

Rule 5. Service and Filing of Pleadings and Other Documents**5.01 Service; When Required; Appearance**

Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar document shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4. A party appears when that party serves or files any document in the proceeding.

5.02 Service; How Made

(a) **Methods of Service.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Written admission of service by the party or the party's attorney shall be sufficient proof of service. If Rule 14 of the General Rules of Practice for the District Courts or an order of the Minnesota Supreme Court authorizes or requires that service be made by electronic means, service shall be made by compliance with subdivision (b) of this rule. Otherwise, service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party; by mailing a copy to the attorney or party at the attorney's or party's last known address; or, if no address is known, by leaving it with the court administrator. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(b) **E-Service.** Service of all documents after the original complaint may, and where required by these rules shall, be made by electronic means as authorized by Rule 14 of the General Rules of Practice for the District Courts.

(c) **Effective Date of Service.** Service by mail is complete upon mailing. Service by facsimile is complete upon completion of the facsimile transmission. Service by authorized electronic means using the court's E-Filing System as defined by Rule 14 of the General Rules of Practice for the District Courts is complete upon completion of the electronic transmission of the document(s) to the E-Filing System.

(d) **Technical Errors; Relief.** Upon satisfactory proof that electronic filing or electronic service of a document was not completed, any party may obtain relief in accordance with Rule 14.01(c) of the General Rules of Practice for the District Courts.

(Amended effective January 1, 1997; amended effective October 22, 2010; amended effective September 1, 2012; amended effective July 1, 2015.)

Advisory Committee Comment - 2010 Amendment

Rule 5.02 is amended to provide for service by electronic means, other than by facsimile as allowed by the existing rule, if authorized by an order of the Minnesota Supreme Court. This amendment is intended to facilitate a pilot project on electronic service and filing in one or two districts, but is designed to be a model for the implementation of electronic filing and service if the pilot project is made permanent and statewide. The rule makes service by electronic means effective

when transmission is complete, just as the existing rules provide for filing and service by mail and facsimile transmission.

Service by electronic means is allowed for documents served after the original summons. Service under Rule 4 is required for summonses, and electronic service is not one of the means of service under that rule.

This amendment is modeled on Rules 5(b)(2)(D) and (3) of the Federal Rules of Civil Procedure, as amended to implement electronic filing and service in the federal courts.

Advisory Committee Comments - 2015 Amendments

Rule 5.02 is amended in several ways to implement the use of e-filing and e-service in civil actions. Rule 5.02(a) adopts the more detailed provisions of Rule 14 of the Minnesota General Rules of Practice, which establishes procedures for e-filing and e-service in all trial courts. See Minn. Gen. R. Prac. 1.01. The deleted reference to filing by facsimile from Rule 5.02(a) is not intended to affect the availability of facsimile service or filing. Facsimile transmission is defined as a means of electronic transmission allowed under Minn. Gen. R. Prac. 14.02(a)(7).

The use of the alternative "may or shall" language in Rule 5.02(a) reflects the expectation that the implementation of electronic filing and service is likely to involve some period of time where e-filing and e-service will be required for some actions (based on district, county, or type of action), permitted for others, or not permitted at all. The applicability of e-filing and e-service to particular actions should be established in separate implementation orders.

5.03 Service; Numerous Defendants

If the defendants are numerous, the court, upon motion or upon its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading with the court and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

5.04 Filing; Certificate of Service

(a) Deadline for Filing Action. Any action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties unless the parties within that year sign a stipulation to extend the filing period. This paragraph does not apply to family cases governed by Rules 301 to 378 of the General Rules of Practice for the District Courts.

(b) Filing of Documents after the Complaint; Certificate of Service. All documents after the complaint required to be served upon a party, together with a certificate of service specifying the details of how and when service was accomplished and signed under oath or penalty of perjury by the person effecting service, shall be filed with the court within a reasonable time after service, except disclosures under Rule 26, expert disclosures and reports, depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless authorized by court order or rule. If a document is electronically filed and electronically served together using the district court's e-service system, no separate proof of service is required.

(c) Rejection of Filing. The administrator shall not refuse to accept for filing any document presented for that purpose solely because it is not presented in proper form as required by any court rule or practice. Documents may be rejected for filing if:

- (1) tendered without a required filing fee or a correct assigned file number;
- (2) tendered to an administrator other than for the court where the action is pending;
- (3) the document constitutes a discovery request or response submitted without the express permission of the court; or
- (4) the document contains a restricted identifier or other non-public information submitted in violation of Rules 11.02, 11.03, or 11.04 of the General Rules of Practice for the District Courts. This clause (4) shall not apply to criminal, civil commitment, juvenile protection, or juvenile delinquency cases, or to medical records in any type of case.

(d) Relation Back. On motion and in the interests of justice, the court may deem a filing rejected under paragraphs (c)(1) and (c)(4) of this rule to be filed as of the time and date it was originally tendered to the appropriate administrator for filing.

(Amended effective March 1, 1994; amended effective January 1, 1997; amended effective March 1, 2001; amended effective September 1, 2012; amended effective July 1, 2013; amended effective July 1, 2015; amended effective January 1, 2021.)

Advisory Committee Comment - 1993 Amendment

The amendment to Rule 5.04 makes it unnecessary to file notice of taking depositions in the vast majority of cases. Filing may be required as a condition precedent to issuance of a deposition subpoena pursuant to Minn. R. Civ. P. 45.04(a), though that rule only requires proof of service to be shown, not filed, and does not require filing of the notice itself in either event. The notice need not be filed because court administrators should issue subpoenas without the filing of the notice. In practice, courts have little use for deposition notices in court files, and in those rare circumstances where reference to them is necessary, they can be attached as exhibits to an affidavit, filed by leave of court, or offered in evidence just as any other discovery request or response.

Advisory Committee Comment - 2000 Amendment

The last sentence of Rule 5.04 is changed to broaden the direction to court administrators not to reject documents for filing for noncompliance with the form requirements of the rules. The rule as amended makes it clear that those form requirements, regardless of which set of rules contains them, should not be the basis for a refusal to file the document. Any deficiency as to form should be dealt with by appropriate court order, including in most cases an opportunity to cure the defect.

Advisory Committee Comments - 2015 Amendments

Rule 5.04 clarifies the limited circumstances where documents tendered to the court administrator for filing can be rejected. These provisions largely reflect current practices in the courts. Concern about public access to sensitive information is greater in the context of electronic filing because of the risk that the information could be found and spread over the Internet shortly after filing. See, e.g., Minn. Gen. R. Prac. 11 for requirements for submitting restricted identifiers (e.g., Social Security numbers, etc.) and procedures to address any failure to comply with the requirements. It is not feasible to accept for filing documents that relate to an action pending in another district or to file them in an action under an invalid file number. The acceptance of these documents would only create confusion for the parties, both in the intended district and action and in the district and action where they are mistakenly sent. Similarly, payment of the required filing fee is required by

statute, see Minnesota Statutes, section 357.021, and there is no provision for filing without payment of that required fee. The filing of discovery requests and responses, other than notices of taking depositions, is already prohibited by the second paragraph of this rule; the amended language makes it clear that the court administrators are authorized to reject these unauthorized filings. The rule does not prevent a party from filing an affidavit that incorporates or attaches copies of discovery requests or responses that are authenticated by the affiant.

The rule intentionally omits any recommendation that the absence of a Civil Cover Sheet would result in the rejection of a document for filing. The court can impose an appropriate sanction for this failure after appropriate notice to the parties and, if the court determines it is appropriate, an opportunity to cure the defect. The improper submission of restricted identifiers is addressed in Rule 11.02(3) of these rules and in Rule 11.04 in the General Rules of Practice.

Advisory Committee Comment - 2020 Amendments

Rule 5.04(b) is amended to expressly require that proof of service be provided either by: (1) both eFiling and eServing a document together using the court's e-Filing System (with the system-generated proof of service eliminating the need to file separate proof of service); or (2) by filing a separate certificate of service. The amended rule specifies that a certificate of service must be signed under oath or penalty of perjury by the person effecting service. The certificate must also establish the specific time and manner of services, as this information is often required to determine the deadline for response.

Rule 5.04(c) is amended to add the new subdivision (4), to authorize court administrators to reject for filing any document containing restricted identifiers or other information that may not properly be filed in a public document. The specific definitions of what information may not be filed are contained in Rules 11 and 14 of the Minnesota General Rules of Practice for the District Courts.

Rule 5.04(d) is new and is intended to prevent a rejection for filing from having case-ending or other severe consequences for a timely attempt to file a document that contains non-public information. Relief is not automatic under the rule, and in most cases the document will not be deemed filed until a version that complies with the rules is filed. If the filing date is crucial, however, the rule authorizes a motion to have the filing of a compliant version deemed filed as of the time of the original attempted filing. The rule requires that the moving party demonstrate that relief is required "in the interests of justice." This standard does not focus on whether there is a good excuse for the initial, non-compliant document being tendered for filing so much as whether the consequences of rejection are severe or irreparable. This might occur for those relatively rare cases where an action is commenced by filing the complaint. See, e.g., Minnesota Statutes, section 514.11 (requiring timely filing of mechanic's lien foreclosure action).

5.05 Filing; Facsimile Transmission

Except where filing is required by electronic means by rule of court, any document may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time that the facsimile transmission is received by the court and the filed facsimile shall have the same force and effect as the original. Only facsimile transmission equipment that satisfies the published criteria of the Supreme Court shall be used for filing in accordance with this rule.

Within 7 days after the court has received the transmission, the party filing the document shall forward the following to the court:

- (a) a \$25 transmission fee for each 50 pages, or part thereof, of the filing;

- (b) any bulky exhibits or attachments; and
- (c) the applicable filing fee or fees, if any.

If a document is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the party transmitting it for filing and made available to the court or any party to the action upon request.

Upon failure to comply with the requirements of this rule, the court in which the action is pending may make such orders as are just, including but not limited to, an order striking pleadings or parts thereof, staying further proceedings until compliance is complete, or dismissing the action, proceeding, or any part thereof.

(Amended effective January 1, 1997; amended effective January 1, 2006; amended effective September 1, 2012; amended effective January 1, 2020.)

Advisory Committee Comment - 1996 Amendment

Most of Rule 5.02 is new and for the first time provides for service by facsimile. Service by this method has become widespread, generally handled either by express agreement of counsel or acquiescence in a service method not explicitly authorized by rule.

The committee considered a suggestion that the provision for leaving a document with the court administrator be changed, deleted, or clarified. Although it is not clear from the rule what the administrator should do in the rare event that a document is filed with the administrator rather than delivered or mailed to the attorney, the committee believes the rule should be retained as it provides notice to the court that although service may comply with the rule, effective notice has not been received by the party entitled to notice. This will facilitate the court's consideration of the sufficiency of service under all of the circumstances.

The amendment to Rule 5.02 provides an express mechanism for service by facsimile. Service by facsimile has become widely accepted and is used in Minnesota either by agreement or presumption that it is acceptable under the rules or at least has not been objected to by the parties. The committee believes an express authorization for service by facsimile is appropriate and preferable to the existing silence on the subject. The committee's recommendation is modeled on similar provisions in the Wisconsin and Florida rules. See Wis. Stat. sections 801.14(2) & .15(5)(b); Fla. R. Civ. P. 1.080(b)(5). Service by facsimile is allowed in other jurisdictions as well. See, e.g., Ill. S. Ct. R. 11(b)(4); S. Dak. R. 15-6-5(b); Cal. R. Civ. P. 2008.

In addition to providing for service by facsimile, Rule 6.05 is amended to create a specific deadline for timely service. This rule adds an additional day for response to any paper served by any means other than mail (where 3 extra days are allowed under existing Rule 6.05, which is retained) and where service is not effected until after 5:00 p.m., local time. This rule is intended to discourage, or at least make unrewarding, the inappropriate practice of serving papers after the close of a normal business day. Service after 5:00 p.m. is still timely as of the day of service if the deadline for service is that day, but if a response is permitted, the party served has an additional day to respond. This structure parallels directly the mechanism for dealing with service by mail under the existing rule.

Rule 5.05 is amended to add a provision relating to filing that was adopted as part of Fed. R. Civ. P. 5(e) in 1991. It is important that Rule 5 specifically provide that the court administrator must accept for filing documents tendered for that purpose regardless of any technical deficiencies they may contain. The court may, of course, direct that those deficiencies be remedied or give substantive importance to the deficiencies of the documents. The sanction of closing the courthouse

to the filing should not be imposed or if imposed, should be imposed by a judge only after reviewing the document and the circumstances surrounding its filing. The rejection of documents for filing may have dire consequences for litigants and is not authorized by statute or rule.

Advisory Committee Comment - 2006 Amendment

Rule 5.05 is amended to delete the requirement that an "original" document follow the filing by facsimile. The requirement of a double filing causes confusion and unnecessary burdens for court administrators, and with the dramatic improvement in quality of received faxes since this rule was adopted in 1988, it no longer serves a useful purpose. Under the amended rule, the document filed by facsimile is the original for all purposes unless an issue arises as to its authenticity, in which case the version transmitted electronically and retained by the sender can be reviewed.

The filing fee for fax filings in Rule 5.05 is changed from \$5.00 to \$25.00 because fax filings, even under the streamlined procedures of the amended rule, still impose significant administrative burdens on court staff, and it is therefore appropriate that this fee, unchanged since the rule's adoption in 1988, be increased. A number of committee members expressed the view that facsimile filing was, and still is, intended to be a process used on a limited basis in exigent or at least unusual circumstances. It is not intended to be a routine filing method.

The rule does not provide a specific mechanism for collecting the transmission fee required under the rule. Because prejudice may occur to a party if a filing is deemed ineffective, the court should determine the appropriate consequences of failure to pay the necessary fee.

Advisory Committee Comment - 2019 Amendment

Rule 5.05 is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules - counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule.

5.06 Filing Electronically

Where authorized or required by order of the Minnesota Supreme Court or Rule 14 of the General Rules of Practice for the District Courts, documents may, or where required shall, be filed electronically by following the procedures of such order or rule and will be deemed filed in accordance with the provisions of this rule.

A document that is electronically filed is deemed to have been filed by the court administrator on the date and time of its transmittal to the court through the E-Filing System as defined by Rule 14 of the General Rules of Practice for the District Courts, and except for proposed orders, the filing shall be stamped with this date and time if it is subsequently accepted by the court administrator. If the filing is not subsequently accepted by the court administrator for reasons authorized by Rule 5.04, no date stamp shall be applied and the E-Filing System shall notify the filer that the filing was not accepted.

(Added effective October 22, 2010; amended effective September 1, 2012; amended effective July 1, 2015.)

Advisory Committee Comment - 2010 Amendment

Rule 5.06 is a new rule to provide for filing by electronic means, if authorized by an order of the Minnesota Supreme Court. This amendment is intended to facilitate a pilot project on electronic service and filing in one or two districts, but is designed to be a model for the implementation of

electronic filing if the pilot project is made permanent and statewide. The rule makes filing by electronic means effective in accordance with the rule for the pilot project.

Advisory Committee Comment - 2012 Amendment

Rule 5.02 is amended to authorize service by use of an authorized E-Filing and E-Service System where allowed or required by court rule or supreme court order. This amendment takes effect in conjunction with the adoption of Rule 14 of the General Rules of Practice; that rule defines the cases in which electronic filing and service are either required or permitted, as well as what constitutes proof of service. Rule 5.02(c) addresses the fact of service. Just as service by postal mail is complete upon dropping the properly addressed and postage paid document into the mailbox, service using the court's E-Filing System is complete upon transmitting the electronic document to the E-Filing System using the appropriate service command. Rule 5.02(d) provides specific guidance for courts dealing with the rare, but probably inevitable, circumstance of the E-Filing System either not being available or not functioning as intended. If applicable, the rule authorizes the court to deem pleadings served or filed (or both) when attempted and to adjust the time to respond as appropriate.

Rule 5.04 is amended to specify the limited situations where courts are not required to accept documents tendered for filing. These situations apply equally to documents tendered for filing electronically, by mail, or by hand-delivery to the court. Rejection for filing is not required in each of these situations, and it may be possible that certain format defects might be "fixed" at the time of filing. For example, if an incorrect file number is used on a document and it is detected at the time of attempted filing, it might be corrected; the administrator is still authorized to reject it for filing. An attempt to file a case using a new case number when the case has previously been filed may also be treated as not having the correct file number.

Rule 5.05 is amended to dovetail the facsimile filing and service provisions to mandatory use of e-filing and e-service in certain cases. Where the court rules require e-filing and e-service, filing and service by facsimile are not authorized. When e-filing and e-service are in use throughout the state and in all categories of cases, facsimile filing and service is likely to become unavailable.

Rule 5.06 is amended to clarify when electronic filing through the court's E-Filing System is effective. E-filings are subject to acceptance by the court administrator and acceptance may or may not occur on the same day as the transmittal of the filing. If accepted by the court administrator, however, the e-filing party will get the benefit of the date and time of their transmittal as the effective date of their filing.

Advisory Committee Comments - 2015 Amendments

This rule incorporates the provisions of Minn. Gen. R. Prac. 14 on the operation of electronic filing and the determination of the date of filing where it is accomplished by use of the court's E-Filing System.

The use of the alternative "may or shall" language in the first paragraph reflects the expectation that the implementation of electronic filing and service is likely to involve some period of time where e-filing and e-service may be required for some actions (based on district, county, or type of actions), permitted for others, or not permitted at all. The rules are designed to implement e-filing and e-service in particular actions as established by separate implementation orders.