MARTINE LAW TRAINING UPDATE

FAMILY LAW MOTIONS - TEN BASIC RULES

Family law motion practice can be complex and nuanced, but before an attorney can effectively navigate those complexities, they must first have a firm grasp of the foundational rules that apply across nearly all family law motions. These motions are governed by statute and the Minnesota Rules of Family Court Procedure. While many attorneys adhere to these rules, others overlook critical requirements. To competently prepare, evaluate, or argue a family law motion, every attorney and judicial officer should be well-versed in the following 10 basic rules and best practices.

1. PARTICULARITY AND SERVICE

Specificity and Supporting Documents: Family law motions shall set out with particularity the relief requested in individually numbered paragraphs. All motions must be supported by affidavits that contain facts relevant to the issues before the court. *See Minn. R. Gen. Prac. Title IV. Rules of Family Court Procedure 303.02(a).*

Timely Service: The rules require 21-day service (before the hearing) for motions and affidavits; 14-day service (before the hearing) for response motions that raise "new issues"; and 7-day service (before the hearing) for responses that do not raise new issues. *Rule 303.03 (a) (1)(2)(3)*. **Failure to Comply:** If a moving party fails to comply with timely service requirements, the court may cancel the hearing. *Rule 303.03 (b).*

Computation of Time for Service: For periods of seven days or more, exclude the day of service and count all days, including Saturday, Sunday, or legal holidays. If the last day falls on a Saturday, Sunday, or a legal holiday, the deadline is extended to the next business day. *Rule 303.03(a)(4), citing Minn. R. Civ. P. 5 & 6.*

2. GOING BEYOND THE SCOPE OF THE MOTION

With rare exception, the court should not allow counsel to argue for relief not noticed in the motion and not supported by relevant information in an affidavit. Similarly, attorneys should not be allowed to argue important facts not stated in the affidavits, such as events that have occurred since the date of the affidavit. This practice undermines notice, preparation, and procedural fairness. *See also Minn. R. Gen. Prac. 303.02(a).*

While the rules do not *explicitly* prohibit oral argument outside of what is noticed or in the affidavit, they **strongly imply** that motions must stand on their written notice and affidavits. Courts rely on this principle to maintain fairness and prevent hearings from being conducted unfairly.

3. TEMPORARY HEARINGS AND ORDERS

Statutory Authority: Be certain that the relief sought at the temporary hearing is within the authority of the Court under *M.S. 518.131 Subd 1 and 2* (listing ten permissible orders and three impermissible orders).

Basis of the Order and Oral Testimony: Temporary orders shall be made solely on the basis of affidavits and argument of counsel except upon demand by either party in a motion or responsive motion made within the time limit for filing a responsive motion that the matter be heard on oral testimony before the court, or if the court in its discretion orders the taking of oral testimony. *M.S. 518.131, Subd 8.* (See Rule #5 below)

Temporary Financial Relief: When temporary financial relief, such as child support, maintenance, payment of debt, and attorney's fees, is requested, the Parenting/Financial Disclosure Statement form developed by the state court administrator shall be served and filed by the moving and responding parties, along with their motions and affidavits. This form is mandatory and must be current as of the date of the hearing. Sanctions for failure to comply include, but are not limited to, the striking of pleadings or hearing. *Rule 303.02(b).*

Not Appealable: Temporary orders are not appealable, which means they are not subject to the stringent findings requirements imposed on final custody or support orders.

Although temporary orders must be supported by affidavits and arguments (see M.S. 518.131, subd. 8), the court is not required to make specific findings of fact or conclusions of law. See also M.S. 518.131, subd. 9.

Violation of Temporary Order – Criminal Penalty: In addition to being enforceable through civil contempt, violating specific provisions of a temporary order or restraining order issued under M.S. 518.131, subd. 1, may also constitute a misdemeanor offense under subdivision 10 of the same statute. Specifically, a violation is a misdemeanor if it involves:

- (g) Restraining one or both parties from harassing, vilifying, mistreating, molesting, disturbing the peace, or restraining the liberty of the other party or the parties' children;
- (h) Prohibiting the removal of a minor child from the court's jurisdiction; or
- (i) Excluding a party from the family home or the home of the other party.

  See Minn. Stat. § 518.131, subd. 10.

NEW: 2024 Parenting Time Provision - Cases Given Priority for Temporary Relief

M.S. 518.131, Subd 11 (a) While the proceeding is pending, the court must give priority to scheduling and holding an expedited hearing for temporary relief when a party credibly alleges that:

(1) the party has been denied parenting time with a child for 14 consecutive days or more; or

(2) the party has been unreasonably denied access to necessary financial resources or support during a pending marital dissolution.

(b) A court must hold a priority hearing under this subdivision within 30 days of the party's request.

(c) A court must consider credible allegations of domestic abuse, substance abuse, maltreatment findings, or neglect as a reasonable basis for a party who has denied parenting time to the other party.

(d) If temporary parenting time is ordered, the court may also order temporary child support if requested by the other party.

Question: What About ICMC Hearings? Can a party request an expedited temporary relief hearing pursuant to the above parenting time provision before the ICMC hearing is held?

Answer: Yes. Legal authority can be found in Minnesota Judicial Branch Policy 520.1 Early Case Management (ICMC) Statewide Best Practices for Family Court; February 1, 2025:

VI. C. Best Practice Three: Motions Should not be Served, Scheduled or Filed before the ICMC. Formal Discovery Should be Suspended.

"This best practice helps maintain parity in the process and ensure that parties are not unduly entrenched before the judicial officer has the opportunity to address them at the ICMC. A party may still submit an ex parte motion for custody or child support or a request for an expedited hearing for temporary relief pursuant to statutes or court rules. Other motions should rarely be filed and even more rarely granted prior to the ICMC……."

Note: Authority to file motions seeking ex parte or emergency relief is provided in Minn. Gen. R. Prac. 303.04(a) ("Ex Parte and Emergency Relief").

4. APPOINTMENT OF GUARDIAN AD LITEM (GAL)

GAL appointment practices vary by district, but all appointment orders must clearly identify the specific duties the GAL is expected to perform. For a list of permitted duties, refer to *Rule 905* of the General Rules of Practice. For duties that are explicitly prohibited, see *Rule 903.04*. Importantly, *Rule 903.04* bars GALs from conducting custody or parenting time evaluations, mediating or arbitrating disputes between the parties, serving as a parenting time consultant or expeditor, or acting as a decision-making facilitator or early neutral evaluator.

Permissive appointment of guardian ad litem: *"In all proceedings for child custody or for dissolution or legal separation where custody or parenting time with a minor child is in issue, the court may appoint a guardian ad litem to represent the interests of the child. The guardian ad litem shall advise the court with respect to custody and parenting time."* (emphasis added). MS 518.165 subd 1.

Required appointment of guardian ad litem: In all proceedings for child custody or marriage dissolution or legal separation in which custody or parenting time is an issue, if the court has reason to believe that the minor child is a victim of domestic child abuse or neglect, as those terms are defined in M.S. 260C.007 and M.S. 260E, respectively, the court shall appoint a guardian ad litem. MS 518.165 subd 2.

5. REQUEST FOR ORAL TESTIMONY

Rule 303.03(d)(2)(3)(5)(6) contains the requirements for providing oral testimony at a motion. The request must be submitted by motion served and filed not later than the filing of that party's initial motion. The motion must include the names of witnesses, the nature and length of their testimony, including cross-examination, and the types of exhibits, if any. Requests for hearing time longer than one-half hour must be made by a separate written motion specifically setting forth the necessity and reason that evidence cannot be submitted by affidavit. The Court can grant or deny the request, or restrict it to a shorter period of time, including reducing the number of witnesses that may be called and limiting the scope of their testimony. See also M.S. 518.131 subd 8.

6. THREE FREQUENTLY IGNORED RULES

a) **NOTIFYING OTHER PARTY OF MOTION:** *Rule 303.01(a)* requires the moving party to promptly give written notice of the date and time of a scheduled motion hearing, the name of the judicial officer if known, and the primary issue(s) to be addressed at the hearing to all parties in the action. If the parties reside in the same residence and there is a possibility of abuse, notice shall be given in accordance with the Minnesota Rules of Civil Procedure. See Minn. R. Civ. P. 4 and 5.

   - **Note:** In the past, some attorneys would schedule motions weeks and even months before the hearing date and then serve the motion with the absolute minimum of 21 days' notice to obtain a perceived tactical advantage. The above 2012 rule amendment was designed to stop that practice.

b) **SETTLEMENT EFFORTS:** *Rule 303.03(c)* requires the moving party, within 7 days of filing a motion, to initiate a settlement conference, either in person, by telephone, or in

writing, in an attempt to resolve the issues raised. Unless ADR is not required under Rule 310, this conference shall include consideration of an appropriate ADR process under Rule 114. The moving party shall file a Certificate of Settlement Efforts in the form developed by the state court administrator not later than 24 hours before the hearing. Unless excused by the court for good cause, no motion shall be heard unless the parties have complied with this rule.

- **Exceptions:** The only exceptions to this rule are parentage cases where there has been no court determination of the existence of the parent-child relationship, and except in situations where a court has ordered no contact between the parties.

c) **ORDER TO SHOW CAUSE vs NOTICE OF MOTION:** Under *Rule 303.01(b)* of the General Rules of Practice, every family law motion must be filed with either a notice of motion or an order to show cause. Most motions are filed with a notice of motion, which sets the hearing date and time. However, when personal service is required or compelled appearance is necessary, an order to show cause must be used.

- The most common use of an order to show cause in family court is when a party seeks to have the other party held in contempt. In such cases, the order must comply with Rules 303.05 and 309 regarding form and content, and it must be personally served in the same manner as a summons. Mailed service is not sufficient. Contempt procedures are governed by M.S. 588.04.

7. UNSWORN ATTACHMENTS

All motions for temporary relief must be supported by a sworn affidavit under *Rule 303.02(a).* A common, but problematic, practice in family court is attaching pages of unsworn materials to a client's affidavit, including school records, police reports, letters from relatives or teachers, and medical records. These unsworn attachments do not automatically gain evidentiary value simply by being attached. The affidavit does not "adopt" them unless the affiant affirms their accuracy based on personal knowledge.

While M.S. 518.131, subd. 8 allows some relaxation of evidentiary rules in motion hearings, documents attached to an affidavit must either (1) be expressly sworn to by the affiant based on personal knowledge, (2) be accompanied by a separate affidavit from the document's author, or (3) qualify under a recognized hearsay exception. Otherwise, such

attachments are subject to objection and may be disregarded by the court. As a judicial best practice, unsworn attachments should not be relied on to support requested relief.

- **Practice Tip - Hearsay Exception:** If a party seeks to admit a document under a hearsay exception, such as the business records exception under Rule 803(6), the party's affidavit should include specific facts establishing the required foundation. For example, a parent could state that a school record was received directly from the school, maintained in the ordinary course of business, and created by staff at or near the time of the event. Including this information in the affidavit allows the court to treat the document as admissible without needing a separate affidavit from the record's author.
- **Notarized Letters Are Not Affidavits:** Attorneys also frequently submit notarized letters addressed "To Whom It May Concern" or "Dear Judge." These documents are not affidavits unless the signer is sworn and states that the contents are true and correct. A notarized signature alone does not make a document admissible. Like other unsworn attachments, they may be excluded if challenged.

8. INAPPROPRIATE AFFIDAVITS

Although parties may feel some cathartic relief by attacking the other parent in their affidavit, the reviewing judge must stay focused on M.S. 518.17 Subd. 1(b)(4), 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 can't consider such conduct, family lawyers should avoid letting clients use affidavits to vent anger or frustration about the other parent—unless it affects the children. Inappropriate attachments, such as hostile emails, texts, tweets, or Facebook posts, may be stricken by the court **sua sponte** as "redundant, immaterial, impertinent or scandalous matter." See Minn. R. Civ. P. 12.06. i

9. AFFIDAVITS FROM MINOR CHILDREN

Affidavits from minor children are strongly discouraged. Children are not parties in dissolution or custody proceedings, and without a court-appointed Guardian ad Litem, they lack the means to express their views independently. Allowing a child to submit an affidavit—or worse, bringing children into court—can compromise neutrality, create loyalty conflicts, and cause emotional harm.

- The Rules of General Practice reflect this concern. Under *Rule 303.03(d)(7), "any motion relating to custody or visitation shall additionally state whether either party desires the court to interview minor children. No child under the age of fourteen years will be allowed to testify without prior written notice to the other party and court approval."* General use of child affidavits or court appearances violates these protections and is improper unless specifically ordered by the court. As a best practice, attorneys should advise clients never to involve their children without explicit court approval.

10. FINANCIAL AFFIDAVITS – DOUBLE-COUNTING

Financial affidavits must be supported by accurate documentation, such as recent pay stubs or tax returns. A common mistake is listing expenses—like health insurance or retirement contributions—on the monthly budget that are already deducted from gross income on the pay stub. This results in **double-counting** the expense and can make it appear that the party is inflating their financial hardship.

Whether intentional or not, double-counting can damage the party's credibility and undermine their entire financial presentation. Attorneys should cross-check expense sheets with pay stubs and remove any items that have already been accounted for through payroll deductions.

- **Practice Tip:** If a client's paycheck deduction only covers a portion of a listed expense (e.g., partial employer contribution to insurance), the affidavit should clearly explain that distinction to avoid confusion or the appearance of misrepresentation.

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RESOURCES: Nicole Geffre, Attorney, Martine Law Firm; Rhiley O'Rourke, Attorney, Martine Law Firm; Greg King, MSSW, Former GAL Manager, Tenth District.

Alan F. Pendleton, Of Counsel, Martine Law Firm; Director of Mentorship and Education, Former District Court Judge; alan@xmartinelaw.com; Minnesota Judicial Training & Education Website