

GENERAL RULES OF PRACTICE

General Rules of Practice for the District Courts

	PAGE
Table of Headnotes	649
Text of Rules	656
Index.....	944

General Rules of Practice for the District Courts

Adopted September 5, 1991 Effective January 1, 1992
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TABLE OF HEADNOTES

TITLE I. RULES APPLICABLE TO ALL COURT PROCEEDINGS

Rule

- 1 Scope of Rules; Modification; Service on Parties;
Applicability to *Pro Se* Parties
- 2 Court Decorum; Conduct of Judges and Lawyers
- 3 Ex Parte Orders
- 4 Pictures and Voice Recordings
- 5 Appearance by Out-of-State Lawyers
- 6 Form of Pleadings
- 7 Proof of Service
- 8 Interpreters
- 9 Frivolous Litigation
- 10 Tribal Court Orders and Judgments

TITLE II. RULES GOVERNING CIVIL ACTIONS

PART A. PLEADINGS, PARTIES, AND LAWYERS

- 101 Scope of Rules
- 102 Form of Pleadings [Renumbered Rule 6.]
- 103 Proof of Service [Renumbered Rule 7.]
- 104 Certificate of Representation and Parties
- 105 Withdrawal of Counsel
- 106 Hearing on Motion to Remove Judge for Actual Prejudice
or Bias
- 107 Procedure for Challenge for Having a Referee Hear a
Matter
- 108 Guardian Ad Litem
- 109 Application for Leave to Answer or Reply
- 110 Self-Help Programs

PART B. SCHEDULING

- 111 Scheduling of Cases
- 112 Joint Statement of the Case
- 113 Assignment of Case(s) to a Single Judge
- 114 Alternative Dispute Resolution
- Code of Ethics
- Code of Ethics Enforcement Procedure

PART C. MOTIONS

- 115 Motion Practice

PART D. MISCELLANEOUS MOTION PRACTICE

- 116 Orders to Show Cause
- 117 Default Hearings
- 118 Injunctive Relief Against Municipalities

- 119 Applications for Attorneys' Fees
- 120 (Reserved for Future Use.)

PART E. TRIAL MANAGEMENT

- 121 Notice of Settlement
- 122 Continuance
- 123 Voir Dire of Jurors in Cases in which Insurance Company
Interested in Defense or Outcome of Action
- 124 Reporting of Opening Statement and Final Arguments
- 125 Automatic Stay
- 126 Judgment—Entry by Adverse Party
- 127 Expert Witness Fees
- 128 Retrieval or Destruction of Exhibits
- 129 Use of Administrator's Files
- 130 Exhibit Numbering
- 131 (Reserved for Future Use.)
- 132 (Reserved for Future Use.)
- 133 (Reserved for Future Use.)
- 134 (Reserved for Future Use.)

PART F. SPECIAL PROCEDURES

- 135 Restraining Order—Bond
- 136 Garnishments and Attachments—Bonds to Release—Entry
of Judgment Against Garnishee
- 137 Receivers
- 138 Banks in Liquidation
- 139 Lawyers as Sureties
- 140 Supplemental Proceedings
- 141 Condemnation
- 142 Trustees—Accounting—Petition For Appointment
[Renumbered Rule 417.]
- 143 Actions by Representatives—Attorneys' Fees
- 144 Actions for Death by Wrongful Act
- 145 Actions on Behalf of Minors and Incompetent Persons

PART G. APPENDIX OF FORMS

Form

- 104 Certificate of Representation and Parties
- 111.02 Informational Statement (Civil Matters—Non-Family)
- 112.01 Joint Statement of the Case
- 114.01 Deleted
- 114.02 Deleted
- 119.05 Notice and Request for Hearing to Determine
Attorneys' Fees Award
- 142.02 Renumbered Form 417.02
- 145.1 Receipt of Minor Settlement Order and Funds
- 145.2 Combined Motion and Order for Release of
Minor Settlement Funds

PART H. MINNESOTA CIVIL TRIALBOOK

Section

- 1 Scope; Policy
- 2 Deleted
- 3 Deleted
- 4 Deleted
- 5 Pre-Trial Conferences
- 6 Voir Dire of Jurors
- 7 Preliminary Instructions
- 8 Opening Statement and Final Arguments
- 9 Availability of Witnesses
- 10 Examination of Witnesses
- 11 Interpreters
- 12 Exhibits
- 13 Custody of Exhibits
- 14 Sealing and Handling of Confidential Exhibits
- 15 Instructions
- 16 Questions by Jurors
- 17 Special Verdicts
- 18 Polling and Discharge

TITLE III. REGISTRATION OF LAND TITLES

PART A. PROCEEDINGS FOR INITIAL REGISTRATION

Rule

- 201 Applicability of Rules
- 202 Applications—Indorsements
- 203 Abstracts of Title
- 204 Title Based upon an Adjudication Not Final, or upon Estoppel
- 205 Examiner's Report—Petition and Order for Summons
- 206 Papers to be Filed—Effect of Notice and Appearance
- 207 Affidavit of No Answer and Court Administrator's Certificate of Default
- 208 Hearings in Default Cases—Filing Papers
- 209 Issues Raised by, Answer—Reply
- 210 Trial of Contested Issues
- 211 Interlocutory Decree Establishing Boundaries
- 212 Protection of Interests Acquired Pendente Lite—Provision for Immediate Registration After Hearing

PART B. PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION

- 213 Title of Proceedings
- 214 Trial and Hearing
- 215 New Certificates, Amendments, Etc.
- 216 New Duplicate Certificate

PART C. MISCELLANEOUS PROVISIONS

- 217 Cases Not Requiring Special Order of Court

218	State Tax Deeds
219	Deeds of Housing and Urban Development
220	Birth Certificates
221	Death Certificates
222	Condominiums

TITLE IV. RULES OF FAMILY COURT PROCEDURE

301	Applicability of Rules
302	Commencement; Continuance; Time; Parties
303	Motions; Ex Parte Relief; Orders to Show Cause; Orders and Decrees
304	Scheduling of Cases
305	Prehearing Conferences
306	Default
307	Final Hearings
308	Final Decree
309	Contempt
310	Alternative Dispute Resolution
311	Forms
312	Review of Referee's Findings or Recommendations
313	Confidential Numbers and Tax Returns

EXPEDITED CHILD SUPPORT PROCESS RULES

351	Scope; Purpose
352	Definitions
353	Types of Proceedings
354	Computation of Time
355	Methods of Service; Filing
356	Fees
357	Legal Representation and Appointment of Guardian Ad Litem
358	Court Interpreters
359	Telephone and Interactive Video
360	Intervention
361	Discovery
362	Settlement
363	Default
364	Hearing Process
365	Decision and Order of Child Support Magistrate
366	Transcript
367	Administration of Expedited Child Support Process; Child Support Magistrates
368	Removal of a Particular Child Support Magistrate
369	Role of County Attorney and Employees of the County Agency
370	Establishment of Support Proceedings
371	Parentage Actions
372	Motions to Modify, Motions to Set Support, and Other Matters
373	Enforcement Proceedings
374	Civil Contempt
375	Motion to Correct Clerical Mistakes
376	Motion for Review
377	Procedure on a Motion to Correct Clerical Mistakes,

	Motion for Review, or Combined Motion
378	Appeal to Court of Appeals
379	Forms

APPENDIX OF FORMS

Form

1	Application for Temporary Relief
2	Prehearing Statement
3	Appendix A
4A	Notice for Implementation of Biennial Cost of Living Adjustment
4B	Cost of Living Adjustment Calculation
5A	Notice to Obligor of Medical Support Enforcement
5B	Notice to Employer or Union of Medical Support
6A	Notice of Income Withholding
6B	Order for Immediate Income Withholding
7	Notice of Order to Payor of Funds
8A	Notice of Entry and Docketing of Maintenance Judgment
8B	Affidavit of Default of Maintenance
8C	Supplemental Affidavit of Default of Maintenance Judgment
8D	Notice of Entry and Docketing of Support Judgment
8E	Affidavit of Default of Support Judgment
9A	Informational Statement (Family Court Matters)
9B	Alternative Informational Statement (Family Court Matters)
10	Default Scheduling Request
11	Confidential Information Form
12	Joint Petition, Agreement, and Judgment and Decree for Marriage Dissolution Without Children

TITLE V. PROBATE RULES

Rule

401	Applicability of Rules
402	Definitions
403	Documents
404	Notice in Formal Proceedings
405	Interim Orders
406	Uncontested Formal Proceedings
407	Appointment
408	Informal Proceedings
409	Formal Testacy and Appointment Proceedings
410	Transfer of Real Estate
411	Closing Estates
412	Fees, Vouchers, and Tax Returns
413	Subsequent Proceedings
414	Fiduciaries
415	Registrar
416	Guardianships and Conservatorships
417	Trustees—Accounting—Petition for Appointment
418	Deposit of Wills

APPENDIX OF FORMS**Form**

417.02 Trustee's Accounting

TITLE VI. CONCILIATION COURT RULES**Rule**

501 Applicability of Rules
 502 Jurisdiction
 503 Computation of Time
 504 Judge(s); Administrator; Reporting
 505 Commencement of Action
 506 Fees; Affidavit in Lieu of Fees
 507 Statement of Claim and Counterclaim;
 Contents; Verification
 508 Summons; Trial Date
 509 Counterclaim
 510 Counterclaim in Excess of Court's Jurisdiction
 511 Notice of Settlement
 512 Trial
 513 Absolute or Conditional Costs; Filing of Orders
 514 Notice of Order for Judgment
 515 Entry of Judgment
 516 Costs and Disbursements
 517 Payment of Judgment
 518 Docketing of Judgment in District Court; Enforcement
 519 Docketing of Judgment Payable in Installments
 520 Vacation of Judgment Order and Judgment
 521 Removal (Appeal) to District Court
 522 Pleadings in District Court
 523 Procedure in District Court
 524 Mandatory Costs in District Court
 525 Appeal from District Court

APPENDIX OF FORMS**Form**

UCF-8 Statement of Claim and Summons
 UCF-9 Judgment and Notice of Judgment
 UCF-10 Defendant's Counterclaim and Notice of Hearing
 UCF-22 Financial Disclosure Form

TITLE VII. HOUSING COURT RULES—HENNEPIN AND RAMSEY COUNTIES**Rule**

601 Applicability of Rules
 602 Housing Court Referee
 603 Parties
 604 Complaint
 605 Return of Summons
 606 Filing of Affidavits

607	Calendar Call
608	Withheld Rent
609	Restitution
610	Motions
611	Review of Referee's Decision
612	Discovery

TITLE VIII. RULES RELATING TO CRIMINAL MATTERS

701	Applicability of Rules
702	Bail
703	Certificates of Representation
704	Timely Appearances
705	Complaints and Warrants—Submission to Second Judge
706	Custody of Exhibits

APPENDIX OF FORMS

Form

702	Bail Bond for Appearance Only

TITLE IX. JURY MANAGEMENT RULES

Rule

801	General Policy
802	Definitions
803	Jury Commissioner
804	Jury Administration Plan
805	Random Selection Procedures
806	Jury Source List
807	Jury Questionnaire and Summons. One-Step Process
808	Qualifications for Jury Service
809	Discrimination Prohibited
810	Excuses and Deferrals
811	Term of Jury Service
812	Juror Use
813	Challenging Compliance with Selection Procedure
814	Records

TITLE X. RULES OF GUARDIAN AD LITEM PROCEDURE

901	Purpose Statement; Implementation
902	Minimum Qualifications
903	Selection of Guardians Ad Litem
904	Appointment of Guardian Ad Litem
905	Oath or Affirmation
906	Supervision and Evaluation of Guardians Ad Litem; Removal from Panel
907	Complaint Procedure; Removal of Guardian Ad Litem from Particular Case
908	General Responsibilities of Guardians Ad Litem;

	Other Roles Distinguished; Contact with Court
909	Rights and Powers of Guardians Ad Litem
910	Pre-Service Training Requirements
911	Continuing Education Requirements
912	Training Curricula; Certification of Trainers
913	Community Education

INDEX

Revisor's Note: The Supreme Court, in a September 5, 1991, order adopting the General Rules of Practice for the District Courts, provided in part:

"The inclusion of Task Force notes, if any, is made for convenience and does not reflect court approval of the comments made therein."

The Supreme Court, in a November 13, 1992, order adopting amendments to the General Rules of Practice for the District Courts, provided in part:

"The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein."

The Supreme Court, in a December 2, 1993, order adopting Rule 114 and amending other rules of the General Rules of Practice, provided in part:

"The inclusion of Implementation Committee comments is made for convenience and does not reflect court approval of the comments made therein."

TEXT OF RULES

TITLE I - RULES APPLICABLE TO ALL COURT PROCEEDINGS

Rule 1. Scope of Rules; Modification; Service on Parties; Applicability to *Pro Se* Parties

Rule 1.01 Scope.

These rules shall apply in all trial courts of the state. These rules may be cited as Minn. Gen. R. Prac. ____.

Rule 1.02 Modification.

A judge may modify the application of these rules in any case to prevent manifest injustice.

Rule 1.03 Service on Parties.

When a paper is to be served on a party under these rules, service shall be made on the party's lawyer if represented, otherwise on the nonrepresented party directly.

Rule 1.04 Responsibility of Parties Appearing *Pro Se*.

Whenever these rules require that an act be done by a lawyer, the same duty is required of a party appearing *pro se*.

Cross Reference: Minn. R. Civ. P. 5.02, 83.

Rule 2. Court Decorum; Conduct of Judges and Lawyers

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 or magazine reading or other distracting activity in the courtroom while court is in session.

(b) **Flag.** The flags of the United States and the State of Minnesota shall be displayed on or in close proximity to the bench when court is in session.

(c) **Formalities in Opening Court.** At the opening of each court day, the formalities to be observed shall consist of the following: court personnel shall direct all present to stand, and shall say clearly and distinctly:

Everyone please rise! The District Court of the _____ Judicial District, County of _____, State of Minnesota is now open. Judge _____ presiding. Please be seated.

(Rap gavel or give other signal immediately prior to directing audience to be seated.)

At any time thereafter during the day that court is reconvened court personnel shall give warning by gavel or otherwise, and as the judge enters, cause all to stand until the Judge is seated.

(The above rule (to) or (to not) apply to midmorning and midafternoon recesses of the court at the option of the judge.)

(d) The Jury. Jurors shall take their places in the jury box before the judge enters the courtroom. Court personnel shall assemble the jurors when court is reconvened.

When a jury has been selected and is to be sworn, the presiding judge or clerk shall request everyone in the courtroom to stand.

(e) Court Personnel. Court personnel shall maintain order as litigants, witnesses and the public assemble in the courtroom, during trial and during recesses. Court personnel shall direct them to seats and refuse admittance to the courtroom in such trials where the courtroom is occupied to its full seating capacity.

(f) Swearing of Witnesses. When the witness is sworn, court personnel shall request the witness's full name, and after being sworn, courteously invite the witness to be seated on the witness stand.

(g) Manner of Administration of Oath. Oaths and affirmations shall be administered to jurors and witnesses in a slow, clear, and dignified manner. Witnesses should stand near the bench, or witness stand as sworn. The swearing of witnesses should be an impressive ceremony and not a mere formality.

(Amended effective January 1, 1998.)

Rule 2.02 Role of Judges

(a) Dignity. The judge shall be dignified, courteous, respectful and considerate of the lawyers, the jury and witnesses. The judge shall wear a robe at all trials and courtroom appearances. The judge shall at all times treat all lawyers, jury members, and witnesses fairly and shall not discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, sexual preference, status with regard to public assistance, disability, or age.

(b) Punctuality. The judge shall be punctual in convening court, and prompt in the performance of judicial duties, recognizing that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality on part of a judge justifies dissatisfaction with the administration of the business of the court.

(c) Impartiality. During the presentation of the case, the judge shall maintain absolute impartiality, and shall neither by word or sign indicate favor to any party to the litigation. The judge shall be impersonal in addressing the lawyers, litigants and other officers of the court.

(d) Intervention. The judge should generally refrain from intervening in the examination of witnesses or argument of counsel; however, the court shall intervene upon its own initiative to prevent a miscarriage of justice or obvious error of law.

(e) Decorum in Court. The judge shall be responsible for order and decorum in the court and shall see to it at all times that parties and witnesses in the case are treated with proper courtesy and respect.

(f) Accurate Record. The judge shall be in complete charge of the trial at all times and shall see to it that everything is done to obtain a clear and accurate record of the trial. It is a duty to see that the witnesses testify clearly so that the reporter may obtain a correct record of all proceedings in court.

(g) **Comment Upon Verdict.** The judge should not comment favorably or adversely upon the verdict of a jury when it may indirectly influence the action of the jury in causes remaining to be tried.

(Amended effective January 1, 1998.)

Rule 2.03 Role of Attorneys

(a) **Officer of Court.** The lawyer is an officer of the court and should at all times uphold the honor and maintain the dignity of the profession, maintaining at all times a respectful attitude toward the court.

(b) **Addressing Court or Jury.** Except when making objections, lawyers should rise and remain standing while addressing the court or the jury. In addressing the court, the lawyer should refer to the judge as “Your Honor” or “The Court.” Counsel shall not address or refer to jurors individually or by name or occupation, except during voir dire, and shall never use the first name when addressing a juror in voir dire examination. During trial, counsel shall not exhibit familiarity with the judge, jurors, witnesses, parties or other counsel, nor address them by use of first names (except for children).

(c) **Approaching Bench.** The lawyers should address the court from a position at the counsel table. If a lawyer finds it necessary to discuss some question out of the hearing of the jury at the bench, the lawyer may so indicate to the court and, if invited, approach the bench for the purpose indicated. In such an instance, the lawyers should never lean upon the bench nor appear to engage the court in a familiar manner.

(d) **Non-Discrimination.** Lawyers shall treat all parties, participants, other lawyers, and court personnel fairly and shall not discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, sexual preference, status with regard to public assistance, disability, or age.

(e) **Attire.** Lawyers shall appear in court in appropriate courtroom attire.

(Amended effective January 1, 1998.)

Advisory Committee Comment—1997 Amendment

The majority of this rule was initially derived from the former Rules of Uniform Decorum. The adoption of these rules in 1991 included these provisions in Part H, Minnesota Civil Trialbook. They are recodified here to make it clear that the standards for decorum, for lawyers and judges, apply in criminal as well as civil proceedings.

The Task Force on Uniform Local Rules considered the recommendations of the Minnesota Supreme Court Task Force on Gender Fairness, and recommended Rule 2.03(d) be adopted to implement, in part, the recommendations of that body. See Minnesota Supreme Court Task Force for Gender Fairness in the Courts, 15 Wm. Mitchell L. Rev. 825 (1989). The rule specifically incorporated the definition of discriminatory conduct in the Minnesota Human Rights Act, Minnesota Statutes, section 363.01, subd. 1(1) (1990). The Task Force added to the statutory definition of discrimination the category of sexual preference.

The inclusion of these provisions in the rules is intended to establish uniform standards to be followed in most cases. Nothing in this rule limits the power of the court to modify the rules or their application in a particular case. See Rule 1.02. It is not intended that the failure to follow these rules, in itself, would be the subject of claimed error in the conduct of the trial court proceedings in the absence of aggravating circumstances, such as repeated violations or persistent violation after objections by a party or direction from the court.

Rule 3. Ex Parte Orders

Rule 3.01 Notice.

In any application for ex parte relief, the court may require a demonstration or explanation of the efforts made to notify affected parties, or the reasons why such

efforts were not made. The reasons supporting ex parte relief should be recited in the order.

Rule 3.02 Prior Application.

Before an ex parte order is issued, an affidavit shall be submitted with the application showing:

(1) No prior applications for the relief requested or for a similar order have been made; or,

(2) The court and judge to whom the prior application was made; the result of the prior application; and what new facts are presented with the current application.

Failure to comply with this rule may result in vacation of any order entered.

Task Force Comment—1991 Adoption

Rule 3.01 is new, although it codifies the practice of the vast majority of judges.

Rule 3.02 is derived from Rule 10 of the Code of Rules for the District Courts. This rule applies in all trial court proceedings, including criminal actions. The Minnesota Supreme Court Advisory Committee on Criminal Procedure joins the Task Force in recommending that this rule apply in all trial court proceedings.

The review of the efforts made to provide notice is an integral part of permitting ex parte relief to be granted. The rule does not specify what showing must be made and does not state how it is to be made because the Task Force recognizes that a wide variety of circumstances apply to the seeking and obtaining of ex parte orders. In some circumstances, there may be proper reasons to justify ex parte relief even if notice could be given, and in those limited instances, a showing of those reasons should be made and reviewed by the court. The more common situation will involve description of the efforts made to give notice. The court may require the information in written or affidavit form, may take oral testimony, or may base the decision on the statements of counsel, either in person or by telephone. The Task Force also believes that if notice to affected parties is deemed unnecessary, the order should state the facts supporting ex parte relief without notice.

Rule 4. Pictures and Voice Recordings

No pictures or voice recordings, except the recording made as the official court record, shall be taken in any courtroom, area of a courthouse where courtrooms are located, or other area designated by order of the chief judge made available in the office of the court administrator in the county, during a trial or hearing of any case or special proceeding incident to a trial or hearing, or in connection with any grand jury proceedings.

This rule shall be superseded by specific rules of the Minnesota Supreme Court relating to use of cameras in the courtroom or use of videotaped recording of proceedings to create the official recording of the case.

(Amended effective January 1, 1994.)

Advisory Committee Comment—1994 Amendments

This rule is derived from the current local rules of three districts.

It appears that this rule is desired by the benches of three districts and it may be useful to have an articulated standard for the guidance of lawyers, litigants, the press, and the public.

The Supreme Court has adopted rules allowing cameras in the courtrooms in limited circumstances, and it is inappropriate to have a written rule that does not accurately state the standards which lawyers are expected to follow. See In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct, No. C7-81-300 (Minn. Sup. Ct. May 22, 1989). The court has ordered an experimental program for videotaped recording of

proceedings for the official record in the Third, Fifth and Seventh Judicial Districts. In re Videotaped Records of Court Proceedings in the Third, Fifth, and Seventh Judicial Districts, No. C4-89-2099 (Minn. Sup. Ct. Nov. 17, 1989) (order). The proposed local rule is intended to allow the local courts to comply with the broader provisions of the Supreme Court Orders, but to prevent unauthorized use of cameras in the courthouse where there is no right to access with cameras.

This is amended in 1994 to make it unnecessary for local courthouses to obtain Supreme Court approval of formal local rules designating areas of courthouses off limits to cameras. The reason for allowing local determination of this issue is the great architectural diversity of Minnesota courthouses and the recognition that the need for changes in the camera-free areas as space use changes, construction or remodeling, or other changes occur. There is no need for formal rulemaking nor Supreme Court approval of these rules. Any order designating areas of a courthouse pursuant to this rule should be posted or available in the court administrator's office. There is no reason for publication of this order so long as it is readily available to members of the press or others interested in this issue. (Amended effective January 1, 1994.)

Rule 5. Appearance by Out-of-State Lawyers

Lawyers duly admitted to practice in the trial courts of any other jurisdiction may appear in any of the courts of this state provided (a) the pleadings are also signed by a lawyer duly admitted to practice in the State of Minnesota, and (b) such lawyer admitted in Minnesota is also present before the court, in chambers or in the courtroom or participates by telephone in any hearing conducted by telephone. In a subsequent appearance in the same action the out-of-state lawyer may, in the discretion of the court, conduct the proceedings without the presence of Minnesota counsel.

Any lawyer appearing pursuant to this rule shall be subject to the disciplinary rules and regulations governing Minnesota lawyers and by applying to appear or appearing in any action shall be subject to the jurisdiction of the Minnesota courts.

Task Force Comment—1991 Adoption

This rule is derived from 3rd Dist. R. 1.

This rule is intended to supplement Minnesota Statutes, section 481.02 (1990) and would supersede the statute to the extent the rule may be inconsistent with it. This rule recognizes and preserves the power and responsibility of the court to determine the proper role to be played by lawyers not admitted to practice in Minnesota.

Rule 6. Form of Pleadings

Rule 6.01 Format

All pleadings or other papers required to be filed shall be double spaced and legibly handwritten, typewritten, or printed on one side on plain unglazed paper of good texture. Every page shall have a top margin of not less than one inch, free from all typewritten, printed, or other written matter. The original papers produced and filed by facsimile transmission as allowed by the Rules of Civil Procedure and in accordance with any supplemental Supreme Court rules or orders shall also be filed.

Rule 6.02 Paper Size

All papers served or filed by any party shall be on standard size 8-1/2 X 11 inch paper.

Rule 6.03 Backings Not Allowed

No pleading, motion, order, or other paper offered to the court administrator for filing shall be backed or otherwise enclosed in a covering. Any papers that cannot be

attached by a single staple in the upper lefthand corner shall be clipped or tied by an alternate means at the upper lefthand corner.

(Former Rule 102 adopted effective January 1, 1992; renumbered effective January 1, 1993.)

Cross Reference: Minn. R. Civ. P. 5.05, 10.

Advisory Committee Comment—1992 Amendments

This rule is based on 4th Dist. R. 1.01 (a) & (b), with changes.

Although the rule permits the filing of handwritten documents, the clearly preferred practice in Minnesota is for typewritten documents. Similarly, commercially printed papers are rarely, if ever, used in Minnesota trial court practice, and the use of printed briefs in appellate practice is discouraged.

All courts in Minnesota converted to use of "letter size" paper in 1982. See Order Mandating 8-1/2 x 11 Inch Size Paper For All Filings in All Courts in the State, Minn. Sup. Ct., Apr. 16, 1982 (no current file number assigned), reprinted in Minn. Rules of Ct. 665 (West pamph. ed. 1992). Papers filed in the appellate courts must also be on letter-sized paper. See Minn. R. Civ. App. P. 132.01, subdivision 1. This rule simply reiterates the requirement for the trial courts.

(Amended effective January 1, 1993.)

Rule 7. Proof of Service

When service has been made before filing, proofs of service shall be affixed to all papers so that the identity of the instrument is not obscured. If a document is filed before service, proof of service shall be filed within 10 days after service is made.

(Former Rule 103 adopted effective January 1, 1992; renumbered effective January 1, 1993; amended effective January 1, 1996.)

Cross Reference: Minn. R. Civ. P. 4.06, 5.04.

Advisory Committee Comments—1995 Amendments

This rule derived from Rule 13 of the Code of Rules for the District Courts.

The second sentence is new, drafted to provide for filing of documents where service is to be made after filing.

The Committee recommends amendment of the rule to require a specific rather than subjective standard for the filing of proof of service. Although the Committee heard requests to change the rule to require that all documents be filed with proof of service attached, the Committee believes that such a rule is neither helpful nor necessary. Such a rule would make it difficult to serve and file documents at the same time, and would probably result in greater problems relating to untimely service and filing. Nonetheless, there appear to be a number of situations where proof of service is not filed for a substantial period of time, resulting in confusion in the courts. The rule is accordingly amended to change the requirement from filing "promptly" after service to "within ten days" after service. The Committee believes this period is more than sufficient for filing a proof of service. The Committee is also sensitive to a potential problem that would arise with a requirement that proof of service accompany documents at the time of filing. The Committee continues to believe that documents, in whatever form, should not be rejected for filing by the court administrators. Rather, documents should be filed as submitted and the court should deal with any deficiencies or irregularities in the documents in an orderly way, having in mind the mandate of Rule 1 of the Minnesota Rules of Civil Procedure that the rules be interpreted to advance the "just, speedy, and inexpensive" determination of every action.

(Amended effective January 1, 1996.)

Rule 8. Interpreters

Rule 8.01 Statewide Roster

The State Court Administrator shall maintain and publish annually a statewide roster of certified and non-certified interpreters which shall include:

(a) **Certified Court Interpreters:** To be included on the Statewide Roster, certified court interpreters must have satisfied all certification requirements pursuant to the Minnesota Supreme Court's Rules on Certification of Interpreters.

(b) **Non-certified Foreign Language Court Interpreters:** To be included on the Statewide Roster, foreign language court interpreters who have not satisfied the requirements of the Minnesota Supreme Court's Rules on Certification of Court Interpreters must have: (1) completed the interpreter orientation program sponsored by the State Court Administrator; (2) filed with the State Court Administrator a written affidavit agreeing to be bound by the Code of Professional Responsibility for Interpreters in the Minnesota State Court System as the same may be amended from time to time; and (3) received a passing score on a written ethics examination administered by the State Court Administrator.

(c) **Non-certified Sign Language Court Interpreters:** To be included on the Stateside Roster, non-certified sign language court interpreters must

(1) have satisfied the three requirements set forth above in Rule 8.01(b);

(2) be a member in good standing with the Registry of Interpreters for the Deaf (RID) or with the National Association of the Deaf (NAD); and,

(3) possess

(i) both a valid Certificate of Transliteration (CT) and a valid Certificate of Interpretation (CI) from RID; or

(ii) a valid Comprehensive Skills Certificate (CSC) from RID; or

(iii) a valid Level 5 certificate from NAD; or

(iv) a valid Certified Deaf Interpreter (CDI) or Certified Deaf Interpreter Provisional (CDIP) certificate from RID; or

(v) another equivalent valid certification approved by the State Court Administrator.

(Added effective January 1, 1996; amended effective January 1, 1998; amended effective March 15, 2002.)

Advisory Committee Comment 1997 Amendment

It is the policy of the state to provide interpreters to litigants and witnesses in civil and criminal proceedings who are handicapped in communication. Minnesota Statutes, sections 611.30 - .32 (1996); Minn. R. Crim. P. 5.01, 15.01, 15.03, 15.11, 21.01, 26.03, 27.04, subd. 2; Minnesota Statutes, section 546.44, subdivision 3 (1996); see also 42 U.S.C. section 12101; 28 C.F.R. Part 35, section 130 (prohibiting discrimination in public services on basis of disability).

To effectuate that policy, the Minnesota Supreme Court has initiated a statewide orientation program of training for court interpreters and promulgated the Rules on Certification of Court Interpreters. Pursuant to Rule 8.01 of the General Rules of Practice for the District Courts, the State Court Administrator has established a statewide roster of court interpreters who have completed the orientation program on the Minnesota court system and court interpreting and who have filed an affidavit attesting that they understand and agree to comply with the Code of Professional Responsibility for Court Interpreters adopted by the Minnesota Supreme Court on September 18, 1995. The creation of the roster is the first step in a process that is being undertaken to ensure the competence of court interpreters. To be listed on the roster, a non-certified court interpreter must attend an orientation course provided or approved by the State Court Administrator. The purpose of the orientation is to provide interpreters with information regarding the Code of Professional Responsibility, the role of interpreters in our courts, skills required of court interpreters,

the legal process, and legal terminology. Merely being listed on the roster does not certify or otherwise guarantee an interpreter's competence.

In 1997, two key changes were made to this rule. First, interpreters are now required to receive a passing score on the ethics examination before they are eligible to be listed on the Statewide Roster. This change was implemented to ensure that court interpreters on the Statewide Roster have a demonstrated knowledge of the Code of Professional Responsibility.

Second, to be eligible to be listed on the Statewide Roster, non-certified sign language court interpreters are required to possess certificates from the Registry of Interpreters for the Deaf (RID), which demonstrate that the interpreter has minimum competency skills in sign language. This change was recommended by the Advisory Committee because of reports to the Committee that courts were hiring sign language interpreters who completed the orientation training, but who were not certified by RID. This practice was troubling because prior to the promulgation of Rule 8, courts generally adopted the practice of using only RID certified sign language interpreters to ensure a minimum level of competency. Unlike most spoken language interpreting fields, the field of sign language interpreting is well established with nationally developed standards for evaluation and certification of sign language interpreters. Because of the long history of RID, its certification program, the availability of RID certified sign language interpreters in Minnesota and the recent incidents when courts have deviated from their general practice of appointing RID certified sign language interpreters, the Advisory Committee determined that it is appropriate and necessary to amend Rule 8 to maintain the current levels of professionalism and competency among non-certified sign language court interpreters.

(Added effective January 1, 1996; amended effective January 1, 1998.)

Rule 8.02 Appointment

(a) Use of Certified Court Interpreter. Whenever an interpreter is required to be appointed by the court, the court shall appoint only a certified court interpreter who is listed on the statewide roster of interpreters established by the State Court Administrator under Rule 8.01, except as provided in Rule 8.02(b), (c) and (d). A certified court interpreter shall be presumed competent to interpret in all court proceedings. The court may, at any time, make further inquiry into the appointment of a particular certified court interpreter. Objections made by a party regarding special circumstances which render the certified court interpreter unqualified to interpret in the proceeding must be made in a timely manner.

(b) Use of Non-certified Court Interpreter on the Statewide Roster. If the court has made diligent efforts to obtain a certified court interpreter as required by Rule 8.02(a) and found none to be available, the court shall appoint a non-certified court interpreter who is otherwise competent and is listed on the Statewide Roster established by the State Court Administrator under Rule 8.01. In determining whether a non-certified court interpreter is competent, the court shall apply the screening standards developed by the State Court Administrator.

(c) Use of Non-certified Foreign Language Court Interpreter not on the Statewide Roster. Only after the court has exhausted the requirements of Rule 8.02(a) and (b) may the court appoint a non-certified foreign language interpreter who is not listed on the Statewide Roster and who is otherwise competent. In determining whether a non-certified foreign language interpreter is competent, the court shall apply the screening standards developed by the State Court Administrator.

(d) Use of Non-certified Sign Language Court Interpreter not on the Statewide Roster. Only after exhausting the requirements of Rule 8.02(a) and (b) may the court appoint a non-certified sign language interpreter(s) not on the Statewide Roster. The court must appoint an interpreter(s) who can establish effective communication and who is (are):

(1) an interpreter who is a member in good standing with RID or NAD who possesses both a valid CT and a valid CI; or a valid CSC from RID; or a valid Level 5 certificate from NAD; or a valid CDI or CDIP certificate; or another equivalent valid

certification approved by the State Court Administrator. If no such interpreter is available,

(2) a team including an interpreter with a valid CDI or CDIP certificate and an interpreter who has a valid CI or a valid CT from RID. If no such interpreters are available, as a last resort,

(3) an interpreter with a valid CI from RID.

(Added effective January 1, 1996; amended effective January 1, 1998; amended effective March 15, 2002.)

Advisory Committee Comment 2002 Amendment

Rule 8.02(a) requires that courts use certified court interpreters. If certified court interpreters are not available or cannot be located, courts should next use only interpreters listed on the statewide roster maintained by the State Court Administrator. Rule 8.02 recognizes, however, that in rare circumstances it will not be possible to appoint an interpreter from the statewide roster. Non-roster interpreters and telephone interpreting services, such as AT & T's Language Lines Service, should be used only as a last resort because of the limitations of such services including the lack of a minimum orientation to the Minnesota Court System and to the requirements of court interpreting. For a detailed discussion of the issues, see *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, chapter 8 (National Center for State Courts, 1995), a copy of which is available from the State Court Administrator's Office.

To avoid unreasonable objections to a certified court interpreter in a proceeding, the rule makes a presumption that the certified court interpreter is competent. However, the rule also recognizes that there are situations when an interpreter may be competent to interpret, but not qualified. Examples of such situations include when an interpreter has a conflict of interest or the user of the interpreter services has unique demands, such as services tailored to a person with minimal language skills, that the interpreter is not as qualified to meet.

Rule 8.02(b) requires that courts make "diligent" efforts to locate a certified court interpreter before appointing a non-certified court interpreter. Because the certification process is still in an early stage and because it is important to ensure that courts use competent interpreters, courts should seek the services of certified court interpreters who are located outside the court's judicial district if none can be found within its own district. In addition, courts should consider modifying the schedule for a matter if there is difficulty locating a certified interpreter for a particular time.

Because the certification program being implemented by the State Court Administrator is still new, interpreters are being certified in only certain languages at this time. The Advisory Committee recognizes that it may be some time before certification is provided for all languages used in our courts. However, the committee feels strongly that for those languages for which certification has been issued, the courts must utilize certified court interpreters to ensure that its interpreters are qualified. If a court uses non-certified court interpreters, court administrators should administer the screening standards prior to hiring an interpreter. However, the presiding judge is still primarily responsible for ensuring the competence and qualifications of the interpreter. A model voir dire to determine the competence and qualifications of an interpreter is set forth in the State Court Administrator's Best Practices Manual on Court Interpreters.

The Supreme Court has received reports that courts do not always comply with Rule 8.02(b)'s requirements that courts make "diligent" efforts to locate a certified court interpreter before appointing a non-certified court interpreter. Apparently there is some confusion about the meaning of "diligent" efforts. To clarify, to satisfy the diligent efforts requirement a court must demonstrate that, after receiving a request for an interpreter, the court made prompt attempts to hire a certified court interpreter. If the court could not find a certified court interpreter within its judicial district, it must show that it attempted to locate a certified interpreter in another judicial district. If no certified interpreter is available, the court must consider modifying the schedule for the matter before resorting to hiring a non-certified court interpreter.

(Added effective January 1, 1996; amended effective January 1, 1998; amended effective March 15, 2002.)

Rule 8.03 Disqualification from Proceeding

A judge may disqualify a court interpreter from a proceeding for good cause. Good cause for disqualification includes, but is not limited to, an interpreter who engages in the following conduct:

- (a) Knowingly and willfully making a false interpretation while serving in a proceeding;
- (b) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
- (c) Failing to follow applicable laws, rules of court, or the Code of Professional Responsibility for Interpreters in the Minnesota State Court System.

(Added effective January 1, 1996; amended effective January 1, 1998.)

Advisory Committee Comment 1995

Interpreters must take an oath or affirmation to make a true interpretation to the best of their ability, to the person handicapped in communication and to officials. Minnesota Statutes, sections 546.44, subdivision 2; 611.33, subdivision 2 (1994). Interpreters cannot disclose privileged information without consent. Minnesota Statutes, sections 546.44, subdivision 4; 611.33, subdivision 4 (1994). These and other requirements are also addressed in the Code of Professional Responsibility for Interpreters in the Minnesota State Court System.

(Added effective January 1, 1996.)

Rule 9. Frivolous Litigation

Rule 9.01 Motion for Order Requiring Security or Imposing Sanctions

Relief under this rule is available in any action or proceeding pending in any court of this state, at any time until final judgment is entered. Upon the motion of any party or on its own initiative and after notice and hearing, the court may, subject to the conditions stated in Rules 9.01 to 9.07, enter an order: (a) requiring the furnishing of security by a frivolous litigant who has requested relief in the form of a claim, or (b) imposing preconditions on a frivolous litigant's service or filing of any new claims, motions or requests. All motions under this rule shall be made separately from other motions or requests, and shall be served as provided in the Rules of Civil Procedure, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged claim, motion, or request is not withdrawn or appropriately corrected.

(Added effective September 1, 1999.)

Rule 9.02 Hearing

(a) **Evidence.** At the hearing upon such motion the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion.

(b) **Factors.** In determining whether to require security or to impose sanctions, the court shall consider the following factors:

- (1) the frequency and number of claims pursued by the frivolous litigant with an adverse result;
- (2) whether there is a reasonable probability that the frivolous litigant will prevail on the claim, motion, or request;
- (3) whether the claim, motion, or request was made for purposes of harassment, delay, or vexatiousness, or otherwise in bad faith;

(4) injury incurred by other litigants prevailing against the frivolous litigant and to the efficient administration of justice as a result of the claim, motion, or request in question;

(5) effectiveness of prior sanctions in deterring the frivolous litigant from pursuing frivolous claims;

(6) the likelihood that requiring security or imposing sanctions will ensure adequate safeguards and provide means to compensate the adverse party;

(7) whether less severe sanctions will sufficiently protect the rights of other litigants, the public, or the courts.

The court may consider any other factors relevant to the determination of whether to require security or impose sanctions.

(c) Findings. If the court determines that a party is a frivolous litigant and that security or sanctions are appropriate, it shall state on the record its reasons supporting that determination. An order requiring security shall only be entered with an express determination that there is no reasonable probability that the litigant will prevail on the claim. An order imposing preconditions on serving or filing new claims, motions, or requests shall only be entered with an express determination that no less severe sanction will sufficiently protect the rights of other litigants, the public, or the courts.

(d) Ruling Not Deemed Determination of Issues. No determination or ruling made by the court upon the motion shall be, or be deemed to be, a determination of any issue in the action or proceeding or of the merits thereof.

(Added effective September 1, 1999.)

Rule 9.03 Failure to Furnish Security

If security is required and not furnished as ordered, the claim(s) subject to the security requirement may be dismissed with or without prejudice as to the offending party.

(Added effective September 1, 1999.)

Rule 9.04 Stay of Proceedings

When a motion pursuant to Rule 9.01 is properly filed prior to trial, the action or proceeding is stayed and the moving party need not plead or respond to discovery or motions, until 10 days after the motion is denied, or if granted, until 10 days after the required security has been furnished and the moving party given written notice thereof. When a motion pursuant to Rule 9.01 is made at any time after commencement of trial, the action or proceeding may be stayed for such period after the denial of the motion or the furnishing of the required security as the court shall determine.

(Added effective September 1, 1999.)

Rule 9.05 Appeal

An order requiring security or imposing sanctions under this rule shall be deemed a final, appealable order. Any appeal under this rule may be taken to the court of appeals as in other civil cases within 60 days after filing of the order to be reviewed.

(Added effective September 1, 1999.)

Rule 9.06 Definitions

As used in this rule, the following terms have the following meanings:

(a) "Claim" means any relief requested in the form of a claim, counterclaim, cross claim, third party claim, or lien filed, served, commenced, maintained, or pending in any federal or state court, including conciliation court.

(b) "Frivolous litigant" means:

(1) A person who, after a claim has been finally determined against the person, repeatedly relitigates or attempts to relitigate either

(i) the validity of the determination against the same party or parties as to whom the claim was finally determined, or

(ii) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same party or parties as to whom the claim was finally determined; or

(2) A person who in any action or proceeding repeatedly serves or files frivolous motions, pleadings, letters, or other papers, conducts unnecessary discovery, or engages in oral or written tactics that are frivolous or intended to cause delay; or

(3) A person who institutes and maintains a claim that is not well grounded in fact and not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law or that is interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigating the claim.

(c) "Security" means either:

(1) an undertaking to assure payment, issued by a surety authorized to issue surety bonds in the State of Minnesota, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a claim instituted, caused to be instituted, or maintained or caused to be maintained by a frivolous litigant or;

(2) cash tendered to and accepted by the court administrator for that purpose.

(Added effective September 1, 1999.)

Rule 9.07 Effect on Other Provisions

Sanctions available under this rule are in addition to sanctions expressly authorized by any other statute or rule, or in the inherent power of the court.

(Added effective September 1, 1999.)

Advisory Committee Comment - 1999 Amendment

This rule is intended to curb frivolous litigation that is seriously burdensome on the courts, parties, and litigants. This rule is intended to apply only in the most egregious circumstances of abuse of the litigation process, and the remedies allowed by the rule can be viewed as drastic. Because of the very serious nature of the sanctions under this rule, courts should be certain that all reasonable efforts have been taken to ensure that affected parties are given notice and an opportunity to be heard. Rule 9.01 also requires that the court enter findings of fact to support any relief ordered under the rule, and this requirement should be given careful attention in the rare case where relief under this rule is necessary.

It is appropriate for the court to tailor the sanction imposed under this rule to the conduct and to limit the sanction to what is necessary to curb the inappropriate conduct of the frivolous litigant. See Cello-Whitney v. Hoover, 769 F. Supp. 1155 (W.D. Wash. 1991).

This rule includes a specific provision relating to the possible appeal of an order for sanctions. The rule provides that an appeal may be taken within 60 days, the same period allowed for appeals from orders and judgment, but specifies that the 60-day period begins to run from entry of the date of filing of the order. This timing mechanism is preferable because the requirement of service of notice of entry may not be workable where only one party may be interested in the appeal or where the order is entered on the court's own initiative. The date of filing can be readily determined, and typically appears on the face of the order or is a matter of record, obviating confusion over the time to appeal.

Rule 10. Tribal Court Orders and Judgments**Rule 10.01 When Tribal Court Orders and Judgments Must Be Given Effect**

(a) **Recognition Mandated by Law.** Where mandated by state or federal statute, orders, judgments, and other judicial acts of the tribal courts of any federally recognized Indian tribe shall be recognized and enforced.

(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.

(Added effective January 1, 2004.)

Rule 10.02 When Recognition of 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.

(b) **Procedure.** The court shall hold such hearing, if any, as it deems necessary under the circumstances.

(Added effective January 1, 2004.)

Advisory Committee Comment - 2003 Adoption

Introduction. Rule 10 is a new rule intended to provide a starting point for enforcing tribal court orders and judgments where recognition is mandated by state or federal law (Rule 10.01), and to establish factors for determining the effect of these adjudications where federal or state statutory law does not do so (Rule 10.02).

The rule applies to all tribal court orders and judgments and does not distinguish between tribal courts located in Minnesota and those sitting in other states. The only limitation on the universe of determinations is that they be from tribal courts of a federally-recognized Indian tribe. These courts are defined in 25 U.S.C. section 450b(e), and a list is published by the Department of the Interior, Bureau of Indian Affairs. See, e.g., 67 FED. REG. 46328 (July 12, 2002).

Tribal court adjudications are not entitled to full faith and credit under the United States Constitution, which provides only for full faith and credit for "public acts, records, and judicial proceedings of every other state." U.S. CONST. Art IV, section 1. But state and federal statutes have conferred the equivalent of full faith and credit status on some tribal adjudications by mandating that they be enforced in state court. Where such full faith and credit is mandatory, a state does not exercise discretion in giving effect to the proper judgments of a sister state. *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 233 (1998) ("A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land.") Through full faith and credit, a sister state's judgment is given *res judicata* effect in all other states. See, e.g., *id.*; *Hansberry v. Lee*, 311 U.S. 32, 42 (1940).

The enforcement in state court of tribal court adjudications that are not entitled to the equivalent of full faith and credit under a specific state or federal statute, is governed by the doctrine of comity. Comity is fundamentally a discretionary doctrine. It is rooted in the court's inherent powers, as was early recognized in *United States jurisprudence in Hilton v. Guyot*, 159 U.S. 113, 163-164 (1895), where the court said: "No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation, as put in force within its territory, whether by executive order, by legislative act, or by judicial decree, shall be allowed to operate within the dominion of another nation, depends upon what our greatest jurists have been content to call 'the comity of nations.'"

This inherent power was recognized in Minnesota in *Traders' Trust Co. v. Davidson*, 146 Minn. 224, 227, 178 N.W. 735, 736 (1920) (citing *Hilton*, 159 U.S. at 227) where the court said: "Effect is given to foreign judgments as a matter of comity and reciprocity, and it has become the rule to give no other or greater effect to the judgment of a foreign court than the country or state whose court rendered it gives to a like judgment of our courts." In *Nicol v. Tanner*, 310 Minn. 68, 75-79, 256 N.W.2d 796, 800-02 (1976) (citing the *Restatement (Second) of Conflicts of Laws* section 98 (1971)), the court further developed the doctrine of comity when it held that the statement in *Traders' Trust Co.* that enforcement required a showing of reciprocity was dictum; that "reciprocity is not a prerequisite to enforcement of a foreign judgment in Minnesota;" and that the default status of a foreign judgment "should not affect the force of the judgment."

Statutory Mandates. Rule 10.01 reflects the normal presumption that courts will adhere to statutory mandates for enforcement of specific tribal court orders or judgments where such a statutory mandate applies. Federal statutes that do provide such mandates include:

1. Violence Against Women Act of 2000, 18 U.S.C. section 2265 (2003) (full faith and credit for certain protection orders).
2. Indian Child Welfare Act, 25 U.S.C. section 1911(d) (2003) ("full faith and credit" for certain custody determinations).
3. Full Faith and Credit for Child Support Orders Act, 28 U.S.C. section 1738B(a) (2003) ("shall enforce" certain child support orders and "shall not seek or make modifications . . . except in accordance with [certain limitations]").

In addition to federal law, the Minnesota Legislature has addressed custody, support, child placement, and orders for protection. The Minnesota Legislature adopted the Uniform

Child Custody Jurisdiction and Enforcement Act, MINN. STAT. sections 518D.101-518D.317 (2002) which: (1) requires recognition and enforcement of certain child custody determinations made by a tribe "under factual circumstances in substantial conformity with the jurisdictional standards of" the Act; and (2) establishes a voluntary registration process for custody determinations with a 20-day period for contesting validity. MINN. STAT. sections 518D.103; 104 (2002) (not applicable to adoption or emergency medical care of child; not applicable to extent ICWA controls). In addition, the Minnesota Legislature has adopted the *Uniform Interstate Family Support Act*, MINN. STAT. sections 518C.101-518C.902 (2002), which provides the procedures for enforcement of support orders from another state ["state" is defined to include an Indian tribe, MINN. STAT. section 518C.101(s)(1) (2002)] with or without registration, and enforcement and modification after registration. The Minnesota Legislature has also adopted the *Minnesota Indian Family Preservation Act*, MINN. STAT. sections 260.751-260.835 (2002), which provides, among other things, that tribal court orders concerning child placement (adoptive and pre-adoptive placement, involuntary foster care placement, termination of parental rights, and status offense placements) shall have the same force and effect as orders of a court of this state. MINN. STAT. section 260.771, subd. 4 (2002).

The facial validity provision in Rule 10.01(b)(2) fills in a gap in state law. MINN. STAT. section 518B.01, subd. 14(e) (2002), authorizes an arrest based on probable cause of violation of tribal court order for protection; although this law includes immunity from civil suit for a peace officer acting in good faith and exercising due care, it does not address facial validity of the order. Similar laws in other jurisdictions address this issue. See, e.g., 720 ILL. COMP. STAT. 5/12-30(a)(2) (Supp. 2003); OKLA. STAT. tit. 22 section 60.9B(1) (2003); WISC. STAT. section 813.128(1) (2001-02).

The Minnesota Legislature has also addressed enforcement of foreign money judgments. The *Minnesota Uniform Foreign Country Money-Judgments Recognition Act*, MINN. STAT. section 548.35 (2002), creates a procedure for filing and enforcing judgments rendered by courts other than those of sister states. Tribal court money judgments fall within the literal scope of this statute and the statutory procedures therefore may guide Minnesota courts considering money judgments. Cf. *Anderson v. Engelke*, 954 P.2d 1106, 1110-11 (Mont. 1998) (dictum) (statute assumed to allow enforcement by state courts outside of tribal lands, but question not decided). In general, money judgments of tribal courts are not entitled to full faith and credit under the Constitution, and the court is allowed a more expansive and discretionary role in deciding what effect they have. Rule 10.02(a) is intended to facilitate that process.

Discretionary Enforcement: Comity. Where no statutory mandate expressly applies, tribal court orders and judgments are subject to the doctrine of comity. Rule 10.02(a) does not create any new or additional powers but only begins to describe in one convenient place the principles that apply to recognition of orders and judgments by comity.

Comity is also an inherently flexible doctrine. A court asked to decide whether to recognize a foreign order can consider whatever aspects of the foreign court proceedings it deems relevant. Thus Rule 10.02(a) does not dictate a single standard for determining the effect of these adjudications in state court. Instead, it identifies some of the factors a Minnesota judge may consider in determining what effect such a determination will be given. Rule 10.02(a) does not attempt to define all of the factors that may be appropriate for consideration by a court charged with determining whether a tribal court determination should be enforced. It does enumerate many of the appropriate factors. It is possible in any given case that one or more of these factors will not apply. For example, reciprocity is not a pre-condition to enforceability generally, *Nicol*, 310 Minn. at 75-79, 256 N.W.2d at 800-02, but may be relevant in some circumstances. Notice of the proceedings and an opportunity to be heard (or the prospect of notice and right to hearing in the case of *ex parte* matters) are fundamental parts of procedural fairness in state and federal courts and are considered basic elements of due process; it is appropriate at least to consider whether the tribal court proceedings extended these rights to the litigants. The issue of whether the tribal court is "of record" may be important to the determination of what the proceedings were in that court. A useful definition of "of record" is contained in the Wisconsin statutes. WIS. STAT. section 806.245(1)(c) (2001-02); see also WIS. STAT. section 806.245(3) (2001-02).

(setting forth requirements for determining whether a court is “of record”). The rule permits the court to inquire into whether the tribal court proceedings offered similar protections to the parties, recognizing that tribal courts may not be required to adhere to the requirements of due process under the federal and state constitutions. Some of the considerations of the rule are drawn from the requirements of the Minnesota Uniform Enforcement of Foreign Judgments Act, MINN. STAT. sections 548.26-.33 (2002). For example, contravention of the state’s public policy is a specific factor for non-recognition of a foreign state’s judgment under MINN. STAT. section 548.35, subd. 4(b)(3) (2002); it is carried forward into Rule 10.02(a)(7). Inconsistency with state public policy is a factor for non-recognition of tribal court orders under other states’ rules. See MICH. R. Civ. P. 2.615(C)(2)(c); N.D. R. CT. 7.2(b)(4).

Hearing. Rule 10.02(b) does not require that a hearing be held on the issues relating to consideration of the effect to be given to a tribal court order or judgment. In some instances, a hearing would serve no useful purpose or would be unnecessary; in others, an evidentiary hearing might be required to resolve contested questions of fact where affidavit or documentary evidence is insufficient. The committee believes the discretion to decide when an evidentiary hearing is held should rest with the trial judge.

(Added effective January 1, 2004.)

TITLE II - RULES GOVERNING CIVIL ACTIONS

PART A - PLEADINGS, PARTIES, AND LAWYERS

Rule 101. Scope of Rules

Rules 101 through 145 shall apply in all civil actions, except those governed by the Rules of Juvenile Procedure.

Rule 102. [Renumbered 6.]

Rule 102.01 [Renumbered 6.01]

Rule 102.02 [Renumbered 6.02]

Rule 102.03 [Renumbered 6.03]

Rule 103. [Renumbered 7.]

Rule 104. Certificate of Representation and Parties

Except as otherwise provided in these rules for specific types of cases and in cases where the action is commenced by filing by operation of statute, a party filing a civil case shall, at the time of filing, notify the court administrator in writing of the name, address, and telephone number of all counsel and unrepresented parties, if known (see Form 104 appended to these rules). If that information is not then known to the filing party, it shall be provided to the court administrator in writing by the filing party within seven days of learning it. Any party impleading additional parties shall provide the same information to the court administrator. The court administrator shall, upon receipt of the completed certificate, notify all parties or their lawyers, if represented by counsel, of the date of filing the action and the file number assigned.

(Amended effective January 1, 1993; amended effective January 1, 1996.)

Cross Reference: Minn. R. Civ. P. 5.04.

Advisory Committee Comments—1995 Amendments

This rule is derived from 7th Dist. R. 7 (eff. Jan. 1, 1990).

The final sentence is derived from 2d Dist. R. 2(b).

This rule formalizes the requirement to provide information about all parties when an action is filed. Its need derives from the commencement of actions by service and the fact

that many pleadings are routinely not filed. The certificate of representation and parties serves a purpose of allowing the court to give notice of assignment of a judge to the case (in those districts making that assignment prior to trial), thereby triggering for all parties the 10-day period to remove an assigned judge under Minn. R. Civ. P. 63.

This requirement now exists in the Fourth and Seventh districts, and seems to be the type of requirement the Task Force seeks to make uniform statewide. The required information may be submitted in typed form or on forms available from the court administrator. A sample form is included in the Appendix of Forms as Form 104.

The first clause of the rule is intended to make it clear that where other rules provide specific requirements relating to initiation of an action for scheduling purposes, those rules govern. For example, Minn. Gen. R. Prac. 144.01, as amended in 1992, states that the Certificate of Representation required under this rule is not required in wrongful death actions following the mere filing of a petition for appointment of the trustee, but is required after the action itself is commenced by service of the summons and papers are filed with the court. Rule 141.02, as amended in 1992, similarly provides that filing of a notice of appeal from a commissioner's award triggers the assignment process requirements in condemnation proceedings. In addition to cases exempted by rule, this rule was amended in 1995 to exempt its application to actions that are commenced by filing. In those cases, it is unfair and inappropriate to place additional burdens on the filing process that are not required by statute, and which might result in the rejection of a document for filing. The consequences of rejecting such a document can be dire. Minnesota Statutes, section 514.11. Cf. *AAA Electric & Neon Service, Inc. v. R. Design Co.*, 364 N.W.2d 869 (Minn. App. 1985) (bar by not meeting filing requirement of action in a timely manner). The Advisory Committee believes it is not appropriate to reject such documents for filing in any event, but this rule now makes it clear that a certificate of representation and parties is not required in actions commenced by filing. For the convenience of the parties, frequently encountered examples of actions that are commenced by filing include mechanic's lien actions, quiet title actions, and actions to register title to real property (Torrens actions). This amendment is intended to remove the requirement that a certificate of representation and parties accompany the complaint for filing. It is not intended to prevent courts from obtaining this information, if still needed, after process has been served and the parties' representation known.

(Amended effective January 1, 1993; amended effective January 1, 1996.)

Rule 105. Withdrawal of Counsel

After a lawyer has appeared for a party in any action, withdrawal will be effective only if written notice of withdrawal is served on all parties who have appeared, or their lawyers if represented by counsel, and is filed with the court administrator if any other paper in the action has been filed. The notice of withdrawal shall include the address and phone number where the party can be served or notified of matters relating to the action.

Withdrawal of counsel does not create any right to continuance of any scheduled trial or hearing.

(Amended effective January 1, 1998.)

Advisory Committee Comment—1997 Amendment

The Task Force believes that uniformity in withdrawal practice and procedure would be desirable. Existing practice varies, in part due to differing rules and in part due to differing practices in the absence of a rule of statewide application. The primary concern upon withdrawal is the continuity of the litigation. Withdrawal should not impose additional burdens on opposing parties. The Task Force considered various rules that would make it more onerous for lawyers to withdraw, but determined those rules are not necessary nor desirable. Consistent with the right of parties to proceed *pro se*, they may continue to represent themselves where their lawyers have withdrawn. This rule establishes the procedure for withdrawal of counsel; it does not itself authorize withdrawal nor does it

change the rules governing a lawyer's right or obligation to withdraw in any way. See Minn. R. Prof. Cond. 1.16. The rule does not affect or lessen a lawyer's obligations to the client upon withdrawal. Those matters are governed by the Minnesota Rules of Professional Conduct. See Minn. R. Prof. Cond. 1.16. Enforcement of those rules is best left to the Lawyers Professional Responsibility Board.

The 1997 amendment removes any suggestion that the notice of withdrawal must be filed with the court if no other documents have been filed by any party. When other documents are filed by any party, however, it should be filed as required by Minn. R. Civ. P. 5.04.

The rule makes it clear that the withdrawal of counsel does not, in itself, justify continuance of any trial or hearing. Of course, withdrawal or substitution of counsel may be part of a set of circumstances justifying the exercise of the court's discretion to grant a continuance.

Rule 106. Hearing on Motion to Remove Judge for Actual Prejudice or Bias

All motions for removal of a judge, referee, or judicial officer, on the basis of actual prejudice or bias shall be heard in the first instance by the judge sought to be removed. If that judge denies the motion, it may subsequently be heard and reconsidered by the Chief Judge of the district or another judge designated by the Chief Judge.

Cross Reference: Minn. R. Civ. P. 63.02.

Task Force Comment—1991 Adoption

Minn. R. Civ. P. 63.02 does not currently specify the procedure to be followed when a motion is made to remove a judge from hearing a case on the grounds of actual bias or prejudice. This rule requires the motion to be heard initially by the judge sought to be removed, and allows the chief judge of the district to reconsider the motion if it is denied by the affected trial judge. The rule does not require the party seeking removal to bring the motion for reconsideration before the chief judge; it merely permits that reconsideration. Bringing the motion for reconsideration should not be construed as any condition precedent to appellate review, whether by appeal or extraordinary writ.

The rule intentionally allows a motion for reconsideration only if the trial court denies the motion for removal. If the motion is granted, it should only be addressed further on appeal.

The procedure for review by the chief judge of the district is not entirely satisfactory. Consideration should be given to facilitating appeal of these issues to the appellate courts, but the Task Force did not directly address this question because of the current limited jurisdiction of the appellate courts to hear appeals of decisions by judges declining to recuse themselves.

Rule 107. Procedure for Challenge for Having a Referee Hear a Matter

Any party objecting to having any referee hear a contested trial, hearing, motion or petition shall serve and file the objection within ten days of notice of the assignment of a referee to hear any aspect of the case, but not later than the commencement of any hearing before a referee.

Cross Reference: Minn. R. Civ. P. 63.

Task Force Comment—1991 Adoption

This rule serves to comply with the requirements of Minnesota Statutes 1990, section 484.70, subdivision 6, which provides:

No referee may hear a contested trial, hearing, motion or petition if a party or lawyer for a party objects in writing to the assignment of the referee to hear the matter. The court shall, by rule, specify the time within which an objection must be filed.

This rule is intended to specify the procedure for filing this notice. The procedure and time limits are derived from the requirements of Minn. R. Civ. P. 63.03 for removing a judge by notice to remove. The Task Force believes it is desirable to use the same procedures, time limits, and time calculation rules for these different types of removal.

This rule should apply to all referee assignments with the exception of referees assigned in Housing Court in Ramsey and Hennepin Counties. These courts are governed by Rule 602 of these rules.

Rule 108. Guardian Ad Litem

Rule 108.01 Role of Guardian

Whenever the court appoints a guardian ad litem, the guardian ad litem shall be furnished copies of all pleadings, documents and reports by the party or agency which served or submitted them. A party or agency submitting, providing or serving reports and documents to or on a party or the court, shall provide copies promptly thereafter to the guardian ad litem.

Upon motion, the court may extend the guardian ad litem's powers as it deems necessary. Except upon a showing of exigent circumstances, the guardian ad litem shall submit any recommendations, in writing, to the parties and to the court at least 10 days prior to any hearing at which such recommendations shall be made. For purposes of all oral communications between a guardian ad litem and the court, the guardian ad litem shall be treated as a party.

Rule 108.02 Guardian Not Lawyer for Any Party

The guardian ad litem shall not be a lawyer for any party to the action.

Cross Reference: Minn. R. Civ. P. 17.

Task Force Comment—1991 Adoption

This rule requires all discussions with a guardian ad litem regarding a case to be made as if the guardian ad litem were a party. It does not prohibit general discussions or briefing of guardians ad litem or potential guardians ad litem from taking place ex parte.

In personal injury actions, neither the lawyer nor any member of the lawyer's firm should be guardian. For the same reason, such a lawyer should not accept a referral fee with respect to the guardianship.

Rule 109. Application for Leave to Answer or Reply

Rule 109.01 Requirement of Affidavit of Merits

Any application for leave to answer or reply after the time limited by statute or rule, or to open a judgment and for leave to answer and defend, shall be accompanied by a copy of the answer or reply, and an affidavit of merits and be served on the opposite party.

Rule 109.02 Contents of Required Affidavits

In an affidavit of merits made by the party, the affiant shall state with particularity the facts relied upon as a defense or claim for relief, that the affiant has fully and fairly stated the facts in the case to counsel, and that the affiant has a good and substantial defense or claim for relief on the merits, as the affiant is advised by counsel after such statement and believes true, and the affiant shall also give the name and address of such counsel.

An affidavit shall also be made by a lawyer who shall state that from the showing of the facts made by the party to the lawyer believes that such party has a good and substantial defense or claim for relief on the merits.

Cross Reference: Minn. R. Civ. P. 4.043, 6.02, 59.03, 59.05, 60.02.

Task Force Comment—1991 Adoption

This rule is derived from Rule 22 of the Code of Rules for the District Courts.

Rule 110. Self-Help Programs

110.01 Authority for Self-Help Programs

A District Court for any county may establish a Self-Help Program to facilitate access to the courts. The purpose of a Self-Help Program is to assist Self-Represented Litigants, within the bounds of this rule, to achieve fair and efficient resolution of their cases, and to minimize the delays and inefficient use of court resources that result from misuse of the court system by litigants who are not represented by lawyers. There is a compelling state interest in resolving cases efficiently and fairly, regardless of the financial resources of the parties.

(Added effective January 1, 2004.)

110.02 Staffing

The Self-Help Program may be staffed by lawyer and non-lawyer personnel, and volunteers under the supervision of regular personnel. Self-Help Personnel act at the direction of the district court judges to further the business of the court.

(Added effective January 1, 2004.)

110.03 Definitions

(a) "Self-Represented Litigant" means any individual who seeks information to file, pursue, or respond to a case without the assistance of a lawyer authorized to practice before the court.

(b) "Self-Help Personnel" means lawyer and non-lawyer personnel and volunteers under the direction of paid staff in a Self-Help Program who are performing the limited role under this rule. "Self-Help Personnel" does not include lawyers who are providing legal services to only one party as part of a legal services program that may operate along side or in conjunction with a Self-Help Program.

(c) "Self-Help Program" means a program of any name established and operating under the authority of this rule.

(Added effective January 1, 2004.)

Rule 110.04 Role of Self-Help Personnel

(a) **Required Acts.** Self-Help Personnel shall

(1) Educate Self-Represented Litigants about available pro bono legal services, low cost legal services, legal aid programs, lawyer referral services and legal resources provided by state and local law libraries;

(2) Encourage Self-Represented Litigants to obtain legal advice;

(3) Provide information about mediation services;

(4) Provide services on the assumption that the information provided by the litigant is true; and

(5) Provide the same services and information to all parties to an action, if requested.

(b) **Permitted, but Not Required, Acts.** Self-Help Personnel may, but are not required to:

(1) provide forms and instructions;

(2) assist in the completion of forms;

(3) provide information about court process, practice and procedure;

(4) offer educational sessions and materials on all case types, such as sessions and materials on marriage dissolution;

(5) answer general questions about family law and other issues and how to proceed with such matters;

(6) explain options within and outside of the court system;

(7) assist in calculating guidelines child support based on information provided by the Self-Represented Litigant;

(8) assist with preparation of court orders under the direction of the court; and

(9) provide other services consistent with the intent of this rule and the direction of the court, including programs in partnership with other agencies and organizations.

(c) Prohibited Acts. Self-Help Personnel may not:

(1) represent litigants in court;

(2) perform legal research for litigants;

(3) deny a litigant's access to the court;

(4) lead litigants to believe that they are representing them as lawyers in any capacity or induce the public to rely on them for personal legal advice;

(5) recommend one option over another option;

(6) offer legal strategy or personalized legal advice;

(7) tell a litigant anything she or he would not repeat in the presence of the opposing party;

(8) investigate facts pertaining to a litigant's case, except to help the litigant obtain public records; or

(9) disclose information in violation of statute, rule, or case law.

(Added effective January 1, 2004.)

110.05 Disclosure

Self-Help Programs shall provide conspicuous notice that:

(a) no attorney-client relationship exists between Self-Help Personnel and Self-Represented Litigants;

(b) communications with Self-Help Personnel are neither privileged nor confidential;

(c) Self-Help Personnel must remain neutral and may provide services to the other party; and

(d) Self-Help Personnel are not responsible for the outcome of the case.

Program materials should advise litigants to consult with their own attorney if they desire personalized advice or strategy, confidential conversations with an attorney, or if they wish to be represented by an attorney in court.

(Added effective January 1, 2004.)

110.06 Unauthorized Practice of Law

The performance of services by Self-Help Personnel in accordance with this rule shall not constitute the unauthorized practice of law.

(Added effective January 1, 2004.)

110.07 No Attorney-Client Privilege or Confidentiality

Except as provided in Rule 110.09, information given by a Self-Represented Litigant to court administration staff or Self-Help Personnel is neither confidential nor privileged. No attorney-client relationship exists between Self-Help Personnel and a Self-Represented Litigant. Notwithstanding the foregoing, Self-Help Personnel who are also lawyers and are permitted to practice law outside the role of Self-Help Personnel

under this rule must abide by all applicable Rules of Professional Conduct regarding confidentiality and conflicts of interest.

(Added effective January 1, 2004.)

110.08 Conflict

Notwithstanding ethics rules that govern attorneys, certified legal interns, and other persons working under the supervision of an attorney, there shall be no conflict of interest when Self-Help Personnel provide services to both parties, provided, however, that Self-Help Personnel who are also lawyers and are permitted to practice law outside the role of Self-Help Personnel under this rule, must abide by all applicable Rules of Professional Conduct regarding conflicts of interest.

(Added effective January 1, 2004.)

110.09 Access to Records

All records made or received in connection with the official business of a Self-Help Program relating to the address, telephone number or residence of a Self-Represented Litigant are not accessible to the public or the other party.

(Added effective January 1, 2004.)

Advisory Committee Comment - 2003 Adoption

Rule 110 is a new rule adopted in 2003 on the recommendation of a pro se implementation committee to facilitate access to and use of the courts by pro se litigants. It is modeled after similar family law provisions in other jurisdictions. See e.g., CA. FAM. CODE sections 10000-100015 (West 2003); FLA. FAM. L. R. P. 12.750 (West 2003); OR. REV. STAT. section 3.428 (2003); WASH. REV. CODE section 26.12.240 (2003); WASH. R. GEN. GR 27 (WEST 2003).

The rule defines and communicates to interested parties the role of Self-Help Personnel. Definition of roles is important because of the potential for confusion. Rule 110.03(b) intentionally limits the definition of Self-Help Personnel to exclude lawyers who provide services to one party, as is commonly done by legal service program attorneys. Because of this definition, Rule 110.07 does not limit the creation of an attorney-client relationship in such attorney-client relationships. Rules 110.07-.08 recognize that Self-Help Personnel who are otherwise engaged in or authorized to engage in the practice of law may have obligations to clients outside the Self-Help Program that can affect their relationships to Self-Represented Litigants within the Self-Help Program.

(Added effective January 1, 2004.)

PART B - SCHEDULING

Rule 111. Scheduling of Cases

Rule 111.01 Scope

The purpose of this rule is to provide a uniform system for scheduling matters for disposition and trial in civil cases, excluding only the following:

- (a) Conciliation court actions and conciliation court appeals where no jury trial is demanded;
- (b) Family court matters governed by Minn. Gen. R. Prac. 301 through 379;
- (c) Public assistance appeals under Minnesota Statutes, section 256.045, subdivision 7;
- (d) Unlawful detainer actions pursuant to Minnesota Statutes, sections 504B.281, et seq.;
- (e) Implied consent proceedings pursuant to Minnesota Statutes, section 169.123;

- (f) Juvenile court proceedings;
- (g) Civil commitment proceedings subject to the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment Act of 1982;
- (h) Probate court proceedings;
- (i) Periodic trust accountings pursuant to Minn. Gen. R. Prac. 417;
- (j) Proceedings under Minnesota Statutes, section 609.748 relating to harassment restraining orders;
- (k) Proceedings for registration of land titles pursuant to Minnesota Statutes, chapter 508;
- (l) Election contests pursuant to Minnesota Statutes, chapter 209; and
- (m) Applications to compel or stay arbitration under Minnesota Statutes, chapter 572.

The court may invoke the procedures of this rule in any action where not otherwise required.

(Amended effective January 1, 1993; amended effective January 1, 1994; amended effective January 1, 2000; amended effective September 5, 2001.)

Advisory Committee Comment—1999 Amendments

Rule 111.01(d) is amended in 1999 to reflect the fact that Minnesota Statutes, sections 566.01, et seq. were replaced by section 504B.281. This change is not intended to have any substantive effect other than to correct the statutory reference.

(Added effective January 1, 2000.)

Rule 111.02 The Party's Informational Statement

Within 60 days after an action has been filed, each party shall submit, on a form to be available from the court (see Form 111.02 appended to these rules), the information needed by the court to manage and schedule the case. The information provided shall include:

- (a) The status of service of the action;
- (b) Whether the statement is jointly prepared;
- (c) Description of case;
- (d) Whether a jury trial is requested or waived;
- (e) Discovery contemplated and estimated completion date;
- (f) Whether assignment to an expedited, standard, or complex track is requested;
- (g) The estimated trial time;
- (h) Any proposals for adding additional parties;
- (i) Other pertinent or unusual information that may affect the scheduling or completion of pretrial proceedings;
- (j) Recommended alternative dispute resolution process, the timing of the process, the identity of the neutral selected by the parties or, if the neutral has not yet been selected, the deadline for selection of the neutral. If ADR is believed to be inappropriate, a description of the reasons supporting this conclusion; and
- (k) A proposal for establishing any of the deadlines or dates to be included in a scheduling order pursuant to Minn. Gen. R. Prac. 111.03.

(Amended effective July 1, 1994, and shall supersede Second Judicial District Local Rules 5 and 25 and Fourth Judicial District Local Rule 5 to the extent inconsistent therewith.)

Rule 111.03 Scheduling Order

(a) **When issued.** No sooner than 60 days and no longer than 90 days after an action has been filed, the court shall enter its scheduling order. The court may issue the

order after either a telephone or in-court conference, or without a conference or hearing if none is needed.

(b) **Contents.** The scheduling order shall provide for alternative dispute resolution as required by Rule 114.04(c) and shall establish a date for the completion of discovery. The order may also establish any of the following:

(1) Deadlines for joining additional parties, whether by amendment or third-party practice;

(2) Deadlines for bringing nondispositive or dispositive motions;

(3) Deadlines or specific dates for submitting particular issues to the court for consideration;

(4) A deadline for completing any independent physical, mental or blood examination pursuant to Minn. R. Civ. P. 35;

(5) A date for a formal discovery conference pursuant to Minn. R. Civ. P. 26.06, a pretrial conference or conferences pursuant to Minn. R. Civ. P. 16, or a further scheduling conference.

(6) Deadlines for filing any pretrial submissions, including proposed instructions, verdicts, or findings of fact, witness lists, exhibits lists, statements of the case or any similar documents;

(7) Whether the case is a jury trial, or court trial if a jury has been waived by all parties;

(8) A date for submission of a Joint Statement of the Case pursuant to Minn. Gen. R. Prac. 112; or

(9) A trial date.

(Amended effective July 1, 1994, and shall supersede Second Judicial District Local Rules 5 and 25 and Fourth Judicial District Local Rule 5 to the extent inconsistent therewith.)

Rule 111.04 Amendment

A scheduling order pursuant to this rule may be amended at a pretrial conference or upon motion for good cause shown. Except in unusual circumstances, a motion to extend deadlines under a scheduling order shall be made before the expiration of the deadline. The court may issue more than one scheduling order.

Cross Reference: Minn. R. Civ. P. 16, 26.06, 35, 36, 38; Minn. Civ. Trialbook, section 5.

Advisory Committee Comment—1994 Amendments

This rule is new. This rule is intended to establish a uniform, mandatory practice of dealing with scheduling in every case by some court action. The rule does not establish, however, a single means of complying with the scheduling requirement nor does it set any rigid or uniform schedules. In certain instances, other rules establish the event giving rise to the requirement that the scheduling procedures be followed. See, e.g., Rule 141. (condemnation scheduling triggered by appeal of commissioner's award); 144.01 (wrongful death scheduling triggered by filing paper in wrongful death action, not proceedings for appointment of trustee). Because applications to compel or stay arbitrations are, by statute, authorized to be handled by the District Court in a summary matter and without the commencement of a separate action, it is appropriate that they be exempted from the formal case scheduling requirements of Rule 111.

Although the rule allows parties to submit scheduling information separately, this information may also be submitted jointly and required to be submitted jointly. In many cases, the efficient handling of the case may be fostered by the parties meeting to discuss scheduling issues and submitting a joint statement.

The rule contemplates establishment of a separate deadline for completion of an independent medical examination because the Task Force believes that it is frequently

desirable to allow such an examination to take place after the conclusion of other discovery. The rule does not create any specific schedule for independent medical examinations, but allows, and encourages, the court to consider this question separately. The timing of these examinations is best not handled by rigid schedule, but rather, by the exercise of judgment on the part of the trial judge based upon the views of the lawyers, any medical information bearing on timing and the status of other discovery, as well as the specific factors set forth in Minn. R. Civ. P. 35. The Task Force considered a new rule expressly to exempt the use of requests for admissions pursuant to Minn. R. Civ. P. 36 from discovery completion deadlines in the ordinary case. The Task Force determined that a separate rule exempting requests for admissions from discovery deadlines in all cases was not necessary, but encourages use of extended deadlines for requests for admissions in most cases. The primary function served by these requests is not discovery, but the narrowing of issues, and their use is often most valuable at the close of discovery. See R. Haydock & D. Herr, Discovery Practice section 7.2 (2d ed. 1988). Because requests for admissions serve an important purpose of narrowing the issues for trial and resolving evidentiary issues relating to trial, it is often desirable to allow use of these requests after the close of other discovery. (Amended effective January 1, 1993; amended effective January 1, 1994.)

Rule 112. Joint Statement of the Case

Rule 112.01 When Required

As a case progresses, the court may find it advisable to implement the scheduling order and procedures of Minn. Gen. R. Prac. 111 by requiring the parties to report on the status of the case. This report shall be made in the form entitled Joint Statement of the Case (see Form 112.01 appended to these rules). The court may also choose to direct the filing of separate statements of the case. If the parties are directed to file a joint statement of the case, the plaintiff shall initiate and schedule the meeting and shall be responsible for filing the Joint Statement of the Case within these time limits. If the plaintiff is unable to obtain the cooperation, after genuine efforts, of the other parties in preparing a Joint Statement of the Case, the plaintiff may file a separate statement together with an affidavit setting forth the efforts made and reasons why a joint statement could not be filed.

(Amended effective January 1, 1994.)

Rule 112.02 Contents

The Joint Statement of the Case shall contain the following information to the extent applicable:

- (a) A statement that all parties have been served, that the case is at issue, and that all parties have joined in the filing of the Statement of the Case;
- (b) An estimated trial time;
- (c) Whether a jury trial has been requested, and if so, by which party;
- (d) Counsels' opinion whether the case should be handled as an expedited, standard, or complex case (determination to be made by the court);
- (e) A concise statement of the case indicating the facts that Plaintiff(s) intend to prove and the legal basis for all claims;
- (f) A concise statement of the case indicating the facts that Defendant(s) intend to prove and the legal basis for all defenses and counterclaims; and
- (g) Names and addresses of all witnesses known to the lawyer or client who may be called at the trial by each party, including expert witnesses and the particular area of expertise each expert will be addressing.

Rule 112.03 Contents—Personal Injury Actions

In cases involving personal injury, the Joint Statement of the Case shall also include a statement by each claimant, whether by complaint or counterclaim, setting forth the following:

(a) A detailed description of claimed injuries, including claims of permanent injury. If permanent injuries are claimed, the name of the doctor or doctors who will so testify;

(b) An itemized list of special damages to date including, but not limited to, auto vehicle damage and method of proof thereof; hospital bills, x-ray charges, and other doctor and medical bills to date; loss of earnings to date fully itemized; and

(c) Whether parties will exchange medical reports (See Minn. R. Civ. P. 35.04).

Rule 112.04 Contents—Vehicle Accidents

In cases involving vehicle accidents, the Joint Statement shall also include the following:

(a) A description of vehicles and other instrumentalities involved with information as to ownership or other relevant facts; and

(b) Name of insurance carriers involved, if any.

Rule 112.05 Hearing

If no Joint Statement has been timely filed, the court may set the matter for hearing.

Cross Reference: Minn. R. Civ. P. 16, 35.04; Minn. Civ. Trialbook, section 5.

Advisory Committee Comment—1994 Amendments

This rule is new. The procedures implemented by this rule supplement the procedures of Rule 111.

The rule does not require that a Joint Statement of the Case be used. The court can direct the parties to file separate statements, although the same format should be followed for such separate statements of the case.

The requirement that the parties confer to prepare a statement does not require a face-to-face meeting; the conference can be by telephone if that is suited to the needs of the particular case.

The final sentence of Rule 112.01 is added to provide a mechanism for the plaintiff ordered to file a Joint Statement of the Case but unable to obtain cooperation of the opposing parties. Although the rule as originally drafted did not place an undue burden on the plaintiff, the trial courts have occasionally done so when the plaintiff's opposing parties have thwarted the preparation of the Statement of the Case and prevented its filing. The amendment allows the plaintiff to proceed individually in that circumstance.

(Amended effective January 1, 1994.)

Rule 113. Assignment of Case(s) to a Single Judge

Rule 113.01 Request for Assignment of a Single Case to a Single Judge

(a) In any case that the court or parties believe is likely to be complex, or where other reasons of efficiency or the interests of justice dictate, the chief judge of the district or the chief judge's designee may order that all pretrial and trial proceedings shall be heard before a single judge. The court may enter such an order at any time on its own initiative, in response to a suggestion in a party's informational statement filed under Rule 111, or on the motion of any party, and shall enter such an order when the requirements of Rule 113.01(b) have been met. The motion shall comply with these rules and shall be supported by affidavit(s). In any case assigned to a single judge pursuant to this Rule that judge shall actively use enhanced judicial management techniques, including, but not limited to, the setting of a firm trial date, establishment of a discovery cut off date, and periodic case conferences.

(b) Grounds. Unless the court finds that court management of the claims and/or issues involved has become routine or that the interests of justice require otherwise, the

court shall order that all pretrial and trial proceedings shall be heard before a single judge upon a showing that the action is likely to involve one or more of the following:

- (1) numerous pretrial motions raising difficult or novel legal issues that will be time consuming to resolve;
- (2) management of a large number of witnesses or substantial amount of documentary evidence;
- (3) management of a large number of separately represented parties;
- (4) the opportunity to coordinate with related actions pending in another court;
- (5) substantial post-judgment judicial supervision.

(Added effective July 1, 1994; amended effective March 1, 2001.)

Rule 113.02 Consolidation of Cases Within a Judicial District

A motion for assignment of two or more cases pending within a single judicial district to a single judge shall be made to the chief judge of the district in which the cases are pending, or the chief judge's designee.

(Added effective July 1, 1994; amended effective March 1, 2001.)

Rule 113.03 Consolidation of Cases in More Than One District

When two or more cases pending in more than one judicial district involve one or more common questions of fact or are otherwise related cases in which there is a special need for or desirability of central or coordinated judicial management, a motion by a party or a court's request for assignment of the cases to a single judge may be made to the chief justice of the supreme court. A copy of the motion shall be served on the chief judge of each district in which such an action is pending. When such a motion is made, the chief justice may, after consultation with the chief judges of the affected districts and the state court administrator, assign the cases to a judge in one of the districts in which any of the cases is pending or in any other district. If the motion is to be granted, in selecting a judge the chief justice may consider, among other things, the scope of the cases and their possible impact on judicial resources, the availability of adequate judicial resources in the affected districts, and the ability, interests, training and experience of the available judges. As necessary, the chief justice may assign an alternate or back-up judge or judges to assist in the management and disposition of the cases. The assigned judge may refer any case to the chief judge of the district in which the case was pending for trial before a judge of that district selected by the chief judge.

(Added effective July 1, 1994; amended effective March 1, 2001.)

Advisory Committee Comment—2000 Amendments

Rule 113.01 applies to assignment of a single case within a judicial district or county that does not already use a so-called block assignment system whereby cases are routinely assigned to the same judge for all pretrial and trial proceedings. Although parties can request a single-judge assignment in the informational statement under Rule 111, this rule contemplates a formal motion with facts presented supporting the request in the form of sworn testimony. The grounds for the motion in Rule 113.01(b) were derived from rules 1800-1811 of the California Special Rules for Trial Courts, Div. V, Complex Cases. If the court finds that management of the claims or issues has become routine, the matter would not rise to the level of requiring assignment to a single judge. A motion to certify a class, for example, might be routine in terms of court management. Once a class has been certified and the matter becomes a class action, however, the complexity may rise to the level that requires a single judge assignment. Under Rule 113.01(a), the motion is to be made to the chief judge (or his or her designee) of the district in which the case is pending.

Rule 113.02 recognizes that motions for consolidation of cases within a single judicial district may be heard by the chief judge of the district or his or her designee.

Rule 113.03 is new, and is intended merely to establish a formal procedure for requesting the chief justice to exercise the power to assign multiple cases in different districts to a single judge when the interests of justice dictate. The power to assign cases has been recognized by the supreme court in a few decisions over the past decade or so. See, e.g., *In re Minnesota Vitamin Antitrust Litigation*, 606 N.W.2d 446 (Minn. 2000); *In re Minnesota Silicone Implant Litigation*, 503 N.W.2d 472 (Minn. 1993); *In re Minnesota L-tryptophan Litigation*, No. C0-91-706 (Minn. Sup. Ct., Apr. 24, 1991); *In re Minnesota Asbestos Litigation*, No. C4-87-2406 (Minn. Sup. Ct., Dec. 15, 1987). The power is derived from the inherent power of the court and specific statutory recognition of that power in Minnesota Statutes, sections 480.16 & 2.724 (1998). The rule is intended to establish a procedure for seeking consideration of transfer by the chief justice. The procedure contemplates notice to interested parties and consultation with the affected judges so that the sound administration of the cases is not compromised. Transfer of cases for coordinated pretrial proceedings is an established practice in the federal court system under 28 U.S.C. section 1407. Although this rule is not as complex as its federal counterpart, its purpose is largely the same - to facilitate the efficient and fair handling of multiple cases. Practice under the federal statute has worked well, and is one of the most important tools of complex case management in the federal courts. See generally DAVID F. HERR, *MULTIDISTRICT LITIGATION: HANDLING CASES BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION* (1986 & Supp. 1996). A companion change is made to MINN. R. CIV. P. 63.03, making it clear that when a judge is assigned by order of the chief justice pursuant to this rule that the judge so appointed may not be removed peremptorily under Rule 63 or the statutory restatement of the removal power contained in Minnesota Statutes, section 542.16 (1998).

(Added effective March 1, 2001.)

Rule 114. Alternative Dispute Resolution

NOTE: Rule 114 is added effective July 1, 1994, and shall supersede Second Judicial District Local Rules 5 and 25 and Fourth Judicial District Local Rule 5 to the extent inconsistent therewith.

Rule 114.01 Applicability

All civil cases are subject to Alternative Dispute Resolution (ADR) processes, except for those actions enumerated in Minnesota Statutes, section 484.76 and Rules 111.01 and 310.01 of these rules.

(Added effective July 1, 1994; amended effective July 1, 1997.)

Advisory Committee Comment—1996 Amendment

This change incorporates the limitations on use of ADR in family law matters contained in Minn. Gen. R. Prac. 310.01 as amended by these amendments. The committee believes it is desirable to have the limitations on use of ADR included within the series of rules dealing with family law, and it is necessary that it be included here as well.

(Added effective July 1, 1997.)

Rule 114.02 Definitions

The following terms shall have the meanings set forth in this rule in construing these rules and applying them to court-affiliated ADR programs.

(a) ADR Processes

Adjudicative Processes

(1) Arbitration: A forum in which each party and its counsel present its position before a neutral third party, who renders a specific award. If the parties stipulate in advance, the award is binding and is enforceable in the same manner as any contractual obligation. If the parties do not stipulate that the award is binding, the award is not binding and a request for trial de novo may be made.

(2) Consensual Special Magistrate: A forum in which a dispute is presented to a neutral third party in the same manner as a civil lawsuit is presented to a judge. This process is binding and includes the right of appeal.

(3) Moderated Settlement Conference: A forum in which each party and their counsel present their position before a panel of neutral third parties. The panel may issue a non-binding advisory opinion regarding liability, damages, or both.

(4) Summary Jury Trial: A forum in which each party and their counsel present a summary of their position before a panel of jurors. The number of jurors on the panel is six unless the parties agree otherwise. The panel may issue a non-binding advisory opinion regarding liability, damages, or both.

Evaluative Processes

(5) Early Neutral Evaluation (ENE): A forum in which attorneys present the core of the dispute to a neutral evaluator in the presence of the parties. This occurs after the case is filed but before discovery is conducted. The neutral then gives a candid assessment of the strengths and weaknesses of the case. If settlement does not result, the neutral helps narrow the dispute and suggests guidelines for managing discovery.

(6) Neutral Fact Finding: A forum in which a dispute, frequently one involving complex or technical issues, is investigated and analyzed by an agreed-upon neutral who issues findings and a non-binding report or recommendation.

Facilitative Processes

(7) Mediation: A forum in which a neutral third party facilitates communication between parties to promote settlement. A mediator may not impose his or her own judgment on the issues for that of the parties.

Hybrid Processes

(8) Mini-Trial: A forum in which each party and their counsel present their opinion, either before a selected representative for each party, before a neutral third party, or both to define the issues and develop a basis for realistic settlement negotiations. A neutral third party may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding unless the parties agree that it is binding and enter into a written settlement agreement.

(9) Mediation-Arbitration (Med-arb): A hybrid of mediation and arbitration in which the parties initially mediate their disputes; but if they reach impasse, they arbitrate the deadlocked issues.

(10) Other: Parties may by agreement create an ADR process. They shall explain their process in the Informational Statement.

(b) Neutral

A “neutral” is an individual or organization who provides an ADR process. A “qualified neutral” is an individual or organization included on the State Court Administrator’s roster as provided in Rule 114.12. An individual neutral must have completed the training and continuing education requirements provided in Rule 114.13. An individual neutral provided by an organization also must meet the training and continuing education requirements of Rule 114.13. Neutral fact-finders selected by the parties for their expertise need not undergo training nor be on the State Court Administrator’s roster.

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective August 31, 1998.)

Implementation Committee Comments—1993

The definitions of ADR processes that were set forth in the 1990 report of the joint Task Force have been used. No special educational background or professional standing (e.g., licensed attorney) is required of neutrals.

Advisory Committee Comment—1996 Amendment

The amendments to this rule are limited, but important. In subdivision (a) (10) is new, and makes it explicit that parties may create an ADR process other than those enumerated in the rule. This can be either a "standard" process not defined in the rule, or a truly novel process not otherwise defined or used. This rule specifically is necessary where the parties may agree to a binding process that the courts could not otherwise impose on the parties. For example, the parties can agree to "baseball arbitration" where each party makes a best offer which is submitted to an arbitrator who has authority to select one of the offers as fairest, but can make no other decision. Another example is the Divorce with Dignity Program established in the Fourth Judicial District, in which the parties and the judge agree to attempt to resolve disputed issues through negotiation and use of impartial experts, and the judge determines unresolved preliminary matters by telephone conference call and unresolved dispositive matters by written submissions.

The individual ADR processes are grouped in the new definitions as "adjudicative," "evaluative," "facilitative," and "hybrid." These collective terms are important in the rule, as they are used in other parts of the rule. The group definitions are useful because many of the references elsewhere in the rules are intended to cover broad groups of ADR processes rather than a single process, and because the broader grouping avoids issues of precise definition. The distinction is particularly significant because of the different training requirements under Rule 114.13.

(Added effective July 1, 1997.)

Rule 114.03 Notice of ADR Processes

(a) Notice. Upon receipt of the completed Certificate of Representation and Parties required by Rule 104 of these rules, the court administrator shall provide the attorneys of record and any unrepresented parties with information about ADR processes available to the county and the availability of a list of neutrals who provide ADR services in that county.

(b) Duty to Advise Clients of ADR Processes. Attorneys shall provide clients with the ADR information.

(Added effective July 1, 1994; amended effective July 1, 1997.)

Implementation Committee Comments—1993

This rule is designed to provide attorneys and parties to a dispute with information on the efficacy and availability of ADR processes. Court personnel are in the best position to provide this information. A brochure has been developed, which can be used by court administrators to give information about ADR processes to attorneys and parties. The State Court Administrator's Office will maintain a master list of all qualified neutrals, and will update the list and distribute it annually to court administrators.

Advisory Committee Comment—1996 Amendment

This change is made only to remove an ambiguity in the phrasing of the rule and to add titles to the subdivisions. Neither change is intended to affect the meaning or interpretation of the rule.

(Added effective July 1, 1997.)

Rule 114.04 Selection of ADR Process

(a) Conference. After the filing of an action, the parties shall promptly confer regarding case management issues, including the selection and timing of the ADR process. Following this conference ADR information shall be included in the informational statement required by Rule 111.02 and 304.02.

In family law matters, the parties need not meet and confer where one of the parties claims to be the victim of domestic abuse by the other party or where the court determines there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse by the other party. In such cases, both parties shall complete and submit form 9A or 9B, specifying the form(s) of ADR the parties individually prefer, not what is agreed upon.

(b) Court Involvement. If the parties cannot agree on the appropriate ADR process, the timing of the process, or the selection of neutral, or if the court does not approve the parties' agreement, the court shall schedule a telephone or in-court conference of the attorneys and any unrepresented parties within thirty days after the due date for filing informational statements pursuant to Rule 111.02 or 304.02 to discuss ADR and other scheduling and case management issues. Except as otherwise provided in Minnesota Statutes, section 604.11 or Rule 310.01, if no agreement on the ADR process is reached or if the court disagrees with the process selected, the court may order the parties to utilize one of the non-binding processes, or may find that ADR is not appropriate; provided that any ADR process shall not be approved where it amounts to a sanction on a non-moving party.

(c) Scheduling Order. The court's Scheduling Order pursuant to Rule 111.03 or 304.03 shall designate the ADR process selected, the deadline for completing the procedure, and the name of the neutral selected or the deadline for the selection of the neutral. If ADR is determined to be inappropriate, the Scheduling Order pursuant to Rule 111.03 or 304.03 shall so indicate.

(d) Post-Decree Family Law Matters. Post-decree matters in family law are subject to ADR under this rule. ADR may be ordered following the conference required by Rule 303.03(c).

(e) Other Court Order for ADR. Except as otherwise provided in Rule 310.01 or Minnesota Statutes, section 604.11, upon motion by any party, or on its own initiative, the court may, at any time, issue an order for any non-binding ADR process.

(Added effective July 1, 1994; amended effective January 1, 1996; amended effective July 1, 1997.)

Implementation Committee Comments—1993

Early case evaluation and referral to an appropriate ADR process has proven to facilitate speedy resolution of disputes, and should be encouraged whenever possible. Mandatory referral to a non-binding ADR process may result if the judge makes an informed decision despite the preference of one or more parties to avoid ADR. The judge shall not order the parties to use more than one non-binding ADR process. Seriatim use of ADR processes, unless desired by the parties, is inappropriate. The judge's authority to order mandatory ADR processes should be exercised only after careful consideration of the likelihood that mandatory ADR in specific cases will result in voluntary settlement.

Advisory Committee Comments—1995 Amendments

Rule 114.04 is amended to make explicit what was implicit before. The rule mandates a telephone or in-court conference if the parties cannot agree on an ADR process. The primary purpose of that conference is to resolve the disagreement on ADR, and the rule now expressly says that. The court can, and usually will, discuss other scheduling and case management issues at the same time. The court's action following the conference required by this rule may be embodied in a scheduling order entered pursuant to Rule 111.03 of these rules.

(Added effective January 1, 1996.)

Advisory Committee Comment—1996 Amendment

The changes to this rule are made to incorporate Rule 114's expanded applicability to family law matters. The rule adopts the procedures heretofore followed for ADR in other civil cases. The beginning point of the process is the informational statement, used under either Rule 111.02 or 304.02. The rule encourages the parties to approach ADR in all matters by conferring and agreeing on an ADR method that best suits the need of the case. This procedure recognizes that ADR works best when the parties agree to its use and as many details about its use as possible.

Subdivision (a) requires a conference regarding ADR in civil actions and after commencement of family law proceedings. In family cases seeking post-decree relief, ADR must be considered in the meeting required by Rule 303.03(c). Cases involving domestic abuse are expressly exempted from the ADR meet-and-confer requirement and courts should accommodate implementing ADR in these cases without requiring a meeting nor compromising a party's right to choose an ADR process and neutral.

The rule is not intended to discourage settlement efforts in any action. In cases where any party has been, or claims to have been, a victim of domestic violence, however, courts need to be especially cautious. Facilitative processes, particularly mediation, are especially prone to abuse since they place the parties in direct contact and may encourage them to compromise their rights in situations where their independent decision-making capacity is limited. The rule accordingly prohibits their use where those concerns are present.

(Added effective July 1, 1997.)

Rule 114.05 Selection of Neutral

(a) Court Appointment. If the parties are unable to agree on a neutral, or the date upon which the neutral will be selected, the court shall appoint the neutral at the time of the issuance of the scheduling order required by Rule 111.03 or 304.03. The order may establish a deadline for the completion of the ADR process.

(b) Exception from Qualification. In appropriate circumstances, the court, upon agreement of the parties, may appoint a neutral who does not qualify under Rule 114.12 of these Rules, if the appointment is based on legal or other professional training or experience. This section does not apply when mediation or med-arb is chosen as the dispute resolution process.

(c) Removal. Any party or the party's attorney may file with the court administrator within 10 days of notice of the appointment of the qualified neutral and serve on the opposing party a notice to remove. Upon receipt of the notice to remove the court administrator shall immediately assign another neutral. After a party has once disqualified a neutral as a matter of right, a substitute neutral may be disqualified by the party only by making an affirmative showing of prejudice to the chief judge or his or her designee.

(d) Availability of Child Custody Investigator. A neutral serving in a family law matter shall not conduct a custody investigation, unless the parties agree in writing executed after the termination of mediation, that the neutral shall conduct the investigation or unless there is no other person reasonably available to conduct the investigation or evaluation. Where the neutral is also the sole investigator for a county agency charged with making recommendations to the court regarding child custody and visitation, the court administrator shall make all reasonable attempts to obtain reciprocal services from an adjacent county. Where such reciprocity is possible, another person or agency is "reasonably available."

(Added effective July 1, 1994; amended effective July 1, 1997.)

Implementation Committee Comments—1993

Parties should consult the statewide roster for information on the educational background and relevant training and experience of the proposed neutrals. It is important that

the neutrals' qualifications be provided to the parties so that the parties may make an informed choice. Unique aspects of a dispute and the preference of the parties may require special qualifications by the neutral.

Parties should have the ability, within reason, to choose a neutral with special expertise or experience in the subject matter of the dispute, even if they do not qualify under Rule 114.12, though it is anticipated that this will occur infrequently. Parties to mediation and med-arb processes must appoint an individual who qualifies under Rule 114.12.

Advisory Committee Comment—1996 Amendment

This rule is amended only to provide for the expanded applicability of Rule 114 to family law matters. The rule also now explicitly permits the court to establish a deadline for completion of a court-annexed ADR process. This change is intended only to make explicit a power courts have had and have frequently exercised without an explicit rule.

Rule 114.05(d) is derived from existing Rule 310.08. Although it is clearly not generally desirable to have a neutral subsequently serve as child custody investigator, in some instances it is necessary. The circumstances where this occurs are, and should be, limited, and are defined in the rule. Where other alternatives exist in a county and for an individual case, a neutral should not serve as child custody investigator.

(Added effective July 1, 1997.)

Rule 114.06 Time and Place of Proceedings

(a) Notice. The court shall send a copy of its order appointing the neutral to the neutral.

(b) Scheduling. Upon receipt of the court's order, the neutral shall promptly schedule the ADR process in accordance with the scheduling order and inform the parties of the date. ADR processes shall be held at a time and place set by the neutral, unless otherwise ordered by the court.

(c) Final disposition. If the case is settled through an ADR process, the attorneys shall complete the appropriate court documents to bring the case to a final disposition.

(Added effective July 1, 1994; amended effective July 1, 1997.)

Implementation Committee Comments—1993

The neutral will schedule the ADR process date unless, the parties agree on a date within the time frame contained in the scheduling order. If the neutral is selected at the time of scheduling order, such order can serve as the court order appointing the neutral. In scheduling the ADR process the neutral will attempt to accommodate the parties' schedules.

Advisory Committee Comment—1996 Amendment

The only changes to this rule are the inclusion of titles to the subparagraphs. This amendment is not intended to affect the meaning or interpretation of the rule, but is included to make the rule easier to use.

(Added effective July 1, 1997.)

Rule 114.07 Attendance at ADR Proceedings

(a) Privacy. Non-binding ADR processes are not open to the public except with the consent of all parties.

(b) Attendance. The attorneys who will try the case may be required to attend ADR proceedings.

(c) Attendance at Facilitative Sessions. Facilitative processes aimed at settlement of the case, such as mediation, mini-trial, or med-arb, shall be attended by individuals with the authority to settle the case, unless otherwise directed by the court.

(d) Attendance at Adjudicative Sessions. Adjudicative processes aimed at reaching a decision in the case, such as arbitration, need not be attended by individuals with authority to settle the case, as long as such individuals are reasonably accessible, unless otherwise directed by the court.

(c) Sanctions. The court may impose sanctions for failure to attend a scheduled ADR process only if this rule is violated.

(Added effective July 1, 1994; amended effective July 1, 1997.)

Implementation Committee Comments—1993

Effective and efficient use of an ADR process depends upon the participation of appropriate individuals in the process. Attendance by attorneys facilitates discussions with clients about their case. Attendance of individuals with authority to settle the case is essential where a settlement may be reached during the process. In processes where a decision is made by the neutral, individuals with authority to settle need only be readily accessible for review of the decision.

Advisory Committee Comment—1996 Amendment

This rule is amended only to incorporate the collective definitions now incorporated in Rule 114.02. This change is not intended to create any significant difference in the requirements for attendance at ADR sessions.

(Added effective July 1, 1997.)

Rule 114.08 Confidentiality

(a) Evidence. Without the consent of all parties and an order of the court, or except as provided in Rule 114.09(e)(4), no evidence that there has been an ADR proceeding or any fact concerning the proceeding may be admitted in a trial de novo or in any subsequent proceeding involving any of the issues or parties to the proceeding.

(b) Inadmissibility. Statements made and documents produced in non-binding ADR processes which are not otherwise discoverable are not subject to discovery or other disclosure and are not admissible into evidence for any purpose at the trial, including impeachment, except as provided in paragraph (d).

(c) Adjudicative Evidence. Evidence in consensual special master proceedings, binding arbitration, or in non-binding arbitration after the period for a demand for trial expires, may be used in subsequent proceedings for any purpose for which it is admissible under the rules of evidence.

(d) Sworn Testimony. Sworn testimony in a summary jury trial may be used in subsequent proceedings for any purpose for which it is admissible under the rules of evidence.

(e) Records of Neutral. Notes, records, and recollections of the neutral are confidential, which means that they shall not be disclosed to the parties, the public, or anyone other than the neutral, unless (1) all parties and the neutral agree to such disclosure or (2) required by law or other applicable professional codes. No record shall be made without the agreement of both parties, except for a memorandum of issues that are resolved.

(Added effective July 1, 1994; amended effective July 1, 1997.)

Implementation Committee Comments—1993

If a candid discussion of the issues is to take place, parties need to be able to trust that discussions held and notes taken during an ADR proceeding will be held in confidence.

This proposed rule is important to establish the subsequent evidentiary use of statements made and documents produced during ADR proceedings. As a general rule,

statements in ADR processes that are intended to result in the compromise and settlement of litigation would not be admissible under Minn. R. Evid. 408. This rule underscores and clarifies that the fact that ADR proceedings have occurred or what transpired in them. Evidence and sworn testimony offered in summary jury trials and other similar related proceedings is not excluded from admissibility by this rule, but is explicitly treated as other evidence or as in the other sworn testimony or evidence under the rules of evidence. Former testimony is accepted from the hearsay rule if the witness is unavailable by Minn. R. Evid. 804(b)(1). Prior testimony may also be admissible under Minn. R. Evid. 613 as a prior statement.

Advisory Committee Comment—1996 Amendment

The amendment of this rule in 1996 is intended to underscore the general need for confidentiality of ADR proceedings. It is important to the functioning of the ADR process that the participants know that the ADR proceedings will not be part of subsequent (or underlying) litigation. Rule 114.08(a) carries forward the basic rule that evidence in ADR proceedings is not to be used in other actions or proceedings. Mediators and lawyers for the parties, to the extent of their participation in the mediation process, cannot be called as witnesses in other proceedings. Minnesota Laws 1996, chapter 388, section 1, to be codified as Minnesota Statutes, section 595.02, subdivision 1a. This confidentiality should be extended to any subsequent proceedings.

The last sentence of 114.08(e) is derived from existing Rule 310.05.

(Added effective July 1, 1997.)

Rule 114.09 Arbitration Proceedings

(a) Evidence

(1) Except where a party has waived the right to be present or is absent after due notice of the hearing, the arbitrator and all parties shall be present at the taking of all evidence.

(2) The arbitrator shall receive evidence that the arbitrator deems necessary to understand and determine the dispute. Relevancy shall be liberally construed in favor of admission. The following principles apply:

(i) **Documents.** The arbitrator may consider written medical and hospital reports, records, and bills; documentary evidence of loss of income, property damage, repair bills or estimates; and police reports concerning an accident which gave rise to the case, if copies have been delivered to all other parties at least 10 days prior to the hearing. Any other party may subpoena as a witness the author of a report, bill, or estimate, and examine that person as if under cross-examination. Any repair estimate offered as an exhibit, as well as copies delivered to other parties, shall be accompanied by a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or in part, and by a copy of the receipted bill showing the items repaired and the amount paid. The arbitrator shall not consider any police report opinion as to ultimate fault. In family law matters, the arbitrator may consider property valuations, business valuations, custody reports and similar documents.

(ii) **Other Reports.** The written statement of any other witness, including written reports of expert witnesses not enumerated above and statements of opinion which the witness would be qualified to express if testifying in person, shall be received in evidence if: (1) copies have been delivered to all other parties at least 10 days prior to the hearing; and (2) no other party has delivered to the proponent of the evidence a written demand at least 5 days before the hearing that the witness be produced in person to testify at the hearing. The arbitrator shall disregard any portion of a statement received pursuant to the rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

(iii) Depositions. Subject to objections, the deposition of any witness shall be received in evidence, even if the deponent is not unavailable as a witness and no exceptional circumstance exist, if: (1) the deposition was taken in the manner provided for by law or by stipulation of the parties; and (2) not less than 10 days prior to the hearing, the proponent of the deposition serves on all other parties notice of the intention to offer the deposition in evidence.

(iv) Affidavits. The arbitrator may receive and consider witness affidavits, but shall give them only such weight as they are entitled to after consideration of any objections. A party offering opinion testimony in the form of an affidavit, statement, or deposition, shall have the right to withdraw such testimony, and attendance of the witness at the hearing shall not then be required.

(3) Subpoenas shall issue for the attendance of the witnesses at the arbitration hearing, as provided in Minn. R. Civ. P. 45. The party requesting the subpoena shall modify the form of the subpoena to show that the appearance is before the arbitrator and to give the time and place set for the arbitration hearing. At the discretion of the arbitrator, nonappearance of a properly subpoenaed witness may be grounds for an adjournment or continuance of the hearing. If any witness properly served with a subpoena fails to appear or refuses to be sworn or answer, the court may conduct proceedings to compel compliance.

(b) Powers of Arbitrator

The arbitrator has the following powers:

- (1) to administer oaths or affirmations to witnesses;
- (2) to take adjournments upon the request of a party or upon the arbitrator's initiative;
- (3) to permit testimony to be offered by deposition;
- (4) to permit evidence to be introduced as provided in these rules;
- (5) to rule upon admissibility and relevance of evidence offered;
- (6) to invite the parties, upon reasonable notice, to submit pre-hearing or post-hearing briefs or pre-hearing statements of evidence;
- (7) to decide the law and facts of the case and make an award accordingly;
- (8) to award costs, within statutory limits;
- (9) to view any site or object relevant to the case; and
- (10) any other powers agreed upon by the parties.

(c) Record

(1) No record of the proceedings shall be made unless permitted by the arbitrator and agreed to by the parties.

(2) The arbitrator's personal notes are not subject to discovery.

(d) The Award

(1) No later than 10 days from the date of the arbitration hearing or receipt of the final post-hearing memorandum, the arbitrator shall file with the court the decision, together with proof of service by first class mail on all parties.

(2) If no party has filed a request for a trial within 20 days after the award is filed, the court administrator shall enter the decision as a judgment and shall promptly mail notice of entry of judgment to the parties. The judgment shall have the same force and effect as, and is subject to all provisions of law relating to, a judgment in a civil action or proceeding, except that it is not subject to appeal, and except as provided in section (d) may not be attacked or set aside. The judgment may be enforced as if it had been rendered by the court in which it is entered.

(3) No findings of fact, conclusions of law, or opinions supporting an arbitrator's decision are required.

(4) Within 6 months after its entry, a party against whom a judgment is entered pursuant to an arbitration award may move to vacate the judgment on only those grounds set forth in Minnesota Statutes Chapter 572.

(c) Trial after Arbitration

(1) Within 20 days after the arbitrator files the decision with the court, any party may request a trial by filing a request for trial with the court, along with proof of service upon all other parties. This 20-day period shall not be extended.

(2) The court may set the matter for trial on the first available date, or shall restore the case to the civil calendar in the same position as it would have had if there had been no ADR.

(3) Upon request for a trial, the decision of the arbitrator shall be sealed and placed in the court file.

(4) A trial de novo shall be conducted as if there had been no arbitration.

(Added effective July 1, 1994; amended effective July 1, 1997.)

Implementation Committee Comments—1993

The Committee made a conscious decision not to formulate rules to govern other forms of ADR, such as mediation, early neutral evaluations, and summary jury trials. There is no consensus among those who conduct or participate in those forms of ADR as to whether any procedures or rules are necessary at all, let alone what those rules or procedures should be. The Committee urges parties, judges and neutrals to be open and flexible in their conduct of ADR proceedings (other than arbitration), and to experiment as needed to suit the circumstances presented. The Committee recognized that it may be necessary, at some time in the future, to revisit the issues of rules, procedures or other limitations applicable to the various forms of court-annexed ADR.

Hennepin County and Ramsey County both have had substantial experience with arbitrations, and have developed rules of procedure that have worked well. The Committee has considered those rules, and others, in developing its proposed rules.

Subd. (a) of this rule is modeled after rules presently in use by the Second and Fourth Judicial Districts and rules currently in use by the American Arbitration Association.

Subd. (b) of this Rule is modeled after rules presently in use in the Second and Fourth Judicial Districts. In non-binding arbitration, the arbitrator is limited to providing advisory awards, unless the parties do not request a trial.

Subd. (c) of this Rule is modeled after rules presently in use in the Second and Fourth Judicial Districts. Records of the proceeding include records made by a stenographer, court reporter, or recording device.

Subd. (d) of this Rule is modeled after Rule 25 VIII of the Special Rules of Practice for the Second Judicial District.

Advisory Committee Comment—1996 Amendment

The changes to this rule in 1996 incorporate the collective labels for ADR processes now recognized in Rule 114.02. These changes should clarify the operation of the rule, but should not otherwise affect its interpretation.

(Added effective July 1, 1997.)

Rule 114.10 Communication with Neutral

(a) **Adjudicative Processes.** The parties and their counsel shall not communicate ex parte with an arbitrator or a consensual special master or other adjudicative neutral.

(b) **Non-Adjudicative Processes.** Parties and their counsel may communicate ex parte with the neutral in non-adjudicative ADR processes with the consent of the neutral, so long as the communication encourages or facilitates settlement.

(c) **Communications to Court during ADR Process.** During an ADR process the court may be informed only of the following:

(1) The failure of a party or an attorney to comply with the order to attend the process;

(2) Any request by the parties for additional time to complete the ADR process;

(3) With the written consent of the parties, any procedural action by the court that would facilitate the ADR process; and

(4) The neutral's assessment that the case is inappropriate for that ADR process.

(d) Communications to Court after ADR Process. When the ADR process has been concluded, the court may only be informed of the following:

(1) If the parties do not reach an agreement on any matter, the neutral should report the lack of an agreement to the court without comment or recommendations;

(2) If agreement is reached, any requirement that its terms be reported to the court should be consistent with the jurisdiction's policies governing settlements in general; and

(3) With the written consent of the parties, the neutral's report also may identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

(Added effective July 1, 1994; amended effective July 1, 1997.)

Implementation Committee Comments—1993

This Rule is modeled after Rule 25 VI of the Special Rules of Practice for the Second Judicial District.

Advisory Committee Comment—1996 Amendment

The changes to this rule in 1996 incorporate the collective labels for ADR processes now recognized in Rule 114.02. These changes should clarify the operation of the rule, but should not otherwise affect its interpretation.

(Added effective July 1, 1997.)

Rule 114.11 Funding

(a) Setting of Fee. The neutral and the parties will determine the fee. All fees of neutral(s) for ADR services shall be fair and reasonable.

(b) Responsibility for Payment. The parties shall pay for the neutral. It is presumed that the parties shall split the costs of the ADR process on an equal basis. The parties may, however, agree on a different allocation. Where the parties cannot agree, the court retains the authority to determine a final and equitable allocation of the costs of the ADR process.

(c) Sanctions for Non-Payment. If a party fails to pay for the neutral, the court may, upon motion, issue an order for the payment of such costs and impose appropriate sanctions.

(d) Inability to Pay. If a party in family law proceedings qualifies for waiver of filing fees under Minnesota Statutes, section 563.01 or the court determines on other grounds that the party is unable to pay for ADR services, and free or low-cost ADR services are not available, the court shall not order that party to participate in ADR and shall proceed with the judicial handling of the case.

(Added effective July 1, 1994; amended effective July 1, 1997.)

Implementation Committee Comments—1993

The marketplace in the parties' geographic area will determine the rates to be offered by neutrals for their services. The parties can then best determine the appropriate fee, after

considering a number of factors, including availability, experience and expertise of the neutral and the financial abilities of the parties.

ADR providers shall be encouraged to provide pro bono and volunteer services to parties unable to pay for ADR processes. Parties with limited financial resources should not be denied access to an ADR process because of an inability to pay for a neutral. Judges and ADR providers should consider the financial abilities of all parties and accommodate those who are not able to share equally in costs of the ADR process. The State Court Administrator shall monitor access to ADR processes by individuals with limited financial resources.

Advisory Committee Comment—1996 Amendment

The payment of fees for neutrals is particularly troublesome in family law matters, where the expense may be particularly onerous. Subdivision (d) of this rule is intended to obviate some difficulties relating to inability to pay ADR fees. The advisory committee rejected any suggestion that these rules should create a separate duty on the part of neutrals to provide free neutral services. The committee hopes such services are available, and would encourage qualified neutrals who are attorneys to provide free services as a neutral as part of their obligation to provide pro bono services. See Minn. R. Prof. Cond. 6.1. If free or affordable ADR services are not available, however, the party should not be forced to participate in an ADR process and should suffer no ill-consequence of not being able to do so.

(Added effective July 1, 1997.)

Rule 114.12 Rosters of Neutrals

(a) Rosters. The State Court Administrator shall establish one roster of neutrals for civil matters and one roster for family law neutrals. Each roster shall be updated and published on an annual basis. The State Court Administrator shall not place on, and shall delete from, the rosters the name of any applicant or neutral whose professional license has been revoked. A qualified neutral may not provide services during a period of suspension of a professional license. The State Court Administrator shall review applications from those who wish to be listed on either roster of qualified neutrals and shall include those who meet the training requirements established in Rule 114.13.

(b) Civil Neutral Roster. The civil neutral roster shall include two separate parts: one for facilitative and hybrid processes (mediators and providers of med-arb and mini-trial services); a second for adjudicative and evaluative processes (arbitrators and providers of consensual special magistrate, moderated settlement conference, summary jury trial, and early neutral evaluation services).

(c) Family Law Neutral Roster. The family law neutral roster shall include three separate parts: one for facilitative and hybrid processes (mediators and providers of med-arb and mini-trial services); a second for adjudicative processes (arbitrators and providers of consensual special magistrate, moderated settlement conference and summary jury trial services); and a third for evaluative processes (neutral evaluators).

(d) Fees. The State Court Administrator may establish reasonable fees for qualified individuals and entities to be placed on either roster.

(Added effective July 1, 1997.)

Advisory Committee Comment—1996 Amendment

This rule is primarily new, though it incorporates the procedure now in place administratively under Rule 114.12(b) for placement of neutrals on the roster and the establishment of fees.

This rule expands the State Court Administrator's neutral roster to create a new, separate roster for family law neutrals. It is intended that the new roster will function the

same way the current roster for civil ADR under existing Rule 114 does. Subparagraph (b) is new, and provides greater detail of the specific sub-rosters for civil neutrals. It describes the roster as it is now created, and this new rule is not intended to change the existing practice for civil neutrals in any way. Subparagraph (c) creates a parallel definition for the new family law neutral roster, and it is intended that the new roster appear in form essentially the same as the existing roster for civil action neutrals.

(Added effective July 1, 1997.)

Rule 114.13 Training, Standards and Qualifications for Neutral Rosters

(a) Civil Facilitative/Hybrid Neutral Roster. All neutrals providing facilitative or hybrid services in civil, non-family matters, shall receive a minimum of 30 hours of classroom training, with an emphasis on experiential learning. The training must include the following topics:

(1) Conflict resolution and mediation theory, including causes of conflict and interest-based versus positional bargaining and models of conflict resolution;

(2) Mediation skills and techniques, including information gathering skills, communication skills, problem solving skills, interaction skills, conflict management skills, negotiation techniques, caucusing, cultural and gender issues and power balancing;

(3) Components in the mediation process, including an introduction to the mediation process, fact gathering, interest identification, option building, problem solving, agreement building, decision making, closure, drafting agreements, and evaluation of the mediation process;

(4) Mediator conduct, including conflicts of interest, confidentiality, neutrality, ethics, standards of practice and mediator introduction pursuant to the Civil Mediation Act, Minnesota Statutes, section 572.31.

(5) Rules, statutes and practices governing mediation in the trial court system, including these rules, Special Rules of Court, and applicable statutes, including the Civil Mediation Act.

The training outlined in this subdivision shall include a maximum of 15 hours of lectures and a minimum of 15 hours of role-playing.

(b) Civil Adjudicative/Evaluative Neutral Roster. All neutrals serving in adjudicative or evaluative processes or serving as a consensual special magistrate shall receive a minimum of 6 hours of classroom training on the following topics:

(1) Pre-hearing communications between parties and between parties and neutral; and

(2) Components of the hearing process including evidence; presentation of the case; witness, exhibits, and objectives; awards; and dismissals; and

(3) Settlement techniques; and

(4) Rules, statutes, and practices covering arbitration in the trial court system, including Supreme Court ADR rules, special rules of court and applicable state and federal statutes; and

(5) Management of presentations made during early neutral evaluation procedures and moderated settlement conferences.

(c) Family Law Facilitative Neutral Roster.

To qualify for the family law facilitative roster neutrals shall:

(1) Complete or teach a minimum of 40 hours of family mediation training which is certified by the Minnesota Supreme Court. The certified training shall include at least:

(a) four hours of conflict resolution theory;

(b) four hours of psychological issues relative to separation and divorce, and family dynamics;

(c) four hours of the issues and needs of children in divorce;

(d) six hours of family law including custody and visitation, support, asset distribution and evaluation, and taxation as it relates to divorce;

(e) five hours of family economics; and,

(f) two hours of ethics, including: (i) the role of mediators and parties' attorneys in the facilitative process; (ii) the prohibition against mediators dispensing legal advice; and, (iii) a party's right of termination.

Certified training for mediation of custody issues only need not include five hours of family economics. The certified training shall consist of at least forty percent roleplay and simulations.

(2) Complete or teach a minimum of 6 hours of certified training in domestic abuse issues, which may be a part of the 40-hour training above, to include at least:

(a) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;

(b) 3 hours of domestic abuse screening, including simulation or roleplay; and,

(c) 1 hour of legal issues relative to domestic abuse cases; and

(3) Certify on the roster application that they have not had a professional license revoked, been refused membership or practice rights in a profession, or been involuntarily banned, dropped or expelled from any profession.

(d) Family Law Adjudicative Neutral Roster.

To qualify for the family law adjudicative roster neutrals shall have at least five years of professional experience in the area of family law and be recognized as qualified practitioners in their field. Recognition may be demonstrated by submitting proof of professional licensure, professional certification, faculty membership of approved continuing education courses for family law, service as court-appointed adjudicative neutral, including consensual special magistrates, service as referees or guardians ad litem, or acceptance by peers as experts in their field. All neutrals applying to the adjudicative neutral roster shall also complete or teach a minimum of 6 hours of certified training on the following topics:

(1) Pre-hearing communications among parties and between the parties and neutral(s);

(2) Components of the family court hearing process including evidence, presentation of the case, witnesses, exhibits, awards, dismissals, and vacation of awards;

(3) Settlement techniques; and,

(4) Rules, statutes, and practices pertaining to arbitration in the trial court system, including Minnesota Supreme Court ADR rules, special rules of court and applicable state and federal statutes.

In addition to the 6-hour training required above, all neutrals applying to the adjudicative neutral roster shall complete or teach a minimum of 6 hours of certified training in domestic abuse issues, to include at least:

(1) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;

(2) 3 hours of domestic abuse screening, including simulation or roleplay; and,

(3) 1 hour of legal issues relative to domestic abuse cases.

(e) Family Law Evaluative Neutrals. All neutrals offering early neutral evaluations or non-binding advisory opinions shall have at least five years of experience as family law attorneys, as accountants dealing with divorce-related matters, as custody and visitation psychologists, or as other professionals working in the area of family law who are recognized as qualified practitioners in their field, and shall complete or teach a minimum of 2 hours of certified training on management of presentations made during evaluative processes. Evaluative neutrals shall have knowledge on all issues in which they render opinions.

In addition to the 2-hour training required above, all neutrals applying to the family law evaluative neutral roster shall complete or teach a minimum of 6 hours of certified training in domestic abuse issues, to include at least:

- (1) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;
- (2) 3 hours of domestic abuse screening, including simulation or roleplay; and,
- (3) 1 hour of legal issues relative to domestic abuse cases.

(f) Exceptions to Roster Requirements. Neutral fact-finders selected by the parties for their expertise need not undergo training nor be included on the State Court Administrator's roster.

(g) Continuing Training. All neutrals providing facilitative or hybrid services must attend eighteen hours of continuing education about alternative dispute resolution subjects within the three-year period in which the neutral is required to complete the continuing education requirements. All other neutrals must attend nine hours of continuing education about alternative dispute resolution subjects during the three-year period in which the neutral is required to complete the continuing education requirements. These hours may be attained through course work and attendance at state and national ADR conferences. The neutral is responsible for maintaining attendance records and shall disclose the information to program administrators and the parties to any dispute. The neutral shall submit continuing education credit information to the State Court Administrator's office within sixty days after the close of the period during which his or her education requirements must be completed.

(h) Certification of Training Programs. The State Court Administrator shall certify training programs which meet the training criteria of this rule.

(Added effective July 1, 1994; amended and renumbered effective July 1, 1997; amended effective March 1, 2001.)

Implementation Committee Comments—1993

The training requirements are designed to emphasize the value of learning through experience. Training requirements can protect the parties and the integrity of the ADR processes from neutrals with little or no dispute resolution skills who offer services to the public and training to neutrals. These rules shall serve as minimum standards; individual jurisdictions may make requirements more stringent.

Advisory Committee Comment—2000 Amendments

The provisions for training and certification of training are expanded in these amendments to provide for the specialized training necessary for ADR neutrals. The committee recommends that six hours of domestic abuse training be required for all family law neutrals, other than those selected solely for technical expertise. The committee believes this is a reasonable requirement and one that should significantly facilitate the fair and appropriate consideration of the concerns of all parties in family law proceedings.

Rule 114.13(g) is amended in 2000 to replace the current annual training requirement with a three-year reporting cycle. The existing requirements are simply tripled in size, but need only be accumulated over a three-year period. The rule is designed to require reporting of training for ADR on the same schedule required for CLE for neutrals who are lawyers. See generally Rule 3 of Rules of the Supreme Court for Continuing Legal Education of Members of the Bar and Rule 106 of Rules of the Board of Continuing Legal Education. Non-lawyer neutrals should be placed by the ADR Board on a similar three-year reporting schedule.

(Added effective July 1, 1997; amended effective March 1, 2001.)

Rule 114.14 Exceptions

(a) Existing Neutrals. Practicing family law neutrals on October 10, 1996, may be placed on the roster of qualified family law neutrals without meeting the training

requirements of these rules except the requirement for training in domestic abuse issues. Any person acting as a family law neutral as of the effective date of the 1996 amendments to these Rules shall have one year to apply. The Minnesota State Supreme Court ADR Review Board shall develop criteria for granting applications, which shall be based on education, training, and expertise of the applicants.

(b) Waiver of Training Requirement. Any neutral wishing to be placed on either of the roster of qualified neutrals after the Board has disbanded shall comply with the training requirements. However, application may be made to the Supreme Court for a waiver of the training requirement.

(Added effective July 1, 1994; amended effective July 1, 1997.)

Implementation Committee Comments—1993

Some neutrals may be permitted to continue providing ADR services without completing the training requirements. A Board, made up of dispute resolution professionals, court officials, judges and attorneys, shall determine who qualifies.

Forms 114.01 and 114.02 attached to these Rules is to be used for application to the neutral and provider organization rosters.

Advisory Committee Comment—1996 Amendment

This rule is amended to allow “grandparenting” of family law neutrals. The rule is derived in form from the grandparenting provision included in initial adoption of this rule for civil neutrals.

(Added effective July 1, 1997.)

RULE 114 APPENDIX CODE OF ETHICS

INTRODUCTION

Rule 114 of the Minnesota General Rules of Practice provides that alternative dispute resolution (ADR) must be considered for nearly all civil cases filed in district court. The ADR Review Board, appointed by the Supreme Court, approves individuals and organizations who are qualified under Rule 114 to act as neutrals in court-referred cases.

Individuals and organizations approved by the ADR Review Board consent to the jurisdiction of the Board and to compliance with this Code of Ethics. The purpose of this code is to provide standards of ethical conduct to guide neutrals who provide ADR services, to inform and protect consumers of ADR services, and to ensure the integrity of the various ADR processes.

In order for ADR to be effective, there must be broad public confidence in the integrity and fairness of the process. Neutrals have a responsibility not only to the parties and to the court, but also to the continuing improvement of ADR processes. Neutrals must observe high standards of ethical conduct. The provisions of this Code should be construed to advance these objectives.

Neutrals should orient the parties to the process before beginning a proceeding. Neutrals should not practice, condone, facilitate, or promote any form of discrimination on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or age. Neutrals should be aware that cultural differences may affect a party's values and negotiating style.

This introduction provides general orientation to the Code of Ethics. Comments accompanying any rule explain and illustrate the meaning and purpose of the rule. The Comments are intended as guides to interpretation but the text of each rule is authoritative. Failure to comply with any provision in this Code of Ethics may be the

basis for removal from the roster of neutrals maintained by the Office of the State Court Administrator and/or for such other action as may be taken by the Minnesota Supreme Court.

Violation of a provision of this Code shall not create a cause of action nor shall it create any presumption that a legal duty has been breached. Nothing in this Code should be deemed to establish or augment any substantive legal duty on the part of neutrals.

Revisor's Note: Minnesota Supreme Court Order CS-87-843, dated August 27, 1997, adopting the Rule 114 Code of Ethics provides in part that "the inclusion of Advisory Task Force Comments is made for convenience and does not reflect court approval of the comments made therein."

Rule I. Impartiality

A neutral shall conduct the dispute resolution process in an impartial manner and shall serve only in those matters in which she or he can remain impartial and evenhanded. If at any time the neutral is unable to conduct the process in an impartial manner, the neutral shall withdraw.

(Added effective August 27, 1997.)

Comment

1. The concept of impartiality of the neutral is central to all alternative dispute resolution processes. Impartiality means freedom from favoritism or bias either by word or action, and a commitment to serve all parties as opposed to a single party.

Rule II. Conflicts of Interest

A neutral shall disclose all actual and potential conflicts of interest reasonably known to the neutral. After disclosure, the neutral shall decline to participate unless all parties choose to retain the neutral. The need to protect against conflicts of interest shall govern conduct that occurs during and after the dispute resolution process. Without the consent of all parties, and for a reasonable time under the particular circumstances, a neutral who also practices in another profession shall not establish a professional relationship in that other profession with one of the parties, or any person or entity, in a substantially factually related matter.

(Added effective August 27, 1997.)

Comments

1. A conflict of interest is any direct or indirect financial or personal interest in the outcome of the proceeding or any existing or past financial, business, professional, family or social relationship which is likely to affect impartiality or which might reasonably create an appearance of partiality or bias. If all parties agree to proceed after being informed of conflicts, the neutral may proceed with the case. If, however, the neutral believes that the conflict of interest would inhibit the neutral's impartiality, the neutral should decline to proceed.

2. Guidance on these conflict of interests issues may be found in the cases under statutes regarding challenges to arbitration awards or mediated settlement agreements on the grounds of fraud for nondisclosure of a conflict of interest or material relationship or for partiality of an arbitrator or mediator. (Minnesota Civil Mediation Act, Uniform Arbitration Act, Federal Arbitration Act.)

3. In deciding whether to establish a relationship with one of the parties in an unrelated matter, the neutral should exercise caution in circumstances which would raise legitimate questions about the integrity of the ADR process.

4. A neutral should avoid conflicts of interest in recommending the services of other professionals.

5. The neutral's commitment must be to the parties and the process. Pressures from outside of the process should never influence the neutral's conduct.

6. *There is no intent that the prohibition established in this rule which applies to an individual neutral shall be imputed to an organization, panel or firm of which the neutral is a part. However, the individual neutral should be mindful of the confidentiality requirements in Rule IV of this Code and the organization, panel, or firm should exercise caution.*

Rule III. Competence

A neutral shall serve as a neutral only when she/he has the necessary qualifications to satisfy the reasonable expectations of the parties.

(Added effective August 27, 1997.)

Comments

1. *Any person on the Minnesota Statewide ADR-Rule 114 Neutral Roster may be selected as a neutral, provided that the parties are satisfied with the neutral's qualifications. A person who offers neutral services gives parties and the public the expectations that she or he is competent to serve effectively as a neutral. A neutral should decline appointment, request technical assistance, or withdraw from a dispute which is beyond the neutral's competence.*

2. *Neutrals must provide information regarding their relevant training, education and experience to the parties (Minnesota Civil Mediation Act.)*

Rule IV. Confidentiality

The neutral shall maintain confidentiality to the extent provided by Rule 114.08 and 114.10 and any additional agreements made with or between the parties.

(Added effective August 27, 1997.):

Comments

1. *A neutral should discuss issues of confidentiality with the parties before beginning an ADR process including limitations on the scope of confidentiality and the extent of confidentiality provided in any private sessions that a neutral holds with a party.*

2. *Rule 114.08 reads: Confidentiality*

(a) *Evidence. Without the consent of all parties and an order of the court, or except as provided in Rule 114.09(e)(4), no evidence that there has been an ADR proceeding or any fact concerning the proceeding may be admitted in a trial de novo or in any subsequent proceeding involving any of the issues or parties to the proceeding.*

(b) *Inadmissibility. Statements made and documents produced in non-binding ADR processes which are not otherwise discoverable are not subject to discovery or other disclosure and are not admissible into evidence for any purpose at the trial, including impeachment, except as provided in paragraph (d).*

(c) *Adjudicative Evidence. Evidence in consensual special master proceedings, binding arbitration, or in non-binding arbitration after the period for a demand for trial expires, may be used in subsequent proceedings for any purpose for which it is admissible under the rules of evidence.*

(d) *Sworn Testimony. Sworn testimony in a summary jury trial may be used in subsequent proceedings for any purpose for which it is admissible under the rules of evidence.*

(e) *Records of Neutral. Notes, records, and recollections of the neutral are confidential, which means that they shall not be disclosed to the parties, the public, or anyone other than the neutral, unless (1) all parties and the neutral agree to such disclosure or (2) required by law or other applicable professional codes. No record shall be made without the agreement of both parties, except for a memorandum of issues that are resolved.*

3. *Rule 114.10 reads: Communication with Neutral*

(a) *Adjudicative Processes.* The parties and their counsel shall not communicate *ex parte* with an arbitrator or a consensual special master or other adjudicative neutral.

(b) *Non-Adjudicative Processes.* Parties and their counsel may communicate *ex parte* with the neutral in non-adjudicative ADR processes with the consent of the neutral, so long as the communication encourages or facilitates settlement.

(c) *Communications to Court During ADR Process.* During an ADR process the court may be informed only of the following:

(1) The failure of a party or an attorney to comply with the order to attend the process;

(2) Any request by the parties for additional time to complete the ADR process;

(3) With the written consent of the parties, any procedural action by the court that would facilitate the ADR process; and

(4) The neutral's assessment that the case is inappropriate for that ADR process.

(d) *Communications to Court After ADR Process.* When the ADR process has been concluded, the court may only be informed of the following:

(1) If the parties do not reach an agreement on any matter, the neutral should report the lack of an agreement to the court without comment or recommendations;

(2) If agreement is reached, any requirement that its terms be reported to the court should be consistent with the jurisdiction's policies governing settlements in general; and

(3) With the written consent of the parties, the neutral's report also may identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

Rule V. Quality of the Process

A neutral shall work to ensure a quality process. A quality process requires a commitment by the neutral to diligence and procedural fairness. A neutral shall not knowingly make false statements of fact or law. The neutral shall exert every reasonable effort to expedite the process including prompt issuance of written reports, awards, or agreements.

(Added effective August 27, 1997.)

Comments

1. A neutral should be prepared to commit the attention essential to the ADR process.

2. A neutral should satisfy the reasonable expectations of the parties concerning the timing of the process.

3. A neutral should not provide therapy to either party, nor should a neutral who is a lawyer represent either party in any matter during an ADR process.

4. A neutral should withdraw from an ADR process when incapable of serving or when unable to remain neutral.

5. A neutral should withdraw from an ADR process or postpone a session if the process is being used to further illegal conduct, or if a party is unable to participate due to drug or alcohol abuse, or other physical or mental incapacity.

Rule VI. Advertising and Solicitation

A neutral shall be truthful in advertising and solicitation for alternative dispute resolution. A neutral shall make only accurate and truthful statements about any alternative dispute resolution process, its costs and benefits, the neutral's role and her or his skills or qualifications. A neutral shall refrain from promising specific results.

In an advertisement or other communication to the public, a neutral who is on the Roster may use the phrase "qualified neutral under Rule 114 of the Minnesota General Rules of Practice." It is not appropriate to identify oneself as a "certified" neutral.

(Added effective August 27, 1997.)

Rule VII. Fees

A neutral shall fully disclose and explain the basis of compensation, fees and charges to the parties. The parties shall be provided sufficient information about fees at the outset to determine if they wish to retain the services of a neutral. A neutral shall not enter into a fee agreement which is contingent upon the outcome of the alternative dispute resolution process. A neutral shall not give or receive any commission, rebate, or similar remuneration for referring a person for alternative dispute resolution services.

(Added effective August 27, 1997.)

Comments

1. *The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.*

2. *A neutral who withdraws from a case should return any unearned fee to the parties.*

MEDIATION

Rule I. Self-Determination

A mediator shall recognize that mediation is based on the principle of self-determination by the parties. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. The primary responsibility for the resolution of a dispute and the shaping of a settlement agreement rests with the parties. A mediator shall not require a party to stay in the mediation against the party's will.

(Added effective August 27, 1997.)

Comments

1. *The mediator may provide information about the process, raise issues, offer opinions about the strengths and weaknesses of a case, draft proposals, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties should be given the opportunity to consider all proposed options. It is acceptable for the mediator to suggest options in response to parties' requests, but not to coerce the parties to accept any particular option.*

2. *A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but it is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.*

RULE 114 APPENDIX CODE OF ETHICS ENFORCEMENT PROCEDURE

Effective August 31, 2000

INTRODUCTION

Inclusion on the list of qualified neutrals pursuant to Minnesota General Rules of Practice 114.12 is a conditional privilege, revocable for cause.

Revisor's Note: Minnesota Supreme Court Order CX-89-1863, dated August 31, 2000, adopting the Rule 114 Code of Ethics Enforcement Procedure provides in part that "The inclusion of advisory comments by the board is made for convenience and does not reflect court approval of the comments made therein."

I. Scope

This procedure applies to complaints against any individual or organization (neutral) placed on the roster of qualified neutrals pursuant to Rule 114.12 or serving as a court appointed neutral pursuant to 114.05(b) of the Minnesota General Rules of Practice.

Advisory Comment

A qualified neutral is subject to this complaint procedure when providing any ADR services. The complaint procedure applies whether the services are court ordered or not, and whether the services are or are not pursuant to Minnesota General Rules of Practice. The Board will consider the full context of the alleged misconduct, including whether the neutral was subject to other applicable codes of ethics, or representing a "qualified organization" at the time of the alleged misconduct.

Minn. Gen. R. Prac. 114.02(b): "Neutral. A 'neutral' is an individual or organization that provides an ADR process. A 'qualified neutral' is an individual or organization included on the State Court Administrator's roster as provided in Rule 114.12. An individual neutral must have completed the training and continuing education requirements provided in Rule 114.13. An individual neutral provided by an organization also must meet the training and continuing education requirements of Rule 114.13. Neutral fact-finders selected by the parties for their expertise need not undergo training nor be on the State Court Administrator's roster."

II. Procedure

A. A complaint must be in writing, signed by the complainant, and mailed or delivered to the ADR Review Board at 25 Constitution Avenue, Suite 140, St. Paul, MN 55155-1500. The complaint shall identify the neutral and make a short and plain statement of the conduct forming the basis of the complaint.

B. The Board shall review the complaint to determine whether the allegations(s), if true, constitute a violation of the Code of Ethics.

C. If the allegations(s) of the complaint do not constitute a violation of the Code of Ethics, the complaint shall be dismissed and the complainant and the neutral shall be notified in writing.

D. If the Board concludes that the allegations of the complaint, if true, constitute a violation of the Code of Ethics, the Board will undertake such review, investigation, and action it deems appropriate. In all such cases, the Board shall send to the neutral, by certified mail, a copy of the complaint, a list identifying the ethical rules which may have been violated, and a request for a written response to the allegations and to any specific questions posed by the Board. It shall not be considered a violation of Rule 114.08(e) of the Minnesota General Rules of Practice or of Rule IV of the Code of Ethics, Rule 114 Appendix, for the neutral to disclose notes, records, or recollections of the ADR process complained of as part of the complaint procedure. Except for good cause shown, if the neutral fails to respond to the complaint in writing within thirty (30) days, the allegations(s) shall be deemed admitted.

E. The Board, at its discretion, may refer the complainant and neutral to mediation conducted by a volunteer qualified neutral to resolve the issues raised by the complainant. Mediation shall proceed only if both the complainant and neutral consent. If the complaint is resolved through mediation, the Board shall dismiss the complaint, unless the resolution includes sanctions to be imposed by the Board. If no agreement is reached in mediation, the Board shall determine whether to proceed further.

F. After review and investigation, the Board shall advise the complainant and neutral in writing of the Board's proposed action on the complaint. Upon request, the neutral shall be entitled to a hearing before a three-member panel of the Board to contest proposed sanctions or findings. The neutral shall have the right to defend against all charges, to be represented by an attorney, and to examine and cross-examine

witnesses. The Board shall receive evidence that the Board deems necessary to understand and determine the dispute. Relevancy shall be liberally construed in favor of admission. The Board shall make an electronic recording of the proceedings. The Board, at its own initiative, or by request of the neutral, may issue subpoenas for the attendance of witnesses and the production of documents and other evidentiary matter.

G. The neutral or the complainant may appeal the panel decision to the Board, which shall conduct a de novo review of the existing record. An appeal must be filed forty-five (45) days from the date of decision. The party that appeals shall pay for the record to be transcribed. The decision of the Board shall be final.

Advisory Comment

A complaint form is available from the ADR Review Board by calling 651-297-7590 or emailing adr@courts.state.mn.us.

The Board, at its discretion, may establish a complaint review panel comprised of members of the Board. Staff under the Board's direction and control may also conduct investigations.

III. Sanctions

A. The Board may impose sanctions, including but not limited to:

- (1) Issue a private reprimand.
- (2) Designate the corrective action necessary for the neutral to remain on the roster.
- (3) Notify the appointing court and any professional licensing authority with which the neutral is affiliated of the complaint and its disposition.
- (4) Publish the neutral's name, a summary of the violation, and any sanctions imposed.
- (5) Remove the neutral from the roster of qualified neutrals, and set conditions for reinstatement.

B. Sanctions shall only be imposed if supported by clear and convincing evidence.

C. Sanctions against an organization may be imposed for its ethical violation and its member's violation if the member is acting within the rules and directives of the organization.

IV. Confidentiality

A. Unless and until sanctions are imposed, all files, records, and proceedings of the Board that relate to or arise out of any complaint shall be confidential, except:

- (1) As between Board members and staff;
- (2) Upon request of the neutral, the file maintained by the Board, excluding its work product, shall be provided to the neutral;
- (3) As otherwise required or permitted by rule or statute; and
- (4) To the extent that the neutral waives confidentiality.

B. If sanctions are imposed against any neutral pursuant to Section III A (2) - (5), the sanction shall be of public record, and the Board file shall remain confidential.

C. Nothing in this rule shall be construed to require the disclosure of the mental processes or communications of the Board or staff.

V. Privilege; immunity

A. **Privilege.** A statement made in these proceedings is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person who made the statement.

B. **Immunity.** Board members and staff shall be immune from suit for any conduct in the course of their official duties.

PART C - MOTIONS

Rule 115. Motion Practice**Rule 115.01 Scope and Application.**

This rule shall govern all civil motions, except those in family court matters governed by Minn. Gen. R. Prac. 301 through 379 and in commitment proceedings subject to the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act.

(a) **Definitions.** Motions are either dispositive or nondispositive, and are defined as follows:

(1) Dispositive motions are motions which seek to dispose of all or part of the claims or parties, except motions for default judgment. They include motions to dismiss a party or claim, motions for summary judgment and motions under Minn. R. Civ. P. 12.02(a)-(f).

(2) Nondispositive motions are all other motions, including but not limited to discovery, third party practice, temporary relief, intervention or amendment of pleadings.

(b) **Time.** The time limits in this rule are to provide the court adequate opportunity to prepare for and promptly rule on matters, and the court may modify the time limits, provided, however, that in no event shall the time limited be less than the time established by Minn. R. Civ. P. 56.03. Whenever this rule requires documents to be filed with the court administrator within a prescribed period of time before a specific event, filing may be accomplished by mail, subject to the following: (1) 3 days shall be added to the prescribed period; and (2) filing shall not be considered timely unless the documents are deposited in the mail within the prescribed period. Service of documents on parties by mail is subject to the provisions of Minn. R. Civ. P. 5.02 and 6.05.

(c) **Post-Trial Motions.** The timing provisions of sections 115.03 and 115.04 of this rule do not apply to post-trial motions.

(Amended effective January 1, 1993; amended effective September 5, 2001.)

Rule 115.02 Obtaining Hearing Date; Notice to Parties.

A hearing date and time shall be obtained from the court administrator or a designated motion calendar deputy. A party obtaining a date and time for a hearing on a motion or for any other calendar setting, shall promptly give notice advising all other parties who have appeared in the action so that cross motions may, insofar as possible, be heard on a single hearing date.

(Amended effective January 1, 1993.)

Rule 115.03 Dispositive Motions.

(a) No motion shall be heard until the moving party pays any required motion filing fee, serves a copy of the following documents on opposing counsel, and files the original with the court administrator at least 28 days prior to the hearing:

- (1) Notice of motion and motion;
- (2) Proposed order;
- (3) Any affidavits and exhibits to be submitted in conjunction with the motion;

and

- (4) Memorandum of law.

(b) The party responding to the motion shall pay any required motion filing fee, serve a copy of the following documents on opposing counsel, and file the originals with the Court Administrator at least 9 days prior to the hearing:

- (1) Memorandum of law; and
- (2) Supplementary affidavits and exhibits.

(c) **Reply Memoranda.** The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response to a motion, by serving a copy on opposing counsel and filing the original with the court administrator at least 3 days before the hearing.

(d) **Additional Requirement for Summary Judgment Motions.** For summary judgment motions, the memorandum of law shall include:

(1) A statement by the moving party of the issues involved which are the grounds for the motion for summary judgment;

(2) A statement identifying all documents (such as depositions or excerpts thereof, pleadings, exhibits, admissions, interrogatory answers, and affidavits) which comprise the record on which the motion is made. Opposing parties shall identify in their responding Memorandum of Law any additional documents on which they rely;

(3) A recital by the moving party of the material facts as to which there is no genuine dispute, with a specific citation to that part of the record supporting each fact, such as deposition page and line or page and paragraph of an exhibit. A party opposing the motion shall, in like manner, make a recital of any material facts claimed to be in dispute; and

(4) The party's argument and authorities. These additional requirements apply also to a motion under Minn. R. Civ. P. 12 if factually based. Part (3) is excluded from the page limitations of this rule.

(Amended effective January 1, 1993; amended effective January 1, 2004.)

Rule 115.04 Non-dispositive Motions.

(a) No motion shall be heard until the moving party pays any required motion filing fee, serves a copy of the following documents on the other party or parties, and files the original with the court administrator at least 14 days prior to the hearing:

(1) Notice of motion and motion;

(2) Proposed order;

(3) Any affidavits and exhibits to be submitted in conjunction with the motion; and

(4) Any memorandum of law the party intends to submit.

(b) The party responding to the motion shall pay any required motion filing fee, serve a copy of the following documents on the moving party and other interested parties, and file the original with the court administrator at least 7 days prior to the hearing:

(1) Any memorandum of law the party intends to submit; and

(2) Any relevant affidavits and exhibits.

(c) **Reply Memoranda.** The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response to a motion, by serving a copy on opposing counsel and filing the original with the court administrator at least 3 days before the hearing.

(Amended effective January 1, 1993; amended effective January 1, 2004.)

Advisory Committee Comment - 2003 Amendments

The rule is amended in 2003 to include a reference to the requirement for paying a motion filing fee. A new statute in 2003 imposes a fee for "[f]iling a motion or response to a motion in civil, family, excluding child support, and guardianship case." See 2003 MINN. LAWS 1st Spec. Sess., ch. 2, art. 2, section 2, to be codified at MINN. STAT. section 357.021, subd. 2(4).

(Added effective January 1, 2004.)

Rule 115.05 Page Limits.

No memorandum of law submitted in connection with either a dispositive or nondispositive motion shall exceed 35 pages, exclusive of the recital of facts required by

Minn. Gen. R. Prac. 115.03(d)(3); except with permission of the court. For motions involving discovery requests, the moving party's memorandum shall set forth only the particular discovery requests and the response or objection thereto which are the subject of the motion, and a concise recitation of why the response or objection is improper. If a reply memorandum of law is filed, the cumulative total of the original memorandum and the reply memorandum shall not exceed 35 pages, except with permission of the court.

(Amended effective January 1, 1993; amended effective January 1, 1994.)

Cross Reference: Minn. R. Civ. P. 7, 56.

Rule 115.06 Failure to Comply.

If the moving papers are not properly served and filed, the hearing may be canceled by the court. If responsive papers are not properly served and filed in a nondispositive motion, the court may deem the motion unopposed and may grant the relief requested without a hearing. For a dispositive motion, the court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, may allow reasonable attorney's fees, or may take other appropriate action.

Rule 115.07 Relaxation of Time Limits.

If irreparable harm will result absent immediate action by the court, or if the interests of justice otherwise require, the court may waive or modify the time limits established by this rule.

Rule 115.08 Witnesses.

No testimony will be taken at motion hearings except under unusual circumstances. Any party seeking to present witnesses at a motion hearing shall obtain prior consent of the court and shall notify the adverse party in the motion papers of the names and addresses of the witnesses which that party intends to call at the motion.

Rule 115.09 Telephone Hearings.

When a motion is authorized by the court to be heard by telephone conference call, the moving party shall be responsible either to initiate the conference call or to comply with the court's instructions on initiation of the conference call. If necessary, adequate provision shall be made by the court for a record of the telephone hearing. No recording shall be made of any telephone hearing except the recording made as the official court record.

(Amended effective January 1, 1996.)

Rule 115.10 Settlement Efforts.

No motion will be heard unless the parties have conferred either in person, or by telephone, or in writing in an attempt to resolve their differences prior to the hearing. The moving party shall initiate the conference. The moving party shall certify to the court, before the time of the hearing, compliance with this rule or any reasons for not complying, including lack of availability or cooperation of opposing counsel. Whenever any pending motion is settled, the moving party shall promptly advise the court.

Cross Reference: Minn. R. Civ. P. 7, 56.

Rule 115.11 Motions to Reconsider

Motions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances. Requests to make such a motion, and any responses to such requests, shall be made only by letter to the court of no more than two pages in length, a copy of which must be sent to opposing counsel.

(Added effective January 1, 1998.)

Advisory Committee Comment - 1997 Amendments

This rule is derived primarily from Rule 15 of the Local Rules of the Seventh District. Provisions are also included from Rule 8 of the Local Rules of the Second District (2d Dist. R. 8(h)(1) & 8(j)(1)).

This rule is intended to create uniform motion practice in all districts of the state. The existing practices diverge in many ways. The inconsistent requirements of having a motion heard impose significant burdens on litigants and their counsel. The Task Force is confident that this new rule will make civil practice more efficient and fairer, consistent with the goals of the rules of civil procedure set forth in Minn. R. Civ. P. 1.

The rule applies to all motions except the timing provisions do not apply to post-trial motions. These motions are excepted because they are governed by other, stringent timing requirements. See Minn. R. Civ. P. 59.03 (motions for a new trial), 52.02 (amendment of findings), 50.02(c) (time for j.n.o.v. motion same as for new trial motion). Other post-trial motions excluded from this rule include those relating to entry of judgment, stays, taxation of costs, and approval of supersedeas bonds. See Minn. R. Civ. App. P. 108.01, subdivision 1. These matters are routinely and necessarily heard on shorter notice than that required by the rule.

*The time limits set forth in this rule were arrived at after extensive discussion. The Task Force attempted to balance the needs of the courts to obtain information on motions sufficiently in advance of the hearing to permit judicial preparation and the needs of counsel and litigants to have prompt hearings after the submission of motions. The time limits for dispositive motions are admittedly longer than the 10-day requirement set forth in Minn. R. Civ. P. 56.03. The Task Force is of the view that these requirements are not necessarily inconsistent because the rules serve two different purposes. The civil procedure rule establishes a minimum notice period to the adversary, while this provision in the general rules of practice sets forth a standard to facilitate the court's consideration of the motions. The time requirements of this rule may be readily modified by the court, while the minimum notice requirements of Minn. R. Civ. P. 56.03 is mandatory unless waived by the parties themselves. See *McAllister v. Independent School District No. 306*, 276 Minn. 549, 149 N.W.2d 81 (1967). The time limits have been slightly modified from the Task Force's original to reflect the motion practice deadlines now established and followed in the federal court by Minnesota. The local rules of the United States District Court for the District of Minnesota were recently amended, effective Feb. 1, 1991. See Rule LR7.1 (b)(1) (D. Minn.) (moving papers for dispositive motions now due 28 days before hearing). The Task Force believes it is desirable to remove minor differences between state and federal court practice where no overriding purpose exists for the differences.*

The amendment to this rule in 1992 added an express provision for reply briefs. Reply briefs are now allowed for all motions, with the total page limits remaining unchanged. This change is appropriate because of the number of situations where truly new factual or legal matters are raised in response to a motion. In many cases, however, a reply brief will be unnecessary or, where no new matters are raised, inappropriate. The requirement that reply briefs be served and filed three days before the hearing contemplates actual delivery three days before the hearing is scheduled. If service or filing will be accomplished by mail, the deadline is three days earlier by operation of Minn. R. Civ. P. 5.02 & 6.05 and Minn. Gen. R. Prac. 115.01(b).

*The statements of facts required by this rule are made for the purpose of the then-pending motion only, and are not to be judicial admissions for other purposes. The Task Force modified the existing local rule in the seventh district to remove any provision that might suggest that summary judgment motions would be treated as defaults if the required statements of fact were not submitted or that might be interpreted to reduce the factual record for summary judgment motions from that specified in Minn. R. Civ. P. 56.05. This will avoid the conflict dealt with by the Minnesota Court of Appeals in *Bunkowske v. Briard*, 461 N.W.2d 392 (Minn. Ct. App. 1990). Counsel seeking to have the court consider*

matters located elsewhere in the court file will need to identify those materials in the statements of facts required by the rule, but will not have to refile the documents.

Rule 115.10 is a new requirement in the statewide rules, but is a familiar one to most lawyers. Many state and federal courts require parties to meet and confer in an attempt to resolve discovery disputes. See Second Dist. Rule 8(h); Fourth Dist. Rule 2.02; R. Haydock & D. Herr, *Discovery Practice* section 8.2 & n.3 (2d ed. 1988) (federal court local rules collected). The Task Force believes that it is reasonable and worthwhile to require informal efforts to attempt to resolve all motion disputes, not just discovery disputes. The Task Force also believes, however, that a rule requiring a face-to-face meeting in all situations would be unwise. This rule requires that some appropriate efforts be made to resolve motion disputes before hearing with the court, but does not specify a specific mechanism. In some instances, a face-to-face meeting will be productive; in other cases a short phone call will suffice to exhaust any possibility of resolution of the matter. The Task Force considered exempting dispositive motions from the requirements of the rule in view of the likely futility of conferring with adversaries over matters that would be dispositive, but determined that the effort expended in conferring in these matters is justified by the likely resolution or narrowing of some disputes or focusing of the dispute for judicial resolution.

Rule 115.02 is a new provision intended both to give parties notice of hearings in advance of the minimum required by other rules. It is intended primarily to prevent a party from obtaining a hearing date and time weeks in advance of a hearing but then delaying giving notice until shortly before the hearing. This practice appears to give an unnecessary tactical advantage to one side. Additionally, by requiring that more than the minimum notice be given in many cases, it will be possible for the responding parties to set on for hearing any additional motions they may have. This may result in the more efficient hearing of multiple motions on a single hearing date.

The definitions of "dispositive" and "nondispositive" motions should be fairly easy to follow in practice. The definitions are similar to those used in Minnesota federal court practice, see Local Rule 4 (D. Minn.), reprinted in Minn. Rules of Ct. 885-86 (West. 1990). Federal court practice treats motions for interlocutory injunctive relief as dispositive because these matters are heard with other dispositive motions before judges rather than magistrates, but there is no reason to treat these motions as dispositive in state-court practice. Indeed, most such motions in state court are heard on expedited schedules set at the time of initial appearance.

The language of rule 115.06 permits the court, but does not require it, to strike a motion where the rule is not followed. The permissive language is included to make it clear the court retains the discretion to hear matters even if the rules have been ignored, but should not be viewed as suggesting that the court needs to provide a hearing on whether such a motion will be stricken. Courts may administratively provide that hearings on motions not served and filed in accordance with the rule will be automatically or routinely canceled.

The Task Force considered the adoption of the Seventh District's rule that called for the trial judge to "make every effort" to rule on nondispositive motions on the day of hearing and dispositive motions within 30 days of hearing. Seventh Dist. R. 15(8). That provision was adopted as part of the revision of motion practice in that district whereby earlier briefing was required with the expected result of earlier decision. Although the purpose of that rule is laudable, the Task Force decided it is not good practice to adopt rules that are purely hortatory in nature, and do not impose any specific requirements or standards. Nonetheless, the Task Force hopes that those benefits of early briefing will flow from the proposed changes on a statewide basis. The Task Force also noted that a statute governs the outer limits of the time for decision. See Minnesota Statutes, section 546.27, subd. 1 (1990) (establishing 90-day period for decision).

Rule 115.09 has been amended to make it clear that telephone hearings may not be recorded unofficially by one party. This rule is consistent with the broader mandate of Gen. R. Prac. 4 which prohibits pictures or voice recordings except if taken as the official record for matters that are heard in court rather than by phone.

Rule 115.11 is added to establish an explicit procedure for submitting motions for reconsideration. The rule permits such motions only with permission of the trial court. The request must be by letter, and should be directed to the judge who issued the decision for which reconsideration is sought. The rule is drawn from a similar provision in the Local Rules of the United States District Court for the District of Minnesota. The rule is intended to remove some of the uncertainty that surrounds use of these motions in Minnesota, especially after the Minnesota Court of Appeals decision in Carter v. Anderson, 554 N.W.2d 110 (Minn. Ct. App. 1996). See Eric J. Magnuson, Motions for Reconsideration, 54 Bench & Bar of Minn., July 1997, at 36.

Motions for reconsideration play a very limited role in civil practice, and should be approached cautiously and used sparingly. It is not appropriate to prohibit them, however, as they occasionally serve a helpful purpose for the courts. Counsel should understand that although the courts may have the power to reconsider decisions, they rarely will exercise it. They are likely to do so only where intervening legal developments have occurred (e.g., enactment of an applicable statute or issuance of a dispositive court decision) or where the earlier decision is palpably wrong in some respect. Motions for reconsideration are not opportunities for presentation of facts or arguments available when the prior motion was considered. Motions for reconsideration will not be allowed to "expand" or "supplement" the record on appeal. See, e.g., Sullivan v. Spot Weld, Inc., 560 N.W.2d 712 (Minn.App. 1997); Progressive Cos. Ins. Co. v. Fiedler, 1997 WL 292332 (Minn.App.1997)(unpublished). Most importantly, counsel should remember that a motion for reconsideration does not toll any time periods or deadlines, including the time to appeal. See generally 3 Eric J. Magnuson & David F. Herr, Minnesota Practice: Appellate Rules Annotated, section 103.17 (3rd ed. 1996, Supp. 1997).

(Amended effective January 1, 1993; amended effective January 1, 1996; amended effective January 1, 1998.)

PART D - MISCELLANEOUS MOTION PRACTICE

Rule 116. Orders to Show Cause

An order to show cause will be issued only in a case where a statute or rule of civil procedure provides that such an order may be issued or where the court deems it necessary to require the party to appear in person at the hearing.

Cross Reference: Minn. R. Civ. P. 7.

Task Force Comment—1991 Adoption

This rule is derived from existing Rule 21 of the Code of Rules for the District Courts.

Rule 117. Default Hearings

Rule 117.01 Scheduling Hearings.

Default hearings are scheduled as motions, and a date and time for default hearings shall be obtained from the court administrator or a designated motion assignment deputy. None of the provisions of Rule 115 apply to default hearings.

(Amended effective January 1, 1993.)

Rule 117.02 Proof of Claim

A party entitled to judgment by default shall move the court for judgment in that party's favor, setting forth by affidavit the facts which entitle that party to relief. Either the party or the party's lawyer may make the affidavit, which may include reliable hearsay. This affidavit is not required in cases governed by Minn. R. Civ. P. 55.01(a).

(Amended effective January 1, 1993.)

Cross Reference: Minn. R. Civ. P. 54.03, 55.01.

Advisory Committee Comment—1992 Amendments

The procedure for scheduling a hearing on a default is the same as that under Rule 115.02 for scheduling motion hearings. This practice related only to the setting of a date for resolution. The other requirements of Rule 115.02 do not apply to default hearings and no additional service requirements are imposed beyond what is required by the Minnesota Rules of Civil Procedure. This rule has been amended explicitly to exempt defaults from all other requirements for motions contained in Rule 115.

Minn. R. Civ. P. 5501(a) permits entry of judgment by the administrator in limited situations. In those cases, however, Rule 55.01 requires only an affidavit of the amount due, and not the more extensive affidavit required by Minn. Gen. R. Prac. 117.02.

(Amended effective January 1, 1993.)

Rule 118. Injunctive Relief Against Municipalities.

No applications for temporary restraining orders against any city, county, state or governmental agency will be granted without prior oral or written notice to the adverse party. The applications shall be accompanied by a written statement describing the manner of notice.

Cross Reference: Minn. R. Civ. P. 65.

Task Force Comment—1991 Adoption

This rule is derived from Second District Rule 8(j)(1).

Rule 119. Applications for Attorneys' Fees

Rule 119.01 Requirement for Motion

In any action or proceeding in which an attorney seeks the award, or approval, of attorneys' fees in the amount of \$1,000.00 for the action, or more, application for award or approval of fees shall be made by motion. As to probate and trust matters, application of the rule is limited to contested formal court proceedings. Unless otherwise ordered by the court in a particular proceeding, it does not apply to:

- (a) informal probates,
- (b) formal probates closed on consents,
- (c) uncontested trust proceedings; and

(d) routine guardianship or conservatorship proceedings, except where the Court determines necessary to protect the interests of the ward.

(Amended effective January 1, 1998.)

Rule 119.02 Required Papers

The motion shall be accompanied by an affidavit of any attorney of record which establishes the following:

1. A description of each item of work performed, the date upon which it was performed, the amount of time spent on each item of work, the identity of the lawyer or legal assistant performing the work, and the hourly rate sought for the work performed;

2. The normal hourly rate for each person for whom compensation is sought, with an explanation of the basis for any difference between the amount sought and the normal hourly billing rate, if any;

3. A detailed itemization of all amounts sought for disbursements or expenses, including the rate for which any disbursements are charged and the verification that the amounts sought represent the actual cost to the lawyer or firm for the disbursements sought; and

4. That the affiant has reviewed the work in progress or original time records, the work was actually performed for the benefit of the client and was necessary for the proper representation of the client, and that charges for any unnecessary or duplicative work has been eliminated from the application or motion.

(Amended effective January 1, 1998.)

Rule 119.03 Additional Records; *In Camera* Review

The court may require production of copies of additional records, including any fee agreement relevant to the fee application, bills actually rendered to the client, work in progress reports, time sheets, invoices or statements for disbursements, or other relevant records. These documents may be ordered produced for review by all parties or for *in camera* review by the court.

(Amended effective January 1, 1998.)

Rule 119.04 Memorandum of Law

The motion should be accompanied by a memorandum of law that discusses the basis for recovery of attorney's fees and explains the calculation of the award of fees sought and the appropriateness of that calculation under applicable law.

(Amended effective January 1, 1998.)

Rule 119.05 Attorneys' Fees in Default Proceedings

(a) A party proceeding by default and seeking an award of attorneys' fees that has established a basis for the award under applicable law may obtain approval of the fees administratively without a motion hearing, provided that:

(1) the fees requested do not exceed fifteen percent (15%) of the principal balance owing as requested in that party's pleadings, up to a maximum of \$3,000.00. Such a party may seek a minimum of \$250.00; and

(2) the requesting party's pleading includes a claim for attorneys' fees in an amount greater than or equal to the amount sought upon default; and

(3) the defaulting party, after default has occurred, has been provided notice of the right to request a hearing under section (c) of this rule, a form for making such a request substantially similar to Form 119.05, and the affidavit required under Rule 119.02.

(b) A party may request a formal hearing and seek fees in excess of the amount described herein if that party provides the court with evidence relevant to the amount of attorneys' fees requested as established by the factors a court considers when determining the reasonableness of the attorneys' fees.

(c) A defaulting party may request a hearing and further judicial review of the attorneys' fees requested by completing a "Request for Hearing" provided by the plaintiff substantially similar to Form 119.05. A party may serve the form, at any time after a default has occurred, provided that the defaulting party is given at least twenty (20) days notice before the request for judgment is made. A defaulting party must serve the Request for Hearing upon the requesting party or its counsel within twenty (20) days of its receipt. Upon timely receipt of a Request for Hearing the party seeking fees shall request a judicial assignment and have the hearing scheduled.

(d) Rule 119.05 does not apply to contested cases, ancillary proceedings (e.g., motions to compel or show cause) or proceedings subsequent to the entry of judgment.

(Added effective January 1, 2004.)

Advisory Committee Comment—1997 Amendment

This rule is intended to establish a standard procedure for supporting requests for attorneys' fees. The committee is aware that motions for attorneys' fees are either not

supported by any factual information or are supported with conclusionary, non-specific information that is not sufficient to permit the court to make an appropriate determination of the appropriate amount of fees. This rule is intended to create a standard procedure only; it neither expands nor limits the entitlement to recovery of attorneys' fees in any case.

Where fees are to be determined under the "lodestar" method widely used in the federal courts and adopted in Minnesota in *Specialized Tours, Inc. v. Hagen*, 392 N.W.2d 520, 542-43 (Minn. 1986), trial courts need to have information to support the reasonableness of the hours claimed to be expended as well as the reasonable hourly rate under the circumstances. This rule is intended to provide a standard set of documentation that allows the majority of fee applications to be considered by the court without requiring further information. The rule specifically acknowledges that cases involving complex issues or serious factual dispute over these issues may require additional documentation. The rule allows the court to require additional materials in any case where appropriate. This rule is not intended to limit the court's discretion, but is intended to encourage streamlined handling of fee applications and to facilitate filing of appropriate support to permit consideration of the issues.

This rule also authorizes the court to review the documentation required by the rule in camera. This is often necessary given the sensitive nature of the required fee information and the need to protect the party entitled to attorneys' fees from having to compromise its attorney's thoughts, mental impressions, or other work product in order to support its fee application. As an alternative to permitting in camera review by the trial judge, the court can permit submission of redacted copies, with privileged material removed from all copies.

The amendment in 1997, adding the exceptions to the requirements of the rule for certain probate and trust proceedings, is designed to obviate procedures that serve no purpose for the courts and unduly burden the parties. Probate and trust matters have separate statutes and case law relating to attorney fees. See Minnesota Statutes, sections 524.3-721 and 525.515; *In re Great Northern Iron Ore Properties*, 311 N.W.2d 488 (Minn. 1981) and *In re Living Trust Created by Atwood*, 227 Minn. 495, 35 N.W.2d 736 (1949). In probate and trust matters, if no interested party objects to the attorney fees, there is ordinarily no reason for the court to require the detail specified in Rule 119. In contested matters, however, such detail may be appropriate to enable the court to resolve the matter under the standards of applicable probate and trust law. The court may protect the sensitive and confidential information that may be contained in attorney time records by entering an appropriate order in a particular case. Similarly, the exemption of these cases from the requirements of the rule does not prevent the court from requiring any of the fee application documentation in a particular matter.

(Added effective January 1, 1997; amended effective December 7, 1997; amended effective January 1, 1998.)

Advisory Committee Comment - 2003 Adoption

Rule 119.05 is a new rule to establish a streamlined procedure for considering attorneys' fees on matters that will be heard by default. The rule does not apply to situations other than default judgments, such as motions to compel discovery, motions to show cause, sanctions matters, or attorneys' fees in contested matters. This subsection is modeled on a rule adopted by the Fourth Judicial District and implemented as a local standing order. A simpler procedure for defaults is appropriate and will serve to conserve judicial resources, and it is appropriate to have a uniform rule throughout Minnesota.

New Form 119.05 is intended to provide useful information to the defaulting party and some care has gone into its drafting. Although use of the form is not required, the requirement that any notice conform "substantially" to the form should be heeded. The committee has attempted to use language that fairly advises the defaulting party of the procedure under Rule 119.05 without threatening consequences or confusing the defaulting party on the effect of either contesting or not contesting the fee award. The rule requires that notice be given after the defendant has defaulted. Notice given earlier is not effective to comply with the rule, as such notice is likely to confuse the recipient as to the differing

procedures and timing for response to the Summons and responding to the request for fees. An affidavit detailing the basis for the award as required under rule 119.02 must accompany the notice and the form.

The rule does not affect the amounts that may be recovered for attorneys' fees; it allows either side to obtain a hearing on the request for fees; the rule supplies an efficient mechanism for the numerous default matters where a full hearing is not required. Similarly, the rule does not remove the requirement that a party seeking fees file a motion; it simply provides a mechanism for resolution of some motions without formal hearings.

(Added effective January 1, 2004.)

Rule 120. (Reserved for Future Use.)

PART E - TRIAL MANAGEMENT

Rule 121. Notice of Settlement

When any action in which any pleading or other paper has been filed is settled, counsel shall immediately advise the appropriate assignment office, and shall also advise the office of the judge assigned to the case or then assigned to hear any matter relating to the case.

Cross Reference: Minn. R. Civ. P. 40, 41.

Task Force Comment—1991 Adoption

This rule is based on 2d Dist. R.9(a). Other districts have similar rules. This new rule, derived from current local rule provisions, makes explicit what courts now expect and which common courtesy requires.

Rule 122. Continuance

If a trial setting has been established by scheduling order after hearing the parties, the court shall decline to consider requests for continuance except those made by motion or when a judge determines that an emergency exists. A single request for a reasonable continuance of a trial setting set by notice without hearing should be granted by the court upon agreement of all parties, provided that the request is made within 20 days after notice of the setting to the parties. All other requests for continuance shall be made by motion with notice to all parties.

Cross Reference: Minn. R. Civ. P. 40.

Task Force Comment—1991 Adoption

This rule reflects the result of extensive discussions by the Task Force. This rule is intended to create a uniform continuance practice statewide, consistent with the widely differing assignment practices. The rule creates a presumptive right to one continuance only in cases where a trial setting is made mechanically and without consultation of the parties and their lawyers and then only if all parties agree. If the setting has been made after hearing parties, there would be no presumed continuance. In any case, the court can deny requests for continuance.

Rule 123. Voir Dire of Jurors in Cases in Which Insurance Company Interested in Defense or Outcome of Action

In all civil jury cases, in which an insurance company or companies are not parties, but are interested in the defense or outcome of the action, the presiding judge shall, upon the request of any party, be advised of the name of such company or companies, out of the hearing of the jury, as well as the name of the local agent of such companies. When so disclosed, no inquiry shall be permitted by counsel as to such names in the

hearing of the jury, nor shall disclosure be made to the jury that such insurance company is interested in the action.

During examination of the jurors by the court, the jurors shall, upon request of any party, be asked collectively whether any of them have any interest as policyholders, stockholders, officers, agents or otherwise in the insurance company or companies interested in the defense or outcome of the action, but such question shall not be repeated to each individual juror. If none of the jurors indicate any such interest in the company or companies involved, then no further inquiry shall be permitted with reference thereto.

If any of the jurors manifest an interest in any of the companies involved, then the court shall further inquire of such juror or jurors as to any interest in such company, including any relationship or connection with the local agent of such interested company, to determine whether such interests or relationship disqualifies such juror.

Cross Reference: Minn. R. Civ. P. 47, Minn. Civ. Trialbook, section 6.

Task Force Comment—1991 Adoption

This rule is derived from Rule 31 of the Code of Rules for the District Courts. The rule is modified to specify that the court conducts the examination of potential jurors about their possible involvement with any interested insurers, thereby allowing the subject to be covered without the potential for introducing prejudice, rather than revealing it. The court should exercise its discretion to make certain that any affirmative answers to the court's questions be fully explored. See Hunt v. Regents of Univ. of Minn., 460 N.W.2d 28, 33-34 (Minn. 1990).

Rule 124. Reporting of Opening Statement and Final Arguments

Opening statements and final arguments shall be reported.

Cross Reference: Minn. R. Civ. P. 39.04, Minn. Civ. Trialbook, section 8.

Task Force Comment—1991 Adoption

This rule is new. The practice of various courts in reporting opening statements and final arguments has not been uniform. The Task Force strongly recommends that the rules provide for reporting of all opening statements and final arguments so that these portions of the trial proceedings are available for transcription. Most judges now follow this practice. In some cases, parties exercising their right to make a record of these trial proceedings have been presented with bills from the official court reporter for this service. In the absence of an order for a transcript, the Task Force believes no extra charges should properly be made for the mere making of a record of what transpires in the trial court.

Rule 125. Automatic Stay

The court administrator shall stay entry of judgment for thirty days after the court orders judgment following a trial unless the court orders otherwise. Upon expiration of the stay, the court administrator shall promptly enter judgment.

(Amended effective January 1, 1993.)

Cross Reference: Minn. R. Civ. P. 58.

Advisory Committee Comment—1992 Amendments

This rule is derived from 7th Dist. R. 11, and is similar to the local rules in other districts.

This rule reflects a common practice in the trial courts, even in those districts that do not have a specific rule requiring a stay. The Task Force believes it is desirable to make this practice both uniform and explicit. The stay allows parties to file post-trial motions and to

perfect an appeal without entry of judgment or formal collection efforts. At the end of the 30-day period, stay is governed by Minn. R. Civ. P. 62.03 and the supersedeas bond requirements of the Minnesota Rules of Civil Appellate Procedure. The stay anticipated by this rule applies only following a trial. Where judgment is ordered pursuant to pretrial motion or by default (e.g., temporary hearings in family law), or in situations governed by other rules, including marriage dissolutions by stipulation (Rule 307(b)) and housing court matters (Rules 609 and 611(b)), the stay is not necessary and not intended by the rule.

The rule only creates a standard, uniform procedure for staying entry of judgment. The court can enter such a stay in any case and can order immediate entry of judgment in any case.

(Amended effective January 1, 1993.)

Rule 126. Judgment—Entry by Adverse Party

When a party is entitled to have judgment entered in that party's favor upon the verdict of a jury, report of a referee, or decision or finding of the court, and neglects to enter the same for 10 days after the rendition of the verdict or notice of the filing of the report, decision or finding; or after the expiration a stay, the opposite party may cause judgment to be entered on five days' notice to the party entitled thereto.

Cross Reference: Minn. R. Civ. P. 58.

Task Force Comment—1991 Adoption

This rule is derived from existing Rule 17 of the Code of rules for the District Courts.

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 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 preparation or in conducting of experiments outside the courtroom by an expert.

Cross Reference: Minn. R. Civ. P. 54.

Task Force Comment—1991 Adoption

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

Rule 128. Retrieval or Destruction of Exhibits

It shall be the duty of the lawyer or party offering exhibits in evidence to remove all exhibits from the custody of the court upon final disposition of a case. Failure to do so within 15 days of being notified to do so will be deemed authorization to destroy such exhibits.

Cross Reference: Minn. R. Civ. P. 43, 77; Minn. Civ. Trialbook, sections 13, 14.

Task Force Comment—1991 Adoption

This rule is derived from 2d Dist. R. 11, with changes.

Rule 129. Use of Administrator's Files

No papers on file in a cause shall be taken from the custody of the court administrator except upon order of the court.

Cross Reference: Minn. R. Civ. P. 77; Minn. Civ. Trialbook, sections 13, 14.

Task Force Comment—1991 Adoption

This rule is derived from Rule 12(b) of the Code of Rules for the District Courts, without substantial change.

Rule 130. Exhibit Numbering

Exhibits proposed by any party shall be marked in a single series of arabic numbers, without designation of the party offering the exhibit. Exhibit numbers may be consecutive or may be preassigned in blocks to each party. If adhesive exhibit labels are used, they shall be white with black printing.

(Added effective January 1, 1994.)

Advisory Committee Comment—1994 Amendments

This new rule requires a uniform method of marking exhibits, without the cumbersome prefixes that are frequently now encountered. The committee believes that a uniform numbering system will benefit the courts and litigants. The new system will permit exhibits to be used without labeling to show "ownership" or "lineage" of the exhibit. This system will also facilitate numbering of exhibits in multi-party cases, where the current practice creates complicated numbers at trial and burdensome citations on appeal. Attorneys and judges with experience in using this system believe it works fairly, predictably, and efficiently. The rule permits flexibility in assignment of exhibit numbers, allowing them to be issued seriatim at trial or in blocks of numbers assigned to each party prior to trial. The rule requires uniform exhibit labels to prevent any uncertainty or wasted effort by parties attempting to obtain a perceived advantage in identifying "ownership" of exhibits through the color of labels.

(Added effective January 1, 1994.)

Rule 131. (Reserved for Future Use.)

Rule 132. (Reserved for Future Use.)

Rule 133. (Reserved for Future Use.)

Rule 134. (Reserved for Future Use.)

PART F - SPECIAL PROCEDURES**Rule 135. Restraining Order-Bond**

Before any restraining order shall be issued, except in aid of writs of execution or replevin, in harassment proceedings, in actions for dissolution of marriage or orders for protection in domestic abuse proceedings, or in any other case exempted by law, the applicant shall give a bond in the penal sum of at least \$2,000, executed by the applicant or by some person for the applicant as a principal, approved by the court and conditioned for the payment to the party restrained of such damages as the restrained person shall sustain by reason of the order, if the court finally decides that the applicant was not entitled thereto.

Cross Reference: Minn. R. Civ. P. 65.

Task Force Comment—1991 Adoption

This rule is derived from Rule 24 of the Code of Rules for the District Courts.

By statute, governmental entities are not required to post bonds for temporary restraining orders. Minnesota Statutes, section 574.18 (1990). In addition, the court may waive the bond requirement when granting an order temporarily restraining an action on a contract for the conveyance of real estate. Minnesota Statutes, section 559.211 (1990).

Accordingly, a specific provision allowing waiver of the bond requirement is included in the rule for cases provided by law.

Rule 136. Garnishments and Attachments-Bonds to Release-Entry of Judgment Against Garnishee

Rule 136.01 Bond.

Garnishments or attachments shall not be discharged through a personal bond under Minnesota Statutes, sections 571.931 and 571.932 without one day's written notice of the application therefor to the adverse party; but if a surety company's bond is given, notice shall not be required.

(Amended effective January 1, 1993.)

Rule 136.02 Requirement of Notice.

Judgment against a garnishee shall be entered only upon notice to the garnishee and the defendant, if known to be within the jurisdiction of the court, showing the date and amount of the judgment against the defendant, and the amount for which plaintiff proposes to enter judgment against the garnishee after deducting such fees and allowances as the garnishee is entitled to receive. If the garnishee appears and secures a reduction of the proposed judgment, the court may make an appropriate allowance for fees and expense incident to such appearance.

Cross Reference: Minn. R. Civ. P. 64.

Advisory Committee Comment—1992 Amendments

This rule is derived from Rule 15 of the Code of Rules for the District Courts. The statutes governing garnishment and attachment have been amended, and the statutory reference in the rule has been corrected to reflect this change.

(Amended effective January 1, 1993.)

Rule 137. Receivers

Rule 137.01 Venue.

All actions or proceedings for the sequestration of the property of corporations or for the appointment of receivers thereof, except actions or proceedings instituted by the Attorney General in behalf of the state, shall be instituted in the county in which the principal place of business of said corporation is situated; provided, that for the convenience of witnesses and to promote the ends of justice the venue may be changed by order of court.

Rule 137.02 Appointment of Receivers.

Receivers, trustees, guardians and others appointed by the court to aid in the administration of justice shall be wholly impartial and indifferent to all parties in interest, and selected with a view solely to their character and fitness. Except by consent of all parties interested, or where it clearly appears that prejudice will otherwise result, no person who is or has been during the preceding year a stockholder, director or officer of a corporation shall be appointed as receiver for such corporation. Receivers shall be appointed only upon notice to interested parties, such notice to be given in the manner ordered by the court; but if it shall be clearly shown that an emergency exists requiring the immediate appointment of a temporary receiver, such appointment may be made ex parte.

Rule 137.03 Bond.

Every receiver after appointment shall give a bond to be approved by the court in such sum and conditioned as the court shall direct, and shall make and file with the

court administrator an inventory and estimated valuation of the assets of the estate in the receiver's custody; and, unless otherwise ordered, appraisers shall then be appointed and their compensation fixed by order of the court.

Rule 137.04 Claims.

Claims of creditors of corporations, the subject of sequestration or receivership proceedings, shall be duly verified and filed in the office of the court administrator. The court, by order, shall fix the time for presentation, examination and adjustment of claims and the time for objecting thereto, and notice of the order shall be given by such means, including publication if deemed desirable, as the court therein shall direct. Written objections to the allowance of any claim may be made by the party to the proceeding by serving a copy of such objection upon the claimant or the claimant's lawyer. Where no objection is made within the time fixed by said order, the claim may stand admitted and be allowed without proof. Issues of law and fact shall be tried as in other cases.

Rule 137.05 Annual Inventory and Report.

Every receiver shall file an annual inventory and report showing the condition of the estate and a summary of the proceedings to date. The clerk shall keep a list of receiverships and notify each receiver and the court when such reports are due.

Rule 137.06 Lawyer as Receiver.

When a lawyer has been appointed receiver, no lawyer for such receiver shall be employed except upon the order of the court, which shall be granted only upon the petition of the receiver, stating the name of counsel whom the receiver wishes to employ and showing the necessity for such employment.

Rule 137.07 Employment of Counsel.

No receiver shall employ more than one counsel, except under special circumstances requiring the employment of additional counsel; and in such cases only after an order of the court made on a petition showing such circumstances, and on notice to the party or person on whose behalf or application the receiver was appointed. No allowance shall be made to any receiver for expenses paid or incurred in violation of this rule.

Rule 137.08 Use of Funds.

No receiver or other trustee appointed by the court, nor any lawyer acting for such receiver or trustee, shall withdraw or use any trust funds to apply on the receiver's compensation for services except on written order of court, duly made after such notice as the court may direct, and filed in the proceeding.

Rule 137.09 Allowance of Fees.

All applications for the allowance of fees to receivers and their lawyers shall be accompanied by an itemized statement of the services performed and the amount charged for each item shown.

Compensation of receivers and their lawyers shall be allowed only upon the order of the court after such notice to creditors and others interested as the court shall direct, of the amounts claimed, as compensation and of the time and place of hearing the application for their allowance.

Rule 137.10 Final Account.

Every receiver shall take a receipt for all disbursements made by him in excess of one dollar, shall file the same with the final account, and shall recite such filing in a verified petition for the allowance of such account. Final accounts shall disclose the status of the property of the estate as to unpaid or delinquent taxes and the same shall

be paid by the receiver to the extent that the funds in the receiver's custody permit, over and beyond costs and expenses of the receivership.

Cross Reference: Minn. R. Civ. P. 66.

Task Force Comment—1991 Adoption

This rule is derived from Rule 23 of the Code of Rules for the District Courts.

Rule 138. Banks in Liquidation

Petitions for orders approving the sale or compounding of doubtful debts, or the sale of real or personal property, or authorizing a final dividend, of any bank, state or national, in liquidation, shall be heard after notice to all interested persons given as herein provided.

Upon the filing of the petition, the court shall enter an order reciting the substance of the petition and the time and place for hearing thereon, and advising all interested parties of their right to be heard.

A copy of the order shall be published once in a legal newspaper published near the location of the bank in liquidation, which publication shall be made at least ten days prior to the time fixed for the hearing; or the court may direct notice to be given by such other method as it shall deem proper. If it shall appear to the court that delay may prejudice the rights of those interested, the giving of notice may be dispensed with.

Cross Reference: Minn. R. Civ. P. 66.

Task Force Comment—1991 Adoption

This rule is derived from Rule 5 of the Code of Rules for the District Court.

Rule 139. Lawyers as Sureties

No practicing lawyer shall be accepted as surety on a bond or undertaking required by law.

Cross Reference: Minn. R. Civ. P. 67.

Task Force Comment—1991 Adoption

This rule is derived from Rule 4 of the Code of Rules for the District Courts.

Rule 140. Supplemental Proceedings

Rule 140.01 Previous Applications.

If an ex parte application is made, any previous applications for a supplemental proceeding order concerning the pending case shall be disclosed to the court in the form of an affidavit.

Rule 140.02 Referee.

Referees in supplementary proceedings and in garnishment disclosures shall be notaries public or lawyers and shall not be the creditor's lawyer or an employee or partner of the creditor or of the creditor's lawyer and said referees must take and subscribe the appropriate oath.

Rule 140.03 Continuances.

Orders in supplementary proceedings shall specify the name of the Referee and provide that in the examination of the judgment debtor the Referee shall not grant more than two continuances.

Cross Reference: Minn. R. Civ. P. 69.

Task Force Comment—1991 Adoption

This rule is derived from 4th Dist. R. 12.

Rule 141. Condemnation**Rule 141.01 Objection to Commissioner.**

Within ten (10) days after the order appointing the commissioners has been filed, the petitioner or any respondent may serve on all other parties and file with the appointing judge an affidavit objecting to the appointment of any one or more of the commissioners and setting forth the reasons for the objection. Within five (5) days after receiving such an objection, the judge in the exercise of discretion may appoint a new commissioner to replace any commissioner concerning whom objection has been made. If the judge does not appoint a new commissioner within five (5) days, the objection shall be deemed overruled.

Rule 141.02 Notice of Appeal.

In condemnation cases the notice of appeal from the award of the Commissioners shall be deemed the filing of the first paper in the case for the purposes of Minn. Gen. R. Prac. 104 and 111.

(Amended effective January 1, 1993.)

Advisory Committee Comment—1992 Amendments

This rule is derived from 4th Dist. R. 10 and is intended to supplement statutes providing for the appointment of commissioners and the filing of a notice of appeal. See Minnesota Statutes, sections 117.075 and 117.145 (1990).

Rule 141.02 as amended in 1992 establishes that the appeal from the award of the commissioners, not any earlier proceedings relating to appointment of commissioners or a "quick take" of the property, triggers the scheduling requirements of Rules 104 and 111.

(Amended effective January 1, 1993.)

Rule 142. [Renumbered 417.]**Rule 142.01 [Renumbered 417.01]****Rule 142.02 [Renumbered 417.02]****Rule 142.03 [Renumbered 417.03]****Rule 142.04 [Renumbered 417.04]****Rule 142.05 [Renumbered 417.05]****Rule 142.06 [Renumbered 417.06]****Rule 143. Actions by Representatives-Attorneys' Fees**

In actions for personal injury or death by wrongful act, brought by persons acting in a representative capacity, contracts for attorney's fees shall not be regarded as determinative of fees to be allowed by the court.

Cross Reference: Minn. R. Civ. P. 17.

Task Force Comment—1991 Adoption

This rule is Rule 1 of the Code of Rules for the District Court, without change.

Rule 144. Actions for Death by Wrongful Act**Rule 144.01 Application for Appointment of Trustee.**

Every application for the appointment of a trustee of a claim for death by wrongful act under Minnesota Statutes, section 573.02, shall be made by the verified petition of

the surviving spouse or one of the next of kin of the decedent. The petition shall show the dates and places of the decedent's birth and death; the decedent's address at the time of death; the name, age and address of the decedent's surviving spouse, children, parents, grandparents, and siblings; and the name, age, occupation and address of the proposed trustee. The petition shall also show whether or not any previous application has been made, the facts with reference thereto and its disposition shall also be stated. The written consent of the proposed trustee to act as such shall be endorsed on or filed with such petition. The application for appointment shall not be considered filing of a paper in the case for the purpose of any requirement for filing a certificate of representation or informational statement.

(Amended effective January 1, 1993; amended effective January 1, 2000.)

Cross Reference: Minn. R. Civ. P. 17.

Rule 144.02 Notice and Hearing.

The petition for appointment of trustee will be heard upon such notice, given in such form and in such manner and upon such persons as may be determined by the court, unless waived by the next of kin listed in the petition or unless the court determines that such notice is not required.

(Amended effective January 1, 2000.)

Rule 144.03 Caption.

The petition, any order entered thereon, and the trustee's oath, will be entitled: "In the matter of the appointment of a trustee for the next of kin of _____, Decedent."

Rule 144.04 Transfer of Action.

If the trustee, after appointment and qualification, commences an action for death by wrongful act in a county other than that in which the trustee was appointed, a certified copy of the petition, the order entered thereon and the oath shall be filed in the court where such action be commenced, at the time the summons and complaint are filed therein, and the court file and jurisdiction over the trust will thereupon be transferred to such court.

Rule 144.05 Distribution of Proceeds.

Application for the distribution of money recovered under Minnesota Statutes, section 573.02 shall be by verified petition of the trustee. Such petition shall show the amount which has been received upon action or settlement; a detailed statement of disbursements paid or incurred, if any; the amount, if any, claimed for services of the trustee and of the trustee's lawyer; the amount of the funeral expenses and of demands for the support of the decedent; the name, age and address of the surviving spouse and each next of kin required to be listed in the petition for appointment of trustee and all other next of kin who have notified the trustee in writing of a claim for pecuniary loss, and the share to which each is entitled.

If an action was commenced, such petition shall be heard by the court in which the action was tried, or in the case of a settlement, by the court in which the action was pending at the time of settlement. If an action was not commenced, the petition shall be heard by the court in which the trustee was appointed. The court hearing the petition shall approve, modify, or disapprove the proposed disposition and shall specify the persons to whom the proceeds are to be paid.

The petition for distribution will be heard upon notice, given in form and manner and upon such persons as may be determined by the court, unless waived by all next of kin listed in the petition for distribution or unless the court determines that such notice is not required. The court by order, or by decree of distribution, will direct distribution of the money to the persons entitled thereto by law. Upon the filing of a receipt from

each distributee for the amount assigned to that distributee, the trustee shall be discharged.

The foregoing procedure will, so far as can be applicable, also govern the distribution of money recovered by personal representatives under the Federal Employers' Liability Act (45 U.S.C. section 51) and under Minnesota Statutes, section 219.77.

(Amended effective January 1, 2000.)

Cross Reference: Minn. R. Civ. P. 17.

Rule 144.06 Validity and Timeliness of Action

The failure to name the next of kin in a petition required by Rule 144.01 or the failure to notify or obtain a waiver from the next of kin shall have no effect on the validity or timeliness of an action commenced by the trustee.

(Added effective January 1, 2000.)

Advisory Committee Comment—1999 Amendment

*This rule is derived from Rule 2 of the Code of Rules for the District Courts. The Task Force has amended the rule to refer to "next of kin" rather than "heirs." Minnesota Statutes, section 573.02 makes no requirements as to who must receive notification of petitions for appointment of trustees or for orders for distribution. Amendments to Rule 144.01, 144.02, and 144.05 codify the longstanding practice of requiring petitioners to name and notify only the decedent's surviving spouse and close relatives, not "all next of kin," which under *Wynkoop v. Carpenter*, 574 N.W.2d 422 (Minn. 1998), and recent changes to Minnesota's intestacy statute would include distant relatives such as nieces, nephews, aunts, uncles, and cousins. These amendments address only the matter of notification and are not intended to reduce substantive rights of any next of kin.*

*The Task Force considered the advisability of amending Rule 144.05 to require the court to consider and either approve, modify, or disapprove the settlement itself, in addition to the disposition of proceeds as required under the existing rule. Although it appears that good reasons exist to change the rule in this manner, the Minnesota Supreme Court has indicated that the trial court has no jurisdiction to approve or disapprove the settlement amounts agreed upon by the parties. The court can only approve the distribution of those funds among the heirs and next of kin. See *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 200 n. 1 (Minn. 1986).*

The final sentence of Rule 144.01 was added in 1992 to make it clear that it is the filing of papers in the actual wrongful death action, and not papers relating to appointment of a trustee to bring the action, that triggers the scheduling requirements of the rules, including the requirement to file a certificate of representation and parties (Rule 104) and an informational statement (Rule 111.02).

*Rule 144.06 codifies existing law holding that failure to notify some next of kin does not void an appointment. See *Stroud v. Hennepin County Medical Center*, 544 N.W.2d 42, 48-49 (Minn. App. 1996) (failure to list and obtain signatures of all next of kin did not invalidate trustee's appointment and commencement of a wrongful death action), rev'd on other grounds, 556 N.W.2d 552, 553-55, nn. 3 & 5 (Minn. 1996) (trustee's original complaint effectively commenced wrongful death action despite her improper appointment).*

(Amended effective January 1, 1993; amended effective January 1, 2000.)

Rule 145. Actions on Behalf of Minors and Incompetent Persons

Rule 145.01 When Petition and Order are Required.

No part of the proceeds of any action or claim for personal injuries on behalf of any minor or incompetent person shall be paid to any person except under written petition to the court and written order of the court as hereinafter provided. This rule governs a claim or action brought by a parent of a minor, by a guardian ad litem or

general guardian of a minor or incompetent person, or by the guardian of a dependent, neglected or delinquent child, and applies whether the proceeds of the claim or action have become fixed in amount by a settlement agreement, jury verdict or court findings, and even though the proceeds have been reduced to judgment.

Rule 145.02 Contents and Filing of Petition.

The petition shall be verified by the parent or guardian, shall be filed before the court makes its order, and shall include the following:

- (a) The name and birth date of the minor or other incompetent person.
- (b) A brief description of the nature of the claim if a complaint has not been filed.
- (c) An attached affidavit, letter or records of a health care provider showing the nature of the injuries, the extent of recovery, and the prognosis if the court has not already heard testimony covering these matters.

(d) Whether the parent, or the minor or incompetent person, has collateral sources covering any part of the principal and derivative claims, including expenses and attorneys fees, and whether subrogation rights have been asserted by any collateral source.

(e) In cases involving proposed structured settlements, a statement from the parties disclosing the cost of the annuity or structured settlement to the tortfeasor.

(Amended effective January 1, 1993; amended effective January 1, 1994.)

Rule 145.03 Representation.

(a) If the lawyer who presents the petition has been retained by the tortfeasor or its insurer, the lawyer shall disclose to the court and to the petitioner the nature of the representation, how he or she is being paid, the frequency with which the lawyer has been retained by the tortfeasor or insurer, and whether the lawyer is giving legal advice to the petitioner. The petition shall not be denied by the court solely because of the petitioner's representation.

(b) The court may, at its discretion, refer the petitioner to a lawyer selected by the petitioner (or by the court if petitioner requests or declines to select a lawyer), to evaluate the proposed settlement and advise the court whether the settlement is reasonable considering all relevant facts. The opinion shall be in writing, and the court shall provide a copy to the petitioner and all tortfeasors or their representative, regardless of whether a filing fee has been paid by the tortfeasor. This appointment shall be made pursuant to Minn. R. Evid. 706.

(c) The lawyer accepting the referral must agree not to represent the petitioner or the minor or accept a referral fee in the event that the petition is denied by the court.

(d) For the legal opinion thus rendered to the court, the tortfeasor or the insurer shall pay a reasonable sum ordered by the court; however, the insurer or tortfeasor may be reimbursed from settlement proceeds up to one half of the sum so ordered, also upon order of the court. An order for attorney's fees payment in excess of \$300.00 can issue only upon a court hearing with notice to the insurer or tortfeasor and the petitioner.

(c) The opinion of the referred-to lawyer shall not be binding upon the court.

Rule 145.04 Hearing on the Petition.

The minor or incompetent person and the petitioner shall personally appear before the court at the hearing on the petition unless their appearance is specifically waived by the court because the action has been fully or partially tried or for other good cause. The reporter shall, when ordered by the court, keep a record of the hearing. The hearing shall be ex parte unless otherwise ordered.

Rule 145.05 Terms of the Order.

The court's order shall:

(a) Approve, modify or disapprove the proposed settlement or disposition and specify the persons to whom the proceeds are to be paid.

(b) State the reason or reasons why the proposed disposition is approved if the court is approving a settlement for an amount which it feels is less than what the injuries and expenses, might seem to call for, e.g., limited insurance coverage, dubious liability, comparative fault or other similar considerations.

(c) Determine what expenses may be paid from the proceeds of any recovery by action or settlement, including the attorney's fee. Attorney's fees will not be allowed in any amount in excess of one-third of the recovery, except on a showing that: (1) an appeal to an appellate court has been perfected and a brief by the plaintiff's lawyer has been printed therein and (2) there has been an expenditure of time and effort throughout the proceeding which is substantially disproportionate to a one-third fee. No sum will be allowed, in addition to attorney fees, to reimburse any expense incurred in paying an investigator for services and mileage, except in those circumstances where the attorney's fee is not fully compensatory or where the investigation must be conducted in any area so distant from the principal offices of the lawyer so employed that expense of travel and related expense would be substantially equal to, or in excess of, usual investigating expenses.

(d) Specify what disposition shall be made of the balance of the proceeds of any recovery after payment of the expenses authorized by the court.

(1) The court may authorize investment of all or part of such balance of the proceeds in securities of the United States, or in an annuity or other form of structured settlement, including a medical assurance agreement, but otherwise shall order the balance of the proceeds deposited in one or more banks, savings and loan associations or trust companies where the deposits will be fully covered by Federal deposit insurance.

(2) In lieu of such disposition of the proceeds, the order may provide for the filing by the petitioner of a surety bond approved by the court conditioned for payment to the ward in a manner therein to be specified of such moneys as the ward is entitled to receive, including interest which would be earned if the proceeds were invested.

(e) If part or all of the balance of the proceeds is ordered deposited in one or more financial institutions, the court's order shall direct:

(1) that the defendant pay the sum to be deposited directly to the financial institution;

(2) that the account be opened in the name of the minor or incompetent person and that any deposit document be issued in the name of the minor or incompetent person;

(3) that the petitioner shall, at the time of depositing, supply the financial institution with a tax identification number or a social security number for the minor and a copy of the order approving settlement; and

(4) that financial institution forthwith acknowledge to the court receipt of the order approving settlement and the sum and that no disbursement of the funds will occur unless the court so orders, using the form substantially equivalent to Form 145.1;

(5) that the financial institution shall not make any disbursement from the deposit except upon order of the court; and

(6) that a copy of the court's order shall be delivered to said financial institution by the petitioner with the remittance for deposit. The financial institution(s) and the type of investment therein shall be as specified in Minnesota Statutes, section 540.08, as amended. Two or more institutions shall be used if necessary to have full Federal deposit insurance coverage of the proceeds plus future interest; and time deposits shall be established with a maturity date on or before the minor's age of majority. If automatically renewing instruments of deposit are used, the final renewal period shall be limited to the date of the age of majority.

(7) that the petitioner shall be ordered to file or cause to be filed timely state and federal income tax returns on behalf of the minor.

(f) Authorize or direct the investment of proceeds of the recovery in securities of the United States only if practicable means are devised comparable to the provisions of paragraphs (d) and (e) above, to insure that funds so invested will be preserved for the benefit of the minor or incompetent person, and the original security instrument be deposited with the court administrator consistent with paragraph (e) above.

(g) Provide that applications for release of funds, either before or upon the age of majority may be made using the form substantially similar to Form 145.2.

(Amended effective January 1, 1993; amended effective January 1, 2003.)

Rule 145.06 Structured Settlements.

If the settlement involves the purchase of an annuity or other form of structured settlement, the court shall:

(a) Determine the cost of the annuity or structured settlement to the tortfeasor by examining the proposal of the annuity company or other generating entity;

(b) Require that the company issuing the annuity or structured settlement:

- (1) Be licensed to do business in Minnesota;
- (2) Have a financial rating equivalent to A. M. Best Co. A+, Class VIII or better;
- (3) Has complied with the applicable provisions of Minnesota Statutes, sections 549.30 to 549.34;

or that a trust making periodic payments be funded by United States Government obligations; and

(4) If the company issuing the proposed annuity or structured settlement is related to either the settling party or its insurer, that the proposed annuity or structured settlement is at least as favorable to the minor or incompetent person as at least one other competitively-offered annuity obtained from an issuer qualified under this rule and not related to the party or its insurer. This additional proposal should be for an annuity with the same terms as to cost and due dates of payments.

(c) Order that the original annuity policy be deposited with the court administrator, without affecting ownership, and the policy be returned to the owner of the policy when:

- (1) The minor reaches majority;
- (2) The terms of the policy have been fully performed; or
- (3) The minor dies, whichever occurs first.

(d) In its discretion, permit a "qualified assignment" within the meaning and subject to the conditions of Section 130(c) of the Internal Revenue Code;

(e) In its discretion, order the tortfeasor or its insurer, or both of them, to guarantee the payments contracted for in the annuity or other form of structured settlement; and

(f) Provide that:

- (1) The person receiving periodic payments is entitled to each periodic payment only when the payment becomes due;
 - (2) That the person shall have no rights to the funding source; and
 - (3) That the person cannot designate the owner of the annuity nor have any right to control or designate the method of investment of the funding medium; and
- (g) Direct that the appropriate party or parties will be entitled to receive appropriate receipts, releases or a satisfaction of judgment, pursuant to the agreement of the parties.

(Amended effective January 1, 1993; amended effective January 1, 1996; amended effective March 1, 2001; amended effective January 1, 2003.)

Cross Reference: Minn. R. Civ. P. 17.

Rule 145.07 General Guardians.

When an action is brought by a general guardian appointed and bonded by a court of competent jurisdiction, the requirements of this rule may be modified as deemed desirable by the court because of bonding or other action taken by the appointing court, except that there must be compliance with the settlement approval requirements of Section 540.08 of the Minnesota Statutes or amendments thereof.

Cross Reference: Minn. R. Civ. P. 17.

Advisory Committee Comments—2000 Amendments

This rule is derived from Minnesota Statutes, section 540.08 (1990) and Rule 3 of the Code of Rules for the District Courts.

The Task Force considered it a thoughtful recommendation that a minor's social security number be required to be included on all minor settlement petitions. Such a requirement would make it easier to locate a minor at the time of reaching majority. The Task Force ultimately concluded, however, the privacy interests dictate that the inclusion of this number should not be mandatory. The information may nonetheless be required by the financial institution with which the funds are deposited, and many lawyers will routinely include it in petitions in order to facilitate locating the minor should the need arise.

The 1994 amendment of Rule 145.02(c) allows the filing of medical records in lieu of a full report of each health care provider where those records provide the information necessary to evaluate the settlement. This may be especially appropriate where the injuries are not severe, or where the cost of obtaining reports would represent a substantial portion of the settlement proceeds. The court can, in any case, require any further information or reports deemed necessary to permit the court to discharge its duty to evaluate the overall fairness of the settlement to the minor.

Rule 145.02(d) is new. It is designed to advise the court of factors to take into consideration when approving or disapproving a settlement on behalf of the minor or incompetent person. Rule 145.02(e) is added in 1992 to provide the court in the petition the information necessary for the court to make the determination required by Rule 145.06(a). Although the parties are the obvious source of the cost information necessary to make the cost determination, the rule explicitly requires the petition to include this information. This information must be disclosed by the parties, and not only the party filing the petition, as often the tortfeasor will have the only accurate information on this subject.

Rule 145.03 is new. It addresses a situation where a tortfeasor or insurer has negotiated a settlement with a minor's family or guardian, and court approval of that settlement is necessary. Oftentimes the plaintiff does not wish to incur attorney's fees to obtain that approval, so as a part of the settlement, the tortfeasor or the insurer makes the arrangements to draft and present the petition. The court needs to be satisfied that the settlement is fair. The Task Force discussed at length whether or not a lawyer hired and paid by an insurer or tortfeasor should be permitted to represent the minor or incompetent person to obtain the approval of the court. It was decided that the petitioner should not be compelled to obtain counsel, and that "arranged counsel" may appear, provided that there is full disclosure to the petitioner of the interests of the insurer or tortfeasor.

Rule 145.03(b) is new and is designed to provide a procedure for the court to obtain advice to evaluate the reasonableness of a settlement. The court may appoint a lawyer selected by the petitioner or the court may designate a lawyer of its own choice. In either case, where a referral is made under this section, the lawyer accepting the referral may not represent the petitioner to pursue the claim, should the petition be denied by the court. Rule 145.03(d) provides that the cost of the consultation provided for in Rule 145.03(b) shall be born equally by the petitioner and the tortfeasor or insurer.

Finally, Rule 145.03(d) provides that any opinions rendered by a selected lawyer on behalf of the minor or incompetent person are advisory only.

Rule 145.05(d) expands the types of investments that may be used in managing the settlement proceeds while retaining the requirements of security of investment. It incorporates Minnesota Statutes, section 540.08 (1990) regarding structured settlements, and it

allows that settlements may include a medical assurance agreement. A medical assurance agreement is a contract whereby future medical expenses of an undetermined amount will be paid by a designated person or entity.

Rule 145.05(e)(5) requires that funds placed in certificates of deposit or other deposits with fixed maturities have those maturities adjusted so they do not mature after the age of majority. This rule places the burden on the financial institution by the notice to be included in the order for deposit.

Rule 145.06 is new. It establishes criteria for approval of structured settlements, and it requires the court to determine the cost of the annuity to insure that the periodic payments reflect a cost comparable to a reasonable settlement amount. Where a minor or incompetent receives a verdict representing future damages greater than \$100,000 and the guardian determines that a structured settlement pursuant to Minnesota Statutes, section 549.25 (1990) would be in the best interests of the minor or incompetent person, this rule shall apply to the implementation of the election pursuant to the statute. The amendment of the rule in 1995 (effective January 1, 1996) is intended to make it clear that it is important that the original annuity policy be retained by the court administrator, and that this is for the purpose of security, not establishing any ownership interest which might affect the tax treatment of the settlement.

Rule 145.06(b) is modified by amendment in 2000. The amendment is intended to require the court approving a minor settlement that includes a structured settlement provision to verify that the annuity issuer is licensed to do business and that Minnesota Statutes, sections 549.30-.34 (1998) is followed. The amendment is not intended to impose any additional substantive requirements, as compliance with statutes is assumed under the current rule. The rule will require the trial court to verify the fact of compliance, however, and will probably require submitting this information to the court.

(Amended effective January 1, 1993; amended effective January 1, 1994; amended effective January 1, 1996; amended effective March 1, 2001.)

Advisory Committee Comment - 2002 Amendment

Rule 145.05 is revamped to create a new procedure for handling the deposit of funds resulting from minor settlements. The new rule removes provisions calling for deposit of funds in "passbook" savings accounts, largely because this form of account is no longer widely available from financial institutions. The revised rule allows use of statement accounts, but requires that the financial institution acknowledge receipt of the funds at the inception of the account. A form for this purpose is included as Form 145.1. Additionally, the rule is redrafted to remove inconsistent provisions. Under the revised rule, release of funds is not automatic when the minor reaches majority; a separate order is required. A form to implement the final release of funds, as well as any permitted interim release of funds, is included as Form 145.2.

Rule 145.06(b)(4) is a new provision to require at least two competitive proposals for a structured settlement. This requirement applies only when one of the proposals is for an annuity issued by the settling party, its liability insurer, or by an insurer related to either of them. The rule requires that the competitive bids be issued by annuity companies that would be qualified to issue an annuity that complies with the requirements of Rule 145.06. In order to permit the trial court to determine that the proposed settlement adequately provides for the interests of the minor, the competitive bids must be for annuities with comparable terms. The rule requires only a second proposal, but permits the court to require additional proposals or analysis of available proposals in its discretion. The rule, as revised, does not direct how the trial court should exercise its discretion in approving or disapproving the proposed structure settlement. It is intended, however, to provide the court some information upon which it can base the decision.

(Added effective January 1, 2003.)

PART G - APPENDIX OF FORMS
FORM 104 CERTIFICATE OF REPRESENTATION AND PARTIES

State of Minnesota

District Court

COUNTY _____

JUDICIAL DISTRICT _____

CASE NO. _____

CERTIFICATE OF REPRESENTATION AND PARTIES

**(ONLY THE INITIAL FILING LAWYER/
 PARTY NEEDS TO COMPLETE THIS FORM)**

Date Case Filed: _____

vs. _____

This certificate must be filed pursuant to Rule 104 of the General Rules of Practice for the District Courts, which states: "A party filing a civil case shall, at the time of filing, notify the court administrator in writing of the name, address, and telephone number of all counsel and unrepresented parties, if known (see form 104 appended to these rules). If that information is not then known to the filing party, it shall be provided to the court administrator in writing by the filing party within seven days of learning it. Any party impleading additional parties shall provide the same information to the court administrator. The court administrator shall, upon receipt of the completed certificate, notify all parties or their lawyers, if represented by counsel, of the date of filing the action and the file number assigned."

LIST ALL LAWYERS/PRO SE PARTIES INVOLVED IN THIS CASE.

LAWYER FOR PLAINTIFF(S)

LAWYER FOR DEFENDANT(S)

(if not known,
name party and address)

 Name of Party

 Name of Party

 Atty Name (Not firm name)

 Atty Name (Not firm name)

 Address

 Address

 Phone Number

 Phone Number

 MN Atty ID No.

 MN Atty ID No.

(Please use other side for additional lawyers/parties).

Date

Lawyer for:

Name of Party

Atty Name (Not firm name)

Address

Phone Number

MN Atty ID No.

Lawyer for:

Name of Party

Atty Name (Not firm name)

Address

Phone Number

MN Atty ID No.

Filing Lawyer/Party

Lawyer for:

Name of Party

Atty Name (Not firm name)

Address

Phone Number

MN Atty ID No.

Lawyer for:

Name of Party

Atty Name (Not firm name)

Address

Phone Number

MN Atty ID No.

FORM 111.02 INFORMATIONAL STATEMENT (Civil Matters—Non-Family)

State of Minnesota

District Court

COUNTY _____

JUDICIAL DISTRICT _____

CASE NO. _____

Case Type: _____

Plaintiff

and

INFORMATIONAL STATEMENT FORM_____
Defendant

1. All parties (have) (have not) been served with process.

2. All parties (have) (have not) joined in the filing of this form.

3. Brief description of the case: _____

4. It is estimated that the discovery specified below can be completed within ____ months from the date of this form. (Check all that apply, and supply estimates where indicated.)

a. Factual Depositions

No ____ Yes ____, estimated number: ____

b. Medical Evaluations

No ____ Yes ____, estimated number: ____

c. Experts Subject to Discovery

No ____ Yes ____, estimated number: ____

5. Assignment as an ____ expedited ____ standard ____ complex case is requested. (If not standard case assignment, include brief setting forth the reasons for the request.)

6. The dates and deadlines specified below are suggested.

- a. _____ Deadline for joining additional parties, whether by amendment or third party practice.
- b. _____ Deadline for bringing nondispositive motions.
- c. _____ Deadline for bringing dispositive motions.
- d. _____ Deadline for submitting _____ to the court.
(specify issue)
- e. _____ Deadline for completing independent physical examination pursuant to Minn. R. Civ. P. 35.
- f. _____ Date for formal discovery conference pursuant to Minn. R. Civ. P. 26.06.

- g. _____ Date for pretrial conference pursuant to Minn. R. Civ. P. 16.
- h. _____ Date for scheduling conference.
- i. _____ Date for submission of a Joint Statement of the Case pursuant to Minn. Gen. R. Prac. 112.
- j. _____ Trial Date.
- k. _____ Deadline for filing (proposed instructions), (verdicts), (findings of fact), (witness list), (exhibit list).
- l. _____ Deadline for _____
(specify)

7. Estimated trial time: _____ days _____ hours (estimates less than a day must be stated in hours).

8. A jury trial is: ☐ waived by consent of _____
(specify party)
pursuant to R. Civ. P. 38.02.
- ☐ requested by _____
(specify party)
(NOTE: Applicable fee must be enclosed.)

9. a. MEETING: Counsel for the parties met on _____
to discuss case management issues. (Date)

b. ADR PROCESS (Check one):

— Counsel agree that ADR is appropriate and choose the following:

- Mediation
- Arbitration (non-binding)
- Arbitration (binding)
- Med-Arb
- Early Neutral Evaluation
- Moderated Settlement Conference
- Mini-Trial
- Summary Jury Trial
- Consensual Special Magistrate
- Impartial Fact-Finder
- Other (describe) _____

— Counsel agree that ADR is appropriate but request that the Court select the process.

— Counsel agree that ADR is NOT appropriate because:

- the case implicates the federal or state constitution.
- other (explain with particularity) _____

— domestic violence has occurred between the parties.

c. PROVIDER (check one):

— The parties have selected the following ADR neutral: _____

— The parties cannot agree on an ADR neutral and request to Court to appoint one

— The parties agreed to select an ADR neutral on or before _____

d. DEADLINE: The parties recommend that the ADR process be completed by _____

(Date)

10. Please list any additional information which might be helpful to the court when scheduling _____ this _____ matter. _____

Signed: _____

Lawyer for
(Plaintiff) (Defendant)

Signed: _____

Lawyer for
(Plaintiff) (Defendant)

Attorney Reg. #: _____

Firm: _____

Address: _____

Telephone: _____

Date: _____

Attorney Reg. #: _____

Firm: _____

Address: _____

Telephone: _____

Date: _____

(Amended effective January 1, 1993; amended effective July 1, 1994, and shall supersede Second Judicial District Local Rules 5 and 25 and Fourth Judicial District Local Rule 5 to the extent inconsistent therewith; amended effective January 1, 1996.)

FORM 112.01 JOINT STATEMENT OF THE CASE

State of Minnesota

District Court

COUNTY

JUDICIAL DISTRICT

CASE NO.

Case Type:

Plaintiff

and

JOINT STATEMENT OF THE CASE

Defendant

1. All parties have been served with process. The case is at issue and all parties have joined in the filing of this Joint Statement of the Case.
2. Estimated trial time: ___ days ___ hours (estimates less than a day must be stated in hours).
3. Jury is requested by the ___ plaintiff ___ defendant. (If this is a change from a court to a jury request, then a \$30 fee must be paid when filing this document.)
4. Concise statement of the case including facts plaintiff(s) intend to prove and legal basis for claims: _____

5. Concise statement of the case indicating facts defendant(s) intend to prove and legal basis for defenses and counterclaim: _____

6. List the names and addresses of witnesses known to either party that either party may call. Indicate the party who expects to call the witness and whether the party intends to qualify that witness as an expert. (Attach additional sheets if necessary.)

Party	Name/Addresses of Witnesses	Please Indicate if Expert Witness
_____	_____	_____ Yes
_____	_____	_____ Yes
_____	_____	_____ Yes

7. In claims involving personal injury, attach a statement by each claimant, whether by complaint or counterclaim, setting forth a detailed description of claimed injuries and an itemized list of special damages as required by the rule. Indicate whether parties will exchange medical reports.
8. In claims involving vehicle accidents, attach a statement describing the vehicles with information as to ownership and the name of insurance carriers, if any.

[Signature Blocks]

(If more space is needed to add additional information or parties, attach a separate sheet typed in the same format.) The undersigned counsel have met and conferred this ___ day of _____ and certify the foregoing is true and correct.

Signature

Signature

Signature

Signature

FORM 114.01 [Deleted effective January 1, 1998]

FORM 114.02 [Deleted effective January 1, 1998]

**FORM 119.05 NOTICE AND REQUEST FOR HEARING TO
DETERMINE ATTORNEYS' FEES AWARD**

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____(Plaintiff)

vs.

**NOTICE AND REQUEST FOR
HEARING TO DETERMINE
ATTORNEYS' FEES AWARD**

_____(Defendant(s))

Court File No.: _____

TO: _____, JUDGMENT DEBTOR:
(Provide Name)

The above-named plaintiff has commenced an action against you and you are in default because you failed to timely serve an Answer. The plaintiff is now seeking an award of attorneys' fees in addition to the principal, interest and court costs in this action. If you do not contest the attorney fee award by completing this form and returning it to the (plaintiff)(plaintiff's attorney) identified below within twenty (20) days, the court may award fees up to the amount of \$_____, calculated as fifteen percent (15%) of the principal balance owing as requested in the Complaint up to a maximum of \$3,000.00 but not less than \$250.00. Attached to this notice is an affidavit from the plaintiff explaining its basis for an award of attorney fees. If you contest the reasonableness of the attorney fees, the plaintiff may seek an award of fees in excess of the amount indicated above, and the Court may award an amount larger or smaller than the amount indicated above.

You must return this form to the (plaintiff)(plaintiff's attorney) identified below within twenty (20) days of its receipt. Failure to timely return the form may result in judgment for the requested fees being granted.

NOTE: This form is not a substitute for an Answer to the action that has been commenced against you and will not preclude the entry of judgment for the principal claim. This form is limited solely to requesting a judicial review of the attorneys' fees requested by the plaintiff. Please contact legal counsel for advice related to serving an Answer or completing this form. _____

REQUEST FOR COURT HEARING

I request a hearing to determine the reasonableness of the attorneys' fees requested by the plaintiff.

(Defendant(s))

Return this form to:

(Plaintiff)(Plaintiff's Attorney)

(Address)

(Added effective January 1, 2004.)

FORM 142.02 [Renumbered Form 417.02]

FORM 145.1 - RECEIPT OF MINOR SETTLEMENT ORDER AND FUNDS**FORM 145.1 RECEIPT OF MINOR SETTLEMENT ORDER AND FUNDS**
(Gen. R. Prac. 145.05)

State of Minnesota

District Court

County of _____

_____ Judicial District

Case Type: _____

Plaintiff/Petitioner

Case No. _____

and

**RECEIPT OF MINOR SETTLEMENT
ORDER AND FUNDS**_____
Defendant/Respondent(Provided Pursuant to Rule 145 of the
Minnesota General Rules of Practice)

1. _____ ("Financial Institution") acknowledges receipt of
the sum of \$ _____ on behalf of _____ in this action.

2. **Financial Institution** acknowledges receipt of the Order Approving Settlement and
For Deposit Into Restricted Account dated _____ in this action, and that the funds
delivered remain subject to that order in the account specified below:

Name of Depository: _____

Branch Name: _____

Branch Address: _____

Account Number: _____

Date Account Opened: _____

Current Balance: \$ _____

3. This account is a federally insured, restricted account, and no withdrawal of either
principal or interest shall be allowed by **Financial Institution** without a signed court order in
this case.

Dated: _____ Type or Print Name _____

Signature: _____

Title: _____

(Added effective January 1, 2003.)

**FORM 145.2 - COMBINED MOTION AND ORDER FOR
RELEASE OF MINOR SETTLEMENT FUNDS**

**FORM 145.2 COMBINED MOTION AND ORDER FOR RELEASE OF MINOR
SETTLEMENT FUNDS (Gen. R. Prac. 145.05)**

State of Minnesota

District Court

County of _____

Judicial District

Case Type: _____

Plaintiff/Petitioner

Case No. _____

and

**COMBINED MOTION AND ORDER
FOR RELEASE OF
MINOR SETTLEMENT FUNDS
(Pursuant to Rule 145 of the
Minnesota General Rules of Practice)**

Defendant/Respondent

1. _____ ("Movant") requests an order of permitting withdrawal of funds
now held in a restricted account pursuant to a minor settlement approved in this action on
_____. Movant brings this Motion as the

_____ (Minor, now past the age of majority—Date of Birth _____)

or

_____ to minor. (Specify whether trustee,
custodian, parent, legal guardian, conservator, or other specified role).

2. Funds are now held on behalf of _____ in the following account:

Name of Depository: _____

Branch Name: _____

Branch Address: _____

Account Number: _____

Date Account Opened: _____

Current Balance: \$ _____

3. Previous withdrawals from the account, each of which was approved by the Court, are
as follows:

_____ None.

or

_____ \$ _____ on _____ for the purpose of _____

_____ \$ _____ on _____ for the purpose of _____

\$ _____ on _____ for the purpose of _____

☐ Check if additional space is necessary, and attach a separate sheet with that information.

4. Movant seeks the release of funds in the amount of \$ _____ for the following reason:

_____ Minor has reached the age of 18 and this is a final distribution
or

_____ The funds will be used for the benefit of the minor in the following way:

☐ Check if additional space is necessary, and attach a separate sheet with that information.

5. Funds should be disbursed as follows:

\$ _____ to _____

\$ _____ to _____

\$ _____ to _____

☐ Check if additional space is necessary, and attach a separate sheet with that information.

I declare under oath and penalty of perjury under the laws of the State of Minnesota that the foregoing is true and correct and that any funds released pursuant to this request will be used for the benefit of the minor and in the way stated.

Dated: _____ Type or Print Name _____

Signature: _____
(sign only in front of notary public or court administrator)

Sworn / affirmed before me this
_____ day of _____,
(DATE) (MONTH) (YEAR)

Notary Public/ Deputy Court Administrator

ORDER APPROVING RELEASE OF FUNDS

Pursuant to the foregoing Motion,

IT IS HEREBY ORDERED that:

1. Movant is authorized to withdraw funds to be made payable as follows:

\$ _____ to _____

\$ _____ to _____

2. _____ This is a final distribution of funds from this account and the account may accordingly may be closed following this final distribution

or

_____ This is not a final distribution of funds and this account must be maintained as to the remaining funds and subject to all restrictions on distribution previous ordered.

3. Other provisions: _____

Dated: _____

Judge of District Court

(Added effective January 1, 2003; amended effective January 13, 2003.)

PART H - MINNESOTA CIVIL TRIALBOOK

Section 1. Scope; Policy

This Trialbook is a declaration of practical policies and procedures to be followed in the civil trials in all the trial courts of Minnesota. It has been written to standardize practices and procedures throughout the state with the hope, and expectation, that trial time and expense will be reduced and that justice to the litigants and public acceptance of trial procedures will be increased.

It is recommended that the policies and procedures be generally and uniformly used. However, it is recognized that situations will arise where their use would violate the purpose for which they were drafted. In such circumstances, the policies and procedures should be disregarded so that justice, not form, may prevail. The provisions of this Trialbook may be cited as Minn. Civ. Trialbook section _____.

Sections 2 to 4. (Deleted effective January 1, 1998)

Section 5. Pre-Trial Conferences

(a) **Settlement procedures.** Settlement conferences are encouraged and recommended for case disposition. However, because of the diversity of approaches to be used, specific procedures are not set forth.

Lawyers will be notified by the court of the procedures to be followed in any action where settlement conferences are to be held.

(b) **Procedures to be followed.** In those courts where a formal pre-trial conference is held prior to assignment for trial, a trial date shall be set and the conference shall cover those matters set forth in paragraphs (d) and (e) of this section.

(c) **Settlement discussions with court.** The court may request counsel to explore settlement between themselves further and may engage in settlement discussions.

(d) Pretrial chambers conferences. At an informal chambers conference before trial the trial court shall:

- (1) determine whether settlement possibilities have been exhausted;
- (2) determine whether all pleadings have been filed;
- (3) ascertain the relevance to each party of each cause of action; and,
- (4) with a view to ascertaining and reducing the issues to be tried, shall inquire:

- (i) whether the issues in the case may be narrowed or modified by stipulations or motions;

- (ii) whether dismissal of any of the causes of actions or parties will be requested;

- (iii) whether stipulations may be reached as to those facts about which there is no substantial controversy;

- (iv) whether stipulations may be reached for waiver of foundation and other objections regarding exhibits, tests, or experiments;

- (v) whether there are any requests for producing evidence out of order;

- (vi) whether motions in limine to exclude or admit specified evidence or bar reference thereto will be requested; and

- (vii) whether there are any unusual or critical legal or evidentiary issues anticipated;

- (5) direct the parties to disclose the number and names of witnesses they anticipate calling, and to make good faith estimates as to the length of testimony and arguments;

- (6) inquire whether the number of experts or other witnesses may be reduced;

- (7) ascertain whether there may be time problems in presentation of the case, e.g., because of other commitments of counsel, witnesses, or the court and advise counsel of the hours and days for trial; and

- (8) ascertain whether counsel have graphic devices they want to use during opening statements; and

- (9) ascertain whether a jury, if previously demanded, will be waived. If a jury is requested, the judge shall make inquiries with a view to determining:

- (i) the areas of proposed voir dire interrogation to be directed to prospective jurors, and whether there is any contention that the case is one of "unusual circumstances";

- (ii) the substance of a brief statement to be made by the trial court to the prospective jurors outlining the case, the contentions of the parties, and the anticipated issues to be tried;

- (iii) the number of alternate jurors (it is suggested that the identity of the alternates not be disclosed to the jury); and

- (iv) in multiple party cases, whether there are issues as to the number of "sides" and allocation of peremptory challenges.

(e) Formal conference. After conclusion of the informal chambers conference and any review of the court file and preliminary research the court finds advisable, a formal record shall be made of:

- (1) arguments and rulings upon motions, bifurcation, and order of proof;

- (2) statement of stipulations, including whether graphic devices can be used during opening statement; and

- (3) in a jury trial, specification of:

- (i) the brief statement the trial court proposes to make to prospective jurors outlining the case, contentions of the parties, and anticipated issues to be tried;

- (ii) the areas of proposed voir dire interrogation to be directed to the prospective jurors;

(iii) whether any of the defendants have adverse interests to warrant individual peremptory challenges and number of them;

(iv) the number of alternate jurors, if any, and the method by which the alternates shall be determined;

(v) the need for any preliminary jury instructions.

Cross Reference: Minn. R. Civ. P. 116; Minn. Gen. R. Prac. 111, 112.

Task Force Comment—1991 Adoption

Subsection (a) is derived from existing Trialbook paragraph 6. The deleted language is unnecessary as it merely repeats other requirements.

Subsection (b) is derived from existing Trialbook paragraph 7.

Subsection (c) is derived from existing Trialbook paragraph 8.

Subsection (d) is derived from existing Trialbook paragraph 9.

Subsection (e) is derived from existing Trialbook paragraph 10.

This section sets forth many of the matters which can, and often should, be discussed in pretrial proceedings. The section does not enumerate all the subjects that can be discussed or resolved in pretrial conferences or other pretrial proceedings. The pretrial conference is intended to be a flexible device and the trial judge has considerable discretion to tailor the pretrial conference to suit the needs of an individual case. Many matters that may be useful in pretrial conferences are discussed in the Federal Judicial Center's Manual for Complex Litigation (2d ed. 1985).

The Task Force considered proposals and concerns expressed on the subject of the role of trial judges, both in jury trial matters and bench trial matters. The Task Force believes this is a difficult issue, and one on which trial judges and counsel should have guidance. The Task Force recommends that this problem area be given further study by the Minnesota Supreme Court and interested bar associations.

Section 6 Voir Dire of Jurors

(a) Swearing Jurors to Answer. The entire panel shall be sworn by the clerk to truthfully answer the voir dire questions put to them. The clerk shall then draw the names of the necessary persons who shall take their appropriate seats in the jury box.

(b) Statement of the Case To and Examination of Prospective Jurors. The court shall make a brief statement to the prospective jurors introducing the counsel and parties and outlining the case, contentions of the parties, and anticipated issues to be tried and may then permit the parties or their lawyers to conduct voir dire or may itself do so. In the latter event, the court shall permit the parties or their lawyers to supplement the voir dire by such further nonrepetitive inquiry as it deems proper.

(c) Challenges for Cause. A challenge for cause may be made at any time during voir dire by any party or at the close of voir dire by all parties.

(d) Peremptory Challenges. Each adverse party shall be entitled to two peremptory challenges, which shall be made alternately beginning with the defendant. The parties to the action shall be deemed two, plaintiffs being one party, defendants the other. If the court finds that two or more defendants have adverse interests, the court shall allow each adverse defendant additional peremptory challenges. When there are multiple adverse parties, the court shall determine the order of exercising peremptory challenges.

(e) Voir Dire of Replacements. When a prospective juror is excused, the replacement shall be asked by the court:

(1) whether he or she heard and understood the brief statement of the case previously made by the judge;

(2) whether he or she heard and understood the questions;

(3) whether, other than to personal matters such as prior jury service, area of residence, employment, and family, the replacement's answers would be different from the previous answers in any substantial respect.

If the replacement answers in the affirmative to (3) above, the court shall inquire further as to those differing answers and counsel may make such supplemental examination as the court deems proper.

(f) **Alternates.** (Deleted effective January 1, 2000.)

Cross Reference: Minn. R. Civ. P. 47; Minn. Gen. R. Prac. 123.

Advisory Committee Comment—1999 Amendments

Subsections (a), (b), (d), and (f) are derived from existing Trialbook paragraphs 11-15.

Subsection (c) is derived from the analogous provision of the rules of criminal procedure, Minn. R. Crim. P. 26.02(3)(a)(4). The present provisions relating to jury selection are spread among numerous different sets of rules. The civil rules have not heretofore specified a time for exercise of peremptory challenges. Some judges ask a party conducting voir dire examination before the conclusion of the jury selection process to "pass the jury for cause." This section will make it clear that challenges for cause can be made at any time, even after voir dire by other parties.

Although the section provides for administration of oaths to jurors, an affirmation should be used as to any juror or panel member preferring it.

Section 6(f) dealing with alternates is deleted in 1999 to conform this rule to the abolition of alternates under the Rules of Civil Procedure. Minn. R. Civ. P. 47.02 was abrogated by the 1998 amendments to the Rules of Civil Procedure, effective January 1, 1999.

(Amended effective January 1, 2000.)

Section 7 Preliminary Instructions

After the jury is sworn, but before opening statements, the judge shall instruct the jurors generally as follows:

(1) to refrain from communicating in writing or by other means about the case, to use the jury room rather than remaining in the courtroom or hallway, and to avoid approaching, or conversations with counsel, litigants, or witnesses, and that they must not discuss the case, or any aspect of it among themselves or with other persons;

(2) that if a juror has a question or communication for the court (e.g., as regards time scheduling), it should be taken up with, or transmitted through, the appropriate court personnel who is in charge of the jurors as to their physical facilities and supplies;

(3) that the jurors will be supplied with note pads and pencils, on request, and that they may only take notes on the subject of the case for their personal use, though they may bring such notes with them into the jury room once they commence deliberations in the case. The jury should receive a cautionary instruction that they are to rely primarily on their collective recollection of what they saw and heard in the courtroom and that extensive note taking may distract them from properly fulfilling this function;

(4) as to law which the judge determines to be appropriate; and

(5) that, as with other statements of counsel, the opening statement is not evidence but only an outline of what counsel expect to prove.

Upon submission of the case to the jury, the judge shall instruct the jury that they shall converse among themselves about the case only in the jury room and only after the entire jury has assembled.

Cross Reference: Minn. R. Civ. P. 39.03.

Task Force Comment—1991 Adoption

This section was derived from existing Trialbook paragraph 16, without significant change.

Section 8 Opening Statement and Final Arguments

(a) **Scope of Opening.** Counsel on each side, in opening the case to the jury, shall only state the facts proposed to be proven. During opening statement counsel may use a blackboard or paper for illustration only. There shall be no display to the jury of, nor reference to, any chart, graph, map, picture, model or any other graphic device unless, outside the presence of the jurors:

- (1) it has been admitted into evidence; or
- (2) such display or reference has been stipulated to; or
- (3) leave of court for such reference or display has been obtained.

(b) **Final Arguments.** Final arguments to the jury shall not misstate the evidence. During final argument counsel may use a blackboard or paper for illustration only. A graphic device, such as a chart, summary or model, which is to be used for illustration only in argument shall be prepared and shown to opposing counsel before commencement of the argument. Upon request by opposing counsel, it shall remain available for reference and be marked for identification.

(c) **Objections.** Objections to remarks by counsel either in the opening statement to the jury or in the closing argument shall be made while such statement or argument is in progress or at the close of the statement or argument. Any objection shall be argued outside the juror's hearing. If the court is uncertain whether there has been a misstatement of the evidence in final argument, the jurors shall be instructed to rely on their own recollections.

Cross Reference: Minn. R. Civ. P. 39.04; Minn. Gen. R. Prac. 124.

Task Force Comment—1991 Adoption

Subsection (a) is derived from Rule 27(a) of the Code of Rules for the District Court and existing Trialbook paragraph 17.

Subsection (b) is derived from existing Trialbook paragraphs 30 and 44.

Subsection (c) is derived from Rule 27(f) of the Code of Rules and existing Trialbook paragraph 31.

Section 9 Availability of Witnesses

(a) **Exchange of Information as to Future Scheduling.** In order to facilitate efficient scheduling of future witnesses and court time, all parties shall communicate with one another and exchange good faith estimates as to the length of witness examinations together with any other information pertinent to trial scheduling.

(b) **"On-Call" Witnesses.** It is the responsibility of an "on-call" witness proponent to have the witness present in court when needed.

(c) **Completion of Witness' Testimony.** Except with the court's approval, a witness' testimony shall be pursued to its conclusion and not interrupted by the taking of other evidence.

Upon the conclusion of a witness's testimony the court should inquire of all counsel whether the witness may be excused from further attendance and if affirmative responses are given, the court may then excuse the witness.

(d) **Excluding Witnesses.** Exclusion of witnesses shall be in accordance with Minn.R.Evid. 615.

(e) **Issuance of Warrants.** A warrant for arrest or body attachment for failure of a witness to attend shall not be released for service unless it is shown by the applicant party, in a hearing outside the presence of jurors, that (1) service of the process

compelling attendance was made at a time providing the witness with reasonable notice and opportunity to respond, and (2) no reasonable excuse exists for the failure to attend or, if the reason for the failure to attend is unknown to the applicant party, due diligence was used in attempting to communicate with such witness to ascertain the reason for the failure to attend.

Cross Reference: Minn. R. Civ. P. 43.

Task Force Comment—1991 Adoption

Subsection (a) is derived from existing Trialbook paragraph 54.

Subsection (b) is derived from existing Trialbook paragraph 55.

Subsection (c) is derived from existing Trialbook paragraph 56.

Subsection (d) is derived from existing Trialbook paragraph 57, with significant change.

Subsection (e) is derived from existing Trialbook paragraph 61.

Subsection (d) now simply makes it clear that Minn. R. Evid. 615 governs the sequestration of witnesses. The existing provision of existing Trialbook paragraph 57 appears to be inconsistent with the Rules of Evidence, and should be superseded.

Section 10 Examination of Witnesses

(a) **Objections.** Lawyers shall state objections succinctly, stating only the specific legal grounds for the objection without argument. Argument, if allowed by the court, and any offer of proof shall be made outside of the hearing of the jury and on the record.

(b) **Caution to Witnesses.** Before taking the stand and outside of the hearing of the jury, a witness called by counsel shall be cautioned by such counsel to be responsive to the questions and to wait in answering until a question is completed and a ruling made on any objection. Lawyers should advise their clients and witnesses of the formalities of court appearances.

Counsel may request the court to caution a witness while on the stand as to the manner of answering questions.

(c) **Questions Not to be Interrupted.** A question shall not be interrupted by objection unless then patently objectionable.

(d) **Effect of Asking Another Question.** An examiner shall not repeat the witness' answer to the prior question before asking another question.

An examiner shall wait until the witness has completed answering before asking another question. If a question is asked before the preceding question of the same examiner is answered or any objection is ruled upon, it shall be deemed a withdrawal of the earlier question.

(e) **Number of Examinations.** On the trial of actions only one counsel on each side shall examine or cross-examine a witness, and one counsel only on each side shall sum up the case to the jury, unless the judge otherwise orders.

(f) **Counsel's Use of Graphic Devices.** Counsel may use a graphic device to diagram, calculate, or outline chronology from witnesses' testimony.

(g) **Familiarity with witnesses, jurors and opposing counsel.** Lawyers and judges shall not exhibit undue familiarity with adult witnesses, parties, jurors or opposing counsel, or each other and the use of first names shall be avoided. In arguments to the jury, no juror shall be singled out and addressed individually. When addressing the jury, the lawyers shall first address the court, who shall recognize the lawyer.

(h) **Matters to be Out of Jury's Hearing.** The following matters shall be held outside the hearing of jurors. Counsel wishing to argue such matters shall request leave from the court. The first time this request is granted in a trial, the judge shall advise the jurors that matters of law are for the court rather than the jury and that discussions as to law outside the jurors' hearing are necessary and proper for counsel to request.

(1) **Arguments:** Evidentiary arguments and offers of proof as provided for in section 10(a) of this Trialbook;

(2) **Offers to Stipulate:** Counsel shall not confer about stipulations within possible jury hearing, nor without leave of the court when such conference would impede trial progress;

(3) **Requests for Objects:** Other than requests to a witness during testimony, requests by a party to opposing counsel for objects or information purportedly in the possession of the opposing counsel or party shall be made outside the hearing of jurors;

(4) **Motions:** Motions for judgments on the pleadings, to exclude evidence, directed verdict, and mistrial shall be made and argued outside the hearing of the jurors. If the ruling affects the issues to be tried by the jury, the court, after consulting with counsel, shall advise the jurors. Immediately upon granting a motion to strike any evidence or arguments to the jury, the court shall instruct the jury to disregard the matter stricken; and

(5) **Sensitive Areas of Inquiry:** Areas of inquiry reasonably anticipated to be inflammatory, highly prejudicial, or inadmissible, shall be brought to the attention of opposing counsel and the court outside the hearing of jurors before inquiry. A question of a witness shall be framed to avoid the suggestion of any inadmissible matter.

(i) **Questioning by Judge.** The judge shall not examine a witness until the parties have completed their questions of such witness and then only for the purpose of clarifying the evidence. When the judge finishes questioning, all parties shall have the opportunity to examine the matters touched upon by the judge. If a lawyer wants to object to a question posed by the court, he or she shall make an objection on the record outside the presence of the jury. The lawyer shall make a "motion to strike" and ask for a curative instruction.

(j) **Advice of Court as Self-Incrimination.** Whenever there is a likelihood of self-incrimination by a witness, the court shall advise the witness outside the hearing of the jurors of the privilege against self-incrimination.

(k) **Policy Against Indication as to Testimony.** Persons in the courtroom shall not indicate by facial expression, shaking of the head, gesturing, shouts or other conduct disagreement or approval of testimony or other evidence being given, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them.

(l) **Policy on Approaching the Bench.** Except with approval of the court, persons in the courtroom shall not traverse the area between the bench and counsel table, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them.

(m) **Use of Depositions and Interrogatories.** A party, before reading into evidence from depositions or interrogatories, shall cite page and line numbers to be read, and pause briefly for review by opposing counsel and the court and for any objections. The court may require designation of portions of depositions to be used at trial in a pretrial order.

Cross Reference: Minn. R. Civ. P. 43.

Task Force Comment—1991 Adoption

Subsections (a)-(d) are derived from paragraphs 48-53 of the existing Trialbook, in order.

Subsection (e) is derived from Rule 27(d) of the Code of Rules.

Subsection (f) is derived from paragraph 59 of the existing Trialbook.

Subsection (g) is derived from paragraph 58 of the existing Trialbook.

Subsection (h) is derived from paragraph 18 of the existing Trialbook.

Subsections (i)-(l) are derived from paragraphs 62-65 of the existing Trialbook, in order.

Subsection (m) is derived from existing Trialbook, paragraph 22.

Section 11 Interpreters

The party calling a witness for whom an interpreter is required shall advise the court in advance of the need for an interpreter. Parties shall not use a relative or friend as an interpreter in a contested proceeding, except as approved by the court.

Cross Reference: Minn. R. Civ. P. 43.

Task Force Comment—1991 Adoption

This section is derived from existing Trialbook paragraph 60.

Section 12 Exhibits

(a) **Pre-Trial Exchange of Lists of Exhibits.** Each party shall prepare a list of exhibits to be offered in evidence, and exchange copies of such lists with other counsel prior to the pre-trial conference. Such lists shall briefly describe each exhibit anticipated to be offered in evidence. Prior to the commencement of trial, copies of all documents on the list of exhibits shall be made available by the proponent for examination and copying by any other party.

(b) **Counsel to Organize Numerous Exhibits.** If it can reasonably be anticipated that numerous exhibits will be offered in a trial, all counsel shall meet with designated court personnel shortly prior to or during a recess of the trial for the purpose of organizing and marking the exhibits.

All exhibits shall be marked for identification before any reference by counsel or by a witness.

(c) **Marking of Exhibits First Disclosed During Trial.** When an exhibit is first disclosed, the proponent shall have it marked for identification before referring to it.

(d) **Collections of Similar and Related or Integrated Documents.** Each collection of similar and related or integrated documents shall be marked with a single designation. If reference is made to a specific document or page in such collection, it shall be marked with a letter the arabic exhibit number assigned to the collection, e.g., "1-a," "21-b," "2-g," etc.

(e) **Oral Identification of Exhibits at First Reference.** Upon first reference to an exhibit the proponent shall briefly refer to its general nature, without describing the contents.

(f) **When Exhibits to be Given to Jurors.** Exhibits admitted into evidence, subject to cursory examination, such as photographs and some other demonstrative evidence, may be handed to jurors only after leave is obtained from the court.

Other exhibits admitted into evidence, not subject to cursory examination, such as writings, shall not be handed to jurors until they retire to the jury room upon the cause being submitted to them. If a party contends that an exhibit not subject to cursory examination is critical and should be handed to jurors in the jury box during the course of the trial, counsel shall request leave from the court. Such party shall be prepared to furnish sufficient copies of the exhibit, if reasonably practicable, for all jurors in the event such leave is granted; and upon concluding their examination, the jurors should return the copies to the bailiff. In lieu of copies, and if reasonably practicable, enlargements or projections of such exhibits may be utilized. The court may permit counsel to read short exhibits or portions of exhibits to the jury.

(g) **Exhibits Admitted in Part.** If an exhibit admitted into evidence contains some inadmissible matter, e.g., a reference to insurance, excluded hearsay, opinion or other evidence lacking foundation, the court, outside the hearing of the jury, shall specify the excluded matter and withhold delivery of such exhibit to the jurors unless and until the inadmissible matter is physically deleted.

Such redaction may be accomplished by photocopying or other copying which deletes the inadmissible portions, and in such event, the proponent of such exhibit shall prepare and furnish a copy.

If redaction by such copying is not accomplished, the parties shall seek to reach a stipulation as to other means; and failing so to do, the admissible matter may be read into evidence with leave of the court.

(h) Evidence Admitted for a Limited Purpose. When evidence is received for a limited purpose or against less than all other parties, the court shall so instruct the jury at the time of admission and, if requested by counsel, during final instructions.

(Amended effective January 1, 1994.)

Cross Reference: Minn. R. Civ. P. 43.

Advisory Committee Comment—1994 Amendment

Subsection (a) is derived from existing Trialbook paragraph 37.

Subsection (b) is derived from existing Trialbook paragraph 38.

Subsection (c) is derived from existing Trialbook paragraph 39.

Subsection (d) is derived from existing Trialbook paragraph 41.

Subsection (e) is derived from existing Trialbook paragraph 42.

Subsection (f) is derived from existing Trialbook paragraph 19.

Subsection (g) is derived from existing Trialbook paragraph 20.

Subsection (h) is derived from existing Trialbook paragraph 21.

Former subsection (d) is deleted because uniform exhibit marking is now covered by Minn. Gen. R. Prac. 130, a new rule effective on the same date. The remaining sections are renumbered for convenience.

The provisions of subsection (f) are not intended to limit in any way the discretion of the trial court as to what evidence is allowed to go to the jury room. Any evidence that is fragile, perishable, or hazardous may properly not be allowed into the jury deliberation room.

(Amended effective January 1, 1994.)

Section 13 Custody of Exhibits

(a) Return of Exhibits to Court Personnel. Immediately after conclusion of the examination of a witness regarding an exhibit shown to a witness, counsel shall return it to the court personnel.

(b) Exhibits after Trial. Upon the completion of trial, the administrator shall index and retain all exhibits until the case is finally disposed of and all times for appeal have expired and they are either retrieved by the party offering them or destroyed pursuant to Minn. Gen. R. Prac. 128. In the event an appeal is taken, the court administrator shall deliver the exhibits to the Clerk of Appellate Courts in accordance with the procedures of the appellate courts.

(c) Bulky Exhibits. Any time after trial and upon the agreement of all parties, the court administrator may arrange the return of bulky exhibits to the party offering them at trial.

Cross Reference: Minn. R. Civ. P. 43, 77; Minn. Gen. R. Prac. 128, 129.

Task Force Comment—1991 Adoption

Subsection (a) is derived from existing Trialbook paragraph 43.

Subsection (b) is new, although the subject is covered in a number of current rules.

Section 14 Sealing and Handling of Confidential Exhibits

When briefs, depositions, and other documents or an exhibit such as a trade secret, formula or model are to be treated as confidential, if size permits, such an exhibit shall be placed in a sealed envelope clearly labeled as follows:

"This envelope contains Exhibits _____ which are confidential and sealed by order of the court. This envelope shall not be opened, nor the contents hereof revealed, except by order of the court."

Such an envelope and other confidential exhibits shall be kept in a locked container such as a file cabinet or some other secure location under the supervision of the administration until released by order of the court.

If testimony is taken which would reveal the substance of confidential exhibits, the courtroom shall be cleared of all persons other than parties, their lawyers, and court personnel. Those present, including jurors, shall be directed by the court to refrain from disclosing the substance of the confidential exhibits.

The pertinent portions of the reporter's notes or transcript shall be kept in a locked container after being placed in a sealed envelope clearly labeled as follows:

"This envelope contains confidential references sealed by order of the court. This envelope shall not be opened, nor the contents hereof revealed, except by order of the court."

Briefs and other papers submitted in or after trial ordinarily should not describe the substance of confidential exhibits but should refer to them only by number or letter designation pursuant to the uniform method of marking exhibits.

Cross Reference: Minn. R. Civ. P. 26.03, 43, 77; Minn. Gen. R. Prac. 128, 129.

Task Force Comment—1991 Adoption

This section is derived from existing Trialbook paragraph 47. For a discussion of balancing tests applicable to requests to seal documents, see Minneapolis Star & Tribune Co. v. Schumacher, 392 N.W.2d 197, 202-206 (Minn. 1986).

Section 15 Instructions

(a) When Jury Instructions to be Submitted. Jury instructions shall be submitted in accordance with Minn. R. Civ. P. 51. Written requests for instructions shall list authorities.

(b) Conference Regarding Instructions and Verdicts. Before final argument and after submission to the court of all proposed jury instructions and verdict forms, a conference shall be held outside the presence of jurors.

A reporter is not required at the beginning of the conference while the court reviews with counsel any proposed instructions or verdict forms and discusses:

(1) whether any proposed instructions or verdict forms are inappropriate and will be voluntarily withdrawn;

(2) whether there is any omission of instructions or verdict forms which are appropriate and shall be offered and given without objection; and

(3) whether there is any other modification of instructions or verdict forms to which the parties will stipulate.

Thereafter, the conference shall be reported and the court shall:

(1) specify those instructions and verdict forms the court proposes to give, refuse, or modify, whether at the request of a party or on its own initiative;

(2) hear formal argument, and rule upon any objections to, and offers of, the proposed instruction and verdict forms.

(c) Specifying Disposition of Instructions. Upon determining the instructions to be given, refused, or modified, the court shall indicate the disposition and sign or initial them.

(d) Stipulations Regarding Further Procedure. At a conference prior to the submission of the case to the jury, the court may request that the parties consider stipulating:

(1) that in the absence of any counsel the court may, upon request of the jury, read to the jury any and all instructions previously given;

(2) that in the absence of the court after the original submission of the case to the jury, any judge of the court may act in the court's place up to and including the time of dismissal of the jury;

(3) that a stay of entry of judgment for an agreed upon number of days shall be granted after a verdict;

(4) that a sealed verdict may be returned; and

(5) that the presence of the clerk and reporter, the right to poll the jury, and the right to have the verdict immediately recorded and filed in open court are waived.

(e) **Changing Jury Instructions.** If, after the chambers conference and at any time before giving the instructions and verdict form to the jurors, the court determines to make any substantive change the court shall so advise all parties outside the hearing of jurors. If the court determines to make a substantive change after final argument, the court shall permit additional final argument. The court shall also make a statement on the record regarding any changes.

(f) **Use of Jury Instructions in Jury Room.** Jury instructions may be sent to the jury room for use by the jurors if the court so directs. The number, title, citation of authority, and history shall be removed from each instruction. Stricken portions shall be totally obliterated and any additions shall be completely legible.

Cross Reference: Minn. R. Civ. P. 51.

Task Force Comment—1991 Adoption

Subsection (a) is derived from existing Trialbook paragraph 24.

Subsection (b) is derived from existing Trialbook paragraph 25.

Subsection (c) is derived from existing Trialbook paragraph 26.

Subsection (d) is derived from existing Trialbook paragraph 27.

Subsection (e) is derived from existing Trialbook paragraph 28.

Subsection (f) is derived from existing Trialbook paragraph 32.

Section 16 Questions by Jurors

If the jury has a question regarding the case during deliberations, the court shall instruct the foreperson to reduce it to writing and submit it through appropriate court personnel. Upon receipt of such a written question, the court shall review the propriety of an answer with counsel, unless counsel have waived the right to participate or cannot be found after reasonable and diligent search documented by the court. Such review may be in person or by telephone, and shall be on the record outside the hearing of the jury. The written question and answer shall be made a part of the record. The answer shall be given in open court, absent a stipulation to the contrary.

Cross Reference: Minn. R. Civ. P. 47, 49.

Task Force Comment—1991 Adoption

This section is derived from existing Trialbook paragraph 34.

Section 17 Special Verdicts

(a) **Special Verdict Forms.** A party requesting a special verdict form should prepare the proposed form and submit it to the court and serve it upon the other counsel prior to the chambers conference referred to in section 15 of this Trialbook.

(b) **Filing.** Proposed special verdict forms shall be filed and made part of the record in the case.

(c) **Copies of Verdict.** The court may provide copies of the verdict form to the jury or to each juror for use during arguments or instruction.

Cross Reference: Minn. R. Civ. P. 49.

Task Force Comment—1991 Adoption

Subsection (a) is derived from existing Trialbook paragraph 33.

Subsection (b) is new.

Subsection (c) is new. The Task Force believes that it may be useful in some cases to allow the jury to have a copy or copies to be used during arguments of counsel or instructions by the court. It is not wise to permit multiple copies of the verdict form to be taken into the jury room, however.

Section 18 Polling and Discharge

(a) Polling the Jury. Upon the return of any verdict and at the request of a party the jury shall be polled. Polling shall be conducted by the trial court or by the clerk at the trial court's direction by asking each juror: "Is the verdict read your verdict?"

(b) Discharge of the Jury. In discharging the jury, the court shall:

- (1) Thank the jury for its service;
- (2) Not comment on the propriety of any verdict or failure to reach same;
- (3) Advise the jurors that they may, but need not, speak with anyone about the case; and
- (4) Specify where and when any jurors are to return for further service.

Cross Reference: Minn. R. Civ. P. 47-49.

Task Force Comment—1991 Adoption

Subsection (a) is derived from existing Trialbook paragraph 35.

Subsection (b) is derived from existing Trialbook paragraph 36.

TITLE III - REGISTRATION OF LAND TITLES**PART A - PROCEEDINGS FOR INITIAL REGISTRATION****Rule 201. Applicability of Rules**

Rules 201 through 222 of these rules apply to all actions and proceedings in the district court relating to registration of land titles, including proceedings subsequent to initial registration.

Task Force Comment—1991 Adoption

These rules include all of the provisions of the Code of Rules for the District Courts, Part II, and include additional rules derived from detailed local rules provisions dealing with subjects not addressed in the Code of Rules. No significant substantive changes have been made except to add these new provisions to the state-wide rules.

Rule 202. Applications—Indorsements

Applications shall be approved as to form by the examiner, and there shall be indorsed thereon the name and address of the applicant's lawyer, or of the applicant if the applicant appears in person.

Rule 203. Abstracts of Title

The abstract when filed shall show the record of the patent or other conveyance from the United States, the record of the certified copy of the application, and shall include searches as to all state and federal judgments, federal and state tax liens, real estate taxes and tax and special assessment sales. The abstract also shall contain

bankruptcy searches in the office of the County Recorder in the county in which the land is located. Additional bankruptcy searches in the office of the clerk of federal district court shall be required only in examination of title to lands in Hennepin, Ramsey and St. Louis counties.

Rule 204. Title Based Upon an Adjudication Not Final, or Upon Estoppel

When the title of the applicant or the release or discharge of any incumbrance thereon is based upon an adjudication not final, or upon estoppel, and there remains a right of appeal or contest, all parties having such right of appeal or contest shall be made parties defendant.

Rule 205. Examiner's Report—Petition and Order for Summons

The examiner's report shall specify the names of all parties deemed necessary parties defendant. Petitions for summons shall set forth those names and the names of such other parties as the applicant deems to be necessary, and the names, if known to the applicant, or ascertainable by reasonable inquiry of the successors in interest of such persons known to the applicant to be deceased. The petition shall recite that the petitioner has made a diligent effort by reasonable inquiry and search to ascertain the place of residence of all defendants named therein, and where the place of residence of a defendant is unknown to the petitioner, the petition shall so state such fact.

Rule 206. Papers to be Filed—Effect of Notice and Appearance

A defendant who appears or files an answer, and who also serves a copy on the applicant or the applicant's lawyer, shall be entitled to notice of all subsequent proceedings in that action.

Rule 207. Affidavit of No Answer and Court Administrator's Certificate of Default

The default of defendants who fail to appear and answer shall be shown by the certificate of the court administrator of the district court in which the action is filed, and by the affidavit of the applicant's lawyer, if the applicant appears by lawyer; otherwise by the applicant's affidavit.

Rule 208. Hearings in Default Cases—Filing Papers

Initial applications, where no issue has been joined, shall be heard by the court at any special term, or they may be heard by an examiner, to whom the matter has been specially referred. In counties where the examiner checks the proceedings in advance of the hearings, all papers necessary to complete the files shall be filed; and all documentary evidence proposed to be used by the applicant or petitioner shall be delivered to the examiner at least three days before the hearing, together with the proposed order for judgment and decree.

Rule 209. Issues Raised by Answer—Reply

All facts alleged in an answer, which are not in accordance with the allegations of the application, shall be considered at issue without reply by the applicant. But if the answer sets up rights admitted in the application, or in a reply of the applicant, the hearing may proceed as in case of a default, and the registration shall be subject to such rights.

Rule 210. Trial of Contested Issues

In all cases where the answer raises an issue which is not disposed of by stipulation or otherwise, the matter shall be set for trial. The procedure and the method of determination shall be the same as in the trial of similar issues in civil actions or proceedings.

Rule 211. Interlocutory Decree Establishing Boundaries

When the application seeks to fix and establish all or some of the boundary lines of the land, the applicant shall have the premises surveyed by a registered land surveyor and shall cause to be filed in the proceeding a plat of the survey showing the correct boundaries of the premises. The applicant shall furnish the examiner with such abstracts of title of adjoining lands as the latter shall require in determining the necessary parties defendant in the fixing and establishing of such boundaries. The hearing upon such application may be separate from or in connection with the hearing upon the application to register, but before any final adjudication of registration, the court by order shall fix and establish such boundaries and direct the establishment of "judicial landmarks" in the manner provided by Minnesota Statutes, section 559.25. In the decree of registration thereafter entered, and in certificates of title thereafter issued, the description of the land shall contain appropriate reference to such "judicial landmarks."

Rule 212. Protection of Interests Acquired Pendente Lite—Provision for Immediate Registration after Hearing

At the time of the hearing of the application for judgment, the applicant shall satisfy the court by continuation of abstract, if required by the examiner, and other proper proof, of any changes in the title, or in the incumbrances arising since the filing of the application. When the decree is signed, the applicant shall forthwith file it with the court administrator, together with a receipt of the registrar showing payment of all sums due for the registration of the decree, and the issuance of a certificate of title, and thereupon the court administrator shall certify a copy of the decree and file the same for registration with the registrar.

PART B—PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION**Rule 213. Title of Proceedings**

Proceedings subsequent to the initial registration under Minnesota Statutes, sections 508.44, 508.45, 508.58, 508.59, 508.61, 508.62, 508.67, 508.671, 508.70, 508.71, and 508.73, shall be commenced by filing with the court administrator a verified petition by a party in interest, which shall be entitled:

In the Matter of the Petition of _____ in Relation to (description of property) registered in Certificate of Title No. _____ for (relief sought).

The petition shall allege the facts justifying the relief sought, the names of all interested parties as shown by the certificate of title, and their interests therein.

Rule 214. Trial and Hearing

In proceedings where no notice is required and in proceedings where the required process or notice has been served and the time for appearance has expired without any issue having been raised, the proceedings shall be set for trial and heard the same as in proceedings upon default for initial registration. Issues raised in these proceedings shall be set for trial and disposed of the same as similar issues in other civil proceedings.

Rule 215. New Certificates, Amendments, Etc.

In proceedings under Minnesota Statutes, sections 508.44, 508.45, 508.58, 508.59, 508.61, 508.62, 508.67, 508.671, 508.70, 508.71, and 508.73, the examiner shall make such examination as to the truth of the allegations contained in the petition as the examiner considers necessary, or as directed by the court. In all cases where notice is necessary and the manner of notice is not prescribed by statute, it shall be by an order to show cause, which shall designate the respondents, the manner of service, and the time within which service shall be made. Any final order or decree directed in such proceeding shall be approved as to form by the examiner before presentation to the court.

Rule 216. New Duplicate Certificate

Every petition for a new duplicate certificate shall be filed with the clerk and a certified copy thereof may be filed with the registrar for registration as a memorial on the certificate of title. Thereupon the court shall issue a citation addressed "To Whom It May Concern," fixing a time and place of hearing and prescribing the mode of service. No order shall be made for a new duplicate except upon hearing and due proof that the duplicate theretofore issued has been lost or destroyed, or cannot be produced. If it shall appear at the hearing that there are any known parties in interest to whom notice should be given, the hearing shall be continued and an order entered accordingly.

PART C—MISCELLANEOUS PROVISIONS**Rule 217. Cases Not Requiring Special Order of Court**

When the interest of a life tenant has been terminated by death, the Registrar may receive and enter a memorial of a duly certified copy of the official death certificate and an affidavit of identity of the decedent with the life tenant named in the certificate of title; and in such case the memorial of said certificate and affidavit shall be treated as evidence of the discharge of said life tenancy.

Task Force Comment—1991 Adoption

This rule is derived from 4th Dist. R. 11.02(d).

Rule 218. State Tax Deeds

A deed from the State of Minnesota in favor of the registered owner shall be registered as a memorial on the certificate of title as a discharge of an Auditor's Certificate of forfeiture to the State.

In cases where the state deed of repurchase is dated subsequent to the date of any conveyance by the repurchasing registered owner to another, the County Auditor, a deputy Auditor, or the County Land Commissioner may endorse on the state deed a statement that the repurchase was made prior to or concurrent with the date of the conveyance by the registered owner.

Task Force Comment—1991 Adoption

This rule is derived from 4th Dist. R. 11.03.

Rule 219. Deeds of Housing and Urban Development

In the registration of deeds or other instruments hereinafter listed for titles or interest registered in the name of an individual as Secretary of Housing and Urban Development, the Registrar of Titles shall be guided by 12 U.S.C. section 1710(g), which confers upon any designated officer, agent or employee the power to convey and to execute in the name of the Secretary deeds of conveyance, deeds of release, assignments of mortgages, satisfactions of mortgages, and any other written instrument relating to real property or any interest therein which has been acquired by the Secretary; and the Registrar of Titles shall accept the statement of the certificate of acknowledgement attached to any such instrument as evidence of the official character of the Secretary or the Secretary's designated officer, agent or employee executing the instrument.

Task Force Comment—1991 Adoption

This rule is derived from 4th Dist. R. 11.04.

Rule 220. Birth Certificates

The Registrar of Titles is authorized to receive for registration of memorials upon any outstanding certificate of title an official birth certificate pertaining to a registered owner named in said certificate of title showing the date of birth of said registered owner, providing there is attached to said birth certificate an affidavit of an affiant who states that he/she is familiar with the facts recited, stating that the party named in said birth certificate is the same party as one of the owners named in said certificate of title; and that thereafter the Registrar of Titles shall treat said registered owner as having attained the age of the majority at a date 18 years after the date of birth shown by said certificate.

Task Force Comment—1991 Adoption

This rule is derived from 4th Dist. R. 11.05.

Rule 221. Death Certificates

The Registrar of Titles may receive official certificates of death issued by the United States Department of Defense or other military department in lieu of a certificate of death.

Task Force Comment—1991 Adoption

This rule is derived from 4th Dist. R. 11.06.

Rule 222. Condominiums

The procedure for administration by the Registrar of the Uniform Condominium Act shall be as follows:

(a) The declaration, bylaws and any amendments thereto, to be filed in the office of the Registrar of Titles, must be executed and acknowledged and embrace land within the county.

(b) In order to have uniformity in the recording offices and to protect the interests of the public generally, the general requirements of Minnesota Statutes, section 505.08 as to the platting of land shall be followed, namely: as authorized by Minnesota Statutes, section 505.08, subdivision 2a, only one set of transparencies shall be filed. The transparencies shall be of 4 mil. thickness, black on white on clear Mylar and be made by a fixed photo process. The transparencies shall be 20 by 30 inches in size. More detailed information on the drafting of the condominium plat may be obtained from the Registrar of Titles.

(c) The condominium plat is to be numbered serially beginning with the next number after the last apartment ownership number assigned pursuant to the Minnesota Condominium Act, Minnesota Statutes, chapter 515, and the numbers shall run consecutively within the offices of the County Recorder and the Registrar of Titles.

(d) Where registered land is to be submitted for administration under said act, the declarant, prior to filing the declaration and bylaws, shall obtain an Order of the Court in a Proceedings Subsequent to Initial Registration of land that the Declaration, including the condominium plat, and Bylaws, as submitted, comply with the various requirements of Minnesota Statutes, chapter 515A, and any amendments thereto. The Order shall direct the Registrar of Titles to accept such documents for registration and to enter them as separate memorials on the original Certificate of Title and on the Owner's Duplicate Certificate thereof. Reference to such documents, including the document numbers and dates of filing, shall be carried forward to each succeeding Certificate, including any Mortgagees' or Lessees' Duplicate Certificates.

(e) A condominium shall not include both registered land and unregistered land, but shall consist only of land that is all registered under Minnesota Statutes, chapter 508 or land of which no part is so registered.

Task Force Comment—1991 Adoption

This rule is derived from 4th Dist. R. 11.07.

TITLE IV - RULES OF FAMILY COURT PROCEDURE**Rule 301. Applicability of Rules**

Rules 301 through 313 and, where applicable, the Minnesota Rules of Civil Procedure shall apply to family law practice except where they are in conflict with applicable statutes or the Expedited Child Support Process Rules, Minn. Gen. R. Prac. 351 through 379. Rules 301 through 313 do not apply to proceedings commenced in the Expedited Child Support Process, except for Rules 302.04, 303.05, 303.06, 308.02, and 313.

(Amended effective March 1, 2001; amended effective September 5, 2001.)

Advisory Committee Comment—1992 Amendments

These rules are derived primarily from the Rules of Family Court Procedure. The advisory committee comments from the Rules of Family Court Procedure are included except where inconsistent with new provisions or where applicable rules are not retained.

These rules apply to the following specific types of proceedings that are generally treated as family court actions:

- 1. Marriage dissolution, legal separation, and annulment proceedings (Minnesota Statutes, chapter 518);*
- 2. Child custody enforcement proceedings (Minnesota Statutes, chapter 518A);*
- 3. Domestic abuse proceedings (Minnesota Statutes, chapter 518B);*
- 4. Support enforcement proceedings (Minnesota Statutes, chapter 518C—R.U.R.E.S.A.);*
- 5. Contempt actions in Family Court (Minnesota Statutes, chapter 588);*
- 6. Parentage determination proceedings (Minnesota Statutes, sections 257.51-.74);*
- 7. Actions for reimbursement of public assistance (Minnesota Statutes, section 256.87);*
- 8. Withholding of refunds from support debtors (Minnesota Statutes, section 289A.50, subdivision 5);*
- 9. Proceedings to compel payment of child support (Minnesota Statutes, section 393.07, subdivision 9); and*
- 10. Proceedings for support, maintenance or county reimbursement judgments (Minnesota Statutes, section 548.091).*

Other matters may be heard and treated as family court matters.

(Amended effective January 1, 1993.)

Advisory Committee Comment - 2001

Minn. Gen. R. Prac. 351.01 states that the Rules of Civil Procedure, Rules of Evidence, and General Rules of Practice shall apply to proceedings in the expedited process unless inconsistent with the Expedited Child Support Rules, Minn. Gen. R. Prac. 351 through 379. With the exception of Family Court Rules 302.04, 303.05, 303.06, 308.02, and 313, Minn. Gen. R. Prac. 301-313 are inconsistent with the Expedited Child Support Rules and therefore do not apply to the expedited process.

(Added effective September 5, 2001.)

Rule 302. Commencement; Continuance; Time; Parties**Rule 302.01 Commencement of Proceedings**

(a) **Service.** Marriage dissolution, legal separation and annulment proceedings shall be commenced by service of a summons and petition upon the person of the other party, or by publication pursuant to court order. Service in other family court proceedings shall be governed by the rules of civil procedure.

(b) **Joint Petition.**

(1) No summons shall be required if a joint petition is filed. Proceedings shall be deemed commenced when both parties have signed the verified petition.

(2) Where the parties to a proceeding agree on all property issues, have no children together, the wife is not pregnant, and the wife has not given birth since the date of the marriage to a child who is not a child of the husband, the parties may proceed using a joint petition, agreement, and judgment and decree for marriage dissolution without children. Form 12 appended to these rules is a sufficient form for this purpose.

(3) Upon filing of the "Joint Petition, Agreement and Judgment and Decree," and Form 11 appended to these rules, and a Notice to the Public Authority if required by Minn. Stat. section 518.551, subd. 5(a), the court administrator shall place the matter on the default calendar for approval without hearing pursuant to Minn. Stat. section 518.13, subd. 5. A Certificate of Representation and Parties and documents required by Rules 306.01 and 306.02 shall not be required if the "Joint Petition, Agreement and Judgment and Decree" provided in Form 12 is used.

(4) Court Administrators in each Judicial District shall make the "Joint Petition, Agreement and Judgment and Decree for Marriage Dissolution Without Children" available to the public at a reasonable cost, as a fill-in-the-blank form.

(c) **Service by Publication.** Service of the summons and petition may be made by publication only upon an order of the court. If the respondent subsequently is located, personal service shall be made before the final hearing.

(Amended effective January 1, 2004.)

Family Court Rules Advisory Committee Commentary *

Proceedings for dissolution, legal separation and annulment are governed by Minnesota Statutes, chapter 518. Minnesota Statutes, section 518.10 sets out the requisites for the petition. Minnesota Statutes, section 518.11 governs service by publication and precludes substitute service or service by mail under Minn. R. Civ. P. 4.05. The respondent's answer must be served within 30 days. Minnesota Statutes, section 518.12. The joint proceeding is commenced on the date when both parties have signed the petition; no summons is required. Minnesota Statutes, sections 518.09 & 518.11. In cases involving foreign nationals, see Part I, Rule 30, Code of Rules for District Court.

Custody proceedings under the Uniform Child Custody Jurisdiction Act are governed by Minnesota Statutes, chapter 518A. Interstate service and notice must be accomplished at least 20 days prior to any hearing in Minnesota. Service within the state is set forth in Minn. R. Civ. P. 4.

Domestic abuse proceedings are governed by Minnesota Statutes, chapter 518B. Ex parte orders for protection must include notice of a hearing within 14 days of the issuance of the order. Personal service upon the respondent must be effected not less than five days prior to the first hearing.

Support proceedings under the revised Uniform Reciprocal Enforcement of Support Act are governed by Minnesota Statutes, chapter 518C. The time for answer is governed by the law of the responding jurisdiction.

Actions to establish parentage are governed by Minnesota Statutes, chapter 257. Actions for reimbursement for public assistance are governed by Minnesota Statutes, section 256.87. Defendant has 20 days to answer the complaint in each action.

The Petitioner must notify the public agency responsible for support enforcement of all proceedings if either party is receiving or has applied for public assistance. Minnesota Statutes, section 518.551.

A party appearing pro se shall perform the acts required by rule or statute in the same manner as an attorney representing a party. An attorney dealing with a party pro se shall proceed in the same manner, including service of process, as in dealing with an attorney.

**Original Advisory Committee Comment—Not kept current.*

Task Force Comment—1991 Adoption

Subsection (a) is derived from Rule 1.01 of the Rules of Family Court Procedure.

Subsection (b) is derived from Second District Local Rule 1.011.

Subsection (c) is derived from Second District Local Rule 1.013. See Minnesota Statutes, section 518.11 (1990). This is to protect the children and help avoid secret proceedings if the respondent is able to be located.

Advisory Committee Comment - 2003 Amendments

Subsections (2), (3), and (4), and Form 12, are new in 2003 and were recommended for adoption by the Minnesota State Bar Association's Pro Se Implementation Committee.

Subsections (2) and (3) of Rule 302.01(b) intended to provide a streamlined process for marriage dissolutions without children, where the parties agree on all property issues. These rule provisions essentially create a new process, commenced with a combined petition, stipulation and judgment and decree. Although intended to facilitate handling of cases by parties appearing without an attorney, it is available to represented parties as well. A new form is provided and should be made readily available to litigants. If either party to the proceedings is receiving public assistance, a Notice to Public Authority is also required. The Joint Petition, Agreement, and Judgment and Decree includes a statement regarding non-military status and a pro se waiver of right to be represented by a lawyer, thus satisfying the requirements of Rule 306.01(c). Court Administrators shall place the matter on the default calendar for final hearing without filing of Form 10 appended to the Rules. The Joint Petition, Agreement and Judgment and Decree may be used by parties represented by attorneys or parties representing themselves. The committee believes that the Joint Petition, Agreement, and Judgment and Decree procedure will reduce costs for litigants, reduce paper handling and storage expenses for the courts, and improve access to the courts.

Attorneys should approach the use of a Joint Petition with care. The amendment of this rule to allow use of a joint petition does not modify the professional liability constraints on joint representation of parties with divergent interests.

As part of this amendment, Rule 306.01 is also amended for internal consistency.

(Added effective January 1, 2004.)

Rule 302.02 Continuances

Minn. Gen. R. Prac. 122 shall be followed in connection with continuances for pre-hearings and trial settings. No continuance of a motion shall be granted unless requested within 3 days of receiving notice under Rule 303.01(a) and unless good cause is shown.

Rule 302.03 Time

Time is governed by Minnesota Rules of Civil Procedure, except where a different time is specified by statute. Procedural time limits may be shortened for good cause shown.

Family Court Rules Advisory Committee Commentary *

Family Court proceedings involve human considerations which may require expeditious judicial attention. The shortening of time should be the exception and not the rule. A

motion to shorten time will be granted only upon demonstration of the unusual circumstances justifying this extraordinary relief See Rule 2.05.

**Original Advisory Committee Comment—Not kept current.*

Task Force Comment—1991 Adoption

This rule is derived from existing Rule 1.04 of the Rules of Family Court Procedure.

Rule 302.04 Designation of Parties

(a) **Petitioner and Respondent.** Parties to dissolution, legal separation, annulment, custody, domestic abuse, U.C.C.J.A., and R.U.R.E.S.A. proceedings shall be designated as petitioner (joint petitioners) and respondent. Parties to parentage and Minnesota Statutes, section 256.87 reimbursement actions shall be designated as plaintiff and defendant. After so designating the parties, it is permissible to refer to them as husband and wife by inserting the following in any petition, order, decree, etc.:

Petitioner is hereinafter referred to as (wife/husband), and respondent as (husband/wife).

(b) **Guardians.** Appointment of a guardian ad litem is governed by Minn. Gen. R. Prac. 108. A guardian ad litem for minor children may be designated a party to the proceedings in the order of appointment.

Family Court Rules Advisory Committee Commentary *

A guardian appointed pursuant to Minnesota Statutes, section 257.60 becomes a party to the action if the child is made a party. The guardian then would be entitled to initiate and respond to motions, conduct discovery, call and cross-examine witnesses, make oral or written arguments or reports and appeal on behalf of a child without the necessity of applying to the court.

A guardian appointed under Minnesota Statutes, section 518.165 is not a party to the proceeding and may only initiate and respond to motions and make oral statements and written reports on behalf of the child.

A party has the right to cross-examine as an adverse witness the author of any report or recommendation on custody and visitation of a minor child. Thompson v. Thompson, 288 Minn. 41, 55 N.W. 329 (1952) and Scheibe v. Scheibe, 308 Minn. 449, 241 N.W.2d 100 (1976).

Practice among the courts may vary with respect to appointments. Some courts maintain panels of lay guardians while other courts maintain panels of attorney guardians. If a lay guardian is appointed, an attorney for the guardian may also be appointed. Guardians may volunteer or be paid for their services. An attorney requesting appointment of a guardian should inquire into local practice.

**Original Advisory Committee Comment—Not kept current.*

Task Force Comment—1991 Adoption

Subdivision (a) of this rule is derived from existing Second District R. 1.07.

Subdivision (b) of this rule is derived from Rule 1.02 of the Uniform Rules of Family Court Procedure. The first sentence of the subdivision is new and is intended to make it clear that practice involving guardians ad litem is also governed by another rule provision.

Rule 303. Motions; Ex Parte Relief; Orders to Show Cause; Orders and Decrees

Rule 303.01 Scheduling of Motions

(a) Notice.

(1) All motions shall be accompanied by either an order to show cause or by a notice of motion which shall state, with particularity, the time and place of the hearing

and the name of the judge, referee, or judicial officer, as assigned by the local assignment clerk.

(2) Except in cases in which the parties reside in the same residence and there is a possibility of abuse, a party who obtains a date and time for hearing a motion shall promptly give notice of the hearing date and time and the name of the judge or referee, if known, to all other parties in the action. If the parties reside in the same residence and there is a possibility of abuse, notice shall be given in accordance with the Minnesota Rules of Civil Procedure.

(b) Notice of Time to Respond. All motions and orders to show cause shall contain the following statement:

All responsive pleadings shall be served and mailed to or filed with the court administrator no later than five days prior to the scheduled hearing. The court may, in its discretion, disregard any responsive pleadings served or filed with the court administrator less than five days prior to such hearing in ruling on the motion or matter in question.

*Family Court Rules Advisory Committee Commentary **

The scheduling of cases and the assignment of judges, judicial officers or referees is often a situation in which local calendaring practices prevail. Effective disposition of litigation requires immediate notice of the hearing officer's identity to preclude last minute filing of notices to remove or affidavits of prejudice.

**Original Advisory Committee Comment—Not kept current.*

Task Force Comment—1991 Adoption

Subdivision (a)(1) of this rule is derived from existing Rule 2.01 of the Rules of Family Court Procedure.

Subdivision (a)(2) is from the new Minn. Gen. R. Prac. 115.02. It is intended primarily to prevent a party from obtaining a hearing date and time weeks in advance of a hearing but then delaying giving notice until shortly before the hearing. This practice appears to give an unnecessary tactical advantage to one side. Additionally, by requiring that more than the minimum notice be given in many cases, it will be possible for the responding parties to set on for hearing any additional motions they may have. This may result in the more efficient hearing of multiple motions on a single hearing date.

Subdivision (b) of this rule is derived from Second Judicial District Rule 2.011.

Rule 303.02 Form of Motion

(a) Specificity and Supporting Documents. Motions shall set out with particularity the relief requested in individually numbered paragraphs. All motions must be supported by appropriate affidavits, relevant and material to the issues before the court. The paragraphs of the affidavits should be specific and factual; where possible, they should be numbered to correspond to the paragraphs of the motion.

(b) Application for Temporary Relief. When temporary financial relief is initially requested, such as child support, maintenance and attorney's fees, the application for temporary relief form set forth at form 1 appended to these rules shall be served and filed by the moving and responding parties. Additional facts, limited to relevant and material matters, shall be added at paragraph 10 of the application form or by supplemental affidavit. Sanctions for failure to comply include, but are not limited to, the striking of pleadings or hearing.

Task Force Comment—1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 2.02 of Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from Second Judicial District Rule 2.021.

The local rule from which subdivision (b) is derived included a requirement that information be filed on forms, and that typewritten or word-processed documents would not be accepted for filing. The Task Force considered the desirability of requiring information to be submitted on pre-printed forms, and determined that such requirements should not be retained. Many modern law offices cannot readily prepare such documents as word processing machines have displaced the typewriters for which the forms are designed. The Task Force also believes that these requirements only increase the cost of litigation and limit access to the courts.

Rule 303.03 Motion Practice

(a) Requirements for Motions.

(1) **Moving Party, Supporting Documents, Time Limits.** No motion shall be heard unless the initial moving party pays any required motion filing fee, serves a copy of the following documents on opposing counsel, and files the original with the court administrator at least 14 days prior to the hearing:

- (i) Notice of motion in form required by Minn. Gen. R. Prac. 303.01(a);
- (ii) Motion;
- (iii) Any relevant affidavits and exhibits; and
- (iv) Any memorandum of law the party intends to submit.

(2) **Motion Raising New Issues.** A responding party raising new issues other than those raised in the initial motion shall pay any required motion filing fee, serve a copy of the following documents on opposing counsel, and file the original with the court administrator at least 10 days prior to the hearing:

- (i) Notice of motion in form required by Minn. Gen. R. Prac. 303.01(a);
- (ii) Motion;
- (iii) Any relevant affidavits and exhibits; and
- (iv) Any memorandum of law the party intends to submit.

(3) **Responding Party, Supporting Documents, Time Limits.** The party responding to issues raised in the initial motion, or the party responding to a motion which raises new issues, shall pay any required motion filing fee, serve a copy of the following documents on opposing counsel, and file the original with the court administrator at least five days prior to the hearing, inclusive of Saturdays, Sundays, and holidays:

- (i) Any memorandum of law the party intends to submit; and
- (ii) Any relevant affidavits and exhibits.

(4) **Computation of Time for Service and Filing By Mail.** Whenever this rule requires documents to be filed with the court administrator within a prescribed period of time before a specific event, filing may be accomplished by mail, subject to the following: (i) 3 days shall be added to the prescribed period; and (ii) filing shall not be considered timely unless the documents are deposited in the mail within the prescribed period. Service of documents on parties by mail is subject to the provisions of Minn. Civ. R. P. 5.02 and 6.05.

(5) **Post-Trial Motions.** The timing provisions of Section 303.03(a) do not apply to post-trial motions.

(b) **Failure to Comply.** In the event an initial moving party fails to timely serve and file documents required in this rule, the hearing may be canceled by the court. If responsive papers are not properly served and filed, the court may deem the initial motion or motion raising new issues unopposed and may issue an order without hearing. The court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, may consider the matter unopposed, may allow reasonable attorney's fees, or may take other appropriate action.

(c) **Settlement Efforts.** No motion, except motion for temporary relief, will be heard unless the parties have conferred either in person, or by telephone, or in writing

in an attempt to resolve their differences prior to the hearing. The moving party shall initiate such conference. In matters involving post-decree motions, if the parties are unable to resolve their differences in this conference they shall consider the use of an appropriate ADR process under Rule 114 to attempt to accomplish resolution. The moving party shall certify to the court, before the time of the hearing, compliance with this rule or any reasons for not complying, including lack of availability or cooperation of opposing counsel. Whenever any pending motion is settled, the moving party shall promptly advise the court.

(d) Motion with Request for Oral Testimony. Motions, except for contempt proceedings, shall be submitted on affidavits, exhibits, documents subpoenaed to the hearing, memoranda, and arguments of counsel unless otherwise ordered by the court for good cause shown. If demand is made for the taking of oral testimony, and if the matter cannot be heard adequately in the scheduled time, the hearing shall be utilized as a prehearing conference. Requests for hearing time in excess of one-half hour shall be submitted by written motion specifically setting forth the necessity and reason that evidence cannot be submitted by affidavit. The motion shall include names of witnesses, nature and length of testimony, including cross-examination, and types of exhibits, if any. The court may issue an order limiting the number of witnesses each party may call, the scope of their testimony, and the total time for each party to present evidence. Such an order shall be made only after the lawyer for each party has had an opportunity to suggest appropriate limits. Any motion relating to custody or visitation shall additionally state whether either party desires the court to interview minor children. No child under the age of fourteen years will be allowed to testify without prior written notice to the other party and court approval.

(Amended effective January 1, 1994; amended effective July 1, 1997; amended effective January 1, 2004.)

Family Court Rules Advisory Committee Commentary *

Minnesota Statutes, section 518.131, subdivision 8 grants a party the right to present oral testimony upon the filing of a demand either in the initial application for temporary relief or in the response thereto.

The party demanding oral testimony should provide a list of the proposed witnesses, the scope of their testimony and an estimate of the required time.

**Original Advisory Committee Comment—Not kept current.*

Advisory Committee Comment—1996 Amendment

Subdivisions (a)-(d) of this rule are new. They are derived from parallel provisions in new Minn. Gen. R. Prac. 115, and are intended to make motion practice in family court matters as similar to that in other civil actions as is possible and practical given the particular needs in family court matters.

Subdivision (d) of this rule is derived from Rule 2.04 of Rules of Family Court Procedure and from Second Judicial District Rules 2.041 and 2.042.

The requirement in subsection (c) of an attempt to resolve motion disputes requires that the efforts to resolve the matter be made before the hearing, not before bringing the motion. It is permissible under the rule to bring a motion and then attempt to resolve the motion. If the motion is resolved, subsection (c) requires the parties to advise the court immediately.

Rule 303.03(a)(5) is added by amendment to be effective January 1, 1994, in order to make it clear that the stringent timing requirements of the rule need not be followed on post-trial motions. This change is made to continue the uniformity in motion practice between family court matters and general civil cases, and is patterned on the change to Minn. Gen. R. Prac. 115.01(c) made effective January 1, 1993.

Subdivision (c) of this rule is amended in 1996 to require consideration of ADR in post-decree matters. The rule specifies how ADR proceedings are commenced in post-

decree matters; the procedures for court-annexed ADR in these matters is generally the same under Rule 114 as for other cases.

(Amended effective January 1, 1994; amended effective July 1, 1997.)

Advisory Committee Comment - 2003 Amendments

The rule is amended in 2003 to include a reference to the requirement for paying a motion filing fee. A new statute in 2003 imposes a fee for "filing a motion or response to a motion in civil, family, excluding child support, and guardianship case." See 2003 MINN. LAWS 1st Spec. Sess., ch. 2, art. 2, section 2, to be codified at MINN. STAT. section 357.021, subd. 2(4).

(Added effective January 1, 2004.)

Rule 303.04 Ex parte Relief

(a) **Motion.** The court may grant ex parte relief only if requested by a motion with supporting affidavit, properly executed.

(b) **Order to Show Cause.** An order to show cause shall not be used to grant ex parte relief except in those cases where permitted pursuant to Minn. Gen. R. Prac. 303.05.

(c) **Filing.** All such orders and supporting documents must be filed with the order appropriately signed out for personal service. A conformed file copy of such order shall be retained by the court administrator in the file.

(d) **Interim Support Order.** To insure support for an unemployed party or a party with children pending a full temporary hearing, an initial order to show cause may, if the situation warrants, contain the following:

IT IS FURTHER ORDERED that pending the aforesaid scheduled hearing, you, shall pay to the (petitioner) (respondent) commencing forthwith _____ percent of your net earnings after the usual deductions for FICA, withholding taxes and group insurance, such payments to be made within 24 hours of your receipt of such earnings for each pay period. These payments are to insure that provision is made by you for the support of your (wife) (husband) (and) (children) pending the aforesaid hearing.

The percentage to be used will be in accordance with the statutory child support guidelines and such other factors related to maintenance as the court deems appropriate.

There must be a showing in the Application for Temporary Relief or separate affidavit of the necessity for the interim order for support.

Family Court Rules Advisory Committee Commentary *

Minn. R. Civ. P. 65.01 states the notice requirements for ex parte relief Minnesota Statutes, section 518.131 controls ex parte temporary restraining orders.

**Original Advisory Committee Comment—Not kept current.*

Task Force Comment—1991 Adoption

Subdivisions (a), (b) and (c) of this rule are derived from existing Rule 2.05 of the Rules of Family Court Procedure.

Subdivision (d) of this rule is derived from Second District Local Rule 2.051.

Parties should be aware that Minn. Gen. R. Prac. 3 applies to all ex parte orders, including those relating to family court proceedings. Minn. R. Civ. P. 65.01 also applies in family court temporary restraining order practice.

Rule 303.05 Orders to Show Cause

Orders to show cause shall be obtained in the same manner specified for ex-parte relief. Such orders may require production of limited financial information deemed necessary by the court. An order to show cause shall be issued only where the motion seeks a finding of contempt or the supporting affidavit makes an affirmative showing of:

- (a) a need to require the party to appear in person at the hearing, or
- (b) the need for interim support is warranted, or
- (c) the production of limited financial information deemed necessary by the court,

or

(d) such other limited relief and appropriate restraining orders, as addressed individually in the separate supportive affidavit for ex-parte relief.

Family Court Rules Advisory Committee Commentary *

The use of orders to show cause can be abused by requiring a personal appearance where none is necessary. A timely notice of motion informing a party of the time to appear, if he or she wishes, is adequate in most proceedings.

**Original Advisory Committee Comment—Not kept current.*

Task Force Comment—1991 Adoption

This rule is derived from existing Rule 2.06 of the Rules of Family Court Procedure. The Family Law Section of the Minnesota State Bar Association recommended additional specific language limiting use of orders to show cause and the Task Force agrees that this clarification should be useful. Orders to show cause are specifically authorized, in limited circumstances, by statute. See, e.g., Minnesota Statutes, sections 256.87, subdivision 1a and 393.07, subdivision 9 (1990).

Rule 303.06 Orders and Decrees Requiring Child Support or Maintenance

All orders and judgments and decrees which include awards of child support and/or maintenance, unless otherwise directed by the court, shall include the following provisions:

That both parties are hereby notified that:

(a) Payment of support or maintenance, or both, is to be as ordered herein, and the giving of gifts or making purchases of food, clothing and the like will not fulfill the obligation.

(b) Payment of support must be made as it becomes due, and failure to secure, or denial of rights of, visitation is not an excuse for nonpayment, but the aggrieved party must seek relief through proper motion filed with the court.

(c) The payment of support or maintenance, or both, takes priority over payment of debts and other obligations.

(d) A party who remarries after dissolution and accepts additional obligations of support does so with full knowledge of his or her prior obligations under this proceeding.

(e) Child support and maintenance are based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that payments are made regularly throughout the year as ordered.

Task Force Comment—1991 Adoption

This rule is derived from Rule 7.01 of the Rules of Family Court Procedure and Second District Rule 2.09.

Rule 304. Scheduling of Cases**Rule 304.01 Scope.**

The purpose of this rule is to provide a uniform system for scheduling matters for disposition and trial in proceedings in family court, excluding only the following:

- (a) Actions for reimbursement of public assistance (Minnesota Statutes, section 256.87);
- (b) Contempt (Minnesota Statutes, chapter 588);
- (c) Domestic abuse proceedings (Minnesota Statutes, chapter 518B);
- (d) Child custody enforcement proceedings (Minnesota Statutes, chapter 518A);
- (e) Support enforcement proceedings (Minnesota Statutes, chapter 518C—R.U.R.E.S.A.);
- (f) Withholding of refunds from support debtors (Minnesota Statutes, section 289A.50, subdivision 5);
- (g) Proceedings to compel payment of child support (Minnesota Statutes, section 393.07, subdivision 9); and
- (h) Proceedings for support, maintenance or county reimbursement judgments (Minnesota Statutes, section 548.091).

Rule 304.02 The Party's Informational Statement

(a) **Timing.** Within 60 days after filing an action or, if a temporary hearing is scheduled within 60 days of the filing of the action, then within 60 days after a temporary hearing is initially scheduled to occur, whichever is later, each party shall submit, on a form to be available from the court (see Forms 9A and B appended to these rules), the information needed by the court to manage and schedule the case.

(b) **Content.** The information provided shall include:

- (1) Whether minor children are involved, and if so:
 - (i) Whether custody is in dispute; and
 - (ii) Whether the case involves any issues seriously affecting the welfare of the children;
- (2) Whether the case involves complex evaluation issues, and/or marital and nonmarital property issues;
- (3) Whether the case needs to be expedited, and if so, the specific supporting facts;
- (4) Whether the case is complex, and if so, the specific supporting facts;
- (5) Specific facts about the case which will affect readiness for trial;
- (6) Recommended alternative dispute resolution process, the timing of the process, the identity of the neutral selected by the parties or, if the neutral has not yet been selected, the deadline for selection of the neutral. If ADR is believed to be inappropriate, a description of the reasons supporting this conclusion; and
- (7) A proposal for establishing any of the deadlines or dates to be included in a scheduling order pursuant to this rule.

(c) **Unrepresented Parties.** Parties not represented by a lawyer shall, instead of providing the information required above on Form 9A, provide substantially the information required on Form 9B.

(Amended effective January 1, 1993; amended effective January 1996; amended effective July 1, 1997.)

Rule 304.03 Scheduling Order

(a) **When issued.** Within thirty days after the expiration of the time set forth in Minn. Gen. R. Prac. 304.02 for filing informational statements, the court shall enter its scheduling order. The court may issue the order after either a telephone or in court conference, or without a conference or hearing if none is needed.

(b) Contents of Order. The scheduling order shall provide for alternative dispute resolution as required by Rule 114.04(c) and may establish any of the following:

- (1) Deadlines or specific dates for the completion of discovery and other pretrial preparation;
- (2) Deadlines or specific dates for serving, filing or hearing motions;
- (3) Deadlines or specific dates for completion and review of custody/visitation mediation and evaluation or property mediation and evaluation;
- (4) A deadline or specific date for the prehearing conference; and
- (5) A deadline or specific date for the trial or final hearing.

(Amended effective July 1, 1997.)

Rule 304.04 Amendment

A scheduling order pursuant to this rule may be amended at a prehearing conference or upon motion for good cause shown, or upon approval by authorized court personnel if there is agreement of all parties.

Advisory Committee Comment—1996 Amendment

This rule is new. It is patterned after the similar new Minn. Gen. R. Prac. 111. The Task Force believes that the scheduling information and procedures in family court and other civil matters should be made as uniform as possible, consistent with the special needs in family court matters. It is amended in 1996 to include information needed for using alternative dispute resolution in family law matters as required by Minn. Gen. R. Prac. 301.01, also as amended in 1996. These amendments follow the form of similar provisions in Minn. Gen. R. Prac. 111, and should be interpreted in the same manner.

Matters not scheduled under the procedures of this rule are scheduled by motion practice under Minn. Gen. R. Prac. 303.

Rule 304.02 now provides a definite time by which informational statements are required, even if a temporary hearing is contemplated and postponed. Under the prior version of the rule, informational statements might never be due because a temporary hearing might be repeatedly postponed. If the parties seek to have a case excluded from the court scheduling process, they may do so by stipulating to having the case placed on "Inactive Status." This stipulation can be revoked by either party, but removes the case from active court calendar management for up to one year. See Minnesota Conference of Chief Judges (See Exhibit A), Resolution Relating to the Adoption of Uniform Local Rules, Jan. 25, 1991.

This rule provides for a separate Form 9B for use by unrepresented parties. This form contains additional information useful to the court in managing cases where one or both parties are not represented by an attorney. This form is updated in 1996 to request information about any history or claims of domestic abuse and the views of the parties on the use (or potential use) of alternative dispute resolution in the same manner as Form 9A for represented parties.

(Amended effective January 1, 1993; amended effective July 1, 1997.)

Rule 305. Prehearing Conferences

Rule 305.01 Prehearing Statement

Each party shall complete a prehearing conference statement substantially in the form set forth at form 2 appended to these rules which shall be served upon all parties and mailed to or filed with the court at least 10 days prior to the date of the prehearing conference.

Task Force Comment—1991 Adoption

This rule is derived from existing Rule 4.02 of the Rules of Family Court Procedure. The existing family court rule includes a requirement that information be filed on forms,

and that typewritten or word-processed documents would not be accepted for filing. The Task Force considered the desirability of requiring information to be submitted on preprinted forms, and determined that such requirements should not be retained. Many modern law offices cannot readily prepare such documents as word processing machines have displaced the typewriters for which the forms are designed. The Task Force also believes that these requirements only increase the cost of litigation and limit access to the courts.

Rule 305.02 Prehearing Conference Attendance

(a) **Parties and Counsel.** Unless excused by the court for good cause, the parties and lawyers who will try the proceedings shall attend the prehearing conference, prepared to negotiate a final settlement. If a stipulation is reduced to writing prior to the prehearing conference, the case may be heard as a default at the time scheduled for the conference. In that event, only the party obtaining the decree need appear.

(b) **Failure to Appear—Sanctions.** If a party fails to appear at a prehearing conference, the court may dispose of the proceedings without further notice to that party.

(c) **Failure to Comply—Sanctions.** Failure to comply with the rules relating to prehearing conferences may result in the case being stricken from the contested calendar, granting of partial relief to the appearing party, striking of the nonappearing party's pleadings and the hearing of the matter as a default, award of attorney fees and costs, and such other relief as the court finds appropriate, without further notice to the defaulting party.

Family Court Rules Advisory Committee Commentary *

In disposing of a proceeding, the Court may dismiss it entirely, grant relief to the party appearing, grant attorney fees, bifurcate the proceedings and grant partial relief, or grant any other relief which the court may deem appropriate. See Rule 306.2(c).

**Original Advisory Committee Comment—Not kept current.*

Task Force Comment—1991 Adoption

Subsection (a) of this rule is derived from existing Rule 4.03 of the Rules of Family Court Procedure.

Subsection (b) of this rule is derived from existing Rule 4.04 of the Rules of Family Court Procedure.

Subsection (c) of this rule is derived from existing Rule 4.05 of the Rules of Family Court Procedure.

A prehearing conference without both parties and lawyers familiar with the facts of the case and the parties is rarely a worthwhile exercise and usually is a waste of resources of the parties and the court. Nonetheless, the Task Force believes there may be situations, on rare occasion, where a party or lawyer should be excused from attendance or should be allowed to participate by conference phone call.

Rule 305.03 Prehearing Conference Order

If the parties are unable to resolve the case, in whole or in part, at the prehearing conference, the court shall issue an order which schedules any remaining discovery and any contemplated motions, identifies the contested issues for trial, and provides for the exchange of witness lists and exhibits to be offered at trial.

Cross Reference: Minn. Civ. Trialbook, section 5.

Task Force Comment—1991 Adoption

This rule is new. The Task Force believes it is useful to have an order entered to limit the issues and preserve any agreements reached at a pretrial conference. This rule is

adapted from a recommendation of the Minnesota State Bar Association's Family Law Section.

Rule 306. Default

Rule 306.01 Scheduling of Final Hearing

Except when proceeding under Rule 302.01(b) by Joint Petition, Agreement and Judgment and Decree, to place a matter on the default calendar for final hearing or for approval without hearing pursuant to Minnesota Statutes, section 518.13, subdivision 5, the moving party shall submit a default scheduling request substantially in the form set forth in Form 10 appended to these rules and shall comply with the following, as applicable:

(a) Without Stipulation-No Appearance. In all default proceedings where a stipulation has not been filed, an affidavit of default and of nonmilitary status of the defaulting party or a waiver by that party of any rights under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, shall be filed with the court.

(b) Without Stipulation-Appearance. Where the defaulting party has appeared by a pleading other than an answer, or personally without a pleading, and has not affirmatively waived notice of the other party's right to a default hearing, the moving party shall notify the defaulting party in writing at least ten (10) days before the final hearing of the intent to proceed to Judgment. The notice shall state:

You are hereby notified that an application has been made for a final hearing to be held not sooner than three (3) days from the date of this notice. You are further notified that the court will be requested to grant the relief requested in the petition at the hearing.

The default hearing will not be held until the notice has been mailed to the defaulting party at the last known address and an affidavit of service by mail has been filed.

(c) Default with Stipulation. Whenever a stipulation settling all issues has been executed by the parties, the stipulation shall be filed with an affidavit of nonmilitary status of the defaulting party or a waiver of that party's rights under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, if not included in the stipulation.

In a stipulation where a party appears pro se, the following waiver shall be executed by that party:

I know I have the right to be represented by a lawyer of my choice. I hereby expressly waive that right and I freely and voluntarily sign the foregoing stipulation.

(Amended effective January 1, 1993; amended effective January 1, 2004.)

Family Court Rules Advisory Committee Commentary *

This stipulation should establish that one of the parties may proceed as if by default, without further notice to or appearance by the other party.

The waiver of counsel should be prepared as an addendum following the parties' signatures on the stipulation.

**Original Advisory Committee Comment—Not kept current.*

Advisory Committee Comment—1992 Amendments

Subsections (a) and (b) of this rule are derived from existing Rule 5.01 of the Rules of Family Court Procedure.

Subsection (c) of this rule is derived from existing Rule 5.02 of the Rules of Family Court Procedure.

The default scheduling request required by Rule 306.01, as amended in 1992, serves the purpose of permitting the court administrator's office to schedule the case for the right

type of hearing. It is not otherwise involved in the merits. The affidavit of default is a substantive document establishing entitlement to relief by default.

(Amended effective January 1, 1993.)

Advisory Committee Comment - 2003 Amendment

Rule 306.01 is amended in 2003 to add a new first clause. The purpose of this change is to include in the rules an express exemption of the proceedings from the requirements of the rule when the parties proceed by Joint Petition, Agreement and Judgment and Decree as allowed by new Rule 302.01(b).

(Added effective January 1, 2004.)

Rule 306.02 Preparation of Decree

Except in a proceeding under Rule 302.01(b) commenced by Joint Petition, Agreement and Judgment and Decree, or in a scheduled default matter, proposed findings of fact, conclusions of law, order for judgment and judgment and decree shall be submitted to the court in advance of, or at, the final hearing.

(Amended effective January 1, 2004.)

Task Force Comment—1991 Adoption

This rule is derived from existing Rule 5.03 of the Rules of Family Court Procedure.

Advisory Committee Comment - 2003 Amendment

Rule 306.02 is amended in 2003 to add a new first clause. The purpose of this change is to include in the rules an express exemption of the proceedings from the requirements of the rule when the parties proceed by Joint Petition, Agreement and Judgment and Decree as allowed by new Rule 302.01(b).

(Added effective January 1, 2004.)

Rule 307. Final Hearings

(a) Failure to Appear-Sanctions. Failure to appear at the scheduled final hearing may result in the case being stricken from the contested calendar, granting of partial relief to the appearing party, striking of the nonappearing party's pleadings and the hearing of the matter as a default, an award of attorney's fees and costs, and such other relief as the court finds appropriate, without further notice to the defaulting party.

(b) Stipulations Entered in Open Court-Preparation of Findings. Where a stipulation has been entered orally upon the record, the lawyer directed to prepare the decree shall submit it to the court with a copy to each party. Unless a written, fully executed stipulation is filed or unless the decree contains the written approval of the lawyer for each party, a transcript of the oral stipulation shall be filed by the lawyer directed to prepare the decree. Responsibility for the cost of the transcript shall be determined by the court. Entry of the decree shall be deferred for 14 days to allow for objections unless the decree contains the written approval of the lawyer for each party.

Task Force Comment—1991 Adoption

Subsection (a) of this rule is derived from existing Rule 6.01 of the Rules of Family Court Procedure.

Subsection (b) of this rule is derived from existing Rule 6.02 of the Rules of Family Court Procedure.

Rule 308. Final Decree**Rule 308.01 Notices; Service**

(a) **Awards of Child Support and/or Maintenance.** All judgments and decrees which include awards of child support and/or maintenance, unless otherwise directed by the court, shall include the provisions set forth in Minn. Gen. R. Prac. 303.06.

(b) **Public Assistance.** When a party is receiving or has applied for public assistance, the party obtaining the judgment and decree shall serve a copy on the agency responsible for child support enforcement, and the decree shall direct that all payments of child support and spousal maintenance shall be made to the agency providing the assistance for as long as the custodial parent is receiving assistance.

(c) **Child Support Enforcement.** When a private party has applied for or is using the services of the local child support enforcement agency, a copy of the decree shall be served by mail by the party submitting the decree for execution upon the county agency involved.

(d) **Supervised Custody or Visitation.** A copy of any judgment and decree directing ongoing supervision of custody or visitation shall be provided to the appropriate agency by the party obtaining the decree.

Family Court Rules Advisory Committee Commentary *

Minnesota Statutes, section 518.551 requires that maintenance or support must be ordered payable to the public agency so long as the obligee is receiving public assistance.

Agencies responsible for enforcement of child support in private cases also require a copy of the judgment and decree.

**Original Advisory Committee Comment—Not kept current.*

Task Force Comment—1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 7.01 of the Rules of Family Court Procedure. The list of provisions is not set forth in this rule, as it was set forth in full in new Minn. Gen. R. Prac. 303.06.

Subdivision (b) is derived from Rule 7.02 of the Rules of Family Court Procedure, and also in part from Second District Local Rule 7.021.

Subdivision (c) is derived from Second District Local Rule 7.022.

Subdivision (d) of this rule, replacing existing Rule 7.03 of the Rules of Family Court Procedure, was recommended to the Task Force by the Minnesota State Bar Association Family Law Section.

Rule 308.02 Statutorily Required Notices

Where statutes require that certain subjects be addressed by notices in an order or decree, the notices shall not be included verbatim but shall be set forth in an attachment and incorporated by reference.

Family Court Rules Advisory Committee Commentary *

See Rule 10.01, Form 3, for the concept of the form of the attachment.

**Original Advisory Committee Comment—Not kept current.*

Task Force Comment—1991 Adoption

This rule is derived from existing Rule 7.04 of the Rules of Family Court Procedure.

Rule 308.03 Sensitive Matters

Whenever the findings of fact include private or sensitive matters, a party may submit a judgment and decree supported by separate documents comprising findings of fact, conclusions of law, and order for judgment.

Task Force Comment—1991 Adoption

The Task Force recommends repeal of existing Rule 7.05 of the Rules of Family Court Procedure because the requirement for findings is well established by the common law, and a rule recodifying the settled law is surplusage.

The recommended rule is patterned after Second District Rule 7.051. Its purpose is to allow sensitive factual and legal matters to be preserved in separate documents so that the need for disseminating confidential and sensitive matters can be minimized. This rule does not create a right to maintain the privacy of any portion of the findings; it allows the court to create documents that may be useful for some public purposes without including all other parts of the findings.

Rule 309. Contempt**Rule 309.01 Initiation**

(a) **Moving Papers-Service; Notice.** Contempt proceedings shall be initiated by an order to show cause served upon the person of the alleged contemnor together with motions accompanied by appropriate supporting affidavits.

The order to show cause shall direct the alleged contemnor to appear and show cause why he or she should not be held in contempt of court and why the moving party should not be granted the relief requested by the motion.

The order to show cause shall contain at least the following:

(1) a reference to the specific order of the court alleged to have been violated and date of entry of the order;

(2) a quotation of the specific applicable provisions ordered; and

(3) the alleged failures to comply.

(b) **Affidavits.** The supportive affidavit of the moving party shall set forth each alleged violation of the order with particularity. Where the alleged violation is a failure to pay sums of money, the affidavit shall state the kind of payments in default and shall specifically set forth the payment dates and the amounts due, paid and unpaid for each failure.

The responsive affidavit shall set forth with particularity any defenses the alleged contemnor will present to the court. Where the alleged violation is a failure to pay sums of money, the affidavit shall set forth the nature, dates and amount of payments, if any.

The supportive affidavit and the responsive affidavit shall contain numbered paragraphs which shall be numbered to correspond to the paragraphs of the motion where possible.

Family Court Rules Advisory Committee Commentary *

Service of the order to show cause upon the person provides jurisdiction for the issuance of a writ of attachment or bench warrant, if necessary, and meets the requirement or an opportunity to be heard. See Clausen v. Clausen, 250 Minn. 293, 84 N.W.2d 675 (1976); Hopp v. Hopp, 279 Minn. 170, 156 N.W.2d 212 (1968).

**Original Advisory Committee Comment—Not kept current.*

Task Force Comment—1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 8.01 of the Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from existing Rule 8.01 of the Rules of Family Court Procedure. The new language is derived from Second District Local Rule 8.011.

Rule 309.02 Hearing

The alleged contemnor must appear in person before the court to be afforded the opportunity to resist the motion for contempt by sworn testimony. The court shall not

act upon affidavit alone, absent express waiver by the alleged contemnor of the right to offer sworn testimony.

*Family Court Rules Advisory Committee Commentary **

For the right to counsel in contempt proceedings, see Cox v. Slama, 355 N.W.2d 401 (Minn. 1984).

**Original Advisory Committee Comment—Not kept current.*

Task Force Comment—1991 Adoption

This rule is derived from existing Rule 8.02 of the Rules of Family Court Procedure.

Rule 309.03 Sentencing

(a) **Default of Conditions for Stay.** Where the court has entered an order for contempt with a stay of sentence and there has been a default in the performance of the condition(s) for the stay, before a writ of attachment or a bench warrant will be issued, an affidavit of noncompliance and request for writ of attachment must be served upon the person of the defaulting party, unless the person is shown to be avoiding service.

(b) **Writ of Attachment.** The writ of attachment shall direct law enforcement officers to bring the defaulting party before the court for a hearing to show cause why the stay of sentence should not be revoked. A proposed order for writ of attachment shall be submitted to the court by the moving party.

Task Force Comment—1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 8.03 of the Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from existing Rule 8.03 of the Rules of Family Court Procedure, with the new language added from Second District Rule 8.031.

Rule 310. Alternative Dispute Resolution

Rule 310.01 Applicability

All family law matters in district court are subject to Alternative Dispute Resolution (ADR) processes as established in Rule 114, except for:

1. actions enumerated in Minnesota Statutes, chapter 518B (Domestic Abuse Act),
2. contempt actions, and
3. maintenance, support, and parentage actions when the public agency responsible for child support enforcement is a party or is providing services to a party with respect to the action.

The court shall not require parties to participate in any facilitative process where one of the parties claims to be the victim of domestic abuse by the other party or where the court determines there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse by the other party. In circumstances where the court is satisfied that the parties have been advised by counsel and have agreed to an ADR process that will not involve face-to-face meeting of the parties the court may direct that the ADR process be used.

The court shall not require parties to attempt ADR if they have made an unsuccessful effort to settle all issues with a qualified neutral before the filing of Informational Statement.

(Amended effective July 1, 1997.)

Advisory Committee Comment—1996 Amendment

This rule is changed from a limited rule dealing only with mediation to the main family law rule governing use of ADR. All of the provisions of the existing rule are deleted because their subject matter is now governed by either the amended rule or Minn. Gen. R. Prac. 114.

The committee believes that there are significant and compelling reasons to have all court-annexed ADR governed by a single rule. This will streamline the process and make it more cost-effective for litigants, and will also make the process easier to understand for ADR providers and neutrals, many of whom are not lawyers.

The rule is not intended to discourage settlement efforts in any action. In cases where any party has been, or claims to have been, a victim of domestic violence, however, courts need to be especially cautious. Facilitative processes, particularly mediation, are especially prone to abuse since they place the parties in direct contact and may encourage them to compromise their rights in situations where their independent decision-making capacity is limited. The rule accordingly prohibits their use where those concerns are present.

(Added effective July 1, 1997.)

Rule 310.02 Post-Decree Matters

The court may order ADR under Rule 114 in matters involving post-decree relief. The parties shall discuss the use of ADR as part of the conference required by Rule 303.03(c).

(Amended effective July 1, 1997.)

Advisory Committee Comment—1996 Amendment

This rule expressly provides for use of ADR in post-decree matters. This is appropriate because such matters constitute a significant portion of the litigation in family law and because these matters are often quite susceptible to successful resolution in ADR.

The committee believes the existing mechanism requiring the parties to confer before filing any motion other than a motion for temporary relief provides a suitable mechanism for considering ADR and Rule 303.03(c) is amended to remind the parties of this obligation.

(Added effective July 1, 1997.)

310.03-310.09 (Deleted effective July 1, 1997.)**Rule 311. Forms**

The forms contained in the Appendix of Forms are sufficient under these rules.

Task Force Comment—1991 Adoption

This rule is derived from existing Rule 10.01 of the Rules of Family Court Procedure.

Rule 312. Review of Referee's Findings or Recommendations**Rule 312.01 Notice of Assignment to Judge; Parties' Submissions**

Upon the filing of the notice of review of a referee's findings or recommended order, the court administrator shall notify each party:

- (a) of the name of the judge to whom the review has been assigned;
- (b) that the moving party shall have 10 days from the date of mailing the notice of assignment in which to file and serve a memorandum; and
- (c) that the responding party(s) shall have 20 days from the date of mailing the notice of assignment within which to file and serve a responsive memorandum.

Failure to file and serve these submissions on a timely basis may result in dismissal of the review or disallowance of the submissions. No additional evidence may be filed and no personal appearance will be allowed except upon order of the court for good cause shown after notice of motion and motion.

The review shall be based on the record before the referee and additional evidence will not be considered, except for compelling circumstances constituting good cause.

Task Force Comment—1991 Adoption

This rule is derived from Second District Rules 11.03 and 11.04.

Rule 312.02 Transcript of Referee's Hearing

Any party desiring to submit a transcript of the hearing held before the referee shall make arrangements with the court reporter at the earliest possible time. The court reporter must advise the parties and the court of the date by which the transcript will be filed. The order and submission of the transcript shall not delay the due dates for the submissions described in Rule 312.01.

Task Force Comment—1991 Adoption

This rule is derived from Second District Rule 11.05.

Rule 313. Confidential Numbers and Tax Returns

Rule 313.01 Social Security Number.

Whenever an individual's social security number is required on any pleading or other paper that is to be filed with the court, the social security number shall be submitted on a separate form entitled Confidential Information Form (see Form 11 appended to these rules) and shall not otherwise appear on the pleading or other paper. As an alternative, the filing party may prepare and file an original and one copy of the pleading or other paper if all social security numbers are completely removed or obliterated from the copy.

(Added effective March 1, 2001.)

Rule 313.02 Tax Returns.

Copies of tax returns required to be filed with the court shall be submitted in a separate envelope marked "CONFIDENTIAL TAX RETURN OF for YEAR(S)"

(Added effective March 1, 2001.)

Rule 313.03 Failure to Comply.

A party who fails to comply with the requirements of this rule may be deemed to have waived their right to privacy in their social security number or tax return filed with the court and the court may impose appropriate sanctions, including costs necessary to prepare an appropriate redacted copy, for a party's failure to comply with this rule in regard to another individual's social security number or tax return.

(Added effective March 1, 2001.)

Advisory Committee Comment—2000 Amendments

Rule 313 is new in 2000 and is designed to facilitate confidential treatment of social security numbers and tax returns in family court proceedings. Confidentiality is required under both state and federal law. See Minnesota Statutes, section 518.146 (1999 Supplement); 2000 Minnesota Laws, chapter 403 (codified as Minnesota Statutes, section

518.5513, subdivision 3); 42 U.S.C., section 666(a)(13), (c)(2)(A); 42 U.S.C., section 405(c)(2)(C)(vii). This rule relieves court administration staff from the daunting task of assuring that social security numbers and tax returns are not inadvertently disclosed and places the primary responsibility for maintaining privacy with the persons submitting the information to the court.

State law also requires the social security number to be included in each child support order. See, e.g., Minnesota Statutes, sections 256.87, subdivision 1a; 257.66; 518.171, subdivision 1(a)(2); 518.5853, subdivision 5 (1998; 1999 Supp.). This rule contemplates that inclusion of social security numbers may appropriately be accomplished by relegating social security numbers to a separate page that is referenced in the order.

(Added effective March 1, 2001.)

EXPEDITED CHILD SUPPORT PROCESS RULES

Effective July 1, 2001

I. GENERAL RULES

RULE 351. SCOPE; PURPOSE

Rule 351.01. Scope

These rules govern the procedure for all proceedings conducted in the expedited process, regardless of whether the presiding officer is a child support magistrate, family court referee, or district court judge. The Minnesota Rules of Civil Procedure, Minnesota Rules of Evidence, and other provisions of the Minnesota General Rules of Practice for the District Courts shall apply to proceedings in the expedited process unless inconsistent with these rules. These rules do not apply to matters commenced in or referred to district court.

Rule 351.02. Purposes and Goals of the Expedited Child Support Process

Subdivision 1. Purposes. The purposes of these rules are to establish an expedited process that:

- (a) is streamlined;
- (b) is uniform across the state;
- (c) is easily accessible to the parties; and
- (d) results in timely and consistent issuance of orders.

Subd. 2. Goals. These rules should be construed to:

- (a) be a constitutional system;
- (b) be an expedited process;
- (c) be family and user friendly;
- (d) be fair to the parties;
- (e) be a cost-effective system;
- (f) address local administration and implementation concerns;
- (g) maintain simple administrative procedures and focus on problem cases;
- (h) comply with federal and state laws;
- (i) maximize federal financial participation;
- (j) ensure consistent decisions statewide; and
- (k) have adequate financial and personnel resources.

RULE 352. DEFINITIONS

Rule 352.01. Definitions

For purposes of these rules, the following terms have the following meanings:

(a) **“Answer”** means a written document responding to the allegations of a complaint or motion.

(b) **“Child support magistrate”** means an individual appointed by the chief judge of the judicial district to preside over matters in the expedited process. “Child support magistrate,” also means any family court referee or district court judge presiding over matters in the expedited process.

(c) **“County agency”** means the local public authority responsible for child support enforcement.

(d) **“County attorney”** means the attorney who represents the county agency, whether that person is employed by the office of the county attorney or under contract with the office of the county attorney.

(e) **“Initiating party”** means a person or county agency starting the proceeding in the expedited process by serving and filing a complaint or motion.

(f) **“IV-D case”** means any proceeding where a party has either (1) assigned to the State rights to child support because of the receipt of public assistance as defined in Minn. Stat., section 256.741 (2000), or (2) applied for child support services under Title IV-D of the Social Security Act, 42 U.S.C., section 654(4) (1994). “IV-D case” does not include proceedings where income withholding is the only service applied for or received under Minn. Stat., section 518.6111 (2000).

(g) **“Noninitiating party”** means a person or county agency responding to a complaint or motion, including any person who assigned to the State rights to child support because of the receipt of public assistance or applied-for child support services.

(h) **“Parentage”** means the establishment of the existence or non-existence of the parent-child relationship.

(i) **“Parenting time”** means the time a parent spends with a child regardless of the custodial designation regarding the child. “Parenting time” previously was known as “visitation.”

(j) **“Party”** means any person or county agency with a legal right to participate in the proceedings.

(k) **“Response”** means a written answer to the complaint or motion, a “request for hearing” form, or, in a parentage matter, a “request for blood or genetic testing” form.

(l) **“Support”** means child support; child care support; medical support, including medical and dental insurance, and unreimbursed medical and dental expenses; expenses for confinement and pregnancy; arrearages; reimbursement; past support; related costs and fees; and interest and penalties. “Support” also means the enforcement of spousal maintenance when combined with child support, child care support, or medical support.

RULE 353. TYPES OF PROCEEDINGS

Rule 353.01. Types of Proceedings

Subdivision 1. Mandatory Proceedings. Proceedings to establish, modify, and enforce support shall be conducted in the expedited process if the case is a IV-D case, except as provided in subdivision 2 and Rule 353.02. Proceedings to enforce spousal maintenance, including spousal maintenance cost-of-living adjustment proceedings, shall, if combined with a support issue, be conducted in the expedited process if the case is a IV-D case, except as provided in subdivision 2 and Rule 353.02.

Subd. 2. Permissive Proceedings.

(a) At the option of each county, the following proceedings may be initiated in the expedited process if the case is a IV-D case, except to the extent prohibited by subdivision 3:

- (1) parentage actions; and
- (2) civil contempt matters.

(b) When establishing parentage, a child support magistrate has the authority to establish custody, parenting time, and the legal name of the child only when:

- (1) the parties agree or stipulate to all of these particular issues; or

(2) if the complaint, motion, or supporting affidavit specifically addresses these particular issues and a party fails to serve a response or appear at the hearing.

(c) Upon written consent of all parties, a child support magistrate may issue an order changing venue. The court administrator shall forward the court file to the county that has been granted venue. If any party disputes a motion to change venue, the child support magistrate shall issue an order referring the matter to district court and the court administrator shall schedule the matter for hearing. The court administrator shall mail notice of the date, time, and location of the hearing to all parties.

Subd. 3. Prohibited Proceedings and Issues. The following proceedings and issues shall not be conducted or decided in the expedited process:

- (a) non-IV-D cases;
- (b) establishment, modification, or enforcement of custody or parenting time under Minn. Stat., chapter 518 (2000), unless authorized in subdivision 2;
- (c) establishment or modification of spousal maintenance;
- (d) issuance, modification, or enforcement of orders for protection under Minn. Stat. ch. 518B;
- (e) division of marital property;
- (f) determination of parentage, except as permitted by subdivision 2(b);
- (g) evidentiary hearings to establish custody, parenting time, or the legal name of the child under Minn. Stat. ch. 257 (2000);
- (h) evidentiary hearings in contempt matters;
- (i) matters of criminal contempt;
- (j) motions to change venue, except as permitted in subdivision 2;
- (k) enforcement proceedings prohibited in Rule 373.01;
- (l) matters of criminal non-support; and
- (m) motions to vacate a recognition of paternity or paternity adjudication.

Rule 353.02. Procedure When Prohibited Issues

Subdivision 1. Generally. These rules do not prevent a party, upon timely notice to all parties and to the county agency, from commencing a proceeding or bringing a motion in district court if the proceeding or motion involves one or more issues identified in Rule 353.01, subd. 1, and one or more issues identified in Rule 353.01, subd. 3.

Subd. 2. Multiple Issues in District Court. If a proceeding is commenced in district court, the district court judge should attempt to decide all issues before the court. If the district court judge cannot decide the support issues without an additional hearing, the district court judge shall determine whether to retain the support issues or refer them to the expedited process for decision by a magistrate. If the district court judge refers the support issues to the magistrate, the referral shall include a clear statement of the issues referred and a description of the additional information needed. If possible at the time of the referral, the district court judge shall decide temporary support. A matter referred to district court pursuant to subdivision 3 shall be decided in its entirety by the district court judge and shall not be referred back to the expedited process.

Subd. 3. Prohibited Issues in Expedited Child Support Process. If a proceeding is commenced in the expedited process and the complaint, motion, answer, responsive motion, or counter motion raises one or more issues identified in Rule 353.01, subd. 3, upon the child support magistrate's own initiative or motion of a party, the child support magistrate assigned to the matter shall, either before or at the time of the hearing, decide whether to:

- (a) refer the entire matter to district court; or
- (b) determine the temporary support amount and refer all issues to district court. The district court judge shall issue an order addressing all issues and, with respect to support, may adopt and incorporate by reference the findings and order of the child

support magistrate. If the district court judge does not adopt the findings and order of the child support magistrate, the judge shall make the necessary findings and order regarding permanent support. In the alternative, the order for temporary support shall become permanent upon the dismissal or withdrawal of the prohibited issue referred to district court. If the district court order fails to address the issue of permanent support, the order for temporary support shall become permanent and shall be deemed incorporated upon issuance of the district court order. If the district court judge fails to issue an order, on the 180th day after service of the notice of filing of the order for temporary support, the order for temporary support shall become permanent.

When a matter is referred to district court, service of the summons and complaint or notice of motion and motion in the expedited process is sufficient for the matter to proceed in district court.

RULE 354. COMPUTATION OF TIME

Rule 354.01. Generally

All time periods shall be measured by starting to count on the first day after any event happens which by these rules starts the running of a time period. When the last day of the time period is any day other than a business day, then the last day is the next business day.

Rule 354.02. Time Periods Less Than Seven Days

When any prescribed time period is less than seven (7) days, only business days shall be counted.

Rule 354.03. "Business Day" Defined

A "business day" means any day that is not a Saturday, Sunday, or legal holiday. As used in these rules, "legal holiday" means New Year's Day, Martin Luther King's Birthday, Washington's and Lincoln's Birthday (Presidents' Day), Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President or Congress of the United States, by the State, or by a county.

Advisory Committee Comment

State-Level Judicial-Branch Holidays. The legal holidays listed in Rule 354.03 are based upon Minn. Stat. section 645.44, subd. 5 (2000), which defines state-level judicial-branch holidays. The statute further provides that when New Year's Day (January 1), Independence Day (July 4), Veteran's Day (November 11), or Christmas Day (December 25) falls on a Sunday, the following day (Monday) shall be a holiday, and that when New Year's Day, Independence Day, Veteran's Day, or Christmas Day falls on a Saturday, the preceding day (Friday) shall be a holiday. Minn. Stat., section 645.44, subd. 5, also authorizes the judicial branch to designate certain other days as holidays. The Judicial Branch Personnel Plan designates the Friday after Thanksgiving as a holiday.

County Holidays. Counties are authorized to close county offices on certain days under Minn. Stat., section 373.052 (2000). Thus, if a county closes its offices under Minn. Stat., section 373.052 on a day that is not a state-level judicial-branch holiday, such as Christopher Columbus Day (the second Monday in October), the court in that county would nevertheless include that day as a holiday for the purpose of computing time under Rule 354.03. See *Mittelstadt v. Breider*, 286 Minn. 211, 212, 175 N.W.2d 191, 192 (1970) (applying Minn. Stat., section 373.052 to filing of notice of election contest with district court). If a county does not close its offices on a day that is a state-level judicial-branch holiday, such as the Friday after Thanksgiving, the court in that county must still include that day as a holiday for the purpose of computing time under Rule 354.03.

Rule 354.04. Additional Time if Service by Mail or Service Late in Day

Whenever a person has the right or is required to do an act within a prescribed period of time after service of a notice or other paper and the notice or other paper is served by U.S. mail, three (3) days shall be added to the prescribed time period. If service is made by any means other than by U.S. mail and accomplished after 5:00 p.m. Central Time, one (1) additional day shall be added to the prescribed time period.

RULE 355. METHODS OF SERVICE; FILING**Rule 355.01. Generally**

Subdivision 1. Service Required. Except for ex parte motions allowed by statute or these rules, every paper or document filed with the court shall be served on all parties and the county agency.

Subd. 2. Service Upon Attorney for Party. If a party, other than the county agency, is represented by an attorney as shown by a certificate of representation in the court file, service shall be made upon the party's attorney, unless personal service upon the represented party is required under these rules. Except where personal service upon the county agency is required under these rules, service upon the county agency shall be accomplished by serving the county attorney.

Rule 355.02. Types of Service**Subdivision 1. Personal Service.****(a) Upon Whom.**

(1) Upon an Individual. Personal service upon an individual in the state shall be accomplished by delivering a copy of the summons and complaint, notice, motion, or other document to the individual personally or by leaving a copy at the individual's house or usual place of residence with some person of suitable age and discretion who presently lives at that location. If the individual has, pursuant to statute, consented to any other method of service or appointed an agent to receive service, or if a statute designates a state official to receive service, service may be made in the manner provided by such statute. If the individual is confined to a state institution, personal service shall be accomplished by also serving a copy of the document upon the chief executive officer at the institution. Personal service upon an individual outside the state shall be accomplished according to the provisions of Minn. Stat., ch. 518C (2000) and Minn. Stat., section 543.19 (2000). Personal service may not be made on Sunday, a legal holiday, or election day.

(2) Upon the County Agency. Personal service upon the county agency shall be accomplished by serving the director of the county human services department or the director's designee.

(b) By Whom Served. Unless otherwise ordered by the child support magistrate, personal service shall be made only by the sheriff or by any other person who is at least 18 years of age who is not a party to the proceeding. Pursuant to Minn. Stat., section 518.5513 (2000), an employee of the county agency may serve documents on parties.

(c) Alternative Personal Service.

(1) Acknowledgement by Mail. As an alternative to personal service, service may be made by U.S. mail if acknowledged in writing. Any party attempting alternative personal service shall include two copies of a notice and acknowledgment of service by mail conforming substantially to Form 22 set forth in the Minnesota Rules of Civil Procedure, along with a return envelope, postage prepaid, addressed to the sender. Any person served by U.S. mail who receives a notice and acknowledgment form shall complete the acknowledgment part of the form and return one copy of the completed form to the serving party. If the serving party does not receive the acknowledgment form within twenty (20) days, service is not valid upon that party. The serving party may then serve the summons and complaint by any means authorized under this subdivision. The child support magistrate may order the costs of personal service to be

paid by the person served, if such person does not complete and return the notice and acknowledgment form within twenty (20) days.

(2) Service by Publication.

(A) Service. Service by publication means the publication of the entire summons or notice in the regular issue of a qualified newspaper, once each week for three (3) weeks. Service by publication shall be permitted only upon order of a child support magistrate. The child support magistrate may order service by publication upon the filing of an affidavit by the serving party or the serving party's attorney stating that the person to be served is not a resident of the state or cannot be found within the state, the efforts that have been made to locate the other party, and either that the serving party has mailed a copy of the summons or notice to the other party's place of residence or that such residence is not known to the serving party. When the person to be served is not a resident of the state, statutory requirements regarding long-arm jurisdiction shall be met.

(B) Defense by Noninitiating Party. If the summons or notice is served by publication and the noninitiating party receives no actual notification of the proceeding, either before judgment or within one year of entry of judgment the noninitiating party may seek relief pursuant to Minn. R. Civ. P. 4.043.

Subd. 2. Service by U.S. Mail. Service by U.S. mail means mailing a copy of the document by first-class mail, postage prepaid, addressed to the person to be served at the person's last known address. Service by mail shall be made only by the sheriff or by any other person who is at least 18 years of age who is not a party to the proceeding. Pursuant to Minn. Stat., section 518.5513 (2000), an employee of the county agency may serve documents on the parties.

Subd. 3. Service by Facsimile Transmission. Unless these rules require personal service, any document may be served by transmitting a copy by facsimile machine.

Rule 355.03. Completion of Service

Personal service is complete upon delivery of the document. Service by U.S. mail is complete upon mailing. Service by publication is complete twenty-one (21) days after the first publication. Service by facsimile is complete upon completion of the facsimile transmission.

Rule 355.04. Proof of Service

Subdivision 1. Parties. All papers and documents filed with the court shall be accompanied by an affidavit of service, an acknowledgment of service by the party or party's attorney if served by alternative service, or, if served by publication, by the affidavit of the printer or the printer's designee. An affidavit of service shall describe what was served, state how the document was served, upon whom it was served, and the date, time, and place of service.

Subd. 2. Court Administrator. If the court administrator is required or permitted under these rules to serve a document, service may be proved by filing an affidavit of service, by filing a copy of the written notice, or by making a notation in the court's computerized records that service was made.

RULE 356. FEES

Rule 356.01. Collection of Fees

The court administrator shall charge and collect fees pursuant to Minnesota Statutes.

Advisory Committee Comment

Minnesota Statutes, section 357.021, subdivision 2 (2000), establishes the various fees that must be charged and collected by court administrators. Specifically included is a filing

fee, which is to be charged and collected from a party upon the filing of that party's first paper in the proceeding. Also included is a modification fee, which is to be paid upon the filing of a motion to modify support and upon the filing of a response to such a motion.

Rule 356.02. Waiver of Fees

If a party indicates an inability to pay any fee required under Rule 356.01, the court administrator shall explain that the party may apply for permission to proceed without payment of the fee. Upon request, the court administrator shall provide to such a party an application to proceed in forma pauperis. If a party signs and submits to the court administrator an application to proceed without payment of the fee, and such a request to waive the fee is approved by a child support magistrate, the court administrator shall not charge and collect the fee.

Advisory Committee Comment

Minnesota Statutes, section 563.01, subdivision 3 (2000), provides that "the court shall allow the person to proceed in forma pauperis" if the court makes certain findings. Under this statute, only judicial officers, and not court administrators, are authorized to issue orders granting in forma pauperis status.

RULE 357. LEGAL REPRESENTATION AND APPOINTMENT OF GUARDIAN AD LITEM

Rule 357.01. Right to Representation

Each party appearing in the expedited process has a right to be represented by an attorney. A party, however, does not necessarily have the right to appointment of an attorney at public expense as provided in Rule 357.03.

Rule 357.02. Certificate of Representation

An attorney representing a party in the expedited process, other than a public defender or county attorney, shall on or before the attorney's first appearance file with the court a certificate of representation.

Rule 357.03. Appointment of Attorney at Public Expense

Unless a party voluntarily waives the right to counsel, the child support magistrate shall appoint an attorney at public expense for a party who requests an attorney and who cannot afford to retain an attorney when the case involves:

- (a) establishment of parentage; or
- (b) contempt proceedings in which incarceration of the party is a possible outcome of the proceeding.

Pursuant to Minn. Stat., section 257.69 (2000), a court-appointed attorney shall represent a party with respect to all issues necessary for the initial establishment of parentage, including child support, custody, parenting time, and name of the child.

Advisory Committee Comment

Parentage. *The Minnesota Parentage Act, codified as Minn. Stat., sections 257.51-.74 (2000), provides that "the court shall appoint counsel for a party who is unable to pay timely for counsel in proceedings under sections 257.51 to 257.74." Minn. Stat., section 257.69, subd. 1 (2000). A party has a right to appointed counsel for all matters brought under the Parentage Act. See M.T.L. v. Dempsey, 504 N.W.2d 529, 531 (Minn. App. 1993).*

Contempt. *In Cox v. Slama, 355 N.W.2d 401, 403 (Minn. 1984), the court established the right to counsel for persons facing civil contempt for failure to pay child support when incarceration is a real possibility.*

Rule 357.04. Appointment of Guardian Ad Litem

Subdivision 1. Applicability of Rules of Guardian Ad Litem Procedure. Child support magistrates shall appoint guardians ad litem to advocate for the best interests of children when required under Minn. Stat., section 518.165 (2000) or any other applicable statute. When a child support magistrate determines that the appointment of a guardian ad litem is necessary, that appointment shall be made according to the Minnesota General Rules of Practice 901-913.

Subd. 2. Exception. The Minnesota Rules of Guardian Ad Litem Procedure do not apply when the person for whom the guardian ad litem is being appointed is a minor parent.

RULE 358. COURT INTERPRETERS**Rule 358.01 Appointment Mandatory**

The child support magistrate shall appoint a qualified interpreter in any proceeding conducted in the expedited process in which a person handicapped in communication is a party or witness. Such appointment shall be made according to the provisions of Minn. Gen. R. Prac. 8.

Rule 358.02. "Person Handicapped in Communication" Defined

For the purpose of Rule 358.01, a "person handicapped in communication" is one who, because of a hearing, speech, or other communication disorder, or because of difficulty in speaking or comprehending the English language, is unable to fully understand the proceedings in which the person is required to participate, or when named as a party to a legal proceeding is unable by reason of the handicap to obtain due process of law.

Advisory Committee Comment

Rules 358.01 and 358.02 are based upon the provisions of Minn. Stat., sections 546.42 and 546.43 (2000) which set forth the types of proceedings in which qualified interpreters must be appointed.

RULE 359. TELEPHONE AND INTERACTIVE VIDEO**Rule 359.01. Telephone and Interactive Video Permitted**

A child support magistrate may on the magistrate's own initiative conduct a hearing by telephone or, where available, interactive video. Any party may make a written or oral request to the court administrator or the court administrator's designee to appear at a scheduled hearing by telephone or, where available, interactive video. In the event the request is for interactive video, the request shall be made at least five (5) days before the date of the scheduled hearing. A child support magistrate may deny any request to appear at a hearing by telephone or interactive video.

Advisory Committee Comment

The Advisory Committee encourages the use of telephone and, where available, interactive video, to conduct proceedings in the expedited process.

Rule 359.02. Procedure

The court administrator or court administrator's designee shall arrange for any telephone or interactive video hearing approved by the child support magistrate. When conducting a proceeding by telephone or interactive video and a party or witness resides out of state, the child support magistrate shall ensure that the requirements of Minn. Stat., section 518C.316 (2000) are met. The child support magistrate shall make

adequate provision for a record of any proceeding conducted by telephone or interactive video. No recording may be made of any proceeding conducted by telephone or interactive video, except the recording made as the official court record.

Rule 359.03. In-Court Appearance Not Precluded

Rule 359.01 does not preclude any party or the county attorney from being present in person before the child support magistrate at any motion or hearing.

RULE 360. INTERVENTION

Rule 360.01. County Agency

Subdivision 1. Intervention as a Matter of Right. To the extent allowed by law, the county agency may, as a matter of right, intervene as a party in any matter conducted in the expedited process. Intervention is accomplished by serving upon all parties by U.S. mail a notice of intervention. The notice of intervention and affidavit of service shall be filed with the court.

Subd. 2. Effective Date. Intervention by the county agency is effective when the last person is served with the notice of intervention.

Rule 360.02. Other Individuals

Subdivision 1. Permissive Intervention. Any person may be permitted to intervene as a party at any point in the proceeding if the child support magistrate finds that the person's legal rights, duties, or privileges will be determined or affected by the case.

Subd. 2. Procedure. A person seeking permissive intervention under subdivision 1 shall file with the court and serve upon all parties a motion to intervene. The motion shall state:

- (a) how the person's legal rights, duties, or privileges will be determined or affected by the case;
- (b) how the person will be directly affected by the outcome of the case;
- (c) the purpose for which intervention is sought; and
- (d) any statutory grounds authorizing the person to intervene.

Subd. 3. Objection to Permissive Intervention. Any existing party may file with the court and serve upon all parties and the intervenor a written objection within ten (10) days of service of the motion to intervene.

Subd. 4. Effective Date; Hearing. If a written objection is not timely served and filed and the requesting party meets the requirements of subdivisions 1 and 2, the child support magistrate may grant the motion to intervene after considering the factors set forth in subdivision 2. If written objection is timely served and filed, the child support magistrate may hold a hearing on the matter or may decide the issue without a hearing. Intervention is effective as of the date granted.

Rule 360.03. Effect of Intervention

The child support magistrate may conduct hearings, make findings, and issue orders at any time prior to intervention being accomplished or denied. Prior proceedings and decisions of the child support magistrate are not affected by intervention. Upon effective intervention the caption of the case shall be amended to include the name of the intervening party, which shall appear after the initial parties' names.

RULE 361. DISCOVERY

Rule 361.01. Witnesses

Any party may call witnesses to testify at any hearing. Any party intending to call a witness other than an employee of the county agency or any party to the proceeding shall, at least five (5) days before the hearing, provide to the other parties and the county agency written notice of the name and address of each witness.

Rule 361.02. Exchange of Documents

If any party needs information to support or respond to a complaint or motion, that party should immediately notify the other parties and make arrangements for the exchange of documents between all parties. The parties shall cooperate in providing documents to each other. If the parties cannot agree on an acceptable exchange of documents, the parties shall exchange what can be agreed upon and be prepared to explain the disagreement to the child support magistrate. In addition, the parties may proceed pursuant to Rule 361.03 or Rule 361.04.

Advisory Committee Comment

Examples of documents that may be requested and exchanged include pay stubs, W-2 forms, signed tax returns, bank statements, utility bills, rental statement bills, loan payment statements, medical and dental bills, proof of medical insurance for dependents, child care expense statements from child care providers, and other documents relating to income, assets, or expenses.

Rule 361.03. Subpoenas

Subdivision 1. Written Request. Requests for subpoenas for the attendance of witnesses or for the production of documents shall be in writing and shall be submitted to the court administrator. The request shall specifically identify any documents requested, include the full name and home or business address of all persons to be subpoenaed, and specify the date, time, and place for responding to the subpoena. The court administrator shall issue a subpoena signed and sealed stating the name of the court and the title of the action, but otherwise in blank. The party requesting the subpoena shall fill out the subpoena before having it served.

Subd. 2. Service of Subpoenas shall be by Personal Service. Except as noted in this subdivision, all subpoenas issued by the district court, shall be personally served by the sheriff or by any other person who is at least 18 years of age who is not a party to the action. Employees of the county agency may personally serve subpoenas. The person being served shall, at the time of service, be given the fees and mileage allowed by Minn. Stat., section 357.22 (2000). When the subpoena is requested by the county agency, fees and mileage need not be paid. The cost of service, fees, and expenses of any witnesses who have been served subpoenas shall be paid by the party at whose request the witness appears. The person serving the subpoena shall provide proof of service by filing the original subpoena with the court, along with an affidavit of personal service.

Subd. 3. Objection to Subpoena. Any person served with a subpoena who objects to the request shall serve upon the parties and file with the court an objection to subpoena. The party objecting shall state on the objection to subpoena why the request is unreasonable or oppressive. The objection to subpoena shall be filed promptly and no later than the time specified in the subpoena for compliance. A child support magistrate shall cancel or modify the subpoena if it is unreasonable or oppressive, taking into account the issues or amounts in controversy, the costs or other burdens of compliance when compared with the value of the testimony or evidence requested, and whether there are alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the subpoena to pay reasonable costs of producing documents, books, papers, or other tangible things.

Rule 361.04. Other Discovery

Subdivision 1. Motion for Discovery. Any additional means of discovery available under the Minnesota Rules of Civil Procedure may be allowed only by order of the child support magistrate. The party seeking discovery shall bring a motion before the child support magistrate for an order permitting additional means of discovery. The motion shall include the reason for the request and shall notify the other parties of the opportunity to respond within five (5) days. The party seeking discovery has the burden

of showing that the discovery is needed for the party's case, is not for purposes of delay or harassment, and that the issues or amounts in dispute justify the requested discovery. The motion shall be decided without a hearing unless the child support magistrate determines that a hearing is necessary. The child support magistrate shall issue an order granting or denying the discovery motion.

Subd. 2. Noncompliance with Discovery. If a party fails to comply with a request for discovery, the party requesting the discovery may serve and file a motion for an order compelling an answer or compliance with the discovery request. The motion shall be decided without a hearing unless the child support magistrate determines that a hearing is necessary.

In deciding a motion to compel, the child support magistrate shall grant the motion in whole or in part, if the child support magistrate determines that:

- (a) discovery is needed;
- (b) discovery is not for the purposes of delay or harassment; and
- (c) the issues or amounts in dispute justify the requested discovery.

Rule 361.05. Discovery Remedies

Subdivision 1. Options Available to the Child Support Magistrate. When deciding a discovery related motion or issue, the child support magistrate may:

- (a) direct the parties to exchange specified documents or information;
- (b) deny the discovery request;
- (c) affirm, modify, or quash the subpoena;
- (d) issue a protective order;
- (e) set or continue the hearing;
- (f) conduct a hearing and keep the record open to allow for further exchange of information or response to the information provided at the hearing; or
- (g) order other discovery allowable under the Minnesota Rules of Civil Procedure, if appropriate.

Subd. 2. Failure to Comply with Discovery Order. If a party fails to comply with an order issued pursuant to Rule 361.04, subd. 2, upon motion the child support magistrate may:

- (a) find that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order;
- (b) prohibit the non-compliant party from supporting or opposing designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or
- (c) issue any other order that is appropriate in the interests of justice, including attorney fees or other sanctions.

Rule 361.06. 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.

RULE 362. SETTLEMENT

Rule 362.01. Procedure

The parties may settle the case at any time before a hearing or, if no hearing is scheduled, before an order is issued. Alternative dispute resolution, as provided in

Minn. Gen. R. Prac. 310, and settlement efforts, as provided in Minn. Gen. R. Prac. 303, do not apply to cases brought in the expedited process.

Rule 362.02. Signing of Order

Subdivision 1. Preparation and Signing. If the parties reach an agreement resolving all issues, one of the parties shall prepare an order setting forth the terms of the agreement. If the parties are not represented by counsel and the county agency is a party, the county agency shall prepare the order. All parties to the agreement, including the county agency, shall sign the original order. The order shall state that the parties have:

- (a) waived the right to a hearing;
- (b) waived the right to counsel where a party is not represented by counsel; and
- (c) received and reviewed all documents used to prepare the order.

Subd. 2. Filing. The original order signed by all parties shall be filed with the court, who shall submit it to the child support magistrate for review and signature.

Rule 362.03. Order Accepted

The child support magistrate may sign an order filed pursuant to Rule 362.02 if it is supported by law, and is reasonable and fair.

Rule 362.04. Order Not Accepted

The child support magistrate may reject an order filed pursuant to Rule 362.02 if the child support magistrate finds that it is contrary to law, or is unreasonable and unfair. If the child support magistrate rejects the order, the child support magistrate shall prepare a notice of deficiency, stating the reason(s) why the order cannot be signed. The notice of deficiency shall inform the parties of the following options:

- (a) to file and serve any missing documents;
- (b) to file and serve a revised order;
- (c) to file and serve a revised order and attach any missing or additional documents;
- (d) to appear at a hearing, notice of which shall be issued by the court administrator;
- (e) to appear at the previously scheduled hearing; or
- (f) to withdraw the matter without prejudice.

The court administrator shall mail the notice of deficiency to the parties. The parties shall either correct the deficiency or set the case on for a hearing and serve notice of the date, time, and location of the hearing pursuant to Rule 364. In matters that are pending before the court, if the parties fail to comply with the notice of deficiency within forty-five (45) days of the date the notice was mailed, the child support magistrate shall dismiss the matter without prejudice.

A stipulation or agreement shall be rejected where no underlying file exists. Neither the parties nor the child support magistrate may schedule a hearing without a party first serving and filing a summons and complaint or notice of motion and motion.

Advisory Committee Comment

After an order or a judgment and decree is issued, at a later date parties sometimes amicably agree to modify the order. These agreements are often reached without the serving and filing of any papers. Under such circumstances, the parties are required to reduce the agreement to writing in the form of a stipulation and order which a child support magistrate may accept or reject. If the stipulation and order is rejected, and there is no underlying file, the matter may not be set for hearing until such time as a complaint is filed thus giving the court jurisdiction over the parties.

RULE 363. DEFAULT**Rule 363.01. Scope**

The default procedure set forth in this rule applies to actions to establish support under Minn. Stat., section 256.87 (2000) (Rule 370) and proceedings to modify support or set support (Rule 372).

Rule 363.02. Procedure

The initiating party may proceed by default if:

(a) all noninitiating parties have been properly served with the summons or notice of motion;

(b) the summons or notice of motion did not contain a hearing date; and

(c) there has been no written answer or return of the request for hearing form from any party within twenty (20) days from the date the last party was served.

The initiating party shall file an order with the court within forty-five (45) days from the date the last noninitiating party was served with the summons and complaint or notice of motion and motion. The initiating party shall also file with the court a current affidavit of default and a current affidavit of non-military status. If an order is not filed with the court within forty-five (45) days, the court administrator shall mail a notice to all parties that the matter shall be scheduled for hearing unless the initiating party files an order along with all necessary documents within ten (10) days from the date notice was mailed. If the initiating party fails to file the necessary documents within the allotted ten (10) days, the court administrator shall set the matter on for hearing and serve upon all parties and the county agency by U.S. mail at least fourteen (14) days before the scheduled hearing, notice of the date, time, and location of the hearing.

Rule 363.03. Order Accepted

The child support magistrate may sign an order filed pursuant to Rule 363.02 if the child support magistrate finds that it is supported by law, is reasonable and fair, and that each noninitiating party:

(a) was properly served with the summons and complaint or notice of motion and motion;

(b) was notified of the requirement to either serve and file a written answer or return the request for hearing form within twenty (20) days of service of the summons and complaint or notice of motion and motion; and

(c) failed to serve and file a written answer or return the request for hearing form within twenty (20) days from the date of service.

Rule 363.04. Order Not Accepted

The child support magistrate may reject an order filed pursuant to Rule 363.02 if the child support magistrate finds the order contrary to law, or unreasonable and unfair. If the child support magistrate rejects the order, the child support magistrate shall prepare a notice of deficiency, stating the reason(s) why the order cannot be signed. The notice of deficiency shall inform the initiating party of the following options:

(a) to file and serve any missing documents;

(b) to file a revised order;

(c) to file a revised order and attach any missing or additional documents;

(d) to appear at a hearing, notice of which shall be issued by the court administrator to all parties;

(e) to appear at any previously scheduled hearing; or

(f) to withdraw the matter without prejudice.

The court administrator shall mail the notice of deficiency to the initiating party. The initiating party shall either correct the deficiency or set the case on for a hearing and serve notice of the date, time, and location of the hearing upon all parties pursuant to Rule 364. If the initiating party submits a revised order that raises new issues beyond the scope of the complaint or motion, amended pleadings shall be served and filed on all parties pursuant to Rule 370.06 or Rule 372.06. If the initiating party fails to schedule a hearing or comply with the notice of deficiency within forty-five (45) days of the date the notice was mailed, the child support magistrate shall dismiss the matter without prejudice.

RULE 364. HEARING PROCESS

Rule 364.01. Right to Hearing

Any party has a right to a hearing unless otherwise stated in these rules.

Rule 364.02. Scheduling of Hearing

The initiating party shall schedule a hearing if a written answer or a request for hearing form is received. The initiating party shall contact the court administrator or the court administrator's designee to obtain a hearing date and shall serve upon all parties and the county agency by U.S. mail at least fourteen (14) days before the scheduled hearing, notice of the date, time, and location of the hearing.

Rule 364.03. Timing of Hearing

In the event the parties are unable to resolve the matter, a hearing shall be held no sooner than twenty (20) days after service of the summons and complaint or notice of motion and motion, unless the time period is waived by the parties. Every effort shall be made to conduct the hearing no later than sixty (60) days after service of the summons and complaint or notice of motion and motion on the last person served or, in an establishment of parentage case, no later than sixty (60) days after receipt of the genetic test results. If conducted later than sixty (60) days, the court administrator shall report that fact to the chief judge of the judicial district. Conducting a hearing later than sixty (60) days after service or receipt of blood or genetic test results does not deprive the child support magistrate of jurisdiction.

Advisory Committee Comment

Federal law requires 75% of cases commenced in the Expedited Process to be completed within 6 months from the date of service of process and 90% of the cases to be completed within 12 months from the date of service of process. 45 C.F.R. section 303.101 (2000). If the hearing is initially scheduled within 60 days under Rule 364.03 and is later continued to beyond 60 days, that fact must be reported to the chief judge of the judicial district.

Rule 364.04. Notice of Hearing

A notice of the hearing shall:

- (a) state the name of the court;
- (b) state the names of the parties;
- (c) state the date, time, and location of the hearing;
- (d) state that the parties shall appear at the hearing, unless otherwise provided in these rules;
- (e) inform the parties of the requirement to bring to the hearing sufficient copies of all documents the parties intend to offer; and
- (f) if possible, include the name of the child support magistrate assigned to the case.

Rule 364.05. Continuance of Hearing

Upon agreement of the parties or a showing of good cause, the child support magistrate may grant a request for continuance of a hearing. An order granting a continuance may be stated orally on the record or may be in writing. Unless time does not permit, a request for continuance shall be made in writing, and shall be filed with the court and served upon all parties at least five (5) days before the hearing. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance.

Advisory Committee Comment

Rule 364.05 provides that a continuance may be granted for good cause. Examples of good cause include: death or incapacitating illness of a party or attorney of a party; lack of proper notice of the hearing; a substitution of the attorney of a party; a change in the parties or pleadings requiring postponement; an agreement for a continuance by all parties provided that it is shown that more time is clearly necessary. Good cause does not include: intentional delay; unavailability of counsel due to engagement in another judicial or administrative proceeding unless all other members of the attorney's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received prior to the notice of the hearing for which the continuance is sought; unavailability of a witness if the witness' testimony can be taken by deposition; and failure of the attorney to properly utilize the statutory notice period to prepare for the hearing.

Rule 364.06. Explanation of Hearing Purpose and Procedure

At the beginning of each hearing the child support magistrate shall explain the purpose of the hearing and the process and procedures to be used during the hearing.

Rule 364.07. Hearings Open to Public

All hearings are open to the public, except as otherwise provided in these rules or by statute. For good cause shown, a child support magistrate may exclude members of the public from attending a hearing.

Advisory Committee Comment

Under Minn. Stat., section 257.70 (2000), hearings regarding the establishment of parentage are closed to the public. Other proceedings identified in Rule 353.01 are generally open to the public.

Rule 364.08. Record of Hearing

Each child support magistrate shall ensure that an accurate record is made of each hearing over which the magistrate presides.

Advisory Committee Comment

Under Minn. Stat., section 484.72, subs. 1, 6 (2000), records of hearings and other proceedings in the expedited process may be made either by competent stenographers or by use of electronic recording equipment. (1999 Minn. Laws 196, art. 1, section 3.) If electronic recording equipment is used, it must meet the minimum standards promulgated by the state court administrator and must be operated and monitored by a person who meets the minimum qualifications promulgated by the state court administrator. The minimum standards are set forth in Minnesota State Court System Administrative Policy, dated June 29, 1999.

Rule 364.09. Right to Present Evidence

Subdivision 1. Generally. Each party may present evidence, rebuttal testimony, and argument with respect to the issues.

Subd. 2. Testimony and Documents Permitted. Evidence may be presented through documents and testimony of the parties or other witnesses. Testimony may be given in narrative fashion by witnesses or by question and answer. Any party may be a witness and may present witnesses. All oral testimony shall be under oath or affirmation. The child support magistrate may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses. In any proceeding, a sworn written affidavit of any party or witness may be offered in lieu of oral testimony.

Subd. 3. Necessary Preparation Required. Each party shall bring to the hearing all evidence, both oral and written, the party intends to present. Each party must have enough copies of each exhibit the party intends to offer so that a copy can be provided to all other parties and the child support magistrate at the time of the hearing. The parties are encouraged to exchange copies of exhibits before the hearing begins.

Rule 364.10. Evidence

Subdivision 1. Type of Evidence Admissible. The child support magistrate may admit any evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. The child support magistrate shall give effect to the rules of privilege recognized by law. Evidence that is not related to the issue of support, is unimportant to the issue before the magistrate, or that repeats evidence that has already been provided shall not be allowed.

Subd. 2. Evidence Part of Record. All pleadings and supporting documentation previously served upon the parties and filed with the court, unless objected to, may be considered by the magistrate. Only evidence that is offered and received during the hearing or submitted following the hearing with the permission of the child support magistrate may be considered in rendering a decision, including, but not limited to, testimony, affidavits, exhibits, and financial information.

Subd. 3. Documents. Ordinarily, copies or excerpts of documents instead of originals may be received or incorporated by reference. The child support magistrate may require the original or the complete document if the copy is not legible, there is a genuine question of accuracy or authenticity, or if it would be unfair to admit the copy instead of the original. Any financial documents prepared by the employee of the county agency are admissible without requiring foundation testimony or appearance of the employee of the county agency.

Subd. 4. Notice of Facts. The child support magistrate may take judicial notice of facts not subject to reasonable dispute, but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

Rule 364.11. Burden of Proof

The party proposing that certain action be taken shall prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard. A party asserting an affirmative defense has the burden of proving the existence of the defense by a preponderance of the evidence.

Rule 364.12. Examination of Adverse Party

A party may call an adverse party or any witness for an adverse party, and may ask leading questions, cross-examine, and impeach that adverse party or witness.

Rule 364.13. Role of Child Support Magistrate

A child support magistrate may ask questions of witnesses when needed to ensure sufficient evidence to make the required findings.

Rule 364.14. Discretion to Leave Record Open

At the conclusion of a hearing, the child support magistrate may leave the record open and request or permit submission of additional documentation. Unless otherwise

ordered by the child support magistrate, such additional documentation shall be submitted to the court within ten (10) days of the conclusion of the hearing. Documents submitted after the due date or without permission of the child support magistrate shall be returned to the sender and shall not be considered by the child support magistrate when deciding the case.

Rule 364.15. Close of Record

The record shall be considered closed either at the conclusion of the hearing or upon the expiration date for submission by the parties of any additional documentation authorized or requested by the child support magistrate, whichever is later. At the close of the record, the child support magistrate shall issue a decision and order pursuant to Rule 365.

RULE 365. DECISION AND ORDER OF CHILD SUPPORT MAGISTRATE

Rule 365.01. Failure to Attend Hearing

If a party fails to appear at a hearing for which notice was properly served, the child support magistrate may:

- (a) decide all issues and issue an order without further notice or hearing;
- (b) dismiss the matter without prejudice; or
- (c) continue the hearing.

Rule 365.02. Timing

Within thirty (30) days of the close of the record the child support magistrate shall file with the court a decision and order. The child support magistrate may serve the order upon the parties at the hearing.

Rule 365.03. Effective Date; Final Order

Except as otherwise provided in these rules, the decision and order of the child support magistrate is effective and final when signed by the child support magistrate.

Rule 365.04. Notice of Filing of Order or Notice of Entry of Judgment

Subdivision 1. Service by Court Administrator. Within five (5) days of receipt of the decision and order of the child support magistrate the court administrator shall serve a notice of filing of order or notice of entry of judgment upon each party by U.S. mail, together with a copy of the order or judgment if a copy of the order was not served at the hearing. The court administrator shall use the notice of filing form prepared by the state court administrator which shall set forth the information required in subdivision 2.

Subd. 2. Content of Notice. The notice required in subdivision 1 shall include information regarding the:

- (a) right to bring a motion to correct clerical mistakes pursuant to Rule 375;
- (b) right to bring a motion for review of the decision and order of the child support magistrate pursuant to Rule 376;
- (c) right to appeal a final order or judgment of the child support magistrate directly to the court of appeals pursuant to Rule 378;
- (d) right of other parties to respond to motions to correct clerical mistakes, motions for review, and appeals pursuant to Rules 377 and 378; and
- (e) authority of the child support magistrate to award costs and fees if the magistrate determines that a motion to correct clerical mistakes or a motion for review is not made in good faith or is brought for purposes of delay or harassment pursuant to Rule 377.09, subd. 6.

Subd. 3. Court Administrator Computes Dates. The court administrator shall compute, and set forth in the notice required in subdivision 1, the last day for bringing a motion for review and the last day for bringing any response to such motion.

Advisory Committee Comment

Timing and Procedure for Bringing Motions. *The timing for bringing a motion for review differs from the timing for bringing an appeal to the court of appeals. Under Rule 377.02, the time within which to bring a motion for review is twenty (20) days, which begins to run on the date the court administrator serves the notice of filing of order or notice of entry of judgment.*

Timing and Procedure for Bringing an Appeal to Court of Appeals. *Rule 104.01 of the Minnesota Rules of Civil Appellate Procedure provides that the time within which to bring an appeal to the court of appeals is sixty (60) days which begins to run on the date of service by any party upon any other party of written notice of the filing of the order or entry of the judgment. The Advisory Committee intends that Rule 378.01 supersede Minn. R. Civ. App. P. 104.01 to provide that the sixty (60) days begins to run on the date the court administrator serves the written notice of filing of the order or notice of entry of judgment.*

Options for Review and Appeal. *A party may choose to bring a motion to correct clerical mistakes, a motion for review, or a combined motion, or may choose to appeal directly to the court of appeals thus bypassing the first two options. However, if a party chooses the option of appealing directly to the court of appeals without first bringing a motion for review, such an appeal will be limited to determining whether the evidence sustains the findings of fact (to which the "clearly erroneous" standard of review applies) and whether the findings support the conclusions of law and the judgment. Kahn v. Tronnier, 547 N.W.2d 425, 428 (Minn. App.), rev. denied (Minn. July 10, 1996). Thus, although a motion for review is very important to obtaining the broadest possible appellate review, it is not an absolute prerequisite to appeal; a litigant can choose to file a direct appeal from the order of the child support magistrate, but the appeal will be limited to issues within that narrower scope of review.*

RULE 366. TRANSCRIPT

Rule 366.01. Ordering of Transcript

Subdivision 1. Informational Request. Any person may request a transcript of any proceeding held before a child support magistrate, except as prohibited by statute or rule, by filing a request for transcript form with the court. The person requesting the transcript must make satisfactory arrangements for payment with the transcriber within thirty (30) days of ordering the transcript or the request for the transcript shall be deemed cancelled. The person requesting the transcript may withdraw the request any time prior to the time transcription has begun. The transcriber shall file the original with the court and serve a copy upon the requesting person. The transcriber shall also file with the court an affidavit of service verifying that service has been made upon the requesting person.

Subd. 2. Clerical or Review Requests. If a party chooses to request a transcript for purposes of bringing or responding to a motion to correct clerical mistakes, a motion for review, or a combined motion, a request for transcript form shall be filed with the court within the time required under Rule 377.02 and 377.04. The party requesting the transcript must make satisfactory arrangements for payment with the transcriber within thirty (30) days of ordering the transcript or the request for the transcript shall be deemed cancelled. The requesting party may withdraw that party's request for a transcript any time prior to the time transcription has begun. The transcriber shall file the original with the court and serve each party, including the county agency if a party, with a copy. The transcriber shall also file with the court an affidavit of service verifying that service has been made upon all parties. Ordering and filing of a transcript does not delay the due dates for the submissions described in Rule 377.02 and Rule 377.04.

Filing of the transcript with the court closes the record for purposes of Rule 377.09, subd. 1.

Subd. 3. Appellate Request. If the transcript request is for appellate review, the transcriber shall comply with all appellate rules.

RULE 367. ADMINISTRATION OF EXPEDITED CHILD SUPPORT PROCESS; CHILD SUPPORT MAGISTRATES

Rule 367.01. Administration of Expedited Process

The chief judge of each judicial district shall determine whether the district will administer the expedited process within the judicial district in whole or in part, or request that the state court administrator administer the expedited process in whole or in part for the district.

Advisory Committee Comment

Rule 367.01 does not permit a judicial district to opt out of the expedited process. Rather, Rule 367.01 simply indicates that the chief judge of the district must decide who will be responsible for administering the expedited process within each judicial district.

Rule 367.02. Use and Appointment of Child Support Magistrates

The chief judge of each judicial district shall determine whether the district will use child support magistrates, family court referees, district court judges, or a combination of these individuals to preside over proceedings in the expedited process. The chief judge of each judicial district, with the advice and consent of the judges of the district, shall appoint each child support magistrate, except family court referees and district court judges, subject to confirmation by the Supreme Court. Each child support magistrate serves at the pleasure of the judges of the judicial district. Child support magistrates may be appointed on a full time, part time, or contract basis.

Advisory Committee Comment

Nothing in these rules precludes a family court referee or district court judge from serving in the capacity of a child support magistrate.

Rule 367.03. Powers and Authority

Child support magistrates shall have the powers and authority necessary to perform their duties in the expedited process pursuant to statute and rule.

Advisory Committee Comment

It is the intent of the Committee that child support magistrates have the authority to decide all issues permitted in the expedited process, including, but not limited to, awarding and modifying tax dependency exemptions, awarding costs and attorneys fees, and issuing orders to show cause.

Rule 367.04. Conflict of Interest

Subdivision 1. Generally. A child support magistrate shall not serve as:

(a) an attorney in any family law matter within any county in which the person serves as a child support magistrate; or

(b) a guardian ad litem in any family law matter, as defined in the comment to Minn. Gen. R. Prac. 901.01, in any county in which the person serves as a child support magistrate.

Subd. 2. Disqualification. The disqualifications listed in subdivision 1 shall not be imputed to other members of a child support magistrate's law firm.

Rule 367.05. Code of Judicial Conduct

Each child support magistrate is bound by the Minnesota Code of Judicial Conduct. The exceptions set forth in the Application of the Minnesota Code of Judicial Conduct relating to part-time judges apply to child support magistrates appointed on a part-time or contract basis.

Advisory Committee Comment

A comment to the Application Section of the Minnesota Code of Judicial Conduct provides that "anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a referee, special master or magistrate" is a judge within the meaning of the Minnesota Code of Judicial Conduct.

Rule 367.06. Impartiality

Each child support magistrate shall conduct each hearing in an impartial manner and shall serve only in those matters in which the magistrate can remain impartial and evenhanded. If at any time a child support magistrate is unable to conduct any proceeding in an impartial manner, the magistrate shall withdraw.

RULE 368. REMOVAL OF A PARTICULAR CHILD SUPPORT MAGISTRATE**Rule 368.01. Automatic Right to Remove Precluded**

No party has an automatic right to remove a child support magistrate, family court referee, or district court judge presiding over matters in the expedited process, including motions to correct clerical mistakes under Rule 375 and motions for review under Rule 376.

Rule 368.02. Removal for Cause

Subdivision 1. Procedure. Any party may serve upon the other parties and file with the court a request to remove the child support magistrate assigned to hear the matter. If the assigned child support magistrate denies the request to remove, upon written request the chief judge of the judicial district shall determine whether cause exists to remove the assigned child support magistrate. If the chief judge of the judicial district is the subject of the request to remove, the assistant chief judge shall determine whether cause exists to remove the child support magistrate. A request to remove shall be filed with the court and served upon the parties within ten (10) days of service of notice of the name of the magistrate assigned to hear the matter or within ten (10) days of discovery of prejudice. If assignment of a child support magistrate is made less than ten (10) days before the hearing, the request to remove shall be made as soon as practicable after notice of assignment is given.

Subd. 2. Grounds to Remove. Removal of a child support magistrate requires an affirmative showing of prejudice. A showing that the child support magistrate might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice.

RULE 369. ROLE OF COUNTY ATTORNEY AND EMPLOYEES OF THE COUNTY AGENCY**Rule 369.01. Role of County Attorney**

Subdivision 1. Approval as to Form and Content. The county attorney shall review and approve as to form and content all legal documents prepared by employees of the county agency for use in the expedited process or in district court.

Subd. 2. Attendance at Hearings. The county agency shall appear through counsel. However, the county attorney may authorize an employee of the county agency to appear on behalf of the county attorney to present an agreement or stipulation reached

by all the parties. An employee of the county agency shall not advocate a position on behalf of any party. The county attorney is not required to be present at any hearing to which the county agency is not a party.

Rule 369.02. Role of Employees of County Agency

Subdivision 1. County Attorney Direction. Under the direction of, and in consultation with, the county attorney, and consistent with Rules 5.3 and 5.5 of the Minnesota Rules of Professional Conduct, employees of the county agency may perform the following duties:

(a) meet and confer with parties by mail, telephone, electronic, or other means regarding legal issues;

(b) explain to parties the purpose, procedure, and function of the expedited child support process and the role and authority of nonattorney employees of the county agency regarding legal issues;

(c) prepare pleadings, including, but not limited to, summonses and complaints, notices, motions, subpoenas, orders to show cause, proposed orders, administrative orders, and stipulations and agreements;

(d) issue administrative subpoenas;

(e) prepare judicial notices;

(f) negotiate settlement agreements;

(g) attend and participate as witnesses in hearings and other proceedings, and if requested by the child support magistrate, present evidence, agreements and stipulations of the parties, and any other information deemed appropriate by the magistrate;

(h) participate in such other activities and perform such other duties as delegated by the county attorney; and

(i) exercise other powers and perform other duties as permitted by statute or these rules.

Employees of the county agency shall not represent the county agency at hearings conducted in the expedited process.

Subd. 2. Support Recommendations Precluded. Employees of the county agency may not offer recommendations regarding support at the hearing unless called as a witness at the hearing. Computation and presentation of support calculations are not considered recommendations as to support.

Subd. 3. County Attorney Direction Not Required. Without direction from the county attorney, employees of the county agency may perform the duties listed under Minn. Stat., section 518.5513, subd. 2(c) (2000). In addition, employees of the county agency may testify at hearings at the request of a party or the child support magistrate.

Subd. 4. Performance of Duties Not Practice of Law. Performance of the duties identified in Rule 369.02 by employees of the county agency does not constitute the unauthorized practice of law for purposes of these rules or Minn. Stat., section 481.02 (2000).

II. PROCEEDINGS

RULE 370. ESTABLISHMENT OF SUPPORT PROCEEDINGS

Rule 370.01. Commencement

An initial proceeding to establish support shall be commenced in the expedited process by service of a summons and complaint pursuant to Rule 370.03. If the summons does not contain a hearing date, a request for hearing form and a supporting affidavit shall be attached to the summons and complaint. In addition to service of the summons and complaint, an order to show cause may be issued pursuant to Minn. Gen. R. Prac. 303.05. Service shall be made at least twenty (20) days prior to any scheduled hearing.

Rule 370.02. Content of Summons, Complaint, Supporting Affidavit, and Request for Hearing Form

Subdivision 1. Content of Summons. A summons shall:

- (a) state the name of the court;
- (b) state the names of the parties;
- (c) state an address where the initiating party may be served;
- (d) state that the purpose of the action is to establish support;
- (e) either set a hearing date or attach a request for hearing form;
- (f) provide information about serving and filing a written response pursuant to Rule 370.04 and Rule 370.05;
- (g) state that all parties shall appear at the hearing if one is scheduled, and state that if any party fails to appear at the hearing the child support magistrate shall proceed pursuant to Rule 365.01;
- (h) state that the child support magistrate may sign a default order pursuant to Rule 363.03;
- (i) state that a party has the right to representation pursuant to Rule 357;
- (j) state that the case may be settled informally by contacting the initiating party, and include the name, address, and telephone number of the person to contact to discuss settlement; and
- (k) be signed by the initiating party or that party's attorney.

If there is reason to believe that domestic violence exists or if an order for protection has been issued, the party may provide an alternative address and telephone number. Pursuant to Minn. Stat., section 518.005, subd. 5 (2000), in all actions in which public assistance is assigned or the county agency is providing services to a party or parties to the action, information regarding the location of one party may not be released by the county agency to any other party if the county agency has knowledge that a protective order with respect to the other party has been entered or has reason to believe that the release of the information may result in physical or emotional harm to the other party.

Subd. 2. Content of Complaint. A complaint shall:

- (a) state the relief the initiating party wants the child support magistrate to order;
- (b) state the facts and grounds supporting the request for relief;
- (c) set forth the acknowledgment required under Rule 379.04; and
- (d) be signed by the initiating party or that party's attorney.

Subd. 3. Content of Supporting Affidavit. A supporting affidavit is required when the summons does not contain a hearing date. The supporting affidavit shall:

- (a) state detailed facts supporting the request for relief;
- (b) provide all information required by Minn. Stat., section 518.5513, subd. 3(a) (2000), if known; and
- (c) be signed and sworn to under oath.

Subd. 4. Content of Request for Hearing Form. A request for hearing form shall contain the name and address of the initiating party and a short, concise statement that a noninitiating party requests a hearing.

Advisory Committee Comment

Pursuant to Minn. Stat., section 518.5513, subd. 3(a), for all cases involving establishment or modification of support, the pleadings are to contain specific information. At times, it may be necessary to attach additional supporting documents. Each county should establish its own local policy regarding the attachment of supporting documents.

Rule 370.03. Service of Summons and Complaint

Subdivision 1. Who is Served. All parties, and the county agency even if not a party, shall be served pursuant to subdivision 2.

Subd. 2. How Served. The summons and complaint, and if required the supporting affidavit and request for hearing form, shall be served upon the parties by personal service, or alternative personal service, pursuant to Rule 355.02, unless personal service has been waived in writing. Where the county agency is the initiating party, the party who is receiving assistance from the county or who has applied for child support services from the county may be served by any means permitted under Rule 355.02.

Rule 370.04. Filing Requirements

Subdivision 1. Initiating Party. No later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served, the initiating party shall file the following with the court:

- (a) the original summons;
- (b) the original complaint;
- (c) the original supporting affidavit, if served;
- (d) the request for hearing form, if returned to the initiating party; and
- (e) proof of service upon each party pursuant to Rule 355.04.

Subd. 2. Responding Party. If a noninitiating party responds with a written answer pursuant to Rule 370.05, the following shall be filed with the court no later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served:

- (a) the original written answer; and
- (b) proof of service upon each party pursuant to Rule 355.04.

Rule 370.05. Response

Subdivision 1. Hearing Date in Summons. Inclusion of a hearing date does not preclude a noninitiating party from serving and filing a written answer. Within twenty (20) days from service of the summons and complaint, a noninitiating party may serve upon all parties a written answer to the complaint. The service and filing of a written answer or the failure of a noninitiating party to appear at a hearing does not preclude the hearing from going forward, and the child support magistrate may issue an order based upon the information in the file or evidence presented at the hearing.

Subd. 2. Hearing Date Not in Summons. If the summons does not contain a hearing date, within twenty (20) days from service of the summons and complaint, a noninitiating party shall either:

- (a) request a hearing by returning the request for hearing form to the initiating party; or
- (b) serve upon all other parties and file with the court a written answer to the complaint.

The initiating party shall schedule a hearing upon receipt of the request for hearing form or the service of a written answer.

Rule 370.06. Amended Pleadings

Subdivision 1. Service. At any time up to ten (10) days before a scheduled hearing, the initiating party may serve and file amended pleadings. If no hearing date has been scheduled, the initiating party may serve and file amended pleadings within the time remaining for response.

Subd. 2. Response. If the noninitiating party chooses to respond to amended pleadings, the response must be made within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleadings, whichever period is longer, unless the court otherwise orders.

Rule 370.07. Fees

A filing fee shall be paid pursuant to Rule 356 upon the filing of:

- (a) the summons and complaint; and
- (b) the written answer, if any.

Rule 370.08. Settlement Procedure

The parties may settle the case at any time pursuant to Rule 362.

Rule 370.09. Default Procedure

An action to establish support may proceed by default pursuant to Rule 363.

Rule 370.10. Hearing Procedure

Any hearing shall proceed pursuant to Rule 364. If the summons contains a hearing date, all parties shall appear at the hearing. If a party fails to appear at a hearing for which notice was properly served, the child support magistrate shall proceed pursuant to Rule 365.01.

Rule 370.11. Decision and Order

The decision and order of the court shall be issued pursuant to Rule 365.

Rule 370.12. Review and Appeal

Motions to correct clerical mistakes, if any, shall proceed pursuant to Rule 375. Review, if any, shall proceed pursuant to Rule 376. Appeal, if any, shall proceed pursuant to Rule 378.

RULE 371. PARENTAGE ACTIONS**Rule 371.01. Commencement**

A proceeding to establish parentage shall be commenced in the expedited process by service of a summons and complaint pursuant to Rule 371.03. A supporting affidavit may also be served. Unless blood or genetic testing has already been completed, a request for blood or genetic testing shall be served with the summons and complaint. In addition to service of the summons and complaint, an order to show cause may be issued pursuant to Minn. Gen. R. Prac. 303.05. Service shall be completed at least twenty (20) days prior to any scheduled hearing.

Rule 371.02. Content of Summons, Complaint, and Supporting Affidavit

Subdivision 1. Content of Summons. A summons shall:

- (a) state the name of the court;
- (b) state the names of the parties;
- (c) state an address where the initiating party may be served;
- (d) state that the purpose of the action is to establish parentage;
- (e) state the date, time, and location of the hearing;
- (f) provide information about serving and filing a written response pursuant to Rule 371.04 and Rule 371.05;
- (g) state that all parties shall appear at the hearing, and if any party fails to appear at the hearing the child support magistrate shall proceed pursuant to Rule 365.01;
- (h) state that a party has the right to representation pursuant to Rule 357;
- (i) state that the case may be settled informally by contacting the initiating party and include the name, address, and telephone number of the person to contact to discuss settlement; and
- (j) be signed by the initiating party or that party's attorney.

If there is reason to believe that domestic violence exists or if an order for protection has been issued, a party may provide an alternative address and telephone number. Pursuant to Minn. Stat., section 257.70(b) (2000), in all actions in which public assistance is assigned or the county agency is providing services to a party or parties to

the action, information regarding the location of one party may not be released by the county agency to any other party if the county agency has knowledge that a protective order with respect to the other party has been entered or has reason to believe that the release of the information may result in physical or emotional harm to the other party.

Subd. 2. Content of Complaint. A complaint shall:

- (a) state the relief the initiating party wants the child support magistrate to order;
- (b) state the facts and grounds supporting the request for relief;
- (c) set forth the acknowledgement required under Rule 379.04; and
- (d) be signed by the initiating party or that party's attorney.

Subd. 3. Content of Supporting Affidavit. A supporting affidavit shall:

- (a) state detailed facts supporting the request for relief, including the facts establishing parentage;
- (b) provide all information required by Minn. Stat., section 518.5513, subd. 3(a), if known; and
- (c) be signed and sworn to under oath.

Advisory Committee Comment

Pursuant to Minn. Stat., section 518.5513, subd. 3(a), for all cases involving establishment or modification of support, the pleadings are to contain specific information. At times, it may be necessary to attach additional supporting documents. Each county should establish its own local policy regarding the attachment of supporting documents.

Rule 371.03. Service of Summons and Complaint

Subdivision 1. Who is Served. All parties, each man presumed to be the father under Minn. Stat., section 257.55 (2000), each man alleged to be the biological father, and the county agency even if not a party, shall be served pursuant to subdivision 2.

Subd. 2. How Served. The summons and complaint, any supporting affidavit, and if required, a request for blood or genetic testing, shall be served upon the parties by personal service, or alternative personal service, pursuant to Rule 355.02, unless personal service has been waived in writing.

Rule 371.04. Filing Requirements

Subdivision 1. Initiating Party. No later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served, the initiating party shall file the following with the court:

- (a) the original summons;
- (b) the original complaint;
- (c) the original supporting affidavit, if served; and
- (d) proof of service upon each party pursuant to Rule 355.04.

Subd. 2. Responding Party. If a noninitiating party responds with a written response pursuant to Rule 371.05, the following, if served, shall be filed with the court no later than five (5) days before any scheduled hearing:

- (a) the original written answer; or
- (b) a request for blood or genetic testing; and
- (c) proof of service upon each party pursuant to Rule 355.04.

Rule 371.05. Response

Subdivision 1. Response Options. In addition to appearing at the hearing as required under Rule 371.10, subd. 1, a noninitiating party may do one or more of the following:

- (a) contact the initiating party to discuss settlement; or

(b) within fourteen (14) days of service of the summons and complaint, serve upon all parties one or more of the written responses pursuant to subdivision 2.

Subd. 2. Types of Written Response.

(a) **Request for Blood or Genetic Test.** A noninitiating party may serve and file a request for blood or genetic testing either alleging or denying paternity. Filing of a request for blood or genetic testing shall, with the consent of the parties, extend the time for filing and serving a written answer until the blood or genetic test results have been mailed to the parties. In this event, the alleged parent shall have ten (10) days from the day the test results are mailed to the alleged parent in which to file and serve a written answer to the complaint.

(b) **Written Answer.** A noninitiating party may serve and file a written answer responding to all allegations set forth in the complaint. The matter shall proceed pursuant to Rule 353.02, subd. 3, if the written answer raises one or more of the following issues: parentage, custody, parenting time, or the legal name of the child.

Rule 371.06. Blood or Genetic Testing Requested Before Hearing

When a request for blood or genetic testing is made prior to the hearing pursuant to Rule 371.05, the child support magistrate shall issue an order for blood or genetic testing and shall continue the hearing to allow the tests to be completed and the results to be received.

Rule 371.07. Amended Pleadings

Subdivision 1. Service. At any time up to ten (10) days before a scheduled hearing, the initiating party may serve and file amended pleadings.

Subd. 2. Response. If the noninitiating party chooses to respond to amended pleadings, the response must be made within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleadings, whichever period is longer, unless the court otherwise orders.

Rule 371.08. Fees

A filing fee shall be paid pursuant to Rule 356 upon the filing of:

- (a) the summons and complaint; and
- (b) the written answer or the request for blood or genetic testing, if any.

Rule 371.09. Settlement Procedure

The parties may settle the case at any time pursuant to Rule 362.

Rule 371.10. Hearing Procedure

Subdivision 1. Hearing Mandatory. A hearing shall be held to determine parentage, except as provided in subdivision 2. All parties shall appear at the hearing. If a party fails to appear at a hearing for which notice was properly served, the child support magistrate shall either refer the matter to district court or proceed pursuant to Rule 365.01. The hearing shall proceed pursuant to Rule 364, except that paternity hearings from commencement through adjudication shall be closed to the public. All hearings following entry of the order determining the parent and child relationship are open to the public.

Subd. 2. Exception. If all parties, including the county agency, sign an agreement that contains all statutory requirements for a parentage adjudication, including a statement that the parties waive their right to a hearing, the hearing may be stricken. The matter shall not be stricken from the court calendar until after the child support magistrate reviews and signs the agreement. The court administrator shall strike the hearing upon receipt of the agreement signed by the child support magistrate.

Rule 371.11. Procedure When Blood or Genetic Testing Requested

Subdivision 1. Blood or Genetic Testing Requested at Hearing. When blood or genetic testing is requested at the hearing, the child support magistrate shall issue an order for blood or genetic testing and shall continue the hearing to allow the tests to be completed and the results to be received.

Subd. 2. Blood or Genetic Testing Requested and Conducted Prior to Hearing. When blood or genetic testing is completed prior to the hearing and parentage is contested, the child support magistrate may upon motion set temporary child support pursuant to Minn. Stat., section 257.62, subd. 5 (2000), and shall refer the matter to district court pursuant to Rule 353.02, subd. 3.

Rule 371.12. Procedure When Written Answer Filed

Subdivision 1. Objections under the Parentage Act. The matter shall proceed pursuant to Rule 353.02, subd. 3, if the written answer contains an objection to one or more of the following issues: parentage, custody, parenting time, or the legal name of the child.

Subd. 2. Genetic Tests Received. When blood or genetic test results have been received and the results indicate a likelihood of paternity of ninety-two (92) percent or greater and a motion to set temporary support has been served and filed, the issue of temporary support shall be decided by the child support magistrate and the matter shall be referred to district court for further proceedings. Failure of a party to appear at the hearing shall not preclude the child support magistrate from issuing an order for temporary support.

Subd. 3. Objection to Support. A written answer objecting to any issue other than parentage, custody, parenting time, or the legal name of the child shall not prevent the hearing from proceeding. Failure of a party to appear at the hearing shall not preclude the child support magistrate from determining paternity and issuing an order for support.

Rule 371.13. Procedure When Written Answer Not Filed

If a written answer has not been served and filed by a noninitiating party and that party fails to appear at the hearing, the matter shall be heard and an order shall be issued by the child support magistrate. When the complaint, motion, or supporting affidavit contains specific requests for relief on the issue of custody, parenting time, or the legal name of the child, and proper service has been made upon all parties, the child support magistrate may grant such relief when a noninitiating party fails to appear at the hearing.

Advisory Committee Comment

Minnesota Statutes, section 257.651 (2000) provides that if the alleged father fails to appear at a hearing after service duly made and proved, the court may issue an order. The Committee also intends that the court may issue an order if the mother fails to appear after service duly made and proved.

Rule 371.14. Decision and Order

The decision and order of the court shall be issued pursuant to Rule 365.

Rule 371.15. Review and Appeal

Motions to correct clerical mistakes, if any, shall proceed pursuant to Rule 375. Review, if any, shall proceed pursuant to Rule 376. Appeal, if any, shall proceed pursuant to Rule 378.

RULE 372. MOTIONS TO MODIFY, MOTIONS TO SET SUPPORT, AND OTHER MATTERS

Rule 372.01. Commencement

Subdivision 1. Motions to Modify and Motions to Set Support. A proceeding to modify an existing support order shall be commenced in the expedited process by service of a notice of motion, motion, and supporting affidavit pursuant to Rule 372.03. A proceeding to set support where a prior order reserved support may be commenced in the expedited process by service of a notice of motion and motion and supporting affidavit pursuant to Rule 372.03. If the notice of motion does not contain a hearing date, a request for hearing form shall be attached to the notice of motion. In addition to service of the notice of motion and motion, an order to show cause may be issued pursuant to Minn. Gen. R. Prac. 303.05. Service shall be made at least twenty (20) days prior to any scheduled hearing.

Subd. 2. Other Motions. Except as otherwise provided in these rules, all proceedings shall be commenced in the expedited process by service of a notice of motion, motion, and supporting affidavit.

Rule 372.02. Content of Notice of Motion, Motion, Supporting Affidavit, and Request for Hearing Form

Subdivision 1. Content of Notice. A notice of motion shall:

- (a) state the name of the court;
- (b) state the names of the parties as set forth in the summons and complaint, or summons and petition, unless amended by order of the court;
- (c) state an address where the initiating party may be served;
- (d) state the purpose of the action;
- (e) for motions brought pursuant to Rule 372.01, subd. 2, state the date, time, and location of the hearing;
- (f) for motions brought pursuant to Rule 372.01, subd. 1, either state the date, time, and location of the hearing if one is scheduled or, if no hearing is scheduled, state that any party has a right to a hearing and attach a request for hearing form;
- (g) provide information about serving and filing a written response pursuant to Rule 372.04 and Rule 372.05;
- (h) state that all parties shall appear at the hearing if one is scheduled, and if any party fails to appear at the hearing, the child support magistrate shall proceed pursuant to Rule 365.01;
- (i) state that a party has a right to representation pursuant to Rule 357;
- (j) state that the case may be settled informally by contacting the initiating party and include the name, address, and telephone number of the person to contact to discuss settlement; and
- (k) be signed by the initiating party or that party's attorney.

If there is reason to believe that domestic violence exists or if an order for protection has been issued, the party may provide an alternative address and telephone number. Pursuant to Minn. Stat., section 518.005, subd. 5, in all actions in which public assistance is assigned or the county agency is providing services to a party or parties to the action, information regarding the location of one party may not be released by the county agency to the other party if the county agency has knowledge that a protective order with respect to the other party has been entered or has reason to believe that the release of the information may result in physical or emotional harm to the other party.

Subd. 2. Content of Motion. A motion shall:

- (a) state the relief the initiating party wants the child support magistrate to order;
- (b) state the specific support that the initiating party wants the child support magistrate to order if the notice of motion does not contain a hearing date;
- (c) state the facts and grounds supporting the request for relief;

- (d) set forth the acknowledgment under Rule 379.04; and
- (e) be signed by the initiating party or that party's attorney.

Subd. 3. Content of Supporting Affidavit. A supporting affidavit shall:

- (a) state detailed facts supporting the request for relief;
- (b) for motions to modify support and motions to set support, provide all information required by Minn. Stat., section 518.5513, subd. 3(a), if known; and
- (c) be signed and sworn to under oath.

Subd. 4. Content of Request for Hearing Form. A request for hearing form shall contain the name and address of the initiating party, and a short and concise statement that a noninitiating party requests a hearing.

Advisory Committee Comment

Pursuant to Minn. Stat., section 518.5513, subd. 3(a), for all cases involving establishment or modification of support, the pleadings are to contain specific information. At times, it may be necessary to attach additional supporting documents. Each county should establish its own local policy regarding the attachment of supporting documents.

Rule 372.03. Service of Notice of Motion and Motion

Subdivision 1. Who is Served. All parties, and the county agency even if not a party, shall be served pursuant to subdivision 2.

Subd. 2. How Served. The notice of motion, motion, supporting affidavit, and if required, the request for hearing form, may be served upon the parties either by U.S. mail, facsimile, or by personal service pursuant to Rule 355.02.

Rule 372.04. Filing Requirements

Subdivision 1. Initiating Party. No later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served, the initiating party shall file the following with the court:

- (a) the original notice of motion;
- (b) the original motion;
- (c) the original supporting affidavit;
- (d) the request for hearing form, if returned to the initiating party; and
- (e) proof of service upon each party pursuant to Rule 355.04.

Subd. 2. Responding Party. If a noninitiating party responds with a responsive motion or counter motion pursuant to Rule 372.05, the following shall be filed with the court no later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served:

- (a) the original responsive motion or counter motion; and
- (b) proof of service upon each party pursuant to Rule 355.04.

Rule 372.05. Response

Subdivision 1. Hearing Date Included in the Notice of Motion. Inclusion of a hearing date does not preclude a noninitiating party from serving and filing a responsive motion or counter motion. A noninitiating party may serve upon all parties a responsive motion or counter motion along with a supporting affidavit within fourteen (14) days of service of the notice of motion and motion. The service and filing of a responsive motion or counter motion does not preclude the hearing from going forward and the child support magistrate may issue an order based upon the information in the file or evidence presented at the hearing if a noninitiating party fails to appear at the hearing.

Subd. 2. Hearing Date Not Included in the Notice of Motion. If the notice of motion does not contain a hearing date, a noninitiating party shall either:

(a) request a hearing by returning the request for hearing form to the initiating party; or

(b) within fourteen (14) days of service of the notice of motion and motion, serve upon all other parties a responsive motion or counter motion.

The initiating party shall schedule a hearing upon receipt of a request for hearing form, a responsive motion, or counter motion. Failure of the noninitiating party to request a hearing, to serve a responsive motion, or to appear at a scheduled hearing shall not preclude the matter from going forward, and the child support magistrate may issue an order based upon the information in the file or the evidence presented at the hearing.

Rule 372.06. Amended Motions

Subdivision 1. Service. At any time up to ten (10) days before a scheduled hearing, the initiating party may serve and file an amended motion. If no hearing date has been scheduled, the initiating party may serve and file an amended motion within the time remaining for response.

Subd. 2. Response. If the noninitiating party chooses to respond to an amended motion, the response must be made within the time remaining for response to the original motion or within ten (10) days after service of the amended motion; whichever period is longer, unless the court otherwise orders.

Rule 372.07. Fees

Subdivision 1. Filing Fee. A filing fee shall be paid pursuant to Rule 356 upon the filing of:

- (a) the notice of motion and motion; and
- (b) the responsive motion or counter motion.

Subd. 2. Modification Fee. Pursuant to Minn. Stat., section 357.021, subd. 2(12) (2000), a separate fee shall also be collected upon the filing of the motion to modify and a responsive motion or counter motion.

Advisory Committee Comment

The modification fee to be collected under Rule 372.07 is \$20.00. (Order Setting Fee, File C9-85-1134, filed March 31, 1993.)

Rule 372.08. Settlement Procedure

The parties may settle the case at any time pursuant to Rule 362.

Rule 372.09. Default Procedure

An action to modify or set support may proceed by default pursuant to Rule 363.

Rule 372.10. Hearing Procedure

Any hearing shall proceed pursuant to Rule 364. If the notice of motion contains a hearing date, all parties shall appear at the hearing. If a party fails to appear at a hearing for which notice was properly served, the child support magistrate shall proceed pursuant to Rule 365.01.

Rule 372.11. Decision and Order

The decision and order of the court shall be issued pursuant to Rule 365.

Rule 372.12. Review and Appeal

Motions to correct clerical mistakes, if any, shall proceed pursuant to Rule 375. Review, if any, shall proceed pursuant to Rule 376. Appeal, if any, shall proceed pursuant to Rule 378.

RULE 373. ENFORCEMENT PROCEEDINGS**Rule 373.01. Types of Proceedings**

All proceedings seeking statutory remedies shall be heard in the expedited process except as prohibited by statute or as follows:

- (a) evidentiary hearings for contempt;
- (b) matters of criminal non-support;
- (c) motions to vacate a recognition of paternity or paternity adjudication; and
- (d) matters of criminal contempt.

Civil contempt proceedings are permitted pursuant to Rule 353.01, subd. 2.

Rule 373.02. Commencement

Subdivision 1. Procedure Provided. When an enforcement proceeding is initiated pursuant to procedures set forth in statute, and a hearing is requested as permitted by statute, the matter shall be commenced in the expedited process by service of a notice of hearing. The hearing shall proceed pursuant to Rule 364.

Subd. 2. Procedure Not Provided. Any enforcement proceeding where the statute does not provide a procedure to obtain a hearing shall be commenced in the expedited process pursuant to Rule 372.

Subd. 3. Civil Contempt. Civil contempt proceedings shall be commenced pursuant to Rule 374.

RULE 374. CIVIL CONTEMPT**Rule 374.01. Initiation**

Civil contempt proceedings initiated in the expedited process shall be brought according to the procedure set forth in Minn. Gen. R. Prac. 309.

Rule 374.02. Resolution of Contempt Matter

If the parties reach agreement at the initial appearance, the agreement may be stated orally on the record or the county attorney may prepare an order that shall be signed by all parties and submitted to the child support magistrate for approval. If approved, the order shall be forwarded to the court administrator for signing by a district court judge. The order is effective upon signing by a district court judge.

Rule 374.03. Evidentiary Hearing

If the parties do not reach agreement at the initial appearance, the child support magistrate shall refer the matter to the court administrator to schedule an evidentiary hearing before a district court judge or a family court referee. A child support magistrate shall not consider or decide a contempt matter, except as provided in Rule 353.01, subd. 2.

Rule 374.04. Failure to Appear

If the alleged contemnor fails to appear at the initial appearance, the child support magistrate may certify to a district court judge that the alleged contemnor failed to appear and may recommend issuance of a warrant for the person's arrest. Only a district court judge may issue arrest warrants.

III. REVIEW AND APPEAL**RULE 375. MOTION TO CORRECT CLERICAL MISTAKES****Rule 375.01. Initiation**

Clerical mistakes, typographical errors, and errors in mathematical calculations in orders, including orders for temporary support, arising from oversight or omission may

be corrected by the child support magistrate at any time upon the magistrate's own initiative or upon motion of any party after notice to all parties.

Rule 375.02. Procedure

A motion to correct clerical mistakes shall be brought pursuant to Rule 377 and shall be made in good faith and not for purposes of delay or harassment.

Rule 375.03. Decision

A motion to correct clerical mistakes shall be decided by the child support magistrate who issued the decision and order. If the child support magistrate who issued the order is unavailable, the motion to correct clerical mistakes may be assigned by the court administrator to another child support magistrate in the judicial district. If an appeal has been made to the court of appeals pursuant to Rule 378, a child support magistrate may correct clerical mistakes, typographical errors, and errors in mathematical calculations only upon order of the appellate court.

Rule 375.04. Combined Motions

A motion to correct clerical mistakes may be combined with a motion for review. If a party intends to bring both a motion to correct clerical mistakes under this rule and a motion for review under Rule 376.01, the combined motion shall be brought within the time prescribed by Rule 377.02. A combined motion may be decided either by the child support magistrate who issued the decision and order or, at the request of any party, by a district court judge.

RULE 376. MOTION FOR REVIEW**Rule 376.01. Initiation**

Any party may bring a motion for review of the decision and order or judgment of the child support magistrate. An order for temporary support is not subject to a motion for review.

Advisory Committee Comment

A party may make a motion for review regarding an order, regardless of whether it was issued as a result of default, based upon a stipulation or agreement of the parties, or issued following a hearing.

Rule 376.02. Procedure

A motion for review or a combined motion shall be brought pursuant to Rule 377 and shall be made in good faith and not for purposes of delay or harassment.

Rule 376.03. Decision

A motion for review may be decided either by the child support magistrate who issued the decision and order or, at the request of any party, a district court judge. If the child support magistrate who issued the order is unavailable, the motion for review may be assigned by the court administrator to another child support magistrate in the judicial district. If a district court judge issued the order in question, that judge shall also decide the motion for review. If an appeal has been made to the court of appeals pursuant to Rule 378, a child support magistrate may decide a motion for review or a combined motion only upon order of the appellate court.

RULE 377. PROCEDURE ON A MOTION TO CORRECT CLERICAL MISTAKES, MOTION FOR REVIEW, OR COMBINED MOTION**Rule 377.01. Other Motions Precluded**

Except for motions to correct clerical mistakes, motions for review, or motions alleging fraud, all other motions for post-decision relief are precluded, including those under Minn. R. Civ. P. 59 and 60 and Minn. Stat., section 518.145 (2000).

Rule 377.02. Timing of Motion

To bring a motion to correct clerical mistakes, the aggrieved party shall perform items (a) through (e) as soon as practicable after discovery of the error. To bring a motion for review or a combined motion, the aggrieved party shall perform items (a) through (f) within twenty (20) days of the date the court administrator served that party with the notice form as required by Rule 365.04.

(a) Complete the motion to correct clerical mistakes form, motion for review form, or combined motion form.

(b) Serve the completed motion for clerical mistakes form, motion for review form, or combined motion form upon all other parties and the county agency. Service may be made by personal service or by U.S. mail pursuant to Rule 355.02.

(c) File the original motion with the court. If the filing is accomplished by mail, the motion shall be postmarked on or before the due date set forth in the notice of filing.

(d) File the affidavit of service with the court. The affidavit of service shall be filed at the time the original motion is filed.

(e) Order a transcript of the hearing under Rule 366, if the party desires to submit a transcript.

(f) For a motion for review or combined motion, pay to the court administrator the filing fee required by Rule 356.01, if the party has not already done so. The court administrator may reject the motion papers if the appropriate fee does not accompany the papers at the time of filing.

Rule 377.03. Content of Motion

Subdivision 1. Motion to Correct Clerical Mistakes. A motion to correct clerical mistakes shall:

(a) identify by page and paragraph the clerical mistake(s) and state the correct language;

(b) include the acknowledgment as required pursuant to Rule 379.04; and

(c) be signed by the party or that party's attorney.

Subd. 2. Motion for Review or Combined Motion. A motion for review or combined motion shall:

(a) state the reason(s) the review is requested;

(b) state the specific change(s) requested;

(c) specify the evidence or law that supports the requested change(s);

(d) state whether the party is requesting that the review be by the child support magistrate that issued the order being reviewed or by a district court judge;

(e) state whether the party is requesting an order authorizing the party to submit new evidence;

(f) state whether the party requests an order granting a new hearing;

(g) include the acknowledgement as required pursuant to Rule 379.04; and

(h) be signed by the initiating party or that party's attorney.

Rule 377.04. Response to Motion

Subdivision 1. Timing of Response to Motion. A responding party may respond to a motion to correct clerical mistakes or a motion for review, but is not required to

respond if the party is in agreement with the motion. Any response shall state why the relief requested in the motion should or should not be granted. If a responding party wishes to raise other issues, the responding party must set forth those issues as a counter motion in the response. To respond to a motion to correct clerical mistakes the party shall perform items (a) through (e) within ten (10) days of the date the party was served with the motion. To respond to a motion for review or a combined motion the party shall perform (a) through (f) within thirty (30) days of the date the party was served with the notice under Rule 365.04. To respond to a counter motion, the party shall perform items (a) through (f) within forty (40) days of the date the party was served with the notice under Rule 365.04.

(a) Complete the response to motion to correct clerical mistakes form, response to motion for review form, or response to combined motion form.

(b) Serve the completed response to motion for clerical mistakes form, response to motion for review form, or response to combined motion form upon all other parties and the county agency. Service may be made by personal service or by U.S. mail pursuant to Rule 355.02.

(c) File the original response to motion with the court. If the filing is accomplished by mail, the response to motion shall be postmarked on or before the due date set forth in the notice of filing.

(d) File the affidavit of service with the court. The affidavit of service shall be filed at the time the original response to motion is filed.

(e) Order a transcript of the hearing under Rule 366, if the party desires to submit a transcript.

(f) For a responsive motion for review or combined motion, pay to the court administrator the filing fee required by Rule 356.01, if the party has not already done so. The court administrator may reject the responsive papers if the appropriate fee does not accompany the papers at the time of filing.

Subd. 2. Content of Response to Motion

(a) **Content of Response to Motion to Correct Clerical Mistakes.** A response to a motion to correct clerical mistakes shall:

- (1) identify by page and paragraph the clerical mistake(s) alleged by the moving party and state whether responding party agrees or opposes the corrections;
- (2) include an acknowledgment as required pursuant to Rule 379.04; and
- (3) be signed by the responding party or that party's attorney.

(b) **Content of Response to Motion for Review, Combined Motion, or Counter Motion.** A response to a motion for review, combined motion, or counter motion shall:

- (1) state why the relief requested should or should not be granted;
- (2) if new issues are raised, state the specific change(s) requested;
- (3) if new issues are raised, specify the evidence or law that supports the requested change(s);
- (4) state whether the party is requesting that the review be by the child support magistrate who issued the order being reviewed or by a district court judge;
- (5) state whether the party is requesting an order authorizing the party to submit new evidence;
- (6) state whether the party requests an order granting a new hearing;
- (7) include an acknowledgment as required pursuant to Rule 379.04; and
- (8) be signed by the responding party or that party's attorney.

Rule 377.05. Calculation of Time

Subdivision 1. Timing for Response to Motion to Correct Clerical Mistakes. To calculate the time to respond to a motion to correct clerical mistakes, three (3) days shall be added to the ten (10) days for a total of thirteen (13) days within which to respond when the motion is served by mail.

Subd. 2. Timing for Service of Motion for Review or Combined Motion. To calculate the time to serve a motion for review or combined motion, three (3) days shall be added to the twenty (20) days for a total of twenty-three (23) days within which to serve a motion when the notice form as required by Rule 365.04 is served by mail.

Subd. 3. Timing for Response to Motion for Review or Combined Motion. To calculate the time to serve a response to a motion for review or combined motion, three (3) days shall be added to the thirty (30) days for a total of thirty-three (33) days within which to respond when the notice form as required under Rule 365.04 is served by mail. If the motion for review or combined motion is served by mail, an additional three (3) days shall be added to the thirty-three (33) days for a total of thirty-six (36) days within which to respond.

Subd. 4. Timing for Response to Counter Motion. To calculate the time to serve a response to a counter motion, three (3) days shall be added to the forty (40) days for a total of forty-three (43) days within which to respond when the notice form as required under Rule 365.04 is served by mail. If the counter motion to the motion for review or combined motion is served by mail, an additional three (3) days shall be added to the forty-three (43) days for a total of forty-six (46) days within which to respond.

Rule 377.06. Review When Multiple Motions Filed - Motion for Review

If in a motion for review a party requests review by the child support magistrate and any other party requests review by a district court judge, all motions shall be assigned to a district court judge who shall either decide all issues or remand one or more issues to the child support magistrate with instructions.

Rule 377.07. Notice of Assignment of District Court Judge - Motion for Review

If a party requests that a motion for review be decided by a district court judge, upon the filing of a motion containing such a request the court administrator shall as soon as practicable notify the parties of the name of the judge to whom the motion has been assigned.

Rule 377.08. Decision and Order Not Stayed

The decision and order of the child support magistrate or district court judge remains in full force and effect and is not stayed pending a motion to correct clerical mistakes, a motion for review, or a combined motion.

Rule 377.09. Basis of Decision and Order

Subdivision 1. Timing. Within forty-five (45) days of the close of the record, the child support magistrate or district court judge shall file with the court an order deciding the motion. In the event a notice to remove is granted pursuant to Rule 368, the forty-five (45) days begins on the date the substitute child support magistrate or district court judge is assigned. The record shall be deemed closed upon occurrence of one of the following, whichever occurs later:

- (a) filing of a response pursuant to Rule 377.04;
- (b) filing of a transcript pursuant to Rule 366;
- (c) withdrawal or cancellation of a request for transcript pursuant to Rule 366; or
- (d) submission of new evidence under subdivision 4.

If none of the above events occur, the record shall be deemed closed forty-six (46) days after service of the notice of filing as required by Rule 365.04, despite the requirements of Rule 354.04.

Subd. 2. Decision.

(a) **Motion to Correct Clerical Mistakes.** The child support magistrate or district court judge may issue an order denying the motion to correct clerical mistakes or may issue an order making such corrections as deemed appropriate. If the motion is denied, the child support magistrate or district court judge shall specifically state in the order that the findings, decision, and order are affirmed.

(b) **Motion for Review.** The child support magistrate or district court judge shall make an independent review of any findings or other provisions of the underlying decision and order for which specific changes are requested in the motion. The child support magistrate or district court judge shall affirm the order unless the court determines that the findings and order are not supported by the record or the decision is contrary to law. The child support magistrate or district court judge may issue an order:

- (1) denying in whole or in part the motion for review;
- (2) approving, modifying, or vacating in whole or in part, the decision and order of the child support magistrate; or
- (3) scheduling the matter for hearing and directing the court administrator to serve notice of the date, time, and location of the hearing upon the parties.

In addition, the district court judge may remand one or more issues back to the child support magistrate with instructions. If the child support magistrate who issued the order is unavailable, the motion may be assigned by the court administrator to another child support magistrate serving in the judicial district. If any findings or other provisions of the child support magistrate's or district court judge's decision and order approved without change, the child support magistrate or district court judge shall specifically state in the order that those findings and other provisions are affirmed but need not make specific findings or conclusions as to each point raised in the motion. If any findings or other provisions of the child support magistrate's or district court judge's decision and order are modified, the child support magistrate or district court judge need only make specific findings or conclusions with respect to the provisions that are modified.

Subd. 3. Record on Review. The review by the child support magistrate or district court judge shall be based upon the decision of the child support magistrate or district court judge and any exhibits and affidavits filed, and, where a transcript has not been filed, may be based upon all or part of the audio or video recording of the hearing.

Subd. 4. Additional Evidence Discretionary. When bringing or responding to a motion to correct clerical mistakes, a motion for review, or a combined motion, the parties shall not submit any new evidence unless the child support magistrate or district court judge, upon written or oral notice to all parties, requests additional evidence.

Subd. 5. No Right to Hearing. A hearing shall not be held unless ordered by the child support magistrate or district court judge. The child support magistrate or district court judge may order a hearing upon motion of a party or on the court's own initiative. A party's motion shall be granted only upon a showing of good cause. In the event the child support magistrate or district court judge decides to conduct a hearing, the child support magistrate or the district court judge shall direct the court administrator to schedule a hearing date and to serve notice of the date, time, and location of the hearing upon all parties and the county agency.

Subd. 6. Costs and Fees. The child support magistrate or district court judge may award costs and fees incurred in responding to a motion to correct clerical mistakes, motion for review, or combined motion if the child support magistrate or district court judge determines that the motion is not made in good faith or is brought for purposes of delay or harassment.

Rule 377.10. Notice of Order or Judgment

Within five (5) days of receipt of an order issued as a result of a motion to correct clerical mistakes, a motion for review, or a combined motion, the court administrator shall serve a notice of filing of order or notice of entry of judgment upon each party by U.S. mail, along with a copy of the order or judgment. The notice shall state that the parties have a right to appeal to the court of appeals under Rule 378. If the order was issued by a district court judge, the court administrator shall provide a copy of the order to the child support magistrate.

Rule 377.11. Effective Date; Final Order

The order issued following a motion to correct clerical mistakes, a motion for review, or a combined motion is effective and final when signed by the child support magistrate or district court judge.

RULE 378. APPEAL TO COURT OF APPEALS**Rule 378.01. Generally**

An appeal may be taken to the court of appeals from a final order or judgment of a child support magistrate or from a final order deciding a motion for review under Rule 376. Such an appeal shall be taken in accordance with the procedures set forth in the Minnesota Rules of Civil Appellate Procedure within sixty (60) days of the date the court administrator serves upon the parties the notice of filing of order or notice of entry of judgment. If any party brings a timely motion to correct clerical mistakes under Rule 375 or a timely motion for review under Rule 376, the time for appeal is extended for all parties while that motion is pending. Once the last such pending motion is decided by the child support magistrate or district court judge, the sixty (60) days to appeal from the final order or judgment of a child support magistrate or from a final order deciding a motion to correct clerical mistakes or a motion for review runs for all parties from the date the court administrator serves upon the parties the notice of filing of order or notice of entry of judgment disposing of that motion. A notice of appeal filed before the disposition of a timely motion to correct clerical mistakes or for review is premature and of no effect, and it does not divest the child support magistrate of jurisdiction to dispose of the motion. Except as otherwise provided in these rules, the Minnesota Rules of Civil Appellate Procedure shall govern the taking and processing of such appeals.

Advisory Committee Comment

Timing. Under Minn. R. Civ. App. P. 104.01, the sixty (60) days in which to bring an appeal to the court of appeals begins to run on the date of service by any party of written notice of filing of an appealable order or on the date on which an appealable judgment is entered. The Advisory Committee intends that Rule 378 supersede the appellate rule to provide that the sixty (60) days to appeal begins to run from the time the court administrator serves the written notice of filing of order or notice of entry of judgment.

Scope of Review. A party may choose to bring a motion to correct clerical mistakes, or a motion for review, or to appeal directly to the court of appeals thus bypassing the first two options. However, if a party chooses the option of appealing directly to the court of appeals without first bringing a motion for review, such an appeal will be limited to determining whether the evidence sustains the findings of fact (to which the “clearly erroneous” standard of review applies) and whether the findings support the conclusions of law and the judgment. *Kahn v. Tronnier*, 547 N.W.2d at 428, rev. denied (Minn. July 10, 1996). Thus, although a motion for review is very important to obtaining the broadest possible appellate review, it is not an absolute prerequisite to appeal — a litigant can choose to file a direct appeal from the order of the child support magistrate, but the appeal will be limited to issues within that narrower scope of review.

IV. FORMS**RULE 379. FORMS****Rule 379.01. Court Administrator to Provide Forms**

Whenever a court administrator is required to provide forms under these rules, those forms shall be provided to the parties in the most accessible method for the parties, including fax, electronic mail, in person, by U.S. mail, or in alternate formats.

Rule 379.02. Substantial Compliance

The forms developed by the state court administrator and by the department of human services for use in the expedited process, or forms substantially in compliance with such forms, are sufficient for purposes of these rules.

Advisory Committee Comment

The Advisory Committee encourages use of the standardized forms developed by the state court administrator and department of human services. However, regardless of such standardized forms, attorneys representing the parties and the county attorney representing the interests of the county agency retain professional responsibility for the form and content of pleadings and other legal documents used in the expedited process.

Rule 379.03. Modification of Forms

Except as otherwise provided in these rules, a party has discretion to modify the standardized forms to address the factual and legal issues that cannot be adequately covered by standardized forms.

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 paper, an attorney or pro se party is certifying that to the best of the person's knowledge, information, and belief:

(a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;

(d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief; and

(e) the court may impose an appropriate sanction upon the attorneys, law firms, or parties that violate the above stated representations to the court, or are responsible for the violation.

Subd. 2. Motions to Correct Clerical Mistakes and Motions for Review. In motions to correct clerical mistakes, motions for review, or combined motions, the acknowledgement shall also include the following:

(a) a statement that the existing order remains in full force and effect and the parties must continue to comply with that order until a new order is issued; and

(b) a statement that the party understands that the child support magistrate or judge will decide whether the party may submit new information or whether the party may have a hearing, and that the parties will be notified if the party's request is granted.

Rule 379.05. Exception from Rules Governing Civil Actions

Subdivision 1. Informational Statement. The Informational Statement required by Minn. Gen. R. Prac. 304.02 is not required to be filed in cases brought in the expedited process.

Subd. 2. Prehearing Statement. The Prehearing Statement required by Minn. Gen. R. Prac. 305.01 is not required to be filed in cases brought in the expedited process.

APPENDIX OF FORMS

FORM 1. APPLICATION FOR TEMPORARY RELIEF

State of Minnesota

District Court

COUNTY _____

JUDICIAL DISTRICT _____

CASE NO. _____

In Re The Marriage Of:

Petitioner

and

Respondent**APPLICATION FOR
TEMPORARY RELIEF**

STATE OF MINNESOTA

COUNTY OF _____

_____, the Petitioner-Respondent hereinafter called Wife-Husband, being first duly sworn, upon oath, respectfully represents to the Court that:

1. The parties were married on _____; the Wife's age is ____; the Husband's age is ____.

2. The parties have been separated _____ months, during which the Husband-Wife has paid \$_____ to the Wife-Husband.

3. (a) There are _____ children of the parties, aged _____, _____, _____, _____, now in the care of the Wife-Husband at _____.

(b) The family home is owned-rented by the parties and is now occupied by the Wife-Husband-both parties and _____.

(c) For the best interests of the minor children, they should be in the temporary custody of the Husband-Wife.

(d) The Wife has _____ minor children of a prior marriage. The amount of support received-paid is \$_____ per month.

(e) The Husband has _____ minor children of a prior marriage. The amount of support received-paid is \$_____ per month.

4. The assets of the parties include:

APPROXIMATE MARKET VALUE AND ENCUMBRANCES

Item	Wife	Husband	Joint Tenancy	Encumbrances
(a) Cars (Year/Make)	\$_____	\$_____	\$_____	\$_____
(b) Stocks, Bonds, Notes	\$_____	\$_____	\$_____	\$_____
(c) Cash and Savings	\$_____	\$_____	\$_____	\$_____
(d) Claims	\$_____	\$_____	\$_____	\$_____
(e) Accounts Receivable	\$_____	\$_____	\$_____	\$_____
(f) Homestead	\$_____	\$_____	\$_____	\$_____

5. Secured Debts, not listed above (excluding homestead):

(a) Creditor	1. _____	2. _____	3. _____	4. _____
(b) Total	_____	_____	_____	_____
Outstanding	\$ _____	\$ _____	\$ _____	\$ _____
(c) Monthly	_____	_____	_____	_____
Payment	\$ _____	\$ _____	\$ _____	\$ _____
(d) Party	_____	_____	_____	_____
Obligated	_____	_____	_____	_____
(e) Security	_____	_____	_____	_____
Pledged	_____	_____	_____	_____

6. Necessary Monthly Expenses:

Wife/Husband

Child(ren)
(if separate)

(a) Rent	\$ _____	\$ _____
(b) Mortgage Payment	\$ _____	\$ _____
(c) Contract for Deed Payment	\$ _____	\$ _____
(d) Homeowner's Insurance	\$ _____	\$ _____
(e) Real Estate Taxes	\$ _____	\$ _____
(f) Utilities	\$ _____	\$ _____
(g) Heat	\$ _____	\$ _____
(h) Food	\$ _____	\$ _____
(i) Clothing	\$ _____	\$ _____
(j) Laundry and Drycleaning	\$ _____	\$ _____
(k) Medical and Dental	\$ _____	\$ _____
(l) Transportation (includes _____ car payment)	\$ _____	\$ _____
(m) Car Insurance	\$ _____	\$ _____
(n) Life Insurance	\$ _____	\$ _____
(o) Recreation, Entertainment, Travel	\$ _____	\$ _____
(p) Newspapers and Magazines	\$ _____	\$ _____
(q) Social and Church Obligations	\$ _____	\$ _____
(r) Personal Allowances and Incidentals	\$ _____	\$ _____
(s) Babysitting and Child Care	\$ _____	\$ _____
(t) Home Maintenance	\$ _____	\$ _____
(u) Children School Needs and Allowances	\$ _____	\$ _____
(v) Additional Information re: Debts and expenses	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
TOTAL:	\$ _____	\$ _____

7. Employment Data: Provide the following data for each employer. Attach prior month's paycheck stub(s) as Exhibit.

	Husband	Wife
(a) Name of Employer	_____	_____
Type of Employment	_____	_____
(b) Income:		
(1) Gross income		
per * _____	\$ _____	\$ _____
(2) Statutory Deductions:		
Federal Income Tax	\$ _____	\$ _____

State Withholding	\$ _____	\$ _____
Social Security		
(FICA)	\$ _____	\$ _____
Pension Deduction	\$ _____	\$ _____
Union Dues	\$ _____	\$ _____
Dependent Health/		
Hospitalization		
Coverage	\$ _____	\$ _____
Dental Coverage	\$ _____	\$ _____
(3) Subtotal of Statutory		
Deductions	\$ _____	\$ _____
(4) Net Income (line 1 -		
line 3)	\$ _____	\$ _____
(5) Other Paycheck		
Deductions:		
Specify _____	\$ _____	\$ _____
_____	\$ _____	\$ _____
(6) Subtotal: (Other		
Deductions)	\$ _____	\$ _____
(7) NET TAKE HOME PAY		
(line 4 - line 6)	\$ _____	\$ _____
(c) Tax withholding figures above		
are based on Married or		
Single taxpayer with # of		
deductions		
(Example: M-4 or S-2):	_____	_____
(d) Employer reimbursed		
expenses	\$ _____	\$ _____
Specify _____	\$ _____	\$ _____
_____	\$ _____	\$ _____
(e) Other Income:		
(1) Public Assistance		
(AFDC/GA)	\$ _____	\$ _____
(2) Social Security benefits		
for party or child(ren)	\$ _____	\$ _____
(3) Unemployment/Workers'		
Comp.	\$ _____	\$ _____
(4) Interest income		
per _____	\$ _____	\$ _____
(5) Dividend income		
per _____	\$ _____	\$ _____
(6) Gross Rental income	\$ _____	\$ _____
(7) Other income _____	\$ _____	\$ _____

8. (a) \$ _____ is a reasonable amount for temporary support for _____ children per month.

(b) \$ _____ is a reasonable amount for temporary maintenance per month.

(c) Payment should be made on _____.

9. (a) \$ _____ has been paid on the Wife's attorney fees and costs.

(b) \$ _____ has been paid on the Husband's attorney fees and costs.

(c) \$ _____ is reasonable for Wife-Husband's attorney fees and costs.

*Monthly income is to be calculated using a 4.3 multiple.

10. Additional Material Facts:

WHEREFORE, Petitioner-Respondent prays for an order granting such relief prior to trial as may be just and lawful.

Petitioner-Respondent

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public, _____ County, Minnesota
My commission expires _____.

FORM 2. PREHEARING STATEMENT

State of Minnesota

COUNTY

District Court

JUDICIAL DISTRICT

CASE NO.

In Re The Marriage Of:

Petitioner

and

Respondent

PREHEARING STATEMENT

1. PERSONAL INFORMATION:

	HUSBAND	WIFE
Full Name		
Present Mailing Address		
Employer		
Street Address		
City, State, ZIP		
Birthdate	age	age
Marriage Date		
Separation Date		
(Different Residences)		
Date(s) of Temporary		
Order(s), if any		

Minor Children born to this marriage or who will be affected by this legal action:

FULL NAME	BIRTHDATE	AGE	LIVING WITH:

Is the wife now pregnant? no yes - due date of

Is the issue of custody contested? ycs no

If custody is disputed, each party shall submit proposals for custody and visitation for each child as Exhibit 1A.

2. EMPLOYMENT: Provide the following data for each employer.

	HUSBAND	WIFE
a) Name of Employer		
Length of Employment		
Income:		
(1) Gross income per	\$	\$
Statutory Ddeductions:		
Federal Income Tax	\$	\$
State Withholding	\$	\$
Social Security (FICA)	\$	\$

Pension Deductions	\$ _____	\$ _____
Union Dues	\$ _____	\$ _____
Dependent Health/ Hospitalization Coverage	\$ _____	\$ _____
Dental Coverage	\$ _____	\$ _____
(2) Subtotal of Statutory Deductions:	\$ _____	\$ _____
(3) Net Income (line 1 - line 2)	\$ _____	\$ _____
Other Paycheck Deductions:	\$ _____	\$ _____
Specify: _____	\$ _____	\$ _____
_____	\$ _____	\$ _____
(4) Subtotal of Other Deductions	\$ _____	\$ _____
(5) NET TAKE HOME PAY PER _____		
(line 3 - line 4)	\$ _____	\$ _____

Tax withholding figures above are based upon Married or Single taxpayer with # of exemptions: (EX. M-4 or S-2):

Attach prior month's paycheck stub(s) as Exhibit 2A.

b) Employment benefits: Identify all benefits in addition to wages including bonus paid or due, automobile or travel expense reimbursement, other per diem compensation, memberships paid by the employer.

Will your medical and dental insurance coverage be available for your spouse after the dissolution?

	_____ Yes	_____ No
c) Other Income:		
(1) Public Assistance (AFDC/GA)	\$ _____	\$ _____
(2) Social Security Benefits for party or child(ren)	\$ _____	\$ _____
(3) Unemployment/ Workers' Comp.	\$ _____	\$ _____
(4) Interest income per _____	\$ _____	\$ _____
(5) Dividend income per _____	\$ _____	\$ _____
(6) Other income: _____	\$ _____	\$ _____
(7) Last Year's Tax Refunds	Federal _____ State _____	Federal _____ State _____

3. CHILD SUPPORT/SPOUSAL MAINTENANCE:

a) Does either party receive child support or spousal maintenance from a separate proceeding? ____yes ____no.

If yes, specify the \$_____ received each month for child support/alimony for _____ by the order of _____ County, dated _____.

b) Child Support or Spousal Maintenance established by court order for person(s) not included in this proceeding **currently being paid**: \$_____ \$_____

To whom is this obligation owed? _____

County and Date of such Order: _____

c) Current Monthly Child Support or Spousal Maintenance Order established by temporary order for other party and minor children in this proceeding:

Child Support: \$_____

Spousal Maintenance (Alimony): \$_____

Any claimed arrearages under existing court order(s)? ____yes ____no.

If yes, specify the amount(s) claimed:

Child Support: \$_____

Spousal Maintenance (Alimony): \$_____

4. LIVING EXPENSES:

Your estimated monthly expenses: \$_____

(Enter the total from an itemized schedule to be attached as Exhibit 4A.)

5. REAL PROPERTY:

	HOMESTEAD	OTHER*
(1) Date Acquired	\$_____	\$_____
(2) Purchase Price	\$_____	\$_____
(3) Present Fair Market Value	\$_____	\$_____
(4) First Mortgage Balance	\$_____	\$_____
(5) Second Mortgage Balance	\$_____	\$_____
or Home Improvement Loan		
(6) Net Value	\$_____	\$_____
(7) Monthly Payment: (PITI)	\$_____	\$_____
(8) Rental Income, if any	\$_____	\$_____

* Other Real Estate: Provide the same information for other real property such as rental property, lake cabin, etc. as Exhibit 5C.

6. PERSONAL PROPERTY: Fair Market Value

In Possession of:

	HUSBAND	WIFE	JOINT
a) Household Contents	\$_____	\$_____	\$_____
b) Stocks, Bonds,	\$_____	\$_____	\$_____
etc. _____	\$_____	\$_____	\$_____
	\$_____	\$_____	\$_____
c) Checking Accounts	\$_____	\$_____	\$_____
	\$_____	\$_____	\$_____
Savings Accounts	\$_____	\$_____	\$_____
	\$_____	\$_____	\$_____

d) Reccivables and Claims

\$

\$

\$

e) Motor Vehicles

(1) year/make/model

(2) year/make/model

(3) year/make/model

Market Value

Encumbrance

Net Value

Monthly Payment

In Possession of

f) Boats, Motors, Campers, Snowmobiles, Trailer, etc.

(1) year/make/model

(2) year/make/model

(3) year/make/model

Market Value

Encumbrance

Net Value

Monthly Payment

In Possession of

g) Other: (such as power equipment, tools, guns, valuable animals, etc.)

Description:

Fair Market Value: \$

Encumbrance: \$

Net Value: \$

7. NONMARITAL CLAIMS:

a) Description: (1)

(2)

b) Amount claimed: \$

\$

Set forth as the basis for and method used to arrive at your claims to be attached as Exhibit 7A.

8. LIFE INSURANCE:

Company	a)	b)	c)
Policy Number			
Type of Insurance			
Face Amount	\$	\$	\$
Cash Value	\$	\$	\$
Loans	\$	\$	\$
Insured			
Beneficiary			
Owner			

9. PENSION PLAN AND/OR PROFIT SHARING PLAN:

	HUSBAND	WIFE
a) Through Employment:		
(1) Present Cash Value	\$	\$
(2) Vested or Nonvested		
b) Private Plans:		
(IRA, Kcogh, SEP, etc.)		
(1) Present Cash Value	\$	\$
c) Deferred Compensation:	\$	\$
d) Military Pension or Disability:	Yes No	Yes No

10. DEBTS: (Not listed in paragraphs 4 or 5 above)

a) All Secured Debts:

Creditor	(1) _____	(2) _____	(3) _____
Total Amount Owning	\$ _____	\$ _____	\$ _____
Monthly Payment	\$ _____	\$ _____	\$ _____
When Incurred	_____	_____	_____
Party Obligated	_____	_____	_____
(H, W, J)	_____	_____	_____
Reason for Debt	_____	_____	_____
Totals	Husband: \$ _____	Wife: \$ _____	Joint: \$ _____

b) Unsecured Debts: Attach a separate schedule showing the creditor, balance owed, monthly payment, etc. to be attached as Exhibit 9B. Include attorney fees and costs.

Totals	Husband: \$ _____	Wife: \$ _____	Joint: \$ _____

Dated: _____

The statements contained
herein are true and complete
to the best of my knowledge.

_____ Petitioner	_____ Respondent

Attorney for _____
Attorney I.D. # _____

Telephone #: _____

FORM 3
APPENDIX A

NOTICE IS HEREBY GIVEN TO THE PARTIES:

I. PAYMENTS TO PUBLIC AGENCY. ACCORDING TO MINNESOTA STATUTES, SECTION 518.551, SUBDIVISION 1, PAYMENTS ORDERED FOR MAINTENANCE AND SUPPORT MUST BE PAID TO THE MINNESOTA CHILD SUPPORT PAYMENT CENTER AS LONG AS THE PERSON ENTITLED TO RECEIVE THE PAYMENTS IS RECEIVING OR HAS APPLIED FOR PUBLIC ASSISTANCE OR HAS APPLIED FOR SUPPORT AND MAINTENANCE COLLECTION SERVICES. Parents mail payments to: P.O. Box 64326, St. Paul, MN 55164-0326. Employers mail payments to: P.O. Box 64306, St. Paul, MN 55164.

II. DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS - A FELONY. A PERSON MAY BE CHARGED WITH A FELONY WHO CONCEALS A MINOR CHILD OR TAKES, OBTAINS, RETAINS, OR FAILS TO RETURN A MINOR CHILD FROM OR TO THE CHILD'S PARENT (OR PERSON WITH CUSTODIAL OR PARENTING TIME RIGHTS), ACCORDING TO MINNESOTA STATUTES, SECTION 609.26. A COPY OF THAT SECTION IS AVAILABLE FROM ANY COURT ADMINISTRATOR.

III. NONSUPPORT OF A SPOUSE OR CHILD - CRIMINAL PENALTIES. A person who fails to pay court-ordered child support or maintenance may be charged with a crime, which may include misdemeanor, gross misdemeanor, or felony charges, according to Minnesota Statutes, section 609.375. A copy of that section is available from any district court clerk.

IV. RULES OF SUPPORT, MAINTENANCE, PARENTING TIME.

A. Payment of support or spousal maintenance is to be as ordered, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation.

B. Payment of support must be made as it becomes due, and failure to secure or denial of parenting time is NOT an excuse for nonpayment, but the aggrieved party must seek relief through a proper motion filed with the court.

C. Nonpayment of support is not grounds to deny parenting time. The party entitled to receive support may apply for support and collection services, file a contempt motion, or obtain a judgment as provided in Minnesota Statutes, section 548.091.

D. The payment of support or spousal maintenance takes priority over payment of debts and other obligations.

E. A party who accepts additional obligations of support does so with the full knowledge of the party's prior obligation under this proceeding.

F. Child support or maintenance is based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that payments are made throughout the year as ordered.

G. If the obligor is laid off from employment or receives a pay reduction, support may be reduced, but only if a motion to reduce the support is served and filed with the court. Any reduction will take effect only if ordered by the court and may only relate back to the time that the motion is filed. If a motion is not filed, the support obligation will continue at the current level. The court is not permitted to reduce support retroactively, except as provided in Minnesota Statutes, section 518.64, subdivision 2, paragraph (d).

H. A *Parental Guide to Making Child-Focused Visitation Decisions* is available from any court administrator.

I. The nonpayment of support may be enforced through the denial of student grants; interception of state and federal tax refunds; suspension of driver's, recreational, and occupational licenses; referral to the department of revenue or private collection agencies; seizure of assets, including bank accounts and other assets held by

financial institutions; reporting to credit bureaus; interest charging, income withholding, and contempt proceedings; and other enforcement methods allowed by law.

V. PARENTAL RIGHTS FROM MINNESOTA STATUTES, SECTION 518.17, SUBDIVISION 3. UNLESS OTHERWISE PROVIDED BY THE COURT:

A. Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children. Each party has the right of access to information regarding health or dental insurance available to the minor children. Presentation of a copy of this order to the custodian of a record or other information about the minor children constitutes sufficient authorization for the release of the record or information to the requesting party.

B. Each party shall keep the other informed as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children's welfare, educational progress and status, and to attend school and parent teacher conferences. The school is not required to hold a separate conference for each party.

C. In case of an accident or serious illness of a minor child, each party shall notify the other party of the accident or illness, and the name of the health care provider and the place of treatment.

D. Each party has the right of reasonable access and telephone contact with the minor children.

VI. WAGE AND INCOME DEDUCTION OF SUPPORT AND MAINTENANCE. CHILD SUPPORT AND/OR SPOUSAL MAINTENANCE MAY BE WITHHELD FROM INCOME, WITH OR WITHOUT NOTICE TO THE PERSON OBLIGATED TO PAY, WHEN THE CONDITIONS OF MINNESOTA STATUTES, SECTION 518.6111, HAVE BEEN MET. A COPY OF THAT SECTION IS AVAILABLE FROM ANY COURT ADMINISTRATOR.

VII. CHANGE OF ADDRESS OR RESIDENCE. UNLESS OTHERWISE ORDERED, EACH PARTY SHALL NOTIFY THE OTHER PARTY, THE COURT, AND THE PUBLIC AUTHORITY RESPONSIBLE FOR COLLECTION, IF APPLICABLE, OF THE FOLLOWING INFORMATION WITHIN TEN DAYS OF ANY CHANGE: RESIDENTIAL AND MAILING ADDRESS, TELEPHONE NUMBER, DRIVER'S LICENSE NUMBER, SOCIAL SECURITY NUMBER, AND NAME, ADDRESS, AND TELEPHONE NUMBER OF THE EMPLOYER.

VIII. COST OF LIVING INCREASE OF SUPPORT AND MAINTENANCE. CHILD SUPPORT AND/OR SPOUSAL MAINTENANCE MAY BE ADJUSTED EVERY TWO YEARS BASED UPON A CHANGE IN THE COST OF LIVING (USING THE U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEX MPLS. ST. PAUL, FOR ALL URBAN CONSUMERS (CPI-U), UNLESS OTHERWISE SPECIFIED IN THIS ORDER) WHEN THE CONDITIONS OF MINNESOTA STATUTES, SECTION 518.641, ARE MET. COST OF LIVING INCREASES ARE COMPOUNDED. A COPY OF MINNESOTA STATUTES, SECTION 518.641, AND FORMS NECESSARY TO REQUEST OR CONTEST A COST OF LIVING INCREASE ARE AVAILABLE FROM ANY COURT ADMINISTRATOR.

IX. JUDGMENTS FOR UNPAID SUPPORT; INTEREST. ACCORDING TO MINNESOTA STATUTES, SECTION 548.091:

A. If a person fails to make a child support payment, the payment owed becomes a judgment against the person responsible to make the payment by operation of law on or after the date the payment is due, and the person entitled to receive the payment or the public agency may obtain entry and docketing of the judgement without notice to the person responsible to make the payment.

B. Interest begins accruing on a payment or installment of child support whenever the unpaid amount due is greater than the current support due.

X. JUDGMENTS FOR UNPAID MAINTENANCE. A JUDGMENT FOR UNPAID SPOUSAL MAINTENANCE MAY BE ENTERED AND DOCKETED WHEN THE CONDITIONS OF MINNESOTA STATUTES, SECTION 548.091, ARE MET. A COPY OF THAT SECTION IS AVAILABLE FROM ANY COURT ADMINISTRATOR.

XI. ATTORNEY FEES AND COLLECTION COSTS FOR ENFORCEMENT OF CHILD SUPPORT. A JUDGMENT FOR ATTORNEY FEES AND OTHER COLLECTION COSTS INCURRED IN ENFORCING A CHILD SUPPORT ORDER WILL BE ENTERED AGAINST THE PERSON RESPONSIBLE TO PAY SUPPORT WHEN THE CONDITIONS OF MINNESOTA STATUTES, SECTION 518.14, SUBDIVISION 2, ARE MET. A COPY OF THAT SECTION AND FORMS NECESSARY TO REQUEST OR CONTEST THESE ATTORNEY FEES AND COLLECTION COSTS ARE AVAILABLE FROM ANY COURT ADMINISTRATOR.

XII. PARENTING TIME EXPEDITER PROCESS. ON REQUEST OF EITHER PARTY OR ON ITS OWN MOTION, THE COURT MAY APPOINT A PARENTING TIME EXPEDITER TO RESOLVE PARENTING TIME DISPUTES UNDER MINNESOTA STATUTES, SECTION 518.1751. A COPY OF THAT SECTION AND A DESCRIPTION OF THE EXPEDITOR PROCESS IS AVAILABLE FROM ANY COURT ADMINISTRATOR.

XIII. PARENTING TIME REMEDIES AND PENALTIES. REMEDIES AND PENALTIES FOR WRONGFUL DENIAL OF PARENTING TIME ARE AVAILABLE UNDER MINNESOTA STATUTES, SECTION 518.175, SUBDIVISION 6. THESE INCLUDE COMPENSATORY PARENTING TIME; CIVIL PENALTIES; BOND REQUIREMENTS; CONTEMPT; AND REVERSAL OF CUSTODY. A COPY OF THAT SUBDIVISION AND FORMS FOR REQUESTING RELIEF ARE AVAILABLE FROM ANY COURT ADMINISTRATOR.

(Amended effective August 1, 1993; amended effective January 1, 1994; amended effective July 1, 1994; amended effective August 1, 1996; amended effective July 2, 1997; amended effective August 5, 1997; amended effective August 6, 1999; amended effective September 8, 2000; amended effective December 28, 2000; amended effective August 8, 2001.)

Advisory Committee Comment—1994 Amendments

Form 3 has been amended, and will continue to be amended, as the legislature continues to modify the statutes affecting this notice. See Promulgation of Amendment to General Rules of Practice, Rules of Family Court, Form 3, Appendix A, Nos. C9-85-1134 & CX-89-1863 (Minn. Sup. Ct. July 26, 1993). The changes to Form 3 contained in that order were required by 1993 Minn. Sess. Laws, ch. 322, sections 13 and 16 and were effective August 1, 1993. The additional changes recommended by the advisory committee are intended to conform this form to the additional legislative enactments contained in 1993 Minn. Sess. Laws, ch. 340, sections 21, 49, and 51.

(Added effective January 1, 1994.)

**FORM 4A. NOTICE FOR IMPLEMENTATION OF BIENNIAL
COST OF LIVING ADJUSTMENT**

Date _____
Obligor's Name _____
Address _____

RE: Notice for Implementation of Cost of Living Adjustment

Court File: In Re the Marriage of:

_____, Petitioner and _____, Respondent.

Court File No: _____

Dear _____:

Please be advised that a cost of living adjustment will become effective on _____, 19____. The adjustment is more fully explained and consistent with the terms of paragraph _____ of the _____.

Prior to the effective date of the adjustment, you have the right to schedule a court hearing on whether the cost-of-living adjustment should take effect and obtain an ex parte stay of the imposition of the cost-of-living adjustment pending the outcome of the hearing. Forms for your use in requesting a hearing are available from the _____. The cost of living adjustment upon the child support obligation of \$_____ and/or upon the maintenance order obligation of \$_____ ordered by the court will otherwise become automatic, if you fail to schedule such a hearing and obtain an ex parte court order.

My calculations as to the amount of the adjustment are enclosed. By such computation, you should be paying \$_____ for your child support obligation starting on _____, 19____, in equal installments of \$_____, and/or \$_____ for your maintenance obligation starting on _____, 19____, in equal installments of \$_____. If the calculations are satisfactory, please sign and date the attachment, and, after you make a copy for your records, please mail it back to me. A copy of this notice and the original calculation attached shall be filed with the court.

Sincerely,

Name

FORM 4B. COST OF LIVING ADJUSTMENT CALCULATION

State of Minnesota District Court

COUNTY JUDICIAL DISTRICT CASE NO.

In Re The Marriage Of:

and Petitioner Respondent COST OF LIVING ADJUSTMENT CALCULATION

This cost of living adjustment in child support and / or maintenance has been calculated pursuant to Minnesota Statutes, section 518.641 and the Order of the court dated and entered on

- Step 1. Total child support payable before adjustment. \$
- Step 2. Most current available CPI-U for this year.
- Step 3. CPI-U for of two years ago. (specify month.)
- Step 4. Subtract the number in Step 3 from the number in Step 2.
- Step 5. Divide the number in Step 4 by the number in Step 3.
- Step 6. Multiply the number in Step 5 by the number in Step 1.
- Step 7. Add the number in Step 6 to the number in Step 1.

YOU MUST NOW PAY \$ AS AND FOR YOUR MONTHLY CHILD SUPPORT OBLIGATION, EFFECTIVE , 19.

- Step 8. Total maintenance payable before adjustment. \$
- Step 9. Multiply the number in Step 5 by the number in Step 8.
- Step 10. Add the number in Step 9 to the number in Step 8.

YOU MUST NOW PAY \$ AS AND FOR YOUR MONTHLY MAINTENANCE PAYMENT, EFFECTIVE , 19.

FORM 5A. NOTICE TO OBLIGOR OF MEDICAL SUPPORT ENFORCEMENT

TO: _____, OBLIGOR.

You are hereby notified pursuant to Minnesota Statutes, section 518.171, that thirty (30) days have passed since entry of the court order dated _____. You have failed to provide written proof that the required health and dental insurance has been obtained, or that an application for insurability has been made.

If, after fifteen (15) days from the date of this notice, written proof that the insurance coverage exists is not received at the address listed below, a copy of the court order for insurance coverage will be forwarded to your employer or union. This order is binding on your employer or union.

Upon receipt of the order, your employer or union will enroll the minor children named in the order as beneficiaries in an insurance plan and withhold any required premium from your income or wages. If more than one plan is offered by your employer or union, the children will be enrolled in the least costly plan otherwise available to you that is comparable to a number two qualified plan as defined by Minnesota Statutes, section 62E.06, subdivision 2. The children will remain eligible for insurance coverage until emancipated or until further order of the court.

If dependent health and dental insurance is available for the benefit of your (ex-) spouse, at no additional cost, the employer or union will also enroll that person.

If you fail to maintain the medical or dental insurance as ordered, you will be liable to the obligee for any medical or dental expenses incurred from the date of the court order. Proof of failure to maintain insurance constitutes a showing of increased need by the obligee pursuant to Minnesota Statutes, section 518.64 and provides a basis for a modification of your child support order.

Date: _____

Address: _____

Telephone #: (____) _____

FORM 5B. NOTICE TO EMPLOYER OR UNION OF MEDICAL SUPPORT

TO: _____, EMPLOYER OR UNION

Re: Employee, _____

Social Security Number: _____

You are being served with a medical support order pursuant to Minnesota Statutes, section 518.171, which requires you to enroll the minor children named in the order as a beneficiary in any health and dental insurance plan that is available to the employee on a group basis, and withhold any required premium from your employee's income or wages.

If more than one plan is offered by you, the children must be enrolled in the insurance plan in which your employee is enrolled, or the least costly plan otherwise available to your employee that is comparable to a number two qualified plan as prescribed by Minnesota Statutes, section 62E.06, subdivision 2.

Insurance coverage for the children cannot be terminated until the children are emancipated or until further order of the court.

If dependent health and dental insurance is available for the benefit of the employee's (ex-) spouse at no additional cost, you must also enroll that person.

When an order for dependent insurance is in effect, the employer must release, upon request, to the custodial parent, the county agency, or the state agency, information on the dependent coverage, including the name of the insurer.

You must comply with the order even if the obligor fails to execute necessary documents. Minnesota Statutes, section 518.171, subdivision 4.

You must forward a copy of the medical support order to the health and dental insurance plan in which the minor children and (ex-) spouse are to be enrolled. Minnesota Statutes, section 518.171, subdivision 3.

Dated: _____

Address: _____

Telephone # (____) _____

FORM 6A. NOTICE OF INCOME WITHHOLDING

TO: _____, OBLIGOR

You are hereby notified pursuant to Minnesota Statutes, section 518.611, that fifteen (15) days from the date of this notice your employer or payor of funds will be instructed to deduct your court-ordered child/spousal support payments and payments for past due support from your income.

Your child/spousal support payments are more than thirty (30) days in arrears since the court issued its order for income withholding on _____. In addition to withholding \$_____ per _____ for child/spousal support, \$_____ per _____ will be withheld by your employer or payor of funds until past due support is paid in full.

If you believe your payments are not at least thirty (30) days in arrears, or if other mistakes of fact exist, you can delay income withholding by requesting within fifteen (15) days from the date of this order that the court:

1. Deny income withholding on the grounds that an arrearage of at least thirty (30) days did not exist as of the date of this notice, or on other grounds, limited to mistakes of fact, and

2. Stay service on the payor of funds until the motion to deny income withholding is heard.

The forms in support of a motion to deny income withholding may be obtained from _____. If you request a court hearing, you must serve notice upon _____. If you fail to serve notice, your employer or payor of funds will be instructed to begin withholding child/spousal support payments from your income.

Dated: _____

Address: _____

Telephone # (____) _____

FORM 6B. ORDER FOR IMMEDIATE INCOME WITHHOLDING

State of Minnesota
COUNTY

JUDICIAL DISTRICT

District Court
CASE NO.

In Re The Marriage Of:

Petitioner

and

Respondent

ORDER FOR IMMEDIATE
INCOME WITHHOLDING

WHEREAS, income withholding does not indicate any wrongdoing on the part of _____, referred to herein as the Obligor, but is required by Minnesota law to assure the regular and timely payment of support and maintenance obligations; and
WHEREAS, Obligor's date of birth, social security number, and name and location of Obligor's employer or other payor of funds are:

DOB: _____ SSN: _____

Employer/Payor of Funds: _____

NOW, THEREFORE, pursuant to the provisions of Minnesota Statutes, sections 518.611 and 518.613, copies of which are attached, and the hearing on _____ and/or the order dated _____, IT IS HEREBY ORDERED:

1. That the sum of \$ _____ per _____ representing child support and/or spousal maintenance, and \$ _____ per _____ representing payment on child support and/or maintenance arrears in the amount of \$ _____, shall immediately be withheld from the Obligor's income by Obligor's employer or other payor of funds and remitted to: _____ in accordance with the provisions of Minnesota Statutes, chapter 518.
2. That an additional amount equal to 20 percent of the amount required to be withheld in paragraph 1 above (\$ _____ per _____) shall be withheld from the income of the Obligor by the employer or other payor of funds until the arrearage is paid in full.
3. Withheld funds must be remitted within ten days of the date the Obligor is paid the remainder of the income, and the remittance information must include the Obligor's name, court file number, and the date the Obligor was paid the remainder of the income.
4. This order is binding on all current and future employers or payors of funds without further order of the court. NO EMPLOYER MAY DISCHARGE, SUSPEND, OR OTHERWISE PENALIZE OR DISCIPLINE AN EMPLOYEE BECAUSE THE EMPLOYER MUST WITHHOLD SUPPORT. When Obligor's employment terminates, the Obligor and the employer or payor of funds must notify the child support agency of the termination.

Dated: _____

BY THE COURT:

FORM 7. NOTICE OF ORDER TO PAYOR OF FUNDS

State of Minnesota

District Court

COUNTY

JUDICIAL DISTRICT

CASE NO.

In Re The Marriage Of:

and Petitioner

Respondent

NOTICE OF ORDER TO
A PAYOR OF FUNDS

TO: _____, A PAYOR OF FUNDS:

You are hereby notified pursuant to Minnesota Statutes, section 518.646, that according to the terms and conditions of the order dated _____, and issued by the _____ Court, _____ Judicial District, County of _____, in file number _____, the above named _____ obligor is to provide (support) (health and dental insurance) for _____, the obligee minor children of the parties, namely:

_____ born _____
_____ born _____
_____ born _____

The relevant provisions of the order are as follows:

[here set out the operative provisions of the order verbatim]

STATE OF MINNESOTA

COUNTY OF _____

_____, being first duly sworn upon oath, deposes and says that s/he is the _____; that s/he has read the foregoing notice and knows the contents thereof and that the same is true of his/her knowledge except as to those matters believed to be true.

Subscribed and sworn to before me

this _____ day of _____, 19____

Notary Public

**FORM 8A. NOTICE OF ENTRY AND DOCKETING
OF MAINTENANCE JUDGMENT**

State of Minnesota

District Court

COUNTY _____

JUDICIAL DISTRICT _____

CASE NO. _____

In Re The Marriage Of:

_____ and _____

Petitioner

**NOTICE OF ENTRY
AND DOCKETING OF
MAINTENANCE JUDGMENT**

_____ Respondent

TO: _____, THE ABOVE NAMED _____ -OBLIGOR:

You are hereby notified pursuant to Minnesota Statutes, section 548.091 that you have twenty (20) days from the date of this notice to either pay all amounts claimed unpaid in the attached affidavit of default or to request a court hearing on the issue of whether the amounts claimed owing have been paid and to seek, ex parte, a stay of entry of judgment and serve a copy of your Notice of Motion and Motions on _____. Should you fail to do either of the above, judgment will be entered and docketed against you in the amount of \$_____.

Dated: _____

Address: _____

Telephone #: (____) _____

FORM 8B - AFFIDAVIT OF DEFAULT OF MAINTENANCE JUDGMENT

STATE OF MINNESOTA

**AFFIDAVIT OF DEFAULT
OF MAINTENANCE JUDGMENT**

COUNTY OF _____

_____, being duly sworn on oath deposes and states that s/he is the _____.

According to the order dated _____, the obligor is to pay \$_____ per _____ as and for spousal maintenance. Obligor is more than thirty days in arrears. For the period _____, 19__ through _____, 19__, payments due amounted to \$_____, the amount paid was \$_____, and the total amount unpaid is \$_____.

The obligor's full name is _____. The obligor's last known employer is _____. The obligor's last known address is _____, in the City of _____, State of _____. The obligor's last known post office address is _____. The obligor is not in the Armed Services.

All maintenance payments are payable to _____.

Subscribed and sworn to before me
this _____ day of _____, 19__.

Notary Public

**FORM 8C. SUPPLEMENTAL AFFIDAVIT OF DEFAULT OF
MAINTENANCE JUDGMENT**

STATE OF MINNESOTA

COUNTY OF _____

**SUPPLEMENTAL
AFFIDAVIT OF DEFAULT
OF MAINTENANCE JUDGMENT**

_____, being duly sworn on-oath deposes and states
that s/he is the _____.

Since the date of execution of the Affidavit of Default herein on
_____, the obligor has made payments in the amount of
\$_____. Accordingly, judgment should be entered against the obligor,
_____, and in favor of _____ for the un-
paid balance in the amount of \$_____.

Subscribed and sworn to before me
this _____ day of _____, 19____.

Notary Public

FORM 8D. NOTICE OF ENTRY AND DOCKETING OF
SUPPORT JUDGMENT

State of Minnesota District Court
COUNTY JUDICIAL DISTRICT CASE NO.

In Re The Marriage Of:

Petitioner

and

Respondent

NOTICE OF ENTRY
AND DOCKETING OF
SUPPORT JUDGMENT

TO: , THE ABOVE NAMED OBLIGOR:

You are hereby notified pursuant to Minnesota Statutes, section 548.091, subdivision 2a, that judgment has been entered and docketed against you in favor of for unpaid child support in the amount of \$

Any payment or installment of child support required by court order or decree that is not paid or withheld from the obligor's income is a judgment by operation of law on and after the date that it is due. You may request a hearing under the Minnesota Rules of Civil Procedure on the issue of whether the judgment amount or amounts have been paid and may move the court for an order directing the court administrator to vacate the judgment or judgments on the docket and register in any county or other jurisdiction in which judgment or judgments were entered pursuant to this action.

Dated: Address: Telephone #: ()

FORM 8E. AFFIDAVIT OF DEFAULT OF SUPPORT JUDGMENT .

STATE OF MINNESOTA

COUNTY OF _____

AFFIDAVIT OF DEFAULT
OF SUPPORT JUDGMENT

_____, being duly sworn on oath deposes and states that she/he is the _____.

According to the order dated _____, the obligor is to pay \$_____ per _____ as and for child support. Judgment was obtained by operation of law for unpaid child support as follows:

<u>Payment Due Date(s)</u>	<u>Amount Paid</u>	<u>Amount Unpaid</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Total Amount Unpaid: _____

The obligor's full name is _____. The obligor's last known employer is _____. The obligor's last known address is _____, in the City of _____, State of _____. The obligor's last known post office address is _____. The obligor is not in the Armed Services.

All support payments are payable to _____.

Subscribed and sworn to before me

this _____ day of _____, 19____.

Notary Public

FORM 9A. INFORMATIONAL STATEMENT (Family Court Matters)

See Minn. Gen. R. Prac. 304.02

State of Minnesota

District Court

COUNTY

JUDICIAL DISTRICT

CASE NO.

In Re The Marriage Of:

Petitioner
and

Respondent

INFORMATIONAL
STATEMENT FORM

- 1. All parties (have) (have not) been served with process.
- 2. All parties (have) (have not) joined in the filing of this form.
- 3. The parties are in agreement on all matters and this case will proceed by default.

Yes___ No___

If you answered yes to the preceding question, please check all of the following that apply:

- ___ Default hearing by General Rules of Practice, Rule 306.
- ___ Marriage includes minor children.
- ___ Approval without a hearing pursuant to M.S.A. 518.13, subdivision 5.
- ___ The marriage includes minor children, each party is represented by a lawyer and each party has signed a stipulation.
- ___ The marriage does not include minor children and each party has signed a stipulation.
- ___ The marriage does not include minor children, at least 50 days has elapsed since service of the Summons and Petition, and the respondent has not appeared in the action.

- 4. The case involves the following:

(Check all that apply and supply estimates where indicated.)

- a. minor children No___ Yes___, Number: _____
- b. custody dispute No___ Yes___ Specify: _____
- c. visitation dispute No___ Yes___ Specify: _____

Each party will submit an exhibit outlining custody and visitation proposals for each child.

- d. marital property No___ Yes___

Identify the asset and the requested disposition: _____

- e. nonmarital property No___ Yes___

Each party shall identify any nonmarital claims, their respective positions for the basis for the claim, the method(s) used to arrive at the claimed amount or trace the claim and requested disposition: _____

- f. complex evaluation issues No___ Yes___

5. It is estimated that the discovery specified below can be completed within ___ months from the date of this form. (Check all that apply and supply estimates where indicated.)

- a. Factual Depositions No___ Yes___

Identify the person who will be deposed by either party: _____

- b. Medical/Vocational Evaluations No___ Yes___

Identify the person who will conduct such evaluations for either party: _____

- c. Experts No___ Yes___

Identify any experts for either party: _____

6. The dates and deadlines specified below are suggested.

- a. _____ Deadline for bringing motion regarding: _____ (specify)

- b. _____ Deadline for completion and review of property evaluation.

- c. _____ Deadline for completion and review of custody/visitation mediation.

- d. _____ Deadline for completion and review of custody/visitation evaluation.

- e. _____ Deadline for submitting _____ to the court. (specify)

- f. _____ Date for prehearing conference.

- g. _____ Date for trial or final hearing.

7. Estimated trial or final hearing time: ___ Days ___ Hours

(Estimates less than a day must be stated in hours.)

8. a. MEETING: Counsel for the parties met on _____ (date)

to discuss case management issues.

b. ADR PROCESS: (check one):

— Counsel agree that ADR is appropriate and choose the following:

- Mediation
- Arbitration (non-binding)
- Arbitration (binding)
- Med-Arb
- Early Neutral Evaluation
- Moderated Settlement Conference
- Mini-Trial
- Summary Jury Trial
- Consensual Special Magistrate
- Impartial Fact-Finder
- Other (describe) _____

— Counsel agree that ADR is appropriate but request that the court select the process.

— Counsel agree that ADR is NOT appropriate because:

- the case implicates the federal or state constitution
- other (explain with particularity) _____

— domestic violence has occurred between the parties

c. PROVIDER (check one):

— the parties have selected the following ADR neutral: _____

— The parties cannot agree on an ADR neutral and request the court to appoint one.

— The parties agreed to select an ADR neutral on or before: _____

d. DEADLINE: The parties recommend that the ADR process be completed by _____

(date)

9. Please list any additional information which might be helpful to the court when scheduling this matter including, e.g., facts which will affect readiness for trial and any issues that significantly affect the welfare of the children:

Signed: _____

Lawyer for (Petitioner)

Attorney Reg. #: _____

Firm: _____

Address: _____

Telephone: _____

Date: _____

Signed: _____

Lawyer for (Respondent)

Attorney Reg. #: _____

Firm: _____

Address: _____

Telephone: _____

Date: _____

(Amended effective January 1, 1993; amended effective July 1, 1997.)

FORM 9B. ALTERNATIVE INFORMATIONAL STATEMENT**(Family Court Matters)**

See Minn. Gen. R. Prac. 304.02

State of Minnesota

District Court

COUNTY

JUDICIAL DISTRICT

CASE NO.

In Re The Marriage Of:

Petitioner

**INFORMATIONAL
STATEMENT FORM**

and

Respondent

PLEASE READ THE FOLLOWING CAREFULLY. COURT PERSONNEL ARE NOT ALLOWED TO HELP YOU COMPLETE THIS FORM.

These questions must be answered to help the court make a schedule for the dissolution of your marriage. This statement is your opportunity to tell the Court those factors that will require consideration in scheduling. If the information is incomplete, the Court will design its own schedule from the information supplied.

If you are representing yourself please complete questions 1 through 5. If you are an attorney please complete the entire Scheduling Information Statement.

Some questions have more than one part. Be sure to read and answer all questions completely.

1. This form is being filled out:
 - a. Jointly (both parties together) _____
 - b. Separately _____

Check or complete the following if they apply.

1. ☐ An Order for Protection petition has been filed at some time during the marriage.
2. ☐ An Order for Protection is in effect.
3. _____ is the Court file number for the Order for Protection.

2. **FINAL HEARING BY DEFAULT**

The parties are in agreement on all matters and this dissolution will proceed by default.

Yes ☐ No ☐

If you answered yes to the preceding question, please check all of the following that apply:

- ☐ Default hearing by General Rules of Practice, Rule 306.
- ☐ Marriage includes minor children.
- ☐ Approval without a hearing pursuant to M.S.A. 518.13, subdivision 5.
- ☐ The marriage includes minor children, each party is represented by a lawyer and each party has

signed a stipulation.

- The marriage does not include minor children and each party has signed a stipulation.
- The marriage does not include minor children, at least 50 days has elapsed since service of the Summons and Petition, and the respondent has not appeared in the action.

3. CHILDREN

- A. Do you have minor children born or adopted to the marriage?
Yes ___ No ___ If yes, how many ___
- B. If there are minor children:
Do you agree who will have custody? Yes ___ No ___
Do you agree on a visitation schedule? Yes ___ No ___
- C. A problem of emotional or physical disability or chemical dependency exists on the part of one party or the other which affects the welfare of the children.
Husband ___ Wife ___ Children ___
- D. Using one of the attached blank sheets please explain what custody and/or visitation plan is best for the children. (If you cannot agree, each person should submit separate plans.)

4. ASSET AND DEBT INFORMATION

- A. Are you satisfied that you have sufficient information about your assets and debts to make an informed decision about how they should be divided?
Yes ___ No ___
 - 1. If yes, do you agree or disagree about how the assets and debts should be divided?
Agree ___ Disagree ___
 - 2. If no, check the following items that still need to be evaluated.
 - a. ___ Home
 - b. ___ Business
 - c. ___ Retirement benefits and Pensions
(Include 401K plans, IRA's, deferred compensation)
 - d. ___ Savings and checking accounts
 - e. ___ Life insurance policies
 - f. ___ Stock options, bonds, mutual funds, etc.
 - g. ___ Personal property
 - h. ___ Automobiles and trucks
 - i. ___ Boats, motorcycles, snowmobiles, etc.
 - j. ___ Collectibles
 - k. ___ Vacation property
 - l. ___ Other
- B. Do you agree on how to divide the debts from the marriage?
Yes ___ No ___
If no, estimate the total debt: _____
- C. Have you filed, or, do you plan on filing for bankruptcy?
Yes ___ No ___
- D. Do you agree on the amount of spousal maintenance (alimony), if any?
Yes ___ No ___

If no, please explain why or why not on the blank sheets provided.

- E. Do you agree on the amount of child support?

Yes ___ No ___

If yes, is the amount agreed upon pursuant to the child support guidelines?

Yes ___ No ___

If no, please explain why not on the blank sheets provided.

5. ALTERNATIVE DISPUTE RESOLUTION

(NOTE: YOU MAY SKIP THIS QUESTION AND PROCEED TO QUESTION 6 IF YOUR ATTORNEY IS COMPLETING QUESTIONS 7 THROUGH 10.)

Have the parties talked with a third person to decide any of the problems listed in this form?

Yes ___ No ___

If yes, please check one or all of the following:

- ___ Property/Financial problems
- ___ Custody problems
- ___ Visitation problems
- ___ Third person is on the Supreme Court's roster of qualified neutrals

- a. MEETING: The parties (or their attorneys) met on _____ to discuss case management issues.

(date)

- b. ADR PROCESS: (check one) (descriptions can be obtained from the court administrator):

You Both Parties

___ ___

Agree that ADR is appropriate and choose the following:

- ___ Mediation
- ___ Arbitration (non-binding)
- ___ Arbitration (binding)
- ___ Med-Arb
- ___ Early Neutral Evaluation
- ___ Moderated Settlement Conference
- ___ Mini-Trial
- ___ Summary Jury Trial
- ___ Consensual Special Magistrate
- ___ Impartial Fact-Finder
- ___ Other (describe)

You Both Parties

___ ___

Agree that ADR is appropriate but request that the court select the process

You Both Parties

___ ___

Agree that ADR is NOT appropriate because:

- ___ the case implicates the federal or state constitution
- ___ other (explain with particularity)

___ domestic violence has occurred between the parties

c. PROVIDER (check one):

You Both Parties

_____ have selected the following ADR neutral: _____

_____ cannot agree on an ADR neutral and
 _____ request the court to appoint one
 _____ agreed to select an ADR neutral on or
 before: _____

(date)

d. DEADLINE (check one)

You Both Parties

_____ recommend that the ADR process be
 _____ completed by _____

(date)

6. List any other information which may help the court
 schedule your dissolution on the attached additional sheets if
 necessary.

 Signature of Pro se Petitioner

 Signature of Pro se Petitioner

 Address

 Address

 City, State, Zip Code

 City, State, Zip Code

 Home Telephone

 Home Telephone

 Work Telephone

 Work Telephone

 Date

 Date

THE NEXT TWO PAGES ARE TO BE COMPLETED BY ATTORNEYS ONLY.

7. It is estimated that the discovery specified below can be completed within _____ months from the date of this form. (Check all that apply and supply estimates where indicated.)
- | | | |
|------------------------|-------------------------|-----------|
| a. Interrogatories | No _____ | Yes _____ |
| b. Document Requests | No _____ | Yes _____ |
| | estimated number: _____ | |
| c. Factual Depositions | No _____ | Yes _____ |
- Identify the person who will be deposed by either party:
- _____
- _____
- _____
d. Medical/Vocational Evaluations	No _____	Yes _____
- Identify the person who will conduct such evaluations for either party:
- _____
- _____
- _____
e. Experts	No _____	Yes _____
- Identify any experts for either party:
- _____
- _____
- _____
8. The dates and deadlines specified below are suggested.
- | | |
|----------|--|
| a. _____ | Deadline for bringing motion regarding: _____ (specify) |
| b. _____ | Deadline for completion and review of property evaluation. |
| c. _____ | Deadline for completion and review of custody/visitation mediation. |
| d. _____ | Deadline for completion and review of custody/visitation evaluation. |
| e. _____ | Deadline for submitting _____ to the court. (specify) |
| f. _____ | Date for prehearing conference. |
9. a. MEETING: Counsel for the parties met on _____ (date) to discuss case management issues.
- b. ADR PROCESS: (check one):
- _____ Counsel agree that ADR is appropriate and choose the following:
- _____ Mediation
- _____ Arbitration (non-binding)
- _____ Arbitration (binding)
- _____ Med-Arb
- _____ Early Neutral Evaluation

- ☐ Moderated Settlement Conference
☐ Mini-Trial
☐ Summary Jury Trial
☐ Consensual Special Magistrate
☐ Impartial Fact-Finder
☐ Other (describe) _____

- ☐ Counsel agree that ADR is appropriate but request that the court select the process
☐ Counsel agree that ADR is NOT appropriate because:
☐ the case implicates the federal or state constitution
☐ other (explain with particularity) _____

- ☐ domestic violence has occurred between the parties
- c. PROVIDER (check one):
- ☐ the parties have selected the following ADR neutral: _____

☐ The parties cannot agree on an ADR neutral and request the court to appoint one.
☐ The parties agreed to select an ADR neutral on or before: _____
- d. DEADLINE: The parties recommend that the ADR process be completed by _____ (date)

10. Please list additional information which might be helpful to the court when scheduling this matter. Include complexity of case facts that will affect readiness for final hearing and any issues that significantly affect the welfare of the children:

Signed: _____
 Lawyer for (Petitioner)
 Attorney Reg. #: _____
 Firm: _____
 Address: _____
 Telephone: _____
 Date: _____

Signed: _____
 Lawyer for (Respondent)
 Attorney Reg. #: _____
 Firm: _____
 Address: _____
 Telephone: _____
 Date: _____

(Amended effective July 1, 1997.)

FORM 10. DEFAULT SCHEDULING REQUEST

(Gen. R. Prac. 306.01 and Minnesota Statutes, section 518.13, subd. 5)

State of Minnesota**District Court****COUNTY****JUDICIAL DISTRICT****CASE NO.**

In Re The Marriage Of:

and

Petitioner

**DEFAULT SCHEDULING
REQUEST**

Respondent

The above entitled matter is submitted for default scheduling as follows:

(Check all appropriate lines)

Approval without a hearing pursuant to Minnesota Statutes, section 518.13, subdivision 5.

The marriage includes minor children, each party is represented by a lawyer and each party has signed a stipulation.

The marriage does not include minor children and each party has signed a stipulation.

The marriage does not include minor children, at least 50 days have elapsed since service of the Summons and Petition, and the respondent has not appeared in the action.

Default hearing required or requested.

Marriage includes minor children.

Submitted by:

Name of Party

Attorney Name (Not firm name)

Address

Phone Number

MN Attorney ID No.

FORM 11. CONFIDENTIAL INFORMATION FORM

(Gen. R. Prac. 313.01)

State of Minnesota

District Court

County

Judicial District

Case Type:

Case No. _____

Plaintiff/Petitioner

and

CONFIDENTIAL INFORMATION FORM
(Provided Pursuant to Rule
313.01 of the Minnesota
General Rules of Practice)

Defendant/Respondent

	NAME	SOCIAL SECURITY NUMBER
Plaintiff/ Petitioner	1. _____	_____
	2. _____	_____
	3. _____	_____
Defendant/ Respondent	1. _____	_____
	2. _____	_____
	3. _____	_____
Other Party (e.g., minor children)	1. _____	_____
	2. _____	_____

Information supplied

by: _____

(print or type name of party submitting
this form to the court)

Signed: _____

Attorney Reg. #: _____

Firm: _____

Address: _____

Date: _____

(Added effective March 1, 2001.)

**FORM 12. JOINT PETITION, AGREEMENT, AND
JUDGMENT AND DECREE FOR MARRIAGE
DISSOLUTION WITHOUT CHILDREN**

(Gen. R. Prac. 302.01(b))

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

In the Matter of:

**CASE TYPE: DISSOLUTION WITHOUT
CHILDREN**_____
Name of Husband (First, Middle, Last)

Case No.: _____

**JOINT PETITION, AGREEMENT, AND
JUDGMENT AND DECREE
For Marriage Dissolution Without
Children**

Name of Wife (First, Middle, Last)**1. Information about Husband:**Full Name: _____
First Middle LastAddress: _____
Street Address Apt. No._____
City County State Zip CodeDate of Birth: _____
Month Day Year

Husband's former or other names:

First Middle Last**2. Information about Wife:**Full Name: _____
First Middle LastAddress: _____
Street Address Apt. No._____
City County State Zip CodeDate of Birth: _____
Month Day Year

Wife's former or other names:

First Middle Last

First Middle Last

3. Husband's and Wife's social security numbers have been filed with the Court Administrator using Confidential Information Form (Form 11).

4. **Children:** "Child" means a living person under age 18, or under age 20 and still in high school, or a person over 18 who by reason of a physical or mental condition is incapable of self support.

a. Are there any children born to or adopted by husband and wife together?

— YES — NO. (If you answered YES, you are using the wrong form. Use Marriage Dissolution with Children.)

b. Has wife given birth since the date of marriage to a child who is not a child of the Husband?

— YES — NO. (If YES, you are using the wrong form. Use Marriage Dissolution with Children.)

c. Is wife pregnant? — YES — NO. (If YES, you are using the wrong form. Use Marriage Dissolution with Children.)

5. Our Marriage

Husband and wife were married on: _____ at: _____
date city

county state country

6. 180 Day Requirement

Husband has been living in Minnesota for the past six (6) months:

— YES — NO.

Wife has been living in Minnesota for the past six (6) months:

— YES — NO.

7. Armed Forces

Husband is a member of the armed forces: — YES — NO.

Wife is a member of the armed forces: — YES — NO.

If YES, has the member of the armed forces been stationed in Minnesota for the past six (6) months? — YES — NO.

8. Other Proceedings

A separate proceeding for dissolution, legal separation or annulment has already been started by husband or wife in Minnesota or another state:

— YES — NO. If YES, the type of proceeding is:

— marriage dissolution — legal separation — annulment; the proceeding is in _____ County in the State of _____ and the Court file number is _____. (If a separate proceeding has been started, you must complete the other proceeding or have it dismissed before filing this Joint Petition.)

9. Marriage Cannot be Saved

There has been an irretrievable breakdown of our marriage relationship.

10. Protection or Harassment Order

An *Order for Protection* or a *Harassment/Restraining Order* is in effect regarding Husband and Wife: ☐ YES ☐ NO. If YES, the *Order* protects: ☐ Husband ☐ Wife.

The *Order* was filed in _____ County on the date: _____,
 _____ Month _____ Day _____ Year
 and the Court file number is _____. **A copy of the Order is attached to this Joint Petition.**

11. Name Change

- ☐ a. Neither person wants to change his/her name.
☐ b. ☐ Wife ☐ Husband wants to change his/her name to: *(full name, not initials)*

_____ first _____ middle _____ last

This name change request is made with no intent to defraud or mislead anyone:
☐ True ☐ False

The person requesting the name change has been convicted of a felony:
☐ YES ☐ NO

If YES:

☐ i. Notice of this request for name change has been given to the proper authority as required by MINN. STAT. section 259.13. (**IMPORTANT NOTICE:** If you are a convicted felon and you request a name change without following the requirements of MINN. STAT. section 259.13, using the new last name after your divorce is a gross misdemeanor.)

☐ ii. An *Affidavit of Service of the Notice* marked Exhibit "A" has been attached to this Joint Petition.

12. Public Assistance: (Note: If either person is receiving public assistance from the State of Minnesota or applies for it after this proceeding is started, notice of this marriage dissolution action must be given to the county's collections and support office. See MINN. STAT. section 518.551, subd. 5).

- a. Husband receives public assistance from the State of Minnesota:
☐ YES ☐ NO.

If YES, the assistance is from _____ County. (check all that apply)

- ☐ MFIP ☐ Medical Assistance ☐ IV-E Foster Care
☐ Tribal TANF ☐ Child Care Assistance ☐ MinnesotaCare

- b. Wife receives public assistance from the State of Minnesota:

☐ YES ☐ NO. If YES, the assistance is from _____ County. (check all that apply)

- ☐ MFIP ☐ Medical Assistance ☐ IV-E Foster Care
☐ Tribal TANF ☐ Child Care Assistance ☐ MinnesotaCare

13. Husband's Income

State Husband's gross income per month.

Source of Income	Amount per month before taxes
☐ Job	\$
☐ Unemployment	\$
☐ Social Security	\$
☐ MFIP	\$
☐ General Assistance	\$
☐ Investments or Rental Income	\$
☐ Pension	\$
☐ Other _____ identify source	\$
Gross Income Total	\$ per month

14. Wife's Income

State Wife's gross income per month.

Source of Income	Amount per month before taxes
☐ Job	\$
☐ Unemployment	\$
☐ Social Security	\$
☐ MFIP	\$
☐ General Assistance	\$
☐ Investments or Rental Income	\$
☐ Pension	\$
☐ Other _____ identify source	\$
Gross Income Total	\$ per month

15. Medical Insurance (Medical Insurance does not include MinnesotaCare or Medical Assistance.)

- a. Wife has ___ medical ___ dental insurance or ___ no insurance.
- b. Husband has ___ medical ___ dental insurance or ___ no insurance.

AGREEMENT OF HUSBAND AND WIFE

1. We have made this agreement to settle once and for all what we owe to each other and what we can expect to receive from each other. Each of us states that nothing has been held back, and that we have honestly included everything we could think of in listing our assets (everything we own and that is owed to us) and our debts (everything we owe) and that we believe the other has been open and honest in writing this agreement.

2. We will sign and exchange any papers that might be needed to complete this agreement before or after the divorce.

3. Real Estate

Real estate includes a homestead, condominium, apartment building, vacant land, contract for deed interest, remainder interest, and more.

— a. Husband owns no real estate by himself or with anyone else.

— b. Wife owns no real estate by herself or with anyone else.

— c. Husband and/or Wife own real estate as described on the Real Estate Attachment(s).

(Use a separate Real Estate Attachment sheet for each parcel of real estate.) All Real Estate Attachments are part of this Joint Petition, Agreement, Judgment and Decree and we agree that the real estate shall be awarded as stated on the Real Estate Attachment(s).

Check one:

— There is one Real Estate Attachment OR

— There are ____ Real Estate Attachments.

4. Non-Marital Property

Non-marital Property means: (1) anything that you or your spouse owned before the marriage; (2) a gift, bequest, devise, or inheritance made by a third party to one but not to the other spouse; (3) anything that you or your spouse got in trade or in exchange for your non-marital property; (4) anything that is an increase in the value of non-marital property (STOP: Property can be part non-marital and part marital. Defining and valuing non-marital property can be complicated. If you have any concerns or questions, you should stop here and talk to an attorney.) (5) anything you or your spouse received after the valuation date set by the Court; or (6) anything defined as non-marital property by a valid antenuptial contract (STOP: If you have an antenuptial contract, you should stop here and talk to an attorney.)

a. Husband owns non-marital property he wants awarded to him by the Court:

— YES — NO If YES, Husband and Wife agree that the following property is Husband's non-marital property and shall be awarded to Husband: _____

The total value of Husband's non-marital property is \$ _____

b. Wife owns non-marital property she wants awarded to her by the Court:

— YES — NO If YES, Husband and Wife agree that the following property is Wife's non-marital property and shall be awarded to Wife: _____

The total value of Wife's non-marital property is \$ _____

5. Division of Marital Property

Marital Property means almost anything that you or your spouse own that you or your spouse received during the marriage, even during the times that you and your

spouse were separated. This includes real estate, boats, cabins, household goods, furniture, jewelry, and other things.

See attached Asset Sheet listing all assets. The Asset Sheet is part of this Joint Petition. The Asset Sheet must be attached to the Joint Petition, even if husband and wife have no assets.

6. Division of Marital Debts

Marital Debts means debts incurred by you or your spouse during the marriage, even during the times that you and your spouse were separated. Do not include monthly expenses you pay in full each month, such as telephone and utilities.

See attached Debt Sheet listing all debts. The Debt Sheet is part of this Joint Petition. The Debt Sheet must be attached to the Joint Petition, even if wife and husband have no debts.

7. Spousal Maintenance (alimony)

No arrearages in maintenance due under any previous Order of the Court shall merge with this Judgment and Decree. This means that any past due amounts of spousal maintenance are still owed, no matter which option is checked below.

Check One

— a. Each of us forever gives up any right to spousal maintenance (alimony) that we may have and the Court is divested of jurisdiction over spousal maintenance. This means we may never ask the court to order spousal maintenance, even if our financial situations change in the future or the law on spousal maintenance changes in the future.

— b. Spousal Maintenance is reserved. Neither husband nor wife shall pay or receive spousal maintenance at this time. Either person may ask the court to order spousal maintenance in the future through the motion process, if there are facts and law that support the request.

— c. — Husband — Wife shall pay temporary spousal maintenance to the other party in the amount of \$_____ per month by the first day of the month, starting the first month after entry of the judgment for divorce and ending on _____ (insert a date). Payment shall be through income withholding.

— d. — Husband — Wife shall pay permanent spousal maintenance to the other party in the amount of \$_____ per month by the first day of the month, starting the first month after entry of the judgment for divorce. Payment shall be through income withholding. Permanent spousal maintenance is needed because: _____

Income Withholding:

— Husband's — Wife's employer, trustee, or other payor of funds shall withhold this monthly amount and mail it to Minnesota Child Support Payment Center. Until income withholding starts, the person ordered to pay maintenance shall send the payments to: Support Payment Center, P.O. Box 64326, St. Paul, MN 55164-0326. Checks must be payable to Minnesota Child Support Payment Center.

8. Insurance Coverage

Husband and wife shall each provide for his or her own health and dental insurance. Either party may be eligible to extend for a limited time, at his/her own expense, the dependent coverage available under the other party's insurance plan, pursuant to federal and state statutes.

9. Other:

We also agree to the following:

BASED UPON THE ABOVE INFORMATION, Husband and Wife request that the Court issue a final judgment and decree terminating our marriage and ordering the terms of this Agreement.

READ and SIGN the **Verification and Acknowledgments.**

STATE OF MINNESOTA

COUNTY OF _____

(County where documents signed)

ss.

Verification and Acknowledgments

- a. I have read this document. To the best of my knowledge, information and belief the information contained in this document is well grounded in fact and is warranted by existing law.
- b. I have not been determined by any Court in Minnesota or in any other State to be a frivolous litigant and I am not the subject of an *Order* precluding me from serving or filing this document.
- c. I am not serving or filing this document for any improper purpose, such as to harass the other party or to cause delay or needless increase in the cost of litigation or to commit a fraud on the Court.
- d. I understand that if I am not telling the truth or if I am misleading the Court or if I am serving or filing this document for an improper purpose, the Court can order me to pay money to the other party, including the reasonable expenses incurred by the other party because of the cost of serving or filing this document, Court costs, and reasonable attorney's fees.
- e. **WAIVER (RULE 306.01(c)):** I know I have the right to be represented by a lawyer of my choice. I hereby expressly waive that right and I freely and voluntarily sign the foregoing stipulation.

DATE: _____

Month Day Year

Signature of Husband

(Sign only in presence of notary public)

()

Daytime Telephone Number of Husband

Notary Seal

Signed and sworn to before me on _____

(date)

by _____

Notary Public

3. ☐ Husband's ☐ Wife's name is changed to:

first

middle

last

4. Each party shall execute any documents necessary to transfer real estate and personal property as awarded herein without further order of the Court. Should either party fail to execute the necessary documents, a certified copy of the Judgment and Decree shall operate to transfer title as awarded herein.

5. NOTICE: IF THE AGREEMENT OF THE PARTIES INCLUDES AN AWARD OF SPOUSAL MAINTENANCE, Form 3, Appendix A, of the General Rules of Practice for the District Courts is incorporated and made a part of this final judgment. Appendix A contains, among other things, provisions regarding Payments to Public Agency pursuant to Minnesota Statutes, section 518.551, subdivision 1; Rules of Maintenance; Wage and Income Deduction of Maintenance pursuant to Minnesota Statutes, section 518.6111; Change of Address or Residence; Cost of Living Increase of Maintenance pursuant to Minnesota Statutes, section 518.641; and Judgments for Unpaid Maintenance pursuant to Minnesota Statutes, section 548.091.

6. General Rule of Practice 125 notwithstanding, let Judgment be entered immediately.

Dated: _____

Judge of District Court

The foregoing facts were found by me after due
hearing and the Order thereon is recommended.

Dated

Referee of District Court

Judgment

I certify the above constitutes the Judgment of the Court.

Court Administrator

Real Estate Attachment

Fill out a separate Attachment for each parcel of real estate.

1. Real Estate belongs to:

(List all owners)

2. Street Address of the real estate is:

City _____ State _____ Zip Code _____
 The property is in _____ County.

3. Legal Description is: (Use the full legal description from the deed. If the legal description is long, you may use an attachment. Type or print neatly.)

4. Purchase date _____ (month, day, year) and purchase price:
 \$ _____

5. Mortgages or loans: (Write "NONE" if there is no mortgage)

1st Mortgage: Amount currently owed \$ _____ and name of lender

2nd Mortgage: Amount currently owed \$ _____ and name of lender

6. Current Market Value of this property:

\$ _____

7. This property is the homestead: ____ Yes ____ No

Agreement of the Parties

1. All right, title, and interest of husband and wife in the real estate described above shall be awarded to:

☐ Husband ☐ Wife

2. Husband and Wife also agree that: (Describe any liens in favor husband or wife, or other agreements about the use, sale of, or award of the property. Attach additional pages if needed. If there are no other agreements, write "None".)

3. The Mortgage(s) or Loan(s) described above shall be paid by ____ Husband ____ Wife starting on the following date: _____ (write "NONE" if there is no mortgage or loan.)

(Added effective January 1, 2004.)

Attachment "A"
DIVISION OF ASSETS AND VALUE

Husband's Name: _____

Wife's Name: _____

1. We agree on how to divide our assets (everything we own and that is owed to us).
2. Each person shall receive as their own all assets in their column.

Definitions: "Current Fair Market Value" is an estimate of the amount of money you could get if you sold the item to a stranger, such as through a newspaper advertisement. It does not mean what you paid for it originally, and it does not mean what it would cost you to replace it if you lost it. If you are still paying for an item, list it in husband's or wife's column at the *present value*.

"Present value" means the current fair market value minus the amount you still owe.

Who Gets the Item and What is the Value

DESCRIPTION OF ASSETS ☐ If you do not have the type of property described, enter a zero in the columns for Husband and Wife. ☐ To avoid confusion at a later date, describe each item as clearly as possible. For example, include the last 4 digits of account numbers (xxx2873), names of banks, & whose name is on the title or account, if applicable. ☐ List all property owned separately or together, no matter when it was acquired, except do not list the non-marital property described at #4 of the Joint Petition.	*Enter the current fair market value or present value of the item in the column of the person getting the item.	
	*HUSBAND	*WIFE
Cash on hand:	\$	\$
Cash in banks/credit unions: (Name of bank, last 4 digits of account number, whose name is on the account)		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Stocks/Bonds:		
	\$	\$
	\$	\$
	\$	\$

	Husband	Wife
Notes (money owed to you in writing):		
	\$	\$
	\$	\$
Money owed to you (not evidenced by a note):		
	\$	\$
	\$	\$
	\$	\$
Business interests: (Name of business, who owns it)		
	\$	\$
	\$	\$
Automobiles: (Year, Make, Model) (Reminder: Use present value if you are still paying for the items.)		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Boats:		
	\$	\$
	\$	\$
Other vehicles: (Snowmobiles, 4-Wheelers, etc.)		
	\$	\$
	\$	\$
	\$	\$
Retirement plans		
☐ Profit Sharing or Pension: (Enter "present value". Contact plan administrator for the present value. Include name of employer/group providing the plan, and type of plan.)		
	\$	\$
	\$	\$
☐ 401(k), IRAs or other: (Enter current account balance, name of bank where funds are held, whose name is on the account.)		
	\$	\$
	\$	\$
	\$	\$
Furniture & furnishings:		
☐ We have already divided the furniture and furnishings in a fair manner. (Enter in each spouses' column the total value of their share of the furniture and furnishings already divided.)	\$	\$
☐ We agree to divide the furniture and furnishings as follows: (List items not included above.)		
	\$	\$

	Husband	Wife
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Collectibles & Jewelry:		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Life insurance: (cash surrender value) (Name of insurance company and last 4 digits of policy number.)		
	\$	\$
	\$	\$
Sporting & entertainment & electronic equipment: (TV, stereo, guns, etc.)		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Real Estate:		
Do Not List Here. Use Real Estate Attachment.		
Other assets:		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Total Value of Property To Each Person: (Excluding Real Estate, and any Non-Marital Property listed at Paragraph #4 of the Joint Petition.)	Husband \$	Wife \$

(Added effective January 1, 2004.)

Attachment "B"
DIVISION OF LIABILITIES/DEBTS

Husband's Name: _____
Wife's Name: _____
Date we filled out this form: _____

- 1. We agree on how to divide our marital debts (debts we have incurred since our marriage date, either separately or together).
- 2. Each person shall pay as their own the debts listed in their column, and shall not ask the other person to pay these debts/bills.
- 3. We have listed all marital debts we know of on this Attachment. Any debts incurred by one of us alone and not listed on this Attachment shall be paid by the person whose name is on the debt/bill.

DESCRIPTION OF DEBT(S) ☐ If you do not have the type of debt described, enter a zero in the columns for Husband and Wife. ☐ To avoid confusion at a later date, describe each debt as clearly as possible. For example, state who the debt is owed to, whether husband's or wife's name is on the debt, and the last 4 digits of account numbers (xxx3094), if applicable. ☐ List all debts in husband's name alone and in wife's name alone and in both names together. Include debts incurred during the marriage and after separation. Do not include bills you pay in full each month.	*Write the current amount owed in the column of the person who will pay it.	
	*HUSBAND	*WIFE
Mortgages and loans on Real Estate: Do not list here. Use the Real Estate Attachment.		
Charge/credit card accounts:		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Auto loans:		
	\$	\$
	\$	\$
	\$	\$
Bank/credit union loans:		
	\$	\$

	Husband	Wife
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Student loans:		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Money you owe: (not evidenced by a note)		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Judgments:		
	\$	\$
	\$	\$
	\$	\$
Other debts:		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Total Debts to be Paid by Each Person: (Excluding Real Estate mortgages and loans.)	Husband \$	Wife \$

(Added effective January 1, 2004.)

Instructions: Joint Petition for Dissolution of Marriage Without Children**Where Do We File?**

File in the County where you or your spouse live now. To file for Marriage Dissolution (Divorce) in Minnesota, you must have lived in Minnesota for at least the past 180 days.

Who Can Use this Form?

You can use this form if you and your spouse agree on everything and there are no children. This form may not address all of your needs or concerns. Real estate, pensions, businesses, and other types of property can be handled many different ways. There may be serious negative consequences and tax implications from your decisions on how to divide your property and handle the issues in your divorce.

These forms and instructions do not explain the many legal and financial issues involved in divorce and cannot warn you of specific problem. Please see an attorney if you have questions.

Do not use this form if:

- a) you and your spouse have children together, or
- b) the wife has given birth to a child since the marriage date, or
- c) wife is pregnant.

Filling out the forms:

- Print very neatly or the court may return your forms to you. Use black or dark blue ink.
- Answer every question completely. You must disclose all financial information so the Judge can determine if your proposed division of property and debt is "fair and equitable." Include property/debts you own separately and together. For example, if you have a car and only your name is on the title, you still must list the car.

Information you will need:

- Pay stubs or tax return for you and your spouse
- Medical Insurance information
- Records of bank accounts and investments
- Pension information
- Legal description of any real estate and details about the mortgage and value of the real estate
- Descriptions of vehicles, their value and monthly payment amounts and total owed
- Information about credit card and other debt.

Do You Want to Change Your Name?

You and/or your spouse can ask for a legal change of name in the Joint Petition. If you want to change your name and you have been convicted of a felony, you must get the handout "Felon Name Change Instructions" and follow the steps in the handout.

Do You or Your Spouse Own Real Estate?

You must include real estate that you and your spouse own together, separately, or with other people. Use a separate real estate attachment for each parcel of real estate. Use the correct legal description - do not guess or abbreviate. There are many ways to handle real estate and many potential problems. You should talk to an attorney if you own real estate. For example, you may want the real estate awarded to one person with a lien in favor of the other person. An attorney can help you understand the legal consequences and necessary language.

Answering the Income Questions:

Questions 13 and 14 ask for monthly gross income (before taxes and deductions).

Do not guess at income. Look at your pay stub or tax return.

If you are paid monthly, enter the amount shown on your paycheck for gross income.

If you are paid twice a month, multiply gross income by 2 to get the monthly amount.

If you are paid every two weeks, multiply gross income by 2.17 to get the monthly amount.

If you are paid every week, multiply gross income by 4.33 to get the monthly amount.

If you are self-employed, or you work only part of the year, or your earnings vary, divide your yearly income by 12 to reach an average monthly income figure and write on the petition that you are averaging your income.

Modifying the Joint Petition

You may make changes to the Joint Petition to fit your situation, but do not omit any paragraphs. It is recommended that you consult with an attorney before making any changes to the Joint Petition.

What to Do After Completing the Forms

Sign and Notarize: Both wife and husband must sign the "Joint Petition, Agreement, and Judgment and Decree." It is not necessary for both spouses to sign the document at the same time, but both signatures must be notarized. You may go to a notary public, or to the courthouse. A deputy court administrator can notarize your signature at the courthouse. Picture identification will be required.

File:

1. The completed "Joint Petition, Agreement, and Judgment and Decree," the Asset Sheet, and the Debt Sheet. If there is real estate, also file the Real Estate Attachment(s).
2. "Form 11: Confidential Information" with names and social security numbers.

Pay: The District Court filing fee.

Wait: You are not divorced until the Judge signs the Decree and the Court Administrator "enters" the Decree. Wait to receive a letter from the Court telling you that you are divorced. You will not attend a court hearing unless the Judge decides a hearing is necessary.

If you have real estate, there are additional steps required to transfer the title, including filing the "Joint Petition, Agreement, and Judgment and Decree" and all Attachments in the Real Estate Records, after the Decree is signed by the Judge and entered by the Court Administrator. In the alternative, you can file a Summary Real Estate Disposition Judgment and avoid putting all of your asset and debt information into the Real Estate Records. For more information about the Summary Real Estate Disposition Judgment, see Minnesota Statutes, section 518.191.

Questions?

If you have questions about the Joint Petition, you probably need to ask an attorney or accountant. Court staff can give you limited help with procedures. Only an attorney can give you legal advice.

(Added effective January 1, 2004.)

TITLE V - PROBATE RULES

Rule 401. Applicability of Rules

Rules 401 through 416 apply to all Probate proceedings.

Task Force Comment—1991 Adoption

Rules 401 through 416 are the Minnesota Probate Rules recodified, but not otherwise significantly changed. Rule 401 is a new rule intended to make it clear what actions are governed by these rules.

Rule 402. Definitions

(a) **Formal Proceedings.** A formal proceeding is a hearing conducted before the court with notice to interested persons. Formal proceedings seek a judicial determination.

(b) **Informal Proceedings.** An informal proceeding is conducted by the judge, the registrar, or the person or persons designated by the judge for probate of a will or appointment of a personal representative. Informal proceedings seek an administrative determination and not a judicial determination and are granted without prior notice and hearing.

(c) **Supervised Administration.** Supervised administration is a single, continuous, in rem proceeding commenced by a formal proceeding.

(d) **Code.** The code is the Uniform Probate Code as adopted by the State of Minnesota.

Rule 403. Documents

(a) **Preparation of Original Documents.** It shall be the responsibility of lawyers and others appearing before the court or registrar to prepare for review and execution appropriate orders, decrees, statements, applications, petitions, notices and related documents, complete and properly drafted, to address the subject matter and relief requested.

(b) **Official Forms.** The official forms adopted by the Minnesota District Judges' Association or promulgated by the Commissioner of Commerce shall be used.

(c) **Documents and Files.** The court shall make its files and records available for inspection and copying.

No file, or any part thereof, shall be taken from the custody of the court, except the original court order required to be displayed to an individual or entity when the order is served. A document or exhibit which has been filed or submitted in any proceeding can thereafter be withdrawn only with the permission of the court. Any document which is written in a language other than English shall be accompanied by a verified translation into the English language.

(d) **Verification of Filed Documents.** Every document filed with the court must be verified as required by the code, except a written statement of claim filed with the court administrator by a creditor or a pleading signed by the lawyer for a party in accordance with the Minnesota Rules of Civil Procedure.

*Probate Committee Comment **

The court will accept photocopies of forms if the copies are made by a process that is permanent, on hard stock paper, are free of smudges and otherwise clearly legible and have been reproduced in the same length as the original form and prescribed type size. In using photocopies of forms in courts that are not utilizing a flat file system, the case heading and nomenclature must appear on the outside of the form when folded appropriately for permanent filing.

**Original Advisory Committee Comment—Not kept current.*

Task Force Comment—1991 Adoption

The change in this rule is made to reflect the new title of the office formerly known as Commissioner of Securities. See Minnesota Statutes, section 80A.14, subdivision 5 (1990).

Rule 404. Notice in Formal Proceedings

(a) **General Notice Requirements.** In all formal proceedings notice of a hearing on any petition shall be given as provided in the code after the court issues the order for hearing. Where mailed notice is required, proof of mailing the notice of hearing shall be filed with the court administrator before any formal order will issue. Mailed notice shall be given to any interested person as defined by the code or to the person's lawyer. Where notice by personal service or publication is required by the code, proof of personal service or publication shall be filed with the court administrator before the formal order will issue.

(b) **Notice of Proceedings for Determination of Testacy and Appointment of Personal Representative.** In proceedings which adjudicate testacy, notice of the hearing on the petition shall be given after the court administrator issues the order for hearing. Proof of publication of the order for hearing, in accordance with the code, shall be filed with the court administrator before the order will issue. In proceedings for the formal appointment of a personal representative, the same notice requirements shall pertain except notice by publication shall not be required if testacy has been previously determined. Where creditors claims are to be barred, the published notice shall include notice to creditors.

Mailed notice shall be given to all known heirs-at-law, all devisees under any will submitted for formal probate and all interested persons as defined by the code or ordered by the court and shall include in appropriate cases the attorney general, foreign counsel and lawyers representing the interested persons.

Mailed notice shall be given to the surviving spouse of the following rights:

(1) The right to receive the decedent's wearing apparel, furniture and household goods and other personal property as provided in the code or by law.

(2) The right to receive maintenance payments during administration of the estate as provided in the code or by law.

(3) The right to take an elective share of one-third of the augmented estate as provided in the code and the homestead as provided in the code or by law.

(c) **Waiver of Notice in Formal Proceedings.** Except in proceedings governed by subdivision (b) of this rule, an interested person may waive notice of any formal proceeding in accordance with the code. The written waiver shall evidence the person's consent to the order sought in the proceeding.

*Probate Committee Comment **

Publication required by this notice must be completed prior to the hearing date.

**Original Advisory Committee Comment—Not kept current.*

Rule 405. Interim Orders

(a) **Interim Orders Available From Court Only.** The court has no power to intervene in any unsupervised administration unless a formal petition invoking the court's authority is filed by an interested person.

The court or registrar does not have authority to issue ex parte interim orders in unsupervised proceedings except that the registrar may issue the certificate of discharge provided for in the code.

In supervised administration, the court may issue ex parte orders only for strong and compelling reasons.

Probate Committee Comment *

Determinations by the registrar are informal and do not bring the estate or interested persons under the supervisory authority of the court. A personal representative appointed in informal proceedings may petition the court for a formal determination as to any matter within the jurisdiction of the court. It may also be necessary to seek the formal determination of the court as to the admissibility of a will, determination of heirship, or other matters as a condition precedent to obtaining the requested relief.

**Original Advisory Committee Comment—Not kept current.*

Rule 406. Uncontested Formal Proceedings

(a) **Uncontested Formal Proceedings; Hearings and Proof.** The court shall call the calendar in open court for all hearings set for a designated time. If a petition in a formal proceeding is unopposed, the court will enter in the record the fact that there was no appearance in opposition to the petition and that no objection has been filed with the court. Thereupon, the court shall:

(1) Make its determination after conducting a hearing in open court, requiring appearance of petitioner and testimony or other proof of the matters necessary to support the order sought; or

(2) Make its determination on the strength of the pleadings without requiring the appearance of petitioner or of petitioner's lawyer and without requiring testimony or proof other than the verified pleadings; or

(3) Make its determination based on such combination of (1) and (2) above as the court in its discretion deems proper.

In any uncontested formal proceeding, the court shall determine that (i) the time required for any notice has expired; (ii) any required notice has been given; (iii) the court has jurisdiction of the subject matter; (iv) venue is proper; and (v) the proceeding was commenced within the time limitations prescribed by the code as a prerequisite to determining other issues presented to the court for determination in the proceeding. The court shall be satisfied that the pleadings and any other proof presented support the order sought in any uncontested formal proceeding.

Rule 407. Appointment

(a) **Nomination and Renunciation.** When two or more persons have equal or higher priority to appointment as personal representative, those who do not renounce must concur in writing in nominating another to act for them, or in applying for appointment. In formal appointment proceedings, concurrence by persons who have equal or higher priority is presumed after notice has been given unless a written objection is filed.

(b) **Nonresident Personal Representatives.** The court or registrar may appoint a nonresident personal representative.

Rule 408. Informal Proceedings

(a) **Contents of the Application.** Application for informal probate or appointment proceedings shall contain information required by the code and the approximate value of the following categories of assets:

Probate Assets

Homestead

\$ _____

Other Real Estate

\$ _____

Cash

\$ _____

Securities	\$ _____
Other	\$ _____
Non-Probate Assets	
Joint Tenancy	\$ _____
Insurance	\$ _____
Other	\$ _____
Approximate Indebtedness	\$ _____

In all estate proceedings, whether testate or intestate, the application must contain a statement that specifically eliminates all heirs or devisees other than those listed in the application.

Probate Committee Comment *

Examples

(These are not intended to be exhaustive)

The statements will necessarily vary, depending upon who survives the decedent, and must close out any class affected:

(1) Where only the spouse survives, the application should state "That decedent left no surviving issue, natural or adopted, legitimate or illegitimate."

(2) Where only children survive, the application should state "That the decedent left surviving no spouse; no children, natural or adopted, legitimate or illegitimate, other than herein named; and no issue of any deceased children."

(3) Where the spouse and children survive, the application should state "That the decedent left surviving no children, natural or adopted, legitimate or illegitimate, other than herein named and no issue of any deceased children."

(4) Where only brothers or sisters of decedent survive, the application should state "That the decedent left surviving no spouse; issue; parents; brothers or sisters other than herein named; and no issue of deceased brothers or sisters."

(5) Where only first cousins survive, the application should state "That the decedent left surviving no spouse; issue; parents; brothers or sisters or issue thereof; grandparents; aunts or uncles; and no first cousins other than herein named."

(6) In all cases, the application should state either:

(a) That all the heirs-at-law survived the decedent for 120 hours or more; or

(b) that all the heirs-at-law survived the decedent for 120 hours or more except the following: (name or names).

(7) In all cases where a spouse and children survive, the application should state either:

(a) That all of the issue of the decedent are also issue of the surviving spouse; or

(b) That one or more of the issue of the decedent are not also issue of the surviving spouse.

(b) Will Testimony. The registrar shall not require any affidavit or testimony with respect to execution of a will prior to informal probate if it is a self-proved will or appears to have been validly executed.

**Original Advisory Committee Comment— Not kept current.*

*Probate Committee Comment **

Applicants for informal probate of a will which is not self-proved are encouraged to preserve evidence concerning the execution of the will if a formal testacy proceeding may later be required or desired.

(c) **Appearances.** The applicant is required to appear before the registrar unless represented by counsel. The registrar may also waive appearance by counsel.

(d) **Informal Proceedings: Notice of Informal Probate of Will and Informal Appointment of Personal Representative.** In informal proceedings, notice of appointment of a personal representative shall be given after the registrar issues the order appointing the personal representative. Proof of placement for publication shall be filed with the court administrator before letters will issue. Where mailed notice is required, an affidavit of mailing of the order appointing the personal representative shall be filed with the court administrator before letters will issue. If the informal proceedings include the informal probate of a will, the notice shall include notice of the issuance of the statement of informal probate of the will. Where creditors claims are to be barred, the published notice shall include notice to creditors.

Mailed notice shall be given to all known heirs-at-law, all devisees under any will submitted for informal probate and all interested persons as defined by the code and shall include in appropriate cases the attorney general, foreign consul and lawyers representing interested persons.

Mailed notice shall be given to the surviving spouse of the following rights:

(1) The right to receive the decedent's wearing apparel, furniture and household goods and other personal property as provided in the code or by law.

(2) The right to receive maintenance payments during administration of the estate as provided in the code or by law.

(3) The right to take an elective share of one-third of the augmented estate as provided in the code and the homestead as provided in the code or by law.

**Original Advisory Committee Comment—Not kept current.*

Rule 409. Formal Testacy and Appointment Proceedings

(a) **Contents of Petition.** A petition in formal testacy and appointment proceedings shall contain the information required by the code and the information concerning the approximate value of assets required by Minn. Gen. R. Prac. 408(a). In all estate proceedings, whether testate or intestate, the petition must contain an allegation that specifically eliminates all heirs or devisees other than as listed in the petition.

(b) **Conversion to Supervised Administration.** Any estate which has been commenced as an informal proceeding or as an unsupervised formal proceeding may be converted at any time to a supervised administration upon petition. The court shall enter an order for hearing on said petition. Notice of hearing shall be given in accordance with Minn. Gen. R. Prac. 404(a). If testacy has not been adjudicated in a prior formal proceeding, notice of hearing must meet the specific notice requirements for formal testacy proceedings provided by Minn. Gen. R. Prac. 404(b) including notice by publication.

Rule 410. Transfer of Real Estate

(a) **Transfers of Real Estate in Supervised and Unsupervised Administration; Transfer by Personal Representative of Real Property for Value; Documents Required.** A personal representative shall provide a transferee of real property for value with the following documents:

(1) A certified copy of unrestricted letters (30 days must have elapsed since date of issuance of letters to an informally appointed personal representative);

(2) A certified copy of the will; and

(3) A personal representative's deed or other instrument transferring any interest in real property which shall contain the marital status of the decedent and the consent of spouse, if any.

(b) Distribution of Real Property; Documents Required. A personal representative shall provide a distributee of real property with the following documents:

(1) When distribution is made by decree, a certified copy of the decree of distribution assigning any interest in real property to the distributee.

(2) When distribution is made by deed from a personal representative in unsupervised administration:

(i) A certified copy of unrestricted letters (30 days must have elapsed since date of issuance of letters to an informally appointed personal representative);

(ii) A certified copy of the will; and

(iii) A personal representative's deed of distribution of any interest in real property to the distributee which shall contain the marital status of the decedent and consent of spouse, if any.

(3) When distribution is made by deed from the personal representative in supervised administration:

(i) A certified copy of unrestricted letters;

(ii) A certified copy of an order of distribution which authorizes the distribution of any interest in real property to the distributee;

(iii) A certified copy of the will; and

(iv) A personal representative's deed of distribution of any interest in real property to the distributee.

Rule 411. Closing Estates

(a) Notice of Formal Proceedings for Complete Settlement Under Minnesota Statutes, section 524.3-1001. If testacy has been adjudicated in a prior formal proceeding, notice of hearing on a petition for complete settlement under Minnesota Statutes, section 524.3-1001 must meet the requirements of Minn. Gen. R. Prac. 404(a), but notice by publication specifically provided for in Minnesota Statutes, section 524.3-403 is not required. If testacy has not been adjudicated in a prior formal proceeding, notice of hearing on a petition for complete settlement under Minnesota Statutes, section 524.3-1001, must meet the specific notice requirements for formal testacy proceedings provided in Minnesota Statutes, section 524.3-403, including notice by publication.

(b) Notice of Formal Proceedings for Settlement of Estate Under Minnesota Statutes, section 524.3-1002. If an estate is administered under an informally probated will and there has been no adjudication of testacy in a prior formal proceeding, the court may make a final determination of rights between the devisees under the will and against the personal representative under Minnesota Statutes, section 524.3-1002, if no part of the estate is intestate. The court will not adjudicate the testacy status of the decedent. Notice of hearing on a petition must meet the requirements of Minnesota Statutes, section 524.1-401. Notice by publication specifically provided for in Minnesota Statutes, section 524.3-403 is not required.

Rule 412. Fees, Vouchers, and Tax Returns

(a) Fees. The court may require documentation or it may appoint counsel to determine the reasonableness of the fees charged by the lawyer and the personal representative. The court may order the fees of the appointed counsel to be paid out of the estate.

(b) Vouchers. Unless otherwise ordered by the court, vouchers for final and interim accounts need not be filed.

(c) Tax Returns. Unless ordered by the court, copies of the United States Estate Tax closing letter and the Minnesota notification of audit results need not be filed.

Rule 413. Subsequent Proceedings

(a) Authority of Personal Representative During One Year Period After Filing Closing Statement. For one year from the date of filing the closing statement authorized by the code, the personal representative shall have full and complete authority to execute further transfers of property; to complete transactions; to complete distributions; to correct misdescriptions or improper identification of assets; or to transfer or distribute omitted property. During this period, the personal representative shall ascertain any matters of unfinished administration which must be completed prior to the termination of the representative's authority.

(b) Authority of Personal Representative to Transfer or Distribute Omitted Property During One Year Period After Filing Closing Statement. In the case of omitted property discovered after the filing of the closing statement authorized by the code, but before termination of the personal representative's authority, the personal representative must, as required by the code, file a supplementary inventory with the court and mail a copy to any surviving spouse, other distributees, and other interested persons, including creditors whose claims are unpaid and not barred. Proof of service by mail must be filed with the court prior to any transfer of the omitted property by the personal representative.

(c) Notice of Proceedings for Subsequent Administration After Termination of Personal Representative's Authority. Appointment of a personal representative in subsequent administration may only be secured in formal proceeding. If testacy has been adjudicated in a formal proceeding, notice of hearing must meet the requirements of Minn. Gen. R. Prac. 404(a), but the notice by publication specifically provided for in Minnesota Statutes, section 524.3-403 is not required. If testacy has not been adjudicated previously and only appointment of a personal representative is sought, notice of hearing must meet the specific notice requirements for formal testacy proceedings provided in Minnesota Statutes, section 524.3-403, but notice by publication is not required. In the case of subsequent administration involving omitted property, the personal representative must comply with the inventory, mailing and filing requirements of Minn. Gen. R. Prac. 413(b).

(d) Proof Required for Formal Settlement or Distribution in Subsequent Administration. During a subsequent administration, when an order of settlement of the estate and decree or order of distribution is sought, the court must be satisfied with the pleadings and any other proof (including accounting for all assets, disbursements, and distributions made during the prior administration) before issuing its order.

Rule 414. Fiduciaries

If the lawyer for the estate, a partner, associate or employee is the personal representative of the estate, except where one of them is a family member of the decedent, the administration shall be supervised. In such a case, both the lawyer for the estate and the personal representative must keep separate time records and differentiate the charges for their duties in each capacity. The lawyer should only serve as fiduciary at the unsolicited suggestion of the client and the lawyer must realize that there are legal, ethical and practical problems that must be overcome in order to perform the duties of a fiduciary and lawyer.

Task Force Comment—1991 Adoption

This recommended change is made to permit family members, who happen to be lawyers, to serve as fiduciaries without automatically subjecting the estate to the burdens of supervised administration. Although supervised administration may be appropriate in individual cases, the Task Force believes that it should not be uniformly imposed on the families of lawyers.

Rule 415. Registrar

(a) Authority. The functions of the registrar may be performed either by a judge of the court or by a person designated by the court in a written order filed and recorded in the office of the court, subject to the following:

(1) Each judge of the court may at any time perform the functions of registrar regardless of whether the court has designated other persons to perform those functions.

(2) The functions and powers of the registrar are limited to the acts and orders specified by the code and these rules.

(3) Any person designated registrar by the court shall be subject to the authority granted by and the continuing direction of the court.

(4) The registrar is not empowered to intervene or issue orders resolving conflicts related to the administration of the estate.

(b) Registrar Has No Continuing Authority. The registrar does not have any continuing authority over an estate after the informal probate is granted or denied and shall not require the filing of any additional documents other than are required by the code (law) and these rules.

Rule 416. Guardianships and Conservatorships

(a) Responsibility of Lawyer. Upon the appointment of a conservator or guardian of the estate, the appointee shall nominate a lawyer of record for that conservatorship or guardianship, or shall advise the court that he or she shall act pro se. The named lawyer shall be the lawyer of record until terminated by the conservator or guardian, or, with the consent of the court, by withdrawal of the lawyer. If the lawyer is terminated by the conservator or guardian, written notice of substitution or pro se representation shall be given to the court (by the conservator or guardian, or by the lawyer who has received oral or written notice of termination), and until such notice, the former lawyer shall be recognized.

(b) Visitors in Guardianship and Conservatorship Proceedings. A visitor, as defined by law, may be appointed in every general guardianship or conservatorship proceeding.

Every visitor shall have training and experience in law, health care or social work, as the case may be, depending upon the circumstances of the proposed ward or conservatee.

The visitor shall be an officer of the court and shall be disinterested in the guardianship or conservatorship proceedings. If the court at any time determines that the visitor, or the firm or agency by which he or she is employed, has or had, at the time of the hearing, a conflict of interest, the court shall immediately appoint a new visitor and may, if necessary, require a hearing de novo.

The visitor shall, (a) without outside interferences, meet with the proposed ward or conservatee; either once or more than once as the visitor deems necessary, (b) observe his or her appearance, lucidity and surroundings, (c) serve, read aloud, if requested, and explain the petition and notice of hearing, (d) assist, if requested, in obtaining a private or court appointed lawyer, (e) advise the proposed ward or conservatee that a report will be filed at least five (5) days before the hearing and that the report is available to the proposed ward or conservatee or the ward's or conservatee's lawyer, (f) prepare a written report to the court setting forth all matters the visitor deems relevant in determining the need for a guardian or conservator, including recommendations concerning appointment and limitation of powers, (g) file the original report with the court and, (h) serve a copy upon the petitioner or petitioner's lawyer at least five (5) days prior to the hearing, (i) appear, testify and submit to cross examination at the hearing concerning his or her observations and recommendations, unless such appearance is excused by the court.

(c) Voluntary Petition. If an adult voluntarily petitions or consents to the appointment of a guardian or conservator of the estate as set forth in the law, then it is not necessary for such adult to be an "incapacitated person" as defined by the law.

(d) Amount of Bond. The court may, at any time, require the filing of a bond in such amount as the court deems necessary and the court, either on request of an interested party, or on its own motion, may increase or decrease the amount of the

bond. The court, in requiring a bond, if any, or in determining the amount thereof, shall take into account not only the nature and value of the assets, but also the qualifications of the guardian or conservator.

(e) **Effect of Allowance of Accounts.** The filing, examination and acceptance of an annual account, without notice of hearing, shall not constitute a determination or adjudication on the merits of the account, nor does it constitute the court's approval of the account.

(f) **Required Periodic Settlement of Accounts.** No order settling and allowing an annual or final account shall be issued by the court except on a hearing with notice to interested parties. A hearing for the settlement and allowance of an annual or final account may be ordered upon the request of the court or any interested party. A hearing shall be held for such purpose in each guardianship or conservatorship of the estate at least once every five years upon notice as set forth in the law, and the rules pursuant thereto. However, in estates of the value of \$20,000 or less, the five-year hearing requirement may be waived by the court in its discretion. Such five-year hearings shall be held within 150 days after the end of the accounting period of each fifth annual unallowed account and the court administrator shall notify such guardian or conservator, the guardian's or conservator's lawyer and the court if the hearing is not held within the 150-day period.

(g) **Notice of Hearing on Account.** Notice of time and place for hearing on the petition for final settlement and allowance of any account shall be given to the ward or conservatee, to the guardian or conservator if such person was not the petitioner for settlement of the accounts, to the spouse, adult children and such other interested persons as the court may direct. Whenever any funds have been received by the estate from the Veterans Administration during the period of accounting, notice by mail shall be given to the regional office. The notice may be served in person or by depositing a copy in the U.S. mail to the last known address of the person or entity being served. When a ward or conservatee is restored to capacity, that person is the only interested person. When a ward or conservatee dies, the personal representative of the estate is the only interested person.

(h) **Appearance on Petition for Adjudication of Accounts.** When a verified annual or final account is filed in accord with the law and an adjudication is sought, and notice given as required by the law or waived as provided below, and the court determines that the account should be allowed, the account may be allowed upon the pleadings without appearance of the guardian or conservator. If the ward, conservatee or any interested person shall object to the account, or demand the appearance of the guardian or conservator for hearing on the account, at any time up to and including the date set for the hearing, the court will continue the hearing, if necessary, to a later date and require the appearance of the guardian/conservator for examination. Notice of hearing may be waived with the consent of all interested persons.

(i) **Successor Guardian; Notice to Ward or Conservatee.** The notice required by law shall include the right of the ward or conservatee to nominate and instruct the successor.

Rule 417. Trustees-Accounting-Petition For Appointment

Rule 417.01 Petition for Confirmation of Trustee.

Except in those cases in which a trust company or national banking association having trust powers is the trustee or one of the trustees, the petition for confirmation of the appointment of the trustee or trustees shall include an inventory, including a description of the assets of the trust known to the petitioners and an estimate by them of the market value of such assets at the date of the petition. The petition shall also set forth the relationship, if any, of the trustee or trustees to the beneficiaries of the trust.

Rule 417.02 Annual Account.

Every trustee subject to the continuing supervision of the district court shall file an annual account, duly verified, of the trusteeship with the court administrator within 60

days after the end of each accounting year. Such accounts may be submitted on form 417.02 appended to these rules, and shall contain the following:

(a) Statements of the total inventory or carrying value and of the total fair market value of the assets of the trust principal as of the beginning of the accounting period. In cases where a previous account has been rendered, the totals used in these statements shall be the same as those used for the end of the last preceding accounting period.

(b) A complete itemized inventory of the assets of the trust principal as of the end of the accounting period, showing both the inventory or carrying value of each asset and also the fair market value thereof as of such end of the accounting period, unless, because such value is not readily ascertainable or for other sufficient reason, this provision cannot reasonably be complied with. Where the fair market value of any item at the end of the accounting period is not used, a notation of such fact and the reason therefor shall be indicated on the account.

(c) An itemized statement of all income transactions during the period of such account.

(d) A summary statement of all income transactions during the period of such account, including the totals of distributions of income to beneficiaries and the totals of trustees' fees and attorneys' fees charged to income.

(e) An itemized statement of all principal transactions during the period of such account.

(f) A reconciliation of all principal transactions during the period of such account, including the totals of distributions of principal to beneficiaries and the totals of trustees' fees and attorneys' fees charged to principal as well as the totals of liquidations and reinvestments of principal cash.

(g) A list of all assets that realized a net income less than one per cent of the inventory value or acquisition cost, and an explanation of the amount of net income realized and the reasons for retaining the assets.

(Amended effective January 1, 1996.)

Rule 417.03 Taxes.

Final accounts shall also disclose the state of the property of the trust estate as to unpaid or delinquent taxes and such taxes shall be paid by the trustee to the extent that the funds in the trust permit, over and beyond the cost and expenses of the trust administration, except where a special showing is made by the trustee that it is in the best interests of the trust and is lawful for the unpaid or delinquent taxes not to be paid.

Rule 417.04 Service on Beneficiaries.

There shall also be filed with the court administrator proof of mailing of such account to the last addresses known to the trustee of, or of the service of such account upon, such of the following beneficiaries or their natural or legal guardians as are known to, or reasonably ascertainable by, the trustee:

(a) Beneficiaries entitled to receive income or principal at the date of the accounting; and

(b) Beneficiaries who, were the trust terminated at the date of the accounting, would be entitled to share in distributions of income or principal.

Rule 417.05 Court Administrator Records; Notice.

The court administrator shall keep a list of trusteeships and notify each trustee and the court when any such annual account has not been filed within 120 days from the end of the accounting year.

Rule 417.06 Hearing.

Hearings upon annual accounts may be ordered upon the request of any interested party. A hearing shall be held on such annual accounts at least once every five years by mailing, at least 15 days before the date of the hearing, a copy of the order for hearing to those beneficiaries of the trust who are known to or reasonably ascertainable by the petitioner, to any other person requesting notice, or as ordered by the court. In trusts of the value of \$20,000 or less, the five year hearing requirement may be waived by the court in its discretion. Any hearing on an account may be ex parte if each party in interest then in being shall execute waiver of notice in writing which shall be filed with the court administrator, but no account shall be finally allowed except upon a hearing on the record in open court. Such five year hearings shall be held within 150 days after the end of the accounting period of each fifth annual unallowed account, and the court administrator shall notify each trustee and the Court if the hearing is not held within such 150 day period.

(Amended effective January 1, 1993.)

Advisory Committee Comment—1992 Amendments

This rule was derived from Rule 28 of the Code of Rules for the District Courts. The rule is recodified with the probate court rules because it relates to actions brought in the now-unified district court.

Rule 417.06 is amended to provide a specific method of notice rather than incorporating a specific statutory requirement. The former statute, Minnesota Statutes, section 501.35 was replaced by section 501B.18. The new statute, however, provides a general mechanism for order of hearing with published notice twenty days before the date of the hearing. This requirement is not necessary for hearings on accounts, as the interested parties will have been identified and known to the trustee at the time a hearing is scheduled. The rule does require notice to any party requesting notice of the hearing, and allows the court to specify another method of giving notice in a particular case. Although that might conceivably include published notice, published notice would be unusual.

(Amended effective January 1, 1993.)

Advisory Committee Comments—1995 Amendments

Rule 417.02, as amended, refers to trustees subject to the continuing supervision of the district courts. The rule is intended to apply to all trusts subject to the continuing supervision of the district courts pursuant to Minnesota Statutes, section 501B.23 (1994), and the earlier reference to jurisdiction is deleted to avoid confusion, since all Minnesota trusts are subject to the district court's jurisdiction.

(Added effective January 1, 1996.)

FORM 417.02 TRUSTEE'S ACCOUNTING

State of Minnesota

District Court

COUNTY

JUDICIAL DISTRICT
CASE NO.

Case Type:

In the Matter of the Trust Created under Article
of the Last Will of

ALTERNATIVE FOR INTER VIVOS TRUSTS:

In the Matter of the Trust Created under
Agreement By and Between
Settlor, and and
Trustees, dated

TRUSTEE'S ANNUAL ACCOUNT

	Principal	Income
Assets on Hand as of (Schedule 1)	\$	\$
Increases to Assets:		
Interest (Schedule 2)	\$ 0.00	\$
Dividends (Schedule 3)	\$ 0.00	\$
Capital gains distributions (Schedule 4)	\$	\$ 0.00
Gains on sales and other dispositions (Schedule 5)	\$	\$ 0.00
Return of capital (Schedule 6)	\$	\$ 0.00
Other increases (Schedule 7)	\$	\$
Decreases to Assets:		
Losses on sales and other dispositions (Schedule 8)	(\$)	(\$.00)
Administration expenses (Schedule 9)	(\$)	(\$)
Taxes (Schedule 10)	(\$)	(\$)
Trustee fees	(\$)	(\$)
Attorney fees	(\$)	(\$)
Other decreases (Schedule 11)	(\$)	(\$)
Balance Before Distributions	\$	\$
Distributions to Beneficiaries (Schedule 12)	(\$)	(\$)
Principal and Income Balances	\$ 0.00	\$ 0.00
Total Assets on Hand as of (Income plus principal) (Schedule 13)		\$

Assets which realized a net income of less than 1% of their inventory values or acquisition costs are listed on Schedule 14.

[FORM CONTINUED NEXT PAGE]

[NAME OF TRUST]

ASSETS ON HAND
[Beginning DATE]
Schedule 1

	Market Value as of [DATE]	Values at Cost or Basis Principal	Values at Cost or Basis Income
Cash or Cash Equivalents			
Checking account	\$	\$	\$
Savings account	\$	\$	\$
Money market account	\$	\$	\$
Stocks and Bonds			
Stocks	\$	\$	\$ 0.00
Corporate bonds	\$	\$	\$ 0.00
Municipal bonds	\$	\$	\$ 0.00
Real Estate	\$	\$	\$ 0.00
Other Assets			\$
Life insurance policies (cash value)	\$	\$	\$
Other assets	\$	\$	\$
Total Assets on Hand as of [Date]	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>

Note: This schedule reflects assets on hand at the beginning of the period. Identify each asset thoroughly. Provide the name of the bank and account number for each account holding cash or cash equivalents. Provide the number of shares or par value of each security. Provide the address of each parcel of real estate.

[NAME OF TRUST]

INTEREST
Schedule 2

	<u>Income</u>
Checking account(s)	
1.	\$
2.	\$
Savings account(s)	
1.	\$
2.	\$
Corporate bonds	
1.	\$
2.	\$
3.	\$
Municipal bonds	
1.	\$
2.	\$
3.	\$
Other interest	
1.	\$
2.	\$
3.	\$
Total Interest	<u>\$ 0.00</u>

Identify each interest-producing asset. List each bank account by name and account number. Identify each bond or other asset that pays interest.

[NAME OF TRUST]

DIVIDENDS
Schedule 3

	<u>Income</u>
Stocks	
1	\$
2	\$
3	\$
4	\$
5	\$
6	\$
7	\$
8	\$
9	\$
10	\$
11	\$
12	\$
13	\$
14	\$
15	\$

Total Dividends 0.00

Identify each security that paid dividends.

[NAME OF TRUST]

CAPITAL GAINS DISTRIBUTIONS
Schedule 4

Principal

Capital gains distributions:

1	\$
2	\$
3	\$
4	\$
5	\$
6	\$
7	\$
8	\$
9	\$
10	\$
11	\$
12	\$
13	\$
14	\$

Total Capital Gains Distributions 0.00

Identify each security that paid a capital gains distribution.

[NAME OF TRUST]

GAINS ON SALES AND OTHER DISPOSITIONS

Schedule 5

Principal

Sale of _____ shares of _____:

Proceeds received

\$

Less cost or basis

(\$ _____)

\$ 0.00

Sale of _____ shares of _____:

Proceeds received

\$

Less cost or basis

(\$ _____)

\$ 0.00

Sale of _____ shares of _____:

Proceeds received

\$

Less cost or basis

(\$ _____)

\$ 0.00

Sale of _____ shares of _____:

Proceeds received

\$

Less cost or basis

(\$ _____)

\$ 0.00

Sale of _____ shares of _____:

Proceeds received

\$

Less cost or basis

(\$ _____)

\$ 0.00

Sale of _____ shares of _____:

Proceeds received

\$

Less cost or basis

(\$ _____)

\$ 0.00

Sale of _____ shares of _____:

Proceeds received

\$

Less cost or basis

(\$ _____)

\$ 0.00

Sale of _____ shares of _____:

Proceeds received

\$

Less cost or basis

(\$ _____)

\$ 0.00

Sale of _____ shares of _____:

Proceeds received

\$

Less cost or basis

(\$ _____)

\$ 0.00

Total Gains

\$ 0.00

[NAME OF TRUST]

RETURN OF CAPITAL

Schedule 6

Principal

Return of capital:

1.	\$
2.	\$
3.	\$
4.	\$
5.	\$
6.	\$
7.	\$
8.	\$
9.	\$
10.	\$
11.	\$
12.	\$
13.	\$
14.	\$

Total Return of Capital

0.00

Identify each security that paid a return of capital.

[NAME OF TRUST]

OTHER INCREASES

Schedule 7

	<u>Principal</u>	<u>Income</u>
Securities added to trust by Settlor		\$ 0.00
	\$	\$
1	\$	\$
2	\$	\$
3	\$	\$
4	\$	\$
5	\$	\$
6	\$	\$
7	\$	\$
8	\$	\$
9	\$	\$
Income transferred to principal	\$	\$ 0.00
Other increases:		
1	\$	\$
2	\$	\$
3	\$	\$
4	\$	\$
5	\$	\$
6	\$	\$
7	\$	\$
8	\$	\$
9	\$	\$
Total Other Increases	<u>0.00</u>	<u>0.00</u>

[NAME OF TRUST]

LOSSES ON SALES AND OTHER DISPOSITIONS

Schedule 8

		<u>Principal</u>
Sale of _____ shares of _____:		
Proceeds received	\$	
Less cost or basis	(\$ _____)	\$ 0.00
Sale of _____ shares of _____:		
Proceeds received	\$	
Less cost or basis	(\$ _____)	\$ 0.00
Sale of _____ shares of _____:		
Proceeds received	\$	
Less cost or basis	(\$ _____)	\$ 0.00
Sale of _____ shares of _____:		
Proceeds received	\$	
Less cost or basis	(\$ _____)	\$ 0.00
Sale of _____ shares of _____:		
Proceeds received	\$	
Less cost or basis	(\$ _____)	\$ 0.00
Sale of _____ shares of _____:		
Proceeds received	\$	
Less cost or basis	(\$ _____)	\$ 0.00
Sale of _____ shares of _____:		
Proceeds received	\$	
Less cost or basis	(\$ _____)	\$ 0.00
Sale of _____ shares of _____:		
Proceeds received	\$	
Less cost or basis	(\$ _____)	\$ 0.00
Sale of _____ shares of _____:		
Proceeds received	\$	
Less cost or basis	(\$ _____)	\$ 0.00
Total Losses		\$ <u>0.00</u>

[NAME OF TRUST]

OTHER DECREASES
Schedule 11

	<u>Principal</u>	<u>Income</u>
Income transferred to principal	\$	\$ 0.00
Other decreases:		
1.	\$	\$
2.	\$	\$
3.	\$	\$
4.	\$	\$
5.	\$	\$
6.	\$	\$
7.	\$	\$
8.	\$	\$
9.	\$	\$
10.	\$	\$
Total Other decreases	<u>0.00</u>	<u>0.00</u>

[NAME OF TRUST]

DISTRIBUTIONS TO BENEFICIARIES
Schedule 12

	<u>Principal</u>	<u>Income</u>
Name of each beneficiary and date and description of distribution:		
1.	\$	\$
2.	\$	\$
3.	\$	\$
4.	\$	\$
5.	\$	\$
6.	\$	\$
7.	\$	\$
8.	\$	\$
9.	\$	\$
10.	\$	\$
11.	\$	\$
12.	\$	\$
13.	\$	\$
14.	\$	\$
15.	\$	\$
Total Distributions to Beneficiaries	<u>0.00</u>	<u>0.00</u>

[NAME OF TRUST]

ASSETS ON HAND
[ending DATE]
Schedule 13

	Market Value as of [DATE]	Values at Cost or Basis Principal	Values at Cost or Basis Income
Cash or Cash Equivalents			
Checking account	\$	\$	\$
Savings account	\$	\$	\$
Money market account	\$	\$	\$
Stocks and Bonds			
Stocks	\$	\$	\$ 0.00
Corporate bonds	\$	\$	\$ 0.00
Municipal bonds	\$	\$	\$ 0.00
Real Estate	\$	\$	\$ 0.00
Other Assets			
Life insurance policies (cash value)	\$	\$	\$
Other assets	\$	\$	\$
Total Assets on Hand as of [Date] _____	<u>0.00</u>	<u>\$</u>	<u>\$</u>

Note: This schedule reflects assets on hand at the end of the accounting period. Identify each asset thoroughly. Provide the name of the bank and account number for each account holding cash or cash equivalents. Provide the number of shares or par value of each security. Provide the address of each parcel of real estate.

[NAME OF TRUST]

ASSETS WHICH REALIZED A NET INCOME OF
LESS THAN 1% OF THEIR INVENTORY
VALUES OR ACQUISITION COSTS
Schedule 14

Description of Asset	Amount of Net <u>Income Realized</u>	Income as Percentage of <u>Cost/Basis</u>
1.	\$	%
Reason why this asset should be retained:		
2.	\$	%
Reason why this asset should be retained:		
3.	\$	%
Reason why this asset should be retained:		
4.	\$	%
Reason why this asset should be retained:		
5.	\$	%
Reason why this asset should be retained:		

Under penalties of perjury, we have read this Annual Account and we know or believe its contents are true and correct.

Trustee Date
Address:

Trustee Date
Address:

Notarial Stamp or Seal (or Other Title or Rank)

Signed and sworn to (or affirmed) before
me on (date) _____
by _____
and _____
Trustees.

Signature of Notary Public or Other
Official

(Amended effective January 1, 1996.)

Rule 418. Deposit of Wills

(a) Deposit by Testator. Any testator may deposit his or her will with the court administrator in any county subject to the following rules. Wills shall be placed in a sealed envelope with the name, address, and birth date of the testator placed on the outside. The administrator shall give a receipt to the person depositing the will.

(b) Withdrawal by Testator or Agent. Any will may be withdrawn by the testator in person upon presentation of identification and signing an appropriate receipt. A testator's attorney or other agent may withdraw the will by presenting a written authorization signed by the testator and two witnesses with the testator's signature notarized.

(c) Examination by Guardian or Conservator. A guardian or conservator of the testator may review the will upon presentation of identification bearing the photograph of the person seeking review and a copy of valid letters of guardianship or conservatorship. If the guardianship or conservatorship proceedings are venued in a county other than that where the will is filed, the required copy of the letters shall be certified by the issuing court within 30 days of the request to review the will. The will may only be examined by the guardian or conservator in the presence of the court administrator or deputy administrator, who shall reseal it after the review is completed and shall endorse on the resealed envelope the date it was opened, by whom it was opened and that the original was placed back in the envelope.

(d) Copies. No copies of the original will shall be made during the testator's lifetime.

(Added effective January 1, 1997.)

Advisory Committee Comment—1996 Amendment

This rule is new and is intended to provide a standard mechanism for handling wills deposited with the court for safekeeping. Minnesota Statutes, section 524.2-515, became effective in 1996 to permit deposit of any will by the testator. This rule is intended to provide uniform and orderly rules for deposit and withdrawal of wills that are deposited pursuant to this statute.

(Added effective January 1, 1997.)

TITLE VI—CONCILIATION COURT RULES

Amended by a Supreme Court order dated June 22, 1993, to govern all conciliation court actions filed on or after July 1, 1993

In a Supreme Court order dated June 22, 1993, the Court repealed Rule 503 and amended and renumbered the following Rules:

<u>From</u>	<u>To</u>
504	503
505	504
506	505
507	506
508	507
509	508
510	509
511	510

Rule 501. Applicability of Rules

Rules 501 through 525 apply to all conciliation court proceedings.

Rule 502. Jurisdiction

The conciliation court shall have jurisdiction and powers as prescribed by law.

Rule 503. Computation of Time

(a) **General.** All time periods shall be measured by starting to count on the first day after any event happens which by these rules starts the running of a time period. If the last day of the time period is anything other than a working week day, then the last day is the next working week day.

(b) **Time Periods Less Than Seven Days.** When the time period is less than seven days, only working week days shall be counted.

(c) **Working Week Day.** A "working week day" means a day which is not a Saturday, Sunday or legal holiday. For purposes of this rule, a legal holiday includes all state level judicial branch holidays established pursuant to law and any other day on which county offices in the county in which the conciliation court is held are closed pursuant to law.

1993 Committee Comment

State level judicial branch holidays are defined in Minnesota Statutes, section 645.44, subdivision 5 (1990), which includes: New Year's Day, January 1; Martin Luther King's Birthday, the third Monday in January; Washington's and Lincoln's Birthday, the third Monday in February; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Veteran's Day, November 11; Thanksgiving Day, the fourth Thursday in November; and Christmas Day, December 25. Section 645.44, subdivision 5, further provides that when New Year's Day, January 1; or Independence Day, July 4; or Veteran's Day, November 11; or Christmas Day, December 25; falls on Sunday, the following day shall be a holiday and that when New Year's Day, January 1; or Independence Day, July 4; or Veteran's Day, November 11; or Christmas Day, December 25; falls on Saturday, the preceding day shall be a holiday. Section 645.44, subdivision 5, also authorizes the judicial branch to designate certain other days as holidays. The 1992 Judicial Branch Personnel Plan designates the Friday after Thanksgiving as a holiday.

*Conciliation courts are housed in county buildings, and the county is authorized to close county offices on certain days pursuant to Minnesota Statutes, section 373.052 (1990). Thus, if a county closes its offices under section 373.052 on a day that is not a state level judicial branch holiday, such as Christopher Columbus Day, the second Monday in October, the conciliation court in that county would nevertheless include that day as a holiday for the purpose of computing time under Rule 503. See *Mittelstadt v. Breider*, 286 Minn. 211, 175 N.W.2d 191 (1970) (applying section 373.052 to filing of notice of election contest with district court). If a county does not close its offices on a day that is a state level judicial branch holiday, such as the Friday after Thanksgiving, the conciliation court in that county must still include that day as a holiday for the purpose of computing time under Rule 503.*

Rule 504. Judge(s); Administrator; Reporting

(a) **Judges.** The judge(s) and, where authorized by statute, full and part time judicial officers and referees of the district court shall serve as judge(s) of conciliation court for such periods and at such times as the judge(s) shall determine. A judge, judicial officer, or referee so serving shall be known as a conciliation judge.

(b) Administrator.

(1) The court administrator shall manage the conciliation court, and may delegate a deputy or deputies to assist in performing the administrator's duties. The court administrator shall keep records and accounts and perform such duties as may be prescribed by the judge(s). The court administrator shall account for, and transmit to the appropriate official, all fees received as required by statute or rule.

(2) Under supervision of the conciliation court judges, the court administrator shall explain to litigants the procedures and functions of the conciliation court and shall on request assist litigants in filling out the forms provided under Rules 507(b) and 518(b) of these rules and on request shall forward properly completed statement of claim and counterclaim forms to the administrator of the appropriate conciliation court

together with the applicable fees, if any. The court administrator shall also advise litigants of the availability of subpoenas to obtain witnesses and documents. The performance of these duties shall not constitute the practice of law.

(c) **Reporting.** Conciliation court trials and proceedings shall not be reported.

1993 Committee Comment

Rule 504(b)(2) requires court administrators to advise litigants of the availability of subpoenas under Rule 512(a). The required advice may be provided orally or in writing (e.g. on the litigant's copy of a court form, an accompanying instruction sheet, or in a brochure).

Rule 505. Commencement of Action

An action is commenced against a defendant when a statement of claim as required by Rule 507 is filed with the court administrator of the conciliation court having jurisdiction and the applicable fees are paid to the administrator or the affidavit in lieu of filing fees prescribed in Rule 506 is filed with the administrator.

Rule 506. Fees; Affidavit in Lieu of Fees

The court administrator shall charge and collect a filing fee in the amount established by law and the law library fee, from every plaintiff and from every defendant when the first paper for that party is filed in any conciliation court action. If the plaintiff or defendant who is a natural person signs and files with the court administrator an affidavit claiming an inability to pay the applicable fees, no fees are required. If the affiant prevails on a claim or counterclaim, the amount of the fees which would have been payable by the affiant must be included in the order for judgment and paid to the administrator of conciliation court by the affiant out of any money recovered by the affiant on the judgment.

1993 Committee Comment

Statewide conciliation court filing fees are established by the legislature (see Minnesota Statutes, section 557.022). The law library fee is established by the local law library board, and these fees typically range from \$0 to \$10 Minnesota Statutes, sections 134A.09 and 134A.10 (1990 and 1991 Supplement). The fee waiver procedure under Rule 506 is essentially a clerical process, and the waiver applies to the conciliation court filing and law library fees only. The procedure for waiver of other fees [e.g. service fees under Rule 508(d)(3), subpoena fees under Rule 512(a), and removal/appeal fees under Rule 521(b)(4)] is set forth in Minnesota Statutes, section 563.01 (1990), which requires a formal application to, and decision by, the court. Only a party who is a natural person may utilize the fee waiver procedures under section 563.01 and Rule 506.

Rule 507. Statement of Claim and Counterclaim; Contents; Verification

(a) **Claim; Verification; Contents.** Each statement of claim and each counterclaim shall be made in the form approved by the court and shall contain a brief statement of the amount and nature of the claim, including relevant dates, and the name and address of the plaintiff and the defendant. The court administrator shall assist with the completion of the statement of claim and counterclaim upon request. Each statement of claim and each counterclaim shall also be signed and sworn to by the party, or the lawyer representing the party, in the presence of a notary public or the court administrator.

(b) **Uniform Statement of Claim or Counterclaim; Acceptance by Court.** A statement of claim or counterclaim in the uniform form prescribed in the appendix to these rules shall be accepted by any conciliation court administrator when properly completed and filed with the applicable fees, if any.

1993 Committee Comment

Rule 507(b) requires that all courts accept a statement of claim or counterclaim properly completed on the form set forth in the appendix. Rule 507(a) authorizes a court to tailor the forms that it makes available to litigants for use in that court or to approve forms prepared by the litigants. This rule allows both the court and the litigants to benefit from increased efficiency through the use of various preprinted forms and word processor or computer generated forms. Courts using tailored forms cannot, however, reject a statement of claim or counterclaim properly completed on the form set forth in the appendix.

Rule 508. Summons; Trial Date

(a) **Trial Date.** When an action has been properly commenced, the court administrator shall set a trial date and prepare a summons. Unless otherwise ordered by a judge, the trial date shall not be less than ten days from the date of mailing or service of the summons.

(b) **Contents of Summons.** The summons shall state the amount and nature of the claim; require the defendant to appear at the trial in person or if a corporation, by officer or agent; shall specify that if the defendant does not appear judgment by default may be entered for the amount due the plaintiff, including fees, expenses and other items provided by statute or by agreement, and where applicable, for the return of property demanded by the plaintiff; and shall summarize the requirements for filing a counterclaim.

(c) **Service on Plaintiff.** The court administrator shall summon the plaintiff by first class mail.

(d) Service on Defendant.

(1) If the defendant's address as shown on the statement of claim is within the county, the administrator shall summon the defendant by first class mail, except that if the claim exceeds \$2,500 the summons must be served by the plaintiff by certified mail, and proof of service must be filed with the administrator. If the summons is not properly served and proof of service filed within 60 days after issuance of the summons, the action shall be dismissed without prejudice.

(2) If the defendant's address as shown on the statement of claim is outside the county but within the state, and the law provides for service of the summons anywhere within the state, the administrator shall summon the defendant by first class mail, except that if the claim exceeds \$2,500 the summons must be served by the plaintiff by certified mail, and proof of service must be filed with the administrator. If the summons is not properly served and proof of service filed within 60 days after issuance of the summons, the action shall be dismissed without prejudice.

(3) If the defendant's address as shown on the statement of claim is outside the state, the administrator shall forward the summons to the plaintiff who, within 60 days after issuance of the summons, shall cause it to be served on the defendant and file proof of service with the administrator. If the summons is not properly served and proof of service filed within 60 days after issuance of the summons, the action shall be dismissed without prejudice. A party who is unable to pay the fees for service of a summons may apply for permission to proceed without payment of fees pursuant to the procedure set forth in Minnesota Statutes, section 563.01.

1993 Committee Comment

The territorial jurisdiction of conciliation court is limited to the county boundaries, and a summons cannot be issued outside the county except in certain situations, including: recovery of certain student loans by educational institutions located within the county; recovery of alleged dishonored checks issued within the county; certain claims arising out of rental property located within the county; actions against two or more defendants when one defendant resides in the county; actions against foreign corporations doing business in this state; and actions against nonresidents other than foreign corporations when the state has

jurisdiction under Minnesota Statutes, section 543.19. Minnesota Statutes, section 491A.01, subdivisions 3, 6 to 10 (Supplement 1993). In situations in which the address of the defendant as shown on the statement of claim is outside the state, the summons is forwarded to the plaintiff who is then responsible for causing service of the summons on the defendant in the manner provided by law and filing proof of service with the court within 60 days of issuance of the summons.

Various laws govern the service of a summons on nonresident defendants. See, e.g. Minnesota Statutes, sections 45.028 (foreign insurance entities doing business in this state); 303.13 (foreign corporations doing business in this state); 543.19 (other nonresident defendants subject to the jurisdiction of Minnesota's courts). The procedure under each of these laws is different, and it is the plaintiff's responsibility to ensure that the appropriate procedures are followed. For example, service on an unregistered foreign corporation pursuant to Minnesota Statutes, section 303.13 (1991 Supplement) can be accomplished by delivering three copies of the summons to the secretary of state and payment of a \$35 fee. The secretary of state then mails a copy to the defendant corporation and keeps a record of the mailing. Rule 508(d) requires that the plaintiff file an affidavit of compliance which should be accompanied by the fee receipt from the secretary of state's office or a copy of the summons bearing the date and time of filing with the secretary of state. Service on an unregistered foreign insurance entity pursuant to Minnesota Statutes, section 45.028, subdivision 2 (1990), may be accomplished by: (1) delivering a single copy of the summons to the commissioner of commerce (as of August 1, 1992, there is no filing fee); and (2) the plaintiff mailing a copy of the summons and notice of service to the foreign insurance company by certified mail; and (3) filing of an affidavit of compliance with the court. Service is not effective until all steps are completed, including the filing of the affidavit of compliance, which should be accompanied by receipts or other proof of mailing and filing with the commissioner of commerce. Finally, service on other nonresidents pursuant to Minnesota Statutes, section 543.19 (1990) requires that the summons be "personally served" on the nonresident and proof of service filed with the court. Such "personal service" may only be made by a sheriff or any other person not less than 18 years of age who is not a party to the action. *Reichel v. Hefner*, 472 N.W.2d 346 (Minnesota Appellate 1991) (applying Rule 4.02 of the rules of civil procedure for the district courts).

When service on a foreign corporation has been made under Minnesota Statutes, section 303.13 through the office of the secretary of state, the defendant corporation so served shall have 30 days from the date of mailing by the secretary of state in which to answer the complaint. Thus, the conciliation court trial date must be scheduled to allow the defendant the full 30 days to appear. Similarly, when certain foreign insurance entities are served under Minnesota Statutes, section 45.028, subdivision 2, the law also provides a 30-day response period [see, e.g., Minnesota Statutes, section 64B.35, subdivision 2 (fraternal benefit societies)] or prohibits default judgments until the expiration of 30 days from the filing of the affidavit of compliance. [Minnesota Statutes, section 60A.21, subdivision 1(4) (unauthorized foreign insurer)].

Rule 508(d) recognizes that in most situations involving resident defendants, first class mail is a sufficient method of notifying the defendant of the claim. If for some reason the summons cannot be delivered by mail, the last sentence of Rule 508(a) recognizes that personal service of the summons pursuant to the rules of civil procedure for the district court is always an effective means of providing notice of the claim. The party filing the claim is responsible for obtaining personal service, including any costs involved. As indicated above, "personal service" may only be made by a sheriff or any other person not less than 18 years of age who is not a party to the action.

The provisions requiring service by certified mail were added in order to make the rules consistent with statutes. See Minnesota Statutes, section 491A.01, subdivision 3(b) (Supplement 1993). If the claim exceeds \$2,500, the plaintiff is responsible for causing service of the summons on the defendant by certified mail, and filing proof of service with the court within 60 days of issuance of the summons.

Rule 509. Counterclaim

(a) **Counterclaims Allowed.** The defendant may assert a counterclaim within jurisdiction of conciliation court which the defendant has against the plaintiff, whether or not arising out of the transaction or occurrence which is the subject matter of plaintiff's claim.

(b) **Assertion of Counterclaim.** To assert a counterclaim the defendant shall perform all the following not less than five days prior to the date set for trial of plaintiff's claim:

(1) file with the court administrator a counterclaim required by Rule 507;

(2) pay to the court administrator the applicable fees or file with the administrator the affidavit in lieu of fees prescribed in Rule 506.

(c) **Administrator's Duties.** The court administrator shall assist with the preparation of the counterclaim on request. When the counterclaim has been properly asserted, the court administrator shall note the filing of the counterclaim on the original claim, promptly mail notice of the counterclaim to plaintiff and set the counterclaim for trial on the same date as the original claim.

(d) **Late Filing.** No counterclaim shall be heard if filed less than five days before the trial date of plaintiff's claim except by permission of the judge, who has discretion to allow a filing within the five-day period. Should a continuance be requested by and granted to plaintiff because of the late filing, the judge may require payment of costs by defendant, absolute or conditional, not to exceed \$50.

Rule 510. Counterclaim in Excess of Court's Jurisdiction

(a) The court administrator shall strike plaintiff's action from the calendar if the defendant not less than five days of the date set for trial of plaintiff's claim, files with the court administrator an affidavit stating that:

(1) the defendant has a counterclaim against plaintiff arising out of the same transaction or occurrence as plaintiff's claim, the amount of which is beyond monetary jurisdiction of the conciliation court, and

(2) the defendant has commenced or will commence within 30 days an action against plaintiff in a court of competent jurisdiction based on such claim.

(b) The plaintiff's action shall be subject to reinstatement on the trial calendar at any time after 30 days and up to three years, upon the filing by plaintiff of an affidavit showing that the plaintiff has not been served with a summons by defendant. If the action is reinstated, the court administrator shall set the case for trial and mail notice of the trial date to the parties by first class mail.

(c) Absolute or conditional costs, not to exceed \$50, may be imposed against the defendant if the defendant fails to commence an action as provided in paragraph (a)(2) of this rule, and the court determines that the defendant caused the plaintiff's action to be stricken from the calendar in bad faith or solely to delay the proceedings or to harass.

Rule 511. Notice of Settlement

If the parties agree on a settlement prior to trial, each party who has made a claim or counterclaim shall promptly advise the court in writing that the claim or counterclaim has been settled and that it may be dismissed.

(Rule numbered 511 added effective July 1, 1993.)

Rule 512. Trial

(a) **Subpoenas.** Upon request of a party and payment of the applicable fee, the court administrator shall issue subpoenas for the attendance of witnesses and production of documentary evidence at the trial. Minnesota Rules of Civil Procedure 45.01, 45.02, 45.03, 45.05, 45.06, and 45.07 apply to subpoenas issued under this rule. A party who is unable to pay the fees for issuance and service of a summons may apply for

permission to proceed without payment of fees pursuant to the procedure set forth in Minnesota Statutes, section 563.01.

(b) Testimony and Exhibits. Subject to part (d) of this rule, the judge shall hear testimony of the parties, their witnesses, and shall consider exhibits offered by the parties. The party offering an exhibit shall mark the party's name on the exhibit in a manner that will not obscure the exhibit. All exhibits will be returned to the parties at the conclusion of the trial unless otherwise ordered by the judge.

(c) Appearances. The parties shall appear in person, unless otherwise authorized by the court, and may be represented by a lawyer admitted to practice law before the courts of this state. A lawyer representing a party in conciliation court may participate in the trial to the extent and in the manner that the judge, in the judge's discretion, deems helpful.

A corporation, partnership, limited liability company, sole proprietorship, or association may be represented in conciliation court by an officer, manager, or partner, or an agent in the case of a condominium, cooperative or townhouse association, or may appoint a natural person who is an employee of the party or a commercial property manager to appear on its behalf or settle a claim in conciliation court. In the case of an officer, employee, commercial property manager, or agent of a condominium, cooperative or townhouse association, an authorized power of attorney, corporate authorization resolution, corporate by-law or other evidence of authority acceptable to the court must be filed with the claim or presented at the trial. The authority shall remain in full force and effect only as long as the case is active in conciliation court.

"Commercial property manager" means a corporation, partnership, or limited liability company or its employees who are hired by the owner of commercial real estate to perform a broad range of administrative duties at the property including tenant relations matters, leasing, repairs, maintenance, the negotiation and resolution of tenant disputes, and related matters. In order to appear in conciliation court, a property manager's employees must possess a real estate license under Minnesota Statutes, section 82.20, and be authorized by the owner of the property to settle all disputes with tenants and others within the jurisdictional limits of conciliation court.

(d) Evidence. The judge shall normally receive only evidence admissible under the rules of evidence, but in the exercise of discretion and in the interests of justice, may receive otherwise inadmissible evidence.

(e) Conciliation; Judgment. The judge may attempt to conciliate disputes and encourage fair settlements among the parties. If at the trial the parties agree on a settlement the judge shall order judgment in accordance with the settlement. If no agreement is reached, the judge shall hear, determine the cause, and order judgment. Written findings of fact or conclusions of law shall not be required.

(f) Failure of Defendant to Appear. If the defendant fails to appear at the trial, after being summoned as provided in these rules, the judge may hear the plaintiff and may:

(1) order judgment in the amount due the plaintiff, including fees, expenses and other items provided by law or by agreement, and where applicable, order return of property to the plaintiff or

(2) otherwise dispose of the matter.

(g) Failure of Plaintiff to Appear, Defendant Present. Should plaintiff fail to appear at the trial, but defendant appears, the judge may hear the defendant and may:

(1) order judgment of dismissal on the merits or order a dismissal without prejudice on the plaintiff's statement of claim, and where applicable, order judgment on defendant's counterclaim in the amount due the defendant, including fees, expenses and other items provided by law or by agreement, and where applicable, order return of property to the defendant, or

(2) otherwise dispose of the matter.

(h) Continuances. On proper showing of good cause, a continuance may be granted by the court on request of either party. The court may require payment of

costs, absolute or conditional, not to exceed \$50, as a condition of such an order. On proper showing of good cause, requests for continuance that are made at least five days prior to the trial may be granted by the court administrator. Continuances granted by the court administrator shall be limited to one continuance per party. (Amended effective August 1, 1994.)

1993 Committee Comment

Rule 512(a) authorizes the issuance of subpoenas to secure the attendance of witnesses and production of documentary evidence. The attendance of the parties is required by Rule 512(c).

The fee for issuing a subpoena is \$3. Minnesota Statutes, section 357.021, subdivision 2(3) (1990). A subpoena may be served by the sheriff, a deputy sheriff, or any other person not less than 18 years of age who is not a party to the action. Minnesota Rules of Civil Procedure 4.02; 45.03. The sheriff's fees and mileage reimbursement rate for service of a subpoena are set by the county board. Minnesota Statutes, section 357.09 (1990).

Witnesses are also entitled to attendance fees and travel fees, and, unless otherwise ordered by the court, a witness need not attend at the trial unless the party requesting the subpoena pays the witness one day's attendance and travel fees in advance of the trial. Minnesota Statutes, section 357.22 (1990) (\$10 per day attendance fee, \$.24 per mile mileage fee, to and from courthouse, measured from witness' residence, if within state, or from state boundary line, if residence is outside the state); Minnesota Rules of Civil Procedure 45.03.

A witness who is not a party or an employee of a party and who is required to provide testimony or documents relating to a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of such profession, business or trade (e.g., a banker witness subpoenaed to produce bank records), is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents. The party requesting the subpoena must make arrangements for such compensation prior to the trial. Minnesota Rules of Civil Procedure 45.06; D. Herr, R. Haydock, 2 Minnesota Practice, Civil Rules Annotated, section 45.14 (1985). With respect to any subpoena requiring the production of documents, the court may also require the party requesting the subpoena to pay the reasonable costs of producing the documentary evidence. Minnesota Rules of Civil Procedure 45.02.

Rule 512(e) does not preclude a court from providing the parties with a written explanation for the court's decision. Explanations, regardless of their brevity, are strongly encouraged. Explanations provide litigants with some degree of assurance that their case received thoughtful consideration, and may help avoid unnecessary appeals. Explanations may be inserted on Form UCF-9, appended to the rules, in either the Order for Judgment section on the front of the form or in the Memorandum section on the reverse side of the court's copy of the form.

Rule 513. Absolute or Conditional Costs; Filing of Orders

In any case in which payment of absolute or conditional costs has been ordered as a condition of an order under any provision of these rules, the amount so ordered shall be paid to the court administrator before the order becomes effective or is filed. Conditional costs shall be held by the court administrator to be paid in accordance with the final order entered in the case; absolute costs shall be promptly transmitted by the court administrator to the other party as that party's absolute property.

Rule 514. Notice of Order for Judgment

The court administrator shall promptly mail to each party a notice of the order for judgment entered by the judge. The notice shall state the last day for obtaining an order to vacate (where there has been a default) or for removing the cause to the civil division of district court under these rules. The notice shall also contain a statement that if the cause is removed to district court, the court will allow the prevailing party to

recover from the aggrieved party \$50 as costs if the prevailing party on appeal is not the aggrieved party in the original action as provided in Rule 524.

1993 Committee Comment

Rules 515, 520(a), and 521(b) of these rules establish a uniform 20-day time period for obtaining an order to vacate or for removing the case to district court. The 20 days is measured from the mailing of the notice of judgment, and the law requires that an additional three days be added to the time period when notice is served by mail. Wilkins v. City of Glencoe, 479 N.W.2d 430 (Minnesota Appellate 1992) (construing Rule 6.05 of the Minnesota Rules of Civil Procedure). Computing the deadline can be difficult and confusing for lay persons, and Rule 514 attempts to alleviate this problem by requiring the court administrator to perform the computation and specify the resulting date in the notice of order for judgment, taking into consideration applicable rules, including Rule 503 of these rules and Rule 6.05 of the Minnesota Rules of Civil Procedure.

Rule 515. Entry of Judgment

The court administrator shall promptly enter judgment as ordered by the judge. The judgment shall be dated as of the date notice is sent to the parties. The judgment so entered becomes finally effective twenty days after mailing of the notice, unless:

- (a) payment has been made in full, or
- (b) removal to district court has been perfected, or
- (c) an order vacating the prior order for judgment has been filed, or
- (d) ordered by a judge.

As authorized by law, any judgment ordered may provide for satisfaction by payment in installments in amounts and at times, as the judge determines. Should any installment not be paid when due, the entire unpaid balance of the judgment ordered, becomes immediately due and payable.

1993 Committee Comment

Rule 515 provides that a judgment becomes finally effective 20 days after notice of judgment is mailed to the parties, and the law requires that an additional three days be added to the time period when notice is served by mail. Wilkins v. City of Glencoe, 479 N.W.2d 430 (Minnesota Appellate 1992) (construing Rule 6.05 of the Minnesota Rules of Civil Procedure). Computing the effective date of the judgment can be difficult and confusing for lay persons, and Rule 514 attempts to alleviate this problem by requiring the court administrator to perform the computation and specify the resulting date in the notice of order for judgment, taking into consideration applicable rules, including Rule 503 of these rules and Rule 6.05 of the Minnesota Rules of Civil Procedure. The purpose of the 20-day time period specified in Rule 515 is to permit a party to obtain an order to vacate under Rule 520(a) or effect removal of the case to district court under Rule 521(b).

The legislature has determined that any judgment ordered may provide for satisfaction by payment in installments in amounts and at such times, not exceeding one year for the last installment, as the judge determines to be just and reasonable. Minnesota Statutes, section 491A.02, subdivision 5 (Supplement 1993). Rule 512(e) recognizes that the one year limit on installment payments may be waived by the parties as part of a settlement.

Rule 516. Costs and Disbursements

The order for judgment shall include the fees paid or payable by the prevailing party pursuant to Rules 506 and 508(d)(3) of these rules and, in the discretion of the court, may include all or part of disbursements incurred by the prevailing party which would be taxable in district court and any conditional costs previously ordered to be paid by either party.

Rule 517. Payment of Judgment

The nonprevailing party may pay all or any part of the judgment to the court administrator for benefit of the prevailing party or may pay the prevailing party directly. The court administrator shall enter on the court's records any payment made to the administrator or the prevailing party directly when satisfied that the direct payments have been made.

Rule 518. Docketing of Judgment in District Court; Enforcement

(a) **Docketing.** Except as otherwise provided in Rule 519 with respect to installment judgments, when a judgment has become finally effective as defined in Rule 515 of these rules the judgment creditor may obtain a transcript of the judgment from the court administrator on payment of the applicable statutory fee and file it in district court. Once filed in district court the judgment becomes and is enforceable as a judgment of district court, and the judgment will be docketed by the court administrator upon presentation of an affidavit of identification. No writ of execution or garnishment summons shall be issued out of conciliation court.

(b) **Enforcement.** Unless the parties have otherwise agreed, if a conciliation court judgment has been docketed in district court for a period of at least 30 days and the judgment is not satisfied, the district court shall upon request of the judgment creditor order the judgment debtor to mail to the judgment creditor information as to the nature, amount, identity, and location of all the debtor's assets, liabilities, and personal earnings. The information shall be provided on a form prescribed by the Supreme Court (see form UCF-22 appended to these rules), and the information shall be sufficiently detailed to enable the judgment creditor to obtain satisfaction of the judgment by way of execution on nonexempt assets and earnings of the judgment debtor. The order shall contain a notice that failure to complete the form and mail it to the judgment creditor within ten days after service of the order may result in a citation for civil contempt of court. Cash bail posted as a result of being cited for civil contempt of court order under this rule may be ordered payable to the creditor to satisfy the judgment, either partially or fully.

1993 Committee Comment

The party in whose favor the judgment was entered (the "judgment creditor") is responsible for enforcing the judgment if the other party ("the judgment debtor") does not voluntarily comply with the judgment. Obtaining a transcript of the judgment and filing it in district court under Rule 518(a) is the first step in enforcing a judgment. A judgment requiring the payment of money (as opposed to a judgment requiring the return of property) will also be docketed by the court administrator upon transcription if the statutorily required affidavit of identification (Minnesota Statutes, section 548.09, subdivision 2 (1990)) is presented. Docketing a money judgment creates a lien against all real property of the debtor in the county in which it is docketed, except for registered land, which requires an additional filing (pursuant to Minnesota Statutes, sections 508.63 and 508A.63) to create a lien. Docketing must be accomplished before the judgment creditor is permitted to use the disclosure provisions of Rule 518(b), which may assist in locating assets of the judgment debtor. Additional information on enforcement of judgments against nonexempt assets of the debtor is set forth in brochures and forms available from local court administration and legal aid offices.

Specific fee amounts have been deleted from these rules as the fees are subject to modification by the legislature. Minnesota Statutes, section 357.021 (1990) (\$7.50 transcription fee). Whether a separate fee in addition to the transcription fee is required for filing and docketing is also subject to legislative modification. Under current law, no separate fee may be charged for filing and docketing a conciliation court judgment in the district court of the county in which the judgment was rendered.

Rule 519. Docketing of Judgment Payable in Installments

No transcript of a judgment of conciliation court payable in installments shall be issued and filed until 20 days after default in payment of an installment due.

Rule 520. Vacation of Judgment Order and Judgment

(a) **Vacation of Order for Judgment Within 20 Days.** When a default judgment or judgment of dismissal on the merits has been ordered for failure to appear, the judge within 20 days after notice was mailed may vacate said judgment order ex parte and grant a new trial on a proper showing by the defaulting party of lack of notice, mistake, inadvertence or excusable neglect as the cause of that party's failure to appear. Absolute or conditional costs not to exceed \$50 to the other party may be ordered as a prerequisite to that relief.

(b) **Vacation of Judgment After 20 Days.** A default judgment may be vacated by the judge upon a proper showing by the defendant that: (1) the defendant did not receive a summons before the trial within sufficient time to permit a defense and did not receive notice of the order for default judgment within sufficient time to permit application for relief within 20 days after notice, or (2) upon other good cause shown. Application for relief pursuant to this Rule 520(b) shall be made within a reasonable time after the applicant learns of the existence of the judgment and shall be made by motion in accordance with the procedure governing motions in the district court, except that the motion is filed with the court administrator of conciliation court. The order vacating the judgment shall grant a new trial on the merits and may be conditioned upon payment of absolute or conditional costs not to exceed \$50.

(c) **Notice.** The court administrator shall promptly notify the parties by mail of a new trial date.

1993 Committee Comment

Rule 520(a) establishes a 20-day time period for obtaining an order to vacate a default judgment order or order for judgment of dismissal. The 20 days is measured from the mailing of the notice of judgment, and the law requires that an additional three days be added to the time period when notice is served by mail. Wilkins v. City of Glencoe, 479 N.W.2d 430 (Minnesota Appellate 1992) (construing Rule 6.05 of the Minnesota Rules of Civil Procedure). Computing the deadline can be difficult and confusing for lay persons, and Rule 514 attempts to alleviate this problem by requiring the court administrator to perform the computation and specify the resulting date in the notice of order for judgment, taking into consideration applicable rules, including Rule 503 of these rules and Rule 6.05 of the Minnesota Rules of Civil Procedure.

Rule 520(a) authorizes an informal, ex parte proceeding (involving appearance of one party only), which typically includes the presentation of an affidavit establishing lack of notice, mistake, inadvertence or excusable neglect as the cause of that party's failure to appear. In contrast, Rule 520(b) requires compliance with the formal requirements for making a motion in the district court. See Minnesota Rules of Civil Procedure 4.02, 5.02, 6.05; Minnesota General Rules of Practice for the District Courts 115.01, 115.02, 115.04 to 115.10. Forms and instructions are available from the conciliation court.

Rule 521. Removal (Appeal) to District Court

(a) **Trial de novo.** Any person aggrieved by an order for judgment entered in conciliation court after contested trial may remove the cause to district court for trial de novo (new trial). An "aggrieved person" may be either the judgment debtor or creditor.

(b) **Removal Procedure.** To effect removal, the aggrieved party must perform all the following within twenty days after the date the court administrator mailed to that party notice of the judgment order:

(1) Serve on the opposing party or the opposing party's lawyer a demand for removal of the cause to district court for trial de novo. Service shall be by first class mail. Service may also be by personal service in accordance with the provisions for personal service of a summons in district court. The demand for removal shall state whether trial demanded is to be by court or jury, and shall indicate the name, address,

and telephone number of the aggrieved party's lawyer, if any. If the aggrieved party is a corporation, the demand for removal must be signed by the party's attorney.

(2) File with the court administrator the original demand for removal with proof of service. The aggrieved party may file with the court administrator within the twenty day period the original and copy of the demand together with an affidavit by the party or the party's lawyer showing that after due and diligent search the opposing party or opposing party's lawyer cannot be located. This affidavit shall serve in lieu of making service and filing proof of service. When an affidavit is filed, the court administrator shall mail the copy of the demand to the opposing party at the party's last known residence address.

(3) File with the court administrator an affidavit by the aggrieved party or that party's lawyer stating that the removal is made in good faith and not for purposes of delay.

(4) Pay to the court administrator as the fee for removal the amount prescribed by law for filing a civil action in district court, and if a jury trial is demanded under Rule 521(b)(1) of these rules, pay to the court administrator the amount prescribed by law for requesting a jury trial in a civil action in district court. A party who is unable to pay the fees may apply for permission to proceed without payment of fees pursuant to the procedure set forth in Minnesota Statutes, section 563.01.

(c) Demand for Jury Trial. Where no jury trial is demanded on removal under Rule 521(b) by the aggrieved party, if the opposing party desires a jury trial that party shall perform all the following within 20 days after the demand for removal was served on the party or lawyer:

(1) Serve a jury trial demand by first class mail upon the aggrieved party or that party's lawyer. Service may also be by personal service in accordance with the provisions for personal service of a summons in district court.

(2) File the original jury trial demand and proof of service with the court administrator.

(3) Pay to the court administrator the amount prescribed by law for requesting a jury trial in a civil action in district court and, if the demand is the first paper filed by the party in the district court proceeding, pay to the administrator the amount prescribed by law for filing a civil action in district court. A party who is unable to pay the fees may apply for permission to proceed without payment of fees pursuant to the procedure set forth in Minnesota Statutes, section 563.01.

(d) Removal Perfected; Vacating Judgment; Transmitting File. When all removal papers have been filed properly and all requisite fees paid as provided under Rule 521(b), the removal is perfected, and the court shall issue an order vacating the order for judgment in conciliation court, and the whole contents of the conciliation court file of the cause shall be filed in district court.

(e) Limited Removal:

(1) When a motion for vacation of an order for judgment, or judgment under Rule 520 (a) or (b) of these rules, is denied, the aggrieved party may demand limited removal to the district court for hearing de novo (new hearing) on the motion. Procedure for service and filing of the demand for limited removal and notice of hearing de novo, proof of service of the notice, and procedure in case of inability of the aggrieved party to make service on the opposing party or the opposing party's lawyer shall be in the same manner prescribed in part (b) of this rule, except that the deadline for effecting limited removal shall be twenty days after the date that the court administrator mails notice of the denial of the motion for vacation of the order for judgment or judgment. The fee payable by the aggrieved party to the court administrator for limited removal shall be the same as the filing fee prescribed by law for filing of a civil action in district court. The court administrator shall then place the matter on the special term calendar for the date specified in the notice. At the hearing in district court, either party may be represented by a lawyer.

(2) A judge other than the conciliation court judge who denied the motion, shall hear the motion de novo (ancw) and may (A) deny the motion or (B) grant the motion. In determining the motion the judge shall consider the entire file plus any affidavits submitted by either party or their lawyers.

(3) The court administrator shall send by mail a copy of the order made in district court after de novo hearing to both parties and the venue shall be transferred back to conciliation court.

(Amended effective January 1, 1998; amended effective March 1, 2001.)

Cross Reference: Minn. R. Civ. P. 4.02, 4.06, 5.02, 6.01, 6.02, and 6.05.

1993 Committee Comment

Rule 521(b) establishes a 20-day time period for removing the case to district court. The 20 days is measured from the mailing of the notice of judgment, and the law requires that an additional three days be added to the time period when notice is served by mail. Wilkins v. City of Glencoe, 479 N.W.2d 430 (Minnesota Appellate 1992) (construing Rule 6.05 of the Minnesota Rules of Civil Procedure). Computing the deadline can be difficult and confusing for lay persons, and Rule 514 attempts to alleviate this problem by requiring the court administrator to perform the computation and specify the resulting date in the notice of order for judgment, taking into consideration applicable rules, including rule 503 of these rules and Rule 6.05 of the Minnesota Rules of Civil Procedure.

In district court, personal service may only be made by a sheriff or any other person not less than 18 years of age who is not a party to the action. Reichel v. Hefner, 472 N.W.2d 346 (Minnesota Appellate 1991). This applies to personal service under this Rule 521. Service may not be made on Sunday, a legal holiday, or election day. Minnesota Statutes, sections 624.04; 645.44, subdivision 5 (1990); Minnesota Constitution article VII, section 4.

Advisory Committee Comment—2000 Amendments

Rule 521(e)(1), as amended in 1997, allows limited removal to district court from a denial of a motion to vacate the order for judgment or judgment made pursuant to Rule 520(a) or (b). To obtain limited removal under Rule 521(e)(1), a party must follow the same procedural steps for obtaining removal under Rule 521(b), except that the event that triggers the twenty-day time period for effecting removal is the date that the court administrator mails the notice of denial of the motion to vacate the order for judgment or judgment. The law requires that an additional three days be added to the time period when notice is served by mail. Wilkins v. City of Glencoe, 479 N.W.2d 430 (Minn. App. 1992).

Under Rule 521(b)(1) as amended in 2000, if the party seeking to remove (appeal) the case to district court is a corporation, the demand for removal must be signed by an attorney authorized to practice law in the district court. This requirement simply restates a requirement recognized by court decision. See World Championship Fighting, Inc. v. Janos, 609 N.W.2d 263 (Minn. App. 2000), rev. denied (Minn. July 25, 2000). A corporation must be represented by a licensed attorney in district court regardless of the fact that the action originated in conciliation court. See Nicollet Restoration, Inc. v. Turnham, 486 N.W.2d 753 (Minn. 1992).

(Amended effective March 1, 2001.)

Rule 522. Pleadings in District Court

The pleadings in conciliation court shall constitute the pleadings in district court. Any party may amend its statement of claim or counterclaim if, within 30 days after removal is perfected, the party seeking the amendment serves on the opposing party and files with the court a formal complaint conforming to the Minnesota Rules of Civil Procedure. If the opposing party fails to serve and file an answer within the time permitted by the Minnesota Rules of Civil Procedure, the allegations of the formal

complaint are deemed denied. Amendment of the pleadings at any other time shall be allowed in accordance with the rules of civil procedure. On the motion of any party or on its own initiative, the court may order either or both parties to prepare, serve and file formal pleadings.

(Amended effective January 1, 2003.)

Advisory Committee Comment - 2002 Amendment

Rule 522 establishes a streamlined procedure for amendment of pleadings as a matter of right during the first 30 days after an action is removed to district court. The 2002 amendment adds a sentence before the last sentence to make it clear that the parties may move for leave to amend at other times, and the court can allow amendment on its own initiative. In these situations, the standards for amendment and supplementation of pleadings contained in Rule 15 of the Minnesota Rules of Civil Procedure and the case law interpreting that rule should guide the court in deciding whether to allow amendment.

Rule 523. Procedure in District Court

Proceedings in the district court shall, except as otherwise expressly provided in these rules, be in accordance with the Minnesota Rules of Civil Procedure and the General Rules of Practice for the District Courts. The judge who presided in conciliation court shall not preside in district court.

1993 Committee Comment

The Minnesota Supreme Court has determined that a corporation must be represented by a licensed attorney when appearing in district court regardless of the fact that the action originated in conciliation court. Nicollet Restoration, Inc. v. Turnham, 486 N.W.2d 753 (Minnesota 1992).

Rule 524. Mandatory Costs in District Court

(a) For the purposes of this rule, "removing party" means the first party who serves or files a demand for removal. "Opposing party" means any party as to whom the removing party seeks a reversal in whole or in part.

(b) If the removing party prevails in district court, the removing party may recover costs from the opposing party as though the action were commenced in district court. If the removing party does not prevail, the court shall award the opposing party an additional \$50 as costs. If the removing party is eligible to proceed under Minnesota Statutes, section 563.01, the \$50 costs may be waived if the court determines that a hardship exists and that the case was removed in good faith.

(c) For purposes of this rule, the removing party prevails in district court if:

(1) the removing party recovers at least \$500 or 50 percent of the amount or value of property that the removing party requested on removal, whichever is less, when the removing party was denied any recovery in conciliation court;

(2) the opposing party does not recover any amount or any property from the removing party in district court when the opposing party recovered some amount or some property in conciliation court;

(3) the removing party recovers an amount or value of property in district court that exceeds the amount or value of property that the removing party recovered in conciliation court by at least \$500 or 50 percent, whichever is less; or

(4) the amount or value of property that the opposing party recovers from the removing party in district court is reduced from the amount or value of property that the opposing party recovered in conciliation court by at least \$500 or 50 percent, whichever is less.

(d) Costs or disbursements in conciliation or district court shall not be considered in determining whether there was a recovery by either party in either court or in determining the difference in recovery under this rule.

1993 Committee Comment

Rule 524 simply repeats, for the benefit of litigants, the requirements set forth by the legislature. Minnesota Statutes, section 491A.02, subdivision 7 (Supplement 1993). Statutory costs normally available in district court pursuant to Minnesota Statutes, section 549.02 do not apply to conciliation court matters that have been removed to district court. Minnesota Statutes, section 549.02 (1992).

Rule 525. Appeal From District Court

The judgment of the district court on removal from conciliation court in any cause may be appealed to the Court of Appeals as in other civil cases.

1993 Committee Comment

An appeal may not be taken directly from conciliation court to the court of appeals. McConnell v. Beseres, 358 N.W.2d 113 (1984). Removal under Rule 521(b) or limited removal under Rule 521(c), and a ruling on the removal by the district court, are jurisdictional prerequisites for an appeal to the court of appeals from an action initiated in conciliation court.

UCF-8 (SCAO 6/73) Statement of Claim and Summary

Memoranda of Proceedings

Judgment becomes final and time for removal expires on _____, 19____.

ACTION	DATE	ACTION	DATE
Claim filed		Notices Mailed	
Hearing set for		Stricken-Sent	
Notices mailed		Order of Dismissal	
Notice returned/not delivered		Judgment entered	
Notice re-mailed		Notice of Judgment mailed	
Answer/Offer filed		Judgment satisfied	
Counterclaim filed		Removal/Appeal perfected	
Notices mailed		Order Vacating Judgment	
Hearing continued/reset to		Transcript issued	
Notices mailed		Exhibit Inf. (date filed)	
Hearing continued/reset to		Exhibits returned	

Settlement Agreement

Minn. Gen. R. Prac. 512(e)

The parties hereto have agreed upon a settlement of the within controversy, which agreement is as follows:

The parties further agree that they will abide the judgment to be entered herein based upon this agreement, without removal, appeal or further litigation.

_____ Plaintiff	_____ Defendant
_____ Plaintiff	_____ Defendant
Dated: _____	_____ Judge

UCF-9 JUDGMENT AND NOTICE OF JUDGMENT

UCF-9 (SCAO 6/93) Judgment and Notice of Judgment

Minn. Gen. R. Prac. 514

State of Minnesota		Conciliation Court	
COUNTY _____		JUDICIAL DISTRICT _____	CASE NO. _____
NAME AND ADDRESS _____ _____ _____ ZIP _____		NAME AND ADDRESS _____ _____ _____ ZIP _____	
vi.		vi.	
NAME AND ADDRESS _____ _____ _____ ZIP _____		NAME AND ADDRESS _____ _____ _____ ZIP _____	
Appearances: ☐ Plaintiff ☐ Defendant ☐ Neither Party ☐ Contested ☐ Default			
Upon evidence received, IT IS HEREBY ORDERED: ☐ _____ is entitled to judgment against _____ for the sum of \$ _____, plus fees of \$ _____, disbursements of \$ _____, and conditional costs of \$ _____, for a total of \$ _____. ☐ judgment shall be entered in favor of _____ (without damages). ☐ _____'s claim is dismissed without prejudice. ☐ _____'s claim is dismissed with prejudice. ☐ _____ shall immediately return _____ to the _____, and that the Sheriff of the county in which the property is located is authorized and directed to effect repossession of such property according to M.S. § 491A.01 subd.5, and turn the property over to _____. ☐ Other / ☐ Memo _____			
Dated: _____ Judge: _____			
JUDGMENT is hereby declared and entered as stated in the Court's Order for Judgment set forth above, and the judgment shall become finally effective on the date specified in the notice of judgment set forth below.			
Dated: _____ Court Administrator/Deputy: _____			
THE PARTIES ARE HEREBY notified that Judgment has been entered as indicated above, but the Judgment is stayed by law until _____ p.m. (to allow time for an appeal/removal if desired). DATE _____ TIME _____			
THE PARTIES ARE FURTHER NOTIFIED that if the cause is removed to district court and the removing party does not prevail as provided in Rule 524 of the Minnesota General Rules of Practice for the District Courts, the opposing party will be awarded \$50 as costs.			
Dated: _____ Court Administrator/Deputy: _____			
I certify that the above is a correct transcript of the Judgment entered by this Court.			
Dated: _____ Court Administrator/Deputy: _____			

Plaintiff
#1Plaintiff
#2Defendant
#1Defendant
#2ORDER FOR
JUDGMENT ON
CLAIM AND
COUNTER-
CLAIM

JUDGMENT

NOTICE OF
JUDGMENTTRANSCRIPT OF
JUDGMENT

UCF-9 (SCAO 6/93) Judgment and Notice of Judgment

FILE # 	
PLAINTIFF 	VS
	DEFENDANT
MEMORANDUM	
Empty space for memorandum content	
DATED: _____	
Judge	
Order Vacating Judgment For Cause Minn. Gen. R. Prac. 520	
Upon cause shown by the ☐ Plaintiff ☐ Defendant, the written judgment is hereby vacated and costs in the amount of \$ _____ is hereby assessed against the ☐ Plaintiff ☐ Defendant as ☐ Absolute/ ☐ Conditional costs.	
DATED: _____	
JUDGE	
Order Vacating Judgment Upon Removal/Appeal Minn. Gen. R. Prac. 521(e)	
Removal/Appeal by the ☐ Plaintiff ☐ Defendant having been perfected, the within judgment is hereby vacated.	
DATED: _____	
JUDGE	

UCF-10 DEFENDANT'S COUNTERCLAIM

UCF-10 (SCAD 6/93) Defendant's Counselors:

Mitt. Gen. R. Pr. 506

State of Minnesota		Conciliation Court	
COUNTY _____	JUDICIAL DISTRICT _____ CASE NO. _____		
NAME AND ADDRESS _____ _____ _____ ZIP _____	Plaintiff #1	NAME AND ADDRESS _____ _____ _____ ZIP _____	
NAME AND ADDRESS _____ _____ _____ ZIP _____	Defendant #1	NAME AND ADDRESS _____ _____ _____ ZIP _____	
Name _____ Title _____ being duly sworn says that: s/he is the above named defendant/defendant's attorney; each plaintiff listed above is at least 18 years old; is not now in the Military Services; and alleges that the plaintiff(s) is (are) indebted to the defendant(s) in the amount of \$ _____ plus \$ _____ filing fee, totaling \$ _____ plus disbursements, by reason of the following FACTS:			
NOTARY STAMP OR COURT SEAL	SUBSCRIBED AND SWORN TO BEFORE ME ON: DATE _____ SIGNATURE _____	THIS ABOVE STATEMENT OF CLAIM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. SIGNATURE _____ TELEPHONE _____	
THE STATE OF MINNESOTA TO THE ABOVE NAMED PLAINTIFF YOU ARE HEREBY SUMMONED to appear at the hearing of the above entitled case at _____ on _____, at _____ o'clock _____ M., on _____ day of _____, A.D. 19_____. Dated: _____ Place: _____ Court Administrator/Deputy: _____			
Failure of defendant to appear at the hearing may result in a default judgment being entered for the plaintiff, and failure of the plaintiff to appear may result in dismissal of the action or a default judgment being entered in favor of the defendant on any counterclaim that has been asserted.			

UCF-22 (8/94B)
Financial Disclosure Form

UCF-22 FINANCIAL DISCLOSURE FORM

M 5 491A.02 subd. 9, 550.011

The purpose of this Financial Disclosure Form is to tell the JUDGMENT CREDITOR what money and property you have which may be used to pay the judgment the creditor obtained against you in the lawsuit. It also allows you to tell the creditor that some or all of your property and money is "exempt," which means that it cannot be taken to pay the judgment. You must answer every question on this form. If you need additional space, continue your answer on the back of the form or attach additional sheets if necessary. If you do not understand the questions or don't know how to fill out the form, call the court administrator for assistance or consult with an attorney.

WARNING: IF YOU CLAIM AN EXEMPTION IN BAD FAITH, OR IF THE JUDGMENT CREDITOR WRONGFULLY OBJECTS TO AN EXEMPTION IN BAD FAITH, THE COURT MAY ORDER THE PERSON WHO ACTED IN BAD FAITH TO PAY COSTS, ACTUAL DAMAGES, ATTORNEY FEES, AND AN EXTRA \$100.

1. JUDGMENT DEBTOR Name		2. ☐ Individual ☐ Partnership ☐ Corporation ☐ Other	
3. Street Address	4. City	5. State	6. Zip
7. Date of Birth	8. If Married, Spouse's Full Name		9. Home Telephone Number ()
10. Employer or Business			11. Work Telephone Number ()
12. Street Address	13. City	14. State	15. Zip
16. What are your total wages, salary, or commissions per pay period? \$		17. How often are you paid? ☐ Daily ☐ Weekly ☐ Twice a month ☐ Monthly ☐ Other	
18. Do you have income from any other source? ☐ Yes ☐ No If yes, give the source and amount of the income:			
19. By answering this question, you will be able to claim the exemptions you have for wages and income. The first exemption is already checked for you, check all others that apply: ☒ I claim that 75% of my disposable (after-tax) earnings or 40 times the federal minimum wage (\$206.40 for 40-hour week, \$190 beginning 10-1-96, \$206 beginning 9-1-97) is exempt (whichever is greater), unless the judgment is for child support. ☐ If the judgment is for child support, I claim that the following percentage of my after tax earnings is exempt: ☐ 50% (I am supporting a spouse and/or dependent child, and the child support judgment is 12 weeks old or less). ☐ 45% (I am supporting a spouse and/or dependent child, and the child support judgment is more than 12 weeks old). ☐ 40% (I am not supporting a spouse and/or dependent child, and the child support judgment is 12 weeks old or less). ☐ 35% (I am not supporting a spouse and/or dependent child, and the child support judgment is more than 12 weeks old). ☐ I am presently receiving or have received relief based on need in the past 6 months so all my wages are exempt. Type of relief you receive ☐ I have been an inmate in a correctional institution within the past 6 months so all my wages are exempt. Name institution and release date ☐ My income is exempt because it is: ☐ Unemployment Comp. ☐ Worker's Comp. ☐ V.A. Benefits ☐ Social Security ☐ Accident or Disability Benefits ☐ Retirement Benefits ☐ Other (specify)			
20. Do you have a checking or savings account? (This includes any account whether you have it by yourself or with someone else, or whether it is in your name or any other name) ☐ Yes ☐ No For each, provide the following information: Name and Address of Bank, Credit Union or Financial Institution Type of Account Account Number			
21. If you claimed an exemption for your wages or income, you may claim an exemption when your money is deposited in a bank. Claim your exemptions by checking the boxes that apply to you: ☐ The money in my account is from exempt wages, income, or benefits. ☐ The money in my account is from the exempt sale of my homestead within the past year. ☐ The money in my account is from exempt life insurance received on the death of a spouse or parent. ☐ The money in my account is from other exempt property (specify)			
22. Do you have any stocks, bonds, securities, certificates of deposit, mutual funds, money market account, etc.? (This includes any whether owned by you alone or with any other person, or whether it is in your name or any other name.) ☐ Yes ☐ No If yes, itemize these and the location of each:			

**TITLE VII—HOUSING COURT RULES—
HENNEPIN AND RAMSEY COUNTIES**

Rule 601. Applicability of Rules

In Hennepin and Ramsey Counties, Rules 601 through 612 apply to all proceedings in Housing Court. These rules and, where not inconsistent, the Minnesota Rules of Civil Procedure, shall apply to housing court practice except where they are in conflict with applicable statutes.

Task Force Comment—1991 Adoption

These rules apply only in Hennepin and Ramsey Counties. Housing Courts created by the legislature exist only in those counties.

These rules were drafted as a joint effort of legal advisory committees for the Ramsey and Hennepin County Housing Courts. Those committees met on a number of occasions, and these rules are the result of significant drafting efforts and compromise. Those drafting committees included the Housing Court Referee, court administrator, judges, and practitioners of landlord and tenant law in each County. The rules are generally drawn from a current local rule, 4th Dist. R. 13 and the Housing Court Temporary Rules, Rule 17.

The Task Force is mindful that Housing Court is currently in existence in only Ramsey and Hennepin Counties, 1989 Minnesota Laws, chapter 328, article 2, sections 17, 18 and 19 (uncodified), and these rules should be reviewed and revised if Housing Courts are used in other districts.

Rule 602. Housing Court Referee

The housing court referee may preside over all actions brought under Minnesota Statutes, Chapter 504B, criminal and civil proceedings related to violations of any health, safety, housing, building, fire prevention or housing maintenance code, escrow of rent proceedings, landlord and tenant damage actions, and actions for rent and rent abatement, unless the matter has been removed for hearing before a judge.

A party may request that a judge hear a case by filing such request in writing with the court administrator at least 1 day prior to the scheduled hearing date.

(Amended effective January 1, 2000.)

Advisory Committee Comment—1999 Amendments

The former chapters 504 and 566 were consolidated into and replaced by a new chapter 504B. This change is not intended to have any substantive effect other than to correct the statutory reference.

(Added effective January 1, 2000.)

Task Force Comment—1991 Adoption

The procedure for removal of a referee assigned in Housing Court is intended to be different, due to the exigencies of practice in that court, from the procedure created by Minn. Gen. R. Prac. 107.

Rule 603. Parties

An unlawful detainer action shall be brought in the name of the owner of the property or other person entitled to possession of the premises. No agent shall sue in the agent's own name. Any agent suing for a principal shall attach a copy of the Power of Authority to the complaint at the time of filing.

No person other than a principal or a duly licensed lawyer shall be allowed to appear in Housing Court unless the Power of Authority is attached to the complaint at

the time of filing, and no person other than a duly licensed lawyer shall be allowed to appear unless the Power of Authority is so attached to the complaint. An agent or lay advocate may appear without a written Power of Authority if the party being so represented is an individual and is also present at the hearing.

Task Force Comment—1991 Adoption

The Task Force expresses no opinion about whether or the extent to which the role of lay advocates constitutes the unauthorized practice of law. See Minnesota Statutes, section 481.01, et seq. (1990).

Rule 604. Complaint

(a) **Contents of Complaint.** The plaintiff in an unlawful detainer case shall file with the court administrator a complaint containing the following:

- (1) A description of the premises including a street address;
- (2) The legal owner of the property or other person entitled to possession of the premises;
- (3) A statement of how plaintiff has complied with Minnesota Statutes, section 504B.181, by written notice to the defendant, by posting or by actual knowledge of the defendant;
- (4) The facts which authorize recovery; and,
- (5) A request for return of possession of the property.

(b) **Signature.** The complaint shall be signed by the plaintiff or the plaintiff's authorized agent or a duly licensed lawyer.

(c) **Termination.** If the complaint contains allegations of holding over after termination of the lease, a copy of the termination notice, if any, must be attached to the complaint or provided to defendant or defendant's counsel at the initial appearance, unless the plaintiff does not possess a copy of the notice or if the defendant at the hearing acknowledges receipt of the notice.

(d) **Breach.** If the complaint contains allegations of breach of the lease or rental agreement, a copy of the lease or rental agreement, if any, must be attached to the complaint or provided to defendant and defendant's counsel at the initial appearance, unless the plaintiff does not possess a copy.

(Amended effective January 1, 2000.)

Advisory Committee Comment—1999 Amendments

The former statute section 504.22 was replaced by a new statute section 504B.181. This change is not intended to have any substantive effect other than to correct the statutory reference.

(Added effective January 1, 2000.)

Rule 605. Return of Summons

All summons shall be served in the manner required by Minnesota Statutes, Chapter 504B, and the affidavit of service shall be filed with the court by 3:00 o'clock p.m. 3 business days prior to the hearing or the matter may be stricken. The affidavit must contain the printed or typed name of the person who served the summons.

(Amended effective January 1, 2000.)

Advisory Committee Comment—1999 Amendments

The former chapter 560 was replaced by a new chapter 504B. This change is not intended to have any substantive effect other than to correct the statutory reference.

(Added effective January 1, 2000.)

Rule 606. Filing of Affidavits

Upon return of the sheriff or other process server indicating that the defendant cannot be found in the county and, in the case of a nonresidential premises, where no person actually occupies the premises described in the complaint, or, in the case the premises described in the complaint is residential, service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 and 10:00 p.m., the plaintiff or plaintiff's lawyer shall:

(1) file an affidavit stating that the defendant cannot be found or on belief that the defendant is not in the state, and

(2) file an affidavit stating that a copy of the summons and complaint has been mailed to the defendant at the defendant's last known address or that such an address is unknown to the plaintiff.

Service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the premises for not less than one week. A separate affidavit shall be filed stating that the summons has been posted and the date and location of the posting.

(Amended effective January 1, 1998.)

Advisory Committee Comment—1999 Amendments

This rule is amended to conform the service requirements to the service provisions of Minnesota Statutes, section 504B.331 (Supp. 1999). The procedure of the revised rule also streamlines the procedure for issuance, service, and filing of process, and should permit service to be accomplished at a lower cost.

(Amended effective January 1, 2000.)

Rule 607. Calendar Call

At the first call of the calendar the parties shall specify whether the case is a default or for trial, and if for trial, whether by court or jury. Proposed Order forms will be available at the hearing. It is the responsibility of the plaintiff to properly complete the proposed order prior to the case being called for hearing. When each case is called for hearing, the defendant shall be asked whether the defendant admits or denies the charges in the complaint. Matters involving unlawful ouster or lockouts, utility shutoffs and other emergency relief, and motions for temporary restraining orders shall be heard first, then default cases shall be heard in their calendar order, followed by contested cases triable to the court without a jury. If a jury trial is demanded, the jury fee must be paid before the jury is impaneled. Contested cases shall be set for trial the same day as the initial hearing, if possible, or set on the first available calendar date.

Rule 608. Withheld Rent

In any unlawful detainer case where a tenant withholds rent in reliance on a defense, the defendant shall deposit forthwith into court an amount in cash, money order or certified check payable to the District Court equal to the rent due as the same accrues or such other amount as determined by the court to be appropriate as security for the plaintiff, given the circumstances of the case.

Rule 609. Restitution

A writ of restitution shall issue within 24 hours after the entry of judgment, excluding Saturdays, Sundays and legal holidays, unless a stay authorized by law is specifically ordered by the court.

Rule 610. Motions

Any motion otherwise allowed by the Minnesota Rules of Civil Procedure may be made by any party orally or in writing at any time including the day of trial. Whenever

possible, oral or written notice of any dispositive motions and the grounds therefore shall be provided by the moving party to all parties prior to the hearing.

All motions shall be heard by the court as soon as practicable. The court may grant a request by any party for time to prepare a response to any motion for good cause shown by the requesting party or by agreement of the parties.

The requirements of service of notice of motions and any time periods set forth in the Minnesota Rules of Civil Procedure do not apply.

Rule 611. Review of Referee's Decision

(a) **Notice.** In all cases except conciliation court actions, a party not in default may seek judge review of a decision or sentence recommended by the referee by serving and filing a notice of review on the form prescribed by the court administrator. The notice must be filed within ten days after an oral announcement in court by the referee of the recommended order or within 13 days after service by mail of the adopted written order, whichever occurs first. Service of the written order shall be deemed complete and effective upon the mailing of a copy of the order to the last known address of the petitioner.

A judge's review of a decision recommended by the referee shall be based upon the record established before the referee. Upon the request of any party, a hearing shall be scheduled before the reviewing judge.

(b) **Stays.** In civil cases, filing and service of a notice of review does not stay entry of judgment nor vacate a judgment if already entered unless the petitioner requests and the referee orders a bond, payment(s) in lieu of a bond, or waiver of bond and payment(s). The decision to set or waive a bond or payment(s) in lieu of bond shall be based upon Minn. R. Civ. App. P. 108, subdivisions 1 & 5. A hearing on a bond or payment(s) in lieu of bond shall be scheduled before the referee, and the referee's order shall remain in effect unless a judge modifies or vacates the order.

In criminal cases, the execution of judgment or sentence shall be stayed pending review by the judge.

(c) **Transcripts.** The petitioner must obtain a transcript from the referee's court reporter. The petitioner must make satisfactory arrangements for payment with the court reporter or arrange for payment in forma pauperis.

Any transcript request by the petitioner must be made within one day of the date the notice of review is filed. The transcript must be provided within five business days after its purchase by the petitioner.

For good cause the reviewing judge may extend any of the time periods described in this Rule 611(c).

Rule 612. Discovery

Because of the summary nature of proceedings in Housing Court, the parties shall cooperate with reasonable informal discovery requests by another party.

Upon the request of any party to a matter scheduled for trial, the presiding referee or judge may issue an order for an expedited discovery schedule.

TITLE VIII - RULES RELATING TO CRIMINAL MATTERS

Rule 701. Applicability of Rules

These rules apply in all criminal actions, and supplement the Minnesota Rules of Criminal Procedure.

Task Force Comment—1991 Adoption

The rules set forth here are derived from existing local rules. In order to further uniformity in practice in criminal proceedings throughout the state, the Task Force reviewed the existing local rules, and combined those rules having potential usefulness in all cases

into a single code. The Task Force then submitted those rules to the Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure. The recommendations of that Advisory Committee have been endorsed and ratified by this Task Force, and these rules incorporate all of the recommendations of the Advisory Committee.

Rule 702. Bail

(a) Approval of Bond Procurers Required. No person shall engage in the business of procuring bail bonds, either cash or surety, for persons under detention until an application is approved by a majority of the judges of the judicial district. The application form shall be obtained from the court administrator. The completed application shall then be filed with the administrator stating the information requested and shall be accompanied by verification that the applicant is licensed as an insurance agent by the Minnesota Department of Commerce. The approval granted under this rule may be revoked or suspended by the chief judge of the judicial district or the chief judge's designee and such revocation or suspension shall apply throughout the State of Minnesota.

(b) Corporate Sureties. Any corporate surety on a bond submitted to the judge shall be one approved by a majority of the judges of the judicial district and authorized to do business in the State of Minnesota.

(c) Surety Insolvency. Whenever a corporate surety becomes insolvent, the local agent shall notify the court in every county in which it has issued or applied to issue bonds, in writing immediately. Within fourteen (14) days after such notice to the court, the agent shall file with the court administrator a security bond to cover outstanding obligations of insolvent surety, which may be reduced automatically as the obligations are reduced. In the absence of such surety or security bond, a summons shall be sent to all principals on the bonds of the surety.

(d) Posting Bonds. Before any person is released on bond, the bond must be approved by a judge after submission to the prosecuting lawyer for approval of form and execution and filed with the court administrator during business hours or thereafter with the custodian of the jail. In cases where bail has been set by the court and the defendant has provided a bail bond with corporate surety, approval by a judge is unnecessary if the bond conforms to Form 702.

(e) Forfeiture of Bonds. Whenever a bail bond is forfeited by a judge, the surety and bondsman shall be notified by the court administrator in writing, and be directed to make payment in accordance with the terms of the bond within ninety (90) days from the date of the order of forfeiture. A copy of the order of forfeiture shall be forwarded with the notice.

(f) Reinstatement. Any motion for reinstatement of a forfeited bond or cash bail shall be supported by a petition and affidavit and shall be filed with the court administrator. A copy of said petition and affidavit shall be served upon the prosecuting attorney and the principal of the bond in the manner required by Minn. R. Civ. P. 4.03(e)(1). A petition for reinstatement filed within ninety (90) days of the date of the order of forfeiture shall be heard and determined by the judge who ordered the forfeiture, or the chief judge. Reinstatement may be ordered on such terms and conditions as the court may require. A petition for reinstatement filed between ninety (90) days and one hundred eighty (180) days from date of forfeiture shall be heard and determined by the judge who ordered forfeiture or the judge's successor and reinstatement may be ordered on such terms and conditions as the court may require, but only with the concurrence of the chief judge and upon the condition that a minimum penalty of not less than ten per cent (10%) of the forfeited bail be imposed. No reinstatement of a forfeited bond or cash bail shall be allowed unless the petition and affidavit are filed within one hundred eighty (180) days from the date of the order of forfeiture.

(g) Forfeited Bail Money. All forfeited bail money shall be deposited in the state treasury in the manner provided by law.

(h) Bonding Privilege Suspension. A failure to make payment on a forfeited bail within ninety (90) days as above provided shall automatically suspend the surety and its

agent from writing further bonds. Such suspension shall apply throughout the State of Minnesota and shall continue for a period of thirty (30) days from the date the principal amount of the bond is deposited in cash with the court administrator.

(Amended effective January 1, 1994; amended effective January 1, 1996; amended effective January 1, 1998.)

Advisory Committee Comment—1997 Amendments

This Rule is derived from 4th Dist. R. 8.02. Pretrial release is governed by Minn. R. Crim. P. 6, and this rule supplements the provisions of that rule. The Task Force believes that specific, written standards relating to the issuance and forfeiture of bail bonds would be useful to practitioners, courts, and to those issuing bonds.

The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure recommended that this local rule be incorporated in the General Rules of Practice for the District Courts for uniform statewide application and the Task Force concurs in that recommendation. The 1997 amendment continues the practice of statewide uniformity, established a uniform bail bond application procedure and making the posting of bonds easier by using a standard form. The rule conforms the rule to the practice in use prior to 1997.

Rule 702(h) was amended in 1993, effective January 1, 1994, to establish statewide suspension of bonding privileges for a surety and a surety's agent in the event of failure to make payment on a forfeited bond. This rule is necessary to ensure that irresponsible sureties not be allowed to move from district to district.

The power to revoke bail bonding privileges must be exercised sparingly. Courts considering this action should give consideration to the appropriate procedure and the giving of notice and an opportunity to be heard if such process is due the bond person. See, e.g., In re Cross, 617 A.2d 97, 100-02 (R.I. 1992) (show cause hearing procedure based on probable cause, with clearly defined burden of proof, not inherently unconstitutional); American Druggists Ins. Co. v. Bogart, 707 F.2d 1229, 1234-36 (11th Cir. 1983) (corporate surety authorized by Secretary of Treasury has right under U.S. Constitution to present bonds to court for approval).

(Amended effective January 1, 1994; amended effective January 1, 1996; amended effective January 1, 1998.)

Rule 703. Certificates of Representation

In any criminal case, a lawyer representing a client, other than a public defender, shall file with the court administrator on the first appearance a "certificate of representation," in such form and substance as a majority of judges in the district specifies.

Once a lawyer has filed a certificate of representation, that lawyer cannot withdraw from the case until all proceedings have been completed, except upon written order of the court pursuant to a written motion, or upon written substitution of counsel approved by the court ex parte.

A lawyer who wishes to withdraw from a criminal case must file a written motion and serve it by mail or personal service upon the client and upon the prosecutor; and the lawyer shall have the matter heard by the court. No motion of withdrawal will be heard within ten days of a date certain for hearing or trial.

If the court approves the withdrawal, it shall be effective when the order has been served on the client and the prosecutor by mail or personal service and due proof of such service has been filed with the court administrator.

Task Force Comment—1991 Adoption

This rule is derived from 4th Dist. R. 8.05.

The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure recommended that this local rule be incorporated in the General Rules of Practice for the District Courts for uniform statewide application and the Task Force concurs in that recommendation.

Rule 704. Timely Appearances

Once the nonfelony arraignment court calendar has convened, no lawyer shall approach the courtroom clerk or the court. Any lawyer appearing late must notify the bailiff in the courtroom of his or her presence. The bailiff will then transmit the information to the court and the case will be called by instruction of the presiding judge.

Task Force Comment—1991 Adoption

This rule is derived from 4th Dist. R. 8.06.

The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure recommended that this local rule be incorporated in the General Rules of Practice for the District Courts for uniform statewide application and the Task Force concurs in that recommendation.

Rule 705. Complaints and Warrants—Submission to Second Judge

A complaint or search warrant application which is found by a judge to be defective or otherwise insufficient shall not be submitted to another judge without a full and complete disclosure of such finding to the second judge.

Task Force Comment—1991 Adoption

This rule is derived from 4th Dist. R. 8.10.

The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure recommended that this local rule be incorporated in the General Rules of Practice for the District Courts for uniform statewide application and the Task Force concurs in that recommendation.

Rule 706. Custody of Exhibits

Exhibits marked in criminal cases shall be kept by the court administrator until the time for appeal has expired or any appeal has been decided, unless surrender of the exhibits is ordered by the judge before whom the case was tried or the chief judge of the district.

Task Force Comment—1991 Adoption

This rule is derived from 4th Dist. R. 6.03.

The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure recommended that this local rule be incorporated in the General Rules of Practice for the District Courts for uniform statewide application and the Task Force concurs in that recommendation.

APPENDIX OF FORMS

FORM 702 - BAIL BOND FOR APPEARANCE ONLY
 Filed in _____ County District Court

STATE OF MINNESOTA, *PLAINTIFF*v. _____, *DEFENDANT*

COURT FILE NO. _____

Bond Amount: _____ (\$ _____)

Charges: _____

(Include any amendments or lesser included charges.)

BOND OBLIGATION AND CONDITIONS

The Defendant, as Principal, and _____ as Surety, hereby agree and acknowledge that they are indebted to pay to the District Court the Bond Amount if Defendant fails to personally appear in Court at such times and on such dates as specified by the Court to answer the charge(s) identified in this Bond, including any amendments of these charges or lesser included charges.

Provided, however, the obligation of the Surety becomes null and void upon the happening of any of the following events:

1. The dismissal of the charge(s) identified in this Bond.
2. The finding or verdict that Defendant is not guilty of the charges identified in this Bond.
3. The sentencing of Defendant (whether imposed or stayed) with respect to the charge(s) identified in this Bond.

This is an appearance bond only and does not guaranty compliance with conditional release requirements imposed upon the Defendant by the Court and shall not be used for payment of any fines, surcharges, costs, or other financial obligation imposed upon the Defendant by the Court.

By: _____
 Attorney in Fact for Surety Defendant, Principal

ACKNOWLEDGMENT OF PRINCIPAL

State of Minnesota)
) ss.
 County of _____)

This instrument was acknowledged before me on _____ (date) by
 _____ (name(s) of person(s)).

 Notary Public

ACKNOWLEDGMENT OF SURETY

State of Minnesota)
) ss.
County of _____)

This instrument was acknowledged before me on _____ (date) by
_____ (name(s) or person(s)) as
_____ (type of authority or office) of
_____, Surety.

Notary Public

TO BE COMPLETED BY COURT ADMINISTRATION

Filed this _____ day of _____
By: _____, Deputy Court Administrator

TITLE IX—JURY MANAGEMENT RULES

Rule 801. General Policy

Persons shall be selected randomly for jury service, from the broadest possible cross section of people in the area served by the court. All qualified persons have an obligation to serve as jurors when summoned, and all should be considered for jury service.

Task Force Comment—1991 Adoption

These Jury Management Rules have already been adopted by the Minnesota Supreme Court. See Order Promulgating Jury Management Rules, No. C5-85-837 (Minn. Sup. Ct. June 14, 1990). The Task Force recommends that they be included as part of the General Rules of Practice for the District Courts.

Rule 802. Definitions

(a) "Court" means a district court of this state, and includes, when the context requires, any judge of the court.

(b) "Court administrator," "judicial district administrator," and "jury commissioner" include any deputy of the court designated to perform the functions listed in these rules.

(c) "Source list" means the voter registration list for the jurisdiction served by the court, which may be supplemented with names from other sources as set out in the jury administration plan.

(d) "Voter registration list" means the official record of persons registered to vote.

(e) "Drivers' license list" means the record, maintained by the department of public safety, of persons over 18 years old licensed to drive a motor vehicle or issued a state identification card.

(f) "Master list" means a list of names and addresses, or identifying numbers of prospective jurors, randomly selected from the source list.

(g) "Juror" means a person summoned for service who either is deferred to a specific future date, attends court for the purpose of serving on a jury, or is on call and available to report to court when requested.

(h) "Random selection" means the selection of names in a manner totally immune to the purposeful or inadvertent introduction of subjective bias and such that no recognizable class of the population from which names are being selected can be purposely included or excluded.

(i) "Petit jury" means a body of six persons, impaneled and sworn in any court to try and determine, by verdict, any question or issue of fact in a civil or criminal action or proceeding, according to law and the evidence as given them in court. In a criminal action where the offense charged is a felony, a petit jury is a body of 12 persons, unless a different size is established in accordance with the Minnesota Rules of Criminal Procedure.

(Amended effective January 1, 1994.)

Advisory Committee Comment—1994 Amendments

Rule 802(i) is amended effective January 1, 1994, to make it clear that the definition of petit jury is not intended to change in any way the mechanism for agreeing to a different sized jury in criminal cases as established in the Minnesota Rules of Criminal Procedure. This change is intended to obviate any confusion over this rule, and to eliminate the type of dispute that arose in a case brought to the Minnesota Court of Appeals. See State v. McKenzie, No. C7-93-1890 (Minn. Ct. App., Sept. 23, 1993) (Unpublished Order Opinion).

(Added effective January 1, 1994.)

Rule 803. Jury Commissioner

(a) A jury commissioner is established in each county to administer the jury system under the supervision and control of the chief judge of the judicial district. The jury commissioner shall be the judicial district administrator or designee. If another person is designated jury commissioner, the other person shall be responsible to the judicial district administrator in the performance of the jury commissioner's tasks.

(b) The jury commissioner shall collect and analyze information regarding the performance of the jury system on a regular basis in order to evaluate:

- (1) the representativeness and inclusiveness of the jury source list;
- (2) the effectiveness of qualification and summoning procedures;
- (3) the responsiveness of individual citizens to jury duty summonses;
- (4) the efficient use of jurors; and
- (5) the cost effectiveness of the jury system.

(c) The jury commissioner should seek to secure adequate and suitable facilities for juror use in each court facility in which jury trials are held.

Rule 804. Jury Administration Plan

(a) Each jury commissioner shall develop and place into operation a written plan for the administration of the jury system. The plan shall be designed to further the policies of these rules.

(b) Each plan must

- (1) describe the jury system;
- (2) give a detailed description of the random selection procedures to be used in all phases of juror selection, in accordance with Rule 805;
- (3) identify the lists of names, if any, which shall be used to supplement the source list, and describe the storage media by which the lists shall be maintained;
- (4) indicate if a master list is to be used, and set the minimum number of names which can be used;
- (5) list the conditions which will justify excusing a juror, as well as those which justify deferral;
- (6) describe the juror qualification questionnaire, which will be used to gather information to determine if a prospective juror is qualified;
- (7) contain policies and procedures for enforcing a summons and for monitoring failures to respond;
- (8) describe juror orientation and instruction for jurors upon initial contact prior to service; upon first appearance at the courthouse; upon reporting to a courtroom for voir dire; following empanelment; during the trial; prior to deliberations; and after the verdict has been rendered or when a proceeding is terminated without a verdict.

Rule 805. Random Selection Procedures

(a) Random selection procedures shall be used throughout the juror selection process. Any method may be used, manual or automated, that provides each eligible and available person with an equal probability of selection.

(b) Random selection procedures shall be employed in

- (1) selecting persons to be summoned for jury service;
- (2) assigning prospective jurors to panels; and
- (3) calling prospective jurors for voir dire.

(c) Departures from the principle of random selection are appropriate

- (1) to exclude persons ineligible for service in accordance with Rule 808;

- (2) to excuse or defer prospective jurors in accordance with Rule 810;
- (3) to remove prospective jurors for cause or if challenged peremptorily in accordance with applicable rules of procedure;
- (4) to equalize service among all prospective jurors in accordance with Rule 812.

Rule 806. Jury Source List

(a) The jury commissioner for each county shall be responsible for compiling and maintaining copies of all lists to be used in the random selection of prospective jurors. These lists shall be compiled when the court finds it necessary. No names shall be placed on the source list, master list, grand jury list, or petit jury venire except as provided by the applicable jury administration plan, or these rules.

(b) The voter registration and drivers' license list for the county must serve as the source list. The source list may be supplemented with names from other lists specified in the jury administration plan. Whoever has custody, possession, or control of the lists used in compiling the source list shall provide them to the jury commissioner, upon request and for a reasonable fee, at any reasonable time. All lists shall contain the name and address of each person on the list.

(c) The source list must be used for the random selection of names or identifying numbers of prospective jurors to whom qualification questionnaires and summonses for service must be sent.

(d) When the source list is so large that its use for selecting prospective jurors and mailing out summonses and questionnaires is unreasonably cumbersome, burdensome, and noneconomical, a second list may be created. This master list shall be randomly drawn from the source list.

(e) The jury commissioner shall review the jury source list once every four years for its representativeness and inclusiveness of the adult population in the county and report the results to the chief judge of the judicial district.

(f) If the chief judge, or designee, determines that improvement is needed in the representativeness or inclusiveness of the jury source list, appropriate corrective action shall be ordered.

(Amended effective January 1, 1994.)

Advisory Committee Comment—1994 Amendments

Rule 806 is amended to incorporate a change made in jury source list creation that predated the adoption of the Minnesota General Rules of Practice but which was not incorporated in the final draft of the rules. This change is not intended to change the existing practice in creation of jury source lists.

(Added effective January 1, 1994.)

Rule 807. Jury Questionnaire and Summons. One-Step Process

(a) The jury commissioner shall mail to every prospective juror whose name has been drawn a juror qualification questionnaire and summons for service, along with instructions to fill out and return the questionnaire by mail within ten days of receipt.

(b) The notice summoning a person to jury service and the questionnaire eliciting essential information regarding that person shall be:

- (1) combined in a single mailing;
- (2) phrased so as to be readily understood by an individual unfamiliar with the legal and jury systems; and
- (3) delivered by first class mail.

(c) A summons shall clearly explain how and when the recipient must respond and the consequences of a failure to respond.

(d) The questionnaire shall be phrased and organized so as to facilitate quick and accurate screening, and should request only that information essential for:

- (1) determining whether a person meets the criteria for eligibility;
- (2) determining whether there exists a mental or physical disability which would prevent the person from rendering satisfactory jury service;
- (3) providing basic background information including age, race, gender, occupation, educational level, address, marital status, prior jury service within the past four years, occupation of spouse, and the age(s) of any children; and
- (4) efficiently managing the jury system.

(e) The jury commissioner shall make a list of the persons to whom the summons and questionnaire have been sent, but neither the names nor the list shall be disclosed except as provided in these rules.

Rule 808. Qualifications for Jury Service

(a) The jury commissioner shall determine on the basis of information provided on the juror qualification questionnaire, supplemented if necessary, whether the prospective juror is qualified for jury service. This determination shall be entered on the questionnaire or other record designated by the court.

(b) To be qualified to serve as a juror, the prospective juror must be:

- (1) A citizen of the United States.
- (2) At least 18 years old.
- (3) A resident of the county.
- (4) Able to communicate in the English language.

(5) Be physically and mentally capable of rendering satisfactory jury service. A person claiming disability may be required to submit a physician's certificate as to the disability, and the Judge may inquire of the certifying physician. A prospective qualified juror who is 70 years of age or older, who requests to be excused from jury service shall be automatically excused from service without having to submit evidence of an inability to serve.

(6) A person who has had their civil rights restored if they have been convicted of a felony.

(7) A person who has not served as a state or federal grand or petit juror in the past four years.

(c) A judge, serving in the judicial branch of the government, is disqualified from jury service.

Rule 809. Discrimination Prohibited

A citizen shall not be excluded from jury service in this state on account of race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance, disability, age, occupation, physical or sensory disability, or economic status.

(Amended effective January 1, 1994.)

Advisory Committee Comment—1994 Amendments

This rule is amended to add "physical or sensory disability" as types of discrimination specifically prohibited by the rule. This amendment is made to conform the rule to the legislative mandate against discrimination on these bases adopted by the legislature in 1992 and at Minnesota Statutes, section 593.32, subdivision 1.

(Added effective January 1, 1994.)

Rule 810. Excuses and Deferrals

(a) All automatic excuses or disqualifications from jury service are eliminated except as provided in Rule 808.

(b) Eligible persons who are summoned may be excused from jury service only if:

(1) their ability to receive and evaluate information is too impaired that they are unable to perform their duties as jurors and they are excused for this reason by a jury commissioner or a judge;

(2) they request to be excused because their service would be a continuing hardship to them or to members of the public and they are excused for this reason by the jury commissioner.

(c) Upon request from a qualified prospective juror, the jury commissioner shall determine whether the prospective juror meets the conditions for deferral set out in the jury administration plan. The deferral shall be for a reasonable time, after which the prospective juror shall be available for jury service, in accordance with the court's direction. Deferral of jury service is encouraged as an alternative to excuse from service.

(d) The reason for the excuse or deferral of any prospective juror must be entered in the jury commissioner's records.

(e) A member, officer, or employee of the legislature is excused from jury service while the legislature is in session.

(f) A candidate who has filed an affidavit of candidacy for elected office under Minnesota Laws, chapter 103C, 122, 204B, 204D, 205, 205A, or 447 is deferred from jury service from the date of filing the affidavit until the day after the election for that office, if the person requests to be deferred for this reason.

Rule 811. Term of Jury Service

The time that persons are called upon to perform jury service and be available for jury service is the shortest period consistent with the needs of justice.

(a) In counties with a population of 100,000 or more, a term of service must not exceed two weeks or the completion of one trial, whichever is longer.

(b) In counties with a population of less than 100,000 but more than 50,000, a term of service must not exceed two months. However, no person is required to continue to serve after the person has reported to the courthouse for ten days or after the completion of the trial on which the juror is sitting, whichever is longer.

(c) In counties with a population of less than 50,001 a term of service must not exceed four months. However, no person is required to continue to serve after the person has reported to the courthouse for ten days or after the completion of the trial on which the juror is sitting, whichever is longer.

(d) Chief judges and judicial district administrators shall review the frequency of juror use in each county in determining the shortest period of jury service that will enable the greatest number of citizens to have the opportunity to report to the courthouse and participate in the jury system. All courts shall adopt the shortest period of jury service that is practical.

Rule 812. Juror Use

(a) Courts shall employ the services of prospective jurors so as to achieve optimum use with minimum inconvenience to jurors.

(b) Courts shall determine the minimally sufficient number of jurors needed to accommodate trial activity; this information and appropriate management techniques shall be used to adjust both the number of individuals summoned for jury duty and the number assigned to jury panels.

(c) Courts may employ procedures to ensure that each prospective juror who has reported to the courthouse is assigned to a courtroom for voir dire each day before any prospective juror is assigned a second time that day.

Rule 813. Challenging Compliance with Selection Procedure

(a) A party may move to stay the proceedings, quash the indictment or for other appropriate relief, on the ground that these rules have not been complied with. Such motion should be made within seven days after the moving party discovers or should have discovered the grounds for the motion, and in any event before the petit jury is sworn to try the case.

(b) If a motion filed under (a) contains a sworn statement of facts which, if true, constitute a substantial failure to comply with these rules, the moving party is entitled to present the testimony of the jury commissioner, any relevant records and papers even if not public or otherwise available, and any other relevant evidence in support of the motion. If the court determines that there has been a substantial failure to comply with these rules in the selection of either a grand jury or a petit jury, the court shall stay the proceedings while a jury is selected in conformity with these rules.

(c) The procedures prescribed by this Rule are the exclusive means by which a party may challenge a jury on the grounds that the jury was not selected in conformity to these rules.

Rule 814. Records

(a) The names of qualified prospective jurors drawn and the contents of juror qualification questionnaires completed by those prospective jurors must be made available to the public upon specific request to the court, supported by affidavit setting forth the reasons for the request, unless the court determines in any instance that in the interest of justice this information should be kept confidential or its use limited in whole or in part.

(b) The contents of juror qualification questionnaires must be made available to lawyers upon request in advance of voir dire. The court may restrict access to addresses of the prospective jurors.

(c) The jury commissioner shall make sure that all records and lists are preserved for the length of time ordered by the court. The contents of any records or lists not made public shall not be disclosed until one year has elapsed since preparation of the list and all persons selected to serve have been discharged, unless a motion is brought under Rule 813.

TITLE X - RULES OF GUARDIAN AD LITEM PROCEDURE

Effective January 1, 1999

RULE 901. PURPOSE STATEMENT; IMPLEMENTATION**Rule 901.01 Purpose of Rules**

The purpose of Rules 902 to 913 is to provide standards governing the qualifications, recruitment, screening, training, selection, appointment, supervision, evaluation, responsibilities, and removal of guardians ad litem appointed to advocate for the best interests of the child in family and juvenile court cases. For purposes of Rules 902 to 913:

(a) The phrase "family court" case refers to the types of proceedings set forth in the Comment to Rule 301 of these rules, including, but not limited to, marriage dissolution, legal separation, and annulment proceedings; child custody enforcement proceedings; domestic abuse and harassment proceedings; support enforcement proceedings; contempt actions in family court; parentage determination proceedings; and other proceedings that may be heard or treated as family court matters.

(b) The phrase "juvenile court" case refers to the child protection matters set forth in Rule 37.01 of the Minnesota Rules of Juvenile Procedure, including all child in need of protection or services, neglected and in foster care, termination of parental rights, review of out of home placement matters, and other matters that may be heard or treated as child protection matters, including, but not limited to, suspension of parental

rights proceedings, guardianship proceedings, and adoption proceedings occurring as part of a permanency plan. The phrase “juvenile court” case also refers to the juvenile delinquency proceedings set forth in Rule 1.01 of the Minnesota Rules of Juvenile Procedure.

(Amended effective January 1, 1999.)

Rule 901.02 Implementation

Rules 901 to 913 shall be implemented in each judicial district on or before the date for implementation prescribed by the Supreme Court in its order adopting Rules 901 to 913. The chief judge of the judicial district shall be responsible for insuring the implementation of Rules 901 to 913. The responsibilities set forth in Rules 903 to 907 shall be carried out in each judicial district at the direction of one or more program coordinators to be designated by the chief judge of the judicial district. The chief judge may establish a panel to assist in the selection of the program coordinator(s). The designation of a program coordinator may be terminated by the judges of the judicial district.

A program coordinator may be an individual, other than a judge or referee serving in the judicial district, or an organization. To be eligible to serve as a program coordinator, an individual or, if an organization, the person directly responsible for its operation, must have management experience, must complete the program coordinator orientation, and must satisfy the minimum qualifications set forth in Rule 902, clauses (c), (d), (g), and (h). An individual or organization may serve in more than one county in a judicial district. A program coordinator may delegate the responsibilities set forth in Rules 903 and 904 to a person who has not completed the training requirements set forth in Rule 910, provided that if the person is not under the direct supervision of the program coordinator, the person to whom the responsibilities are delegated has completed the program coordinator orientation and the delegation must be approved by the chief judge of the judicial district. A person who has concerns regarding the performance of a program coordinator may submit those concerns in writing to the chief judge of the district. The chief judge, or chief judge’s designee, shall take whatever action, if any, the chief judge determines to be appropriate.

(Amended effective January 1, 1999.)

Advisory Task Force Comments

Rule 901.02 is designed to allow judicial districts flexibility in the implementation of Rules 902 to 913. Both single-county and multi-county judicial districts have used a variety of guardian ad litem programs within a district. Rule 901.02 allows that practice to continue. For example, the chief judge of a single-county judicial district could designate one or more individuals or organizations to act in the capacity of program coordinator. Likewise, the chief judge of a multi-county judicial district could designate one individual or organization to act in the capacity of program coordinator for all counties in the judicial district or could designate more than one individual or organization to act in that capacity for one or more of the counties in the district. A program coordinator could be a district court or county court administrator or a member of an administrator’s staff, or could be an organization providing guardian ad litem services. Likewise, a program coordinator could delegate the responsibilities set forth in Rules 3 and 4 to a member of the program coordinator’s staff or, for example, to the director of court services if the delegation is approved by the chief judge of the judicial district.

RULE 902. MINIMUM QUALIFICATIONS

Before a person may be recommended for service as a guardian ad litem pursuant to Rule 904, the person must satisfy the following minimum qualifications:

- (a) have an abiding interest in children and their rights and needs;

(b) have sufficient listening, speaking, and writing skills in the person's primary language to successfully conduct interviews, prepare written reports, and make oral presentations;

(c) not have been involved in any conduct or activity that would interfere with the person's ability to discharge the duties assigned by the court;

(d) have knowledge and an appreciation of the ethnic, cultural, and socio-economic backgrounds of the population to be served;

(e) be available for at least 18 months and have sufficient time, including evenings and weekends, to gather information, make court appearances, and otherwise discharge the duties assigned by the court;

(f) have the ability to (1) relate to a child, family members, and professionals in a careful and confidential manner; (2) exercise sound judgment and good common sense; and (3) successfully discharge the duties assigned by the court;

(g) not have been removed from a panel of approved guardians ad litem following an unsatisfactory performance evaluation pursuant to Rule 906.03; and

(h) have satisfactorily completed the pre-service training requirements set forth in Rule 910, and demonstrated a comprehension of the responsibilities of guardians ad litem as set forth in Rule 908.01.

(Amended effective January 1, 1999.)

RULE 903. SELECTION OF GUARDIANS AD LITEM

Rule 903.01 Recruitment

The recruitment of persons to apply to be guardians ad litem shall be announced to the general public. Public announcements shall be made by, or under the direction of, the program coordinator. Every public announcement shall contain an equal opportunity statement, and a reasonable, good faith effort shall be made to solicit applications from individuals whose gender and ethnic, racial, cultural, and socio-economic backgrounds reflect the diversity of the population the applicant is expected to serve. Announcements shall be provided to tribal social service agencies and to public agencies and private organizations serving ethnic and cultural communities, and shall be placed in publications directed to ethnic and cultural communities in the county or counties to be served.

(Amended effective January 1, 1999.)

Rule 903.02 Application Process

Any person who desires to become a guardian ad litem shall be required to submit a completed written application. The application shall address the minimum qualifications set forth in Rule 902 and may be translated into other languages to accommodate applicants whose primary language is not English. Every completed application must be accompanied by a signed release of information authorization sufficient to enable the program coordinator to independently verify the facts set forth in the application and freely check into the applicant's background and qualifications.

(Amended effective January 1, 1999.)

Rule 903.03 Screening Process

Before an applicant is approved by the program coordinator for inclusion on a panel of guardians ad litem maintained pursuant to subsection .04 of this rule,

(a) the written application shall be reviewed,

(b) the applicant shall be interviewed,

(c) the applicant's references shall be contacted, and

(d) a criminal history and personal background check shall be completed.

(Amended effective January 1, 1999.)

Rule 903.04 Panel of Approved Guardians Ad Litem

Each program coordinator shall maintain a current panel of approved guardians ad litem. To be included on the panel, a guardian ad litem shall satisfy the minimum qualifications set forth in Rule 902.

(Amended effective January 1, 1999.)

RULE 904. APPOINTMENT OF GUARDIAN AD LITEM**Rule 904.01 Request by Court; Recommendation of Guardian Ad Litem for Appointment**

Except as provided in subsection .02 of this rule, when the court determines that the appointment of a guardian ad litem is appropriate in a particular case, the court shall request that the program coordinator recommend a guardian ad litem for appointment. In cases where the appointment of a guardian ad litem is statutorily mandated, the request shall be made at the earliest practicable time. Upon receipt of a request, the program coordinator shall promptly recommend a guardian ad litem to the court, applying the factors set forth in subsection .03 of this rule. Unless the court determines, in the exercise of judicial discretion and applying the factors set forth in subsection .03 of this rule, that the guardian ad litem recommended is not appropriate for appointment, and communicates the reasons for that determination to the program coordinator, the court shall enter a written order pursuant to subsection .04 of this rule appointing the guardian ad litem recommended. If the court communicates a determination to not appoint the guardian ad litem recommended, the program coordinator shall promptly recommend another guardian ad litem for appointment.

(Amended effective January 1, 1999.)

Rule 904.02 Direct Selection by Court

When the court determines that an emergency exists which requires the appointment of a guardian ad litem with such immediacy that completion of the process set forth in subsection .01 of this rule is not practical, the court may select a guardian ad litem for appointment, applying the factors set forth in subsection .03 of this rule. The court shall enter an order pursuant to subsection .04 of this rule appointing the guardian ad litem.

(Amended effective January 1, 1999.)

Rule 904.03 Factors to be Considered in Selection

All pertinent factors shall be considered in the identification and selection of the guardian ad litem to be appointed, including the age, gender, race, cultural heritage, and needs of the child; the cultural heritage, understanding of ethnic and cultural differences, background, and expertise of each available guardian ad litem, as those factors relate to the needs of the child; the caseload of each available guardian ad litem; and such other circumstances as may reasonably bear upon the matter. In every case, the goal is the prompt appointment of an independent guardian ad litem to advocate for the best interests of the child. To be appointed pursuant to subsection .04 of this rule, a guardian ad litem must meet the minimum qualifications set forth in Rule 902, must have no conflict of interest regarding the case, and must be listed on a panel of approved guardians ad litem maintained pursuant to Rule 903.04. The parties to a case may recommend that a particular guardian ad litem be appointed, but may not, by agreement, select, or preclude the selection of a particular guardian ad litem for appointment. No person shall be appointed as a guardian ad litem in any case governed by the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act unless that person demonstrates knowledge and an appreciation of the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(Amended effective January 1, 1999.)

Rule 904.04 Appointment Order; Specification of Duties

A guardian ad litem shall not be appointed or serve except upon written order of the court. The order shall set forth the role of a guardian ad litem; the specific duties to be performed by the guardian ad litem in the case; establish, to the extent appropriate, deadlines for the completion of the duties set forth; and the duration of the appointment.

(Amended effective January 1, 1999.)

RULE 905. OATH OR AFFIRMATION

Prior to performing the responsibilities of a guardian ad litem, the guardian ad litem shall take an oath or make an affirmation. At the discretion of the program coordinator, the oath may be taken or the affirmation made at the time the guardian ad litem is included on a panel of approved guardians ad litem maintained pursuant to Rule 903.04, or at the time the guardian ad litem is appointed to a particular case pursuant to Rule 904.04, or at both times.

(Amended effective January 1, 1999.)

RULE 906. SUPERVISION AND EVALUATION OF GUARDIANS AD LITEM; REMOVAL FROM PANEL**Rule 906.01 Support, Advice, and Supervision**

The program coordinator shall be responsible to provide support, advice, and supervision to guardians ad litem serving in the county.

(Amended effective January 1, 1999.)

Rule 906.02 Performance Evaluation

The program coordinator(s) shall provide for the periodic evaluation of the performance of guardians ad litem serving in the judicial district. The evaluation shall be objective in nature and shall include a review of the cases assigned to the guardian ad litem; a review of the guardian ad litem's compliance with the continuing education requirements set forth in Rule 911; inquiries to judges presiding over cases in which the guardian ad litem was appointed; a review of complaints filed against the guardian ad litem, if any; follow-up checks pursuant to Rule 902(c), if warranted; and such other information as may have come to the attention of the program coordinator. The evaluation shall be undertaken, at least in part, by means of a written performance evaluation instrument. A written record of the completed evaluation shall be maintained in the guardian ad litem's personnel file. The performance of each guardian ad litem shall be evaluated once during the first six months after the guardian ad litem is first appointed as a guardian ad litem and, thereafter, at least annually.

(Amended effective January 1, 1999.)

Rule 906.03 Removal From Panel

On the basis of the performance evaluation, the program coordinator shall determine whether to retain the guardian ad litem on the panel of approved guardians ad litem maintained pursuant to Rule 903.04. A guardian ad litem removed from a panel of approved guardians ad litem following an unsatisfactory performance evaluation shall not be eligible for service as a guardian ad litem in any judicial district. When a guardian ad litem is removed from a panel of approved guardians ad litem following an unsatisfactory performance evaluation, notice of the removal shall be given by the program coordinator to the State Court Administrator. The State Court Administrator shall maintain a list of guardians ad litem removed from panels of approved guardians ad litem following unsatisfactory performance evaluations. A guardian ad litem who has

been removed from the panel of approved guardians ad litem following an unsatisfactory performance evaluation may submit in writing to the chief judge a request that the chief judge review the decision of the program coordinator.

(Amended effective January 1, 1999.)

Advisory Task Force Comments

A guardian ad litem may receive an unsatisfactory performance evaluation and be removed from the panel of guardians ad litem for failure to comply with a directive of the court, including the provisions of the order appointing the guardian ad litem; failure to comply with the responsibilities set forth in Rule 908.01; or for any other reason deemed appropriate by the program coordinator.

In appropriate cases, as an alternative to removal from the panel of guardians ad litem following an unsatisfactory performance evaluation, the program coordinator may place the guardian ad litem on probation, require the guardian ad litem to complete a mentorship, require the guardian ad litem to attend additional training, or take other action deemed appropriate by the program coordinator under the circumstances.

RULE 907. COMPLAINT PROCEDURE; REMOVAL OF GUARDIAN AD LITEM FROM PARTICULAR CASE

Rule 907.01 Complaint Procedure

A person who has concerns regarding the performance of a guardian ad litem may present those concerns to the program coordinator. Upon receipt of a signed, written complaint regarding the performance of a guardian ad litem, the program coordinator shall promptly conduct an investigation into the merits of the complaint. In conducting the investigation, the program coordinator shall seek information from the person making the complaint and the guardian ad litem, and may seek information from any other source deemed appropriate by the program coordinator. Upon completion of the investigation, the program coordinator shall take whatever action the program coordinator determines to be appropriate, and shall prepare a written report describing the nature of the complaint, the nature and extent of the investigation conducted, and the action taken. A copy of the report shall be provided to the person making the complaint and to the guardian ad litem and, upon request, the complaint, report, or other information shall be made available as permitted by the applicable statutes or rules governing the disclosure of information. If the complaint is found to be meritorious, a copy of the investigation report shall be submitted to the appointing judge. A person receiving the report may request that the chief judge review the decision or action(s) taken by the program coordinator. Unless authorized by written order following an *in camera* review by the court, neither the report nor the subject matter of the report shall be introduced as evidence or used in any manner in any case in which the guardian ad litem is serving, has served, or may serve in the future.

(Amended effective January 1, 1999.)

Rule 907.02 Removal of Guardian Ad Litem From Particular Case

A guardian ad litem appointed to serve in a particular case may be removed from the case only by order of the presiding judge. A party who wishes to seek the removal of a guardian ad litem for cause must proceed by written motion before the judge presiding over the case. A motion to remove a guardian ad litem for cause shall be served upon the parties and the guardian ad litem and filed and supported in compliance with the applicable rules of court. At the time the motion is served, a copy of the motion and all supporting documents shall be provided to the program coordinator by the party making the motion. A guardian ad litem who has been removed from a particular case may submit in writing to the chief judge a request that the chief judge review the decision of the presiding judge.

(Amended effective January 1, 1999.)

Advisory Task Force Comments

As the result of an investigation regarding a complaint, the program coordinator may reprimand or counsel the guardian ad litem, place the guardian ad litem on probation, require the guardian ad litem to complete a mentorship, require the guardian ad litem to attend additional training, remove the guardian ad litem from the panel of approved guardians ad litem, or take other steps deemed appropriate under the circumstances.

A guardian ad litem may be removed from a particular case by the presiding judge for failure to comply with a directive of the court, including the provisions of the order appointing the guardian ad litem; failure to comply with the responsibilities set forth in Rule 908.01; or for any other reason deemed appropriate by the presiding judge.

As an alternative to removal from a specific case, the presiding judge may reprimand the guardian ad litem, place the guardian ad litem on probation, require the guardian ad litem to complete a mentorship, require the guardian ad litem to attend additional training, remove the guardian ad litem from the panel of approved guardians ad litem, or direct other action deemed appropriate under the circumstances.

RULE 908. GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM; OTHER ROLES DISTINGUISHED; CONTACT WITH COURT.**Rule 908.01 General Responsibilities of Guardians Ad Litem**

Consistent with the responsibilities set forth in Minnesota Statutes section 260.155, subdivision 4(b), and section 518.165, subdivision 2a, other applicable statutes and rules of court, and the appointment order entered pursuant to Rule 904.04, in every family court and juvenile court case in which a guardian ad litem is appointed, the guardian ad litem shall perform the responsibilities set forth in clauses (a) to (n).

(a) The guardian ad litem shall advocate for the best interests of the child.

(b) The guardian ad litem shall exercise independent judgment, gather information, participate as appropriate in negotiations, and monitor the case, which activities must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case.

(c) The guardian ad litem shall, as appropriate to the case, make written and/or oral reports to the court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based.

(d) The guardian ad litem shall complete work in a timely manner, and advocate for timely court reviews and judicial intervention, if necessary.

(e) The guardian ad litem shall be knowledgeable about community resources for placement, treatment, and other necessary services.

(f) The guardian ad litem shall maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child.

(g) The guardian ad litem shall, during service as a guardian ad litem, keep all records, notes, or other information confidential and in safe storage. At the conclusion of service, the guardian ad litem shall keep or destroy the notes and records in accordance with the requirements of the guardian ad litem program.

(h) The guardian ad litem shall complete continuing education requirements, and seek advice as necessary from the program coordinator or, if the program coordinator is not available, from another guardian ad litem.

(i) The guardian ad litem shall treat all individuals with dignity and respect while carrying out her or his responsibilities.

(j) The guardian ad litem shall be knowledgeable about and appreciative of the child's religious background and racial or ethnic heritage, and sensitive to the issues of cultural and socio-economic diversity, and in all cases governed by the Indian Child Welfare Act or the Minnesota Indian Family Heritage Preservation Act shall apply the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(k) The guardian ad litem shall use the guardian ad litem appointment and authority appropriately to advocate for the best interests of the child, avoid any impropriety or appearance of impropriety, and not use the position for personal gain.

(l) The guardian ad litem shall comply with all state and federal laws regarding the reporting of child abuse and/or neglect.

(m) The guardian ad litem shall inform individuals contacted in a particular case about the role of the guardian ad litem in the case.

(n) The guardian ad litem shall ensure that the appropriate appointment and discharge documents are timely filed with the court.

(Amended effective January 1, 1999.)

Rule 908.02 Other Roles Distinguished

In a case in which a guardian ad litem is serving pursuant to Rule 904.04 the guardian ad litem may not be ordered to, and may not perform the role of mediator, as that role is prescribed in Minnesota Statutes section 518.619 and Rule 310 of these rules, or visitation expeditor, as that role is prescribed in Minnesota Statutes sections 518.619 and 518.1751. Unless specified in the appointment order entered pursuant to Rule 904.04, a guardian ad litem shall not conduct custody or visitation evaluations. A guardian ad litem may not be ordered to conduct a custody or visitation evaluation unless the court makes specific findings in the appointment order that there is no other person who is regularly responsible for the performance of, or who is available to conduct, custody visitation evaluations, and that the guardian ad litem has been properly trained to conduct those evaluations. If ordered to conduct a custody or visitation evaluation, the guardian ad litem shall, as applicable to the case, apply the factors set forth in Minnesota Statutes section 257.025 or section 518.17, subdivisions 1 and 2, and shall be subject to the requirements of Minnesota Statutes section 518.167.

(Amended effective January 1, 1999.)

Rule 908.03 Contact with Court

Except as to procedural matters not affecting the merits of a case, all communications between the court and the guardian ad litem shall be in the presence of the parties or in writing with copies to the parties, or if represented, the party's attorney.

(Amended effective January 1, 1999.)

Advisory Task Force Comments

Contact with the Child.

The guardian ad litem must have sufficient contact with the child to ascertain the best interests of the child. The frequency and duration of contact will vary from child to child depending upon the nature of the case, the age of the child, and the needs of the child.

Considering the Child's Wishes.

The role of a guardian ad litem is to advocate for the best interests of the child, which interests may or may not conflict with the wishes of the child. In arriving at a recommendation as to the child's best interests, one factor that may be considered by the guardian ad litem, as appropriate to each case, is the wishes of the child as to the matters that are before

the court. In that regard, the guardian ad litem, as appropriate to each case, may attempt to ascertain the child's wishes regarding the matters that are before the court.

If the guardian ad litem determines that it is appropriate to ascertain the child's wishes, careful interviewing techniques must be used to elicit those wishes without creating conflicts for the child. Directly asking the child for her or his opinion regarding the matters before the court is not recommended, as doing so may create conflict for the child. For example, directly asking the child for a custody preference is not recommended as it places the child in the position of choosing between two parents for whom the child may care deeply. In addition, if the court implements the child's expressed preference, the child may feel guilty or may feel that the other parent has been betrayed. Instead, questions should be open ended and the guardian ad litem should be prepared to listen carefully.

If the wishes of the child are ascertained, the guardian ad litem should use discretion in deciding whether to communicate those wishes to the court, and/or to the child's parents, and may do so if it is in the child's best interests. Depending upon a number of factors, including the child's age, culture, maturity, emotional stability, and ability to reason, communicate, and understand, the guardian ad litem must be prepared to choose an appropriate course of action. This may include simply listening to the child's wishes, listening and reporting them to the court if appropriate, reporting them to the court even if the guardian ad litem considers them not in the child's best interests, or requesting the court to appoint independent legal counsel for the child for the purpose of representing and advocating for the child's wishes.

Pursuant to Rules 4.06 and 40.02 of the Minnesota Rules of Juvenile Procedure, the child's guardian ad litem is represented by the child's counsel. If the guardian ad litem determines that the wishes of the child conflict with the guardian ad litem's recommendation as to what is in the child's best interests, thereby creating a conflict of interest between the child and the guardian ad litem pursuant to the Rules 4.06 and 40.02, the guardian ad litem shall notify the child, the child's counsel if any, and the court of the existence of the conflict of interest and, if necessary, shall seek appointment of separate counsel to represent the guardian ad litem.

Reports to the Court.

Written reports required by any statute or rule shall be served and filed in a timely manner. See, e.g., Minn. Gen. R. Prac. 108 (written reports must be submitted at least ten days before hearing). Written reports may be updated by oral comments at the hearing.

Serving as a Custody or Visitation Evaluator, Mediator, or Visitation Expeditor.

The roles of guardians ad litem and custody evaluators are not in conflict as, ultimately, each has the responsibility to make recommendations to the court regarding the best interests of the child. Therefore, when ordered to do so, a guardian ad litem may conduct custody and/or visitation evaluations, but only if there are no other persons in the jurisdiction who are regularly responsible for serving in such roles, or such person is not available, and the guardian ad litem (1) is properly trained to conduct such evaluations, and (2) appropriately applies all statutory factors set forth at Minnesota Statutes section 518.17, subdivision 1 and 2, (family court statute) or section 257.025 (parentage statute).

Guardians ad litem have occasionally been assigned the role of mediator or visitation expeditor. There is an inherent conflict of interest between the role of a guardian ad litem and the role of a person appointed to serve as mediator, as that role is prescribed in Minnesota Statutes section 518.619 and Rule 310 of these rules, or visitation expeditor, as that role is prescribed in Minnesota Statutes section 518.1751. Specifically, the responsibilities of mediators or visitation expeditors to facilitate or conduct negotiations, effect settlements, or make decisions which may be binding upon the parties, conflict with the responsibilities of guardians ad litem to advocate for the best interests of the child. Further, unlike information and records obtained by guardians ad litem, information and records obtained by mediators are private and not available as evidence in court proceedings. Therefore, no court should order a person to, and no person should serve in a particular case as both guardian ad litem and mediator, as that role is prescribed in Minnesota Statutes section 518.619 and Rule 310 of these rules, or visitation expeditor, as that role is

prescribed in Minnesota Statutes section 518.1751. Rule 908.02, however, does not preclude a guardian ad litem from facilitating visitation, or from negotiating or mediating on an informal basis.

Inappropriate Guardian Ad Litem Responsibilities.

The provision of direct services to the child or the child's parents is generally beyond the scope of the guardian ad litem's responsibilities. Therefore, except in special circumstances, the appointing court should not order the guardian ad litem, and the guardian ad litem should not undertake, to provide such direct services. Providing such direct services could create a conflict of interest and/or cause a child or family to become dependent upon the guardian ad litem for services that should be provided by other agencies or organizations. The guardian ad litem may locate and recommend services for the child and family, but should not routinely deliver services.

Specifically, a guardian ad litem should not: (a) provide "counseling" or "therapy" to a child or parent; (b) foster a friendship or "big brother/big sister" relationship with a child or parent by inviting the child or parent into the home of the guardian ad litem, routinely entertaining the child or parent at the movies, or giving money or gifts to the child or parent; (c) give legal advice or hire an attorney for the child or parent; (d) supervise visits between the child and parent or third parties, except as ordered by the court; (e) routinely provide transportation for the child or parent, except as ordered by the court; (f) provide child care services for the child; (g) make placement arrangements for the child or remove a child from the home; or (h) provide a "message service" for parents to communicate with each other.

Specific Responsibilities of Guardians Ad Litem.

Rule 908.01 sets forth the general responsibilities of guardians ad litem in every family and juvenile court case. In addition to these general responsibilities, the Advisory Task Force also identified examples of specific responsibilities that may be required of or assumed by guardians ad litem at different stages of family and juvenile court proceedings, respectively. The examples are intended as practical guides for judges presiding over family and juvenile court proceedings to assist them in assigning to guardians ad litem only those responsibilities which they may be expected to perform and for which they have received training. The examples are also intended as practical guides for guardians ad litem to assist them in those cases where specific instructions have not been provided by the appointing judge.

RULE 909. RIGHTS AND POWERS OF GUARDIANS AD LITEM

Rule 909.01 Rights and Powers of Guardians Ad Litem in Every Case

Consistent with the responsibilities set forth in Rule 908.01, in every case in which a guardian ad litem is appointed pursuant to Rule 904.04, the guardian ad litem shall have the rights and powers set forth in clauses (a) to (e).

(a) The guardian ad litem shall have access to the child and to all information relevant to the child's and family's situation. The access of the guardian ad litem to the child and all relevant information shall not be unduly restricted by any person or agency.

(b) The guardian ad litem shall be furnished copies of all pleadings, documents, and reports by the party which served or submitted them. A party submitting, providing, or serving pleadings, documents, or reports shall simultaneously provide copies to the guardian ad litem.

(c) The guardian ad litem shall be notified of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case. Timely notice of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case shall be provided to the guardian ad litem by the party scheduling the proceeding.

(d) The guardian ad litem shall have the right to participate in all proceedings through submission of written and oral reports.

(c) Upon presentation of a copy of the order appointing the guardian ad litem, any person or agency, including, without limitation, any hospital, school, organization, department of health and welfare, doctor, health care provider, mental health provider, chemical health program, psychologist, psychiatrist, or police department, shall permit the guardian ad litem to inspect and copy any and all records relating to the proceeding for which the guardian ad litem is appointed, without the oral or written consent of the child or the child's parents.

(Amended effective January 1, 1999.)

Rule 909.02 Rights and Powers as a Party

In addition to the rights and powers set forth in subsection .01 of this rule, in every case in which a guardian ad litem is designated, by statute, rule, or order of the court, as a party to the case, the guardian ad litem shall have the rights and powers set forth in clauses (a) to (d). The exercise of these rights and powers shall not constitute the unauthorized practice of law.

(a) The guardian ad litem shall have the right to file pleadings, motions, notices, memoranda, briefs, and other documents, and conduct and respond to discovery, on behalf of the child. The guardian ad litem may exercise these rights on her or his own or may seek the appointment of an attorney to act on her or his behalf.

(b) The guardian ad litem shall have the right to request hearings before the court as appropriate to the best interests of the child.

(c) The guardian ad litem shall have the right to introduce exhibits, subpoena witnesses, conduct direct and cross examination of witnesses, and appeal the decision of the court.

(d) The guardian ad litem shall have the right to fully participate in the proceedings through oral arguments and submission of written reports.

(Amended effective January 1, 1999.)

Advisory Task Force Comments

Guardians ad litem have certain rights and powers in every family and juvenile court case, and those rights and powers are identified in Rule 909.01. In addition, in those cases where a guardian ad litem is designated as a party to the case, either by statute, rule, or order of the court, the guardian ad litem should have certain rights and powers beyond those rights and powers present in every case. Following is a summary of the circumstances under which guardians ad litem are designated as parties in family and juvenile court cases and, therefore, endowed with the additional rights and powers set forth in Rule 909.02.

Family Court Cases.

Pursuant to Rule 302.04(b) of these rules, a guardian ad litem is not automatically a party to a dissolution, legal separation, custody, or domestic abuse proceeding, but "may be designated a party to the proceeding in the order of appointment." The Comment to Rule 302.04(b) provides that a non-party guardian ad litem appointed in a family court proceeding "may only initiate and respond to motions and make oral statements and written reports on behalf of the child."

A guardian ad litem appointed pursuant to the Parentage Act, Minnesota Statutes section 257.60, "becomes a party to the action if the child is made a party." Pursuant to the Comment to Rule 302.04(b), a guardian ad litem who is a party to a paternity determination proceeding "would be entitled to initiate and respond to motions, conduct discovery, call and cross-examine witnesses, make oral or written arguments or reports, and appeal on behalf of the child without the necessity of applying to other court."

Juvenile Court Cases.

While the Minnesota Rules of Juvenile Procedure at Rules 3.03 (juvenile delinquency) and 39.04 (child in need of protection or services) and Minnesota Statutes section 260.155,

*subdivision 4, establish that a guardian ad litem may under certain circumstances participate in a juvenile court proceeding, neither the rules nor the statute establish the extent of such participation or whether a guardian ad litem may participate as a party. In considering this issue, however, the Minnesota Supreme Court has cited Minnesota Statutes section 260.155, subdivision 4, for the proposition that a guardian ad litem has "standing as a party to protect the interests of the child." In *Re the Welfare of Solomon*, 291 N.W.2d 364, 369 (Minn. 1980) (child protection and termination of parental rights matter). The Court has cited Minnesota Statutes section 260.155, subdivision 6, for the proposition that the rights accorded to a guardian ad litem who is a party to a juvenile court proceeding are identical to those accorded to other parties, including the right "to be heard, to present evidence material to the case, and to cross-examine witnesses appearing at the hearing."*

RULE 910. PRE-SERVICE TRAINING REQUIREMENTS

Rule 910.01 Pre-Service Training Requirements for New Guardians Ad Litem

The purpose of pre-service training is to equip guardians ad litem with the skills, techniques, knowledge, and understanding necessary to effectively advocate for the best interests of children. To be listed on a panel of approved guardians ad litem maintained pursuant to Rule 903.04, each person, except those persons who meet the criteria set forth in subsection .02 of this rule, shall satisfy the following pre-service training requirements:

- (a) attend a minimum of 40 hours of pre-service training and demonstrate a comprehension of the topics discussed during the training;
- (b) if the person intends to serve in family court, attend an additional training course regarding family law matters and demonstrate a comprehension of the topics discussed during the training relating to family law matters; and
- (c) if the person intends to serve in juvenile court, attend an additional training course regarding juvenile law matters and demonstrate a comprehension of the topics discussed during the training relating to juvenile law matters.

(Amended effective January 1, 1999.)

Rule 910.02 Pre-Service Training Requirements for Existing Guardians Ad Litem

To be listed on a panel of approved guardians ad litem maintained pursuant to Rule 903.04, each person appointed to serve as a guardian ad litem prior to the effective date of Rules 901 to 913 shall either:

- (a) satisfy the pre-service training requirements set forth in subsection .01 of this rule; or
- (b) submit to the program coordinator written proof sufficient to verify that the person has undergone previous training substantially similar in nature and content to that provided by the pre-service training requirements set forth in subsection .01 of this rule. The person must attend those sessions of the pre-service training for which the person is unable to provide written proof of prior training. The program coordinator shall identify the training sessions which the person must attend.

(Amended effective January 1, 1999.)

Rule 910.03 Internship Requirements

In addition to satisfying the pre-service training requirements set forth in either subsections .01 or .02 of this rule, whichever is applicable, during the six months immediately following the date on which the person's name is listed on a panel of approved guardians ad litem, each person who intends to serve as a guardian ad litem in juvenile court shall make a reasonable, good faith effort to satisfy the internship requirements set forth in clauses (a) to (d), and each person who intends to serve as a guardian ad litem in family court shall make a reasonable, good faith effort to satisfy the internship requirements set forth in clauses (e) and (f), or submit to the program

coordinator written proof sufficient to verify that the person has previously satisfied the requirements.

- (a) Visit a shelter and foster home.
- (b) Visit the local social service agency and/or child protection office.
- (c) With the court's permission, observe a variety of juvenile court proceedings, including, but not limited to, an initial child protection hearing, a child protection review hearing, a foster care review hearing, and an administrative review.
- (d) Intern with an experienced guardian ad litem on at least two juvenile court cases.
- (e) Observe a variety of family court proceedings, including, but not limited to, a temporary relief hearing, a child custody hearing, and a domestic abuse hearing.
- (f) Intern with an experienced guardian ad litem on at least two family court cases.

(Amended effective January 1, 1999.)

Advisory Task Force Comments

If an attorney wishes to receive continuing legal education credits for attending guardian ad litem pre-service training and/or continuing education courses, it shall be the sole responsibility of that person to apply for accreditation from the State Board of Continuing Legal Education, and the State Board of Continuing Legal Education shall have sole discretion in determining whether accreditation shall be accorded and, if so, to what extent. If the guardian ad litem is a member of a profession which requires continuing education credits, and the guardian ad litem wishes to receive credits for attending guardian ad litem pre-service training and/or continuing education courses, it shall be the sole responsibility of the guardian ad litem to apply for accreditation from the professional body responsible for approving courses of credit.

RULE 911. CONTINUING EDUCATION REQUIREMENTS

Once a guardian ad litem is listed on a panel of approved guardians ad litem maintained pursuant to Rule 903.04, the guardian ad litem may maintain that listing only by annually completing eight hours of continuing education. The continuing education requirement shall begin in the calendar year following the year in which the guardian ad litem is first listed on a panel of approved guardians ad litem and shall continue each year thereafter until such time as the guardian ad litem is no longer listed on the panel of approved guardians ad litem.

(Amended effective January 1, 1999.)

RULE 912. TRAINING CURRICULA; CERTIFICATION OF TRAINERS

Rule 912.01 Pre-Service Training Curriculum

The State Court Administrator, through the Office of Continuing Education in consultation with the Advisory Task Force on the Guardian Ad Litem System, shall develop a core curriculum to be used in the pre-service training of guardians ad litem and guardian ad litem program coordinators. The pre-service training curriculum should be reviewed and updated at least every three years.

(Amended effective January 1, 1999.)

Rule 912.02 Continuing Education Curriculum

The continuing education curriculum shall include developments in relevant guardian ad litem, family court, or juvenile court topics.

(Amended effective January 1, 1999.)

Rule 912.03 Certification of Trainers

The pre-service training and continuing education of guardians ad litem shall be coordinated by persons certified by the State Court Administrator through the Office of Continuing Education. To be certified, a person shall satisfy the following qualifications.

(a) The person shall have substantial knowledge, training, and experience regarding the roles and responsibilities of guardians ad litem.

(b) The person shall understand the policies, procedures, and functions of family and juvenile court.

(c) The person shall have substantial experience and be competent in providing technical training to adults.

(d) The person shall complete the pre-service training program developed by the State Court Administrator, through the Office of Continuing Education in consultation with the Advisory Task Force on the Guardian Ad Litem System.

(Amended effective January 1, 1999.)

RULE 913. COMMUNITY EDUCATION

The State Court Administrator, in consultation with the Advisory Task Force on the Guardian Ad Litem System, shall develop a brochure, the purpose of which shall be to educate judges, attorneys, parents, case participants, and others regarding the purpose, roles, and responsibilities of guardians ad litem, and opportunities to serve as a guardian ad litem. Each judicial district shall provide for distribution of the brochure to interested persons.

(Amended effective January 1, 1999.)

INDEX - GENERAL RULES OF PRACTICE

ABSTRACTS OF TITLE

- Bankruptcy searches
 - Federal district court, Hennepin, Ramsey, and Saint Louis County, requirements, Rule 203
- Certified copies
 - Registration of title, applications for, requirements, Rule 203
- Registration of title
 - Applications for
 - Certified copies, requirements, Rule 203

ACKNOWLEDGMENT

- Service by mail
 - Expedited child support process, requirements, Rule 355.02

ADOPTION

- Application of rules
 - Guardian ad litem procedure, Rule 901.01
- Defined as juvenile court case
 - Guardian ad litem procedure, Rule 901.01

ADVERSE PARTIES

Cross-examination, see CROSS EXAMINATION

Judgments

- Entry of, Rule 126

AFFIDAVITS

- Affidavits of default
 - Default hearings
 - Expedited child support process, Rule 363.02
 - Family court proceedings, Rule 306.01
- Affidavits of mailing
 - Informal probate proceedings, Rule 408
- Affidavits of merit
 - Applications for leave to answer, open judgments, or defend, 109.01
 - Contents, requirements, Rule 109.02
- Affidavits of nonmilitary status
 - Default proceedings
 - Family court proceedings, Rule 306.01
 - Expedited child support process, Rule 363.04
- Affidavits of service
 - Expedited child support process
 - Requirements, generally, Rule 355.04
 - Transcribers, duties, Rule 366.01
 - Housing court proceedings
 - Contents, requirements, Rule 605
 - Return of service, defendant not served, Rule 606
 - Time limit for filing, Rule 605
- Attorney fees
 - Application for, contents, requirements, Rule 119
- Conciliation courts
 - Filing fees, affidavits in lieu of, Rule 506
- Condemnation proceedings
 - Commissioners, objections to appointment, requirements, 141.01
- Evidence
 - Arbitration hearings, Rule 114.09
- Expert witnesses
 - Fees, bills for, Rule 127
- Family law matters
 - Forms (documents), paragraphs, numbering, requirements, Rule 303.02
 - Noncompliance, contempt, stay of sentencing, Rule 309.03
 - Responsive affidavits, contempt, Rule 309.01
 - Supporting affidavits, Rule 303.02, Rule 309.01
- Forms (documents)
 - Paragraphs, numbering, family court proceedings, Rule 303.02
- Interpreters
 - Code of professional responsibility for interpreters, Rule 8.01
- No answer
 - Default, defendants, registration of title, Rule 207
- Noncompliance
 - Contempt, stay of sentencing, family court proceedings, Rule 309.03

AFFIDAVITS (Cont'd)

- Probate proceedings
 - Informal proceedings, affidavits of mailing, Rule 408
- Registration of title
 - Birth certificates, Rule 220
 - Identity of decedent, Rule 217
 - No answer, default of defendants, Rule 207
- Responsive affidavits
 - Contempts, requirements, family court proceedings, Rule 309.01
- Statement of the case
 - Joint statement of the case not filed, plaintiffs, duties, Rule 112.01
- Supplementary proceedings
 - Previous applications, disclosure, requirements, Rule 140.01
- Supporting affidavits
 - Attorney fees, applications for
 - Requirements, Rule 119
 - Complex cases
 - Motions requesting assignment of single case to single judge, Rule 113.01
 - Contempts, requirements, family court proceedings, Rule 309.01
 - Default judgment
 - Exceptions, Rule 117.02
 - Proof of claim, requirements, Rule 117.02
 - Ex parte relief
 - Applications for, generally, Rule 3.02
 - Family court proceedings, Rule 303.04
 - Expedited child support process, contents, Rule 370.02
 - Motion practice
 - Family court, Rule 303.02 to Rule 303.04
 - Generally, Rule 115.03
 - Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons, requirements, Rule 145.02
- Witness affidavits
 - Evidence, arbitration hearings, Rule 114.09
- AFFIRMATIONS**
 - Expedited child support process, requirements, Rule 364.09
- AGENTS**
 - Forcible entry and unlawful detainer lawsuits
 - Appearance, when permitted, Rule 603
 - Bringing lawsuit in own name, prohibited, Rule 603
 - Power of authority, requirements, Rule 603
- Testators
 - Wills
 - Withdrawal from court administrator's office, requirements, Rule 418
- AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC)**
 - Assistance payments
 - Reimbursement, application of rules, family court proceedings, Rule 301
 - Reimbursement actions
 - Uniform system for scheduling, exclusion, Rule 304.01
- ALTERNATIVE DISPUTE RESOLUTION**
 - Adjudicative processes
 - Arbitration, defined as, Rule 114.02
 - Attendance, requirements, Rule 114.07
 - Consensual special magistrates
 - Defined as, Rule 114.02
 - Ex parte communication with, Rule 114.10
 - Moderated settlement conferences
 - Defined as, Rule 114.02
 - Neutrals
 - Civil neutral roster, Rule 114.12
 - Ex parte communications with, Rule 114.10
 - Family law neutral roster, Rule 114.12
 - Training requirements, Rule 114.13
 - Summary jury trials
 - Defined as, Rule 114.02
 - Neutrals
 - Civil neutral roster, Rule 114.12

ALTERNATIVE DISPUTE RESOLUTION (Cont'd)

Adjudicative processes (Cont'd)
 Summary jury trials (Cont'd)
 Neutrals (Cont'd)
 Ex parte communications with, Rule 114.10
 Family law neutral roster, Rule 114.12
 Training requirements, Rule 114.13

ADR processes
 Conferences
 Family law matters, exceptions, Rule 114.04, Rule 310.01
 Participation in by parties, exception, Rule 310.01
 Requirements, generally, Rule 114.04

Creation by parties, Rule 114.02

Definitions, Rule 114.02, Rule 114.05

District court, communications with during, Rule 114.10

Family law matters
 Application of rules, Rule 114.01, Rule 114.04
 Exception, Rule 310.01
 Fees, inability to pay, effect, Rule 114.11
 Post-decree matters, Rule 114.04

Fees, Rule 114.11

Generally, Rule 114.01 to Rule 114.14

Neutrals, see Neutrals under this topic

Non-binding processes
 Closed to public, Rule 114.07
 Selection by court, family law matters, Rule 114.04

Notice requirements, court administrators, duties, Rule 114.03

Proceedings, see Proceedings under this topic

Selection procedure
 Domestic or child abuse, family law matters, requirements, Rule 114.04
 Generally, Rule 114.04

Application of rules
 Expedited child support process, exception, Rule 366.04
 Family court proceedings, exception, Rule 310.01
 Exclusions, Rule 111.01, Rule 114.01
 Scope, Rule 114.01

Arbitration
 ADR process, arbitration defined as, Rule 114.02

Code of ethics for neutrals
 Enforcement procedure, Code of Ethics Enforcement Procedure, Rule 114 Appendix
 Generally, Code of Ethics for Neutrals, Rules 1-7

Confidential or privileged information
 Disclosure following trial, prohibited, Rule 114.08

Consensual special magistrates
 Defined, ADR processes, Rule 114.02

Neutrals for
 Civil neutral roster, Rule 114.12
 Family law neutral roster, Rule 114.12
 Training requirements, Rule 114.13

Deadlines
 Completion, Rule 114.05

Definitions
 ADR processes, Rule 114.02

Disclosure
 Confidential information, Rule 114.08
 Neutrals, requirements, see Neutrals under this topic

Discovery
 Documents, Rule 114.08
 Statements, Rule 114.08

District court
 Communications with court during or after ADR processes, Rule 114.10

Early neutral evaluation (ENE)
 Defined, ADR processes, Rule 114.02

Neutrals for
 Civil neutral roster, Rule 114.12
 Family law neutral roster, Rule 114.12
 Training requirements, Rule 114.13

Evaluative processes
 Early neutral evaluations (ENE), defined as, Rule 114.02
 Neutral fact finding, defined as, Rule 114.02

Neutrals for
 Civil neutral roster, Rule 114.12
 Family law neutral roster, Rule 114.12

ALTERNATIVE DISPUTE RESOLUTION (Cont'd)

Evidence
 Admissibility, Rule 114.08

Facilitative processes
 Attendance, requirements, Rule 114.07
 Mediation defined as, Rule 114.02

Hybrid processes
 Mediation-arbitration (Med-Arb), defined as, Rule 114.02
 Mini-trials, defined as, Rule 114.02

Neutrals for
 Civil neutral roster, Rule 114.12
 Family law neutral roster, Rule 114.12
 Training requirements, Rule 114.13
 Other, defined as, Rule 114.02

Mediation-arbitration (med-arb)
 Alternative dispute resolution
 ADR process, mediation-arbitration defined as, Rule 114.02
 Application of rules, Rule 114.05

Neutrals for
 Civil neutral roster, Rule 114.12
 Family law neutral roster, Rule 114.12

Mini-trials
 Defined, ADR processes, Rule 114.02

Neutrals for
 Civil neutral roster, Rule 114.12
 Family law neutral roster, Rule 114.12
 Training requirements, Rule 114.13

Moderated settlement conferences
 Defined, ADR processes, Rule 114.02

Neutrals for
 Civil neutral roster, Rule 114.12
 Family law neutral roster, Rule 114.12
 Training requirements, Rule 114.13

Neutral fact finding
 Defined, Rule 114.02
 Neutral fact finders selected by parties
 Roster of neutrals, exemption, Rule 114.12
 Training and continuing education requirements, exemption, Rule 114.13

Neutrals
 Appointment, Rule 114.05
 Child custody investigations
 Investigators, serving as, limitations, Rule 114.05

Code of ethics
 Enforcement procedure, Code of Ethics Enforcement Procedure, Rule 114 Appendix
 Generally, Code of Ethics for Neutrals, Rules 1-7

Communications with court during or after ADR processes, Rule 114.10

Compensation and salaries, payment, Rule 114.11

Continuing education, requirements, Rule 114.13

Defined, Rule 114.02

Disclosures by
 Training and continuing education records, requirements, Rule 114.13

Disqualification, procedure, requirements, Rule 114.05

Ex parte communications with, Rule 114.10

Lists of
 Civil neutral rosters, Rule 114.12
 Family law neutral rosters, Rule 114.12

Neutral fact finders selected by parties, see Neutral fact finding under this topic

Notice given
 Proceedings, time and place of, Rule 114.06

Notice received
 Order of appointment, Rule 114.06

Practicing neutrals, family law matters
 Placement on roster of qualified neutrals, grandparent clause, Rule 114.14

Proceedings, scheduling, duties, Rule 114.06

Qualified neutrals
 Defined, Rule 114.02
 Rosters, state court administrator, duties, Rule 114.12 to Rule 114.14

Records
 Confidentiality, Rule 114.08
 Disclosure, Rule 114.08

Removal, procedure, requirements, Rule 114.05

ALTERNATIVE DISPUTE RESOLUTION (Cont'd)**Neutrals (Cont'd)**

Reports by, 114.10

Selection, district court, duties, Rule 114.05

Training

Exceptions and waivers, family law neutrals, 114.14

Number of hours, requirements, Rule 114.13

Topics, requirements, Rule 114.12

Parties to suits, see **PARTIES TO SUITS****Proceedings**

Attendance requirements, generally, Rule 114.07

Attorneys, attendance, requirements, Rule 114.07

Communications with court during or after, Rule 114.10

Confidentiality, Rule 114.08

Failure to attend, sanctions, Rule 114.07

Neutrals, duties, Rule 114.06

Parties

Attendance, Rule 114.07

Participation, exception, Rule 310.01

Records of neutral, requirements, Rule 114.08

Time and place, Rule 114.06

Scheduling of civil cases

Application of rules, generally, Rule 114.01

Scheduling orders

Contents, requirements, Rule 111.03

Settlements

Attorneys, preparation of documents, duties, Rule 114.06

Summary jury trials

Defined, ADR processes, Rule 114.02

Evidence presented during, admissibility in subsequent proceedings, Rule 114.08

Neutrals

Civil neutral roster, Rule 114.12

Family law neutral roster, Rule 114.12

Training requirements, Rule 114.13

Trials following

Disclosure, confidential information, prohibited, Rule 114.08

Discovery

Documents, not discoverable, Rule 114.08

Statements, not discoverable, Rule 114.08

Evidence, admissibility, Rule 114.08

Notice requirements

ADR processes, information regarding, Rule 114.03

Neutrals, lists of available neutrals, Rule 114.03

Unrepresented or pro se parties, see **Parties to suits** under this topic**ANNUITIES****Structured settlements**

Personal injury lawsuits brought on behalf of minors, mentally ill, or retarded persons, requirements, Rule 145.05, Rule 145.06

ANNULMENT**Application of rules**

Family court proceedings, Rule 301

Guardian ad litem procedure, Rule 901.01

Procedural time limits, Rule 302.03

Continuances

Generally, Rule 302.02

Defined as family court case

Guardian ad litem procedure, Rule 901.01

Final orders

Contents, requirements, Rule 308.02, Rule 308.03

Notices, requirements, Rule 308.02

Parties to suits

Designation, Rule 302.04

Personal service

Commencement of proceedings, Rule 302.01

Petitions

Joint petitions, summonses, not required, Rule 302.01

Service of process

Requirements, generally, Rule 302.01

Service by publication, when permitted, Rule 302.01

Time

Procedural time limits, application of rules, Rule 302.03

ANSWERS**Applications for leave to answer**

Service of process, requirements, Rule 109.01

Registration of title

Defendants, filing, effect, Rule Rule 206

Issues raised by

No reply by applicant, effect, Rule Rule 209

Reply by applicant, effect, Rule 209

APPEARANCESee **Appearance** under specific index headings**APPRAISERS****Appointment**

Corporate receiverships, Rule 137.03

ARBITRATION**Alternative dispute resolution**

ADR process, arbitration defined as, Rule 114.02

Applications to compel or stay

Scheduling of civil cases, exclusion, Rule 111.01

Arbitrators**Attendance**

Arbitration hearings, requirements, Rule 114.09

Awards

Filing, requirements, duties, Rule 114.09

Service by mail, requirements, Rule 114.09

Decisions

Findings of fact, conclusions of law, or opinions supporting, not required, Rule 114.09

Sealing upon request for trial de novo, Rule 114.09

Evidence

Documents, requirements, generally, Rule 114.09

Interpretation of rules, Rule 114.09

Received, generally, Rule 114.09

Taking, requirements, Rule 114.09

Ex parte communication with, Rule 114.10

Neutrals

Civil neutral roster, Rule 114.12

Family law neutral roster, Rule 114.12

Training requirements, Rule 114.13

Personal notes, not subject to discovery, Rule 114.09

Subpoenas, powers, Rule 114.09

Awards

Arbitrators, duties, Rule 114.09

Court administrators, duties, Rule 114.09

Trials, requests for after award, time limits, Rule 114.09

Consensual special masters

Ex parte communication with, Rule 114.10

Definitions

ADR processes, Rule 114.02

Discovery

Requirements, Rule 114.09

Hearings

Attorneys, attendance, requirements, Rule 114.09

Evidence received, Rule 114.09

Judgments, Rule 114.09

Parties, attendance, Rule 114.09

Record of, when permitted, Rule 114.09

Service of process, Rule 114.09

Mediation-arbitration (Med-arb), see **Mediation-arbitration** under **ALTERNATIVE DISPUTE RESOLUTION****Neutrals**

Ex parte communication with, Rule 114.10

Proceedings, see **Hearings** under this topic**Trials after arbitration awards**

De novo, requirements, Rule 114.09

District court, duties, Rule 114.09

Time limits, Rule 114.09

ARREST WARRANTS**Issuance**

Contempts, expedited child support process requirements, Rule 374.04

ATTACHMENT**Discharge**

Personal bonds, notice requirements, Rule 136.01

ATTORNEY FEES

- Application for
 - Motions
 - Affidavits supporting, contents, requirements, Rule 119
 - Memoranda supporting, contents, requirements, Rule 119
 - Requirements, generally, Rule 119
- Probate proceedings, limitations, Rule 119
- Award of
 - Applications for
 - Requirements, generally, Rule 119
 - Family court proceedings
 - Failure of party to appear, sanctions
 - Final hearings, Rule 307
 - Prehearing conferences, Rule 305.02
 - Motion practice
 - Failure to comply with rules, sanctions, Rule 115.06, Rule 303.03
- Contracts for
 - Lawsuits, actions for death by wrongful act or personal injuries
 - Fees allowed by court, not determinative, Rule 143
- Default proceedings, Form 119.05, Rule 119.05
- Disclosure
 - Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons, Rule 145.03
- Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons
 - Allowance, limitations, Rule 145.05
 - Disclosure, Rule 145.03
 - Petitions, requirements, Rule 145.02
- Probate proceedings
 - Annual accounts, contents, Rule 417.02
 - Application of rules, Rule 119
 - Reasonableness, determination, Rule 412

ATTORNEY GENERAL

- Lawsuits
 - Corporate receiverships, venue, Rule 137.01
- Notice received
 - Probate proceedings, formal proceedings, Rule 404

ATTORNEYS

- Affidavits
 - Affidavits of merit, requirements, Rule 109.02
 - No answer, registration of title, default, defendants, Rule 207
- Appearance
 - ADR processes, proceedings, requirements, Rule 114.07
 - Conciliation court proceedings, Rule 512
 - Criminal proceedings, timely appearance, requirements, Rule 704
 - Failure to appear, communication with court during ADR processes, Rule 114.10
 - Family court proceedings, prehearing conferences, Rule 305.02
 - Housing court proceedings, requirements, Rule 603
 - Out-of-state attorneys, Rule 5
- Application of rules
 - Disciplinary rules and regulations, out-of-state attorneys, Rule 5
- Appointment
 - Expedited child support process, 357.03
- Attorney-client relationship
 - District court self-help programs, Rule 110.05, Rule 110.07
- Certificates and certification
 - Certificates of representation
 - Criminal proceedings, Rule 703
 - Expedited child support process, Rule 357.02
 - Generally, Rule 104
- Child support magistrates
 - Conflicts of interest, Rule 367.04
- Conservatorships
 - Probated proceedings
 - Appointment as attorney of record for, Rule 416
- Courtroom decorum
 - Addressing court or jury, requirements, Rule 2.03
 - Approaching the bench, requirements, Rule 2.03
 - Appropriate attire, requirements, Rule 2.03
- ATTORNEYS (Cont'd)
 - Criminal proceedings
 - Certificates of representation, duties, Rule 703
 - Withdrawal from case, requirements, Rule 703
 - Disclosures by
 - Complaints, defective or insufficient
 - Requirements, criminal proceedings, Rule 705
 - Nature of representation
 - Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons, Rule 145.03
 - Search warrant applications, defective or insufficient
 - Requirements, criminal proceedings, Rule 705
 - Documents, preparation
 - ADR processes, cases settled by, Rule 114.06
 - Evidence
 - Exhibits, removal from custody of court, duties, Rule 128
 - Ex parte communications
 - Arbitrators, prohibited, Rule 114.10
 - Consensual special masters, prohibited, Rule 114.10
 - Neutrals, when permitted, Rule 114.10
 - Forms (documents)
 - Standardized forms, expedited child support process modification, Rule 379.03
 - Guardians ad litem
 - Service as, when prohibited, Rule 108.02
 - Guardianships
 - Probate proceedings
 - Appointment as attorney of record for, Rule 416
 - Law firms
 - Conflicts of interest, disqualifications, expedited child support process, Rule 367.04
 - Minnesota civil trialbook, see Attorneys under MINNESOTA CIVIL TRIALBOOK
 - Nonattorneys, practice of law by
 - District court self-help programs, Rule 110.06
 - Notice given
 - ADR processes
 - Information regarding, duties, Rule 114.03
 - Neutrals, removal, Rule 114.05
 - Ex parte relief, applications for, Rule 3.01
 - Late appearance, criminal proceedings, Rule 704
 - Motions to reconsider, Rule 115.11
 - Names, addresses, and telephone numbers
 - Attorneys, civil actions, Rule 104
 - Parties to suits, civil actions, Rule 104
 - Settlement, civil actions, Rule 121
 - Withdrawal, civil actions, Rule 105
 - Notice received
 - ADR processes, information regarding, Rule 114.03
 - Exhibits, removal from custody of court, Rule 128
 - Ex parte relief, applications for, Rule 3.01
 - Motions to reconsider, Rule 115.11
 - Names, addresses, and telephone numbers
 - Attorneys, civil actions, Rule 104
 - Parties to suits, civil actions, Rule 104
 - Probate proceedings, formal proceedings, Rule 404
 - Withdrawal, civil actions, Rule 105
 - Opinions
 - Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons, Rule 145.03
 - Out-of-state attorneys
 - Appearance, presence of Minnesota attorney, requirements, Rule 5
 - Personal representatives, attorneys serving as
 - Supervised administration, probate proceedings
 - Exception, Rule 414
 - Requirements, generally, Rule 414
 - Practicing attorneys
 - Sureties, acceptance as, prohibited, Rule 139
 - Probate proceedings
 - Original documents, preparation, duties, Rule 403
 - Receivers
 - Corporate receivers
 - Attorneys as, Rule 137.06
 - Compensation and salaries, payment, restrictions, 137.08, 137.09
 - Employees, Rule 137.06

ATTORNEYS (Cont'd)

Receivers (Cont'd)

Corporate receivers (Cont'd)

Employment by, Rule 137.07

Recommendations by

Cases, handling as expedited, standard, or complex

Joint statement of the case, requirements, Rule 112.02

Referees (court), attorneys serving as

Garnishment disclosures, qualifications, Rule 140.02

Supplementary proceedings, qualifications, Rule 140.02

Referrals to

Personal injury lawsuits brought on behalf of minors,
mentally ill, or mentally retarded persons, Rule
145.03

Right to representation by

Expedited child support process, Rule 357.01

Sanctions

Family court proceedings

Confidential information, failure to comply, Rule 313.03

Service of process by

Motions, withdrawal from case, criminal proceedings, Rule
703

Referees (court), objections to, Rule 107

Service of process on

Claims, corporate receiverships, objections to, Rule 137.04

Demand for removal, conciliation court proceedings, Rule
521

Expedited child support process, requirements, Rule 355.01

Motion practice, family court proceedings, Rule 303.03

Notice of withdrawal, civil actions, Rule 105

Rules applicable to all court proceedings, Rule 1.03

Signatures

Conciliation court

Removal to district court, Rule 521

Statements of claim and counterclaims, Rule 507

Expedited child support process, complaints, requirements,
Rule 370.02

Sureties

Practicing attorneys, acceptance as, prohibited, Rule 139

BAIL

Bail bonds

Bond procurers

Applications, approval, requirements, criminal
proceedings, Rule 702Notice received, forfeiture of bail bond, requirements,
Rule 702

Forfeiture, requirements, Rule 702

Posting, requirements, Rule 702

Reinstatement, requirements, Rule 702

Contempts

Conciliation court judgments

Payment to judgment creditor, Rule 518

Sureties

Corporate sureties

Approval, requirements, criminal proceedings, Rule 702

Forfeited bonds, failure to pay, effect, Rule 702

Insolvency, procedure, Rule 702

Suspension of bonding privileges, Rule 702

BAILIFFS

Notice received

Attorneys, late appearance, criminal proceedings, Rule 704

BANK ACCOUNTS

Deposits to

Proceeds, personal injury lawsuits brought on behalf of
minors, mentally ill, or mentally retarded persons,
Rule 145.05**BANKRUPTCY**

Searches

Registration of title proceedings, Rule 203

BANKS

Liquidation

Petitions for orders, notice requirements, Rule 138

BENEFICIARIES

Notice received

Hearings

Probate proceedings, final accounts, Rule 417.06

BENEFICIARIES (Cont'd)

Service of process on

Probate proceedings, accounts, Rule 417.04

BONDS (OFFICERS AND FIDUCIARIES)

Guardians and conservators

Probate proceedings, amount of bond, requirements, Rule
416

Receivers and receivership

Corporations, requirements, Rule 137.03

BOUNDARIES

Registration of title

Establishment, interlocutory decrees, Rule 211

BURDEN OF PROOF

Expedited child support process

Generally, Rule 364.11

Discovery motions, Rule 361.04

Standard of proof, see STANDARD OF PROOF

BUSINESS CORPORATIONS

Appearance

Conciliation court proceedings, Rule 512

Receivers and receivership

Civil actions, venue, Rule 137.01

Receivers, duties, see Receivers under RECEIVERS AND
RECEIVERSHIP

Valuations

Evidence, arbitration hearings, Rule 114.09

CALENDAR

Default calendar

Dissolutions of marriage without children, Form 12, Rule
302.01**CANDIDATES**

Juries

Service on, deferral, Rule 810

CERTIFIED COPIES

Wills

Transfer of real property, probate proceedings, Rule 410

CHILD ABUSE

ADR processes

Conferences, requirements, exception, Rule 114.04

CHILD CUSTODY

Application of rules

Family court proceedings, Rule 301

Guardian ad litem procedure, Rule 901.01

Enforcement proceedings

Defined as family court case

Guardian ad litem procedure, Rule 901.01

Uniform system for scheduling, exclusion, Rule 304.01

Expedited child support process

Prohibited proceedings, Rule 353.01

Investigations

Family law matters

Neutrals, serving as investigators, restrictions, Rule
114.05

Parties to suits

Designation, Rule 302.04

Reports

Evidence, arbitration hearings, Rule 114.09

Supervision

Final orders, notice requirements, family court proceedings,
Rule 308.01**CHILD SUPPORT**

ADR processes

Participation in by parties, exception, Rule 310.01

Application of rules

Family court proceedings, Rule 301

Guardian ad litem procedure, Rule 901.01

Decrees

Final decrees, see Final orders under this topic

Defined

Expedited child support process, Rule 352.01

Enforcement proceedings

Application of rules, family court proceedings, Rule 301

Defined as family court case

Guardian ad litem procedure, Rule 901.01

CHILD SUPPORT (Cont'd)

Enforcement proceedings (Cont'd)

Expedited child support process, generally, Rule 351.01 to Rule 379.05

Uniform system for scheduling, exclusion, Rule 304.01

Expedited child support process

Generally, see **EXPEDITED CHILD SUPPORT PROCESS**

Final orders

Contents, requirements, family court proceedings

Generally, Rule 303.06, Rule 308.01

Notices, requirements, Rule 308.02

Sensitive matters, Rule 308.03

Judgments

Enforcement

Application of rules, family court proceedings, Rule 301

Medical support

Defined, expedited child support process, Rule 352.01

Modification

Expedited child support process; use, requirements, Rule 353.01

Orders

Expedited child support process, effective date, Rule 365.03

Final orders, see Final orders under this topic

Parties to suits

ADR processes, participation in by parties, exception, Rule 310.01

Designation, Rule 302.04

CHILD SUPPORT MAGISTRATES

Appointment, Rule 367.02

Appointments by

Interpreters, Rule 358.01

Approvals by

Consent orders, Rule 362.02

In forma pauperis applications, Rule 356.02

Code of judicial conduct

Application of rules, Rule 367.05

Conflicts of interest

Generally, Rule 367.04

Withdrawal from proceedings, grounds, Rule 367.06

Defined, Rule 352.01

Duties, generally, Rule 367.01 to Rule 367.06

Hearings

Explanation of proceedings, requirements, Rule 364.06

Impartial conduct of hearings

Requirements, Rule 367.06

Open to public, requirements, Rule 364.07

Record

Closing, Rule 364.15

Generally, duties, Rule 364.08

Leaving open, grounds, Rule 364.14

Telephone or interactive video

Duties, Rule 359.02

When permitted, Rule 359.01

Witnesses, examination, Rule 364.13

Judicial notice

Taking, requirements, Rule 364.10

Notice given

Rejection of default order, Rule 363.04

Rejection of proposed settlement order, Rule 362.04

Orders

Proposed settlements

Approval, Rule 362.03

Rejection, grounds, Rule 362.04

Continuance of hearing, grounds, Rule 364.05

Discovery

Rulings on, options, Rule 361.05

Final orders

Appeals, Rule 376.03

Motions

Clerical errors, correction, Rule 377.09

Review of decision, Rule 377.06

Proposed orders, default proceedings

Approval, Rule 363.03

Rejection, effect, Rule 363.04

Referrals by

Multiple issue proceedings, referral to district court, Rule 353.02

CHILD SUPPORT MAGISTRATES (Cont'd)

Removal

No automatic right, Rule 368.01

Removal for cause

Grounds, Rule 368.02

Procedure, Rule 368.02

Subpoenas

Cancellation or modification, grounds, Rule 361.05

CHILDREN

Appearance

Hearings, personal injury lawsuits brought on behalf of, Rule 145.04

Marriages without, dissolution, Form 12, Rule 302.01

Personal injury lawsuits brought on behalf of

Appearance

Hearings, petitions for payment of proceeds, Rule 145.04

Application of rules, Rule 145.01

Petitions, requirements, Rule 145.02

CHILDREN IN NEED OF PROTECTION OR SERVICES

Application of rules

Guardian ad litem procedure, Rule 901.01

Legal proceedings concerning, defined as juvenile court case

Guardian ad litem procedure, Rule 901.01

CITIES

Temporary restraining orders against

Applications for, requirements, Rule 118

CLAIMSConciliation courts, see Claims under **CONCILIATION COURTS**Corporate receiverships, see Corporations under **RECEIVERS AND RECEIVERSHIP**Default judgment, see **DEFAULT JUDGMENT**

Failure to state a claim upon which relief can be granted, motions, see Claims under **MOTIONS**

Personal injury lawsuits

Claimants, statements by

Joint statement of the case, requirements, Rule 112.03

Plaintiffs

Intent to prove

Joint statements of the case, requirements, Rule 112.02

Proof of claims

Default judgment, requirements, Rule 117.02

CODE OF JUDICIAL CONDUCT

Application of rules

Child support magistrates, Rule 367.05

CODES OF ETHICS

Application of rules

Disciplinary rules and regulations

Out-of-state attorneys, Rule 5

Code of ethics for neutrals

Enforcement procedure, Code of Ethics Enforcement

Procedure, Rule 114 Appendix

Generally, Code of Ethics for Neutrals, Rules 1-7

Code of professional responsibility for interpreters

Interpreters, bound by, Rule 8.01

COMMISSIONERS

Appointment

Condemnation proceedings, objections, Rule 141.01

COMMITMENTS

Civil commitment proceedings

Scheduling of civil cases, exclusion, Rule 111.01

Motions

Application of rules, exception, Rule 115.01

COMPLAINTS

Applications

Criminal proceedings, defective or insufficient applications

Submission to second judge, when permitted, Rule 705

Expedited child support process

Contents, requirements, Rule 370.02

Filing requirements, Rule 370.04

Response, time limits, Rule 370.05

Unlawful detainer lawsuits

Contents, requirements, Rule 603, Rule 604

COMPROMISE AND SETTLEMENT

Civil actions

Notice requirements, Rule 121

Conciliation courts

Judgment in accord with, Rule 512

Notice requirements, Rule 511

Expedited child support process

Prehearing resolution, procedure, generally, Rule 362.01 to Rule 362.04

Family court proceedings

Settlement efforts, Rule 303.03

Structured settlements

Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons

Annuities, requirements, Rule 145.05, Rule 145.06

Trusts, requirements, Rule 145.05, Rule 145.06

CONCILIATION COURTS

Appearance

Failure to appear, effect, Rule 512

Parties to suits, trials, Rule 512

Application of rules

Generally, Rule 501

Attorneys

Appearance, trials, Rule 512

Signatures, demand for removal, requirements, Rule 521

Calendar

Plaintiffs' actions

Reinstatement, grounds, Rule 510

Striking, grounds, Rule 510

Claims

Compromise and settlement, see *Compromise and settlement* under this topic

Statements of claim

Amendment, Rule 522

Contents, requirements, Rule 507

Filing, requirements, Rule 505

Uniform statement of claim, use, requirements, Rule 507

Verification, requirements, Rule 507

Compromise and settlement

Judgment in accord with, Rule 512

Notice requirements, Rule 511

Costs and disbursements (courts)

Absolute or conditional costs

Continuances, Rule 512

Counterclaims, Rule 509

Generally, Rule 513

Imposition, grounds, Rule 510

Notice regarding, orders for judgment, Rule 514

Court administrators, duties, generally, Rule 504

Filing fees, inclusion in, Rule 506, Rule 516

Mandatory costs

Cases removed to district court, Rule 524

Settlement, notice requirements, Rule 511

Counterclaims

Amendment, Rule 522

Assertion, Rule 509, Rule 510

Court administrators, duties, Rule 509

Defendants, duties, Rule 509

Filing

Late filing, effect, Rule 509

Requirements, Rule 508

Jurisdiction of court, counterclaims in excess of, Rule 510

Settlement, notice requirements, Rule 511

Statements of counterclaim

Contents, requirements, Rule 507

Uniform statement of counterclaim, use, requirements, Rule 507

Verification, requirements, Rule 507

Court administrators

Duties, generally, see **COURT ADMINISTRATORS**

Evidence

Admissibility, Rule 512

Exhibits

Return of, requirements, Rule 512

Fees

Affidavits in lieu of, Rule 505, Rule 506, Rule 509

Court administrators, duties, Rule 504

CONCILIATION COURTS (Cont'd)

Fees (Cont'd)

Establishment, Rule 506

Filing fees

Commencement of action, requirements, Rule 505

Costs and disbursements, inclusion, Rule 516

Counterclaims, Rule 509

Judgments, docketing fees, Rule 518

Subpoenas, trials, Rule 512

Judges

District court judges

Cases removed to district court

Presiding judge in conciliation proceedings, presiding in same case, prohibited, Rule 523

Service as, Rule 504

Referees (court), serving as, Rule 504

Judgments

Appeals to district court, Rule 521

Default, Rule 512

Docketing, Rule 518, Rule 519

Effective date, Rule 515

Enforcement, Rule 518

Entry of, Rule 515

Failure to satisfy, contempt, Rule 518

Notice of order for, Rule 514

Orders, see *Orders* under this topicPayment, *nonprevailing party*, Rule 517

Settlements, judgments in accord with, Rule 512

Vacating, Rule 520

Jurisdiction

Counterclaims

Assertion, requirements, Rule 509

Counterclaims in excess of, Rule 510

Generally, Rule 502

Notice received

Compromise and settlement of claims or counterclaims, Rule 511

Orders

Filing fees, inclusion in, Rule 506, Rule 516

Notice of contempt, requirements, Rule 518

Orders for judgment

Notice of, requirements, Rule 514

Settlements, judgments in accord with, Rule 512

Vacating, Rule 520, Rule 521

Pleadings

Removal of cause to district court, pleadings used, Rule 522

Proceedings

Commencement, Rule 505

Dismissal, Rule 508

Reinstatement, Rule 510

Striking from calendar, grounds, Rule 510

Proceedings, see *Trials* under this topic

Records

Court administrators, duties, Rule 504

Removal of cause to district court

Limited removal, Rule 521

Procedure, generally, Rule 521

Scheduling of civil cases

Exclusion, Rule 111.01

Settlement, see *Compromise and settlement* under this topic

Subpoenas

Availability, court administrators, advice given, Rule 504

Trials, Rule 512

Summonses

Contents, requirements, Rule 508

Issuance, Rule 508

Testimony

Hearing, trials, Rule 512

Time

Computation

Generally, Rule 503

Legal holiday, defined, Rule 503

Time periods less than seven days, Rule 503

Working week day, defined, Rule 503

Trials

Continuances, Rule 509, Rule 512

Date of, Rule 508

Generally, Rule 512

New trials, see **NEW TRIALS**

CONCILIATION COURTS (Cont'd)**Trials (Cont'd)**

- Removal to district court, procedure, Rule 521
- Reporting, prohibited, Rule 504
- Testimony, Rule 512

CONDEMNATION

Real property, see **EMINENT DOMAIN**

CONDOMINIUMS**Associations**

- Appearance, conciliation court proceedings, Rule 512
- Procedure regarding
 - Generally, Rule 222
- Registrars of titles
 - Duties, Rule 222

CONFIDENTIAL OR PRIVILEGED INFORMATION**Alternative dispute resolution**

- Definitions, Rule 114.08
- Proceedings, Rule 114.08
- Disclosure
 - Alternative dispute resolution, Rule 114.08
 - Interpreters, disqualification, grounds, Rule 8.03
- District court self-help personnel, exception, Rule 110.05
- Family court proceedings
 - Social security numbers, Rule 313.01, Rule 355.05
 - Tax returns, Rule 313.02, Rule 355.05

CONFLICTS OF INTEREST

District courts self-help programs, personnel, Rule 110.08

CONTEMPTS**Conciliation court proceedings**

Judgments, failure to satisfy, Rule 518

Expedited child support process

- Child support
 - Enforcement, Rule 373.02
- Contested cases
 - Expedited child support process, prohibited proceedings, Rule 353.01

Family court proceedings

- ADR processes, participation in by parties, exception, Rule 310.01
- Uniform system for scheduling, exclusion, Rule 304.01

Hearings

Family court proceedings, Rule 309.02

Judgments

Conciliation court judgments, failure to satisfy, Rule 518

Proceedings

Family court proceedings, commencement, Rule 309.01

Sentencing

Family court proceedings, Rule 309.03

CONTINUANCES**Conciliation court proceedings**

- Counterclaims, Rule 509
- Good cause, requirements, Rule 512
- Number, limitations, Rule 512

Expedited child support process

Grounds, Rule 364.05

Family court proceedings

- Annulment proceedings, Rule 302.02
- Dissolution of marriage, Rule 302.02
- Separation of husband and wife, Rule 302.02

Registration of title proceedings

New duplicate certificates of title, grounds, Rule 216

Supplementary proceedings

Number allowed, Rule 140.03

Trials

- Motions, requests for continuances, requirements, Rule 122
- Single requests for reasonable continuance, when granted, Rule 122

COOPERATIVE ASSOCIATIONS**Appearance**

Conciliation court proceedings, Rule 512

CORPORATIONS**Appearance**

- Conciliation court proceedings, Rule 512
- Receivers and receivership
 - Civil actions, venue, Rule 1

CORPORATIONS (Cont'd)**Receivers and receivership (Cont'd)**

- Claims against, generally, Rule 137.04
- Receivers, duties, see **Receivers, corporate receiverships under RECEIVERS AND RECEIVERSHIP**

COSTS AND DISBURSEMENTS (COURTS)**Award of**

- Failure of party to appear, sanctions, family court proceedings, Rule 307
- Expedited child support process, Rule 377.09
- Conciliation courts, see **Costs and disbursements (courts) under CONCILIATION COURTS**

Expert witnesses

Fees, taxation, Rule 127

COUNTERCLAIMS

Conciliation courts, see **Counterclaims under CONCILIATION COURTS**

Defendants

- Intent to prove
 - Joint statement of the case, requirements, Rule 112.02
- Personal injury lawsuits
 - Claimants, statements by
 - Joint statement of the case, requirements, Rule 112.03

COUNTIES**County agencies**

- Child custody investigations
 - Reciprocity, ADR processes, family law matters, Rule 114.05
- Defined, expedited child support process, Rule 352.01
- Temporary restraining orders against
 - Applications for, requirements, Rule 118

COUNTY ATTORNEYS**Expedited child support process**

- Approvals by
 - Documents prepared by county employees, Rule 369.01
- Defined, Rule 352.01
- Employees, duties
 - Deemed not practice of law, Rule 369.02
 - Not requiring direction of county attorney, Rule 369.02
 - Requiring direction of county attorney, Rule 369.01
- Interpretation of rules
 - Employees, duties, deemed not practice of law, Rule 369.02

Service of process on**Motions**

Reinstatement, forfeited bail bond or cash bail, Rule 702

COUNTY AUDITORS**Endorsements**

State deeds, repurchase and conveyance of registered land, Rule 218

COURT ADMINISTRATORS**Accounts and accounting**

Conciliation courts, duties, Rule 504

Advice given**Conciliation courts**

- Duties, Rule 504
- Not practice of law, interpretation of rules, Rule 504

Arbitration awards

Judgments, entry as, duties, Rule 114.09

Assignments by

Neutrals, ADR processes, Rule 114.05

Assistance by**Conciliation courts**

- Counterclaims, Rule 507, Rule 509
- Statements of claim, Rule 507

Bail bonds

Bond procurers, applications, duties, Rule 702

Certificates and certification

Defendant's default, registration of title, Rule 207

Conciliation courts

Management, duties, Rule 504

Costs and disbursements (courts)**Conciliation courts, duties**

- Absolute costs, Rule 513
- Conditional costs, Rule 513

COURT ADMINISTRATORS (Cont'd)**Costs and disbursements (courts) (Cont'd)****Conciliation courts, duties: (Cont'd)**

Generally, Rule 504

Expert witness fees, taxation, Rule 127

Court calendars, preparation

Default hearings, scheduling, duties, Rule 117.01

Motion hearings, scheduling, duties, Rule 115.02

Defined

Jury management rules, Rule 802

Delegation of duties

Conciliation courts, Rule 504

Depositing with

Annuity policies

Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons, Rule 145.06

Wills, requirements, Rule 418

Deputies

Delegation of duties to, conciliation courts, Rule 504

Documents

Removal from custody, restrictions, Rule 129

Evidence

Exhibits, custody, requirements, criminal proceedings, Rule 706

Filing fees

Conciliation courts

Collection, duties, Rule 506

Removal of cause to district court, Rule 521

Expedited child support process

Collection, Rule 356.01

Requests to waive, duties, Rule 356.02

Filing with

Affidavits

Affidavits in support of motions, motion practice, Rule 115.03, Rule 3.03

Conciliation courts

Counterclaims, failure of defendant to serve plaintiff with summons, Rule 510

Filing fees, affidavits in lieu of, Rule 505, Rule 506, Rule 509

Removal of cause to district court, Rule 521

Housing courts

Affidavits of service, Rule 605

Defendant unable to be found for service, Rule 606

Mailing, summons and complaint to defendant, Rule 606

Posting, summons and complaint, Rule 606

Annual accounts

Probate proceedings, trustees, duties, Rule 417.02

Certificates of representation

Criminal proceedings, Rule 703

Expedited child support process, Rule 357.02

Generally, Rule 104

Conciliation courts

Affidavits, Rule 505, Rule 506

Counterclaims, Rule 509

Demand for removal to district court, Rule 521

Judgments, Rule 518

Motions, vacation of default judgments, Rule 520

Statement of claim, Rule 505

Summonses, Rule 508

Corporate receiverships

Court orders, use of funds to pay receivers, Rule 137.08

Creditors' claims, Rule 137.04

Inventory and valuation of assets, Rule 137.03

Death by wrongful act lawsuits

Transfer of actions, requirements, Rule 144.04

Housing courts

Affidavits, Rule 605, Rule 606

Complaints, power of authority, attachment, requirements, Rule 603

Requests for removal for hearing before judge, Rule 602

Judgments, arbitration proceedings, Rule 114.09

Memoranda of law

Motion practice, Rule 115.03, Rule 303.03

Summary judgment motions, requirements, Rule 115.03

COURT ADMINISTRATORS (Cont'd)**Filing with (Cont'd)****Motions**

Dispositive motions, Rule 115.03

Expedited child support process

Clerical errors, correction, Rule 377.02

Modification or enforcement of support, Rule 372.04

Review of decision, Rule 376.01

Nondispositive motions, Rule 115.04

Reinstatement, forfeited bail bonds or cash bail, requirements, Rule 702

Summary judgment motions, Rule 115.03

Vacation of default judgments, conciliation courts, Rule 520

New trials, requests for, Rule 114.09

Notice of appeal, expedited child support process, Rule 378.01

Notice of motion and motion, Rule 115.03, Rule 303.03

Notice of objection to referee, (court), Rule 107

Notice of removal, neutrals, ADR processes, Rule 114.05

Notice of review, referee's findings, family courts, Rule 312.01

Notice of withdrawal, attorneys, civil actions, Rule 105

Orders

Decision and order of child support magistrate, Rule 365.04

Papers or documents required to be filed

Backings, prohibited, Rule 6.03

Facsimile transmission, Rule 6.01

Fasteners, Rule 6.03

Format, requirements, Rule 6.01

Paper size, requirements, Rule 6.02

Petitions

Personal injury lawsuits brought on behalf of minors, mentally ill, or retarded persons, requirements, Rule 145.02

Pleadings

Expedited child support process

Generally, Rule 370.02

Parentage actions, Rule 371.02, Rule 371.05

Responses, Rule 370.05

Facsimile transmission, Rule 6.01

Format, requirements, Rule 6.01

Prehearing conference statements

Family court proceedings, Rule 305.01

Proof of service

Conciliation courts, summonses, Rule 508

Expedited child support process, requirements, Rule 355.04; Rule 370.04

Generally, Rule 7

Housing court proceedings, Rule 605

Probate

Accounts, trustees, service on beneficiaries, Rule 417.04

Formal proceedings, Rule 404

Informal proceedings, Rule 408

Proposed orders

Expedited child support process

Default proceedings, Rule 363.02

Settlement, Rule 362.02

Motion practice, Rule 115.03

Registration of title

Answers, Rule 206

Decrees of registration, Rule 212, Rule 213

Default cases, documents, Rule 208

Plats, Rule 211

Requests for removal of child support magistrates, Rule 368.02

Security bonds

Corporate sureties, insolvency, criminal proceedings, Rule 702

Statement of the case

Joint statement of the case, plaintiffs, duties, Rule 112.01

Subpoenas, expedited child support process, requirements, Rule 361.03

Supplementary affidavits

Motion practice, Rule 115.03

Transcripts of proceedings, Rule 366.01

COURT ADMINISTRATORS (Cont'd)

Filing with (Cont'd)

Waivers

Family court proceedings

Default hearings, rights under Soldier's and Sailor's
Civil Relief Act of 1940, Rule 306.01

Probate proceedings

Notice, annual accounts, hearings, Rule 417.06

Forms (documents)

Providing to parties, duties, Rule 379.01

Hearings or motions by telephone or interactive video

Duties, generally, Rule 359.01, Rule 359.02

Judgments

Arbitration proceedings, Rule 114.09

Dockets

Conciliation court judgments, duties, Rule 518

Entry of, duties

Arbitration awards, Rule 125

Automatic stay, requirements, generally, Rule 125

Conciliation courts, duties, Rule 515

Expedited child support process, duties, generally, Rule
365.01 to Rule 365.04

Payment of

Conciliation courts, duties, Rule 517

Vacation of

Conciliation court judgments, new trial, duties, Rule 520

Lists

Probate proceedings

Trusteeships, duties, Rule 417.05

Receivers, corporations, duties, Rule 137.05

Motions

Filing requirements, see Filing with under this topic

Scheduling, duties, see Scheduling duties under this topic

Notice given

ADR processes

Information regarding, Rule 114.03

Neutrals, list of available neutrals, 114.03

Annual reports, due date

Corporate receiverships, Rule 137.05

Arbitration awards

Judgments, entry as, duties, Rule 114.09

Bail bonds, forfeiture, Rule 702

Civil actions

Date of filing, Rule 104

File number assigned to case, Rule 104

Conciliation court proceedings

Counterclaims, notice of filing, Rule 509

New trials, dates of, Rule 520

Orders for judgment, Rule 514

Reinstatement of action, Rule 510

Exhibits, removal from custody of court, duties, Rule 128

Expedited child support process

Filing of order and entry of judgment, Rule 365.04

Probate proceedings

Trustees' annual accounts, hearings, Rule 417.06

Trusteeships, annual accounts, Rule 417.05

Review of referee's findings or recommendations

Family court proceedings, Rule 312.01

Notice received

Failure of defendant to serve plaintiff after counterclaim,
conciliation courts, Rule 510

Names, addresses, and telephone numbers

Attorneys, civil actions, Rule 104

Parties to suits, civil actions, Rule 104

Settlement of civil actions, Rule 121

Orders

Hearings on petitions, issuance

Probate, formal proceedings, Rule 404

Payments to

Conciliation courts

Absolute or conditional costs, Rule 513

Filing fees, Rule 506

Judgments, Rule 517

Removal fees, Rule 521

Records and record keeping

Conciliation courts, duties, Rule 504

Scheduling duties

Default hearings, dates, duties, Rule 117.01

COURT ADMINISTRATORS (Cont'd)

Scheduling duties (Cont'd)

Expedited child support process

Hearings or motions by telephone or interactive video,
Rule 359.01

Motion hearings, dates, duties, Rule 115.02

Service of process by

Conciliation court proceedings, Rule 508

Expedited child support process

Notice of entry of judgment, Rule 365.04

Notice of filing of order, Rule 365.04

State court administrator

Certificates and certification

Training programs

Arbitrators, neutrals, and mediators, ADR

processes, Rule 114.13

Guardian ad litem programs, Rule 912.01 to Rule
912.03

Community education programs

Guardian ad litem system, requirements, Rule 913

Consulting

Guardian ad litem programs, Rule 913

Examination and testing

Court interpreter ethics examination, duties, Rule 8.01

Fees, neutrals, ADR processes, Rule 114.12

Filing with

Affidavits, interpreters, Rule 8.01

Continuing education credit information, Rule 114.13

Interpreters

Roster of interpreters, duties, Rule 8.01

Lists

Civil neutral rosters, duties, ADR processes, Rule
114.12

Family law neutral rosters, duties, ADR processes, Rule
114.12

Guardians ad litem removed from panels, duties, Rule
906.03

Interpreters, duties, Rule 8.01

Publications

Rosters of interpreters, duties, Rule 8.01

Subpoenas

Issuance, duties

Conciliation courts, Rule 512

Summonses

Issuance, duties

Conciliation courts, Rule 508

Housing courts, Rule 606

Verification by

Corporate receiverships, creditors' claims, Rule 137.04

COURT OF APPEALS

Appeals to

Conciliation court cases removed to district court, Rule 525

Expedited child support process

Application of rules, Rule 378.01

Generally, Rule 378.01

Frivolous litigation, Rule 9.05

COURT PERSONNEL

Courtroom decorum

Duties, generally, Rule 2.01

Self-help programs, see Self-help programs under DISTRICT
COURTS**COURT REPORTERS**

Notice given

Family court proceedings

Referee's hearings, transcripts, filing date, Rule 312.02

Personal injury lawsuits brought on behalf of minors, mentally
ill, or mentally retarded persons

Records, duties, Rule 145.04

Transcripts

Referees (court) hearings

Family court proceedings, duties, Rule 312.02

Housing court proceedings, Rule 611

COURT SERVICES DEPARTMENTS

Service of process on

Child custody

Supervised custody, final orders, family court
proceedings, Rule 308.01

COURT SERVICES DEPARTMENTS (Cont'd)

Service of process on (Cont'd)

Child support

Final orders, family court proceedings, Rule 308.01

Visitation

Supervised visitation, final orders, family court proceedings, Rule 308.01

COURTHOUSES

Cameras

Use, prohibited, Rule 4

Jury facilities

Jury commissioners, duties, Rule 803

Photographs

Taking in courtrooms, when permitted, Rule 4

Tape recorders

Use, prohibited, Rule 4

Video recording devices

Use, prohibited, Rule 4

COURTS

Tribal courts

Orders and judgments, enforcement

Discretionary, Rule 10.02

Mandatory, Rule 10.01

CREDITORS

Attorneys for

Signatures, removal from conciliation court, Rule 521

Supplementary proceedings, service as referee, prohibited, Rule 140.02

Employees of

Notice received

Probate proceedings

Formal proceedings, Rule 404

Informal proceedings, Rule 408

Subsequent proceedings, Rule 413

Supplementary proceedings, service as referee, prohibited, Rule 140.02

CROSS-EXAMINATION

Expedited child support process, Rule 364.12

DAMAGES

Special damages

Personal injury lawsuits

Lists, joint statement of the case, requirements, Rule 112.03

DEATH BY WRONGFUL ACT

Lawsuits

Application of rules

Proceeds recovered under Federal Employer's Liability Act and Minnesota Statutes, section 219.77, distribution, Rule 144.05

Personal representatives, claims

Attorney fees, contracts for, interpretation of rules, Rule 143

Proceeds

Petitions for distribution, requirements, Rule 144.05

Trustees

Discharge, Rule 144.05

Payment for services, Rule 144.05

Petitions, captions, Rule 144.03

Petitions, hearings, Rule 144.02

Requirements, generally, Rule 144.01

Transfer of action to another court, requirements, Rule 144.04

Validity of action, 144.06

DEBTORS

Attorneys for

Signatures, removal from conciliation court, Rule 521

Child support obligors

Refunds, withholding

Application of rules, family court proceedings, Rule 301

DECREES

Dissolution of marriage

Joint petition, agreement, and judgment and decree for marriage dissolution without children, Form 12

DEEDS

Housing and urban development deeds

Registration of title, Rule 218

Real property

Transfer, probate proceedings, Rule 410

State tax deeds

Registration of title, Rule 218

DEFAULT JUDGMENT

Attorney fees, Form 119.05, Rule 119.05

Hearings

Family court proceedings, Rule 306.01, Rule 306.02

Motion practice, generally, Rule 117.01

Proof of claim

Requirements, generally, Rule 117.02

DEFENDANTS

Answers

Registration of title, Rule 206, Rule 209

Appearance

Conciliation court proceedings, Rule 508, Rule 512

Registration of title, Rule 206, Rule 207

Counterclaims

Conciliation court proceedings, Rule 509, Rule 510

Intent to prove, joint statement of case, contents

Rules applicable to all court proceedings, Rule 112.02

Defenses

Intent to prove

Joint statement of the case, requirements, Rule 112.02

Family court proceedings

Designation of parties, Rule 302.04

Garnishments

Proposed judgments against, notice requirements, Rule 136.02

Notice given

Claims or counterclaims, settlement

Conciliation court proceedings, Rule 511

Service of process on

Conciliation court proceedings, Rule 508

Constructive service, housing court proceedings, Rule 606

Housing court proceedings, Rule 606

Summonses

Identification prior to issuance, registration of title, Rule 205

DEFENSES

Defendants

Intent to prove

Joint statement of the case, requirements, Rule 112.02

Expedited child support process

Service by publication, no actual notice, Rule 355.02

DEFINITIONS

Adjudicative processes

ADR processes, Rule 114.02

Aggrieved party

Conciliation courts, Rule 521

Answers

Expedited child support process, Rule 352.01

Arbitration

ADR processes, Rule 114.02

Business Day

Expedited child support process, Rule 354.03

Child support magistrate

Expedited child support process, Rule 352.01

Claim

Frivolous litigation, Rule 9.06

Code

Probate rules, Rule 402

Commercial property manager

Conciliation courts, Rule 512

Confidential

Neutrals, ADR processes, records, notes, and recollections, Rule 114.08

Consensual special magistrate

ADR processes, Rule 114.02

County agency

Expedited child support process, Rule 352.01

County attorney

Expedited child support process, Rule 352.01

DEFINITIONS (Cont'd)

Court
Jury management rules, Rule 802

Court administrator
Jury management rules, Rule 802

Dispositive motions
Motion practice, Rule 115.01

Drivers' license list
Jury management rules, Rule 802

Early neutral evaluation (ENE)
ADR processes, Rule 114.02

Evaluative processes
ADR processes, Rule 114.02

Facilitative processes
ADR processes, Rule 114.02

Formal proceedings
Probate rules, Rule 402

Frivolous litigant
Frivolous litigation, Rule 9.06

Good cause

Interpreters
Nonappointment or disqualification from proceedings, Rule 8.02, Rule 8.03

Hybrid processes
ADR processes, Rule 114.02

Informal proceedings
Probate rules, Rule 402

Initiating party
Expedited child support process, Rule 352.01

IV-D case
Expedited child support process, Rule 352.01

Judicial district administrator
Jury management rules, Rule 802

Juror
Jury management rules, Rule 802

Jury commissioner
Jury management rules, Rule 802

Legal holiday
Conciliation courts, Rule 503
Expedited child support process, Rule 354.03

Master list
Jury management rules, Rule 802

Mediation
ADR processes, Rule 114.02

Mediation-arbitration (Med-arb)
ADR processes, Rule 114.02

Mini-trial
ADR processes, Rule 114.02

Moderated settlement conference
ADR processes, Rule 114.02

Neutral
ADR processes, Rule 114.02

Neutral fact finding
ADR processes, Rule 114.02

Nondispositive motions
Motion practice, Rule 115.01

Noninitiating party
Expedited child support process, Rule 352.01

Opposing party
Conciliation courts, removal of cases to district court, Rule 523

Parentage
Expedited child support process, Rule 352.01

Parenting time
Expedited child support process, Rule 352.01

Party
Expedited child support process, Rule 352.01

Person handicapped in communication
Expedited child support process, Rule 358.02

Petit jury
Jury management rules, Rule 802

Qualified neutral
ADR processes, Rule 114.02

Random selection
Jury management rules, Rule 802

Reasonably available
Child custody investigations, ADR processes, Rule 114.05

DEFINITIONS (Cont'd)

Removing party
Conciliation courts, removal of cases to district court, Rule 523

Response
Expedited child support process, Rule 352.01

Security
Frivolous litigation, Rule 9.06

Self-help personnel
Self-help programs, Rule 110.03

Self-help program
General rules of practice, Rule 110.03

Self-represented litigant
Self-help programs, Rule 110.03

Source list
Jury management rules, Rule 802

Summary jury trial
ADR processes, Rule 114.02

Supervised administration
Probate rules, Rule 402

Support
Expedited child support process, Rule 352.01

Voter registration list
Jury management rules, Rule 802

Working week day
Conciliation courts, Rule 503

DELINQUENT TAXES

Probate proceedings
Final accounts, disclosure, Rule 417.03

DEPOSITIONS

Evidence
Arbitration hearings, Rule 114.09

DESCRIPTIONS OF PROPERTY

Registration of title
Applications, interlocutory decrees establishing boundaries, Rule 211

DISCOVERY

ADR processes
Arbitration proceedings, Rule 114.09
Documents produced during, not discoverable, Rule 114.08
Statements made during, not discoverable, Rule 114.08

Depositions, see DEPOSITIONS

Discovery conferences
Date of, scheduling orders, requirements, Rule 111.03

Expedited child support process
Exchange of documents, requirements, Rule 361.02
Filing requirements, exception, Rule 361.06
Motions, see MOTIONS
Requests for, noncompliance, Rule 361.04
Witnesses, see WITNESSES

Informal discovery
Housing court proceedings, requirements, Rule 612

Motions, see Discovery under MOTIONS

Scheduling orders
Date of completion
Family court proceedings, Rule 305.03
Requirements, generally, Rule 111.03
Expedited discovery, housing court, Rule 612

DISCRIMINATION

Juries
Jurors, discrimination against, prohibited, Rule 809

DISMISSAL

Claims, motions, see Dismissal under MOTIONS

Frivolous litigation
Failure to furnish security, Rule 9.03

Parties, motions to dismiss, see Parties under MOTIONS

DISSOLUTION OF MARRIAGE

ADR processes
Application of rules, Rule 114.01, Rule 114.04

Application of rules
Alternative dispute resolution, Rule 114.01, Rule 114.04
Family court proceedings, Rule 301
Guardian ad litem procedure, Rule 901.01
Procedural time limits, Rule 302.03

Arbitration, see ALTERNATIVE DISPUTE RESOLUTION

DISSOLUTION OF MARRIAGE (Cont'd)

- Confidential and privileged information
 - Social security numbers, Rule 313.01
 - Tax returns, Rule 313.02
 - Continuances
 - Generally, Rule 302.02
 - Defined as family court case
 - Guardian ad litem procedure, Rule 901.01
 - Expedited child support process
 - Marital property, division
 - Prohibited proceedings, Rule 353.01
 - Family court, see Family court under DISTRICT COURT
 - Final orders
 - Contents, requirements, Rule 308.02, Rule 308.03
 - Notices, requirements, Rule 308.02
 - Marriages without children, procedure, Form 12, Rule 302.01
 - Mediation, see ALTERNATIVE DISPUTE RESOLUTION
 - Parties to suits
 - Designation, Rule 302.04
 - Personal service
 - Commencement of proceedings, Rule 302.01
 - Petitions
 - Joint petitions
 - Joint petition, agreement, and judgment and decree for marriage dissolution without children, Form 12
 - Summonses, not required, Rule 302.01
 - Post-decree matters
 - ADR processes, application of rules, Rule 114.04
 - Service of process
 - Requirements, generally, Rule 302.01
 - Service by publication, when permitted, Rule 302.01
 - Time
 - Procedural time limits, application of rules, Rule 302.03
- DISTRICT COURT**
- Administration
 - Expedited child support process, Rule 367.01
 - ADR processes
 - Communications with during or after, Rule 114.10
 - Costs, allocation, duties, Rule 114.11
 - Duties, generally, Rule 114.04
 - Neutrals, duties, Rule 114.05
 - Selection of process, telephone conferences, Rule 114.04
 - Appeals from
 - Conciliation court, cases removed to district court, Rule 525
 - Frivolous litigation, Rule 9.05
 - Appeals to
 - Conciliation court cases, removal to district court, Rule 521 to Rule 524
 - Application of rules
 - Cases removed from conciliation court, Rule 523
 - Applications to
 - Attorney fees, requirements, generally, Rule 119
 - Bail bond procurers, criminal proceedings, Rule 702
 - Ex parte orders, Rule 3.01, Rule 3.02
 - Motions to reconsider, Rule 115.11
 - Supplementary proceedings, ex parte applications
 - Previous applications, disclosure, requirements, Rule 140.01
 - Temporary restraining orders against municipalities
 - Notice, requirements, Rule 118
 - Appointments by
 - Appraisers, corporate receiverships, Rule 137.03
 - Child support magistrates, expedited child support process, Rule 367.02
 - Guardians ad litem, Rule 108.01
 - Guardians, corporations, Rule 137.02
 - Interpreters, Rule 8.02
 - Neutrals, ADR processes, Rule 114.05
 - Receivers, corporations, Rule 137.02
 - Referees (court), condemnation proceedings, Rule 141.01
 - Trustees, corporations, Rule 137.02
 - Approvals by
 - Bail bond procurers, criminal proceedings, Rule 702
 - Bonds (officers and fiduciaries), corporate receiverships, Rule 137.03
 - Death by wrongful act lawsuits
 - Distribution of proceeds, Rule 144.05

DISTRICT COURT (Cont'd)

- Approvals by (Cont'd)
 - Restraining orders, bonds, Rule 135
 - Withdrawal of attorney from case, effective date, criminal proceedings, Rule 703
- Calendar
 - Restoration of cases to following alternative dispute resolution, Rule 114.09
 - Scheduling of cases, see Scheduling of civil cases under this topic
 - Special term calendar, conciliation court proceedings, limited removal, Rule 521
- Certifying to
 - Family court proceedings
 - Settlement efforts, Rule 303.03
 - Motion practice
 - Settlement efforts, compliance with rules, Rule 115.10
- Consent
 - Motion hearings, witnesses, testimony, Rule 115.08
- Court
 - Defined, jury management rules, Rule 802
- Courtroom decorum
 - Requirements, generally, Rule 2.01 to Rule 2.03
- Courtrooms
 - Decorum, see Courtroom decorum under this topic
 - Flags in, requirements, Rule 2.01
- Determinations by
 - Allocation of costs, ADR processes, Rule 114.11
 - Cases, handling as expedited, standard, or complex, Rule 112.02
 - Expedited child support process
 - Removal of child support magistrates, Rule 368.02
 - Interpreters on statewide rosters, good cause not to appoint, Rule 8.02
 - Jurors, disqualification, interest in insurance companies with interest in outcome of case, Rule 123
- Discretion
 - Out-of-state attorneys, appearance in Minnesota courts, Rule 5
- Employees
 - Judicial officers, removal for actual prejudice or bias, requirements, Rule 106
- Family court
 - Application of rules, Rule 301 to Rule 313
 - Confidential or privileged information, Rule 313.01 to Rule 313.03
 - Contempt proceedings, Rule 309.01 to Rule 309.03
 - Default hearings, Rule 306.01, Rule 306.02
 - Ex parte relief, Rule 303.01
 - Final hearings, Rule 307
 - Final orders, Rule 308.01 to Rule 308.03
 - Findings of fact, see Findings of fact under this topic
 - Judicial review, referee's findings or recommendations, Rule 312.01
 - Jurisdiction, Rule 301
 - Post-decree matters, Rule 310.02
 - Prehearing conferences, Rule 305.01 to Rule 305.03
 - Referees (court), duties, see REFEREES (COURT)
 - Scheduling of cases
 - Orders, see Orders under this topic
 - Uniform system for scheduling, Rule 304.01
- Findings
 - Frivolous litigation, Rule 9.02
- Findings of fact
 - Family court proceedings
 - Preparation, contested cases, Rule 307
 - Proposed findings of fact, default cases, Rule 306.02
- General rules of practice
 - Modification
 - Personal injury lawsuits brought on behalf of minors, mentally ill or mentally retarded persons, when permitted, Rule 145.07
- Guardians ad litem, see District Court under GUARDIANS AD LITEM
- Hearings
 - Arbitration hearings, Rule 114.09
 - Attorneys, withdrawal from case, criminal proceedings, Rule 703
 - Banks, liquidation, Rule 138

DISTRICT COURT (Cont'd)**Hearings (Cont'd)**

Cameras, use, Rule 4

Conciliation court

Removal of cases to district court, limited removal, Rule 521

Death by wrongful act lawsuits, distribution of proceeds, Rule 144.05

Default hearings

Application of Rule 115, exemption, Rule 117.01

Motion hearings, scheduled as, Rule 117.01

Expedited child support process

Conducted by telephone or interactive video, generally, Rule 359.01 to Rule 359.03

Contempt matters, generally, Rule 353.01

Continuance, grounds, Rule 364.05

Default proceedings, when required, Rule 363.01

Evidentiary hearings, contempt matters, referral to district court or family court referee, Rule 353.01

Permissive intervention, requirements, Rule 360.02

Procedure, time of, Rule 364.03

Scheduling, parties to suits, duties, Rule 364.02

Settlement conferences, effect on time limit for hearing, Rule 362.04

Family court proceedings

Contempts, hearings, Rule 309.02

Final hearings

Contested cases, Rule 307

Default cases, scheduling, requirements, Rule 306.01

Joint statement of the case

Failure of parties to file, effect, Rule 112.05

Jury selection procedure, challenges to, Rule 813**Motion hearings**

Cancellation, grounds, Rule 115.06, Rule 303.03

Family court proceedings, contempts, Rule 309.02

Time limits for filing and serving documents in support of

Modification, restrictions, Rule 115.07

Relaxation, grounds, Rule 115.07

Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons

Petitions for payment of proceeds, Rule 145.04

Registration of title

Default cases, Rule 208

Immediate registration subsequent to, Rule 212

New duplicate certificates of title, Rule 216

Proceedings subsequent to initial registration, Rule 214

Removal of judges, actual prejudice or bias, Rule 106

Tape recorders, use, prohibited, Rule 4

Trustees

Appointment, death by wrongful act lawsuits, notice requirements, Rule 144.02

Video recording devices

Use, prohibited, Rule 4

Housing court

Hennepin County, see Housing court under HENNEPIN COUNTY DISTRICT COURT

Ramsey County, see Housing court under RAMSEY COUNTY DISTRICT COURT

In camera proceedings

Attorney fees, review of documents supporting application, Rule 119

Injunctions**Restraining orders**

Bonds, exception, Rule 135

Local governments, granting, requirements, Rule 118

Judgments, see JUDGMENTS**Judicial district administrators**

Defined, jury management rules, Rule 802

Review by

Juror use, frequency, Rule 811

Judicial review

Referees' decisions, housing court proceedings

Notice, requirements, Rule 611

Transcripts, obtaining, petitioners' duties, Rule 611

Referees' findings or recommendations, family court, Rule 312.01

DISTRICT COURT (Cont'd)**Juries, duties****Jurors**

Prospective jurors, addresses, access, restrictions, Rule 814

Use of, efficiency, requirements, Rule 812

Jury service

Shortest practical period, requirements, Rule 811

Jurisdiction

Death by wrongful act lawsuits, transfer of cases, Rule 144.04

Out-of-state attorneys

Appearance in Minnesota courts, Rule 5

Jury commissioners

Defined, jury management rules, Rule 802

Determinations by**Prospective jurors**

Deferral from service, Rule 810

Qualifications to serve, Rule 808

Disclosures by

Juror qualification questionnaires, Rule 814

Lists of prospective jurors, prohibited

Exceptions, Rule 814

Generally, Rule 807

Establishment of office, Rule 803

Jury administration plans, requirements, Rule 804

Jury source lists, duties, Rule 806

Jury system performance, duties, Rule 803

Mail and mailing

Jury questionnaires and summonses, requirements, Rule 807

Records

Excuse or deferral of prospective jurors, requirements, Rule 810

Requirements, generally, Rule 814

Reports given

Jury source lists, periodic review, Rule 806

Review by

Jury source lists, periodic review, requirements, Rule 806

Testimony

Jury selection procedure, compliance with rules, challenges to, Rule 813

Minnesota civil trialbook, see District court under MINNESOTA CIVIL TRIALBOOK

Notice given

Banks, liquidation, hearings, Rule 138

Notice received

Motions, settlement prior to hearing, Rule 115.10, Rule 303.03

Settlement of civil actions, Rule 121

Transcripts, date of filing, referees' hearings, family court proceedings, Rule 312.02

Opening

Formalities, Rule 2.01

Orders**ADR processes**

Deadlines for completion, Rule 114.05

Non-binding processes, selection by court, Rule 114.04

Non-participation by parties, grounds, Rule 114.11

Payment of costs, Rule 114.11

Post-decree family law matters, Rule 114.04, Rule 310.02

Scheduling orders, family law matters, see Scheduling orders under this topic

Selection of ADR process, Rule 114.04

Attorney fees

Production of documents supporting applications for, Rule 119

Attorneys, withdrawal from case, criminal proceedings, Rule 703

Bail, payment to judgment creditors, conciliation court judgments, Rule 518

Banks, liquidation, Rule 138

Cameras, tape recorders, or video recording devices

Use in areas designated by chief judge, prohibited, Rule 4

DISTRICT COURT (Cont'd)**Orders (Cont'd)**

Child support

Expedited child support process, Rule 365.01 to Rule 365.04

Family court proceedings, requirements, Rule 303.06

Interim orders, Rule 303.04

Compensation and salaries

Appraisers, Rule 137.03

Complex cases

Assignment to single judge, Rule 113.01

Condemnation proceedings

Commissioners, appointment, Rule 141.01

Death by wrongful act lawsuits, distribution of proceeds, Rule 144.05

Ex parte orders

Applications for, requirements, Rule 3.02

Family court proceedings, Rule 303.04

Notice, requirements, Rule 3.01

Family court proceedings

Contested cases, Rule 308.01 to Rule 308.03

Default cases, Rule 306.02

Final orders, Rule 308.01 to Rule 308.03

Frivolous litigation, Rule 9.02

Guardians ad litem, appointments, Rule 904.04

Interim support orders

Family court proceedings, Rule 303.04

Judgments

Automatic stays, Rule 125

Enforcement, conciliation court, Rule 518

Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons

Contents, requirements, Rule 145.05

Court reporters, hearings, recording, Rule 145.04

Proceeds, payment, Rule 145.01, Rule 145.05

Settlement orders, provision for payment of proceeds, Rule 145.05, Rule 145.06

Receivers and receiverships, corporations

Appointment, Rule 137.02

Attorneys for, Rule 137.06, Rule 137.07

Compensation and salaries, Rule 137.09

Compensation and salaries, withdrawal from trust fund to pay, Rule 137.08

Creditors' claims, time for presentation, adjustment, and examination, Rule 137.04

Registration of title

Condominiums, Rule 222

Interlocutory decrees, boundaries, Rule 211

New certificates of title, Rule 215

New duplicate certificates of title, Rule 216

Restraining orders

Issuance, requirements, Rule 135

Scheduling orders

ADR processes, designation in, Rule 114.04

Amendment, generally, Rule 111.04

Contents, requirements

Family court proceedings, Rule 304.03

Generally, Rule 111.03

Issuance, family court proceedings, Rule 304.03

Number of orders permitted, Rule 111.04

Prehearing conference orders

Family court proceedings, Rule 305.03

Show cause orders

Family court proceedings

Contents, Rule 304.03

Ex parte relief, Rule 303.04

Motions, requirements, Rule 303.01

Notice of time to respond, requirements, Rule 303.01

Obtaining, requirements, Rule 303.05

Issuance, generally, Rule 116

Registration of title

Notice requirements, new certificates of title, Rule 215

Spousal maintenance

Family court proceedings, requirements, Rule 303.06

Supplementary proceedings, requirements, Rule 140.03

Testimony

Oral testimony, family court proceedings, Rule 303.03

DISTRICT COURT (Cont'd)**Orders (Cont'd)**

Vacation of

Conciliation court judgment orders and judgments, Rule 520, Rule 521

Witnesses

Number, limitation, family court proceedings, 303.03

Petitions to

Banks, liquidation, Rule 138

Family court proceedings, Rule 302.01

Motions to reconsider, Rule 115.11

Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons, requirements, Rule 145.01, Rule 145.02

Reinstatement, forfeited bail bond or cash bail, Rule 702

Trustees

Appointment, death by wrongful act lawsuits, Rule 144.01

Death by wrongful act lawsuits, distribution of proceeds, Rule 144.05

Records

Motion hearings, teleconferences, Rule 115.09

Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons, requirements, Rule 145.04

Probate proceedings

Availability, requirements, Rule 403

Custody, Rule 403

Referral by

Expedited child support process

Multiple issue proceedings, when permitted, Rule 353.02

Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons, Rule 145.03

Reports

Final argument, requirements, Rule 124

Opening statements, requirements, Rule 124

Review by, see Judicial review under this topic

Scheduling of civil cases

Orders, see Orders under this topic

Uniform system for scheduling

Alternative dispute resolution, application of rules, Rule 114.01

Exclusions, Rule 111.01, Rule 114.01, Rule 304.01

Family court proceedings, scope of rules, Rule 304.01

Self-help programs

Authority to establish, Rule 110.01

Definitions, Rule 110.03

Personnel

Attorney-client relationship, Rule 110.05, Rule 110.07

Communications, not privileged, Rule 110.05

Confidentiality, Rule 110.05, Rule 110.07

Conflicts of interest, Rule 110.08

Definitions, Rule 110.03

Generally, Rule 110.02

Neutrality, Rule 110.05

Services provided by, Rule 110.04

Unauthorized practice of law, Rule 110.06

Records, access to, Rule 110.10

Waivers

Appearance, hearings, petitions for payment of proceeds

Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons, Rule 145.04

Death by wrongful act lawsuits

Distribution of proceeds, Rule 144.05

Probate proceedings

Hearings, annual accounts, Rule 417.06

DISTRICT COURT JUDGES

Assignment of cases to

Complex cases, assignment to single judge

Generally, Rule 113.01 to Rule 113.03

Grounds, Rule 113.01

Chief judge

Approvals by

Program coordinators, guardian ad litem programs, Rule 901.02

DISTRICT COURT JUDGES (Cont'd)

Chief judge (Cont'd)

Determinations by

Complex cases, consolidation, Rule 113.02

Expedited child support process

Administration, duties, Rule 367.01

Hearings

Removal of judge for actual prejudice or bias, Rule 106

Orders

Cameras, tape recorders, or video recording devices, use prohibited, Rule 4

Jury source lists, corrective action regarding, Rule 806

Reports received

Jury source lists, periodic review, Rule 806

Review by

Juror use, frequency, Rule 811

Revocations

Approval, bail bond procurers, Rule 702

Supervision

Jury commissioners, duties, Rule 803

Child support magistrates, serving as, Rule 367.02

Conciliation court judges

Cases removed to district court

Presiding judge in conciliation proceedings, presiding in same case, prohibited, Rule 523

Service as, Rule 504

Court

Judges defined as, jury management rules, Rule 802

Courtroom decorum

Requirements, generally, Rule 2.02

Designations by

Complex cases

Assignment, Rule 113.01 to Rule 113.03

Judges to reconsider motions to remove judges, Rule 106

Enhanced judicial management techniques, use, requirement, Rule 113.01

Motions regarding, duties, Rule 113.03

Orders

Cameras, tape recorders, or video recording devices
Use in designated areas, prohibited, Rule 4

Registrars, persons to serve as, probate proceedings, Rule 415

Removal of judges

Reconsideration of motions to remove, duties, Rule 106

Jurors

Service as, disqualification, Rule 808

Minnesota civil trialbook, see District court judges, under MINNESOTA CIVIL TRIALBOOK

Removal of judges

Actual prejudice or bias

Motions, hearings on, requirements, Rule 106

Reports received

Investigations, guardian ad litem programs, Rule 907.01

Rules applicable to all court proceedings

Modification, Rule 1.02

DOCKETS

Judgment dockets

Conciliation court judgments

Docketing in district court, Rule 518, Rule 519

DOCUMENTS

Evidence, documents as, see EVIDENCE

Forms (documents), see FORMS (DOCUMENTS)

Papers or documents required to be filed with court administrator

Backings, prohibited, Rule 6.03

Facsimile transmission, Rule 6.01

Fasteners, Rule 6.03

Format, requirements, Rule 6.01

Paper size, requirements, Rule 6.02

Proof of service, requirements, Rule 7

DOMESTIC ABUSE

ADR processes

Conferences, requirements, exception, Rule 114.04

Participation in by parties, exception, Rule 310.01

Application of rules

Family court proceedings, Rule 301

DOMESTIC ABUSE (Cont'd)

Application of rules (Cont'd)

Guardian ad litem procedure, Rule 901.01

Defined as family court case

Guardian ad litem procedure, Rule 901.01

Expedited child support process

Parentage actions, Rule 371.02

Protective orders

Issuance, modification, or enforcement, prohibited proceedings, Rule 353.01

Parties to suits

Designation, Rule 302.04

Protection orders

Bonds, exception, Rule 135

Scheduling of cases

Uniform system for scheduling, exclusion, Rule 304.01

DRIVERS LICENSES

Drivers license list

Defined, jury management rules, Rule 802

Juror source list, service as, Rule 806

DRIVING WHILE INTOXICATED

Implied consent proceedings

Scheduling of civil cases, exclusion, Rule 111.01

ELECTIONS

Contested elections

Scheduling of civil cases, exclusion, Rule 111.01

EMINENT DOMAIN

Awards

Appeal of

Notice of appeal, deemed filing of first paper, Rule 141.02

Proceedings

Commissioners, appointment, objections to, Rule 141.01

ESTATE TAXES

Returns

Filing, when required, Rule 412

ESTOPPEL

Real property, title to

Lawsuits, adjudication not final

Parties with right of appeal, joinder, Rule 204

EVIDENCE

Admissible evidence

ADR proceedings, Rule 114.08

Conciliation court proceedings, Rule 512

Expedited child support process, Rule 364.10

Affidavits

Arbitration hearings, Rule 114.09

Default proceedings

Expedited child support process, Rule 363.02

Depositions

Arbitration hearings, Rule 114.09

Documents

Arbitration hearings, Rule 114.09

Expedited child support process, Rule 364.09, Rule 364.10

Excluded evidence

Expedited child support process, Rule 364.09

Exhibits

Custody, court administrators, duties, criminal proceedings, Rule 706

Destruction of, grounds, Rule 128

Numbering, requirements, Rule 130

Removal from custody of court, requirements, Rule 128

Frivolous litigation, Rule 9.02

Hearsay, see HEARSAY

Hospital records

Arbitration hearings, Rule 114.09

Income, loss of

Arbitration hearings, Rule 114.09

Medical expenses

Arbitration hearings, Rule 114.09

Medical records

Arbitration hearings, Rule 114.09

Medical reports

Arbitration hearings, Rule 114.09

EVIDENCE (Cont'd)

Minnesota civil trialbook, see Evidence under MINNESOTA CIVIL TRIALBOOK

Motions

Expedited child support process

Clerical errors, correction, Rule 375.01 to Rule 375.04

Review, Rule 376.01 to Rule 376.03

Police reports

Arbitration hearings, Rule 114.09

Property damage

Arbitration hearings, Rule 114.09

Proposed exhibits

Time limits for filing, scheduling orders, requirements, Rule 111.03

Record, evidence comprising

Expedited child support process, Rule 364.10

Repairs

Bills or estimates, arbitration hearings, Rule 114.09

Right to present

Expedited child support process, Rule 364.09

EX PARTE COMMUNICATIONS**Alternative dispute resolution**

Arbitrators, prohibited, Rule 114.10

Consensual special masters, prohibited, Rule 114.10

Neutrals, when permitted, Rule 114.10

EXPEDITED CHILD SUPPORT PROCESS**Appearance**

Failure to appear

Contempts, Rule 374.04

Default proceedings, effect, Rule 363.03

Motions or hearings conducted by telephone or interactive video

In-court appearance not precluded, Rule 359.03

Application of rules

Matters commenced or referred to district court, exclusion, Rule 351.01

Rules of civil procedure, Rule 301

Child support magistrates, see CHILD SUPPORT MAGISTRATES

County attorneys, duties, see COUNTY ATTORNEYS

Default proceedings

Generally, Rule 363.01 to Rule 363.04

Definitions, see DEFINITIONS

Enforcement of child support proceedings, Rule 373.01, Rule 373.02

Fees

Collection, Rule 356.01

Waiver, Rule 356.02

Hearings, see Hearings under DISTRICT COURT

Intervention, generally, Rule 360.01 to Rule 360.03

Mandatory proceedings

IV-D cases, Rule 353.01

Multiple issue proceedings

District courts, duties, Rule 353.02

When permitted, Rule 353.02

Parties, right to representation, Rule 357.01

Permissive proceedings

IV-D cases, Rule 353.01

Prohibited issues, Rule 353.02

Prohibited proceedings, Rule 353.01

Purpose, Rule 351.02

Scope of rules, Rule 351.01

EXPERT WITNESSES**Affidavits**

Arbitration hearings, Rule 114.09

Arbitration hearings

Statements by, admissibility, Rule 114.09

Fees

Generally, Rule 127

Proposed witness lists

Joint statement of the case, requirements, Rule 112.02

FACSIMILE TRANSMISSION**Expedited child support process**

Filing of documents by, Rule 355.02

Service of process by, Rule 355.02

FAMILY COURT PROCEEDINGS**Application of rules**

Generally, Rule 301

Guardian ad litem procedure, Rule 901.01

Family court case

Defined, guardian ad litem procedure, Rule 901.01

FIDUCIARIES**Attorneys**

Serving as, probate proceedings, Rule 414

FINAL ARGUMENT

Minnesota civil trialbook, see Final argument under MINNESOTA CIVIL TRIALBOOK

Reporting

Requirements, Rule 124

FINAL JUDGMENT**Effective date**

Conciliation courts, Rule 515

FINANCIAL INSTITUTIONS**Deposits in**

Proceeds, personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons, Rule 145.05

FLAGS**United States flag**

Presence in courtroom, requirements, Rule 2.01

FORCIBLE ENTRY AND UNLAWFUL DETAINER**Housing court**

Name of property owner, bringing action in name of

Hennepin County, Rule 603

Ramsey County, Rule 603

Scheduling of civil cases

Exclusion, 111.01

FORMS (DOCUMENTS)**ADR processes**

Family law matters

Alternative informational statement, Form 9B

Informational statement, Form 9A

Bail

Bail bonds, Form 702

Civil actions, general forms

Certificate of representation and parties, Form 104

Informational statement, Form 111.02

Joint statement of the case, Form 112.01

Minnesota civil trialbook, Form 142.02

Conciliation courts

Defendant's counterclaim, Form UCF-10

Financial disclosure form, Form UCF-22

Judgment and notice of judgment, Form UCF-9

Statement of claim and summons, Form UCF-8

Dissolution of marriage

Marriages without children, Form 12

Expedited child support process

Standardized forms

Modification, Rule 379.03

Substantial compliance, requirements, Rule 379.02

State court administrator, duties, Rule 379.01

Family court proceedings

Affidavits of default

Maintenance judgments, Form 8B, Form 8C

Support judgments, Form 8E

Appendix of forms, sufficiency, Rule 311

Applications for temporary relief, Form 1

Confidential information, Form 11

Cost of living adjustment calculation, Form 4B

Notices

Appendix A, Form 3

Implementation of biennial cost of living adjustment, Form 4A

Income withholding, Form 6A, Form 6B

Judgments, entry and docketing of

Maintenance judgments, Form 8A

Support judgments, Form 8D

Medical support enforcement, Form 5A, Form 5B

Order to a payor of funds, Form 7

FORMS (DOCUMENTS) (Cont'd)

Family court proceedings (Cont'd)

Scheduling

Default hearings, Form 10

Statements

Alternative informational statements, Form 9B

Informational statements, Form 9A

Prehearing statements, Form 2

Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons

Receipt of settlement order and funds, Form 145.1

Combined motion and order for release of funds, Rule 145.2

Probate proceedings

Official forms, use, requirements, Rule 403

Trustee's accounting, Form 417.02

FOSTER CARE

Application of rules

Guardian ad litem procedure, Rule 901.01

Defined as juvenile court case

Guardian ad litem procedure, Rule 901.01

GARNISHMENT

Discharge

Personal bonds, notice requirements, Rule 136.01

Garnishees

Appearance

Reduction of proposed judgment against, Rule 136.02

Notice received

Proposed judgments, Rule 136.02

Proposed judgments against

Notice requirements, Rule 136.02

Reduction of, Rule 136.02

Referees (court)

Attorneys, serving as, Rule 140.02

GENERAL FUND

Deposits to

Forfeited bail money, criminal proceedings, Rule 702

GENERAL RULES OF PRACTICE

Civil actions

Forms (documents), see **FORMS (DOCUMENTS)**Generally, see **MINNESOTA CIVIL TRIALBOOK**

Minnesota civil trialbook, Form 142.02, Sections 1 to Section 18

Motion practice

Generally, Rule 115

Miscellaneous motion practice, Rule 116 to Rule 118

Pleadings, parties, and attorneys, Rule 101 to Rule 109

Scheduling, Rule 111 to Rule 114

Special procedures, Rule 135 to Rule 145

Trial management, Rule 121 to Rule 130

Conciliation court

Forms (documents), Form UCF-8 to Form UCF-10, Form UCF-22

Generally, Rule 501 to Rule 525

Criminal proceedings

Generally, Rule 701 to Rule 706

Expedited child support process

Application of rules, Rule 301

Generally, Rule 351.01 to Rule 379.05

Informational statements, requirement, exception, Rule 379.05

Prehearing statements, requirement, exception, Rule 379.05

Family court proceedings

Application of rules, Rule 301

Forms (documents), Form 1 to Form 11, Appendix A

Generally, Rule 301 to Rule 313

Housing court, Hennepin and Ramsey Counties

Generally, Rule 601 to Rule 612

Jury management

Generally, Rule 801 to Rule 814

Probate rules

Forms (documents), Form 417.02

Generally, Rule 401 to Rule 417

Registration of title

Initial registration, Rule 201 to Rule 212

Miscellaneous provisions, Rule 217 to Rule 222

GENERAL RULES OF PRACTICE (Cont'd)

Registration of title (Cont'd)

Proceedings subsequent to initial registration, Rule 213 to Rule 216

Rules applicable to all court proceedings

Citation, Rule 1.01

Generally, Rule 1 to Rule 8

Modification, Rule 1.02

Scope, Rule 1.01

GRAND JURIES

Proceedings

Cameras

Use, prohibited, Rule 4

Tape recorders

Use, prohibited, Rule 4

Video recording devices

Use, prohibited, Rule 4

GUARDIANS AD LITEM

Advisory task force on the guardian ad litem system

Consulting

Community education, Rule 913

Affirmations

Requirements, Rule 905

Appointment

Expedited child support process

Generally, Rule 357.04

Family court proceedings, Rule 302.04

Guardian ad litem programs, Rule 904.01

Treated as parties to suits, Rule 108.01

Attorneys for parties

Serving as guardians ad litem, prohibited, Rule 108.02

Custody evaluations

Performing, limitations, Rule 908.02

District court

Communication with, requirements, Rule 108.01, Rule 908.03

Direct selection by court, when permitted, Rule 904.02

Duties, generally, guardian ad litem programs, Rule 901 to Rule 913

Orders appointing, contents, requirements, Rule 904.04

Duties and responsibilities

Family court and juvenile court cases, Rule 908.01

Education and training

Certification, requirements, Rule 912.03

Continuing education curriculum, Rule 912.02

Continuing education requirements, Rule 911

Internship requirements, Rule 910.03

Pre-service training curriculum, Rule 912.01

Pre-service training requirements

Existing guardians ad litem, Rule 910.02

New guardians ad litem, Rule 910.01

Trainers

Guardian ad litem programs

Applicants

Qualifications, requirements, Rule 902

Application and screening procedure, Rule 903.02, Rule 903.03

Application of rules, Rule 901.01

Approved guardians ad litem, panels, Rule 903.04

Complaint procedure, Rule 907.01

Program coordinators

Duties, generally, Rule 901.02, Rule 906.01

Investigations, duties, Rule 907.01

Panel of approved guardians ad litem, maintaining, Rule 904.01

Performance evaluations of guardians ad litem, Rule 906.02

Qualifications, Rule 901.02

Recommendations by, Rule 904.01

Purpose of rules, Rule 901.01

Recruitment procedure, Rule 903.01

Selection procedure, Rule 904.03

Mediators

Role as, prohibited, Rule 908.02

Oaths

Requirements, Rule 905

Panels, approved guardians ad litem

Appointment procedure, generally, Rule 904

GUARDIANS AD LITEM (Cont'd)

- Pancels, approved guardians ad litem (Cont'd)
 - Performance evaluations, Rule 906.02
 - Removal procedure, Rule 906.03
 - Parties to suits
 - Family court proceedings, Rule 302.04
 - Rights and powers as, Rule 909.02
 - Treated as, interpretation of rules, Rule 108.01
 - Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons
 - Appearance, hearings, petitions for payment of proceeds, Rule 145.04
 - Compromise and settlement
 - Attorneys hired by tortfeasor or insurance company, disclosure, requirements, Rule 145.03
 - Proceeds, payment, petitions and court orders for, requirements, Rule 145.01
 - Recommendations by
 - Time limits, requirements, Rule 108.01
 - Removal from particular case
 - Procedure, Rule 907.02
 - Reports received
 - Reports submitted to court or provided to parties, Rule 108.01
 - Rights and powers in every case
 - Generally, Rule 909.01
 - Service of process on
 - Reports submitted to court or provided to parties, Rule 108.01
 - Visitation evaluations
 - Performing, limitations, Rule 908.02
 - Visitation expeditors
 - Role as, prohibited, Rule 908.02
- GUARDIANS AND CONSERVATORS**
- Accounts and accounting
 - Annual accounts, acceptance by court, effect, Rule 416
 - Final settlement of accounts, hearings, notice requirements, Rule 416
 - Periodic settlement of accounts, hearings, requirements, Rule 416
 - Appearance
 - Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons, Rule 145.04
 - Petitions for adjudication of accounts, when required, Rule 416
 - Appointment
 - Voluntary petitions for or consent to, Rule 416
 - Attorneys
 - Appointment of, probate proceedings, Rule 416
 - Bonds (officers and fiduciaries)
 - Probate proceedings, requirements, Rule 416
 - Conservatees
 - Meetings with visitors, probate proceedings, Rule 416
 - General guardians
 - Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons
 - Modification of general rules of practice, when permitted, Rule 145.07
 - Inspections
 - Wills on deposit with court administrators, requirements, Rule 418
 - Nominations by
 - Attorneys, probate proceedings, Rule 416
 - Notice given
 - Probate proceedings
 - Attorney pro se, acting as, Rule 416
 - Successor guardians, notice to ward or conservatee, requirements, Rule 416
 - Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons
 - Appearance, hearings, petitions for payment of proceeds, Rule 145.04
 - Compromise and settlement
 - Attorneys hired by tortfeasor or insurance company, disclosure, requirements, Rule 145.03
 - Orders
 - Contents, requirements, Rule 145.05

GUARDIANS AND CONSERVATORS (Cont'd)

- Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons (Cont'd)
 - Orders (Cont'd)
 - Proceeds, Rule 145.01
 - Petitions
 - Hearings, Rule 145.04
 - Proceeds, payment, court orders for, requirements, Rule 145.01
 - Verification, Rule 145.02
 - Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons
 - Structured settlements, duties, Rule 145.06
 - Receivers and receiverships, corporations
 - Appointment, qualifications, Rule 137.02
 - Successor guardians
 - Notice to ward or conservatee, probate proceedings, Rule 416
 - Visitors
 - Probate proceedings
 - Appointment, Rule 416
 - Duties, generally, Rule 416
 - Qualifications, Rule 416
 - Wills on deposit with court administrators
 - Examination, requirements, Rule 418
- GUARDIANS OF MINORS**
- Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons
 - Appearance, hearings, petitions for payment of proceeds, Rule 145.04
 - Compromise and settlement
 - Attorneys hired by tortfeasor or insurance company, disclosure, requirements, Rule 145.03
 - Orders
 - Contents, requirements, Rule 145.05
 - Proceeds, Rule 145.01
 - Petitions
 - Hearings, Rule 145.04
 - Proceeds, payment, court orders for, requirements, Rule 145.01
 - Verification, Rule 145.02
 - Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons
 - Appearance, hearings, petitions for payment of proceeds, Rule 145.04
 - Compromise and settlement
 - Attorneys hired by tortfeasor or insurance company, disclosure, requirements, Rule 145.03
 - Proceeds, payment, petitions and court orders for, requirements, Rule 145.01
 - Structured settlements, duties, Rule 145.06
- HARASSMENT**
- Application of rules
 - Guardian ad litem procedure, Rule 901.01
 - Defined as family court case
 - Guardian ad litem procedure, Rule 901.01
 - Protection orders
 - Bonds, exception, Rule 135
 - Restraining orders
 - Scheduling of civil cases, exclusion, Rule 111.01
- HEARSAY**
- Evidence
 - Admissibility, expedited child support process, Rule 364.10
 - Reliable hearsay
 - Motions for default judgment, supporting affidavits, Rule 117.02
- HEIRS**
- Elimination clauses
 - Applications, contents
 - Formal probate proceedings, Rule 409
 - Informal probate proceedings, Rule 408
 - Notice received
 - Probate
 - Formal proceedings, Rule 404
 - Informal proceedings, Rule 408
 - Waivers
 - Notice, probate, formal proceedings, Rule 404

HENNEPIN COUNTY DISTRICT COURT**Housing court**

- Affidavits, Rule 606
- Application of rules, Rule 601
- Bonds
 - Judgments, stay or vacation of, Rule 611
- Calendar
 - Calendar call, requirements, Rule 607
- Complaints
 - Attachments to, Rule 603, Rule 604
 - Contents, requirements, Rule 604
 - Signatures, requirements, Rule 604
- Deposits with
 - Withheld rent, requirements, Rule 608
- Discovery, Rule 612
- Fees
 - Jury fees, Rule 607
- Hearings
 - Proposed order forms, availability, requirements, Rule 607
- Judgments
 - Stay of judgments, Rule 611
 - Vacation of judgments, Rule 611
- Judicial review, requirements, Rule 611
- Jurisdiction, Rule 602
- Motion practice, Rule 610
- Orders
 - Bonds, stay pending review of referee's decision, Rule 611
 - Expedited discovery schedule, Rule 612
 - Stay of writ of restitution, Rule 609
- Proceedings
 - Removal for hearing before district court judge, Rule 602
 - Transcripts, Rule 611
- Referees (court), duties, Rule 602
- Service of process
 - Constructive service, procedure, Rule 606
 - Requirements, generally, Rule 606
- Summonses
 - Posting, Rule 606
 - Return of, requirements, Rule 605
- Trials, Rule 607
- Writs of restitution, issuance, Rule 609

HOUSING AND URBAN DEVELOPMENT DEPARTMENT (U.S.)**Deeds**

- Registration of title
 - Registrar of titles, duties, Rule 219

HUMAN SERVICES BOARDS

- Service of process on
 - Final orders, family court proceedings, Rule 308.01

HUMAN SERVICES DEPARTMENT

- Forms (documents)
 - Expedited child support process
 - Standardized forms, compliance, Rule 379.02

IMPEACHMENT

- Expedited child support process
 - Examination of witnesses, Rule 364.12

INCOME

- Loss of income
 - Evidence, arbitration hearings, Rule 114.09

INDIANS

- Tribal courts
 - Orders and judgments, enforcement
 - Discretionary, Rule 10.02
 - Mandatory, Rule 10.01

INDICTMENTS

- Quashing
 - Jury selection procedure, compliance with rules, challenges to, Rule 813

IN FORMA PAUPERIS PROCEEDINGS

- Expedited child support process
 - Filing fees, waiver, Rule 356.02

INJUNCTIONS

- Protective orders, domestic abuse, see DOMESTIC ABUSE
- Restraining orders
 - Bonds, requirements, generally, Rule 135
 - Temporary restraining orders against municipalities
 - Applications for, requirements, Rule 118

INSURANCE COMPANIES**Lawsuits**

- Interest in defense or outcome of action
 - Jurors, voir dire, requirements, Rule 123
- Payments by
 - Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons, Rule 145.03
 - Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons
 - Attorneys hired by tortfeasor or insurance company, disclosure, requirements, Rule 145.03

INTERPRETATION OF RULES

- Attorney fees, contracts for
 - Fees allowed by court, not determinative, Rule 143
- Conciliation courts
 - Court administrators, advice given, Rule 504
 - Pleadings, use in cases removed to district court, Rule 522
- Condemnation awards
 - Notice of appeal, deemed filing of first paper, Rule 141.02
- Default
 - Failure of defendant to appear and answer, registration of title, Rule 207

Evidence

- Relevancy, arbitration hearings, Rule 114.09
- Expedited child support process
 - County attorneys
 - Employees, duties, deemed not practice of law, Rule 369.02
 - Hearings, closing, Rule 364.07
- Orders
 - Final orders, effective date, Rule 365.03
- Service of process
 - Completion of service, Rule 355.03
- Probate proceedings
 - Formal proceedings
 - Concurrence, appointment of personal representative, Rule 407
 - Waiver of notice, consent to order sought in proceedings, Rule 404
 - Guardians and conservators
 - Annual accounts, acceptance by court, effect, Rule 416
- Trustees, petitions to appoint
 - Death by wrongful act lawsuits
 - Applications, not considered filing of papers, Rule 144.01

INTERPRETERS**Affidavits**

- Code of professional responsibility for interpreters, Rule 8.01

Agreements by

- Code of professional responsibility for interpreters, Rule 8.01

Appointment

- Certified interpreters on statewide roster, Rule 8.02
- Expedited child support process, requirements, Rule 358.01
- Non-certified interpreters on statewide roster
 - Foreign language interpreters not on statewide roster, Rule 8.02
 - Sign language interpreters not on statewide roster, Rule 8.02

Certified court interpreters

- Generally, Rule 8.01, Rule 8.02
- Code of professional responsibility for interpreters
 - Agreement to be bound by, Rule 8.01
 - Failure to follow, disqualification, grounds for, Rule 8.03
- Disclosures by
 - Confidential or privileged information
 - Disqualification, grounds, Rule 8.03
 - Disqualification from proceedings
 - Grounds, Rule 8.03

INTERPRETERS (Cont'd)

- False interpretation
 - Disqualification, grounds, Rule 8.03
- Minnesota civil trialbook, see **INTERPRETERS** under **MINNESOTA CIVIL TRIALBOOK**
- Non-certified court interpreters
 - Generally, Rule 8.01, Rule 8.02
- Non-certified foreign language court interpreters
 - Generally, Rule 8.01, Rule 8.02
- Non-certified sign language court interpreters
 - Generally, Rule 8.01, Rule 8.02
- Statewide roster
 - Certified court interpreters, Rule 8.01, Rule 8.02
 - Non-certified court interpreters
 - Foreign language interpreters, minimum qualifications, Rule 8.01
 - Sign language interpreters, minimum qualifications, Rule 8.01

INTERVENTION

- Expedited child support process
 - Generally, Rule 360.01 to Rule 360.03

JOINDER OF PARTIES

- Failure to join, motions, see **Joinder of parties** under **MOTIONS**

Real property, title to

- Lawsuits, adjudication not final
 - Parties with right of appeal, Rule 204

Time limits

- Scheduling orders, requirements, Rule 111.03

JUDGES

- District court, see **DISTRICT COURT JUDGES**

JUDGMENTS

- Applications to open
 - Service of process, requirements, Rule 109.01
- Arbitration awards
 - Enforcement, Rule 114.09
 - Entry as, effect, Rule 114.09
 - Vacation of judgments, motions, time limits for filing, Rule 114.09
- Dissolution of marriage
 - Joint petition, agreement, and judgment and decree for marriage dissolution without children, Form 12
- Dockets, see **Judgment dockets** under **DOCKETS**
- Enforcement
 - Arbitration awards, Rule 114.09
 - Conciliation court, Rule 518
- Entry of
 - Adverse parties, Rule 126
- Automatic stay
 - Expiration, effect, Rule 125, Rule 126
 - Requirements, generally, Rule 125
- Conciliation courts, see **Judgments** under **CONCILIATION COURTS**

- Garnishments, notice requirements, Rule 136.02

Tribal courts, enforcement

- Mandatory, Rule 10.01, Rule 10.02

Vacation of

- Conciliation court, see **Judgments** under **CONCILIATION COURTS**

JUDICIAL REVIEW

- Attorney fees
 - Default proceedings, Form 119.05, Rule 119.05

JURIES**Administration**

- Jury administration plan, see **Jury commissioners** under **DISTRICT COURT**
 - Jury commissioners, see **Jury commissioners** under **DISTRICT COURT**

Definitions, Rule 802**Disclosure**

- Jurors' names, restrictions, Rule 807

Drivers' license list

- Defined, jury management rules, Rule 802
 - Juror source list, service as, Rule 806

- Examination of jurors, see **Voir dire examinations** under this topic

JURIES (Cont'd)**Excuse or deferral from service**

- Automatic excuses or disqualifications, Rule 808, Rule 810
 - Candidates, deferral, Rule 810
 - Deferral, preference for, Rule 810
 - Grounds, Rule 810
 - Legislative members, officers, or employees, excuse during legislative session, Rule 810
 - Persons aged 70 or older, Rule 808

Fees

- Housing court, Rule 607

Jurors

- Courtroom decorum, Rule 2.01
 - Defined, jury management rules, Rule 802
 - Discrimination, prohibited, Rule 809
 - Disqualification
 - Grounds, Rule 123
 - Efficient use of, requirements, Rule 812
 - Interest in insurance companies with interest in outcome of case
 - Disqualification, grounds, Rule 123
 - Inquiries regarding, Rule 123
 - Records, Rule 814

Jury commissioners, see **Jury commissioners under **DISTRICT COURT******Master list**

- Defined, jury management rules, Rule 802
 - Disclosure, Rule 807
 - Jury administration plan, requirements, Rule 804

Minnesota civil trialbook, see **Juries under **MINNESOTA CIVIL TRIALBOOK******Obligation to serve**

- Excuse or deferral from service, see **Excuse or deferral from service** under this topic
 - General policy, Rule 801

Petit juries, see **PETIT JURIES****Proposed instructions**

- Time limits for filing, scheduling orders, contents, Rule 111.03

Qualifications

- Judges, disqualification, service as jurors, Rule 808
 - Requirements, generally, Rule 808

Random selection

- Defined, jury management rules, Rule 802
 - Policy, Rule 801

Procedures

- Departure from principle, when permitted, Rule 805
 - Use, jury selection process, requirements, Rule 805

Source list, use, Rule 806**Records**

- Jury commissioner, duties, Rule 814

Selection

- Procedure, compliance with rules, challenges to, Rule 813
 - Random selection, see **Random selection** under this topic

Source list

- Defined, jury management rules, Rule 802
 - Jury commissioners, duties, Rule 806
 - Use, random selection of prospective jurors, Rule 806

Summonses

- Contents, requirements, Rule 807
 - Jury questionnaires
 - Inclusion with summons, requirements, Rule 807
 - Information contained in, requirements, Rule 807

Term of service

- Counties less than 50,000, Rule 811
 - Counties over 100,000, Rule 811
 - Counties 50,000 to 100,000, Rule 811

Voir dire examinations

- Insurance companies, interest in outcome of case, disclosure, requirements, Rule 123
 - Jurors, interest in insurance companies with interest in outcome of case, Rule 123

Voter registration list

- Defined, jury management rules, Rule 802
 - Juror source list, service as, Rule 806

JURY TRIALS

Demand for

Conciliation court proceedings, removal to district court,
Rule 521

Housing court proceedings, Rule 607

Mini-trials

ADR process, see Mini-trials under **ALTERNATIVE
DISPUTE RESOLUTION**

Requests for

Joint statement of the case, requirements, Rule 112.02

Summary jury trials

ADR process, see Summary trials under **ALTERNATIVE
DISPUTE RESOLUTION**

Waivers

Scheduling orders, requirements, Rule 111.03

JUVENILE COURTS

Application of rules

Guardian ad litem procedure, Rule 901.01

Delinquency proceedings

Juvenile court case, defined, guardian ad litem procedure,
Rule 901.01

Proceedings

Scheduling of civil cases, exclusion, Rule 111.01

LABELS

Evidence

Exhibits

Adhesive labels, color, requirements, Rule 130
Requirements, generally, Rule 130

LANDMARKS

Judicial landmarks

Registration of title, use, Rule 211

LAWSUITS

Affidavits

Merits, requirements, Rule 109.01, Rule 109.02

Answers

Applications, leave to answer after expiration of time limits,
Rule 109.01

Attorneys

Withdrawal, notice requirements, Rule 105

Certificates of representation and parties

Exceptions, Rule 104
Requirements, Rule 104

Complex cases

Generally, Rule 113.01 to Rule 113.03

Conciliation court proceedings, see Proceedings under
CONCILIATION COURTS

Frivolous litigation

Generally, Rule 9

Sanctions permitted, Rule 9.07

Guardians ad litem

Attorneys for parties, prohibited from serving as, Rule
108.02

Parties to suits, treated as, Rule 108.01

Judges

Removal for actual prejudice or bias, Rule 106

Personal injury lawsuits brought on behalf of minors, mentally
ill, or mentally retarded persons, Rule 145.01 to Rule
145.07

Referees (court)

Removal for actual prejudice or bias, Rule 106

Replies

Applications, leave to reply after expiration of time limits,
Rule 109.01

Scheduling of cases

Family court proceedings

Uniform system for scheduling matters, exclusions, Rule
304.01

Generally, Rule 111 to Rule 114

Scope of rules

Generally, Rule 101

Juvenile proceedings, exception, Rule 101

Settlement

Notice requirements, Rule 121

LEASES

Breach of lease

Lawsuits, complaints, requirements, Rule 604

LEASES (Cont'd)

Holding over after termination

Complaints, termination notices, requirements, Rule 604

LEGAL NEWSPAPERS

Notices in

Banks, liquidation, requirements, Rule 138

LEGISLATURE

Employees

Jury service, excuse during legislative session, Rule 810

Members

Jury service, excuse during legislative session, Rule 810

Officers

Jury service, excuse during legislative session, Rule 810

LIMITED LIABILITY COMPANIES

Appearance

Conciliation court proceedings, Rule 512

LIQUIDATION

Banks

Petitions for orders, notice requirements, Rule 138

LOCAL GOVERNMENTS

Temporary restraining orders against

Applications for, requirements, Rule 118

LOCAL SOCIAL SERVICES AGENCIES

County agency, definitions

Expedited child support process, Rule 352.01

MEDIATION

Alternative dispute resolution, see **ALTERNATIVE**

DISPUTE RESOLUTION

Family court proceedings

Forms (documents), Rule 311

Mediators

Code of Ethics for Neutrals, Rule 1

Neutrals for

Civil neutral roster, Rule 114.12

Code of ethics

Generally, Code of Ethics for Neutrals, Rules 1-7

Family law neutral roster, Rule 114.12

MEDICAL EXPENSES

Evidence

Arbitration hearings, Rule 114.09

MEDICAL RECORDS

Evidence

Arbitration hearings, Rule 114.09

Personal injury lawsuits

Exchange of, joint statement of the case, contents, Rule
112.03

MEDICAL TESTS

Time limits to complete

Scheduling orders, requirements, Rule 111.03

MENTALLY ILL PERSONS

Appearance

Hearings, personal injury lawsuits brought on behalf of,
Rule 145.04

Personal injury lawsuits brought on behalf of

Appearance

Hearings, petitions for payment of proceeds, Rule
145.04

Application of rules, Rule 145.01

Generally, Rule 145.01 to Rule 145.07

Petitions, requirements, Rule 145.02

MENTALLY RETARDED PERSONS

Appearance

Hearings, personal injury lawsuits brought on behalf of,
Rule 145.04

Personal injury lawsuits brought on behalf of

Appearance

Hearings, petitions for payment of proceeds, Rule
145.04

Application of rules, Rule 145.01

Generally, Rule 145.01 to Rule 145.07

Petitions, requirements, Rule 145.02

MINNESOTA CIVIL TRIALBOOK

Citation, Form 142.02, section 1

Evidence

Exhibits

Confidential exhibits, sealing and handling, Form 142.02, section 14

Custody, Form 142.02, section 13

Generally, Form 142.02, section 12

Final argument

Generally, Form 142.02, section 8

Interpreters

Generally, Form 142.02, section 11

Juries

Discharge, Form 142.02, section 18

Instructions

Generally, Form 142.02, section 15

Preliminary instructions, Form 142.02, section 7

Polling, Form 142.02, section 18

Questions by jurors, Form 142.02, section 16

Voir dire, generally, Form 142.02, section 6

Opening statements

Generally, Form 142.02, section 8

Pre-trial conferences

Procedures, generally, Form 142.02, section 5

Scope, Form 142.02, section 1

Verdicts

Special verdicts, Form 142.02, section 17

Witnesses

Availability, Form 142.02, section 9

Examination of, Form 142.02, section 10

MINOR PARENTS

Guardians ad litem

Appointment

Application of rules, expedited child support process exception, Rule 357.04

MOTIONS

ADR processes

Neutrals, fees, payment, Rule 114.11

Application of rules

Exceptions, Rule 115.01

Generally, Rule 115.01

Attorney fees

Affidavits in support of, requirements, Rule 119

Memoranda of law in support of, requirements, Rule 119

Requirements, generally, Rule 119

Attorneys

Withdrawal from case, criminal proceedings, requirements, Rule 703

Claims

Failure to state a claim on which relief can be granted, motion for, defined as dispositive motion, Rule 115.01

Complex cases

Assignment to single judge, Rule 113.01

Consolidation, Rule 113.02

To whom made, Rule 113.03

Contempt proceedings

Family court proceedings, documents, requirements, Rule 309.01

Continuances

Requirements, generally, Rule 122

Cross-motions

Hearings, date of, Rule 115.02

Default judgment

Requirements, Rule 117.02

Definitions, Rule 115.01

Discovery

Nondispositive motions, discovery motions defined as, Rule 115.01

Dismissal

Claims, Rule 115.01

Parties, Rule 115.01

Dispositive motions

Defined, Rule 115.01

Documents in response to, service and filing requirements, Rule 115.03

Documents supporting

Failure to comply with rules, sanctions, Rule 115.06

MOTIONS (Cont'd)

Dispositive motions (Cont'd)

Documents supporting (Cont'd)

Service of process and filing requirements, Rule 115.03

Exception, Rule 115.01

Notice requirements, housing court proceedings, Rule 610

Ex parte relief

Family court proceedings, requirements, generally, Rule 303.04

Expedited child support process

Clerical errors, correction

Contents, requirements, Rule 377.03

Motions permitted, Rule 377.01

Procedure, requirements, Rule 377.02

Response motions, Rule 377.04

Combined motions

Correction of clerical errors and review of decision, generally, Rule 377.01 to Rule 377.11

Discovery

Contents, requirements, Rule 361.04

Filing, precluded, generally, Rule 361.06

Permissive intervention, requirements, Rule 360.02

Response motions, Rule 377.04, Rule 377.05

Review of decision

Assignment to district court judge, Rule 377.07

Motions permitted, Rule 377.03

Procedure, requirements, generally, Rule 377.01 to Rule 377.11

Response motions, Rule 377.04

Family court proceedings

Child custody

Children, interview of by court, Rule 303.03

Ex parte relief, generally, Rule 303.04

Form, requirements, Rule 303.02

Generally, Rule 303.01 to Rule 303.06

Hearings

Contempts, requirements, Rule 309.02

Date and time of, notice requirements, Rule 303.01

Noncompliance with rules, sanctions, Rule 303.02, Rule 303.03

Oral testimony, requests for, requirements, Rule 303.03

Post-decree motions, settlement efforts, requirements, Rule 303.03

Responsive pleadings, notice, requirements, Rule 303.01

Scheduling, requirements, Rule 303.01

Settlement, pending motions, Rule 303.03

Supporting documents

Filing requirements, Rule 303.03

New issues raised, responding parties, requirements, Rule 303.03

Service of process, requirements, Rule 303.03

Temporary relief

Contents, requirements, Rule 303.02

Failure to comply with rules, sanctions, Rule 303.02

Forms (documents)

Paragraphs, numbering, family court proceedings, requirements, Rule 303.02

Guardians ad litem

Extension of powers, Rule 108.01

Hearings

Default hearings

Application of Rule 115, exemption, Rule 117.01

Scheduled as motion hearings, Rule 117.01

Family court proceedings

Contempts, requirements, Rule 309.02

Date and time of, notice requirements, Rule 303.01

Motion hearings, see Motion hearings under this topic

Indictments

Quashing

Jury selection procedure, compliance with rules, challenges to, Rule 813

Intervention

Expedited child support process

Procedure, Rule 360.02

Motions to intervene, defined as dispositive motions, Rule 115.01

Joinder of parties

Failure to join, motion for, defined as dispositive motion, Rule 115.01

MOTIONS (Cont'd)

- Lack of jurisdiction
 - Dispositive motion, motion for lack of jurisdiction defined as, Rule 115.05
- Memoranda of law in support of
 - Attorney fees
 - Application for, requirements, Rule 119
 - Dispositive motions
 - Service of process and filing requirements, Rule 115.03
 - Summary judgment motions, additional requirements, Rule 115.03
 - Nondispositive motions
 - Discovery motions, page limits, Rule 115.05
 - Service of process and filing requirements, Rule 115.04
 - Reply memoranda, see Reply memoranda in support of under this topic
- Motion hearings
 - Cancellation, grounds, Rule 115.06
 - Date of, obtaining, procedure, Rule 115.02
 - Housing court proceedings, Rule 610
 - Settlement efforts prior to hearing, requirements, Rule 115.10
 - Teleconferences
 - Moving parties, duties, Rule 115.09
 - Records, requirements, Rule 115.09
 - Witnesses, presentment of testimony, requirements, Rule 115.08
- Moving parties, see Moving parties under PARTIES TO SUITS
- Nondispositive motions
 - Defined, Rule 115.01
 - Documents in response to
 - Service of process and filing requirements, Rule 115.04
 - Documents supporting
 - Failure to file or serve, sanctions, Rule 115.06
 - Service of process and filing requirements, Rule 115.04
 - Failure to comply with rules, sanctions, Rule 115.06
- Notice of motion
 - Service of
 - Housing court proceedings, Rules of Civil Procedure, inapplicable, Rule 610
 - Time limits
 - Housing court proceedings, Rules of Civil Procedure, inapplicable, Rule 610
- Pleadings
 - Amendment, motions for, defined as dispositive motions, Rule 115.01
 - Responsive pleadings
 - Family court proceedings, notice requirements, Rule 303.01
- Post-decree motions, see Post-trial motions under this topic
- Post-trial motions
 - Family court proceedings
 - Settlement efforts, requirements, Rule 303.03
 - Time limits, exemptions, Rule 115.01, Rule 303.03
- Reconsideration
 - Generally, Rule 115.11
- Reinstatement
 - Forfeited bail bond or cash bail, requirements, Rule 702
- Removal of judges
 - Actual prejudice or bias, hearings, requirements, Rule 106
- Reply memoranda in support of
 - Dispositive motions, service and filing requirements, Rule 115.03
 - Nondispositive motions, service and filing requirements, Rule 115.03
 - Page limits, Rule 115.05
- Responding parties, see Responding parties under PARTIES TO SUITS
- Scheduling orders
 - Time limits for bringing
 - Amendment, Rule 111.04
 - Contents, requirements, Rule 111.03
- Service of process
 - Insufficiency of service, motion for, defined as dispositive motion, Rule 115.01
- Show cause orders, see Orders under DISTRICT COURT

MOTIONS (Cont'd)

- Stay of proceedings
 - Jury selection procedure, compliance with rules, challenges to, Rule 813
- Summary judgment
 - Dispositive motion, motion for summary judgment defined as, Rule 115.01
- Temporary relief
 - Family court proceedings, requirements, Rule 303.02, Rule 303.03
 - Nondispositive motions, motions for temporary relief defined as, Rule 115.01
- Third party practice
 - Nondispositive motions, third party practice motions defined as, Rule 115.01
- Time limits for filing
 - Addition of time to, service by mail, requirements, Rule 115.01
 - Family court
 - Failure to comply with rules, sanctions, Rule 303.03
 - Generally, requirements, Rule 303.03
 - Modification or relaxation by district court
 - Grounds, Rule 115.07
 - Restrictions, Rule 115.01
 - Post-trial motions, application of rules, Rule 115.01

MOTOR VEHICLE INSURANCE

- Motor vehicle insurance companies
 - Names, joint statement of the case, contents
 - Traffic accidents, lawsuits, Rule 112.04

MOTOR VEHICLES

- Descriptions
 - Joint statement of the case, contents
 - Traffic accidents, lawsuits, Rule 112.04
- Owners
 - Names, joint statement of the case, contents
 - Traffic accidents, lawsuits, Rule 112.04

NEGLECT

- Child neglect
 - Application of rules
 - Guardian ad litem procedure, Rule 901.01
 - Legal proceedings concerning, defined as juvenile court case
 - Guardian ad litem procedure, Rule 901.01

NEW TRIALS

- Alternative dispute resolution
 - ADR processes, trials subsequent to
 - Evidence of ADR process, confidentiality, Rule 114.08

Arbitration

- Trials after, requirements, Rule 114.09

Conciliation courts

- Removal of case to district court, Rule 520, Rule 521

NEXT OF KIN

- Death by wrongful act lawsuits
 - Generally, Rule 144.01 to Rule 144.05
 - Trustees, petitions for appointment, requirements, Rule 144.01, Rule 144.02
 - Waivers, distribution of proceeds, Rule 144.05

NOTARIES PUBLIC

- Conciliation court proceedings
 - Claims and counterclaims
 - Endorsement in presence of, Rule 507
- Referees (court), service as
 - Garnishment disclosures, qualifications, Rule 140.02
 - Supplementary proceedings, qualifications, Rule 140.02

OATHS

- Expedited child support process, requirements, Rule 364.09

ORDERS

- Show cause orders, see Orders under DISTRICT COURT
- Tribal courts, enforcement
 - Discretionary, Rule 10.02
 - Mandatory, Rule 10.01

PARENTS

- Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons
 - Appearance, hearings, petitions for payment of proceeds, Rule 145.04
- Compromise and settlement
 - Attorneys hired by tortfeasor or insurance company, disclosure, requirements, Rule 145.03
- Petitions, verification, Rule 145.02
- Proceeds, payment, petitions and court orders for, Rule 145.01, 145.05, 145.06

PARTIES TO SUITS

- Affidavits
 - Affidavits of merit, requirements, Rule 109.02
- Aggrieved parties
 - Defined, conciliation court proceedings, removal to district court, Rule 521
- Agreements by
 - ADR processes
 - Confidential information concerning, disclosure, Rule 114.08
 - Creation, Rule 114.02
 - Continuances, trials, Rule 122
 - Motions, responses, time to prepare, housing courts, Rule 610
 - Neutrals, ADR processes
 - Appointment, Rule 114.05
 - Confidential information, disclosure, Rule 114.08
 - Fees, payment, Rule 114.11
- Appearance
 - ADR processes, Rule 114.07
 - Personal appearance, requirements, conciliation court proceedings, Rule 512
 - Prehearing conferences, family court proceedings, Rule 305.02
- Application of rules
 - Pro se parties, Rule 1.04
- Arbitration hearings
 - Presence at, requirements, Rule 114.09
- Subpoenas
 - Form, modification, requirements, Rule 114.09
 - Power to issue, Rule 114.09
- Burden of proof
 - Expedited child support process, generally, Rule 364.11
- Consent
 - ADR processes, open to public, Rule 114.07
- Receivers
 - Corporations, interest in, appointment, Rule 137.02
- Cooperation
 - Discovery
 - Expedited child support process, requirements, Rule 361.02
 - Housing court proceedings, Rule 612
 - Documents, exchange of, expedited child support process, Rule 361.02
- Defaulting parties
 - Attorney fees, Form 119.05, Rule 119.05
 - Final hearings, failure to appear, sanctions, family court proceedings, Rule 307
 - Service of process on
 - Affidavits of default, stay of sentencing, contempts, family court proceedings, Rule 309.03
 - Show cause orders, contempts, family court proceedings, Rule 309.01
- Defendants, see DEFENDANTS
- Designation of parties
 - Family court proceedings, Rule 302.04
- Discovery
 - Expedited child support process
 - Cooperation, requirements, Rule 361.02
 - Orders, noncompliance, effect, Rule 361.05
 - Requests for, filing, precluded, Rule 361.06
- District court
 - Communications with, during or after ADR processes, Rule 114.10
- Evidence
 - Exhibits, removal from custody of court, duties, Rule 128

PARTIES TO SUITS (Cont'd)

- Evidence (Cont'd)
 - Expedited child support process
 - Preparation, duties, Rule 364.09
- Ex parte communications
 - Arbitrators, prohibited, Rule 114.10
 - Consensual special masters, prohibited, Rule 114.10
 - Neutrals, when permitted, Rule 114.10
- Family court proceedings
 - Confidential information, requirements, Rule 313.01 to Rule 313.03
 - Informational statements
 - Contents, requirements, Rule 304.02
 - Filing, time limits, Rule 304.02
 - Pro se parties, usc, Rule 304.02
- Forcible entry and unlawful detainer
 - Name of property owner, bringing lawsuit in name of, Rule 603
- Guardians ad litem, see GUARDIANS AD LITEM
- Guardians and conservators, see GUARDIANS AND CONSERVATORS
- Guardians of minors, see GUARDIANS OF MINORS
- Housing court proceedings
 - Calendar call, duties, Rule 607
 - Unlawful detainer actions, Rule 603
- Informational statements
 - Contents, requirements
 - ADR processes, Rule 114.02
 - Family court proceedings, Rule 304.02
 - Generally, Rule 111.02
 - Expedited child support process, exception, Rule 379.05
 - Filing, time limits
 - Family court proceedings, Rule 304.02
 - Generally, Rule 111.02
 - Forms (documents)
 - Family court proceedings, Form 9A, Form 9B
 - Generally, Form 111.02
- Initiating party
 - Expedited child support process
 - Hearings, scheduling, duties, Rule 364.02
- Joinder
 - Generally, see JOINDER OF PARTIES
 - Real property, title to, parties with right of appeal, Rule 204
- Judgments
 - Entry by adverse parties, requirements, Rule 126
- Juries
 - Jury selection procedure
 - Compliance with rules, challenges to, Rule 813
- Moving parties
 - Certificates and certification
 - Settlement efforts, compliance with rule, Rule 115.10, Rule 303.03
 - Contempt proceedings
 - Family court proceedings, commencement, requirements, Rule 309.01
 - Show cause orders, requirements, Rule 309.01
 - Writs of attachment, proposed orders for, duties, Rule 309.03
 - Documents supporting motions
 - Filing, time limits, requirements, Rule 115.03, Rule 303.03
 - Service of process, requirements, Rule 115.03, Rule 303.03
 - Family court proceedings, generally, Rule 303.03
 - Motion hearings
 - Settlement efforts prior to, duties, Rule 115.10, Rule 303.03
 - Teleconferences, duties, Rule 115.09
- Notice given
 - Default hearings, scheduling, family court proceedings, Rule 306.01
 - Dispositive motions, housing court proceedings, Rule 610
 - Family court proceedings, date and time of hearing, Rule 303.01
 - Motions, settlement prior to hearing, Rule 115.10, Rule 303.03

PARTIES TO SUITS (Cont'd)**Moving parties (Cont'd)**

Reply memoranda

Filing, time limits, requirements, Rule 115.03

Limitations, Rule 115.03

Service of process, requirements, Rule 115.03

Requests by

Default hearings, scheduling, family court proceedings, Rule 306.01

Neutrals

Disqualification, procedure, Rule 114.05

Selection, procedure, generally, Rule 114.04

Non-initiating party

Expedited child support process

Hearings, scheduling, duties, Rule 370.02, Rule 370.05

Notice given

Attachments

Discharge through personal bond, requirements, Rule 136.01

Conciliation court proceedings

Compromise and settlement prior to trial, Rule 511

Continuances, trials, Rule 122

Ex parte relief, applications for, Rule 3.01

Garnishments

Discharge through personal bond, requirements, Rule 136.01

Hearing dates, motions, Rule 115.02

Judgments, entry by adverse parties, requirements, Rule 126

Motion hearings, witnesses, testimony, Rule 115.08

Names, addresses, and telephone numbers, civil actions, Rule 104

Neutrals, removal, Rule 114.05

Referees (court), objections to, Rule 107

Temporary restraining orders against municipalities, Rule 118

Notice received

ADR processes, pro se parties, Rule 114.03

Attachments

Discharge through personal bond, requirements, Rule 136.01

Attorneys, withdrawal from civil actions, Rule 105

Continuances, trials, Rule 122

Corporate receivers, appointment, Rule 137.02

Entry of judgment, arbitration awards, Rule 114.09

Exhibits, failure to remove from custody of court, effect, Rule 128

Ex parte relief, applications for, Rule 3.01

Expedited child support process

Motions for review, Rule 377.02

Rejection of proposed settlement order, Rule 362.04

Rejection of default order, Rule 363.04

Family court proceedings

Transcripts, date of filing, referees' hearings, Rule 312.02

Garnishments

Discharge through personal bond, requirements, Rule 136.01

Hearing dates, motions, Rule 115.02

Judgments, entry by adverse parties, requirements, Rule 126

Judicial review

Referee's findings or recommendations, family court, Rule 312.01

Motion hearings, witnesses, testimony, Rule 115.08

Names, addresses, and telephone numbers, civil actions, Rule 104

Order for judgment, Rule 514

Temporary restraining orders against municipalities, Rule 118

Opposing parties

Defined, conciliation court proceedings, removal to district court, Rule 523

Parents, see PARENTS**Participation in ADR proceedings**

Exception, Rule 310.01

Payments by

Neutrals, fees, Rule 114.11

PARTIES TO SUITS (Cont'd)**Petitioners**

Family court proceedings, Rule 302.04

Plaintiffs, see PLAINTIFFS**Prehearing conferences**

Attendance, requirements, family court proceedings, Rule 305.02

Prehearing settlement of cases

Expedited child support process

Generally, Rule 362.01 to Rule 362.04

Pro se parties

Acts done by attorneys, application of rules, Rule 1.04

Informational statements, form, use, family court proceedings, Rule 304.02

Notice received

ADR processes, information concerning, Rule 114.03

Neutrals, lists of available neutrals, Rule 114.03

Programs to assist, see Self-programs under DISTRICT COURTS

Service of process on

Rules applicable to all court proceedings, Rule 1.03

Waivers

Execution, default hearings, family court proceedings, Rule 306.01

Real property, title to

Lawsuits, adjudication not final

Parties with right of appeal, joinder, Rule 204

Removing party

Defined

Conciliation court proceedings, removal to district court, Rule 523

Representation

Conciliation courts, Rule 5.12

Expedited child support process

Rights, Rule 357.01

Requests by

Housing courts

Discovery, expedited schedule, Rule 612

Motions, responses, time to prepare, Rule 610

Requests for removal for hearing before judge, Rule 602

Trial following arbitration award, Rule 114.09

Responding parties

Documents responding to motions

Filing time, limits, requirements, Rule 115.03

Service of process, requirements, Rule 115.03

Family court proceedings, Rule 302.04, Rule 303.03

Service of process by

Creditors' claims, objections to, corporate receiverships, Rule 137.04

Nondispositive motions, Rule 115.04

Referees (court), objections to, Rule 107

Service of process on

Arbitration awards, Rule 114.09

Nondispositive motions, Rule 115.04

Notice of withdrawal of attorney from civil action, Rule 105

Notice to remove neutral appointed by court, Rule 114.05

Prehearing conference statements, family court proceedings, Rule 305.01

Subpoenas

Expedited child support process

Requirements, Rule 361.03

Transcripts

Expedited child support process

Ordering, duties, Rule 366.01

Unrepresented parties, see Pro se parties under this topic

Waivers

Family court proceedings

Pro se parties, Rule 306.01

Confidential information, Rule 313.03

Jury trials, scheduling orders, requirements, Rule 111.03

Witnesses

Expedited child support process

Parties serving as, Rule 364.09

PARTNERSHIPS**Appearance**

Conciliation court proceedings, Rule 512

PATERNITY

ADR processes

Participation in by parties, exception, Rule 310.01

Application of rules

Guardian ad litem procedure, Rule 901.01

Defined as family court case

Family court proceedings, Rule 301

Guardian ad litem procedure, Rule 901.01

Expedited child support process

Parentage actions

Procedure, generally, Rule 371.01 to Rule 371.15

Blood or genetic testing, Rule 371.06, Rule 371.11

PERSONAL INJURIES

Lawsuits

Actions brought on behalf of minors, mentally ill, or mentally retarded persons, Rule 145.01 to Rule 145.07

Joint statement of the case, requirements, Rule 112.03

Personal representatives, claims

Attorney fees, contracts for, interpretation of rules, Rule 143

PERSONAL REPRESENTATIVES

Appointment

Formal proceedings

Nomination and renunciation, Rule 407

Non-resident personal representatives, Rule 407

Notice requirements, Rule 404

Informal proceedings

Notice requirements, Rule 408

Proceedings subsequent to termination of authority, Rule 413

Attorneys

Service as, supervised administration, Rule 414

Claims

Personal injuries, attorney fees, interpretation of rules, Rule 143

Death by wrongful act lawsuits

Distribution of proceeds under Federal Employer's Liability Act and Minnesota Statutes, section 219.77, application of rules, Rule 144.05

Fees

Reasonableness, determination, Rule 412

Real property

Transfer of, duties

Supervised administration, Rule 410

Unsupervised administration, Rule 410

Subsequent administration

Authority to act, Rule 413

Duties, generally, Rule 413

PERSONAL SERVICE

Annulment proceedings

Requirements, generally, Rule 302.01

Conciliation court proceedings

Removal to district court, Rule 521

Dissolution of marriage

Requirements, generally, Rule 302.01

Expedited child support process, Rule 355.02, Rule 361.03

Probate

Formal proceedings, notice requirements, Rule 404

Separation of husband and wife

Requirements, generally, Rule 302.01

PETIT JURIES

Defined

Jury management rules, Rule 802

PETITIONS

Joint petition, agreement, and judgment and decree for marriage dissolution without children, Form 12

PHOTOGRAPHS

Cameras

Courtrooms, use in, prohibited, Rule 4

Courtrooms

Taking in, prohibited, Rule 4

PICTURES

Courtrooms

Taking in, prohibited, Rule 4

PLAINTIFFS

Affidavits

Housing court proceedings

Mailing, summons and complaint to defendant, Rule 606

Posting, summonses, Rule 606

Statement of the case

Joint statement of the case not filed, plaintiffs, duties, Rule 112.01

Appearance

Conciliation courts, trials

Failure to appear, effect, Rule 512

Personal appearance, requirements, Rule 512

Claims

Intent to prove, joint statement of the case, contents, Rule 112.02

Family court proceedings

Designation of parties, Rule 302.04

Garnishments

Proposed judgments, notice requirements, Rule 136.02

Notice given

Conciliation courts

Claims or counterclaims, settlement, Rule 511

Notice received

Conciliation court

Counterclaims, Rule 509, Rule 510

Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons

Attorneys to evaluate settlement proposals, selection, Rule 145.03

Service of process by

Conciliation court proceedings, Rule 508

Housing court proceedings, Rule 606

Service of process on

Conciliation court proceedings, Rule 508

Statement of the case

Joint statement of the case, duties, Rule 112.01

Separate statement of the case, duties, Rule 112.01

PLATS

Registration of title

Applications, interlocutory decrees establishing boundaries, Rule 211

Condominiums, Rule 222

PLEADINGS

Conciliation court proceedings

Amendment, Rule 522

Use in cases removed to district court, Rule 522

Expedited child support process

Amended pleadings, requirements, Rule 370.06, Rule 371.07

Child support actions, requirements, Rule 370.01, Rule 370.02

Commencement, Rule 370.01, Rule 371.01

Filing requirements, generally, Rule 370.04, Rule 371.04

Paternity actions, requirements, Rule 371.01, Rule 371.02

Proposed orders, requirements, Rule 362.03, Rule 362.04, Rule 363.03, Rule 363.04

Service of process, see SERVICE OF PROCESS

Family court proceedings

Confidential information, requirements, Rule 313.01 to Rule 313.03

Striking

Failure to comply with rules, sanctions, Rule 303.02, Rule 305.02, Rule 307

Formal pleadings

Conciliation court proceedings removed to district court, when required, Rule 522

Format

Backings, prohibited, Rule 6.03

Facsimile transmission, Rule 6.01

Fasteners, Rule 6.03

Paper size, requirements, Rule 6.02

Petitions

Registration of title

Petitions subsequent to initial registration, Rule 213

PRETRIAL CONFERENCES**Appearance**

Family court proceedings

- Failure to appear, sanctions, Rule 305.02
- Requirements, Rule 305.02

Date of

- Scheduling orders, requirements, Rule 111.03

Prehearing conference statements

Family court proceedings

- Time limits for filing, Rule 305.01

Scheduling orders

- Amendment, when permitted, Rule 111.04
- Contents, requirements
- Family court proceedings, Rule 305.03
- Generally, Rule 111.03

PRIVILEGES AND IMMUNITIES**Neutrals**

- ADR processes, disclosure of confidential information, Rule 114.08

PROBATE

Application of rules, Rule 401

Closing estates

- Notice requirements, Rule 411
- Subsequent administration
- Fees, determination of, Rule 412
- Personal representatives, authority to act, Rule 413
- Proof, requirements, Rule 413
- Tax returns, filing requirements, Rule 412
- Vouchers, filing requirements, Rule 412

Code

- Defined, Rule 402

Definitions, Rule 402**Documents**

- Non-English language documents, translation to English, Rule 403
- Original documents, preparation, attorneys, duties, Rule 403
- Verification, requirements, Rule 403
- Withdrawal from custody of court, requirements, Rule 403

Formal proceedings

Defined, Rule 402

Notice requirements

- Complete settlement, Rule 411
- Generally, Rule 404
- Waivers, effect, Rule 404

Uncontested formal proceedings

- District court, duties, see Formal proceedings, duties, under PROBATE COURT

Generally, Rule 406

Waivers, effect, Rule 404

Unsupervised formal proceedings

- Conversion to supervised administration, Rule 409

Forms (documents)

- Official forms, use, requirements, Rule 403

Informal proceedings

- Appearance before registrar, requirements, Rule 408
- Applications, requirements, Rule 408
- Conversion to supervised administration, Rule 409
- Defined, Rule 402
- Wills, testimony regarding, not required, Rule 408

Orders

- Interim orders, Rule 405

Probate court, see PROBATE COURT**Proceedings**

- Application of rules, Rule 401
- Formal proceedings, see Formal proceedings under this topic
- Informal proceedings, see Informal proceedings under this topic
- Probate court, duties, see PROBATE COURT
- Scheduling of civil cases, exclusion, Rule 111.01

Supervised administration

- Attorneys, serving as personal representatives, Rule 414
- Defined, Rule 402
- Ex parte interim orders, issuance, grounds, Rule 405
- Informal proceedings, conversion to, Rule 409
- Transfer of real property, requirements, Rule 410

PROBATE (Cont'd)**Testacy proceedings**

- Hearings, formal proceedings, notice requirements, Rule 404

Petitions, requirements, Rule 409

Unsupervised administration

- Ex parte interim orders, issuance, prohibited, Rule 405
- Transfer of real property, requirements, Rule 410

Waivers

- Formal proceedings, Rule 404
- Informal proceedings, Rule 408

PROBATE COURT**Appointments by**

- Attorneys, fees, reasonableness, determination, Rule 412
- Non-resident personal representatives, formal proceedings, Rule 407

Determinations by

- Formal proceedings, uncontested formal proceedings, requirements, Rule 406

Formal proceedings, duties

- Complete settlement, Rule 411
- Uncontested formal proceedings, duties, Rule 406

Guardians and conservators

- Annual accounts, acceptance, effect, Rule 416
- Bonds (officers and fiduciaries)
- Amount, criteria, Rule 416
- Requirements, generally, Rule 416

Hearings

- Complete settlement, Rule 411
- Final settlement of accounts, notice requirements, Rule 416
- Periodic settlement of accounts, Rule 416
- Trusts, annual accounts, Rule 417.06
- Uncontested formal proceedings, Rule 406

Interim orders

- Issuance, requirements
- Ex parte interim orders, supervised administration, Rule 405
- Unsupervised administration, Rule 405

Judges

- Registrars, judges serving as, Rule 415

Notice received

Probate proceedings

- Trusts, annual accounts, failure to file, Rule 417.05

Orders

- Conversion to supervised administration, Rule 409
- Interim orders, see Interim orders under this topic
- Registrars, designation, Rule 415
- Tax returns, closing letters and audit results, filing, Rule 412
- Trusts, hearings, annual accounts, Rule 417.06
- Vouchers, filing, interim and final accounts, Rule 412

Petitions to

- Adjudication of accounts, guardians and conservators, duties, Rule 416
- Complete settlement, formal proceedings, Rule 411
- Confirmation of appointment, trustees, requirements, Rule 417.01
- Interventions, unsupervised administrations, Rule 405
- Unopposed petitions, district court, duties, Rule 406

Registrars**Appointments by**

- Non-resident personal representatives, formal proceedings, Rule 407

Authority

- Continuing authority, prohibited, Rule 415
- Grant of by court, Rule 415

Certificates and certification

- Certificates of discharge, issuance, unsupervised administration, Rule 405

Duties, generally, Rule 415

Judges, serving as, Rule 415

Waivers

- Appearance by counsel, informal proceedings, Rule 408

Waivers**Hearings**

- Adjudication of accounts, guardianships and conservatorships, Rule 416
- Annual accounts, trustees, Rule 417.06

PROPERTY DAMAGE

Evidence

Arbitration hearings, Rule 114.09

PROSECUTORS

Approvals by

Bail bonds, Rule 702

Service of process on

Motions, withdrawal of attorney from case, criminal proceedings, Rule 703

PUBLIC AUTHORITIES

Expedited child support process

County agencies defined as, Rule 352.01

Financial worksheets, evidence, admissibility, Rule 364.10

Intervention as matter of right, procedure, generally, Rule 360.01

PUBLIC DEFENDERS

Appointment

Expedited child support process, Rule 357.03

RAMSEY COUNTY DISTRICT COURT

Housing court

Application of rules, Rule 601

Bonds

Judgments, stay or vacation of, Rule 611

Calendar

Calendar call, requirements, Rule 607

Complaints

Attachments to, power of authority, Rule 603

Contents, requirements, Rule 604

Signatures, requirements, Rule 604

Deposits with

Withheld rent, requirements, Rule 608

Discovery, Rule 612

Fees

Jury fees, Rule 607

Hearings

Proposed order forms, availability, requirements, Rule 607

Judgments

Stay of judgments, Rule 611

Vacation of judgments, Rule 611

Judicial review, requirements, Rule 611

Jurisdiction, Rule 602

Motion practice, Rule 610

Orders

Bonds, stay pending review of referee's decision, Rule 611

Expedited discovery schedule, Rule 612

Stay of writ of restitution, Rule 609

Proceedings

Removal for hearing before district court judge, Rule 602

Referees (court); duties, Rule 602

Service of process

Constructive service, procedure, Rule 606

Requirements, generally, Rule 606

Summonses

Posting, Rule 606

Return of, requirements, Rule 605

Trials, Rule 607

Writs of restitution, issuance, Rule 609

REAL PROPERTY

Condemnation, see EMINENT DOMAIN

Eminent domain, see EMINENT DOMAIN

Registration of title, see REGISTRATION OF TITLE

Title to

Parties with right of appeal after adjudication, joinder, Rule 204

Transfers

Probate proceedings, personal representatives, duties, Rule 410

Valuations

Evidence, arbitration hearings, Rule 114.09

RECEIVERS AND RECEIVERSHIP

Accounts and accounting

Final accounts

Application of Rule 115, exemption, Rule 117.01

RECEIVERS AND RECEIVERSHIP (Cont'd)

Accounts and accounting (Cont'd)

Final accounts (Cont'd)

Contents, requirements, Rule 137.10

Generally, Rule 137.10

Business corporations

Lawsuits, venue, Rule 137.01

Corporations

Claims

Claimants, service of process on, Rule 137.04

Lawsuits, venue, Rule 137.01

Objections to

Failure to make, effect, Rule 137.04

Making, requirements, Rule 137.04

Receivers, see Receivers, corporate receiverships under this topic

Receivers, corporate receiverships

Appointment, requirements, Rule 137.02

Attorneys as, Rule 137.06

Compensation and salaries

District court, duties, Rule 137.03

Payment, applications, requirements, Rule 137.09

Trust funds, withdrawal from to pay, restrictions, Rule 137.08

Employment of attorneys, restrictions, Rule 137.07

Fees, applications, requirements, Rule 137.09

Inventory and valuation of assets, filing requirements, Rule 137.03

Notice received

Annual reports, due date, Rule 137.05

Qualifications, Rule 137.02

Reports given

Annual report and inventory, filing requirements, Rule 137.05

Final accounts, Rule 137.10

Surety bonds, requirements, Rule 137.03

Temporary receivers, appointment ex parte, requirements, Rule 137.02

Violations and penalties

Expenses incurred in violation of rule, Rule 137.07

RECIPROCITY

County agencies

Child custody investigations

ADR processes, family law matters, Rule 114.05

REFEREES (COURT)

Attorneys

Serving as, limitations, Rule 140.02

Conciliation court judges

Serving as, Rule 504

Expedited child support process

Referees presiding over, Rule 352.01

Family court proceedings

Hearings, transcripts of, use on review, Rule 312.02

Review of findings or recommendations, Rule 312.01

Family court referees

Child support magistrates, serving as, Rule 352.01

Housing court referees

Duties, Rule 602

Oaths

Garnishment disclosures, requirements, Rule 140.02

Supplementary proceedings, requirements, Rule 140.02

Objections to

Notice requirements, Rule 107

Qualifications

Garnishment disclosures, requirements, Rule 140.02

Supplementary proceedings, requirements, Rule 140.02

Removal

Actual prejudice or bias, requirements, Rule 106

REGISTRATION OF TITLE

Abstracts of title

Contents, requirements, Rule 203

Answers

Defendants, filing, effect, Rule 206

Issues raised by

No reply by applicant, effect, Rule 209

Reply by applicant, effect, Rule 209

Application of rules, Rule 201

REGISTRATION OF TITLE (Cont'd)**Applications**

Endorsements on, requirements, Rule 202
Initial applications, default cases, documents, filing, Rule 208

Judgments, applicants, duties, Rule 212

Boundaries

Interlocutory decrees establishing, Rule 211

Certificates of title

Duplicate certificates of title, see Duplicate certificates of title under this topic

Issuance following hearing, Rule 212

Memorials on

Birth certificates, Rule 220

Death certificates, life tenants, Rule 217

New duplicate certificates of title, petitions for, Rule 216

State tax deeds, Rule 218

New certificates of title

Amendment, Rule 215

Generally, Rule 215, Rule 216

Condominiums

Procedure regarding, Rule 222

Decrees of registration

Filing, court administrators, duties, Rule 211, Rule 212

Registration following hearing, Rule 212

Description of property

Applications, interlocutory decrees establishing boundaries, Rule 211

Duplicate certificates of title

Issuance, requirements, Rule 216

Examiners of titles**Approvals by**

Applications, Rule 202

New certificates of title, form, Rule 215

Petitions for summonses, Rule 205

Deliveries to

Documents, default cases, time limits, Rule 208

Hearings

Default cases, duties, Rule 208

Reports given

Defendant parties, identification, Rule 205

Hearings

Boundaries, establishing, Rule 211

Default cases, Rule 208

Interests acquired pendente lite

Protection, requirements, Rule 212

Petitions

Proceedings subsequent to initial registration

Contents, requirements, Rule 213

New duplicate certificates of title, requirements, Rule 216

Summonses

Applicants, duties, Rule 205

Contents, requirements, Rule 205

Examiners of titles, duties, see Examiners of titles under this topic

Proceedings

Scheduling of civil cases, exclusion, Rule 111.01

Subsequent to initial proceedings, generally, Rule 213 to Rule 216

Registrars of titles

Certificates of title, memorials on, duties

Birth certificates, Rule 220

Death certificates, Rule 217, Rule 221

New duplicate certificates of title, Rule 216

Condominiums

Uniform Condominium Act, administration, duties, Rule 222

Filing with

New duplicate certificates of title, petitions for, Rule 216

Registration of decree, Rule 212

Housing And Urban Development Department (U.S.)

Deeds, acceptance, requirements, Rule 219

Receipts (documents)

Registration of decree, Rule 212

Trials

Contested issues, Rule 210

REGISTRATION OF TITLE (Cont'd)**Trials (Cont'd)**

Proceedings subsequent to initial proceedings, Rule 214

RENTS**Withheld rents**

Deposit with court pending proceedings

Housing court proceedings, requirements, Rule 608

REPAIRS**Repair services**

Charges, evidence, arbitration hearings, Rule 114.09

Estimates, evidence, arbitration hearings, Rule 114.09

RULES OF CIVIL PROCEDURE**Application of rules**

Expedited child support process, Rule 301

Family court proceedings, Rule 301

RULES OF CRIMINAL PROCEDURE**Supplemental rules**

General rules of practice, criminal proceedings, application of rules, Rule 701

SEARCH WARRANTS**Applications**

Defective or insufficient applications, submission to second judge

When permitted, criminal proceedings, Rule 705

SENTENCING**Contempts**

Conditions of stay, default in performance, family court proceedings, Rule 309.03

SEPARATE MAINTENANCE**Application of rules**

Guardian ad litem procedure, Rule 901.01

Enforcement proceedings

Defined as family court case

Guardian ad litem procedure, Rule 901.01

SEPARATION OF HUSBAND AND WIFE**Application of rules**

Family court proceedings, Rule 301

Guardian ad litem procedure, Rule 901.01

Procedural time limits, Rule 302.03

Continuances

Generally, Rule 302.02

Defined as family court case

Guardian ad litem procedure, Rule 901.01

Parties to suits

Confidential information, requirements, Rule 313.01 to Rule 313.03

Designation, Rule 302.04

Personal service

Commencement of proceedings, Rule 302.01

Petitions

Joint petitions, summonses, not required, Rule 302.01

Service of process

Requirements, generally, Rule 302.01

Service by publication, when permitted, Rule 302.01

Time

Procedural time limits, application of rules, Rule 302.03

SERVICE BY MAIL**Arbitration awards**

Requirements, Rule 114.09

Conciliation court proceedings

Removal to district court, Rule 521

Requirements, Rule 508

Expedited child support process

Interpretation of rules

Completion of service, Rule 355.03

Intervention, requirements, Rule 360.01, Rule 360.02

Pleadings, Rule 370.03, Rule 371.03

Requirements, generally, Rule 355.02

Time, additional time, requirements, Rule 354.04

Family court proceedings

Motions, requirements, Rule 303.03

Motions

Family court proceedings, Rule 303.03

Time limits, requirements, generally, Rule 115.01

SERVICE BY MAIL (Cont'd)

Probate

- Formal proceedings, notice requirements, Rule 404
- Informal proceedings, notice requirements, Rule 408

SERVICE OF PROCESS

Affidavits of merit

- Requirements, Rule 109.01

Affidavits of service

- Expedited child support process, Rule 355.04
- Housing court proceedings
 - Contents, requirements, Rule 605
 - Return of service, defendant not served, procedure, Rule 606
 - Time limit for filing, Rule 605

Annulment proceedings

- Requirements, generally, Rule 302.01

Applications for leave to answer, open judgments, or defend

- Requirements, Rule 109.01

Conciliation court proceedings, see Conciliation court proceedings under SERVICE BY MAIL

Constructive service

- Housing court proceedings, procedure, Rule 606

Dissolution of marriage

- Requirements, generally, Rule 302.01

Expedited child support process

- Affidavits of service, see Affidavits of service under this topic
- Completion of service, requirements, Rule 355.03
- Costs, assessment, noncompliance, Rule 355.02
- Interpretation of rules
 - Completion of service, Rule 355.03
- Personal service, requirements, generally, Rule 355.02
- Pleadings, requirements, generally, Rule 370.03, Rule 371.03

- Proof of service, see Proof of service under this topic

- Requirements, generally, Rule 355.01

- Service accomplished after 5 p.m.

- Time, computation, effect, Rule 354.04

- Types of service, generally, Rule 355.02

- Who may serve, Rule 355.02

Family court proceedings

- Motions, requirements, Rule 303.03

Insufficiency, motions, see Service of process under MOTIONS

Motions

- Family court proceedings, Rule 303.03

Prehearing conference statements

- Family court proceedings, Rule 305.01

Proof of service

- Expedited child support process, Rule 355.04

Filing requirements

- Generally, Rule 7

Probate

- Formal proceedings, Rule 404

- Informal proceedings, Rule 408

Rules applicable to all court proceedings, Rule 1.03

Separation of husband and wife

- Requirements, generally, Rule 302.01

Service by publication

- Annulment proceedings, when permitted, Rule 302.01

- Dissolution of marriage proceedings, when permitted, Rule 302.01

- Expedited child support process, Rule 355.02

Probate

- Formal proceedings, notice requirements, Rule 404

- Informal proceedings, notice requirements, Rule 408

- Separation of husband and wife, when permitted, Rule 302.01

Statements regarding

- Joint statement of the case, requirements, Rule 112.02

SOCIAL SECURITY

Numbers

- Confidential information

- Family court proceedings, Rule 313.01

- Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons

- Proceeds, deposits of, Rule 145.05

SOLE PROPRIETORSHIPS

Appearance

- Conciliation court proceedings, Rule 512

SPOUSAL MAINTENANCE

ADR processes

- Participation in by parties, exception, Rule 310.01

Application of rules

- Family court proceedings, Rule 301
- Guardian ad litem procedure, Rule 901.01

Decrees

- Final decrees, see Final orders under this topic

Enforcement proceedings

- Defined as family court case
 - Guardian ad litem procedure, Rule 901.01
- Final orders, notice, requirements, Rule 308.01

Expedited child support process

- Establishment or modification, prohibited proceedings, Rule 353.01

Final orders

- Requirements, family court proceedings
 - Generally, Rule 303.06, Rule 308.01
 - Notices required by law, Rule 308.02
 - Sensitive matters, Rule 308.03

Interim support orders

- Contents, requirements, Rule 303.04

Orders

- Final orders, see Final orders under this topic
- Interim support orders, Rule 303.04

Reimbursement actions

- Uniform system for scheduling, exclusion, Rule 304.01

Surviving spouses, see SURVIVING SPOUSES

STANDARD OF PROOF

Expedited child support process

- Preponderance of evidence, generally, Rule 364.11

STATE AGENCIES

Temporary restraining orders against

- Applications for, requirements, Rule 118

STATE FLAG

Courtrooms

- Presence in, requirements, Rule 2.01

STATEMENT OF THE CASE

Forms (documents), Form 112.02

Joint statement of the case

Contents

- Personal injury actions, Rule 112.03
- Requirements, generally, Rule 112.02
- Traffic accidents, Rule 112.04
- Failure to file, effect, Rule 112.05
- Plaintiffs, duties, Rule 112.01
- Time limits for submitting, scheduling orders, contents, Rule 111.03

Parties to suits

- Joinder in filing, contents, requirements, Rule 112.02

Proposed statement of the case

- Time limits for filing, scheduling orders, contents, Rule 111.03

Purpose

- Status of the case, Rule 112.01

STAY OF PROCEEDINGS

Expedited child support process

Interpretation of rules

- Decision and order not stayed pending motion to correct clerical errors, motion for review, or combined motions, Rule 377.08

F frivolous litigation

- Generally, Rule 9.04

Housing courts

- Civil cases, notice of review, filing, effect, Rule 611
- Criminal cases, notice of review, filing, effect, Rule 611

Jury selection procedure

- Compliance with rules, challenges to, Rule 813

STIPULATION

Family court proceedings

- Final hearings
 - Scheduling, default cases, Rule 306.01

STIPULATION (Cont'd)

Family court proceedings (Cont'd)

Final hearings (Cont'd)

Stipulations entered into in open court, Rule 307

SUBPOENAS

Conciliation court proceedings

Availability, court administrators, advice given, Rule 504

Issuance, trials, Rule 512

Expedited child support process

Issuance, court administrators, duties, Rule 361.03

Objections, procedure, Rule 361.03

Service of process, requirements, Rule 361.03

Power to issue

Parties to suits, arbitration hearings, Rule 114.09

SUBROGATION

Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons

Petitions, requirements, Rule 145.02

SUMMARY JUDGMENT

Motions

Memoranda of law in support of, requirements, Rule 115.03

SUMMARY PROCEEDINGS

Summary jury trials

Defined, ADR processes, Rule 114.02

Evidence presented during, admissibility in subsequent proceedings, Rule 114.08

Neutrals for

Civil neutral roster, Rule 114.12

Family law neutral roster, Rule 114.12

SUMMONSES

Expedited child support process

Contents, requirements, Rule 370.02, Rule 371.02

Response, generally, Rule 370.04 to Rule 370.06, Rule 371.04, Rule 371.05, Rule 371.07

Issuance

Conciliation court proceedings, Rule 508

Posting

Housing court proceedings, requirements, Rule 606

Return of

Housing court proceedings, requirements, Rule 605

Service of process

Housing court proceedings, requirements, Rule 605

SUPPLEMENTARY PROCEEDINGS

Applications for

Ex parte applications, previous applications, disclosure, Rule 140.01

Continuances

Number allowed, Rule 140.03

Orders

Requirements, Rule 140.03

Referees (court)

Attorneys, serving as, Rule 140.02

Continuances, granting, limitations, Rule 140.03

SUPREME COURT

ADR review board

Qualified neutrals, criteria for granting applications, Rule 114.14

Applications to

Training requirements, waivers, ADR neutrals, Rule 114.14

SURETIES

Attorneys

Practicing attorneys, acceptance as, prohibited, Rule 139

SURETY BONDS

Attachment

Discharge, notice to adverse party, not required, Rule 136.01

Garnishment

Discharge, notice to adverse party, not required, Rule 136.01

Injunctions

Restraining orders, requirements, Rule 135

SURVIVING SPOUSES

Death by wrongful act lawsuits

Generally, Rule 144.01 to Rule 144.05

Trustees, petitions for appointment, requirements, Rule 144.01

Notice received

Probate

Formal proceedings, Rule 404

Informal proceedings, Rule 408

TAPE RECORDERS

Courtrooms

Use prohibited

Exceptions, Rule 4

Generally, Rule 4

TAX-FORFEITED LAND

Sales

Special assessments

Abstracts of title, requirements, registration of title, Rule 203

State tax deeds

Registration of title

Certificates of title, memorials on, Rule 218

TAX LIENS

Federal tax liens

Abstracts of title, requirements

Registration of title, Rule 203

State tax liens

Abstracts of title, requirements

Registration of title, Rule 203

TAX RETURNS

Confidential information

Family court proceedings, Rule 313.02

TELECONFERENCES

Expedited child support process

Proceedings conducted via, Rule 359.01 to Rule 359.03

Motion practice

Hearings

Moving parties, duties, Rule 115.09

Records, requirements, Rule 115.09

TELEPHONE

Expedited child support process, proceedings conducted via, Rule 359.01 to Rule 359.03

TENANCY FOR LIFE

Death of life tenant

Registration of title

Certificates of title, memorials on, Rule 217

TERMINATION OF PARENTAL RIGHTS

Guardian ad litem procedure

Application of rules, Rule 901.01

Legal proceedings regarding

Defined as juvenile court case

Guardian ad litem procedure, Rule 901.01

TESTIMONY

Children

Family court proceedings, Rule 303.03

Conciliation court proceedings

Trials, requirements, Rule 512

Expedited child support process

Permitted testimony, Rule 364.09

Oral testimony

Requests for

Motions, family court proceedings, requirements, Rule 303.03

Sworn testimony

Summary jury trials, evidence, admissibility in subsequent proceedings, Rule 114.08

Witnesses, see WITNESSES

THIRD-PARTY PRACTICE

Joinder of parties by

Time limits, scheduling orders, contents, Rule 111.03

TIME

- Annulment proceedings
 - Generally, governed by Minnesota Rules of Civil Procedure, Rule 302.03
 - Limits, shortening, grounds, Rule 302.03
- Computation
 - Conciliation court proceedings, Rule 503
 - Expedited child support process
 - Generally, Rule 354.01
 - Service by mail, Rule 354.04
 - Service late in day, Rule 354.04
 - Time periods less than seven days, Rule 354.02
- Dissolution of marriage
 - Generally, governed by Minnesota Rules of Civil Procedure, Rule 302.03
 - Limits, shortening, grounds, Rule 302.03
- Expedited child support process
 - Business day, defined, Rule 354.03
 - Computation, see Computation under this topic
 - Legal holiday, defined, Rule 354.03
- Separation of husband and wife
 - Generally, governed by Minnesota Rules of Civil Procedure, Rule 302.03
 - Limits, shortening, grounds, Rule 302.03

TITLE

- Real property
 - Lawsuits, adjudication not final
 - Parties with right of appeal, joinder, Rule 204

TOWNHOUSES

- Associations
 - Appearance, conciliation court proceedings, Rule 512

TOWNS

- Temporary restraining orders against
 - Applications for, requirements, Rule 118

TRAFFIC ACCIDENTS

- Statement of the case
 - Joint statement of the case, requirements, Rule 112.04

TRANSCRIPTS

- Expedited child support process
 - Ordering
 - Generally, Rule 366.01
 - Motions for appellate review, Rule 366.01
 - Motions to correct clerical errors, Rule 366.01
- Referees (court) hearings
 - Family court proceedings
 - Cost of, determination, Rule 307
 - Use on judicial review, Rule 312.02
 - Housing court proceedings
 - Obtaining, petitioners, duties, Rule 611

TRANSLATIONS

- Probate documents
 - Verified translations, non-English language documents, Rule 403

TRIALS

- Cameras
 - Use, prohibited, Rule 4
- Complex cases
 - Assignment to single judge, Rule 113.01 to Rule 113.03
- Conciliation courts, see Trials under CONCILIATION COURTS
- Continuances, see CONTINUANCES
- Final argument, see FINAL ARGUMENT
- Mini-trials
 - ADR process, see Mini-trials under ALTERNATIVE DISPUTE RESOLUTION
- Minnesota civil trialbook, see MINNESOTA CIVIL TRIALBOOK
- Opening statements
 - Reporting, requirements, Rule 124
- Registration of title, see Trials under REGISTRATION OF TITLE
- Tape recorders
 - Use, prohibited, Rule 4
- Time of
 - Joint statement of the case, requirements, Rule 112.02

TRIALS (Cont'd)

- Video recording devices
 - Use, prohibited, Rule 4

TRUSTEES

- Accounts and accounting
 - Annual accounts
 - Contents, requirements, Rule 417.02
 - Forms (documents), Form 417.02
 - Hearings, Rule 417.06
 - Final accounts
 - Unpaid or delinquent taxes, duties, Rule 417.03
- Appointment
 - Confirmation, petitions, probate proceedings, Rule 417.01
 - Death by wrongful act lawsuits, petitions
 - Caption, Rule 144.03
 - Contents, requirements, Rule 144.01
- Consent
 - Proposed trustees, requirements, Rule 144.01
- Death by wrongful act lawsuits
 - Appointment
 - Petitions, hearings, Rule 144.02
- Disclosures by
 - Beneficiaries, relationship to, Rule 417.01
 - Unpaid or delinquent taxes, final accounts, Rule 417.03
- Endorsements
 - Consent to act as trustee
 - Death by wrongful act lawsuits, petitions for appointment, Rule 144.01
- Fees
 - Annual accounts, probate proceedings, Rule 417.02
- Notice received
 - Annual accounts
 - Failure to file, Rule 417.05
 - Hearings, Rule 417.06
- Oaths
 - Caption, form of
 - Death by wrongful action lawsuits, requirements, Rule 144.03
- Payments to
 - Death by wrongful act lawsuits, Rule 144.05
- Petitions
 - Appointment, Rule 144.01
 - Distribution of proceeds, Rule 144.05
- Receivers and receivership, corporations
 - Appointment, qualifications, Rule 137.02
- Service of process by
 - Annual accounts, service on beneficiaries, Rule 417.04
 - Final accounts, service on beneficiaries, Rule 417.04
- TRUSTS**
- Assets
 - Annual accounts, requirements, probate proceedings, Rule 417.02
- Periodic trust accountings
 - Scheduling of civil cases, exclusion, Rule 111.01
- Structured settlements
 - Personal injury lawsuits brought on behalf of minors, mentally ill, or mentally retarded persons, requirements, Rule 145.05, Rule 145.06
- Taxes
 - Unpaid or delinquent taxes, final accounts, disclosure, requirements, Rule 417.03
- Trustees, see TRUSTEES
- VENUE**
- Change of venue
 - Expedited child support process, Rule 353.01
 - Receivers, corporations, civil actions, Rule 137.01
- Civil actions
 - Receivers, corporations
 - Attorney general, actions brought by, exception, Rule 137.01
 - Property, sequestration, Rule 137.01
- Conciliation courts
 - Transfer back to after removal, Rule 521
- VERDICTS**
- Minnesota civil trialbook, see Verdicts under MINNESOTA CIVIL TRIALBOOK

VERDICTS (Cont'd)

- Proposed verdicts
 - Time limits for filing, scheduling orders, contents, Rule 111.03

VIDEO

- Interactive video
 - Use in expedited child support enforcement proceedings, Rule 359.01 to Rule 359.03
- Video recording devices
 - Courtrooms
 - Use, prohibited, Rule 4

VISITATION

- Expedited child support process
 - Prohibited proceedings, Rule 353.01
- Supervision
 - Final orders, notice requirements, family court proceedings, Rule 308.01

VOTER REGISTRATION

- Voter registration lists
 - Defined, jury management rules, Rule 802
 - Juror source list, service as, Rule 806

VOUCHERS

- Probate proceedings
 - Final and interim accounts, filing requirements, Rule 412

WAIVERS

- Death by wrongful act lawsuits
 - Distribution of proceeds, hearings, Rule 144.05
 - Trustees, petitions to appoint, hearings, Rule 144.02
- Expedited child support process
 - Fees, Rule 356.02
- Family court proceedings
 - Confidential information, Rule 313.01 to Rule 313.03
 - Default hearings
 - Rights under Soldier's and Sailor's Civil Relief Act of 1940, Rule 306.01
 - Stipulations, contents, requirements, Rule 306.01
- Probate proceedings
 - Hearings, annual accounts, Rule 417.06

WARDS

- Notice received
 - Successor guardians, probate proceedings, requirements, Rule 416

WILLS

- Depositing with court administrators
 - Requirements, Rule 418
 - Withdrawal, Rule 418

WILLS (Cont'd)

- Inspections
 - Guardians and conservators, Rule 418
- Probate court, duties, see PROBATE COURT
- Probate, see PROBATE

WITNESSES

- Arbitration hearings
 - Authors, reports, bills, or estimates, Rule 114.09
 - Non-appearance in response to subpoena, effect, Rule 114.09
 - Subpoena of, Rule 114.09
 - Written statements by, admissibility, Rule 114.09
- Conciliation courts
 - Subpoenas, Rule 512
- Expedited child support process
 - Cross-examination, generally, Rule 364.12
- Examination
 - By child support magistrate, Rule 364.13
 - By parties to suit, Rule 364.09
- Hearings
 - Exclusion, Rule 364.09
 - Testimony, Rule 364.09
- Impeachment
 - Examination of witnesses, Rule 364.13
- Family court proceedings
 - Mediation
 - Number, limitation, Rule 303.03
 - Witness lists, orders to exchange, Rule 305.03
- Minnesota civil trialbook, see Witnesses under MINNESOTA CIVIL TRIALBOOK
- Motion hearings
 - Requirements, Rule 115.08
- Proposed witness lists
 - Exchange, orders for, family court proceedings, Rule 305.03
 - Joint statement of the case, requirements, Rule 112.02
 - Time limits for filing, scheduling, contents, Rule 111.03

WRITS OF ATTACHMENT

- Issuance
 - Contempts, family court proceedings, requirements, Rule 309.03

WRITS OF EXECUTION

- Restraining orders
 - Bonds, exception, Rule 135

WRITS OF REPLEVIN

- Restraining orders
 - Bonds, exception, Rule 135

WRITS OF RESTITUTION

- Issuance
 - Time limits, housing court proceedings, Rule 609