



## Tip of the Month January 2012

### Changes to Minnesota Rules of Family Court

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Earlier this year, the Minnesota Supreme Court released its amendments to the Minnesota Rules of Practice for the District Courts which pertain specifically to the Rules of Family Court. The amendments are targeted at updating terminology, streamlining proceedings in family court actions, and creating three new forms to be drafted by the state court administrator. Some of the major changes are highlighted below. These Rules become effective *May 1, 2012* and can be found online at [www.mncourts.gov](http://www.mncourts.gov) under Court Rules.

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#### CHANGES TO TERMINOLOGY

##### **Defining Family Law Actions – Rule 301.01**

Rule 301.01 introduces the term “Family Law Actions” which refers to a specific set of proceedings enumerated in section (b) of the rule. While the list of actions falling under the family court umbrella is not new, this is the first time it has been listed as part of the rule instead of the Advisory Committee Comment. This eliminates confusion regarding what types of proceedings are covered by the rules of family court.

*Practice Tip: Note that child support proceedings commenced in the Expedited Child Support Process are excluded from a significant portion of Rules 301 through 314 as they have a separate set of Rules found in Rules 351 through 379. Adoption proceedings are also excluded from the umbrella of Family Law Actions and are governed by the Rules of Adoption Procedure.*

##### **Designation of Parties - Rule 302.02**

Parties to most family law matters are designated Petitioner and Respondent. This amendment expands the terminology to all Family Law Actions, including parentage (paternity) and public assistance reimbursement cases, where the parties were previously designated plaintiff and defendant. Prior to the amendment, after formal designation of the parties to the action, the parties could then be referred to by a slightly less formal familial designation as Husband and Wife. The amendment expands the list of acceptable terminology to reflect the evolving definition of family encompassed in Family Court Actions. The rule now provides that in addition to husband and wife, father and mother is also acceptable, in addition to other designations as applicable such as grand-parent.

*Practice Tip: Use these familial designations to avoid confusion specifically when there are multiple petitioners or respondents or in cases where there are a significant amount of pleadings*

*submitted to the Court. It eliminates confusion for the court and other evaluative professionals as well as the parties and counsel.*

*Practice Tip: Use the language contained in Rule 303.02 (a) when making the transition from party designation to familial designation:*

*Petitioner is hereby referred to as (familial designation), and respondent as (familial designation)*

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## MOTION PRACTICE

### **Notification of Hearing Required in Writing - Rule 303.01 (a)**

Rule 303.01 (a) requires the party obtaining the motion date to “promptly” notify the other parties *in writing* of the date and time of hearing, the judicial officer, if known, and the primary issues to be addressed at the hearing. While the term “promptly” does not implement a strict deadline, the Advisory Council Comment does suggest that it is intended to mean the same day that the hearing date was obtained. This written notice can be the Notice of Motion, but the rule simply states that it must be a written notification, so a letter would be acceptable. Also note that there is an exception to the notification requirement if the parties reside in the same residence and there is a “possibility of abuse”.

*Practice Tip: An Order for Protection or other finding of domestic abuse is not required for this exception to apply, but the court retains the ability to impose sanctions if the rule is abused.*

### **Affidavits and Supporting Documents - Rule 303.02**

The rule regarding supporting affidavits for motions is amended to provide that each affidavit is a *signed, sworn, and notarized* statement. While this requirement is not new, the amended rules explicitly state this requirement four times within Rule 303.03 in an effort to stress the significance of this rule. It is a common practice in family law cases for a party to submit improperly executed affidavits to the Court in support of a motion. This often occurs where a party insists on submitting letters or statements from family members or friends that are not signed, sworn, and notarized. These types of communication, submitted as freestanding documents, are not acceptable as supporting documents to a motion.

*Practice Tip: Often clients are given the task of obtaining statements from family, friends or professionals for their pleadings. Discuss the requirements of the Affidavit with your client before he or she makes the request to the third party and provide a form to ensure that the document is properly executed.*

*Practice Tip: Letters and unsworn statements may be admitted as exhibits to a sworn affidavit. However, these statements do not carry the same weight as a signed, sworn, and notarized affidavit.*

## **Parties Must Attempt Settlement Prior to a Motion Hearing – Rule 303.03 (c)**

Rule 303.03(c) requires the moving party to initiate a settlement conference either in person, by telephone, or in writing within seven days from filing motion. This conference shall include a discussion of an appropriate Alternative Dispute Resolution (ADR) process under Rule 114. The moving party must then file with the Court a Certificate of Settlement Efforts no later than 24 hours prior to the hearing that the party has complied with this rule or indicate the reasons for not complying. Under the Rule, the only reasons for not complying are where the motion was brought pursuant to a parentage case where the court has not yet determined the existence of a parent-child relationship, where there is a no contact order (includes an Order for Protection, Harassment Restraining Order, criminal No Contact Order, and a no contact provision in an existing family court order) between the parties or where the Court finds good cause.

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## **NEW FORMS**

### **Parenting/Financial Disclosure Statement**

This statement will replace both the Application for Temporary Relief and the Prehearing Statement. The statement must be filed with the Motion for Temporary Relief when financial relief is requested. This statement, or an updated statement, is also filed *seven* days prior to the Pretrial Conference. Note that the Supreme Court has modified the term “Prehearing Conference” to “Pretrial Conference” and that the deadline for filing the Parenting/Financial Disclosure Statement is reduced from *ten* days to *seven*. However, the provision “mailed to” has been removed from the rule requiring that the document must be *filed* within seven days and not simply placed in the mail.

### **Certificate of Settlement Efforts**

As indicated above, Rule 303.03(c) requires the moving party file a Certificate of Settlement Efforts with the Court no later than 24 hours prior to the party's motion hearing indicating that the party has complied with the rule by initiating a settlement conference with the other party or indicating why the party should not be required to comply with the rule.

### **Initial Case Management Statement**

This document replaces the Informational Statement, but must still be filed within 60 days of the initial filing, or sooner if the Court requires. A version of this document is already used in most, if not all, county courts in Minnesota. However, the state court administrator is now directed to create one form that can be adapted for all counties in the state.

These forms are being created by the state court administrator and will be available online.