

STATE OF MINNESOTA

IN SUPREME COURT

OFFICE OF
APPELLATE COURTS

ADM04-8001

CX-89-1863

C4-94-1646

MAY 03 2010

FILED

**PROMULGATION OF AMENDMENTS
TO THE RULES OF CIVIL PROCEDURE,
THE GENERAL RULES OF PRACTICE FOR
THE DISTRICT COURTS, AND THE SPECIAL
RULES OF PROCEDURE GOVERNING
PROCEEDINGS UNDER THE MINNESOTA
COMMITMENT AND TREATMENT ACT**

O R D E R

The Supreme Court Advisory Committee on the Rules of Civil Procedure has recommended amendments to Rules 45 and 54 and Form 1–Summons of the Rules of Civil Procedure and to Rule 127 of the General Rules of Practice for the District Courts. Pursuant to our order filed December 10, 2009, we received written comments on the proposed amendments.

The court has reviewed the proposals and the comments and is advised in the premises.

IT IS HEREBY ORDERED THAT:

1. The attached amendments to Rules 45 and 54 and Form 1–Summons of the Rules of Civil Procedure, and to Rule 127 of the General Rules of Practice for the District Courts, and the attached new Rule 25 of the Special Rules of Procedure Governing

Proceedings Under the Minnesota Commitment and Treatment Act be, and the same are, prescribed and promulgated to be effective on July 1, 2010.

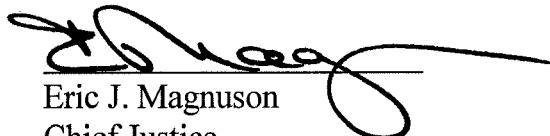
2. These amendments shall apply to all actions or proceedings pending on or commenced on or after the effective date.

3. The State Court Administrator is directed to make a form available on the Judicial Branch website to facilitate taxation of costs and disbursements, similar to the draft form included in the November 16, 2009, Final Report of the Supreme Court Advisory Committee on Rules of Civil Procedure.

4. The inclusion of advisory committee comments is made for convenience and does not reflect court approval of the statements made therein.

Dated: May 3, 2010

BY THE COURT:



Eric J. Magnuson
Chief Justice

AMENDMENTS TO RULES OF CIVIL PROCEDURE

[Note: new material is indicated by underscoring, except committee comments, which are all new; deleted material is indicated by strikethrough.]

RULE 54. JUDGMENTS; COSTS

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Rule 54.04. Costs

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

[Note: The following language is entirely new; underscoring is omitted in interest of readability.]

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

(b) **Application for costs and disbursements.** A party seeking to recover costs and disbursements must serve and file a detailed sworn application for taxation of costs and disbursements with the court administrator, substantially in the form as published by the State Court Administrator. The application must be served and filed not later than 45 days after entry of a final judgment as to the party seeking costs and disbursements. A

party may, but is not required to, serve and file a memorandum of law with an application for taxation of costs and disbursements.

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

(d) Decision. Costs and disbursements may be taxed by the court administrator or a district court judge at any time after all parties have been allowed an opportunity to file applications and to object to the application of any other party as provided in this rule. The judge or court administrator may tax any costs and disbursements allowed by law.

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

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

Advisory Committee Comment—2010 Amendment

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

RULE 45. SUBPOENA

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Rule 45.02 Service

(a) **Who May Serve and Method of Service; Timing of Notice.** A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person or by leaving a copy at the person's usual place of abode with some person of suitable age and discretion then residing therein and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the state of Minnesota or an officer or agency thereof, fees and mileage need not be tendered. A subpoena commanding production for inspection, copying, testing, or sampling of designated books, papers, documents, or electronically stored information, tangible things, or inspection of premises, must be served on the subject of the subpoena, and notice of the required production must be served in the manner prescribed by Rule 5.02 on each party to the action, at least 7 days before the required production.~~Prior notice of any commanded production of documents and things or inspection of premises, copying, testing, or sampling before trial shall be served on each party in the manner prescribed by Rule 5.02.~~

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Rule 45.04 Duties in Responding to Subpoena

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

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

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

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

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

(5) The party issuing a subpoena for production or inspection shall make available to all parties any books, papers, documents or electronically stored information obtained from any person following issuance of a subpoena to that person. If production or inspection is made at a time or place, in a manner, or to an extent and scope, different from that commanded in the subpoena, the party issuing the subpoena must give notice to all parties to the action at least 7 days in advance of the rescheduled production. Any party may attend and participate in any noticed or rescheduled production or inspection and may also require production or inspection within the scope of the subpoena for inspection or copying.

Advisory Committee Comment—2010 Amendment

Rule 45 is amended in several ways to prevent misuse of subpoenas. These amendments are consistent with the purpose of two provisions of the existing rule. Under Rule 45.01(e), notice of issuance of a subpoena is required in order that all parties have an opportunity to participate in the production and to curtail use of a subpoena for ex parte investigation. Rule 45.03(a) explicitly recognizes that the costs of discovery from non-parties should be borne, to the extent feasible, by the parties to the action and the burden on subpoenaed parties should be minimized. The amendment in 2010 adds

language to Rule 45.02(a) that is intended to make even more explicit the proper notice for use of a subpoena for production of documents, etc.

Rule 45.04(a) is amended by the addition of paragraph (5) that is intended to reinforce that the proper use of a subpoena for production is to obtain information for use by all parties to the litigation, and not for ex parte use by a single party. Once a subpoena is issued to a non-party, information produced or testimony by that non-party must be made available to all parties. The new language also facilitates the orderly production of information. Rule 45 was amended in 2006 to permit use of subpoenas to require production of documents and other information from non-parties without requiring a deposition to be scheduled and, indeed, without even requiring a personal appearance. *See* Rule 45.03(b). Where the non-party and the party that issued a subpoena make alternative arrangements for production in response to the subpoena—which may be entirely proper—the potential exists that the production would occur without the knowledge of the other parties to the action. That production, without notice to the parties, is improper and essentially prevents participation by the parties who had received notice of another time of production. The amended rule places a duty on the party issuing the subpoena either to arrange production at a time agreeable to all parties and the non-party or to give notice to the other parties.

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

Notice of the intention to comply with a subpoena in some manner other than that noticed in the subpoena is important because one of the parties may have valid objections to the production taking place at all. Under the revised rule, no production can properly occur without all parties having at least seven days notice, providing any party the opportunity either to participate in the production or to seek a protective order to prevent the production from taking place. Because of the expedited hearing requirement for commitment proceedings under Minn. Stat. ch. 253B, subpoenas for production in those proceedings are subject to a 24-hour notice requirement as provided in a new Rule 25 added to the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act.

FORM 1. SUMMONS

State of Minnesota

District Court

County of _____

_____ Judicial District

_____,

Plaintiff,

Court File Number: _____

Case Type: _____

vs.

Summons

_____,

Defendant.

THIS SUMMONS IS DIRECTED TO _____.

1. YOU ARE BEING SUED. The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you [is attached to this summons] [is on file in the office of the court administrator of the above-named court].* Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

2. YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this summons a **written response** called an Answer within 20** days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this summons located at:

_____.

3. YOU MUST RESPOND TO EACH CLAIM. The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS. If you do not Answer within 20** days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint. If you do not want to contest the claims stated in the complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the complaint.

5. LEGAL ASSISTANCE. You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. ALTERNATIVE DISPUTE RESOLUTION. The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

[7. To be included only if this lawsuit affects title to real property:

THIS LAWSUIT MAY AFFECT OR BRING INTO QUESTION TITLE TO REAL PROPERTY located in _____ County, State of Minnesota, legally described as follows:

[Insert legal description of property]

The object of this action is _____.]

Plaintiff's attorney's signature

Dated

Print or type plaintiff's attorney's name

* Use language in the first bracket when the complaint is served with the summons, language in the second bracket when the complaint is filed and the summons is served by publication.

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

AMENDMENT TO GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

[Note: new material is indicated by underscoring, except committee comments, which are all new; deleted material is indicated by strikethrough.]

RULE 127. EXPERT WITNESS FEES

~~On affidavit showing that a fee equaling or exceeding \$300 per day has been billed, the court administrator may tax \$300 per day for an expert witness fee as a disbursement in a civil case, subject to increase or decrease by a judge.~~ The amount allowed for expert witness fees shall be in such amount as is deemed reasonable for such services in the community where the trial occurred and in the field of endeavor in which the witness has qualified as an expert. No allowance shall be made for time spent in preparation or in the conducting of experiments outside the courtroom by an expert.

Advisory Committee Comment—2010 Amendment

This rule is amended to remove the \$300 limit on expert fees contained in the former rule. This change is part of the new procedure established for taxation of expert costs established by amendment of Minn. R. Civ. P. 54.04 in 2010. The rule allows taxation of costs by either the court administrator or district court judge, and there is no reason to continue a rule that limits the amount the court administrator can order, thereby making a two-step taxation process inevitable. The \$300 limit in the former rule also had not been changed for several decades, so was unduly miserly in the 21st century.

**AMENDMENT TO SPECIAL RULES OF PROCEDURE GOVERNING
PROCEEDINGS UNDER THE MINNESOTA COMMITMENT AND
TREATMENT ACT**

[Note: the following rule is entirely new, and underlining is therefore not used to designate new language.]

RULE 25. SUBPOENA FOR PRODUCTION OF RECORDS

Where a party in a proceeding under Minn. Stat. ch. 253B uses a subpoena to obtain the production of records, the advance-service and advance-notice requirements under Minn. R. Civ. P. 45.02(a) and 45.04(a)(5) shall be 24 hours, rather than seven days.