Rule 26.01 and to conform to the federal rule, Fed. R. Civ. P. 26(g)'s, guidance on the effect of an unsigned disclosure or discovery response and the potential sanction for violating the rule.

Rule 45. Subpoena

[For text of 45.01 to 45.03, see M.S.2020, Volume 15]

45.04 Duties in Responding to Subpoena

(a) Form of Production; Participation of Other Parties; Rescheduling.

(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.

(5) The party issuing a subpoena for production or inspection 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 seven 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.

(b) Claims of Privilege.

(1) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(2) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(3) For depositions taken in Minnesota under Rule 45.06 in connection with litigation pending in another jurisdiction, the procedure for assertion of claims of privilege

is governed by Rule 45.04(b). The law of privilege, or other questions of substantive law, to be applied in such a deposition depends on the application of Minnesota's conflict-of-law principles.

(Amended effective January 1, 2006; amended effective July 1, 2007; amended effective July 1, 2010; amended effective July 1, 2021.)

Advisory Committee Comment - 2021 Amendments

Rule 45.04 is amended to clarify the application of privilege law in depositions taken under Rule 45.06 for depositions taken for litigation pending in a jurisdiction outside of Minnesota. The procedure for obtaining or issuance of a subpoena under Rule 45.06 is governed by Minnesota law, but the rule is amended to make it clear that in situations involving a conflict of substantive law, such as whether a question is governed by a recognized privilege, resolution depends on the application of Minnesota's conflict-of-law principles. This analysis might, in some cases, require the application of another jurisdiction's substantive law. See, e.g., Milkovich v. Saari, 295 Minn. 155, 161-71, 203 N.W.2d 408, 414-17 (1973); see generally William B. Danforth, Developments in the Minnesota Law of Conflict of Laws, 8 Wm. Mitchell L. Rev. 785 (1982).

Rule 45.06 itself is amended to provide for the issuance of a subpoena by a Minnesota attorney of record in a case, obviating issuance of the subpoena by the court administrator. This procedure is already allowed for subpoenas in cases pending in Minnesota state courts. The rule does not modify in any way the requirements for issuance of a subpoena; it merely allows a Minnesota attorney to sign and issue it if those requirements are met.

[For text of 45.05, see M.S.2020, Volume 15]

45.06 Interstate Depositions and Discovery

(a) Definitions. In Rule 45.06:

(1) "Foreign jurisdiction" means a state other than this state.

(2) "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(5) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:

(A) attend and give testimony at a deposition;

(B) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

(C) permit inspection of premises under the control of the person.

(b) Issuance of Subpoena.

(1) To request issuance of a subpoena by the court administrator under this section, a party must submit a foreign subpoena to the district court administrator of the court in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this act does not constitute an appearance in a proceeding pursuant to Rule 5.01 of these rules, but does subject the filer to the jurisdiction of the court and to Minnesota law and rules, including the Minnesota Rules of Professional Conduct. Alternatively, an attorney admitted to practice in Minnesota as an officer of the court may issue and sign a subpoena pursuant to this rule and Rule 45.01(c).

(2) A district court administrator in this state, upon submission of a foreign subpoena, shall, in accordance with that court's procedure, promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(3) A subpoena under Rule 45.06(b)(1) or (2) must:

(A) incorporate the terms used in the foreign subpoena; and

(B) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(c) Service of Subpoena. A subpoena issued under Rule 45.06(b) must be served in compliance with Rule 45.02 of these rules.

(d) Deposition, Production, and Inspection. All Minnesota rules and statutes applicable to compliance with subpoenas to attend and give testimony, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises apply to subpoenas issued under Rule 45.06(b). Resolution of substantive issues about privilege, competence of a witness, or the obligation of a witness to answer particular questions depends on the application of Minnesota's conflict-of-law principles under Rule 45.04(b)(3).

(e) Application To Court. An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a district court administrator under Rule 45.06(b) must comply with the rules and statutes of this state and be submitted to the district court in the county in which discovery is to be conducted.

(Added effective July 1, 2015; amended effective July 1, 2021.)

[For text of Advisory Committee Comments, see M.S.2020, Volume 15]

Advisory Committee Comment - 2021 Amendments

Rule 45.06 is amended in two important ways. The amended rule extends the authority for Minnesota attorneys to sign and issue subpoenas to those used for discovery for cases pending in other states. The rule does not modify the procedural prerequisites for issuance of a Minnesota subpoena, other than allowing a Minnesota lawyer to take those steps and issue the subpoena. This authority to issue subpoenas is not extended to self-represented litigants.

Rule 55. Default

55.01 Judgment

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

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

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

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

(d) When service of the summons has been made by published notice, or by delivery of a copy outside the state, default judgment must not be entered until the plaintiff, if required by the court, has filed a court-approved bond that conforms to a court order regarding the restitution of the property obtained from the judgment if a defense is later permitted and sustained. A bond is not required in actions involving the title to real estate or to foreclose mortgages or other liens.

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

(Amended effective January 1, 1992; amended effective January 1, 2020; amended effective July 1, 2021.)

[For text of Advisory Committee Comments, see M.S.2020, Volume 15]

Advisory Committee Comment - 2021 Amendments

Rule 55.01(d) is amended to make it clearer and to update the phrasing of the provisions in the rule. This amended rule is modeled on N.D.R.Civ.P. 55(a)(4). The provision for a bond as a potential prerequisite for obtaining a default judgment is important where service has been made by publication or service outside Minnesota. The amended rule recognizes, however, that a bond may be of little value if the judgment creditor was of sufficient financial standing that requiring a bond would only impose additional expense in the case, and would offer no additional security to the defaulting defendant.

[For text of 55.02, see M.S.2020, Volume 15]

Rule 59. New Trials

[For text of 59.01 to 59.03, see M.S.2020, Volume 15]

59.04 Time for Serving Affidavits

When a motion for a new trial is based upon affidavits, they shall be served with the notice of motion. The opposing party shall have 14 days after such service in which to serve opposing affidavits, which period may be extended by the court pursuant to Rule 59.03. The court may permit reply affidavits. Except as limited by Rule 59.03, the deadlines for serving any permitted affidavits may be established or modified by order under Minn. Gen. R. Prac. 115.0l(c).

(Amended effective July 1, 2021.)

Advisory Committee Comment - 2021 Amendments

Rule 59.04 is amended to specify that the deadlines for service of affidavits relating to a motion for a new trial may be modified by order of the court. The deadlines contained in Rule 59.04 are presumptively appropriate while the deadlines in Rule 59.03 are controlling.

[For text of 59.05 to 59.06, see M.S.2020, Volume 15]