

# DON'T LET THAT LAWSUIT BURN A HOLE IN YOUR POCKET



By Joseph Janochoski

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On June 28, 2023, the Minnesota Supreme Court issued a decision clarifying what it means to “file” an “action” in state court after it has been commenced via Minnesota’s unique “pocket” service practice. See *Glen Edin of Edinburgh Ass’n v. Hiscox Ins. Co.* (“*Glen Edin*”), 2023 WL 4218116 (Minn. 2023). Attorneys would do well to review the *Glen Edin* decision carefully to avoid inadvertently having their pocket-served lawsuit dismissed by improperly “filing” their “action.”

Minnesota is just one of three states—the others being North Dakota and South Dakota—where a party can commence a lawsuit, conduct discovery, and settle, all without ever filing the lawsuit with a court. This procedural quirk is known as “pocket” service. To

start a lawsuit, a plaintiff need only serve a summons and complaint on a defendant; no filing is required. See Minn. R. Civ. P. 3.01, 3.02.

In 2013, the Minnesota Supreme Court amended the Rules of Civil Procedure, adding a provision imposing automatic dismissal with prejudice for “[a]ny action that is not filed with the court within one year of commencement against any party [.]” Minn. R. Civ. P. 5.04(a). The amendment was intended to retain the benefits of pocket service (resolution of lawsuits outside the court system) while requiring court involvement before a case becomes stale. See *MCHS Red Wing v. Converse*, 961 N.W.2d 780, 784–85 (Minn. Ct. App. 2021).

Under Rule 5.04(a), a pocket-served “action” must be “filed” within a year of commencement, or it is dismissed. But what do the words “action” and “filed” mean in the rule? What constitutes an “action” and what exactly has to be filed, and in what format?

The Minnesota Supreme Court answered those questions in *Glen Edin*. In the case, the plaintiff commenced a lawsuit in June of 2019 by pocket-serving a summons and complaint on the defendant. 2023 WL 4218116, at \*2. In October, the plaintiff filed (in court) a motion for an appointment of a neutral umpire and attached its summons and complaint *as exhibits* to the motion. *Id.* The defendant filed its answer in court in January of 2020. *Id.* However, no standalone copy of the summons and complaint was filed with a court until March of 2021, well past the one-year deadline set forth in Rule 5.04(a). *Id.*

Given the untimely filing of a standalone summons and complaint, the district court dismissed the case with prejudice. *Id.* On appeal, the Court of Appeals reversed, holding that because the defendant had filed its answer within a year of commencement, the “action” had been filed under Rule 5.04(a). *Id.* at \*3.

On review, the Minnesota Supreme Court affirmed the outcome, but on different grounds. First, the Court

held that the word “action” in Rule 5.04(a), read in context with Rules 3.01 and 3.02, “plainly” refers to the summons and complaint that was used to commence the action in the first place, and rejected the argument that filing an answer can constitute filing the “action” under Rule 5.04(a). *Id.* at \*3–5. The Court left open, however, whether filing an answer with a counterclaim would be sufficient. *Id.* at \*5 n.9.

Second, the Court held that the word “filed” does *not* require a party to file the summons and complaint as standalone documents; attaching the documents as exhibits to an ancillary motion is sufficient. *Id.* at \*12–13. Requiring a more specific format would, the Court observed, “add a technical filing requirement beyond the text” of the rule, in violation of the Court’s “well-considered policy to discourage technicalities and form.” *Id.* at \*13 (cleaned up). Because the plaintiff “filed”—in some format—its summons and complaint within one year of commencing its suit, the Court held that the filing requirement had been met. *Id.*

The *Glen Edin* decision makes it clear that to file an “action” after pocket service, a party must file the summons and complaint used to commence the action in the first place; an answer, or other pleading from the case, is not enough. However, there is no requirement that a summons and complaint be filed as standalone documents—so long as they are filed with a court in some format, the rule is satisfied. Attorneys would do well to heed these rulings to avoid allowing a pocket-served lawsuit to inadvertently burn a hole in their (and their client’s) pocket.

*Joseph T. Janochoski is a trial lawyer at the Minneapolis law firm Anthony Ostlund Louwagie Dressen & Boyland P.A., where he practices in state and federal court, as well as in arbitrations and other forms of dispute resolution. He is a fierce advocate for clients, and uses skillful negotiation, creative litigation strategies, and compelling trial presentations to succeed on his client’s behalf.*