

**Rule 302. Commencement; Parties****Rule 302.01 Commencement of Proceedings**

**(a) Methods of Commencement.** Family Court Actions shall be commenced by service of a summons and petition or other means authorized by statute upon the person of the other party. Commencement can be accomplished by the following means:

(1) *Personal Service.* The summons and petition may be served upon the person of the party to be served.

(2) *Admission or Waiver of Service.* Service may be accomplished when the party to be served signs an admission of service or waives service as permitted in Minn. R. Civ. P. 4.05.

(3) *Alternate Means.* Service of the summons and petition may be accomplished by alternate means as authorized by statute.

(4) *Publication.* Service of the summons and petition may be made by publication only upon an order of the court. If the respondent subsequently is located and has not been served personally or by alternate means, personal service shall be made before the final hearing.

(5) *Joint Petition.* The filing of a joint petition as provided in section (c) of this rule.

**(b) Service After Commencement.** After a Family Law Action has been commenced, service may be accomplished in accordance with Minn. R. Civ. P. 5.

**(c) Joint Petition in Marriage Dissolution Proceedings.**

(1) No summons shall be required if a joint petition is filed to commence marriage dissolution proceedings. Proceedings shall be deemed commenced when both parties have signed the verified petition.

(2) Where the parties to a marriage dissolution proceeding agree on all issues, the parties may proceed using a joint petition, agreement, and judgment and decree for marriage dissolution.

(3) Upon filing of the "Joint Petition, Agreement and Judgment and Decree," and Form 11.1 appended to Title I of these rules, and a Notice to the Public Authority if required by Minnesota Statutes, section 518A.44, the court administrator shall place the matter on the appropriate calendar pursuant to Minnesota Statutes, section 518.13, subdivision 5. A Certificate of Representation and Parties and documents required by Rule 306.01 shall not be required if the "Joint Petition, Agreement and Judgment and Decree" published by the state court administrator is used.

(4) The state court administrator shall develop forms that may be used by parties to file joint petitions to commence marriage dissolution proceedings.

(Amended effective January 1, 2004; amended effective January 1, 2006; amended effective January 1, 2008; amended effective May 1, 2012; amended effective July 1, 2019.)

***Family Court Rules Advisory Committee Commentary\****

*Proceedings for dissolution, legal separation and annulment are governed by Minnesota Statutes, chapter 518. Minnesota Statutes, section 518.10, sets out the requisites for the petition. Minnesota Statutes, section 518.11, governs service by publication and precludes substitute service or service by mail under Minn. R. Civ. P. 4.05. The respondent's answer must be served within 30 days. Minnesota Statutes, section 518.12. The joint proceeding is commenced on the date when both parties have signed the petition; no summons is required. Minnesota Statutes, sections 518.09 and 518.11. In cases involving foreign nationals, see Part I, Rule 30, Code of Rules for District Court.*

## MINNESOTA COURT RULES

### GENERAL RULES OF PRACTICE

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*Custody proceedings under the Uniform Child Custody Jurisdiction Act are governed by Minnesota Statutes, chapter 518A. Interstate service and notice must be accomplished at least 20 days prior to any hearing in Minnesota. Service within the state is set forth in Minn. R. Civ. P. 4.*

*Domestic abuse proceedings are governed by Minnesota Statutes, chapter 518B. Ex parte orders for protection must include notice of a hearing within 14 days of the issuance of the order. Personal service upon the respondent must be effected not less than five days prior to the first hearing.*

*Support proceedings under the revised Uniform Reciprocal Enforcement of Support Act are governed by Minnesota Statutes, chapter 518C. The time for answer is governed by the law of the responding jurisdiction.*

*Actions to establish parentage are governed by Minnesota Statutes, chapter 257. Actions for reimbursement for public assistance are governed by Minnesota Statutes, section 256.87. Defendant has 20 days to answer the complaint in each action.*

*The Petitioner must notify the public agency responsible for support enforcement of all proceedings if either party is receiving or has applied for public assistance. Minnesota Statutes, section 518.551.*

*A party appearing pro se shall perform the acts required by rule or statute in the same manner as an attorney representing a party. An attorney dealing with a party pro se shall proceed in the same manner, including service of process, as in dealing with an attorney.*

*\*Original Advisory Committee Comment-Not kept current.*

#### **Task Force Comment - 1991 Adoption**

*Subsection (a) is derived from Rule 1.01 of the Rules of Family Court Procedure.*

*Subsection (b) is derived from Second District Local Rule 1.011.*

*Subsection (c) is derived from Second District Local Rule 1.013. See Minnesota Statutes, section 518.11 (1990). This is to protect the children and help avoid secret proceedings if the respondent is able to be located.*

#### **Advisory Committee Comment - 2003 Amendment**

*Subsections (2), (3), and (4), and Form 12, are new in 2003 and were recommended for adoption by the Minnesota State Bar Association's Pro Se Implementation Committee.*

*Subsections (2) and (3) of Rule 302.01(b) intended to provide a streamlined process for marriage dissolutions without children, where the parties agree on all property issues. These rule provisions essentially create a new process, commenced with a combined petition, stipulation and judgment and decree. Although intended to facilitate handling of cases by parties appearing without an attorney, it is available to represented parties as well. A new form is provided and should be made readily available to litigants. If either party to the proceedings is receiving public assistance, a Notice to Public Authority is also required. The Joint Petition, Agreement, and Judgment and Decree includes a statement regarding non-military status and a pro se waiver of right to be represented by a lawyer, thus satisfying the requirements of Rule 306.01(c). Court Administrators shall place the matter on the default calendar for final hearing without filing of Form 10 appended to the Rules. The Joint Petition, Agreement and Judgment and Decree may be used by parties represented by attorneys or parties representing themselves. The committee believes that the Joint Petition, Agreement, and Judgment and Decree procedure will reduce costs for litigants, reduce paper handling and storage expenses for the courts, and improve access to the courts.*

*Attorneys should approach the use of a Joint Petition with care. The amendment of this rule to allow use of a joint petition does not modify the professional liability constraints on joint representation of parties with divergent interests.*

*As part of this amendment, Rule 306.01 is also amended for internal consistency.*

#### ***Advisory Committee Comment - 2006 Amendment***

*Rule 302 is amended to incorporate procedures to deal with service "by alternate means" as authorized by statute. Minnesota Statutes, section 518.11, expressly provides authority for service by various other means. The rule retains provision for service by publication as well, because publication is authorized for a summons and petition that may affect title to real property. See Minnesota Statutes 2004, section 518.11, paragraph (c).*

#### ***Advisory Committee Comment - 2007 Amendment***

*Although Rule 302 is not amended, the amendment made to Rule 308.04 creates a procedure similar to that in Rule 302.01(b)(2). The Rule 302 procedure is available only in limited circumstances to allow for a completely streamlined procedure - use of a joint petition, agreement and judgment and decree of marriage dissolution without children. The Rule 308 procedure is a more limited streamlined procedure, although it is available in any case, but it does not obviate service of a petition (or use of a separate joint petition). That procedure simply allows the parties to combine the marital termination agreement and judgment and decree into a single document. The decision to use the procedure established in Rule 308.04 may be made at any time, while the procedure in Rule 302.01(b) is, by its nature, limited to a decision prior to commencement of the proceedings.*

#### ***Advisory Committee Comment - 2007 Amendment***

*Rule 302(b) is amended to expand the availability of the streamlined procedure allowing a marriage dissolution to proceed by use of a single pleading that combines a joint petition, marital termination agreement, and judgment and decree. The prior rule allowed this procedure only in marriages with no children; the amendment allows its use in marriage dissolution proceedings with children where the parties have agreed on all issues. The combined form permits the parties to proceed more expeditiously and make it easier for the parties and the court to verify that the judgment and decree to be entered by the court conforms to the parties' agreement.*

*The rule also deletes the reference to the former Rule 12 as part of a transition to maintain practice forms related to practice under the rules by court administration and available on the courts' website [<http://www.mncourts.gov>] rather than as part of the rule.*

#### ***Advisory Committee Comment - 2012 Amendment***

*Family court proceedings are generally governed by statute in Minnesota, and these rules implement the statutory procedures. Proceedings for dissolution, legal separation and annulment are governed in detail by Minnesota Statutes, chapter 518. See generally Minnesota Statutes, section 518.10 (requirements for petition); section 518.11 (service by publication and precluding substitute service or service by mail under Minn. R. Civ. P. 4.05); section 518.12 (requiring respondent's answer to be served within 30 days). Service "by alternate means" is authorized by statute. See Minnesota Statutes, section 518.11 (authorizing service by various other means). The rule retains provision for service by publication because publication is authorized for a summons and petition that may affect title to real property. See Minnesota Statutes, section 518.11, paragraph (c) (2010).*

*A joint proceeding is commenced on the date when both parties have signed the petition, and no summons is required. Minnesota Statutes, sections 518.09 and 518.11. Rule 308.04 creates a*

*procedure similar to that in Rule 302.01(c)(2) and (3). The Rule 302 procedure is available only in limited circumstances to allow for a completely streamlined procedure - use of a joint petition, agreement and judgment and decree of marriage dissolution without children or with children where the parties have agreed on all issues. The Rule 308 procedure is a more limited streamlined procedure, although it is available in any case, but it does not obviate service of a petition (or use of a separate joint petition). That procedure simply allows the parties to combine the marital termination agreement and judgment and decree into a single document. The decision to use the procedure established in Rule 308.04 may be made at any time, while the procedure in Rule 302.01(c) is, by its nature, limited to a decision prior to commencement of the proceedings.*

*Custody proceedings under the Uniform Child Custody Jurisdiction and Enforcement Act are governed by Minnesota Statutes, chapter 518D. Interstate service and notice must be accomplished at least 20 days prior to any hearing in Minnesota. Service within the state is governed by Minn. R. Civ. P. 4.*

*Domestic abuse order for protection proceedings are governed by Minnesota Statutes, chapter 518B. Notice and the timing of personal service on the respondent varies according to the circumstances detailed in the statute. Support proceedings under the revised Uniform Interstate Family Support Act are governed by Minnesota Statutes, chapter 518C. The time for answer is governed by the law of the responding jurisdiction.*

*Statutes authorize commencement of certain Family Court Actions other than by summons and petition. Commencement of contempt proceedings under Minnesota Statutes, section 588.04, is addressed in Rule 309 of these rules. Court decisions set forth in Rodewald v. Taylor, 797 N.W.2d 729 (Minn. Ct. App. 2011), also permit commencement by motion following the signing of a Recognition of Parentage under Minnesota Statutes, section 257.75.*

*Actions to establish parentage are governed by Minnesota Statutes, chapter 257. Rule 314 of these rules addresses specific procedures applicable in these actions.*

*A child support proceeding that is not a IV-D case as defined in Rule 352.01(g) must be commenced in district court and is subject to Rules 301 through 314. Actions for reimbursement for public assistance are governed by Minnesota Statutes, section 256.87, and are governed by the expedited process rules, Rules 351, et seq. The Petitioner must notify the public agency responsible for support enforcement of all proceedings if either party is receiving or has applied for public assistance. Minnesota Statutes, section 518A.44.*

*A party appearing pro se is required to perform the acts required by rule or statute in the same manner as an attorney representing a party. An attorney dealing with a party appearing pro se shall proceed in the same manner, including service of process, as in dealing with an attorney.*

#### **Advisory Committee Comment - 2019 Amendment**

*Rule 302.01(a) is amended to reflect the amendment of Rule 4.05 of the Rules of Civil Procedure, effective July 1, 2018, to create a new means of obtaining waiver of service under the rule. A new subsection (5) is added to reflect that an action can be commenced by joint petition as provided in Rule 302.01(c).*

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

**(a) Petitioner and Respondent.** Parties to Family Court Actions shall be designated as petitioner (joint petitioners or petitioner and co-petitioner) and respondent. After so designating the parties, it is permissible to refer to them as husband and wife, father and mother, or other designations if applicable by inserting the following in any petition, order, decree, etc.:

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

**(b) Guardians Ad Litem.** Appointment of a guardian ad litem for minor children is governed by the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court (Rules 901 through 907). The guardian ad litem shall carry out the responsibilities set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. The guardian ad litem shall have the rights set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

A guardian ad litem for minor children may be designated a party to the proceedings in the order of appointment. If the child is made a party to the proceeding, then the child's guardian ad litem shall also be made a party.

(Amended effective for guardians ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005; amended effective May 1, 2012.)

***Family Court Rules Advisory Committee Commentary \****

*Family Court proceedings involve human considerations which may require expeditious judicial attention. The shortening of time should be the exception and not the rule. A motion to shorten time will be granted only upon demonstration of the unusual circumstances justifying this extraordinary relief. See Rule 2.05.*

*\*Original Advisory Committee Comment-Not kept current.*

***Task Force Comment - 1991 Adoption***

*This rule is derived from existing Rule 1.04 of the Rules of Family Court Procedure.*

***Family Court Rules Advisory Committee Commentary \****

*A guardian appointed pursuant to Minnesota Statutes, section 257.60, becomes a party to the action if the child is made a party. The guardian then would be entitled to initiate and respond to motions, conduct discovery, call and cross-examine witnesses, make oral or written arguments or reports and appeal on behalf of a child without the necessity of applying to the court.*

*A guardian appointed under Minnesota Statutes, section 518.165, is not a party to the proceeding and may only initiate and respond to motions and make oral statements and written reports on behalf of the child.*

*A party has the right to cross-examine as an adverse witness the author of any report or recommendation on custody and visitation of a minor child. Thompson v. Thompson, 288 Minn. 41, 55 N.W. 329 (1952) and Scheibe v. Scheibe, 308 Minn. 449, 241 N.W.2d 100 (1976).*

*Practice among the courts may vary with respect to appointments. Some courts maintain panels of lay guardians while other courts maintain panels of attorney guardians. If a lay guardian is appointed, an attorney for the guardian may also be appointed. Guardians may volunteer or be paid for their services. An attorney requesting appointment of a guardian should inquire into local practice.*

*\*Original Advisory Committee Comment-Not kept current.*

***Task Force Comment - 1991 Adoption***

*Subdivision (a) of this rule is derived from existing Second District R. 1.07.*

*Subdivision (b) of this rule is derived from Rule 1.02 of the Uniform Rules of Family Court Procedure. The first sentence of the subdivision is new and is intended to make it clear that practice involving guardians ad litem is also governed by another rule provision.*

***Advisory Committee Comment - 2012 Amendment***

*Rule 302.02(a) specifies that the proper designation of parties in family court proceedings is as petitioner and respondent. Where a proceeding is commenced jointly, both parties may be designated as co-petitioners. The rule permits the parties, once properly designated in the appropriate pleadings, to be designated by less formal terms that indicate their relationship. The rule is amended to recognize that those designations are not limited to husband and wife, and other forms of relationships are encountered in family court proceedings. The "petitioner" and "respondent" labels are to be used in parentage cases, despite the historic use of "plaintiff" and "defendant" in these cases. There is no statutory or other requirement for the use of those labels, although at least one statute uses the term "defendant" in specifying the proper venue for these actions. See Minnesota Statutes, section 257.59. It is particularly helpful to use common terminology given the fact parentage proceedings may be combined with or joined with an action for dissolution, annulment, legal separation, custody under Minnesota Statutes, chapter 518, or reciprocal enforcement of support pursuant to Minnesota Statutes, section 257.59, subdivision 1.*

*Rule 302.02(b) deals with guardians ad litem. A guardian appointed pursuant to Minnesota Statutes, section 257.60, becomes a party to the action if the child is made a party. The guardian then would be entitled to initiate and respond to motions, conduct discovery, call and cross-examine witnesses, make oral or written arguments or reports and appeal on behalf of a child without the necessity of applying to the court. This rule applies to appointment of a guardian ad litem for minor children. Appointment of a guardian in other situations is governed by Rule 17.02 of the Minnesota Rules of Civil Procedure.*

*A guardian appointed under Minnesota Statutes, section 518.165, is not a party to the proceeding, but may initiate and respond to motions and make oral statements and written reports on behalf of the child. A party has the right to cross-examine as an adverse witness the author of any report or recommendation on custody and visitation of a minor child. Scheibe v. Scheibe, 308 Minn. 449, 241 N.W.2d 100 (1976); Thompson v. Thompson, 238 Minn. 41, 55 N.W.2d 329 (1952).*