

MEETING SUMMARY¹

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

Thursday, June 4, 2009
2:00 p.m. — 4:00 p.m.
Judicial Center Room 230

Members in attendance:

Hon. Elizabeth Hayden	Dan O'Connell
Hon Steven Cahill	Daniel Rogan
Hon. Mel Dickstein	Hon. Jon Stafsholt
Francis Eggert	Erica Strohl
Jennifer Frisch	Hon. Robert Walker
Karen E. Sullivan Hook (phone)	Hon. Lorie Skjerven Gildea, liaison Justice
Hon. Kurt Marben (phone)	David Herr, Reporter
Hon. Kathryn Messerich	Michael Johnson, Staff Attorney

- 1. Future Meeting Schedule.** Next meeting scheduled for Thursday July 23, 2009, from 1:00 p.m. to 3:00 p.m. in the Judicial Center. Members are requested to contact staff ASAP if they are unable to attend
- 2. Cameras in the Courtroom pilot project.** At the last meeting the committee agreed that Jennifer Frisch would begin the dialogue with academics at the University of Minnesota to see if they had any interest in working with the committee to develop a pilot project plan. Jennifer reported that she and staff met with five faculty members and there is a strong interest in preparing a proposal but not necessarily to be involved in a competition for work. The academics indicated that they would welcome participation by other academics and that this is not unusual. They also expressed concerns about being able to devise a study that was both practical and capable of meeting each and every issue identified in the Court's pilot project order. Finally, they were concerned about cost but were also committed to seeking any available outside funding.

Staff added that very little true, empirical research has been undertaken in regard to cameras in the courtroom, and that there may only be three known studies. One was completed in California in the early 1980's by Short on behalf of the

¹ Unofficial summary prepared by advisory committee staff.

California Judicial Council. The other two involved one of the academics who met with Jennifer and staff last month; the first study involved mock trials with students serving as jurors, and the second involved 130 civil and criminal jury trials in Hennepin County in the 1990's but the camera essentially had no film, it was just present at the back of the courtroom pointing at the witness stand. An article has not yet been published on the latter study, but neither study revealed any impact on the outcome of cases. The latter study also included academics from the University of Minnesota, The Ohio State University, and the City University of New York.

Among the points made in the ensuing discussion were:

- Can the academics prepare a written proposal by the time of the July meeting?
- Duluth might serve as a good pilot project site because they have a University of Minnesota branch, the Duluth domestic violence program is well regarded, the area has both urban and rural cultures, and is located next to Wisconsin which currently permits cameras in their courtrooms;
- Pilot may need to be significantly larger than one district in order to produce a sufficient number of cases for a valid study, and we need information from the academics in regard to what might that size be;
- There may be a limited number of cases even if the project is statewide;
- Case volumes should not be the only factor, New Ulm for example had the most recent high media interest case and they have a small volume;
- Academics are very sensitive to obtaining a representative sample;

The committee agreed that it would take up the issue again in July and hopefully by then a written proposal will serve as the discussion guide. Jennifer Frisch indicated that she would let the committee know right away if the July meeting deadline was not workable for the academics. Members were asked to be ready to respond to any questions that the academics might have, and that those would be channeled through Jennifer and staff.

- 3. Cleanup: Rule 12 simultaneous service and filing.** The committee approved the draft report pages 12-13 with one edit on line 49 so it reads “pleadings and other papers” or words to that effect.

4. **Cleanup: Rule 304.02 Interpreter information requirements.** The committee approved the draft report pages 17-18, with the sentence preceding line 106 corrected to indicate that this is a rule modification and not a new rule.
5. **Clean up: Commitment Act Rule 14.** The committee approved the draft report pages 31-32.
6. **Carryover: Rule 517 payment of conciliation court judgment to court administrator.** The committee approved the draft report pages 23-24, with a correction on line 211 moving the new word “then” so that it is between “may” and “pay” instead of after the word “pay.”
7. **Carryover: local rules requiring transcription of audio/visual recordings submitted as exhibits.** The committee approved draft report pages 2-4 and 7-8 with the addition of a recommendation that the matter should also be submitted to the appellate rules committee as those rules direct the preparation of the transcript.
8. **Form 5, Pro Hac vice.** The committee approved the draft report page 9.
9. **Form 11.1 and 11.2 Confidential Information Form and Sealed Financial Source Documents Cover Sheet.** The committee approved the draft report pages 10-11, subject to confirmation by staff with state court administration forms staff that the current form number can be included somewhere on the form posted on the website, including in the title to the form, so that people can be sure that it is the correct form.
10. **Rule 111 information statement — new consumer credit civil case type and mechanics lien actions.** The committee approved the draft report pages 14-16 with the addition of a parenthetical referencing case type 3A, From 23, of the rules of civil procedure so that the definition is tied to the rule and not merely in the comment.
11. **Rule 115 counting backwards.** Considered along with item #23, below.
12. **Rule 503(c) Conciliation court time computation.** Considered along with item #23, below.
13. **Conciliation rule 518(b).** The committee approved the draft report pages 25-26.
14. **Conciliation Court Appeals.** Staff explained that the issue came from the Judicial Council which asked, in light of the budget situation, whether there can be a repeal of the rule permitting jury trials in conciliation court matters that have

been removed to district court. At the last meeting the committee requested staff to provide the committee with a sample of any waiver processes used by other jurisdictions for small claims court.

Staff provided examples of a variety of approaches, including:

- Maine statutes deem that a plaintiff proceeding in small claims court waives the right to a jury trial on appeal, but the defendant can have a jury trial if otherwise entitled to it (e.g., for matters at law as opposed to equity) and if the defendant elects a jury trial on appeal the plaintiff is also entitled to a jury trial;
- Massachusetts procedure is similar to Maine but caselaw adds that if there is a counterclaim, the plaintiff is entitled to a jury trial on appeal because in terms of the counterclaim the plaintiff is essentially a defendant;
- South Dakota does not permit any appeals from its small claims court but does permit the defendant to remove it to the next higher level court if removal is done before the time to answer or appear in small claims court expires;
- Montana prohibits jury trial and in-court appearances of counsel in small claims court but allows the defendant to remove to the next higher level, but if not removed, appeals from small claims are made on the record (including a tape recorded record); there is no trial do novo, and the matter has withstood state constitutional challenge;
- Minnesota Statutes section 491A.02, subd 6, provides that “[t]he rules promulgated by the Supreme Court must provide for a right of appeal from the decision of the conciliation court by removal to the district court for a trial de novo.”

Discussion was extensive; among the points made were:

- Committee members indicated that jury trials on conciliation court appeals were rare in their experience;
- Removing the jury trial rule and considering other jurisdiction approaches appear to be significant structural and/or policy changes that may best be made after a review and study of the process by State Court Administration or the Judicial Council;

- The legislature would also need to be involved in any major structural/policy change;
- During recent budget discussions, the Judicial Council was considering abolishing conciliation court altogether; and
- Rules that fit any appropriate restructuring can be easily drafted.

The committee agreed that it would not make a recommendation due to the structural aspect and would leave the issue open for the Judicial Council or State Court Administration to make an appropriate structural and policy recommendation.

15. Eviction actions. The committee approved the draft report page 4.

16. Rule 301 Scope — whether **chapter 257 (De Facto Custody and Interested Third Party)** is within scope of family law rules. Committee agreed that the matter should remain tabled until we have the results of the Divorce Camp rules project in October.

17. Rule 309 Contempt and Order to show Cause. The committee approved the draft report pages 19 -20, with the addition of some type of caveat that if one is not sure that a noticed person will appear that they should use an order to show cause.

18. Rule 707 Grand Jury Transcripts. The committee reviewed the draft committee report and a letter from criminal rules advisory committee chair Judge Carolan. Discussion was extensive; among the points made were:

- Criminal rules committee appears to be very concerned about confidentiality and has offered language to address that;
- The rule could address confidentiality more efficiently if the rule simply made a reference to submitting the documents in a sealed envelope marked confidential grand jury records, and then citing criminal rule 18 in the comments;
- The entire 700 series of rules should be considered for relocation to the criminal rules where criminal practitioners are more likely to find them;
- Criminal rules committee is polarized and deliberative and a rule may not make it through in quite some time; in the meantime the general rules could be amended and eventually moved over at a later time;
- The rule is important because it provides for permanency of court records that might otherwise get lost when a court reporter dies or retires;

- The criminal rules address a different audience, i.e., the judge and lawyers, while the general rules 700 series addresses administrative staff, so there may be a good reason to keep them where they are.

The committee approved the draft report on pages with 29-30 with the addition of a clause referencing filing in a confidential envelope on lines 299 and 303, and beefing up of the rule or comment to ensure that the references to the “order” on lines 304 and 307 refer to an order of the court approving the request for a transcript. The committee also agreed to recommend that the Court consider moving the 700 series rules to the criminal rules where they can be located easier by criminal law practitioners.

19. Rule 814 Juror Notification. The committee approved the draft report page 5.

20. Mailing limitation. Staff explained that the Chief Justice’s suggestion box included a requested rule indicating that if the court has mailed notice or items to a person at their last known address and the mail has been returned two or more times, further mailing is no longer required. The State Court Administrator’s Court Operational Advisory Workgroup (COAW) also submitted brief written comments indicting that the return of mail as undeliverable is a frequent occurrence across the state and results in frustration and financial waste, and that COAW supports a rule relieving court staff of the duty to send subsequent mailings to a party where at least three pieces of mail, sent to the same address, have been sent and returned identified by the post office as undeliverable.

Among the points made during the discussion were:

- Homeless people do not have addresses where mail can be sent;
- Migrant populations also present notice issues;
- Civil rules committee discussed a similar request to permit e-mail notification, and although the civil rules committee ultimately decided that e-mail works in the federal system because of the implementation of e-filing there, any rule here may have to distinguish between inconsequential notices of scheduling hearings and more important notices such as dismissal or entry of judgment;
- It is difficult to determine where to put a rule, or to decide whether one rule can or should address all cases, including criminal cases;
- Rule 77 of the rules of civil procedure directs the court staff to mail notices;
- It is a global issue as litigants bear similar burdens, but the courts require litigants to keep full records;

- If two years ago several pieces of mail were returned as undeliverable and now there is a dismissal, sound public policy suggests that such a serious notice should be mailed;
- Perhaps there should be a rule clearly requiring litigants to keep the court informed of their current address;
- The certificate of representation and parties attempts to do this but is not as clear or effective;
- Such a rule could also include the ability of the court to stop certain notices after repeated non-deliveries;
- Domestic violence victims may be reluctant to provide current addresses;
- The Secretary of State's Safe at Home program allows domestic violence victims to use the Secretary of state's address as their legal contact address, and the secretary of state forwards legal notices on to the real address.

The committee agreed to defer the matter to the next meeting. The reporter will attempt to draft a rule to guide the next discussion, and members are requested to consider whether they have experienced any problems with notices and non-delivery.

21. Rule 6 Form of Pleadings. HF 1540 and SF 1786 which sought to raise revenue by adding a per page cost to court filings, did not pass into law. The Committee agreed that the issue was moot.

22. Heads up: AAML Divorce Camp October 2009. The conference is scheduled for October 1-3 at Breezy Point and includes a complete rewrite of the family law rules. Each judicial district has a judge and court staff designated to attend; general rules staff and reporter have been asked to attend.

23. General Time Computation Changes from Federal Rules. The committee reviewed the letter from Justice Dietzen requesting the advisory committee to provide a preliminary report by August 1, 2009, indicating in general whether it is a good idea to proceed with timing changes that follow the federal model, and if so, what is the estimated time that the committee would need to produce a draft of rules changes. Discussion was extensive; among the points made were:

- Such changes may require a more extensive public comment period and a longer time lag from adoption to effective date to allow implementation;
- The civil rules committee is looking to have a report filed with the court on October 1, 2009;
- There may also be legislative changes that need to be made so a more likely effective date for any timing rules changes might be August 1, 2010.

- The reporter prepared a chart identifying the current general rules timing provisions and the type of change that might fit the federal model.
- Members have not had much opportunity to review the detail here.

The Committee agreed that it would meet again in July to complete a discussion of the remaining open issues and to give members some more time to evaluate the chart and think about the timing matters.