MINNESOTA JUDICIAL TRAINING UPDATE

FAMILY LAW MOTIONS - 10 BASIC RULES

PREMISE: Family Law Motions Are Controlled By Statute And The Rules Of Family Court Procedure. Although Most Attorneys Follow Those Rules, Some Do Not. In Order To Effectively Evaluate A Family Law Motion There Are 10 Basic Rules And Judicial Best Practices That Every Judge Should Know:

ONE: PARTICULARITY AND SERVICE: All family law motions must specify, with particularity, the relief the party is seeking. *Rule 303.02*. The motion must be properly and timely served. The rules require 14-day service of motions and affidavits; 10-day service for response motions that raise "new issues"; and 5-day service for responses that do not raise new issues. *Rule 303.03 (a).*

TWO: GOING BEYOND SCOPE OF MOTION: With rare exception you should not allow counsel to argue for relief that was not noticed in the motion and not supported by relevant information contained in an affidavit.

THREE: STATUTORY AUTHORITY: Be certain that the relief being sought at the temporary hearing is within the authority of the Court under *M.S. 518.131*. Temporary orders shall be made solely on the basis of affidavits and argument of counsel (including oral testimony if allowed). Because temporary orders are not appealable, the Court is not required to make specific "findings of fact."

FOUR: APPOINTMENT OF GUARDIANS AD LITEM: Although GAL appointment practices vary among districts, *GAL rule 903.04 (See General Rules of Practice)* prohibit GALs from conducting custody/parenting time evaluations or mediating/arbitrating disputes between parties. In all family court cases, the Court shall not appoint a GAL without a judicial finding "*that the child's welfare is at risk as set forth in M.S. 260C.007 or M.S. 626.556." See Conference of Chief Judges Policy #20, 1-1-05.* The appointment order must specify the duties to be performed by the GAL. For a list of GAL duties that are allowed, see *Rule 905*. For a list of duties that are prohibited, see *Rule 903.04*.

Hon. Alan F. Pendleton, Anoka County District Court, Anoka, Mn 55303; 763-422-7309

FIVE: REQUEST FOR ORAL TESTIMONY: *Rule 303.03(d)* contains the requirements for providing oral testimony at a motion. The request must be submitted in motion form with names of witnesses, types of exhibits and the reasons why the evidence cannot be submitted by affidavit. The Court can grant or deny the request or restrict the request to a shorter period of time including reducing the number of witnesses that may be called. See also *M.S. 518.131 subd 8.*

SIX: THREE FREQUENTLY IGNORED RULES:

1) NOTIFYING OTHER PARTY OF MOTION: *Rule 303.01(a)(2)* requires counsel to advise opposing party of a scheduled motion. Some attorneys schedule motions weeks and even months in advance of the hearing date and then serve the motion with the absolute minimum 14-day notice in order to obtain a perceived tactical advantage. If such practice results in a continuance, the moving party may be required to pay attorneys fees.
2) SETTLEMENT EFFORTS: *Rule 303.03(c)* requires counsel to certify settlement efforts. Clearly in some cases involving abusive relationships negotiating with an opposing party may not reasonably occur. However, there are many more cases with counsel on both sides where there is no justifiable excuse for ignoring the requirements of this rule.
3) ORDER TO SHOW CAUSE: If an "Order to Show Cause" is filed (e.g. for a contempt motion, etc) be certain that it complies with *Rules 303.05 and 309* as to form and content. An "Order to Show Cause" must be personally served in the same manner as a summons. Mailed notice is not sufficient. *M.S. 588.04.*

SEVEN: UNSWORN ATTACHMENTS: Motions for temporary relief must be supported by a sworn affidavit under *Rule 303.02*. There is a long-standing practice among the Family bar of attaching numerous pages of unsworn material to their client's affidavit. The client's affidavit does not give evidentiary credibility to unsworn attached material, such as school records, police reports, letters from relatives, teachers, daycare providers or medical records. Such unsworn attachments can be objected to by the other party. Although subject to judicial discretion, as a general rule, a judicial best practice is to ignore unsworn attachments. See also *M.S. 518.131, Subd 8.*

NOTE: NOTARIZED LETTERS: Another common motion practice is submitting notarized letters "To Whom it may Concern" or "Dear Judge" or other similar documents. A notarized signature is NOT a sworn affidavit; the signer must be sworn stating that the information in their affidavit is true and correct. If the document is not an affidavit, it can be objected to by the other party.

EIGHT: INAPPROPRIATE AFFIDAVITS: Although parties may get some cathartic relief by trashing the other parent in their affidavit, the reviewing judge must remain focused on the requirements of *M.S. 518.17 Subd (1)* which states: *the Court shall not consider conduct of a proposed custodian that does not affect the custodian's relationship to the child*. Since judges cannot consider it, family lawyers should cease the practice of allowing clients to vent their anger and frustrations by expounding in their affidavits, at length, about the conduct of the opposing party, unless it clearly impacts the children.

NINE: AFFIDAVITS FROM MINOR CHILDREN: The practice of filing sworn affidavits by children of the parties should be discouraged. The children are not parties to the dissolution or custody case and usually do not have a Guardian ad Litem. Allowing one (or both) parent(s) to "ally" with a child has adverse consequences too numerous to mention in this update. Unless ordered by the Court, parties should NEVER bring the child(ren) to court for the motion hearing.

TEN: FINANCIAL AFFIDAVITS – DOUBLE DIPPING: Financial affidavits should be supported by paystubs or relevant portions of tax returns. A common problem is when parties (intentionally or inadvertently) list on their monthly expense sheet the cost of health insurance or other expenses that are already reflected on their paystubs or wage forms as a deduction to their gross income *(paragraph 7 of the Application for Temporary Relief).* This "double dipping" could look like a fraud or trick is being perpetrated on the judge and will also negatively impact that party's credibility.

SOURCES: This update is based on and contains excerpts from an article written by Hon. Sharon Hall (Anoka County), and Hon. Steve Halsey (Wright County): "Preparing and Arguing Effective Family Law Motions"; Greg King, MSSW, Guardian ad Litem Manager, Tenth District.