Effect of MSBA Comments on 2015 Court Rule Changes Related to e-filing

Under direction from the court, a number of Supreme Court Advisory Committees on Court Rules[1] proposed amendments to court rules in order to accommodate electronic filing and service in the district courts, as well as access to electronic court records. The court published the proposed amendments on January 2, 2015, with a 60-day comment period. The MSBA submitted comments regarding some of the proposed changes and appeared at a public hearing held on March 17, 2015. On April 22, 2015, the court issued its order adopting amendments, which are effective July 1, 2015.

A. Rules of Civil Procedure; Rule 5.02(c) Effective Date of Service

MSBA Comment:
We understand that due to a future upgrade to the e-file and serve system, e-service will be accomplished upon filing, without regard to whether or when court administration approves the filing. If that upgrade is not in place by the effective date of the proposed amendment to Rule 5.02(c), the MSBA is concerned that the effect of the proposed change may mean that service of motion papers will not be considered effective on the date of service if the filing occurs late in the day, because court administration will not approve the file and serve envelope until the next morning

Court's Response:
The Court did not address the concern raised.

Final Rule Language: No change based on MSBA's comment.

Rule 5.04(b) Filing of Documents after the Complaint; Certification of Service and 5.04(c) Rejection of Filing

MSBA Comment:
The amendments to Rule 5.04(b) and 5.04(c) should not expand the scope of rejection of filings or, at a minimum, the Rules should clarify that parties may still file discovery materials when used in connection with a motion or for trial.

Court's Response:
In a footnote, the court stated: The MSBA also questioned the need for the amendment proposed to Minn. R. Civ. P. 5.04(c), to permit court administration to reject discovery documents submitted for filing. "[A}t a minimum," the MSBA asked that the rules clarify that discovery materials can be filed "when used in connection with a motion or for trial." Rule 5.04 prohibits parties from filing discovery documents, and thus we cannot agree with the MSBA that filling those documents is "harmless." In addition, the committee proposed language to allow those documents to be filed when "authorized by

[1] The Supreme Court Advisory Committee on the Rules of Civil Procedure, the Supreme Court Advisory Committee on the Rules of Criminal Procedure, the Supreme Court Advisory Committee on the General Rules of Practice, the Supreme Court Advisory Committee on the Rules of Public Access, the Supreme Court Committee on the Rules of Juvenile Delinquency Procedure, the Supreme Court Advisory Committee on the Rules of Juvenile Protection Procedure, Adoption Procedure and Guardian ad Litem Procedure, and the Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act.

court order or rule" or with the "express permission of the court." Minn. R. Civ. P. 5.04 (b)-(c). The committee's comment acknowledges that discovery requests or responses submitted as an exhibit to another document may be filed. Thus, the rule as amended simply confirms that court administration need not file documents that are *improperly* submitted for filing.

Final Rule Language: No change based on MSBA recommendation.

Rule 11.01 Signature and 11.02(e) Representations to the Court

MSBA Comments:
The proposed change to Rule 11.01 will significantly alter the scope of the rule to cover discovery documents for the first time. Currently, the signing of a discovery document is governed by the different sanctions standards of Rule 26.07. Current Rule 11.04, which the committee is not proposing to amend, expressly states that Rule 11 does not apply to discovery requests and responses, so this proposed amendment to 11.01 would create an internal inconsistency in the rule.

The MSBA opposes the proposed change to Rule 11.02(e), which makes the filing of a document containing restricted identifiers a violation of Rule 11. Rule 11 sanctions should not apply to discovery documents or to the inadvertent filing of a restrictive identifier.

Court's Response:

The MSBA raised concerns about the proposed amendments to Rule 11 that would subject the filing of discovery documents and the filing of documents containing restricted identifiers to the possibility of sanctions under that rule. After consideration of the MSBA's concerns regarding the proposed addition of "discovery request or response" to Rule 11.01, and with the further input of the committee, we agree that this amendment is unnecessary. The amendment proposed at line 298, page 14 of the committee's report is therefore not adopted.

On the other hand, we agree with the committee's proposed amendment to Minn. R. Civ. P. 11.02, to require a certification that the document submitted for filing does not include any restricted identifiers or that, if included, the appropriate confidentiality designation is used. In response to this proposal, the MSBA expressed concern that an inadvertent submission of documents with restricted identifiers would be subject to Rule 11 sanctions. Existing rules, however, already prohibit parties from "submit[ting] restricted identifiers on any pleading or other document that is to be filed with the court." Minn. Gen. R. Prac. 11.02(a). Further, filers are "*solely responsible* for ensuring that restricted identifiers do not …appear on the pleading or other document filed with the court." *Id*. (emphasis added). Finally, court staff do "not review each pleading or document filed by a party for compliance" with the prohibition on restricted identifiers. *Id*. Thus, the proposed amendment to Rule 11.02 does no more than re-state the obligations the filer already bears to ensure restricted identifiers are not included or accessible in a public filing. And, the certification of compliance represented by the filer's signature is to the "best of the [signer's] knowledge, information, and belief former after an inquiry reasonable under the circumstances." Minn. R. Civ. P. 11.02.

Final Rule Language: Committee's proposed amendments to Rule 11.02 adopted. The reference to discovery recommended by the Committee to Rule 11.01 was not adopted, but other changes were, as indicated below.

Rule 11.01 Signature

Every pleading, written motion, or other similar document shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is ~~not represented by an attorney~~ self-represented, shall be signed by the party. Each document shall state the signer's address and telephone number and e-mail address, if any, and attorney registration number if signed by an attorney. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by an affidavit. An unsigned document shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. If authorized by order of the Minnesota Supreme Court or by rule of court, a document filed, signed, or verified by electronic means in accordance with that order or rule constitutes a signed document for the purpose of applying these rules.

The filing or submitting of a document using an E-Filing System established by rule of court constitutes certification of compliance with the signature requirements of applicable court rules

B. Rules of Criminal Procedure, Rule 11.07 Determination of Issues

MSBA Comment:

The MSBA opposes the proposed amendment to Rule 11.07 extending the time period for the findings and determinations of omnibus issues from 7 to 30 days. For defendants who are in custody, the longer deadline represents an additional 23 days spent in jail without an adjudication of guilt or innocence. For defendants who have asserted a speedy trial demand, this 30-day deadline will almost certainly run right up to or even past the 60-day deadline for trial, significantly impacting the defendant's ability to prepare for that event. For both the defendant and the prosecution, the extension represents a delay in the adjudication of justice; a delay in moving the case to trial, which can impact the availability or willingness of witnesses to testify. If the Supreme Court determines that the rule should be changed, we request that the Court consider the following alternative language:

Amend Rule 11.07 as follows:

The court must make findings and determinations on the omnibus issue(s) in writing or on the record within ~~7~~14 ~~business~~ days of the ~~Omnibus Hearingma~~issue(s) being taken under advisement. If the defendant makes a demand for a speedy trial under Rule 11.09, the court must make the findings and determinations within 7 days of the demand.

We believe this language strikes a more appropriate balance between the rights and interests of the defendant and the interests of the court. It doubles the current time for a decision on the omnibus issues from 7 to 14 days, but retains the seven-day period for those instances in which a speedy trial demand is made.

Court's Response

The deadline for decision of omnibus issues has been 7 days. When a period of time prescribed or allowed is 7 days or fewer, intervening Saturdays, Sundays, and legal holidays are excluded from the 7 day period in accordance with Minn. R. Crim. P. 34.01. Thus, depending on the number of intervening excluded days, the 7 day period may be as long as 12 days. The committee received comments from some judges that the 7 day deadline was unreasonable in many cases. The court agrees that an appropriate balance must be achieved between the need for adequate judicial consideration and decision-making, and the goal of prompt adjudication of justice. While the MSBA's proposed 14-day deadline offers more time than the rule currently provides, it is not clear that those few extra days will serve the need for adequate

judicial consideration and decision making. Therefore, while we encourage judges to resolve omnibus issues as expeditiously as possible, we adopt the committee's recommendation to amend Rule 11.07 to allow 30 days for decision. (Memorandum, pp. 1-2).

Final Rule Language: Committee's proposed amendment to Rule 11.07 adopted.

Rule 11.09 Trial Date

MSBA Comment:
The Advisory Committee has proposed amendments to Rule 11.09 in an effort to clarify when the time period for a speedy trial demand begins to run. The rule as currently written indicates in one sentence that the 60 days begins to run upon entry of the speedy trial demand and in another sentence that the time begins to run upon entry of the not guilty plea. The MSBA agrees this should be clarified. It appears the Advisory Committee has proposed that the time should run from entry of the plea; however, the proposed changes to the rule continue to leave this point open to question. We propose that the amendments be slightly altered by adding the word "plea" in place of "demand" as follows:

(b) A defendant must be tried as soon as possible after entry of a plea other than guilty. On demand of any party after entry of such plea, the trial must start within 60 days of the ~~demand~~ plea unless the court finds good cause for a later trial date. ~~The time period begins on the date of the plea other than guilty.~~

Court's Response:
The MSBA proposed alternative language for Rule 11.09 based on an assumption that the committee's recommendation would allow the 60-day period for a speedy trial demand to run from entry of a plea other than guilty, rather than from the date of the speedy trial demand. The MSBA misunderstands the committee's recommendation. The committee's recommended amendment is intended to clarify an ambiguity that arose after a 2009 stylistic amendment to Rule 11.09 that replaced the language "the time period shall not begin to run earlier than the date of the plea other than guilty," with "the time period begins on the date of the plea other than guilty." The committee's proposed amendment clarifies that the 60-day period runs from the date of a speedy trial demand that is made after entry of a plea other than guilty. Because the MSBA's proposed alternative language does not achieve the same clarifying effect, we adopt the amendment to Rule 11.09 as recommended by the committee. (Memorandum, pp. 2-3).

Final Rule Language: No change to committee's language based on MSBA recommendation.

C. Rules of General Practice, Rule 11: 11.01(b), 11.02, 11.03, 11.04, 11.06

MSBA Comments:
- Broaden the definition of 'Financial Source Documents' to include an Application or Affidavit for Proceeding in Forma Pauperis.
- 11.04 should make it clear that sanctions for submitting restricted identifiers and financial source documents only apply if the filer does not comply with the court's warning upon discovery that a document has not been submitted in a confidential manner, or if the court finds that a document was submitted with the intent to harass another party or impose additional costs or delays.

- Courts should educate self-represented litigants regarding the prohibition on filing restricted identifiers and financial source documents and should actively monitor and correct any improper filings using the discretion provided under the amendments to Rule 11.04.

Court's Response:

The MSBA raised several concerns about the proposed amendments to Rule 11 and the potential impact on filers, especially self-represented litigants. Based on its concerns, the MSBA proposed a broader definition of "financial source documents" to encompass applications to proceed in forma pauperis; additional language that would restrict the circumstances in which sanctions could be imposed for inadvertently filing documents with restricted identifiers; and steps that could be taken, outside the rules, to provide appropriate information, training, and warnings regarding the prohibitions on filing documents that contain restricted identifiers and financial source information.

The MSBA's concerns are well-founded. Parties will avoid running afoul of the rules and facing the possibility of sanctions only if they proceed with focused attention on the requirements of the rules and a diligent commitment to following the rules. The risk of sanctions, however, does not convince us that the rules require additional warnings or restrictions because many of the MSBA's concerns are already reflected in the rules or available practices. For example, in forma pauperis applications are already deemed non-confidential case records requested by the court, see Minn. R. Pub. Access 4, subd. 1(b), and therefore are not publicly accessible. In addition, Minn. Gen. R. Prac. 11.04, as amended, will provide parties the opportunity to cure an improper filing before sanctions are imposed. Finally, we agree that adequate information and training on these amended rules, especially for infrequent filers or self-represented litigants, will be important. We therefore direct State Court Administration to consider the MSBA's suggestions as it continues to implement electronic filing and service statewide and as it provides notice regarding these rule changes. (Memorandum, pp. 2-3)

Final Rule Language: No change to committee's language based on MSBA recommendations. (pp. 6-9) However, the **Advisory Committee Comments – 2015 Amendments** were expanded in the final version to provide more explicit notice of the consequences for failing to comply with the rule and the very limited circumstances in which restricted identifiers are required. Specifically:

The amendment to Rule 11.02(a) reminds filers that the best way to prevent public access to sensitive personal information is not to file it with the court unless needed. If a social security number, financial institution record, home address, and any other information defined to be a restricted identifier under the rule is not required for the adjudication of a matter before the court, simply omitting it from the filing prevents any further risk of disclosure. If the information is necessary, then using the other procedures of Rule 11.02 is necessary. The consequences of failing to comply with the rule include sanctions against the filer, and if failure to follow the rule causes injury to any person, an action for damages may lie.

There are very few statutes that require the filing of restricted identifiers. They may be required in certain family child support cases, see Minn. Stat. §§ 256.87, subd. 1a; 257.66, subd. 3; 518/10; 518A.56; and 42 U.S.C. §§ 666(a)(13), which currently require the court to identify the parties by social security number. Minn. Stat. § 548.101 requires the disclosure of the last four digits of a debtor's social security number, if known, in cases involving assigned consumer debt. Social security numbers were required for filings to commence informal

probate or appointment proceedings until 2006. See 2006 Minn. Laws, ch. 221, §20, amending Minn. Stat. § 524.3-301. (pp. 8-9)

Rules of General Practice, Fees for Remote Access

MSBA Comments:

- The Summary of Recommendations to the Rules of Public Access states that the subject of fees for remote electronic access has been left to the judgment of the Supreme Court and Judicial Council. The MSBA believes that setting fees for remote access may raise serious issues of public access and pose a potential barrier to access for people of limited means.
- Recommended best practices in the event fees are imposed.

Court's Response

No response in the Rules of General Practice, but the amended **Rules of Public Access** address the concern.

We consider first the comments of the MSBA, which raised two general concerns regarding the proposed amendments to the Rules of Public Access. The committee recommended that decisions on possible fees for remote access to judicial case records be decided by the supreme court and the Judicial Council. In response to this recommendation, the MSBA proposed that any decision to charge fees for remote access to judicial case records be preceded by a period of public notice and comment to ensure that burdens to access are not imposed. As of today's order, no fees are imposed on remote public access to case records. While we agree that the issue is best addressed after hearing a wide range of views, we need not decide today the procedure to use when the time arrives to consider this issue. (Memorandum, p. 7)

Final Rule Language: No change based on MSBA recommendations.

D. Rules of Public Access, Rule 4, Subd. 1(m): Records Involving Minor Victims of Sexual Abuse

MSBA's Comment:

Add minor victims of sexual abuse in maltreatment determinations based on Minn. Stat. 626.556, subd. 2 (d) to the list of case types where identifying information is not available to the public.

Court's Response

The Committee's recommended amendments to Rule 4 identified categories of case records that are not public, including certain information identifying minor victims. Minn. R. Pub. Access 4, subd. 2(m)(1). In response to this recommendation, the MSBA proposed adding to this category certain records involving minor victims of sexual abuse in which a maltreatment determination has been made under Minn. Stat. § 626.556 (2014). We agree that these records fall within the described category, and therefore amending language has been added to subdivision 2(m). (Memorandum, p. 8)

Final Rule Language

Rule 4, subd. 1

(m) *Minor Victim Identifying Information*.

(1) *Where Applicable*. Except as otherwise provided by order of the court, information that specifically identifies a victim who is a minor at the time of the alleged offense or incident in the following cases:

(A) criminal or juvenile delinquency or extended jurisdiction juvenile cases involving a petition, complaint, or indictment issued pursuant to MINN. STAT. §§ 609.342, 609.343, 609.344, 609.345, 609.3451 or 609.3453;
(B) commitment proceedings related to a case in (A) above, in which supervisory responsibility is assigned to the presiding judge under MINN. R. CRIM. P. 20.01, subd. 7, or 20.02, subd. 8(4);
(C) judicial review pursuant to MINN. STAT. § 256.045, subd. 7, of maltreatment determinations made under MINN. STAT. § 626.556, that involve allegations of sexual abuse as defined by MINN. STAT. § 626.556, subd. 2(d). (p. 8)