

ADM10-8051
STATE OF MINNESOTA
IN SUPREME COURT

FILED

May 24, 2012

OFFICE OF
APPELLATE COURTS

In re: Minnesota Supreme Court Civil Justice Reform Task Force

**Recommendations of the
Minnesota Supreme Court Civil Justice Reform Task Force**

**SUPPLEMENTAL REPORT
May 22, 2012**

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Chair

Honorable Christopher Dietzen
Liaison Justice

Honorable Jerome Abrams
Honorable Robert Awsumb
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Contents

Introduction	2
Appendix A: Proposed changes to the Rules of Civil Procedure and the General Rules of Practice for the District Courts	3
Appendix B: Expedited Litigation Track Assignment Order	18
Appendix C: Expedited Litigation Track Case Management Order	19
Appendix D: Complex Case Program Election Form	20
Appendix E: Complex Case Program Sample Case Management Order	21

Supplemental Report of the Civil Justice Task Force

Introduction

In its December 23, 2011 report, the Civil Justice Reform Task Force recommended changes that will facilitate more effective and efficient case processing. To supplement the recommendations, the court directed the task force to prepare the following rules, case management orders, and forms:

1. **Appendix A:** Proposed changes to the Rules of Civil Procedure and the General Rules of Practice for the District Courts regarding:
 - a. Adopting A Proportionality Consideration Requirement for Discovery (R. Civ. P. 1, 26.01);
 - b. Continuing to Allow Commencement of Actions by Service, but with a One-Year Filing Requirement (R. Civ. P. 3.01, 5.04).
 - c. Adopting the Federal Court Automatic Disclosure Regime (R. Civ. P. 26.01);
 - d. Replace Informational Statement with New Civil Cover Sheet (Non-Family) (Gen. R. Prac. 104, 111.02, 111.03 and Form 104A);
 - e. Adopting an Expedited Procedure for Nondispositive Motions (Gen. R. Prac. 15.04);
2. **Appendix B:** Expedited Litigation Track assignment order;
3. **Appendix C:** Expedited Litigation Track case management order;
4. **Appendix D:** Complex Case Program Election Form; and
5. **Appendix E:** Complex Case Program Case Management Order.

A discussion of the proposed rule changes, Expedited Litigation Track, and Complex Case Program is set forth in the December 23, 2011, Task Force Report. Proposed rules for the Expedited Litigation Track and Complex Case Program are included as Appendices to the December 23, 2011 report.

35

36 * * *

37

38 **RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS**

39 * * *

40 **Rule 5.04 Filing; Certificate of Service**

41 Any action that is not filed with the court within one year of commencement is deemed
42 dismissed:

43 [alternative 1] with prejudice unless the parties within that year sign a stipulation to
44 extend the filing period.

45 [alternative 2] without prejudice but filing with the court is required for
46 reinstatement.

47 All papers after the complaint required to be served upon a party, together with a
48 certificate of service, shall be filed with the court within a reasonable time after service, except
49 expert disclosures and reports, depositions upon oral examination and interrogatories, requests
50 for documents, requests for admission, and answers and responses thereto shall not be filed
51 unless upon order of the court or for use in the proceeding.

52 The administrator shall not refuse to accept for filing any paper presented for that purpose
53 solely because it is not presented in proper form as required by these rules or any local rules or
54 practices.

55 * * *

56

57 **RULE 26. DUTY TO DISCLOSE; GENERAL PROVISIONS GOVERNING**
58 **DISCOVERY**

59 **26.01. Discovery MethodsRequired Disclosures**

60 ~~Parties may obtain discovery by one or more of the following methods: depositions by oral~~
61 ~~examination or written questions; written interrogatories; production of documents or things or~~
62 ~~permission to enter upon land or other property; for inspection and other purposes; physical (including~~
63 ~~blood) and mental examinations; and requests for admission.~~

64 **(a) Initial Disclosure.**

65 (1) In General. Except as exempted by Rule 26.01(a)(2) or as otherwise
66 stipulated or ordered by the court, a party must, without awaiting a discovery request,
67 provide to the other parties:

68 (A) the name and, if known, the address and telephone number of each
69 individual likely to have discoverable information—along with the subjects of
70 that information—that the disclosing party may use to support its claims or
71 defenses, unless the use would be solely for impeachment;

72 (B) a copy—or a description by category and location—of all documents,
73 electronically stored information, and tangible things that the disclosing party has
74 in its possession, custody, or control and may use to support its claims or
75 defenses, unless the use would be solely for impeachment;

76 (C) a computation of each category of damages claimed by the disclosing
77 party—who must also make available for inspection and copying as under Rule
78 34 the documents or other evidentiary material, unless privileged or protected
79 from disclosure, on which each computation is based, including materials bearing
80 on the nature and extent of injuries suffered; and

81 (D) for inspection and copying as under Rule 34, any insurance agreement
82 under which an insurance business may be liable to satisfy all or part of a possible
83 judgment in the action or to indemnify or reimburse for payments made to satisfy
84 the judgment.

85 (2) Proceedings Exempt from Initial Disclosure. The following proceedings are
86 exempt from initial disclosure:

87 (A) an action for review on an administrative record;

88 (B) a forfeiture action in rem arising from a state statute;

89 (C) a petition for habeas corpus or any other proceeding to challenge a
90 criminal conviction or sentence;

91 (D) an action brought without an attorney by a person in the custody of the
92 United States, a state, or a state subdivision;

93 (E) an action to enforce or quash an administrative summons or subpoena;

94 (F) a proceeding ancillary to a proceeding in another court;

95 (G) an action to enforce an arbitration award;

96 (H) family court actions under Gen. R. Prac. 301 - 378;

97 (I) Torrens actions;

- 98 (J) conciliation court appeals.
- 99 (K) forfeitures.
- 100 (L) removals from housing court to district court;
- 101 (M) harassment proceedings;
- 102 (N) name change proceedings;
- 103 (O) default judgments;
- 104 (P) actions to either docket a foreign judgment or re-docket a judgment
105 within the district
- 106 (Q) appointment of trustee;
- 107 (R) condemnation appeal;
- 108 (S) confession of judgment;
- 109 (T) implied consent;
- 110 (U) restitution judgment; and
- 111 (V) tax court filings.

112 (3) Time for Initial Disclosures—In General. A party must make the initial
113 disclosures at or within 30 days after the original due date when an answer is required,
114 unless a different time is set by stipulation or court order, or unless a party objects during
115 the conference that initial disclosures are not appropriate in this action and states the
116 objection in the proposed discovery plan. In ruling on the objection, the court must
117 determine what disclosures, if any, are to be made and must set the time for disclosure.
118 In medical malpractice and other professional malpractice cases in which an expert
119 affidavit is required, a party must make initial disclosures within sixty (60) days of the
120 service of the expert affidavit.

121 (4) Time for Initial Disclosures—For Parties Served or Joined Later. A party that
122 is first served or otherwise joined after the initial disclosures are due under rule
123 26.01(a)(3) must make the initial disclosures within 30 days after being served or joined,
124 unless a different time is set by stipulation or court order.

125 (5) Basis for Initial Disclosure; Unacceptable Excuses. A party must make its
126 initial disclosures based on the information then reasonably available to it. A party is not
127 excused from making its disclosures because it has not fully investigated the case or
128 because it challenges the sufficiency of another party's disclosures or because another
129 party has not made its disclosures.

130 **(b) Disclosure of Expert Testimony.**

131 (1) In General. In addition to the disclosures required by Rule 26.01(a), a party
132 must disclose to the other parties the identity of any witness it may use at trial to present
133 evidence under Minnesota Rule of Evidence 702, 703, or 705.

134 (2) Witnesses Who Must Provide a Written Report. Unless otherwise stipulated or
135 ordered by the court, this disclosure must be accompanied by a written report—prepared
136 and signed by the witness—if the witness is one retained or specially employed to
137 provide expert testimony in the case or one whose duties as the party's employee
138 regularly involve giving expert testimony. The report must contain:

139 (A) a complete statement of all opinions the witness will express and the
140 basis and reasons for them;

141 (B) the facts or data considered by the witness in forming them;

142 (C) any exhibits that will be used to summarize or support them;

143 (D) the witness's qualifications, including a list of all publications
144 authored in the previous 10 years;

145 (E) a list of all other cases in which, during the previous 4 years, the
146 witness testified as an expert at trial or by deposition; and

147 (F) a statement of the compensation to be paid for the study and testimony
148 in the case.

149 (3) Witnesses Who Do Not Provide a Written Report. Unless otherwise stipulated
150 or ordered by the court, if the witness is not required to provide a written report, this
151 disclosure must state:

152 (A) the subject matter on which the witness is expected to present
153 evidence under Minnesota Rule of Evidence 702, 703, or 705; and

154 (B) a summary of the facts and opinions to which the witness is expected
155 to testify.

156 (4) Time to Disclose Expert Testimony. A party must make these disclosures at
157 the times and in the sequence that the court orders. Absent a stipulation or a court order,
158 the disclosures must be made:

159 (A) at least 90 days before the date set for trial or for the case to be ready
160 for trial; or

161 (B) if the evidence is intended solely to contradict or rebut evidence on the
162 same subject matter identified by another party under Rule 26.01(a)(2) or (3),
163 within 30 days after the other party's disclosure.

164 (5) Supplementing the Disclosure. The parties must supplement these disclosures
165 when required under Rule 26.05.

166 **(c) Pretrial Disclosures.**

167 (1) In General. In addition to the disclosures required by Rule 26.01(a) and (b), a
168 party must provide to the other parties and promptly file the following information about
169 the evidence that it may present at trial other than solely for impeachment:

170 (A) the name and, if not previously provided, the address and telephone
171 number of each witness—separately identifying those the party expects to present
172 and those it may call if the need arises;

173 (B) the designation of those witnesses whose testimony the party expects
174 to present by deposition and, if not taken stenographically, a transcript of the
175 pertinent parts of the deposition; and

176 (C) an identification of each document or other exhibit, including
177 summaries of other evidence—separately identifying those items the party
178 expects to offer and those it may offer if the need arises.

179 (2) Time for Pretrial Disclosures; Objections. Unless the court orders otherwise,
180 these disclosures must be made at least 30 days before trial. Within 14 days after they are
181 made, unless the court sets a different time, a party may serve and promptly file a list of
182 the following objections: any objections to the use under Rule 32.01 of a deposition
183 designated by another party under Rule 26.01(c)(1)(B); and any objection, together with
184 the grounds for it, that may be made to the admissibility of materials identified under
185 Rule 26.01(c)(1)(C). An objection not so made—except for one under Minnesota Rule of
186 Evidence 402 or 403—is waived unless excused by the court for good cause.

187 (d) Form of Disclosures. Unless the court orders otherwise, all disclosures under Rule
188 26.01 must be in writing, signed, and served.

189 **26.02. Discovery Methods, Scope and Limits**

190 Unless otherwise limited by order of the court in accordance with these rules, the
191 methods and scope of discovery is as follows:
192

193 (a) Methods. Parties may obtain discovery by one or more of the following
194 methods: depositions by oral examination or written questions; written interrogatories;
195 production of documents or things or permission to enter upon land or other property; for
196 inspection and other purposes; physical (including blood) and mental examinations; and
197 requests for admission.
198

199 (b) In-General Scope and Limits. Discovery must be limited to matters that
200 would enable a party to prove or disprove a claim or defense or to impeach a witness and
201 must comport with the factors of proportionality in rule 1, including the importance of the
202 proposed discovery in resolving the issues, total costs and burdens of discovery compared

203 to the amount in controversy, and total costs and burdens of discovery compared to the
204 resources of each party. Subject to these limitations, Parties may obtain discovery
205 regarding any matter, not privileged, that is relevant to a claim or defense of any party,
206 including the existence, description, nature, custody, condition and location of any books,
207 documents, or other tangible things and the identity and location of persons having
208 knowledge of any discoverable matter. Upon a showing of For good cause and
209 proportionality, the court may order discovery of any matter relevant to the subject matter
210 involved in the action. Relevant information sought need not be admissible at the trial if
211 discovery appears reasonably calculated to lead to the discovery of admissible evidence.

212
213 **(b) Limitations.**
214

215 (1) Authority to Limit Frequency and Extent. The court may establish or
216 alter the limits on the number of depositions and interrogatories and may also
217 limit the length of depositions under Rule 30 and the number of requests under
218 Rule 36. The court may act upon its own initiative after reasonable notice or
219 pursuant to a motion under Rule 26.03.
220

221 (2) Limits on Electronically Stored Evidence for Undue Burden or Cost.
222 A party need not provide discovery of electronically stored information from
223 sources that the party identifies as not reasonably accessible because of undue
224 burden or cost. On motion to compel discovery or for a protective order, the party
225 from whom discovery is sought must show that the information is not reasonably
226 accessible because of undue burden or cost. If that showing is made, the court
227 may nonetheless order discovery from such sources if the requesting party shows
228 good cause and proportionality, considering the limitations of Rule 26.02(b)(3).
229 The court may specify conditions for the discovery.
230

231 (3) Limits Required When Cumulative; Duplicative; More Convenient
232 Alternative; and Ample Prior Opportunity. The frequency or extent of use of the
233 discovery methods otherwise permitted under these rules shall be limited by the
234 court if it determines that: (i) the discovery sought is unreasonably cumulative or
235 duplicative, or is obtainable from some other source that is more convenient, less
236 burdensome, or less expensive; or (ii) the party seeking discovery has had ample
237 opportunity by discovery in the action to obtain the information sought; ~~or (iii) the~~
238 ~~burden or expense of the proposed discovery outweighs its likely benefit, taking~~
239 ~~into account the needs of the case, the amount in controversy, the parties'~~
240 ~~resources, the importance of the issues at stake in the litigation, and the~~
241 ~~importance of the proposed discovery in resolving the issues.~~ The court may act
242 upon its own initiative after reasonable notice or pursuant to a motion under Rule
243 26.03.
244

245 (c) **Insurance Agreements.** In an action in which there is an insurance policy
246 that may afford coverage, any party may require any other party to disclose the coverage
247 and limits of such insurance and the amounts paid and payable thereunder and, pursuant
248 to Rule 34, may obtain production of the insurance policy; provided, however, that this

249 provision will not permit such disclosed information to be introduced into evidence
250 unless admissible on other grounds.

251

252 **(d) Trial Preparation: Materials.** Subject to the provisions of Rule 26.02(e) a
253 party may obtain discovery of documents and tangible things otherwise discoverable
254 pursuant to Rule 26.02(a) and prepared in anticipation of litigation or for trial by or for
255 another party or by or for that other party's representative (including the other party's
256 attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the
257 party seeking discovery has substantial need of the materials in the preparation of the
258 party's case and that the party is unable without undue hardship to obtain the substantial
259 equivalent of the materials by other means. In ordering discovery of such materials when
260 the required showing has been made, the court shall protect against disclosure of the
261 mental impressions, conclusions, opinions, or legal theories of an attorney or other
262 representative of a party concerning the litigation.

263

264 A party may obtain without the required showing a statement concerning the
265 action or its subject matter previously made by that party. Upon request, a party or other
266 person may obtain without the required showing a statement concerning the action or its
267 subject matter previously made by that person who is not a party. If the request is
268 refused, the person may move for a court order. The provisions of Rule 37.01(d) apply to
269 the award of expenses incurred in relation to the motion. For purposes of this paragraph,
270 a statement previously made is (1) a written statement signed or otherwise adopted or
271 approved by the person making it, or (2) a stenographic, mechanical, electrical, or other
272 recording, or a transcription thereof, that is a substantially verbatim recital of an oral
273 statement by the person making it and contemporaneously recorded.

274

275 **(e) Trial Preparation: Experts.** Discovery of facts known and opinions held by
276 experts, otherwise discoverable pursuant to Rule 26.02(a) and acquired or developed in
277 anticipation of litigation or for trial, may be obtained only as follows:

278

279 (1)(A) A party may through interrogatories require any other party to
280 identify each person whom the other party expects to call as an expert witness at
281 trial, to state the subject matter on which the expert is expected to testify, and to
282 state the substance of the facts and opinions to which the expert is expected to
283 testify and a summary of the grounds for each opinion. (B) Upon motion, the
284 court may order further discovery by other means, subject to such restrictions as
285 to scope and such provisions, pursuant to Rule 26.02 (e)(3), concerning fees and
286 expenses, as the court may deem appropriate.

287

288 (2) A party may discover facts known or opinions held by an expert who
289 has been retained or specially employed by another party in anticipation of
290 litigation or preparation for trial and who is not expected to be called as a witness
291 at trial, only as provided in Rule 35.02 or upon a showing of exceptional
292 circumstances under which it is impracticable for the party seeking discovery to
293 obtain facts or opinions on the same subject by other means.

294

295 (3) Unless manifest injustice would result, (A) the court shall require the
296 party seeking discovery to pay the expert a reasonable fee for time spent in
297 responding to discovery pursuant to Rules 26.02(e)(1)(B) and 26.02(e)(2); and
298 (B) with respect to discovery obtained pursuant to Rule 26.02(e)(1)(B), the court
299 may require, and with respect to discovery obtained pursuant to Rule 26.02(e)(2)
300 the court shall require, the party seeking discovery to pay the other party a fair
301 portion of the fees and expenses reasonably incurred by the latter party in
302 obtaining facts and opinions from the expert.

303
304 **(f) Claims of Privilege or Protection of Trial Preparation Materials.**

305
306 (1) When a party withholds information otherwise discoverable under
307 these rules by claiming that it is privileged or subject to protection as trial
308 preparation material, the party shall make the claim expressly and shall describe
309 the nature of the documents, communications, or things not produced or disclosed
310 in a manner that, without revealing information itself privileged or protected, will
311 enable other parties to assess the applicability of the privilege or protection.

312
313 (2) If information is produced in discovery that is subject to a claim of
314 privilege or of protection as trial-preparation material, the party making the claim
315 may notify any party that received the information of the claim and the basis for
316 it. After being notified, a party must promptly return, sequester, or destroy the
317 specified information and any copies it has and may not use or disclose the
318 information until the claim is resolved. A receiving party may promptly present
319 the information to the court under seal for a determination of the claim. If the
320 receiving party disclosed the information before being notified, it must take
321 reasonable steps to retrieve it. The producing party must preserve the information
322 until the claim is resolved.

323
324 **MINNESOTA GENERAL RULES OF PRACTICE**

325 **RULE 104. CIVIL COVER SHEET AND CERTIFICATE OF REPRESENTATION AND**
326 **PARTIES**

327 Except as otherwise provided in these rules for specific types of cases and in cases where
328 the action is commenced by filing by operation of statute, a party filing a civil case shall, at the
329 time of filing, notify the court administrator in writing of:

330 (a) If the case is a family case or a civil case listed in rule 111.01 of this rule, the
331 name, postal address, e-mail address, and telephone number of all counsel and unrepresented
332 parties, if known, in a Certificate of Representation and Parties (see Form 104 promulgated by
333 the state court administrator and published on the website www.mncourts.gov appended to these
334 rules) or

335
336 (b) If the case is a non-family civil case other than those listed in rule 111.01, basic
337 information about the case in a Civil Cover Sheet (see Form 104A promulgated by the state court

338 administrator and published on the website www.mncourts.gov) which shall also include the
339 information required in part (a) of this rule.

340 If that information is not then known to the filing party, it shall be provided to the court
341 administrator in writing by the filing party within seven days of learning it. Any party
342 impleading additional parties shall provide the same information to the court administrator. The
343 court administrator shall, upon receipt of the completed certificate, notify all parties or their
344 lawyers, if represented by counsel, of the date of filing the action and the file number assigned.

345 **Rule 111.02 The Party's Scheduling Input Informational Statement**

346 _____ If no sufficient civil cover sheet has been filed as required by Rule 104, the
347 court may direct that ~~Within 60 days after an action has been filed, each party shall~~
348 ~~submit a civil cover sheet, on a form to be available from the court (see Form 111.02~~
349 ~~appended to these rules), the information needed by the court to manage and schedule the~~
350 ~~case. The information provided shall include:~~

351 ~~_____ (a) _____ The status of service of the action;~~

352 ~~_____ (b) _____ Whether the statement is jointly prepared;~~

353 ~~_____ (c) _____ Description of case;~~

354 ~~_____ (d) _____ Whether a jury trial is requested or waived;~~

355 ~~_____ (e) _____ Discovery contemplated and estimated completion date;~~

356 ~~_____ (f) _____ Whether assignment to an expedited, standard, or complex track is~~
357 ~~requested;~~

358 ~~_____ (g) _____ The estimated trial time;~~

359 ~~_____ (h) _____ Any proposals for adding additional parties;~~

360 ~~_____ (i) _____ Other pertinent or unusual information that may affect the~~
361 ~~scheduling or completion of pretrial proceedings;~~

362 ~~_____ (j) _____ Recommended alternative dispute resolution process, the timing of~~
363 ~~the process, the identity of the neutral selected by the parties or, if the neutral has not yet~~
364 ~~been selected, the deadline for selection of the neutral. If ADR is believed to be~~
365 ~~inappropriate, a description of the reasons supporting this conclusion;~~

366 ~~_____ (k) _____ A proposal for establishing any of the deadlines or dates to be~~
367 ~~included in a scheduling order pursuant to Minn. Gen. R. Prac. 111.03; and~~

368 ~~_____ (1) _____ Identification of interpreter services (specifying language and, if~~
369 ~~known, particular dialect) any party anticipates will be required for any witness or party.~~

370 **Rule 111.03 Scheduling Order**

371 (a) **When issued.** No sooner than the due date of a civil cover
372 sheet under rules 104 and 111.02, ~~60~~ days and no longer than 90 days after an
373 action has been filed, the court shall enter its scheduling order. The court may
374 issue the order after either a telephone or in-court conference, or without a
375 conference or hearing if none is needed.

376 * * *

377 **RULE 115. MOTION PRACTICE**

378 * * *

379 **Rule 115.04. Non-Dispositive Motions**

380 (a) No motion shall be heard until the moving party pays any required motion filing fee,
381 serves a copy of the following documents on the other party or parties and files the original with
382 the court administrator at least 14 days prior to the hearing:

- 383 (1) Notice of motion and motion;
- 384 (2) Proposed order;
- 385 (3) Any affidavits and exhibits to be submitted in conjunction with the motion;
386 and
- 387 (4) Any memorandum of law the party intends to submit.

388 (b) The party responding to the motion shall serve a copy of the following documents on
389 the moving party and other interested parties and shall file the original with the court
390 administrator at least 7 days prior to the hearing:

- 391 (1) Any memorandum of law the party intends to submit; and
- 392 (2) Any relevant affidavits and exhibits.

393 (c) **Reply Memoranda.** The moving party may submit a reply memorandum, limited to
394 new legal or factual matters raised by an opposing party's response to a motion, by serving a
395 copy on opposing counsel and filing the original with the court administrator at least 3 days
396 before the hearing.

397 (d) Expedited, Informal Non-Dispositive Motion Process. The moving party is
398 encouraged to consider whether the motion can be informally resolved through a telephone
399 conference with the judge. The moving party may invoke this informal resolution process by
400 written notice to the other party and to the court. The moving party shall also contact the
401 appropriate court administrative or judicial staff to schedule a phone conference. The parties may
402 (but are not required to) submit short letters, with or without a limited number of documents
403 attached (no briefs, declarations or sworn affidavits are to be filed), prior to the conference to set
404 forth their respective positions. The Court will read the written submissions of the parties before
405 the phone conference, hear arguments of counsel and unrepresented parties at the conference,
406 and issue its decision at the conclusion of the phone conference or shortly after the conference.
407 Depending on the nature of the dispute, the Court may or may not issue a written order. The
408 court may also determine that the dispute must be presented to the Court via formal motion and
409 hearing. Telephone conferences will not be recorded or transcribed.

410

411 [NOTE: advisory comments should note that Gen. R. Prac. 115.01 indicates that
412 this rule does not apply to family law cases.]

413

414

415 [NOTE: this form and form 104 would not be placed in the rules but would be
416 promulgated by the state court administrator and posted on the main state court website
417 (www.mncourts.gov). This form 104A is entirely new; underlining to show new
418 language will be omitted throughout this form]
419

420
421 **FORM 104A CIVIL COVER SHEET (Non-FAMILY)**

422
423 STATE OF MINNESOTA
424 COUNTY OF _____

DISTRICT COURT
JUDICIAL DISTRICT
CASE NO. _____

425
426
427 **CIVIL COVER SHEET (NON-FAMILY)**

428
429 **** (UNLESS OTHERWISE ORDERED BY THE COURT, ONLY THE INITIAL
430 FILING LAWYER/PARTY NEEDS TO COMPLETE THIS FORM) ****

431
432 Date Case Filed: _____

433
434 _____ vs. _____
435

436 This sheet must be filed pursuant to Rule 104 of the General Rules of Practice for
437 the District Courts, which states: "Except as otherwise provided in these rules for
438 specific types of cases and in cases where the action is commenced by filing by operation
439 of statute, a party filing a civil case shall, at the time of filing, notify the court
440 administrator in writing of:

441
442 (a) If the case is a family case or a civil case listed in rule 111.01 of this rule, the
443 name, postal address, e-mail address, and telephone number of all counsel and
444 unrepresented parties, if known, in a Certificate of Representation and Parties (see Form
445 104 promulgated by the state court administrator and published on the website
446 www.mncourts.gov appended to these rules) or

447
448 (b) If the case is a non-family civil case other than those listed in rule 111.01, basic
449 information about the case in a Civil Cover Sheet (see Form 104A promulgated by the
450 state court administrator and published on the website www.mncourts.gov) which shall
451 also include the information required in part (a) of this rule.

452
453 If that information is not then known to the filing party, it shall be provided to the court
454 administrator in writing by the filing party within seven days of learning it. Any party
455 impleading additional parties shall provide the same information to the court
456 administrator. The court administrator shall, upon receipt of the completed certificate,

457 notify all parties or their lawyers, if represented by counsel, of the date of filing the action
458 and the file number assigned. .”

459

460 1. LIST ALL LAWYERS/PRO SE PARTIES INVOLVED IN THIS CASE.

461

462 LAWYER FOR PLAINTIFF(S)

LAWYER FOR DEFENDANT(S)

(if not known, name party and address)

463

464

Name of Party _____

Name of Party _____

465

466

Atty Name (Not firm name) _____

Atty Name (Not firm name) _____

467

468

469

Postal Address _____

Postal Address _____

470

471

472

473

E-mail Address _____

E-mail Address _____

474

475

Phone Number _____

Phone Number _____

476

477

MN Atty ID No. _____

MN Atty ID No. _____

478

479

480 (Attach additional sheet for additional lawyers/parties).

481

482 2. Concise statement of the case including facts and legal basis:

483

484

485

486 3. For ELT (Expedited Litigation Track*) Pilot Courts only:

487 \$ _____ amount in controversy

488 ELT does not apply

ELT applies (*See Special Rules for Pilot ELT)

489

490 4. Estimated discovery completion within ____ months from the date of this form.

491

492 5. Proposed trial start date: _____

493

494 6. Estimated trial time: ____ days ____ hours (estimates less than a day must be stated in hours).

495

496 7. Jury trial is: waived by consent of _____ pursuant to R. Civ. P. 38.02.
497 (specify party)

498

requested by _____. (NOTE: Applicable fee must be enclosed.)

(specify party)

499
500
501
502
503
504
505
506
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8. Independent physical examination pursuant to R. Civ. P. 35 required? No Yes

9. Identify any party or witness who will require interpreter services, and describe the services (specifying language and, if known, particular dialect) needed.

10. Issues in dispute: _____

11. Case Type/Category: _____ (NOTE: select case type from Form 23, Subject Matter Index for Civil Cases, appended to the Minnesota Rules of Civil Procedure).

12. Recommended Alternative Dispute Resolution (ADR) mechanism*: _____
*Note: select from list of ADR processes set forth in Minn. Gen. R. Prac. 114.02(a)
Recommended ADR provider (known as a "neutral"): _____

Recommended ADR completion date: _____

If applicable, reasons why ADR not appropriate for this case: _____

By signing below, the attorney or party submitting this form certifies that the above information is true and correct.

Submitted by: _____
Attorney Reg. #: _____
Firm: _____
Address: _____
Telephone: _____
Date: _____

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Appendix B: Expedited Litigation Track Assignment Order

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
_____ JUDICIAL DISTRICT

CASE TYPE: _____

_____, Plaintiff

File Number: _____

v.

_____, Defendant

**ELT Assignment and Case
Management Conference Order**

It is ORDERED:

1. This case is assigned to the pilot project (ELT Pilot”) under the Special Rules For a Pilot Expedited Civil Litigation Track (“ELT Rules”);
2. A party objecting to this assignment must make a formal motion under ELT Rule 1, subds. 3 or 4, for removal from the ELT Pilot;
3. Each party shall provide the Automatic Disclosure Of Information required under ELT Rule 2;
4. A Case Management conference shall be held on : _____, and each party shall attend the conference prepared to discuss the subjects identified in ELT Rule 3; and
5. The Limitations on Discovery set forth in ELT Rule 4 apply.

Dated: _____

BY THE COURT:

Judge of District Court

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Appendix C: Expedited Litigation Track Case Management Order

STATE OF MINNESOTA
COUNTY OF _____
_____, Plaintiff
v.
_____, Defendant

DISTRICT COURT
_____ JUDICIAL DISTRICT
CASE TYPE: _____
File Number: _____

ELT Case Management Order

It is ORDERED:

1. Each party shall provide the Automatic Disclosure Of Information required under Rule 2 of the Special Rules For a Pilot Expedited Civil Litigation Track (“ELT Rules”)
2. ADR will/will not be used, and if used the deadline and form of ADR shall be: _____;
3. The Limitations on Discovery set forth in ELT Rule 4 apply;
4. All motions shall be heard by : _____;
5. The day or week certain for trial is: _____;
6. The deadline for submitting all trial documents, including witness lists, jury instructions, special verdict forms, trial briefs and motions in limine is: _____.

Dated: _____

BY THE COURT:

Judge of District Court

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4 **Appendix D: Complex Case Program Election Form**
5

6 STATE OF MINNESOTA
7 COUNTY OF _____

DISTRICT COURT
_____ JUDICIAL DISTRICT

8
9 _____, Plaintiff

CASE TYPE: _____

File Number: _____

10 v.

CCP Election

11 _____, Defendant
12 _____

13 Each party who has signed this document has read and understands the Special Rules for a
14 Complex Case Program (CCP Rules”), and agrees that this case may be governed by the CCP
15 Rules.

16
17 _____
18 Name of Party

_____ Name of Party

19 _____
20 Atty Name (Not firm name)

_____ Atty Name (Not firm name)

21
22 _____
23 Postal Address

_____ Postal Address

24 _____
25 _____
26 _____
27 _____
28 Phone Number

_____ Phone Number

29 _____
30 MN Atty ID No.

_____ MN Atty ID No.

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32 (Add additional signature blocks for additional lawyers/parties).
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Appendix E: Complex Case Program Sample Case Management Order

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

CASE TYPE: _____

FILE NUMBER: _____

Judge _____

Plaintiff,

v.

**CASE MANAGEMENT
ORDER**

Defendant.

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WHEREAS, the Court has determined that this Case Management Order (“CMO”) is appropriate and will be of assistance in the efficient management of this litigation:

45

IT IS HEREBY ORDERED, that this CMO is hereby entered as follows:

46 1. **Case Designation.** Every filing shall contain, in its caption, the Court File Number
47 _____.

48 2. **Applicability of Order.** This CMO applies to all pretrial, trial, and post trial
49 proceedings.

50 3. **Filing and Service of Papers**

51 a. **Master Service List.** Except as otherwise provided for herein, all papers or
52 pleadings filed with the Court or served upon a party shall be served as described
53 in this CMO on counsel for all parties to this action in accordance with the Master
54 Service List, attached hereto as Exhibit A. For the purposes of economy it shall
55 be sufficient to state in a certificate of service that the relevant document was
56 served on counsel for all parties listed on the Master Service List current as of that
57 date. The Master Service List may be incorporated by reference with express
58 reference to the revised date thereof, and need not be attached to the certificate of
59 service. The document served must be addressed to the individual attorney(s) on
60 the Master Service List.

61 b. **Method and Timing of Service.** Service of all pleadings, motions, deposition
62 notices, requests for discovery and other papers required to be served upon
63 counsel for the parties (collectively “papers”) shall be effected upon the parties
64 according to the Minnesota Rules of Civil Procedure. Parties may opt for pdf
65 service of all pleadings.

66 c. **Filings.** The original of every pleading and motion shall be filed with this Court
67 along with proof of service on all counsel, in accordance with the e-filing system
68 or other system in the venued Court. No fax filings will be permitted. [Where
69 desired by the court: A courtesy copy of every pleading, motion, or letter shall be
70 clearly marked ‘courtesy copy’ and directed to Judge _____,
71 C/O _____, Judicial Law Clerk.] The filing of discovery materials with
72 this Court shall be governed by the Minnesota Rules of Civil Procedure, except
73 that the original of all such papers which are not filed with this Court under such

74 rules shall be kept in the offices of counsel responsible for generating such
75 pleading, motion or discovery.

76 **d. Correspondence.** All materials, such as correspondence, which are not due to be
77 docketed, shall be sent directly to the chambers of Judge _____.

78 Correspondence and other materials will only be accepted if they are in regards to
79 general administrative matters. The corresponding party shall contemporaneously
80 forward a copy of all correspondence and other materials sent to Judge
81 _____ to all counsel by electronic mail or regular mail, as may be
82 necessary.

83 **e. Motions Requesting Emergency Relief.** Notwithstanding the foregoing, any
84 motion genuinely requiring emergency relief may be filed with the Court via
85 facsimile.

86 **4. Discovery**

87 **a. Document Requests.** The parties shall work diligently to abide by the terms of
88 the scheduling order. Short extensions of time to respond to discovery between
89 counsel shall not be unreasonably refused if reasonably required due to the
90 voluminous number of documents being produced or other necessity associate
91 with their document production.

92 **i. Place of Production and Procedures.** Unless otherwise agreed by the
93 parties, parties shall produce documents for inspection and copying, to the
94 extent practicable, in the form and manner in which the documents have
95 been maintained in the ordinary course of business or in which they
96 previously have been maintained for production in litigation. To
97 distinguish effectively among the documents designated for copying by
98 the parties, each page of each document copied by any party shall bear a
99 unique document identification number, with a unique prefix which
100 identifies the party producing the document (“Bates Stamps” or “Bates
101 Label”). Where documents or portions of documents are withheld, the
102 parties shall, either through the numbering system or as otherwise

103 provided in this Order, to the extent reasonably practicable, identify the
104 number of pages withheld in a manner sufficient to indicate their location
105 in the file being produced. Where part of a page is redacted, both the fact
106 and location of the redaction, and the size or extent of the redaction shall
107 be made clear on the face of the document.

108 Within a reasonable time before production, the producing party
109 shall advise the inspecting party of the approximate volume of the
110 documents and a general description of the types of files or other materials
111 involved. Each party shall produce its documents at its option: (a) by
112 production of originals as they are kept in the ordinary course of business;
113 (b) by production of as legible as possible photocopies in the same format;
114 or (c) by electronic means or other computerized storage.

115 Notwithstanding these provisions, any party may request to inspect the
116 original of any document, communication, or thing produced and the
117 parties shall make arrangements for such inspection within ten (10) days
118 of the request.

119 The location of the production shall be at the place where the
120 documents are kept in the ordinary course of business, at the office of the
121 producing attorney, or as otherwise agreed by the parties.

122 ii. *Privilege Log.* If a party determines that a document responsive to a
123 document request is subject to attorney/client privilege, attorney work
124 product protection, or any other form of privileges or protection, the
125 following method of handling the privileged or protected writing shall be
126 followed. The producing party may withhold the privileged or protected
127 document and must identify the withheld document on a privilege log
128 which shall be provided to the requesting party and all other parties as
129 soon as practicable, but no more than thirty (30) days following the date
130 on which the producing party is due to commence physical production of
131 the requested documents. If after completion of production pursuant to a
132 particular demand for inspection the producing party discovers additional

133 responsive documents and determines any of them to be subject to
134 attorney/client privilege, attorney work product protection, or any other
135 form of privilege or protection, the producing party may withhold any
136 such privileged or protected document and must identify the withheld
137 document on a privilege log which shall be provided to the requesting
138 party as soon as practicable, but in no case more than thirty (30) days after
139 the documents are discovered. Likewise, to the extent any material within
140 a document otherwise producible contains privileged or protected
141 information, the document shall be produced subject to redaction of the
142 subject privileged and protected material and shall be listed on the
143 privilege log. All privilege logs shall identify each privileged document or
144 work product by providing the Bates Label range, date, author(s),
145 recipient(s), the subject matter of the document withheld or information
146 redacted and the nature of the privilege or work product protection
147 asserted. Nothing in this section shall preclude a party from challenging a
148 claim of privilege.

149 **b. Stipulated Confidentiality Order.** All documents and other discovery materials
150 and testimony produced or provided in this action maybe subject to the terms and
151 provisions of a Stipulated Confidentiality Order, if requested and agreed by the
152 parties or ordered by the Court.

153 **c. Inadvertent Production of Privileged Information.** If a party inadvertently
154 produces information or documents that it considers privileged or protected
155 material, in whole or in part, or learns of the production of its privileged or
156 protected material by a third-party, the party may retrieve such information or
157 documents or parts thereof memoranda and other material as follows:

158 (1) Any assertion of inadvertent production shall be made as soon as
159 practicable, but in any case within ten (10) days of the date the party
160 discovers that it, its agents or attorneys, or a third-party has inadvertently
161 produced the privileged document. The party asserting inadvertent
162 production must provide written notice to all parties on the Master Service

163 List that the party claims the document, in whole or in part, to be
164 privileged or protected material; in addition, such notice must state the
165 nature of the privilege or protection and the factual basis for asserting it.
166 No assertion of inadvertent production will be made less than thirty (30)
167 days before trial or fourteen (14) days after service of a trial exhibit list,
168 whichever comes later.

169 (2) Upon receipt of such notice, all parties who have received copies of the
170 document shall, within five (5) days thereafter, confer with the producing
171 party and discuss how to resolve the issue. If no agreement is reached, the
172 producing party may request reasonable relief from the Court, including
173 an order that all copies of inadvertently produced documents shall be
174 returned to the producing party, destroyed or otherwise be made available
175 for procurement by the requesting party. Parties who received copies of
176 inadvertently produced documents may oppose the granting of such relief
177 on any permissible basis, including requesting an order that the
178 inadvertently produced documents are not privileged and do not constitute
179 protected attorney work product.

180 (3) In the event that only part of a document is claimed to be privileged or
181 protected, the party asserting inadvertent production shall furnish to all
182 parties redacted copies of such document, removing only the part(s)
183 thereof claimed to be privileged or protected, together with such written
184 notice.

185 **d. Mutual Use of Discovery.** To help avoid redundancy, all interrogatories,
186 document requests and requests to admit served by any party inure to the benefit
187 of and are enforceable by any other party. The settlement, release or dismissal by
188 any means of any party propounding such discovery will not in any way limit or
189 extinguish any other party's obligation to comply with the discovery.

190 **e. Contention Interrogatories.** No party is precluded from asking so-called
191 contention interrogatories which seek a responding party's contentions as to facts

192 or law but responding parties may reserve all rights to render objections and/or
193 seek leave for protection from the Court.

194 **5. Master Exhibit Book.** The parties shall work together to create a Master Exhibit Book
195 and submit a copy to the Court when appropriate. A party seeking to reference an exhibit
196 found in the Master Exhibit Book shall reference the exhibit number. The parties shall
197 not attach the exhibit to their submission if it is already in the Master Exhibit Book.

198 **6. Motion Practice.** Except as otherwise provided by the Court, pretrial motions in this
199 litigation shall be governed by the Minnesota Rules of Civil Procedure and by the
200 General Rules of Practice for the District Courts, provided that these rules are modified
201 procedurally as follows:

202 (1) Motion hearing dates under Rule 115.02 shall be obtained directly from
203 _____ Judicial Law Clerk, at () ____-. _____. The Court expects the
204 parties to promptly provide notice of the motion hearing date to all other parties as
205 directed by Rule 115.02;

206 (2) Proposed orders for dispositive motions under Rule 115.03 shall not be submitted
207 unless specifically requested by the Court;

208 (3) The moving party's certification under Rule 115.10 shall be in writing and shall
209 be filed separately at least two (2) days prior to the hearing date.

210 Counsel shall attempt to coordinate a hearing date and the notice of motions for
211 hearing on a date obtained from _____, Judicial Law Clerk.

212 Nothing shall restrict any party's right to apply to the Court for an order
213 shortening or extending time or page limitations on a motion upon a showing of good
214 cause, but only after making good faith efforts to resolve the issue among counsel.

215 **7. Coordination Amongst Parties.** The Court expects cooperation among the parties to
216 coordinate motion practice, discovery, trial, or otherwise to minimize the expense in this
217 litigation. The parties shall, to the maximum extent practicable, avoid duplicative
218 motions, briefs and discovery ("filings") consistent with each party's individual interests.

219 Since many parties have a commonality of interest as to many issues in the actions, they
220 may serve joint discovery and file joint submissions with the Court and/or adopt, join in
221 or support any motion made or discovery propounded by another party simply by so
222 noting in writing. If all Plaintiffs or all Defendants file joint submissions, the page
223 limitations contained in Minnesota Rule of General Practice 115.05 will be extended by
224 15 pages, to a total of 50 pages.

225 **8. Depositions**

226 **a. Cooperation.** The parties shall use reasonable efforts to schedule depositions by
227 agreement. Unless otherwise agreed, formal notice of depositions scheduled is
228 required. Unless exigent circumstances exist, the parties will be advised of a
229 deposition at least ten (10) calendar days before a deposition is scheduled to
230 commence,

231 **b. Non-Party Depositions.** Counsel shall attempt to resolve with any non-party
232 deponent the identification for production and subsequent production of any
233 documents being subpoenaed. Whenever possible, this process shall be
234 completed no later than seven (7) days before the date on which the deposition
235 has been scheduled. All counsel shall be given notice of any documents identified
236 for production pursuant to subpoena and shall have the right to inspect and copy,
237 at each inspecting party's expense, whatever documents are produced by a non-
238 party in response to a subpoena. Upon request, a party shall conduct a search of
239 all records that may disclose the present address of any former employee and shall
240 provide such information to the requesting party as soon as practicable. Nothing
241 in this Order shall preclude any party, if it so chooses, from obtaining the
242 attendance of any former employee or officer of another party for deposition by
243 subpoena in the first instance.

244 **c. Stipulations.** Unless otherwise noted on the record, the following stipulations
245 shall apply to all depositions in these actions:

246 (1) Any objection by a single party shall be deemed an objection by each and
247 every similarly situated party;

248 (2) Corrections to a deposition transcript shall be listed on an errata sheet,
249 copies of which shall be served on all parties by counsel for the deponent
250 or the deponent, within thirty (30) days following receipt of the deposition
251 transcript;

252 (3) To the extent practicable, exhibits shall be attached to the original
253 transcript. Where the form or volume of exhibits makes attachment to the
254 transcript impractical, the custody of such exhibits shall be maintained at
255 the office of the attorney taking the deposition or the court reporter and
256 such exhibits shall, after reasonable notice, be subject to inspection and
257 copying by any party during normal business hours or by appointment;

258 (4) The parties shall strive to select and retain court reporters that can produce
259 transcripts in manuscript and computer-readable format and any other
260 agreed format. The parties may stipulate to maintain an online repository
261 for all depositions taken in these cases subject to limitations on
262 accessibility as may be determined by the parties.

263 **d. Deposition Schedule.** With respect to aged or infirm witnesses, counsel shall
264 abide by the reasonable request of such witnesses with regard to timing and
265 availability for deposition testimony. The parties will undertake all reasonable
266 efforts to conduct depositions in an efficient, cost-effective and expedited manner.

267 **e. Attendance and Interrogation.** All parties shall be entitled to be represented at
268 every deposition and to inquire of a deponent through their counsel. A former
269 employee or officer may be represented at his or her deposition by counsel for the
270 former employer. In order to facilitate necessary arrangements for attending
271 counsel, not less than two (2) days prior to the commencement date of a
272 deposition, any counsel intending to attend the deposition shall use its best efforts
273 to notify the noticing party and counsel for the deponent.

274 **f. Time and Location of Depositions.** Depositions may be held Monday through
275 Friday, and shall commence no earlier than 9:00 a.m., and conclude no later than
276 5:00 p.m. local time, unless otherwise agreed between counsel or ordered by the

277 Court. No deposition shall be scheduled for more than two (2) consecutive days
278 absent agreement by the parties or order of the Court. A deposition may,
279 however, proceed for a third consecutive day without agreement of the parties or
280 order of the Court if there is at least eighteen (18) hours between the end of the
281 second deposition day and the commencement of the third. To save expense and
282 travel time, all sessions of the deposition of a single deponent shall, to the extent
283 consistent with the witnesses' schedule and health and the deposition schedule,
284 and unless otherwise agreed, proceed on successive weekdays and for the full
285 deposition day until completion. Except as the parties may agree, no deposition
286 shall be scheduled on the following dates: Court hearing dates, Martin Luther
287 King, Jr.'s Birthday, President's Day, Good Friday, Passover (the first two days),
288 Memorial Day, Independence Day (including the preceding Monday if it falls on
289 a Tuesday or the following Friday if it falls on a Thursday), Labor Day, Rosh
290 Hashanah (two days), Yom Kippur (two days), Columbus Day, Veterans Day,
291 Thanksgiving (Wednesday, Thursday and Friday) Eid Ul Fitr (one day), and Eid
292 Ul Adha (one day). Depositions of witnesses residing outside the United States
293 shall not be scheduled on national holidays in the witness' home country. In
294 addition, no depositions shall be scheduled between December 19 and January 3,
295 except upon agreement of the parties.

296 **g. Exhibits.** To the extent practicable, all parties intending to question a witness at a
297 deposition with respect to documents shall provide a reasonable number of copies
298 of such documents for the use of the other parties in attendance at the deposition.
299 Exhibit numbering shall be in accordance with Minn. Gen. R. Prac. 130.

300 **h. Objections.** The only objections that shall be raised at the deposition are those
301 involving a privilege or other protection against disclosure or some matter that
302 may be remedied at the time, such as to the form of the question, that the question
303 has previously been asked and clearly answered, or the responsiveness of the
304 answers. Objections on any other grounds shall be avoided and are not waived
305 but preserved until trial. All objections shall be concise and must not suggest
306 answers to the deponent. So called "speaking objections" are not permitted.

307 Except as to an objection on grounds of privilege, any objection made by one
308 party reserves that objection for all other parties and duplicate objections shall not
309 be made.

310 **i. Directions to Deponent Not to Answer.** Directions to a deponent not to answer
311 are improper except on the grounds of privilege, confidentiality, or other
312 protection, or to enable the party or deponent to present a motion to the Court for
313 termination of the deposition or protection under Minnesota Rule of Civil
314 Procedure 26.03. When privilege, confidentiality or other protection is claimed,
315 the witness shall nevertheless answer questions relevant to the existence, extent or
316 waiver of the privilege, confidentiality, or other protection.

317 **j. Immediate Presentation of Deposition Disputes.** Consistent with discovery
318 concepts and objectives set forth above, if disputes arise during a deposition
319 which the attorneys cannot resolve by agreement and which, if not promptly
320 decided, will critically disrupt the discovery program or court-imposed schedules,
321 the parties may submit the matter orally by telephone to the undersigned if
322 available.

323 **9. Avoidance of Unnecessary Duplication.** Cooperation and communication among
324 parties as ordered herein shall not constitute the waiver of any applicable privilege or be
325 construed as evidence of wrongful conduct. In the event that any party is in genuine
326 doubt about the legal effect of the communication and cooperation ordered herein, such
327 party may seek the Court's clarification of the party's responsibilities before proceeding.

328 **10. No Waiver of Privilege Due to Joint Efforts.** Communications in connection with this
329 case between and amongst counsel, including the exchange of documents and
330 information, shall be deemed subject to the attorney/client privilege, work product
331 protection, and any other applicable privilege or protection to the same extent as if the
332 communication had taken place within one law firm or between one law firm and one
333 client represented by that firm. Protection afforded by this Order will survive the
334 conclusion of this litigation and the dismissal of any party from this action. If a party
335 withdraws from any cooperative litigation efforts with other parties, previous

336 communications among the withdrawing party and such other parties and all work
337 product shared by or with the withdrawing party with respect to this action, will remain
338 subject to any attorney/client privilege, work product protection, or other privilege that
339 attached at the time the communications were made or the work product was shared.
340 Any such withdrawing party is under a duty not to reveal information obtained through
341 such cooperative efforts.

342 **11. Rules and Procedures.** This CMO supersedes any provision of the Minnesota Rules of
343 Civil Procedure and General Rules of Practice for the District Court to the extent they are
344 in conflict with the provisions of this CMO.

345 **12. CMO Binding on Subsequently Added Parties.** Any party adding a new party to this
346 action after the date the CMO is entered shall serve that new party with a copy of this
347 CMO and any subsequent case management orders. Any such new party will be bound
348 by this CMO and all other case management orders unless it files a motion for relief with
349 the Court within ten (10) days after service of this CMO and any other case management
350 order upon it. Upon the addition of any party to this action, the party adding the new
351 party shall serve a copy of this CMO on counsel for the new party within five (5) days of
352 the date of receiving notice of the identity of the new party's counsel.

353 BY THE COURT

354

355

356 Dated: _____

357 Judge of District Court