

Preface

In 2005 the Minnesota Supreme Court adopted amendments to the rules that became effective on January 1, 2006. These amendments made extensive changes to Rules 23 (class actions), 45 (subpoenas), 50 (directed verdict and jnov motions; not motions for judgment as a matter of law), 51 (jury instructions), and 53 (special masters). Although these changes are extensive, they primarily just adopt changes made to the federal rules over the past decade. These changes are not intended to have a dramatic impact on Minnesota practice, just as they have improved, but not altered significantly, federal practice. The Advisory committee will continue to monitor developments in civil procedure, including federal rules changes, in an attempt to keep the Minnesota rules supportive of civil practice that serves the bench and bar well.

In 2007 the Minnesota rules were amended to adopt, virtually verbatim, the federal “e-discovery” amendments. These rules are analyzed in these volumes, but their primary role is to provide default rules governing some of the specific issues that arise in discovery of electronically stored information. The rules—and particularly Rule 68, were also amended in early 2008, to take effect July 1, 2008. Additional federal rule changes were made in 2010, relating to discovery of experts and summary judgment practice. These changes have not been proposed or considered for application in Minnesota.

Not all federal amendments are necessarily suited to the different litigation context of state court litigation. Some may not be embraced for the different needs of the state courts. *See* David F. Herr, *Amendments to the Civil Rules State and Federal: A Parting of the Ways*, Bench & Bar of Minn., July 2000, at 29. The federal rules have been extensively revamped by the 2007 “style” amendments. These amendments are intended to change the phrasing of the rules without changing their meaning or function. Whether this proves possible is yet to be seen, but in any event they have not yet been taken up for possible adoption in Minnesota.

More dramatic changes to the federal rules were made effective on December 1, 2009. These changes revamp the timing rules in federal actions, including changing most of the deadlines in the rules, and also changing how time limits are determined, removing a separate calculation rule ignoring weekends and

holidays for short time periods. These changes are discussed in section 6:2 of the current pocket parts and in several other sections where the differences are significant. These changes have now been adopted in Minnesota and appear to be operating as intended. See discussion of 2020 amendments, below.

In 2014, the court system initiated e-filing, and trial courts and appellate continue to see expanded use of electronic filing and electronic service. The civil rules have not needed substantial amendment to accommodate e-filing and e-service, but parties do need to be aware of the current status—for use in a particular category of case and a particular district and county. The mechanics of using the trial courts' e-filing system are also covered in the Minnesota General Rules of Practice. The Minnesota Supreme Court's Civil Justice Reform Task Force's recommended rules amendments were largely adopted by the Court, and resulted in several significant changes to the civil rules in 2013. Rule 1 was amended to impose a proportionality requirement on courts and litigants as to all aspects of case management and procedure. Rule 5 was amended to require that all civil actions be filed with the court within one year of their commencement. This amendment requires the attention of all parties with claims or potential claims in each case. The most sweeping changes in the civil rules relate to discovery. The Court adopted automatic disclosures as have been used in federal court since 1993. The changes impact the timing and sequence of discovery, and require the parties to confer early in the pendency of the case to formulate a discovery plan. Discovery itself is stayed until that plan is prepared.

In 2018 the rules were amended in several ways, most importantly to conform them to changes in discovery and disclosure that had been made in the federal rules. Most recently, effective January 1, 2020, the rules were amended to adopt timing changes that had been adopted in the federal rules whereby counting days in the rules include intervening legal holidays and weekends. As part of these changes many rules were amended to make most deadlines there are shorter than 30 days use a 7-day, 14-day, 21-day, or 28-day period, simplifying the calculation of days and causing most deadlines to fall on a weekday.

There are several recent rule amendments, effective July 1, 2021, that include: summons form (4.01), supplementation requirements (26.05), disclosure signatures (26.07), subpoena responses (45.04), default judgments(55.01), and new trial affidavits (59.04).

This treatise is a legacy to the life and times of David Herr. Among all the great Minnesota lawyers and judges, it is fair to

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say that no one has contributed more to the development of Minnesota civil procedure rules and law than David. We are all forever indebted to him, and I treasure his grand friendship, his love of the law, and his legal brilliance, as reported in: A Reverent Homage to David Fulton Herr, 48 Mitchell Hamline Law Review 1 (2022).

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