

Rule 119. Applications for Attorney Fees**Rule 119.01 Requirement for Motion**

In any action or proceeding in which an attorney seeks the award, or approval, of attorneys' fees in the amount of \$1,000.00 for the action, or more, application for award or approval of fees shall be made by motion. As to probate and trust matters, application of the rule is limited to contested formal court proceedings. Unless otherwise ordered by the court in a particular proceeding, it does not apply to:

- (a) informal probates,
- (b) formal probates closed on consents,
- (c) uncontested trust proceedings; and

(d) routine guardianship or conservatorship proceedings, except where the Court determines necessary to protect the interests of the ward.

(Amended effective January 1, 1998.)

Rule 119.02 Required Documents

The motion shall be accompanied by an affidavit of any attorney of record which establishes the following:

1. A description of each item of work performed, the date upon which it was performed, the amount of time spent on each item of work, the identity of the lawyer or legal assistant performing the work, and the hourly rate sought for the work performed;
2. The normal hourly rate for each person for whom compensation is sought, with an explanation of the basis for any difference between the amount sought and the normal hourly billing rate, if any;
3. A detailed itemization of all amounts sought for disbursements or expenses, including the rate for which any disbursements are charged and the verification that the amounts sought represent the actual cost to the lawyer or firm for the disbursements sought; and
4. That the affiant has reviewed the work in progress or original time records, the work was actually performed for the benefit of the client and was necessary for the proper representation of the client, and that charges for any unnecessary or duplicative work has been eliminated from the application or motion.

(Amended effective January 1, 1998; amended effective July 1, 2015.)

Rule 119.03 Additional Records; *In Camera* Review

The court may require production of copies of additional records, including any fee agreement relevant to the fee application, bills actually rendered to the client, work in progress reports, time sheets, invoices or statements for disbursements, or other relevant records. These documents may be ordered produced for review by all parties or for *in camera* review by the court.

(Amended effective January 1, 1998.)

Rule 119.04 Memorandum of Law

The motion should be accompanied by a memorandum of law that discusses the basis for recovery of attorney's fees and explains the calculation of the award of fees sought and the appropriateness of that calculation under applicable law.

(Amended effective January 1, 1998.)

Rule 119.05 Attorney Fees in Default Proceedings

(a) A party proceeding by default and seeking an award of attorney fees that has established a basis for the award under applicable law, including parties seeking to enforce a confession of judgment, may obtain approval of the fees administratively without a motion hearing, provided that:

(1) the fees requested do not exceed fifteen percent (15%) of the principal balance owing as requested in that party's pleadings, up to a maximum of \$3,000.00. Such a party may seek a minimum of \$250.00; and

(2) the requesting party's pleading includes a claim for attorney fees in an amount greater than or equal to the amount sought upon default; and

(3) the defaulting party, after default has occurred, has been provided notice of the right to request a hearing under section (c) of this rule, a form for making such a request substantially similar to Form 119.05 as published by the state court administrator, and the affidavit required under Rule 119.02.

(b) A party may request a formal hearing and seek fees in excess of the amount described herein if that party provides the court with evidence relevant to the amount of attorneys' fees requested as established by the factors a court considers when determining the reasonableness of the attorneys' fees.

(c) A defaulting party may request a hearing and further judicial review of the attorneys' fees requested by completing a "Request for Hearing" provided by the plaintiff substantially similar to Form 119.05 as published by the state court administrator. A party may serve the form, at any time after a default has occurred, provided that the defaulting party is given at least 21 days' notice before the request for judgment is made. A defaulting party must serve the Request for Hearing upon the requesting party or its counsel within 21 days of its receipt. Upon timely receipt of a Request for Hearing the party seeking fees shall request a judicial assignment and have the hearing scheduled.

(d) Rule 119.05 does not apply to contested cases, ancillary proceedings (e.g., motions to compel or show cause) or proceedings subsequent to the entry of judgment.

(Added effective January 1, 2004; amended effective January 1, 2005; amended effective March 1, 2009; amended effective January 1, 2020.)

Advisory Committee Comment - 1997 Amendment

This rule is intended to establish a standard procedure for supporting requests for attorney fees. The committee is aware that motions for attorney fees are either not supported by any factual information or are supported with conclusionary, non-specific information that is not sufficient to permit the court to make an appropriate determination of the appropriate amount of fees. This rule is intended to create a standard procedure only; it neither expands nor limits the entitlement to recovery of attorneys' fees in any case.

*Where fees are to be determined under the "lodestar" method widely used in the federal courts and adopted in Minnesota in *Specialized Tours, Inc. v. Hagen*, 392 N.W.2d 520, 542-43 (Minn. 1986), trial courts need to have information to support the reasonableness of the hours claimed to be expended as well as the reasonable hourly rate under the circumstances. This rule is intended to provide a standard set of documentation that allows the majority of fee applications to be considered by the court without requiring further information. The rule specifically acknowledges that cases involving complex issues or serious factual dispute over these issues may require additional documentation. The rule allows the court to require additional materials in any case where appropriate. This rule is not intended to limit the court's discretion, but is intended to encourage streamlined handling of fee applications and to facilitate filing of appropriate support to permit consideration of the issues.*

This rule also authorizes the court to review the documentation required by the rule in camera. This is often necessary given the sensitive nature of the required fee information and the need to protect the party entitled to attorney fees from having to compromise its attorney's thoughts, mental impressions, or other work product in order to support its fee application. As an alternative to permitting in camera review by the trial judge, the court can permit submission of redacted copies, with privileged material removed from all copies.

*The amendment in 1997, adding the exceptions to the requirements of the rule for certain probate and trust proceedings, is designed to obviate procedures that serve no purpose for the courts and unduly burden the parties. Probate and trust matters have separate statutes and case law relating to attorney fees. See Minnesota Statutes, sections 524.3-721 and 525.515; *In re Great Northern Iron Ore Properties*, 311 N.W.2d 488 (Minn. 1981) and *In re Living Trust Created by Atwood*, 227 Minn. 495, 35 N.W.2d 736 (1949). In probate and trust matters, if no interested party objects to the attorney fees, there is ordinarily no reason for the court to require the detail specified in Rule 119. In contested matters, however, such detail may be appropriate to enable the court to resolve the matter under the standards of applicable probate and trust law. The court may protect the sensitive and confidential information that may be contained in attorney time records by entering an appropriate order in a particular case. Similarly, the exemption of these cases from the requirements of the rule does not prevent the court from requiring any of the fee application documentation in a particular matter.*

(amended 1997; 1998; 2005.)

Advisory Committee Comment - 2003 Amendment

Rule 119.05 is a new rule to establish a streamlined procedure for considering attorney fees on matters that will be heard by default. The rule does not apply to situations other than default judgments, such as motions to compel discovery, motions to show cause, sanctions matters, or attorney fees in contested matters. This subsection is modeled on a rule adopted by the Fourth Judicial District and implemented as a local standing order. A simpler procedure for defaults is appropriate and will serve to conserve judicial resources, and it is appropriate to have a uniform rule throughout Minnesota.

New Form 119.05 is intended to provide useful information to the defaulting party and some care has gone into its drafting. Although use of the form is not required, the requirement that any notice conform "substantially" to the form should be heeded. The committee has attempted to use language that fairly advises the defaulting party of the procedure under Rule 119.05 without threatening consequences or confusing the defaulting party on the effect of either contesting or not contesting the fee award. The rule requires that notice be given after the defendant has defaulted. Notice given earlier is not effective to comply with the rule, as such notice is likely to confuse the recipient as to the differing procedures and timing for response to the Summons and responding

to the request for fees. An affidavit detailing the basis for the award as required under Rule 119.02 must accompany the notice and the form.

The rule does not affect the amounts that may be recovered for attorney fees; it allows either side to obtain a hearing on the request for fees; the rule supplies an efficient mechanism for the numerous default matters where a full hearing is not required. Similarly, the rule does not remove the requirement that a party seeking fees file a motion; it simply provides a mechanism for resolution of some motions without formal hearings.

(amended 2005.)

Advisory Committee Comment - 2004 Adoption

Rule 119.05 was amended in 2004 in a single way: to make it clear that the mechanism for streamlined approval of attorney fees in default matters is also available for matters proceeding pursuant to confession of judgment, even if not technically a default. Confessions of judgment are authorized and limited by Minnesota Statutes 2002, section 548.22, but that statute does not address how attorney fee requests that accompany confessions of judgment should be heard. Because the rule both allows streamlined entry of a judgment for attorney fees and provides procedural protection to the judgment debtor, the committee believes it is appropriate to apply this procedure to judgments pursuant to confession.

Advisory Committee Comment - 2008 Amendment

Rule 119.05 is amended to remove Form 119.05 from the rules, and to permit the maintenance and publication of the form by the state court administrator. The form, together with other court forms, can be found at <http://www.mncourts.gov/>.