Certificate

THE STATE OF MINNESOTA.

I, Esther M. Tomljanovich, Revisor of Statutes, hereby certify that I have compared each of the sections printed in this edition of Minnesota Statutes 1976, with its original section of the statutes, so far as sections printed therein were derived from those statutes; and have compared every other section printed therein with the original section in the enrolled act from which the same was derived; and have compared every section that has been amended, with all amendments thereof; and that all sections therein appear to be correctly printed.

ESTHER M. TOMLJANOVICH,
Revisor.

DISTRICT COURT TERMS

FIRST JUDICIAL DISTRICT

Chief Judge: Robert J. Breunig.
Judges: John M. Fitzgerald, LeCenter; Robert J. Breunig, Hastings; Lawrence L. Lenertz, Shakopee; Jerome Kluck, Glencoe; Raymond Pavlak, Red Wing.

Counties	Terms	Where Held
Carver	Last Monday in February; second Monday in October	Chaska
Dakota	First Monday in October	Hastings
Goodhue	Second Monday in February; second Monday in May; first Monday in October	Red Wing
LeSueur	First Monday in April; first Tuesday in September	LeCenter
McLeod	First Monday in November; second Monday in May	Glencoe
Scott	Third Monday in September	Shakopee
Sibley	Third Monday in September	Gaylord

SPECIAL TERMS

Dakota	Monday through Thursday of each week at 9:00 A.M.	Hastings
Goodhue	Second and fourth Fridays each month at 10:00 A.M.	Red Wing
LeSueur	First and third Fridays each month at 10:00 A.M.	Hastings
McLeod	Second and fourth Fridays each month at 10:00 A.M.	Glencoe
Scott	First and third Fridays each month at 10:00 A.M.	Shakopee
Sibley	First Friday each month at 10:00 A.M.	Gaylord

SECOND JUDICIAL DISTRICT

Chief Judge: Ronald E. Hachey.
Judges: Ronald E. Hachey, Archie L. Gingold, Edward D. Mulally, Harold W. Schultz, David E. Marsden, J. Jerome Plunkett, Otis H. Godfrey, Jr., Stephen L. Maxwell, Hyam Segell, James M. Lynch, Sidney P. Abramson, E. Thomas Brennan.

County	Terms	Where Held
Ramsey	Statutory Term—First Monday in October of each year	St. Paul
	Actual Term—Continuous	St. Paul

SPECIAL TERMS

Ramsey	Every day except Saturday, Sunday and Holidays	St. Paul

THIRD JUDICIAL DISTRICT

Chief Judge: Warren F. Plunkett.
Judges: Warren F. Plunkett, Austin; O. Russell Olson, Rochester; Daniel F. Foley, Rochester; Urban J. Steimann, Faribault; Glenn E. Kelley, Winona; Jack F. C. Gillard, Albert Lea.

Counties	Terms	Where Held
Dodge	First Monday in April; third Monday in September	Mantorville
Fillmore	Second Monday in April; second Monday in October	Preston
Freeborn	Fourth Monday in March; second Monday in September; first Monday in December	Albert Lea
Houston	Third Monday in May; second Monday in October	Caledonia
Mower	Second Monday in February; first Monday in June; second Monday in November	Austin
Olmsted	*First Tuesday after the first Monday in September*	*Rochester*
Rice	First Monday in May; first Wednesday after first Monday in November	Faribault
Steele	First Monday in April; third Monday in September	Owatonna
Wabasha	Third Monday in March; second Monday in September	Wabasha
Waseca	First Monday in March; second Monday in October	Waseca
Winona	Second Monday in January; third Monday in April; second Monday in November	Winona

SPECIAL TERMS

Dodge	First Friday of each month	Mantorville
Fillmore	Third Friday of each Month	Preston
Freeborn	Thursday before first Friday of each month	Albert Lea
Houston	First Friday of each month	Caledonia
Mower	Wednesday before first Friday of each month	Austin
Olmsted	First four Fridays of each month	Rochester
Rice	Second Friday of each month	Faribault
Steele	First Friday of each month	Owatonna
Wabasha	Third Friday of each month	Wabasha
Waseca	Third Friday of each month	Waseca
Winona	Second and fourth Fridays of each month	Winona

Special term days scheduled for Monday falling on a legal holiday will be held the Tuesday following. Other special term days falling on a legal holiday will be held on the day preceding the holiday. Special terms during the months of June, July and August may be set or changed in the various counties by special order of the Court filed with the respective Clerk.

FOURTH JUDICIAL DISTRICT

Chief Judge: Donald T. Barbeau.
Judges: Dana Nicholson, Lindsay G. Arthur (Juvenile court division), Douglas K. Amdahl, Donald T. Barbeau,

Stanley D. Kane, Eugene Minenko, Crane Winton, Irving C. Iverson, Bruce C. Stone, A. Paul Lommen, David R. Leslie, Richard J. Kantorowicz, Harold Kalina, Jonathan G. Lebedoff, Susanne Sedgwick (Family court division), Allen Oleisky, Patrick W. Fitzgerald, William S. Posten, Chester Durda.

County	Terms	Where Held
Hennepin	Statutory Term — Second Monday in September	Minneapolis
	Actual Term — Continuous	Minneapolis

SPECIAL TERMS

Every day except Saturday, Sunday and Holidays.

FIFTH JUDICIAL DISTRICT

Chief Judge: L. J. Irvine.
Judges: L. J. Irvine, Fairmont; Walter H. Mann, Marshall; Noah S. Rosenbloom, New Ulm; Harvey A. Holtan, Windom; Miles B. Zimmerman, Mankato.

Counties	Terms	Where Held
Blue Earth	First Tuesday in October	Mankato
Brown	First Tuesday in March; second Tuesday in September	New Ulm
Cottonwood	First Tuesday in March; second Tuesday in October	Windom
Faribault	First Tuesday in May; second Tuesday in November	Blue Earth
Jackson	First Tuesday in April; second Tuesday in October	Jackson
Lincoln	First Tuesday in May; second Tuesday in December	Ivanhoe
Lyon	First Tuesday in February; second Tuesday in September	Marshall
Martin	First Tuesday in March; second Tuesday in September	Fairmont
Murray	First Tuesday in May; second Tuesday in December	Slayton
Nicollet	First Tuesday in April; second Tuesday in October	St. Peter
Nobles	First Tuesday in February; second Tuesday in September	Worthington
Pipestone	First Tuesday in April; second Tuesday in November	Pipestone
Redwood	First Tuesday in March; second Tuesday in October	Redwood Falls
Rock	First Tuesday in April; second Tuesday in November	Luverne
Watonwan	First Tuesday in May; second Tuesday in November	St. James

SPECIAL TERMS

(All Special Terms in August by Appointment)

Counties	Terms	Where Held
Blue Earth	Each Monday from 8 a.m. to 10 a.m. (For Rule 8 hearings) First and Third Mondays at 1:30 p.m. (For Rule 11 hearings)	Mankato
Brown	Each Monday fro 1:30 p.m. to 4:30 p.m.	New Ulm
Cottonwood	Second, Fourth and Fifth Mondays 2 p.m. to 4:30 p.m.	Windom
Faribault	Second Monday 2 p.m. to 4:30 p.m. Fourth Monday 9:30 a.m. to 12 noon	Blue Earth
Jackson	First and Third Mondays 2 p.m. to 4:30 p.m.	Jackson
Lincoln	By appointment with Judge Walter H. Mann of Marshall	Ivanhoe
Lyon	First, Second, Third and Fourth Mondays 2:30 p.m. to 4:30 p.m. Fifth Monday 9:30 a.m. to 12 noon and 1:30 p.m. to 4:30 p.m.	Marshall
Martin	First, Second and Third Mondays 9:30 a.m. to 12 noon Fourth Monday 2 p.m. to 4:30 p.m. Fifth Monday 9:30 a.m. to 12 noon and 1:30 p.m. to 4:30 p.m.	Fairmont
Murray	Second and Fourth Mondays 9:30 a.m. to 12 noon	Slayton
Nicollet	Each Monday 9 a.m. to 11:30 a.m.	St. Peter
Nobles	First and Third Mondays 2 p.m. to 4:30 p.m. Fifth Monday 9:30 a.m. to 12 noon	Worthington
Pipestone	Second and Fourth Mondays 9:30 a.m. to 12 noon	Pipestone
Redwood	First and Third Mondays 9:30 a.m. to 12 noon	Redwood Falls
Rock	First and Third Mondays 9:30 a.m. to 12 noon	Luverne
Watonwan	Second and Fourth Mondays at 1:30 p.m.	St. James

SIXTH JUDICIAL DISTRICT

Chief Judge: Mitchell A. Dubow.
Judges: Donald C. Odden, Duluth; N. S. Chanak, Hibbing; Mitchell A. Dubow, Virginia; Donald E. Anderson, Duluth; C. Luther Eckman, Duluth; Patrick D. O'Brien, Duluth.

Counties	Terms	Where Held
Carlton	Second Tuesday in February; third Tuesday in May; second Tuesday in October	Carlton
Cook	Second Monday in March; third Monday in October	Grand Marais
Lake	Third Monday in May; second Monday in January	Two Harbors
St. Louis	First Monday after first day in January; first Monday in April; first Tuesday after first Monday in September; first Monday in November	Duluth

In addition to the general terms of the district court in St. Louis County to be held at the county seat, general terms of the court are hereby established to be held in the city of Virginia, in that county, on the first Tuesday in April, the first Wednesday after the first Monday in September, and the fourth Tuesday in November; in the city of Hibbing, in that county, the second Monday in February, and the second Monday in May, and the second Monday in October, in each year; in the city of Ely, in that county, the third Monday in March and the third Monday in October, in each year, for the trial, hearing and determination of all actions, civil and criminal, and with the same force and effect as though held at the county seat of said county; and all proceedings of whatsoever kind that can be heard and determined in the district court of this state may be tried, heard and determined at the said city of Virginia, the said city of Hibbing, or the said city of Ely with the same force and effect as though heard and determined at the county seat of said county, except that all proceedings for the registration of title to real estate shall be tried at the county seat of said county as now provided by law, and all other actions to determine title to real estate shall be tried at the county seat, except that by written consent of all parties thereto any such action may be tried at said city

of Virginia, at the city of Hibbing, or the city of Ely in accordance with such written consent; but no officer having in his custody any of the public records of St. Louis County shall be required to produce such record at the trial of any action not on trial at the county seat, save upon the order of the court providing for the production of such record and its immediate return to the officer producing it, upon its introduction as evidence in such cause. If the day specified for the commencement of any term herein falls on a legal holiday, said term shall commence on the first business day following said holiday.

SPECIAL TERMS

Counties	Terms	Where Held
Carlton	First and third Wednesday of each month excepting July and August, at 2:00 P.M.; third Wednesday in July and August, 2:00 P.M. Criminal arraignments each Wednesday at 2:00 P.M. .. calendar at any general term. Criminal arrangements each Tuesday at 1:30 P.M.	Carlton
Cook	Special term matters may be noted to be heard at the call of the calendar at any general term. Criminal arraignments each Tuesday at 1:30 P.M.	Grand Marais
Lake	Fourth Wednesday of each month at 2:00 P.M. Criminal arraignments each Tuesday at 9:30 A.M. or fourth Wednesday of each month at 2:00 P.M.	Two Harbors

Special term matters of which the venue would normally be in Carlton, Cook, or Lake county may be heard on the regular special term to be held in Duluth upon order of a district judge.

St. Louis	Monday through Wednesday of each week, at 9:30 A.M. for all domestic relations matters, except contested change of custody motions, to be heard by the referee. At 9:30 A.M. on Thursday of each week for all other matters. At 2:00 P.M. on Monday and Thursday of each week for criminal arraignments and sentencings	Duluth
	Second and fourth Friday of each month except August, at 9:30 A.M. At 9:30 A.M. on Thursday of each week for all domestic relations matters, except change of custody motions, to be heard bythe referee. Criminal arraignments each Friday at 9:00 A.M. ..	Virginia
	First and third Friday of each month except August, at 9:30 A.M. At 9:30 A.M. on Friday of each week for all domestic relations matters, except change of custody motions, to be heard by the referee	Hibbing

Special term matters of which the venue would be Ely may be noted to be heard at Virginia at any special term for that city.

Special term matters for the county of St. Louis shall be noted for and heard at the place of trial designated for contested matters in sections 484.47 to 484.52 unless otherwise ordered by a district judge.

SEVENTH JUDICIAL DISTRICT

Chief Judge:

Judges: Charles W. Kennedy, Little Falls; Paul G. Hoffman, St. Cloud; Gaylord A. Saetre, Moorhead; Donald A. Gray, Fergus Falls.

Counties	Terms	Where Held
Becker	First Monday in February; first Tuesday in September	Detroit Lakes
Benton	First Monday in February; first Tuesday in September	Foley
Clay	Second Monday in April; second Monday in November	Moorhead
Douglas	First Monday in March; first Monday in October	Alexandria
Mille Lacs	First Monday in February; first Tuesday in September	Milaca
Morrison	Second Monday in April; second Monday in November	Little Falls
Otter Tail	Second Monday in April; second Monday in November	Fergus Falls
Stearns	First Monday in March; first Monday in October	St. Cloud
Todd	First Monday in March; first Monday in October	Long Prairie
Wadena	First Monday in February; first Tuesday in September	Wadena

Special Terms are held by each judge once during June, July and August each year as fixed by order from time to time. The clerk of each court can advise interested counsel as to dates.

EIGHTH JUDICIAL DISTRICT

Chief Judge: Thomas J. Stahler.

Judges: Thomas J. Stahler, Morris; Leif R. Langsjoen, Willmar; John C. Lindstrom, Montevideo.

Counties	Terms	Where Held
Big Stone	Third Monday in May; first Monday in December	Ortonville
Chippewa	First Monday in June; first Monday in December	Montevideo
Grant	Second Monday in March; third Monday in October	Elbow Lake
Kandiyohi	Second Monday in March; second Monday in September	Willmar
Lac qui Parle	Second Monday in April; second Monday in October	Madison
Meeker	Second Monday in April; second Monday in October	Litchfield
Pope	First Monday in June; third Monday in November	Glenwood
Renville	Second Monday in May; second Monday in November	Olivia
Stevens	Second Monday in February; second Monday in September	Morris
Swift	Second Monday in May; second Monday in November	Benson
Traverse	Fourth Monday in February; first Monday in October	Wheaton
Wilkin	Fourth Monday in March; first Monday in November	Breckenridge
Yellow Medicine	Second Monday in March; second Monday in September	Granite Falls

Special Terms are held each Monday at Willmar, Morris and Montevideo, commencing at 9:30 A.M.

NINTH JUDICIAL DISTRICT

Chief Judge: James E. Preece.

Judges: Gordon L. McRae, International Falls; James E. Preece, Bemidji; Ben F. Grussendorf, Brainerd; Warren A. Saetre, Thief River Falls; John A. Spellacy, Grand Rapids; Robert Peterson, Crookston.

EASTERN AREA

Counties	Terms	Where Held
Aitkin	First Wednesday after the first Tuesday in February; first Wednesday after the first Tuesday in September	Aitkin

Beltrami	First Tuesday in February; first Tuesday in September	Bemidji
Cass	First Wednesday after the first Tuesday in February; first Wednesday after the first Tuesday in September	Walker
Clearwater	First Thursday after the first Tuesday in February; first Thursday after the first Tuesday in September	Bagley
Crow Wing	First Tuesday in February; first Tuesday in September	Brainerd
Hubbard	First Wednesday after the first Tuesday in February; first Wednesday after the first Tuesday in September	Park Rapids
Itasca	First Tuesday in February; first Tuesday in September	Grand Rapids
Koochiching	First Tuesday in February; first Tuesday in September	International Falls
Lake of the Woods	First Wednesday after the first Tuesday in February; first Wednesdays after the first Tuesday in September	Baudette

WESTERN AREA

Kittson	At 10:00 a.m. on the first Tuesday following the third Monday in February and the first Thursday following the first Monday in September	Hallock
Mahnomen	At 10:00 a.m. on the first Tuesday following the third Monday in February and the first Tuesday following the first Monday in September	Mahnomen
Marshall	At 2:00 p.m. on the first Tuesday following the third Monday in February and the first Thursday following the first Monday in September	Warren
Norman	At 2:00 p.m. on the first Tuesday following the third Monday in February and the first Tuesday following the first Monday in September	Ada
Pennington	At 10:00 a.m. on the first Wednesday following the third Monday in February and the first Wednesday following the first Monday in September	Thief River Falls
Polk	At 10:00 a.m. on the first Thursday following the third Monday in February and the first Thursday following the first Monday in September	Crookston
Red Lake	At 10:00 a.m. on the first Wednesday following the third Monday in February and the first Wednesday following the first Monday in September	Red Lake Falls
Roseau	At 10:00 a.m. on the first Thursday following the third Monday in February and the first Tuesday following the first Monday in September	Roseau

Whenever the day specified for the beginning of any general term falls upon a legal holiday or general election day, the term shall begin on the day following.

The counties as named in the eastern area constitute the eastern area of the district and four of the judges of the district shall reside within that area. The counties as named in the western area constitute the western area of the district and two of the judges of the district shall reside within that area. Unless the judges of the district shall by rule or order otherwise provide or the press of court work otherwise requires, the judges residing within an area shall usually be designated and assigned to preside at terms of court and be primarily responsible for the disposition of the court's business within that area.

TENTH JUDICIAL DISTRICT

Chief Judge: William T. Johnson.

Judges: William T. Johnson, Mahtomedi; Robert Bakke, Anoka; John F. Thoreen, Stillwater; Carroll E. Larsson, Buffalo; Thomas G. Forsberg, Anoka; John F. Dablow, Cambridge.

Counties	Terms	Where Held
Anoka	First Tuesday in September	Anoka
Chisago	First Tuesday in April; first Tuesday in November	Center City
Isanti	First Tuesday in February; first Tuesday in October	Cambridge
Kanabec	First Tuesday in May; first Tuesday in December	Mora
Pine	First Tuesday in January; first Tuesday in September	Pine City
Sherburne	First Tuesday in January; first Tuesday in September	Elk River
Washington	First Tuesday in September	Stillwater
Wright	First Tuesday in March; first Tuesday in November	Buffalo

SPECIAL TERMS

(a) Special terms of court at the County of Anoka shall be held daily in the county court house in the City of Anoka, Minnesota.

(b) Special terms of court at the County of Washington shall be held daily at the county court house in the City of Stillwater, Minnesota.

(c) Special terms of court for the Counties of Isanti, Chisago, Kanabec, Pine, Sherburnes, and Wright, shall be held in the respective county court house pursuant to special order of the Court on file in the clerk's office.

(d) The call of the calendar shall be at 9:30 o'clock A.M. unless othrwise ordered by the Court.

APPENDICES

APPENDIX 1

SUPREME COURT OF MINNESOTA

CHIEF JUSTICE

	Term Expires
Robert J. Sheran	1983

ASSOCIATE JUSTICES

James C. Otis	1981
C. Donald Peterson	1979
Walter F. Rogosheske	1983
Fallon Kelly	1979
John J. Todd	1981
Harry H. MacLaughlin	1981
Lawrence R. Yetka	1981
George M. Scott	1981

RETIRED JUSTICES

Frank T. Gallagher
Thomas F. Gallagher
Martin A. Nelson
William P. Murphy
Oscar R. Knutson

COMMISSIONER OF SUPREME COURT

Richard J. Leonard

STATE COURT ADMINISTRATOR

Laurence C. Harmon

CLERK OF SUPREME COURT

John McCarthy
Wayne O. Tschimperle (Deputy)

REPORTER OF SUPREME COURT

Ruth Jensen Harris

LAW LIBRARIAN

Ronald Cherry
Howard M. Adams (Assistant)

APPENDIX 2

DISTRICT COURT JUDGES

Dist.	Name	Chambers	Term Expires
1	Robert J. Breunig	Hastings	1979
1	John M. Fitzgerald	Hastings	1983
1	Lawrence L. Lenertz	Shakopee	1979
1	Jerome Kluck	Glencoe	1979
1	Raymond Pavlak	Red Wing	1983
2	Sidney P. Abramson	St. Paul	1979
2	E. Thomas Brennan	St. Paul	1983
2	Archie L. Gingold	St. Paul	1981
2	Otis H. Godfrey, Jr.	St. Paul	1983
2	Ronald E. Hachey	St. Paul	1981
2	James M. Lynch	St. Paul	1979
2	David E. Marsden	St. Paul	1979
2	Stephen L. Maxwell	St. Paul	1983
2	Edward D. Mulally	St. Paul	1981
2	J. Jerome Plunkett	St. Paul	1981
2	Harold W. Schultz	St. Paul	1983
2	Hyam Segell	St. Paul	1979
3	Daniel F. Foley	Rochester	1981
3	Jack F. C. Gillard	Albert Lea	1979
3	Glenn E. Kelley	Winona	1983
3	O. Russell Olson	Rochester	1983
3	Warren F. Plunkett	Austin	1981
3	Urban J. Steimann	Faribault	1983
4	Douglas K. Amdahl	Minneapolis	1983
4	Lindsay G. Arthur	Minneapolis	1983
4	Donald T. Barbeau	Minneapolis	1983
4	Chester Durda	Minneapolis	1979
4	Patrick W. Fitzgerald	Minneapolis	1983
4	Irving C. Iverson	Minneapolis	1980
4	Harold Kalina	Minneapolis	1980
4	Stanley D. Kane	Minneapolis	1983
4	Richard J. Kantorowicz	Minneapolis	1980
4	Jonathan G. Lebedoff	Minneapolis	1983
4	David R. Leslie	Minneapolis	1980
4	A. Paul Lommen	Minneapolis	1983
4	Eugene Minenko	Minneapolis	1980
4	Dana Nicholson	Minneapolis	1978
4	Allen Oleisky	Minneapolis	1983
4	William S. Posten	Minneapolis	1980
4	Susanne Sedgwick	Minneapolis	1983
4	Bruce C. Stone	Minneapolis	1983
4	Crane Winton	Minneapolis	1980
5	Harvey A. Holtan	Windom	1981
5	L. J. Irvine	Fairmont	1981
5	Walter H. Mann	Marshall	1981
5	Noah S. Rosenbloom	New Ulm	1983
5	Miles B. Zimmerman	Mankato	1983
6	Donald E. Anderson	Duluth	1979
6	Patrick D. O'Brien	Duluth	1981
6	Nicholas S. Chanak	Hibbing	1983
6	Mitchell A. Dubow	Virginia	1981
6	C. Luther Eckman	Duluth	1981
6	Donald C. Odden	Duluth	1981
7	Donald A. Gray	Fergus Falls	1983
7	Paul G. Hoffman	St. Cloud	1983
7	Charles W. Kennedy	Little Falls	1983
7	Gaylord A. Saetre	Moorhead	1983
8	Leif R. Langsjoen	Willmar	1979
8	John C. Lindstrom	Montevideo	1979
8	Thomas J. Stahler	Morris	1979
9	Ben F. Grussendorf	Brainerd	1978
9	Gordon L. McRae	Int. Falls	1983
9	Robert A. Peterson	Crookston	1983
9	James E. Preece	Bemidji	1981
9	Warren A. Saetre	Thief River Falls	1983
9	John A. Spellacy	Grand Rapids	1983
10	Robert Bakke	Anoka	1981
10	John F. Dablow	Cambridge	1979
10	Thomas G. Forsberg	Anoka	1981
10	William T. Johnson	Mahtomedi	1977
10	Carroll E. Larson	Buffalo	1981
10	John F. Thoreen	Stillwater	1981

ADMINISTRATORS AND CLERKS OF DISTRICT/COUNTY COURTS

Name	County	County Seat
Robert E. Haas	Aitkin	Aitkin
Raymond Nilsson	Anoka	Anoka
Donna Jorschumb	Becker	Detroit Lakes
C. Buiford Qualle	Beltrami	Bemidji
S. J. Tomporowski	Benton	Foley

Name	County	County Seat
Ora Mae George	Big Stone	Ortonville
Richard Fasnacht	Blue Earth	Mankato
Lonnie F. Hulsey	Brown	New Ulm
Stuart A. Beck (Adm.)	Carlton	Carlton
Albert A. Vojtisek	Carver	Chaska
Anona Riviere	Cass	Walker
Clifford M. Toov	Chippewa	Montevideo
A. Milton Johnson (Adm.)		
Ethel Dahl	Chisago	Center City
James P. Slette	Clay	Moorhead
Vernon K. Lundin	Clearwater	Bagley
Carl A. Noyes	Cook	Grand Marais
Pansy Purrington	Cottonwood	Windom
Marge Williams	Crow Wing	Brainerd
Nick Vujovich	Dakota	Hastings
William Healy (Adm.)		
Pauline J. Husc	Dodge	Mantorville
Hazel I. Holt	Douglas	Alexandria
Edward D. Fisher	Faribault	Blue Earth
George H. Milne	Fillmore	Preston
William Aanerud	Freeborn	Albert Lea
Lawrence H. Peterson	Goodhue	Red Wing
Harold Bartness	Grant	Elbow Lake
Jack M. Provo (Adm.)	Hennepin	Minneapolis
Gerald R. Nelson (Asst. Adm.)		
S. Allen Friedman (Mcpl. Adm.)		
Merle H. Schultz	Houston	Caledonia
Darrel C. Casmey	Hubbard	Park Rapids
Henry C. Howard	Isanti	Cambridge
Tyrus L. Bischoff	Itasca	Grand Rapids
David E. Johnson	Jackson	Jackson
Jeanne E. Seline	Kanabec	Mora
Gregory W. Sollen	Kandiyohi	Willmar
Jean Pemberton	Kittson	Hallock
Terrance Carew	Koochiching	International Falls
Obert E. Hanson	Lac qui Parle	Madison
Lyla M. Olson	Lake	Two Harbors
Evelyn Slick	Lake of the Woods	Baudette
Edsel J. Janovsky	Le Sueur	Le Center
James Gilronan	Lincoln	Ivanhoe
Beatrice V. Rubertus	Lyon	Marshall
Lloyd E. Lipke	McLeod	Glencoe
Lois Jean Cook	Mahnomen	Mahnomen
Hubert L. Charboneau	Marshall	Warren
Kenneth W. Koenecke	Martin	Fairmont
Hardy D. Silverberg	Meeker	Litchfield
Kenneth J. Johnson	Mille Lacs	Milaca
Edward L. Ciminski	Morrison	Little Falls
Joseph W. Morgan	Mower	Austin
Douglas E. Johnson	Murray	Slayton
Donald P. Schmidt	Nicollet	St. Peter
Vivian E. Erbes	Nobles	Worthington
Milton Lien	Norman	Ada
John N. Rice	Olmsted	Rochester
Myrtle E. Logas	Otter Tail	Fergus Falls
Ardith Johnson	Pennington	Thief River Falls
Ina M. D'Aoust	Pine	Pine City
Richard J. Risch	Pipestone	Pipestone
Doris Morberg	Polk	Crookston
Dorothy Moe	Pope	Glenwood
Joseph P. LaNasa	Ramsey	St. Paul
Gerald Hatfield (Adm.)		
Ronald Bushinski (Mpcl. Adm.)		
Duane Dargon	Red Lake	Red Lake Falls
Keith H. Baldwin	Redwood	Redwood Falls
Glen Agre	Renville	Olivia
Ray L. Sanders	Rice	Faribault
Eleanor Boysen	Rock	Luverne
Clarence A. Corneliusen	Roseau	Roseau
Louis G. Wendlandt	St. Louis	Duluth
Joseph Laskey (Adm.)		
Brendan L. Suel	Scott	Shakopee
Loretta Moos	Sherburne	Elk River
Robert Busse	Sibley	Gaylord
Genevieve M. Sand	Stearns	St. Cloud
Gail R. Lipelt	Steele	Owatonna
Jerry W. Schmidt	Stevens	Morris
Irene E. Grendahl	Swift	Benson
Margaret A. Minke	Todd	Long Prairie
Walter H. Klugman	Traverse	Wheaton
David E. Meyer	Wabasha	Wabasha
Florence Claydon	Wadena	Wadena
John A. Rohde	Waseca	Waseca
Margaret Casanova	Washington	Stillwater
Patricia E. Dittrich	Watonwan	St. James
Ruth Eppeland (Adm.)		
A. W. Gruenberg	Wilkin	Breckenridge
Gertrude Miller	Winona	Winona
Carl Nordberg	Wright	Buffalo
Joyce I. Blindt	Yellow Medicine	Granite Falls

APPENDIX 3

MUNICIPAL COURTS

	Judge	Term Expires
Hennepin County	H. Peter Albrecht	1983
	Robert E. Bowen	1981
	William B. Christianson	1979
	Eugene J. Farrell	1981
	Kenneth J. Gill	1981
	Daniel R. Hart	1983
	James H. Johnston	1981
	Peter Lindberg	1983
	Henry W. McCarr	1979
	Diana K. Murphy	1979
	*O. Harold Odland	1983
	Deliah F. Pierce	1983
	*Neil A. Riley	1983
	James D. Rogers	1979
	Robert H. Schumacher	1983
	C. William Sykora	1979
	Herbert Wolner	1981
Ramsey County	Ronald J. Faricy, Jr.	1983
	Kenneth J. Fitzpatrick	1983
	*William J. Fleming	1979
	Donald E. Gross	1983
	Robert F. Johnson	1981
	John J. Kirby	1979
	*Allan R. Markert	1983
	George Petersen	1981
	Bertrand Poritsky	1981
	Joseph E. Salland	1983
	Joseph P. Summers	1983

*Chief judge

APPENDIX 4

JUDGES OF PROBATE AND COUNTY COURTS

COUNTY COURTS

County	Chambers	Judge	Term Expires
Aitkin	Aitkin	Robert S. Graff	1981
Anoka	Anoka	Edward Coleman	1979
		James T. Knutson	1979
		Spencer J. Sokolowski	1981
		Stanley N. Thorup	1983
		Joseph Wargo	1979
Becker	Detroit Lakes	Sigwel Wood	1981
Beltrami	Bemidji	Marcus A. Reed	1983
Benton	(see Sherburne)		
Big Stone-Traverse	Wheaton	Keith C. Davison	1983
Blue Earth	Mankato	Charles C. Johnson	1979
		James D. Mason	1983
Brown	New Ulm	William B. Mather, Jr.	1981
Carlton	Carlton	LaDean A. Overlie	1983
Carver	Chaska	John A. Fahey	1979
		Edward H. Leudloff	1983
Cass-Hubbard	Park Rapids	Keith L. Kraft	1981
	Walker	Michael Haas	1979
Chippewa	Montevideo	Marquis L. Ward	1981
Chisago	(see Pine)		
Clay	Moorhead	James Garrity	1979
		Homer A. Saetre	1979
Clearwater	Bagley	Melvin T. Anderson	1981
Cook	(see Lake)		
Cottonwood	Windom	James W. Remund	1981
Crow Wing	Brainerd	Henry W. Longfellow	1981
		Darrell M. Sears	1983
Dakota	Burnsville	John J. Daly	1979
	Hastings	Charles F. Gegen	1979
		Gerald W. Kalina	1981
	South St. Paul	Jack A. Mitchell	1979
	West St. Paul	Lawrence Agerter	1979
Dodge-Olmsted	Mantorville	Robert A. Neseth	1981
	Rochester	Harold G. Krieger	1981
	Rochester	Gerard Ring	1981
Douglas-Grant	Alexandria	Paul L. Ballard	1981
	Elbow Lake	Richard S. Roberts	1981
Faribault	Blue Earth	J. W. Schindler	1981
Fillmore	Preston	Clement H. Snyder, Jr.	1979
Freeborn	Albert Lea	A. K. Grinley	1981
		William R. Sturtz	1983
Goodhue	Red Wing	Elmer J. Tomfohr	1981
Grant	(see Douglas)		
Houston	Caledonia	Robert E. Lee	1983
Hubbard	(see Cass)		
Isanti	(see Pine)		
Itasca	Grand Rapids	William J. Spooner	1981
Jackson	Jackson	Donald G. Lasley	1983
Kanabec	(see Mille Lacs)		
Kandiyohi	Willmar	M. A. Wahlstrand	1981
Kittson-Roseau-Lake of the Woods	Roseau	Donald E. Shanahan	1979
Koochiching	International Falls	Peter N. Hempstad	1979
Lac qui Parle	Madison	John J. Weyrens	1979
Lake-Cook	Two Harbors	Walter A. Egeland	1981
Lake of the Woods	(see Kittson)		
LeSueur	LeCenter	Ruth Brown	1981
Lincoln-Lyon	Marshall	Irving J. Wiltrout	1981
Lyon	(see Lincoln)		
McLeod	Glencoe	LeRoy W. Yost	1981
Mahnomen	Mahnomen	Jerome L. Kersting	1979
Marshall-Red Lake-Pennington	Warren	J. A. Harren	1983
		Larry G. Jorgenson	1983
Martin	Fairmont	Conrad F. Gaarenstroom	1981
Meeker	Litchfield	Cedric F. Williams	1981
Mille Lacs-Kanabec	Milaca	Leonard M. Paulson	1981
Morrison	Little Falls	George P. Wetzel	1981
Mower	Austin	Paul Kimball, Jr.	1983
		Robert S. Plunkett	1983
Murray	Slayton	John Holt	1979
Nicollet	St. Peter	Henry N. Benson, Jr.	1981
Nobles	(see Rock)		
Norman	Ada	Milton A. Kludt	1983
Olmsted	(see Dodge)		
Otter Tail	Fergus Falls	Elliot O. Boe	1979
		Henry Polkinghorn	1983
Pennington	(see Marshall)		
Pine-Isanti-Chisago	Center City	James Gunderson	1979
		Linn Slattengren	1979
	Pine City	George E. Sausen	1981
Pipestone	Pipestone	Ordner T. Bundle, Jr.	1979

APPENDIX 4. JUDGES OF PROBATE AND COUNTY COURTS

County	Chambers	Judge	Term Expires
Polk	Crookston	Phillip D. Nelson	1983
Pope	Glenwood	John N. Claeson	1981
Red Lake	(see Marshall)		
Redwood	Redwood Falls	Donald L. Crooks	1981
Renville	Olivia	James E. Zeug	1979
Rice	Faribault	Gerald Wolf	1981
Rock-Nobles	Worthington	Gary L. Crippen	1981
Roseau	(see Kittson)		
St. Louis	Duluth	Edmund J. Belanger	1983
		Thomas J. Bujold	1983
		Robert V. Campbell	1983
		David S. Bouschor	1983
	Hibbing	Gail Murray	1983
	Virginia	Ralph E. Harvey	1983
Scott	Shakopee	Kermit J. Lindmeyer	1979
		Richard J. Menke	1983
Sherburne-Benton-Stearns	Elk River	Rainer L. Weis	1983
	St. Cloud	Richard J. Ahles	1979
		Paul Doerner	1983
		Roger M. Klaphake	1983
		Willard P. Lorette	1981
Sibley	Gaylord	Kenneth W. Bull	1981
Stearns	(see Sherburne)		
Steele	Owatonna	Charles E. Cashman	1981
Stevens	Morris	Donald R. Giberson	1981
Swift	Benson	R. A. Bodger	1981
Todd	(see Wadena)		
Traverse	(see Big Stone)		
Wabasha	Wabasha	Dennis H. Weber	1981
Wadena-Todd	Wadena	Donald A. Gray	1979
Waseca	Waseca	John H. McLoone	1979
Washington	Stillwater	Howard R. Albertson	1979
		John T. McDonough	1981
		Searle R. Sandeen	1981
Watonwan	St. James	David Telgum	1979
Wilkin	Breckenridge	Bruce N. Reuther	1981
Winona	Winona	Dennis A. Challeen	1979
		S. A. Sawyer	1983
Wright	Buffalo	Clifford E. Olson	1981
		Glen W. Swenson	1979
Yellow Medicine	Granite Falls	Frederick M. Ostensoe	1981
PROBATE COURTS			
Hennepin County	Minneapolis	Melvin J. Peterson	1979
Ramsey County	St. Paul	Andrew A. Glenn	1981

APPENDIX 5

UNITED STATES COURTS IN MINNESOTA

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
and
UNITED STATES DISTRICT COURT

CIRCUIT JUSTICE

Harry Blackmun, Associate Justice, United States Supreme Court, Washington, D. C.

CIRCUIT JUDGES (EIGHTH CIRCUIT)

Floyd R. Gibson, Kansas City, Mo., Chief Judge
Donald P. Lay, Omaha, Nebr.
Gerald W. Heaney, Duluth, Minn.
Myron H. Bright, Fargo, N.D.
Donald R. Ross, Omaha, Nebr.
Roy L. Stephenson, Des Moines, Iowa
William H. Webster, St. Louis, Mo.
J. Smith Henley, Little Rock, Ark.

Senior Circuit Judges

Joseph W. Woodrough, Omaha, Nebr.
Charles J. Vogel, Fargo, N.D.
Martin D. Van Oosterhout, Sioux City, Iowa
Marion C. Matthes, St. Louis, Mo.
Pat Mehaffy, Little Rock, Ark.

CLERK OF U. S. COURT OF APPEALS (EIGHTH CIRCUIT)

Robert C. Tucker, St. Louis, Mo.

DISTRICT JUDGES

Edward J. Devitt, Chief Judge, St. Paul, Minn.
Gunnar H. Nordbye, Senior Judge, Minneapolis, Minn.
Earl R. Larson, Minneapolis, Minn.
Miles W. Lord, Minneapolis, Minn.
Donald D. Alsop, St. Paul, Minn.

CLERK OF DISTRICT COURT

Harry A. Sieben, St. Paul, Minn.

DEPUTY CLERKS OF COURT

David J. Thoelke, Deputy in Charge, St. Paul Office, St. Paul, Minn.
Bernadine L. Brown, St. Paul, Minn.
Patricia Giel, St. Paul, Minn.
Melodie D. Decker, St. Paul, Minn.
Yvonne Vie, St. Paul, Minn.
David Bremer, St. Paul, Minn.
Judith Palmer, St. Paul, Minn.
Deborah A. Siebrecht, St. Paul, Minn.
Douglas Hefti, St. Paul, Minn.
Gerald H. Bergquist, Chief Deputy, Minneapolis, Minn.
Florence Keenan, Minneapolis, Minn.
Helen Sinna, Minneapolis, Minn.
Gerald R. Fristensky, Minneapolis, Minn.
Carol Debby, Minneapolis, Minn.
Cyndee Bentzen, Minneapolis, Minn.
Lowell Lindquist, Minneapolis, Minn.
Mary Gibbons, Minneapolis, Minn.
Betty Isaacson, Minneapolis, Minn.

UNITED STATES ATTORNEY

Robert G. Renner

ASSISTANT UNITED STATES ATTORNEYS

Thorwald Anderson, Jr.
Joseph T. Walbran
Elizabeth A. Egan
Stephen G. Palmer
Francis X. Herman
Daniel M. Scott
Donald Parr
John Lee
Mel Dickstein
Richard Vosepka
Ann D. Montgomery

DEPARTMENT OF JUSTICE, BUREAU OF INVESTIGATION

John E. Otto, Special Agent in Charge, Minneapolis, Minn.

UNITED STATES MARSHAL

Harry D. Berglund, Minneapolis, Minn.
James L. Propotnick, Chief Deputy, Minneapolis, Minn.
James Redpath, Supervisory Deputy, St. Paul, Minn.

SESSIONS OF COURT—DISTRICT OF MINNESOTA

Third Division (St. Paul): Continuous.
Fourth Division (Minneapolis): Continuous.
Fifth Division (Duluth): Continuous.
Sixth Division (Fergus Falls): Continuous.

The State of Minnesota constitutes one judicial district, divided into six divisions. The clerk maintains offices in the third (St. Paul), fourth (Minneapolis), and fifth (Duluth) divisions only, and all papers and correspondence relative to cases in those divisions should be mailed to the divisional offices involved. All papers and correspondence relative to cases in the first, second, and sixth divisions should be mailed to the clerk's office at St. Paul.

COUNTIES IN THE DISTRICT

First Division: Dodge, Fillmore, Houston, Mower, Olmsted, Steele, Wabasha, and Winona.

Second Division: Blue Earth, Brown, Cottonwood, Faribault, Freeborn, Jackson, Lac qui Parle, LeSueur, Lincoln, Lyon, Martin, Murray, Nicollet, Nobles, Pipestone, Redwood, Rock, Sibley, Waseca, Watonwan, and Yellow Medicine.

Third Division: Chisago, Dakota, Goodhue, Ramsey, Rice, Scott, and Washington.

Fourth Division: Anoka, Carver, Chippewa, Hennepin, Isanti, Kandiyohi, McLeod, Meeker, Renville, Sherburne, Swift, and Wright.

Fifth Division: Aitkin, Benton, Carlton, Cass, Cook, Crow Wing, Itasca, Kanabec, Koochiching, Lake, Mille Lacs, Morrison, Pine, and St. Louis.

Sixth Division: Becker, Beltrami, Big Stone, Clay, Clearwater, Douglas, Grant, Hubbard, Kittson, Lake of the Woods, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stearns, Stevens, Todd, Traverse, Wadena, and Wilkin.

REFEREES IN BANKRUPTCY

Jacob Dim, St. Paul, Minn.
Hartley Nordin, Minneapolis, Minn.
Kenneth G. Owens, Minneapolis, Minn.
John J. Connelly, St. Paul, Minn.

MASTERS IN CHANCERY

(Masters appointed by the court when deemed necessary)

UNITED STATES MAGISTRATES

Patrick J. McNulty, Duluth, Minn.
Steven Arnold Nelson, International Falls, Minn.
George G. McPartlin, St. Paul, Minn.
Jay R. Petterson, Bemidji, Minn.
J. Earl Cudd, Minneapolis, Minn.
Richard A. Gullicksen, Rochester, Minn.

APPENDIX 6

SUPREME COURT OF MINNESOTA RULES

RULES OF CIVIL APPELLATE PROCEDURE
TABLE OF CONTENTS

TITLE I APPLICABILITY OF RULES

RULE 101
SCOPE OF RULES

These rules govern procedure in the Supreme Court of Minnesota in civil appeals; in criminal appeals insofar as the rules are not inconsistent with the Rules of Criminal Procedure or Minnesota Statutes; in proceedings for review of orders of administrative agencies, boards or commissions; and on applications for writs or other relief in civil proceedings which the Supreme Court or a justice thereof is competent to give. The term "trial court" as used in these rules shall refer to the court or agency whose decision is sought to be reviewed.

RULE 102
SUSPENSION OF RULES

In the interest of expediting decision upon any matter before it, or for other good cause shown, the Supreme Court, except as otherwise provided in Rule 126.02, may suspend the requirement or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

TITLE II APPEALS FROM JUDGMENTS AND ORDERS

RULE 103
APPEAL AS OF RIGHT; HOW TAKEN

103.01 Manner of Making Appeal

(1) An appeal shall be made by the service of a written notice of appeal on the adverse party. The notice shall specify the judgment or order from which the appeal is taken and the names, addresses, and telephone numbers of opposing counsel and the parties they represent. Not more than five days after expiration of the time to appeal, the appellant shall file the notice of appeal and the cost bond required by Rule 107 with the clerk of the court in which the judgment or order was entered, together with a deposit of $25.00. The bond may be waived by stipulation of the parties.

(2) When a party in good faith serves notice of appeal from a judgment or an order, and omits, through inadvertence or mistake, to proceed further with the appeal, or to stay proceedings, the Supreme Court may grant relief on such terms as may be just.

(3) Upon compliance with subdivision (1) of this rule, the clerk of the trial court shall immediately transmit to the clerk of the Supreme Court $20.00 out of the prescribed fee together with a certified copy of the notice of appeal, the affidavit of service of notice of appeal, the order or judgment from which the appeal is taken, and the bond or stipulation waiving such bond (as amended October 23, 1969).

103.02 Joint Appeals.

If two or more parties are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate notice of appeal, and they may thereafter proceed on appeal as a single appellant.

103.03 Appealable Judgments and Orders.

An appeal may be taken to the Supreme Court:

(a) From a judgment entered in the trial court;

(b) From an order which grants, refuses, dissolves, or refuses to dissolve, an injunction;

(c) From an order vacating or sustaining an attachment;

(d) From an order involving the merits of the action or some part thereof;

(e) From an order refusing a new trial, or from an order granting a new trial if the trial court expressly states therein, or in a memorandum attached thereto, that the order is based exclusively upon errors of law occurring at the trial, and upon no other ground; and the trial court shall specify such errors in its order or memorandum, but upon appeal, such order granting a new trial may be sustained for errors of law prejudicial to respondent other than those specified by the trial court;

(f) From an order which, in effect, determines the action, and prevents a judgment from which an appeal might be taken;

(g) From a final order or judgment made or rendered in proceedings supplementary to execution;

(h) Except as otherwise provided by statute, from the final order or judgment affecting a substantial right made in a special proceeding, provided that the appeal must be taken within the time limited for appeal from an order;

(i) If the trial court certifies that the question presented is important and doubtful, from an order which denies a motion to dismiss for failure to state a claim upon which relief can be granted or from an order which denies a motion for summary judgment.

103.04 Scope of Review.

(1) The Supreme Court upon an appeal may reverse, affirm, or modify the judgment or order appealed from, or take any other action as the interests of justice may require.

(2) On appeal from an order the Supreme Court may review any order affecting the order from which the appeal is taken and on appeal from a judgment may review any order involving the merits or affecting the judgment. It may review any other matter as the interests of justice may require.

RULE 104
TIME FOR SERVICE OF NOTICE OF APPEAL

104.01 Judgments and Orders.

An appeal from a judgment may be taken within 90 days after the entry thereof, and from an order within 30 days after service of written notice of filing thereof by the adverse party.

104.02 Effect of Entry of Judgment.

No order made prior to the entry of judgment shall be appealable after the expiration of time to appeal from the judgment. Time to appeal from the judgment under this section shall not be extended by the subsequent insertion therein of the costs and disbursements of the prevailing party.

104.03 Special Proceedings.

Except as otherwise provided by statute, an appeal from the final order or judgment affecting a substantial right made in a special proceeding must be taken within the time limited for appeal from an order.

RULE 105
DISCRETIONARY REVIEW

105.01 Petition for Permission to Appeal; Time.

The Supreme Court, in the interest of justice and upon the petition of a party, may allow an appeal from an order not otherwise appealable under Rule 103.03 except an order made during trial. The petition shall be served on the adverse party within the time limited for appeal from an appealable order. Four copies of the petition, including the original, shall be filed with the clerk of the Supreme Court, but the Supreme Court may direct that additional copies be provided.

105.02 Content of Petition; Response.

The petition shall be entitled as in the trial court and shall contain a statement of facts necessary to an understanding of the questions of law or fact determined by the order of the trial court; a statement of the question itself; and a statement why an immediate appeal is necessary and desirable. The petition shall include or have annexed thereto a copy of the order from which appeal is sought and any findings of fact, conclusions of law and memorandum relating thereto. Within seven days after service of the petition, any adverse party may serve and file a response thereto, with copies in the number required for the petition. All papers may be typewritten.

The petition and any response shall be submitted without oral argument unless otherwise ordered.

105.03 Grant of Permission; Procedure.

If permission to appeal is granted, the clerk of the Supreme Court shall notify the clerk of the trial court and the appellant shall pay the appeal fee and file the bond as required by these rules and shall thereafter proceed as though the appeal had been noticed by service of a written notice of an appeal. The time fixed by these rules for transmitting the record and for filing the briefs and appendix shall run from the date of the entry of the order granting permission to appeal.

RULE 106
RESPONDENT'S RIGHT TO OBTAIN REVIEW

A respondent may obtain review of a judgment or order entered in the same action which may adversely affect him by serving a notice of review on all parties to the action who may be affected by the judgment or order. The notice of review shall specify the judgment or order to be reviewed and shall be served upon the other parties within 15 days after service of the notice of appeal on that respondent and thereafter shall be filed with the clerk of the Supreme Court.

RULE 107
BOND OR DEPOSIT FOR COSTS

A bond shall be executed by, or on behalf of, the appellant. The bond shall be conditioned upon the

payment of all costs and disbursements awarded against appellant on the appeal, not exceeding the penalty of the bond which shall be at least $500. In lieu of said bond, the appellant may deposit $500 with the clerk of the trial court as security for such payment. The bond may be filed or the deposit may be made without approval or order of the trial court. The bond or deposit may be waived by written consent of the respondent which consent shall be filed with the clerk of the trial court.

RULE 108
SUPERSEDEAS BOND; STAYS

108.01 Supersedeas Bond

(1) An appeal from an order or judgment shall stay proceedings in the trial court and save all rights affected thereby, if the appellant provides a supersedeas bond in the amount and form which the trial court shall order and approve, in the cases provided in this Rule.

(2) If the appeal is from an order, the condition of the bond shall be the payment of the costs of the appeal, the damages sustained by the respondent in consequence of the appeal, and the obedience and satisfaction of the order or judgment which the Supreme Court may give, if the order or any part thereof is affirmed or if the appeal is dismissed.

(3) If the appeal is from a judgment directing *the payment of money, the condition of the bond* shall be the payment of the judgment or that part of the judgment which is affirmed and all damages awarded against the appellant upon the appeal, if the judgment or any part thereof is affirmed, or if the appeal is dismissed.

(4) If the appeal is from a judgment directing the assignment or delivery of documents or personal property, the condition of the bond shall be the obedience of the order or judgment of the Supreme Court. The bond provided by this subdivision need not be given if the appellant places the document or personal property in the custody of the officer or receiver whom the trial court may appoint.

(5) If the appeal is from a judgment directing the sale or delivery or possession of real property, the condition of the bond shall be the payment of the value of the use and occupation of the property from the time of the appeal until the delivery of the possession of the property if the judgment is affirmed, and the undertaking that the appellant shall not commit or suffer the commission of any waste on the property while it remains in his possession during the pendency of the appeal.

(6) In cases not specified in subdivisions (2) to (5) hereof, the giving of the bond specified in Rule 107 shall stay proceedings in the trial court.

(7) Upon motion, the trial court may require the appellant to provide a supersedeas bond if it determines that the provisions of Rule 108 do not provide adequate security to the respondent.

108.02 Judgments Directing Conveyances.

If the appeal is from a judgment directing the execution of a conveyance or other instrument, its execution shall not be stayed by an appeal until the instrument shall be executed and deposited with the clerk of the trial court to abide the judgment of the Supreme Court.

108.03 Extent of Stay.

When a bond is given as provided by Rule 108.01, it shall stay all further proceedings in the trial court upon the judgment or order appealed from or the matter embraced therein; but the trial court may proceed upon any other matter included in the action, and not affected by the judgment or order appealed from.

108.04 Respondent's Bond to Enforce Judgment.

Notwithstanding an appeal from a money judgment and security given for a stay of proceedings thereon, the trial court, on motion and notice to the adverse party, may grant leave to the respondent to enforce the judgment upon his giving bond to the appellant as herein provided, if it be made to appear to the satisfaction of the trial court that the appeal was taken for the purpose of delay. Such bond shall be executed by the respondent, or someone in his behalf, and shall be conditioned that if the judgment be reversed or modified the respondent will make such restitution as the Supreme Court shall direct.

108.05 Joinder of Bond Provisions; Service on Adverse Party.

The bonds provided for in Rule 107 and Rule 108.01 may be in one instrument or several, at the option of the appellant, and shall be served on the adverse party.

108.06 Perishable Property.

If the appeal is from a judgment directing the sale of perishable property, the trial court may order the property to be sold and the proceeds thereof deposited or invested to abide the judgment of the Supreme Court.

RULE 110
THE RECORD ON APPEAL

110.01 Composition of the Record on Appeal.

The papers filed in the trial court, the offered exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.

110.02 The Transcript of Proceedings; Duty of Appellant to Order; Notice to Respondent if Partial Transcript is Ordered; Duty of Reporter; Form of Transcript.

(1) Within 10 days after service of the notice of appeal appellant shall, in writing, with a copy to the clerk of the Supreme Court and all counsel of record, order from the reporter a transcript of such parts of the proceedings not already part of the record as he deems necessary for inclusion in the record. Unless the entire transcript is to be included, the appellant, within said 10 days, shall file and serve on the respondent a description of the parts of the transcript which he intends to include in the record and the statement of the issues he intends to present on appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary he shall within 10 days of service of such description order such parts from the reporter or serve and file a motion in the trial court for an order requiring the appellant to do so.

(2) At the time of ordering, a party must make satisfactory arrangements with the reporter for the payment of the cost of the transcript and all necessary copies. The reporter shall promptly acknowledge receipt of said order and his acceptance of it, in writing, with copies to the Clerk of the Supreme Court and all counsel of record and in so doing shall state the date, not to exceed a period of sixty days, by which the transcript will be furnished. Upon delivery of the transcript to the appellant, the reporter shall file with the Clerk of the Supreme Court a certificate evidencing the date of delivery of the transcript.

(3) If any party deems the period of time set by the reporter to be excessive or insufficient, or if the reporter needs an extension of time for completion of the transcript, the party or reporter may request a different period of time within which the transcript must be delivered by written motion to the Supreme Court under Rule 127, showing good cause why said period of time is excessive or insufficient. The Court Administrator of the Supreme Court shall act as a referee in hearing said motions and shall file with the Court appropriate findings and recommendations for an order of the Court in said matter. A failure to comply with the order of the Court fixing a time within which the transcript must be delivered may be punished as a contempt of Court.

(4) The transcript shall be typewritten on 11 x 8½ inches or 10½ x 8½ inches unglazed opaque paper with double spacing between each line of text, shall be bound at the left-hand margin, and shall contain a table of contents. The name of each witness shall appear at the top of each page containing his testimony. A question and its answer may be contained in a single paragraph. The original and first copy of the transcript shall be filed with the clerk of the trial court, and a copy shall be promptly transmitted to the attorney for each party to the appeal separately represented. All copies must be legible. The reporter shall certify the correctness of the transcript.

110.03 Statement of the Proceedings When No Report Was Made or When the Transcript is Unavailable.

If no report of all or any part of the proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 15 days after service of the notice of appeal, prepare a statement of the proceedings from the best available means, including his recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 15 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the trial court and the statement as approved by the trial court shall be included in the record.

110.04 Agreed Statement as the Record.
In lieu of the record as defined in Rule 110.01, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the trial court may consider necessary to present the issues raised by the appeal, shall be approved by the trial court and shall be the record on appeal.

110.05 Correction or Modification of the Record.
If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and determined by the trial court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the Supreme Court, or the Supreme Court, on motion by a party or on its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be approved and transmitted. All other questions as to the form and content of the record shall be presented to the Supreme Court.

RULE 111
TRANSMISSION OF THE RECORD

111.01 Transmission of Record; Time
The record shall be transmitted to the clerk of the Supreme Court by the clerk of the trial court 60 days prior to the date set for oral argument or submission of the appeal unless the time is shortened by an order of the Supreme Court. The clerk shall transmit with the record a list, in duplicate, of the exhibits and the items comprising the record, identifying each with reasonable definiteness. Appellant's attorney has the duty to see that the clerk of the trial court complies with this rule. A party must make his own arrangements for the transportation of bulky or weighty exhibits to and from the clerk of the Supreme Court. Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the Supreme Court.

111.02 Exhibits.
All exhibits sent to the clerk of the Supreme Court shall have endorsed thereon the title of the case to which they belong. All exhibits will be returned to the clerk of the trial court with the remittitur. All models will be so returned when necessary on a new trial, but where the decision of the Supreme Court is final and no new trial is to be had, such models will be destroyed by the clerk of the Supreme Court unless called for by the parties within 30 days after final decision is rendered.

111.03 Record for Preliminary Hearing in the Supreme Court.
If prior to the time the record is transmitted a party desires to make a motion for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the trial court at the request of any party shall transmit to the Supreme Court such parts of the original record as the party shall designate.

111.04 Disposition of Record after Appeal.
Upon the termination of the appeal, the clerk of the Supreme Court shall transmit the original transcript to the State Law Library and the remainder of the record to the clerk of the trial court.

TITLE III. REVIEW OF WORKMEN'S COMPENSATION COMMISSION; TAX COURT; DEPARTMENT OF EMPLOYMENT SERVICES; COMMERCE DEPARTMENT; AND OTHER DECISIONS REVIEWABLE OF RIGHT BY CERTIORARI TO SUPREME COURT

RULE 115
CERTIORARI AS A MATTER OF RIGHT

115.01 How Obtained; Time for Securing Writ
Review of a decision of Workmen's Compensation Commission; Tax Court; Department of Employment Services; Commerce Department; and other decisions reviewable of right by certiorari to the Supreme Court may be had by securing issuance of a writ of certiorari within sixty (60) days after the party applying for such writ shall have received written notice of the decision sought to be reviewed, unless an applicable statute prescribes a different period of time. (As amended Oct. 23, 1969.)

115.02 Petition for Writ; How Secured.
The petition and a proposed writ of certiorari shall be presented to the clerk of the Supreme Court who shall issue the writ in the name of the court.

115.03 Contents of the Petition and Writ; Filing and Service Thereof.
(1) Contents and Form of Petition and Writ. The petition shall definitely and briefly state the judgment, order, or proceeding which is sought to be reviewed and the errors which the petitioner claims. The title and form of the petition and writ may be as shown in Forms 3 and 4 of the Appendix.

(2) Bond or Security. Petitioner shall file such bond or other security as may be required by statute or by the Supreme Court.

(3) Filing; Fees. The clerk shall file the original petition and issue the original writ. The petitioner shall pay the clerk of the administrative agency $25, $5 of which shall be retained by the agency and $20 of which shall be forwarded to the clerk of the Supreme Court unless a different fee is required by statute.

(4) Service; Time. The petitioner shall serve copies of the petition and writ upon the body to which it is directed and upon the adverse party in interest within 60 days after petitioner shall have received written notice of the decision to be reviewed unless a different time is prescribed by statute.

115.04 The Record on Review by Certiorari; Transmissions of the Record.
As near as may be, the provisions of Rules 110 and 111 respecting the record and the time and manner of its transmission and filing or return in appeals shall govern in cases on writ of certiorari unless otherwise provided by statute or order of the court. Each reference in those rules to the trial court, the clerk of the trial court and notice of appeal shall be read as a reference to the body whose decision is to be reviewed, to the clerk or secretary thereof, and to writ of certiorari respectively.

115.05 Costs and Disbursements.
Costs and disbursements may be taxed by the prevailing party but not for or against the body to whom the writ is directed. In case a writ shall appear to have been brought for the purpose of delay or vexation the court may award double costs to the prevailing party.

115.06 Dismissal Costs.
If any writ of certiorari shall be issued contrary to statute, or shall not be served upon the adverse party as required by these rules, the party against which the same is so issued may have the same dismissed on motion and affidavit showing the facts and shall be entitled to his costs and disbursements.

TITLE V EXTRAORDINARY WRITS

RULE 120
WRITS OF MANDAMUS AND PROHIBITION DIRECTED TO A JUDGE OR JUDGES AND OTHER WRITS

120.01 Petition for Writ.
Application for a writ of mandamus or of prohibition or for any other extraordinary writ directed to a judge or judges shall be made by petition. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and of the relief sought; and a statement of the reasons why the extraordinary writ should issue.

120.02 Submission of Petition, Preliminary Conference
The attorney for the petitioner shall file the petition and a proposed writ with the clerk of the Supreme Court after submitting the petition to the Supreme Court or any justice and after having given all other parties to the action reasonable oral or written notice of the date and time of the submission and the conference thereon, but the Supreme Court or any justice may waive the requirement of such notice.

120.03 Procedure Following Submission.
If the Supreme Court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it may (a) issue a peremptory writ

or (b) grant temporary relief and order that an answer be served and filed by the respondent within the time fixed by the order or (c) issue an order to show cause why the writ should not be granted. The petition, if not previously served, and the order shall be served by the petitioner on all the other parties to the action in the trial court and on the trial judge. All parties other than the petitioner shall be deemed respondents. Respondents may answer jointly. If a respondent does not desire to respond, he may so advise the clerk of the Supreme Court and all parties by letter, but the petition shall not thereby be taken as admitted. If briefs are required, the clerk of the Supreme Court shall advise the parties of the dates on which they are to be filed. There shall be no oral argument unless the Supreme Court shall so direct.

120.04 Filing; Form of Papers; Number of Copies.
Upon receipt of a $10 filing fee, the clerk shall file the petition. All papers and briefs may be typewritten. Four copies, including an original, shall be filed with the clerk, but the Supreme Court may direct that additional copies be provided. Service of all papers and briefs may be made by mail.

TITLE VII GENERAL PROVISIONS

RULE 125
FILING AND SERVICE

125.01 Filing.
Papers required or permitted to be filed must be received by the clerk of the Supreme Court within the time fixed for filing. If a motion or petition requests relief which may be granted by a single justice, the justice may permit the motion to be filed with him, in which event he shall note thereon the date of filing and shall thereafter transmit it to the clerk.

125.02 Service of All Papers Required.
Copies of all papers filed by any party shall be served by him, at or before the time of filing, on all other parties to the appeal or review. Service on a party represented by an attorney shall be made on the attorney.

125.03 Manner of Service.
Service may be personal or by mail. Personal service includes delivery of the copy to the attorney or other responsible person in the office of the attorney. Service by mail is complete on mailing.

125.04 Proof of Service.
Papers presented for filing shall contain either a written admission of service or an affidavit of service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without proof of service, but shall require such proof to be filed promptly thereafter.

RULE 126
COMPUTATION AND EXTENSION OR LIMITATION OF TIME

126.01 Computation.
In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the method of computation specified in Rules 6.01 and 6.05 of the Rules of Civil Procedure for the District Court shall be used.

126.02 Extension or Limitation of Time.
The Supreme Court for good cause shown may by order extend or shorten the time prescribed by these rules or by its order for doing any act, and may permit an act to be done after the expiration of such time if the failure to act was excusable under the circumstances; but the Supreme Court may not extend or shorten the time for service of a notice of appeal or the time prescribed by law for securing a review of an order of an administrative agency, board, commission or officer, except as specifically authorized by law.

RULE 127
MOTIONS

Unless another form is prescribed by these rules, an application for an order or other relief shall be made by serving and filing a motion in writing for such order or relief. The motion shall specify the date of its submission, which date shall be not less than 8 days after service, and shall state with particularity the grounds therefor and set forth the order or relief sought. If the motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file an answer in opposition within 5 days after service of the motion. Any reply shall be served within 2 days thereafter. The motion and all papers relating thereto may be typewritten. An original and three copies of all papers shall be filed. Oral argument will not be permitted except by order of the Supreme Court.

RULE 128
BRIEFS

128.01 Brief of Appellant.
The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A concise statement of the legal issue or issues involved, omitting unnecessary detail. Each issue shall be stated as an appellate court would state the broad issue presented. Each issue shall be followed by a concise statement how the trial court decided it.

(3) A statement of the case and the facts. A statement of the case shall first be presented identifying the trial court and the trial judge and indicating briefly the nature of the case and its disposition in the trial court. There shall follow a statement of facts relevant to the grounds urged for reversal, modification, or other relief. The facts must be stated fairly, with complete candor, and as concisely as possible. Where it is claimed that a verdict, finding of fact, or other determination is not sustained by the evidence, the evidence, if any, tending directly or by reasonable inference to sustain the verdict, findings or determination shall be summarized. Each statement of a material fact shall be accompanied by a reference to the record, as provided in Rule 128.04, where such fact appears.

(4) An argument. The argument may be preceded by a summary introduction. The argument shall contain the contentions of the party with respect to the issues presented, the reasons therefor, and the citations to the authorities relied on. Each issue shall be separately presented. Needless repetition shall be avoided.

(5) A short conclusion stating the precise relief sought.

(6) The appendix required by Rule 130.01.

128.02 Brief of Respondent
The brief of the respondent shall conform to the requirements of Rule 128.01, except that a statement of the issues or of the case or facts need not be made unless the respondent is dissatisfied with the statement of appellant. If a notice of review is filed pursuant to Rule 106, the respondent's brief shall contain the issues specified in the notice of review and the argument thereon as well as the answer to the brief of appellant. A respondent who fails to file a brief when due shall not be entitled to oral argument without leave of the Court.

128.03 Reply Brief.
The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of the Supreme Court.

128.04 References in Briefs to Record.
Whenever a reference is made in the briefs to any part of the record which is reproduced in the appendix or in a supplemental record, the reference shall be made to the specific pages of the appendix or the supplemental record where the particular part of the record is reproduced. Whenever a reference is made to a part of the record which is not reproduced in the appendix or in a supplemental record, the reference shall be made to the particular part of the record, suitably designated, and to the specific pages thereof, e.g., Motion for Summary Judgment, p. 1; Transcript, p. 135; Plaintiff's Exhibit D, p. 3. Intelligible abbreviations may be used.

128.05 Reproduction of Statutes, Ordinances, Rules, Regulations, Etc.
If determination of the issues presented requires the study of statutes, ordinances, rules, regulations, etc., or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.

RULE 129
BRIEF OF AN AMICUS CURIAE

Upon prior notice to the parties, a brief of amicus curiae may be filed by leave of the Supreme Court.

A request for leave shall identify the interest of the applicant and shall state the reason why a brief of an amicus curiae is desirable. Copies of an amicus curiae brief shall be served on the parties. An amicus curiae will not participate in oral argument.

RULE 130
THE APPENDIX TO THE BRIEFS; SUPPLEMENTAL RECORD

130.01 Record Not to be Printed; Appellant to File Appendix.

(1) The record shall not be printed. The appellant shall prepare and file an appendix to his brief which shall contain the following portions of the record:

(a) the relevant pleadings;
(b) relevant written motions and orders;
(c) the trial court's instructions and the verdict, or the findings of fact, conclusions of law and order for judgment;
(d) relevant post trial motions and orders;
(e) any memorandum opinions;
(f) any portion of the transcript containing a discussion of the trial court's instructions and any relevant requests for instructions if the instructions are challenged on appeal;
(g) any judgments; and
(h) the notice of appeal.

The parties shall have regard for the fact that the entire record is always available to the Supreme Court for reference or examination and shall not engage in unnecessary reproduction.

(2) If the record includes a statement of the proceedings (made pursuant to Rule 110.03) or an agreed statement (made pursuant to Rule 110.04), the statement shall be included in the appendix.

130.02 Respondent May File Appendix.

If the respondent determines that the appendix filed by the appellant omits any items specified in Rule 130.01, he may prepare and file an appendix to his brief containing the omitted items.

130.03 Party May File Supplemental Record; Not Taxable Cost.

A party may prepare and file a supplemental record, suitably indexed, containing any relevant portion of the record not contained in the appendix. The original paging of each part of the transcript set out in the supplemental record shall be indicated by placing in brackets the number of the original page at the place where the page begins. If the transcript is abridged, the pages and parts of pages of the transcript omitted shall be clearly indicated following the index and at the place where the omission occurs. A question and its answer may be contained in a single paragraph. The cost of producing the supplemental record shall not be a taxable cost.

RULE 131
FILING AND SERVICE OF BRIEFS, THE APPENDIX, AND THE SUPPLEMENTAL RECORD

131.01 Time for Filing and Service.

The appellant shall serve and file his brief and appendix within 60 days after delivery of the transcript by the reporter. If the transcript is obtained prior to appeal, or if the record on appeal does not include a transcript, then the appellant shall serve and file his brief and appendix within 60 days after service of the notice of appeal upon the adverse party. The respondent shall serve and file his brief and appendix, if any, within 45 days after service of the brief of appellant. The appellant may serve and file a reply brief within 15 days after service of respondent's brief. If a party prepares a supplemental record, the supplemental record shall be served and filed with his first brief.

131.011 Application for Extension of Time

No extension of the time fixed in Rule 131.01 for the filing of appellant's brief and appendix and respondent's brief will be granted the parties except upon a motion pursuant to Rule 127. The motion shall be heard and considered by the Court Administrator acting as a referee and shall be granted only for good cause shown. Only an original of said motion shall be filed.

131.02 Number of Copies to be Filed and Served.

Twenty copies of each brief, appendix, and supplemental record, if any, shall be filed with the clerk of the Supreme Court, and two copies shall be served on the attorney for each party to the appeal separately represented. The clerk shall not accept a brief, appendix, or supplemental record for filing unless it is accompanied by admission or proof of service as required by Rule 125.

RULE 132
FORM OF BRIEFS, APPENDICES, SUPPLEMENTAL RECORDS, AND MOTIONS AND OTHER PAPERS

132.01 Form of Briefs, Appendices, and Supplemental Records.

(1) Briefs and appendices shall be produced by standard typographical printing. Any other duplicating or copying process capable of producing a clear black image on white paper may be used with special permission of the Supreme Court. All material (other than footnotes) must appear in at least 11 point type, or the equivalent thereof, on unglazed opaque paper. Briefs and accompanying appendices shall be bound together in volumes having pages 9 by 7 inches, and type matter 7 by 4-1/6 inches. The right-hand margins need not be justified. The pages of the appendix shall be separately numbered.

(2) The front cover of the brief and appendix shall contain: (a) the name of the court and the number of the case which number shall be printed or lettered in bold-face print or prominent lettering, the equivalent of 18 point figures, and shall be located one-half inch from the top center of the cover; (b) the title of the case; (c) the title of the document, e.g., Appellant's Brief and Appendix; and (d) the names, addresses, and telephone numbers of the attorneys representing each party to the appeal.

(3) Supplemental records shall be bound in separate volumes and shall, in all other respects, comply with this rule.

132.02 Form of Motions and Other Papers.

(1) Papers not required to be produced in the manner prescribed in Rule 132.01 may be typewritten or otherwise duplicated upon unglazed opaque paper, 13 by 8½ inches in size. Typewritten matter must be doublespaced. All copies must be legible.

(2) Each such paper shall contain a caption setting forth the name of the court, the title of the case, the file number, and a brief descriptive title of the paper; and shall be subscribed by the attorneys preparing the paper together with their addresses and telephone numbers.

RULE 133
SUMMARY ACTION; PREHEARING CONFERENCE; CALENDAR

133.01 Summary Action

(1) The Supreme Court, on its own motion or on motion of any party, may dismiss the appeal or other request for relief or may summarily affirm the order or judgment below if the Supreme Court lacks jurisdiction or if it clearly appears that the appeal presents no question of substantial merit; or the Supreme Court may limit the issues to be considered on appeal to those which present a substantial question. In case of obvious error the Supreme Court may summarily reverse or remand for additional proceedings or grant other appropriate relief.

(2) Motions for such relief may be made at any time but shall be filed promptly when the occasion appears and shall comply with the requirements of Rule 127.

133.02 Prehearing Conference

The Supreme Court may direct the attorneys for the parties to appear before the Supreme Court or a judge or a designated officer thereof for a prehearing conference to consider settlement, simplification of the issues, and such other matters as may aid in the disposition of the proceedings by the Supreme Court. The Supreme Court or judge thereof shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel. Such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

133.03 Calendar

No case shall be placed on the calendar for argument until after there has been filed in this court the appellant's brief and appendix and respondent's brief. If either appellants or respondents fail to file their brief within the time provided, or an extension thereof, the case shall be disposed of in accordance with Rule 142.

RULE 134
ORAL ARGUMENT

134.01 Notice of Hearing; Postponement.

The clerk shall advise all parties of the time and place at which oral argument will be heard. A

request for postponement of the hearing must be made by motion filed reasonably in advance of the date fixed for hearing.

134.02 Time Allowed for Argument.

Except as provided in Rule 134.07, the appellant shall be entitled to a total of 45 minutes in en banc hearings and to a total of 30 minutes in division hearings, and the respondent to 30 minutes in en banc hearings and to 20 minutes in division hearings, for oral argument. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary by motion filed in advance of the date fixed for hearing.

134.03 Order and Content of Argument.

The appellant is entitled to open and conclude the argument. It is the duty of counsel for appellant to state the case and facts fairly, with complete candor, and as fully as necessary for consideration of the issues to be presented. The appellant shall precede the statement of facts with a summary of the questions to be raised. Counsel should not read at length from the record, briefs or authorities.

134.04 Non-Appearance of Counsel.

If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

134.05 Submission on Briefs.

By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

134.06 Exhibits; Plats.

(1) If any exhibits are to be used at the hearing, counsel shall arrange to have them placed in the courtroom before the Court convenes on the date of the hearing. Counsel will also see that all photographic exhibits shall be in court for the oral argument.

(2) In cases where a plat or diagram will facilitate an understanding of the facts or of the issues involved, counsel for appellant shall have in court a plat or diagram of sufficient size and distinctness to be visible to the court. The plat or diagram may be drawn on the courtroom blackboard.

134.07 Oral Argument; When Allowed.

(1) In the following actions no oral argument is allowed:

(a) Actions for the recovery of money only, or for specific personal property, where the amount or the value of the property involved in the appeal shall not exceed $2,000.

(b) Appeals from orders involving only questions of practice, or forms or rules of pleading.

(c) Appeals from the clerk's taxation of costs.

(d) Appeals from municipal court.

(e) Cases classified by the court to be submitted on briefs.

(2) In the following actions appellant shall be entitled to 25 minutes in all and respondent to 15 minutes:

(a) Actions for the recovery of money only, or for specific personal property, where the amount or value of the property involved in the appeal is more than $2,000 but does not exceed $5,000.

(b) Cases involving decisions of administrative bodies other than the Tax Court.

(c) Cases to determine settlement for poor purposes.

(d) Divorce cases where only alimony or custody, or both, are involved.

(e) Appeals from a post-conviction remedy, habeas corpus, or similar proceeding involving a post-appeal review of a conviction in a criminal case.

(3) Application for leave to argue a case orally when a matter has been set for submission without oral argument shall be made by motion pursuant to Rule 127 setting forth the reason why the appeal should be submitted upon oral argument. Said motion will be considered timely filed if made within 15 days after receipt by counsel of the calendar which sets the matter on the nonoral argument calendar.

(4) Whenever any member of the court is not present at the oral argument of a case, such case shall be deemed submitted to such member of the court on the record and briefs therein and when during the consideration of a case there is a change in the personnel of the court the case shall be deemed submitted to the new member or members on the record and briefs.

RULE 135
EN BANC AND DIVISIONS HEARINGS

(1) Cases set for oral argument or submitted on the briefs will be heard either en banc or by a division of the court. The Chief Justice will assign three or more members of the court to sit as a division of the court to hear and decide cases assigned to such division.

(2) A court commissioner is hereby designated as a referee of the court for the purpose of reviewing the record, transcript, and briefs in all cases and submitting to all justices of the court his recommendations for the classification of cases for assignment to the en banc or to a division calendar, according to the legal and judicial significance of the issues raised. Any one justice of the court may order a case to be placed on the en banc calendar rather than a division calendar. The Chief Justice, in his discretion and according to the requirements of composing the calendar, shall accept, reject, or revise the recommended classification of cases. Thereafter, the clerk shall prepare the calendar.

(3) The decision of a case by a division of the court shall be by the concurrence of all the members of the division. If all the members of the division do not concur in the decision, the case will be re-set for an en banc hearing or considered and decided by the court en banc on the briefs. A copy of the tentative written opinion of a division in each case, prior to filing with the clerk, shall be circulated among the justices who did not sit on the case, and any two justices of the court, by questioning the decision, may signify their doubt as to the decision of the division, in which event the case, at a further conference of the court, will be re-set for an en banc hearing or considered and decided by the court en banc on the briefs. An en banc hearing under this paragraph shall be scheduled at the earliest practicable date, at which hearing the argument time allotted by Rule 134 shall not apply, but counsel for the parties will appear to answer legal or factual questions posed by the court. No additional briefs need be filed unless requested by the court.

(4) The Chief Justice may appoint a panel or panels of members of the court to review pending cases for disposition under the rules of this court.

RULE 136
NOTICE OF DECISION; JUDGMENT; REMITTITUR

136.01 Notice of Decision; Summary Opinion

(1) Notice of Decision

Upon the filing of a decision or order which determines the matter, the clerk shall mail a copy thereof to the attorneys for the parties and to the trial court. The mailing of such copy shall constitute notice of the filing.

(2) Summary Opinion

In any case decided under Rule 133.01 or in any other case where the Supreme Court determines that a detailed opinion would have no precedential value, the Supreme Court in its discretion may enter the following summary opinion:

"Affirmed (or reversed or other appropriate direction for action), pursuant to Rule 136.01 (2)."

136.02 Entry of Judgment; Stay.

The clerk shall enter judgment pursuant to the decision or order not less than ten days after the filing thereof. The service and filing of a petition for rehearing shall stay the entry of the judgment.

136.03 Remittitur.

The clerk of the Supreme Court shall transmit the remittitur to the clerk of the trial court when judgment is entered, unless the prevailing party files an objection to the remittitur pursuant to Rule 136.04. The remittitur shall contain a certified copy of the judgment of the Supreme Court signed by the clerk.

136.04 Objection to Remittitur.

Unless otherwise ordered by the Supreme Court, the prevailing party's properly taxed costs and disbursements shall be paid by the losing party before he shall be entitled to a remittitur. If the prevailing party serves and files a written objection to remittitur on or before the day set for the taxation of costs and disbursements, the clerk shall not transmit the remittitur to the clerk of the trial court until the costs and disbursements are paid. If it shall appear to the satisfaction of the Su-

preme Court that the losing party is unable to pay the costs and disbursements, it may permit the remittitur.

RULE 137
JUDGMENT ROLL, EXECUTIONS

137.01 Judgment Roll.
In all cases the clerk shall attach together the bond and notice of appeal certified and returned by the clerk of the trial court and a certified copy of the judgment of the Supreme Court, signed by him; and these papers shall constitute the judgment roll.

137.02 Execution; Issuance and Satisfaction.
Executions to enforce any judgment of the Supreme Court may issue to the sheriff of any county in which a transcript of the judgment is filed and docketed. Such executions shall be returnable within 60 days from the receipt thereof by the officer. On the return of an execution satisfied in due form of law the clerk shall make an entry thereof upon the record.

RULE 138
DAMAGES FOR DELAY

If an appeal delays proceedings on the judgment of the trial court and appears to have been taken merely for delay, the Supreme Court may award just damages and single or double costs to the respondent.

RULE 139
COSTS AND DISBURSEMENTS

139.01 Costs.
Unless otherwise ordered by the Supreme Court the prevailing party shall recover costs as follows (1) Upon a judgment in his favor on the merits $25; (2) Upon a dismissal, $10.

139.02 Disbursements.
Unless otherwise ordered by the Supreme Court, the prevailing party shall be allowed his disbursements necessarily paid or incurred.

139.03 Taxation of Costs and Disbursements; Time.
Costs and disbursements shall be taxed by the clerk upon 2 days' written notice served and filed by the prevailing party. The costs and disbursements so taxed shall be inserted in the judgment. Failure to tax costs and disbursements within 15 days after the filing of the decision or order shall constitute a waiver thereof.

139.04 Objections; Appeal.
Written objections to the taxation of costs and disbursements may be served and filed on or before the time set for the taxation thereof. A party may appeal to the Supreme Court from the clerk's taxation by serving and filing a notice of appeal within 6 days from the date of taxation by the clerk.

139.05 Disallowance of Costs and Disbursements.
The clerk, in the first instance, and the Supreme Court upon appeal from the clerk's taxation, or upon its own motion, may disallow the prevailing party's costs or disbursements or both, in whole or in part, for a violation of these rules or for other good cause. The prevailing party will not be allowed to tax as a disbursement the cost of reproducing parts of the record in the appendix which are not relevant to the issues on appeal.

RULE 140
PETITION FOR REHEARING

A petition for rehearing may be filed within 10 days after the filing of the decision or order unless the time is enlarged by order of the Supreme Court within the 10-day period. The petition shall set forth with particularity any controlling statute, decision, or principle of law, any material fact, or any material question in the case which, in the opinion of the petitioner, the Supreme Court has overlooked, failed to consider, misapplied, or misconceived. The petition shall be served upon the opposing party who may answer within 5 days thereafter. Oral argument in support of the petition will not be permitted. Thirteen copies of the petition, produced and sized as required by Rule 132.01, shall be filed with the clerk, except that any duplicated copy, other than a carbon copy, of a typewritten original may also be filed. A filing fee of $25 shall accompany the petition for rehearing. The filing of a petition for rehearing stays the entry of judgment until disposition of such petition. It does not stay the taxation of costs.

RULE 142
DISMISSAL; DEFAULT

142.01 Voluntary Dismissal.
If the parties to an appeal or other proceeding shall sign and file with the clerk a stipulation that the proceedings be dismissed, the clerk shall enter an order of dismissal accordingly.

142.02 Default of Appellant.
The respondent may serve and file a motion for judgment of affirmance or dismissal if the appellant shall fail or neglect to serve and file his brief and appendix as required by these rules. If the appellant is in default for 30 days and respondent has not made a motion under this rule, the Supreme Court shall order the appeal dismissed without notice, subject to reinstatement upon motion to the Supreme Court for good cause shown.

142.03 Default of Respondent.
If the respondent shall fail or neglect to serve and file his brief, the case shall be determined on the merits. If a defaulting respondent has filed a notice of review pursuant to Rule 106, the appellant may serve and file a motion for judgment of affirmance of the judgment or order specified in the notice of review, or for a dismissal of respondent's review proceedings.

RULE 143
PARTIES; SUBSTITUTION

143.01 Parties.
The party appealing shall be known as the appellant and the adverse party as the respondent. The title of the action shall not be changed in consequence of the appeal.

143.02 Death of a Party.
If any party to the appeal shall die while an appeal is pending in the Supreme Court, the surviving party or the legal representative or successor in interest of the deceased party, shall file with the clerk of the Supreme Court an affidavit showing such death and the name and address of the legal representative or successor in interest. The clerk, after giving notice to the representative or successor in interest, shall substitute the name of such legal representative or successor in interest by or against whom the appeal shall thereafter proceed. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Supreme Court may direct. If a party against whom an appeal may be taken dies after entry of judgment or order in the trial court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this rule. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his personal representative, or, if he has no personal representative, by his attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this rule.

143.03 Substitution for Other Causes.
If substitution of a party in the Supreme Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in Rule 143.02.

143.04 Public Officers.
When a public officer is a party to an appeal or other proceeding in the Supreme Court in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

RULE 144
CASES INVOLVING CONSTITUTIONAL QUESTIONS WHERE STATE IS NOT A PARTY

When the constitutionality of an act of the legislature is drawn in question in any proceeding in the Supreme Court to which the state or an officer, agency, or employee of the state is not a party, the party asserting the unconstitutionality of the act shall notify the attorney general thereof.

RULE 145
APPENDIX OF FORMS

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

RULE 146
TITLE

These rules may be known and cited as Rules of Civil Appellate Procedure.

RULE 147
EFFECTIVE DATE; STATUTES SUPERSEDED

147.01 Effective Date and Application to Pending Proceedings.

These rules will take effect on February 1, 1968. They govern all civil appeals and proceedings brought after they take effect, and also all further proceedings then pending, except to the extent that in the opinion of the Supreme Court their application in a particular proceeding pending when the rules take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the proceeding was brought applies.

147.02 Statutes Superseded.

Upon the taking of effect of these rules the statutes listed in Appendix A are superseded with respect to practice and procedure in the Supreme Court.

APPENDIX A
List of Statutes Superseded by Rules*

Minnesota Statutes 1965	Rules
§357.021, Subd. 2 (9)	103.01
§357.08 (2)	103.01, 115.03, 120.04
c.586	120
c.587	120
§605.001	101
§605.01	101
§605.02	143.01
§605.03	103.01
§605.045	103.01
§605.05	103.04
§605.065	106
§605.07	142.01
§605.08	104
§605.09	103.03
§605.10	107
§605.115	108.01
§605.14	108.02
§605.16	108.03
§605.17	108.04
§605.18	108.05
§605.19	108.01
§605.20	108.06
§605.21	101
§605.225	143.02
c.606	120
§607.01	139.01, .02
§607.02	136.04, 138

*Note. The listed statutes are superseded only insofar as they pertain to appellate practice and procedure. See Rule 147.02.

APPENDIX B
FORMS

Form 1
NOTICE OF APPEAL

State of Minnesota — District Court
County of..... .....Judicial District

A. B., Plaintiff,
v.
C. D., Defendant.
NOTICE OF APPEAL
No. .....

To: John Brown, Attorney for Plaintiff A. B.:

Please take notice, that the defendant C. D. appeals to the Supreme Court of the State of Minnesota from the order of the District Court entered on August 10, 1966, denying defendant's motion for a new trial.

Dated: August 30, 1966
SMITH & JONES
By .....
John Jones
Attorneys for Defendant C. D.
(address and telephone number)

(The trial court caption is used in the notice of appeal and the cost or supersedeas bond or the stipulation waiving bond; and the original and duplicate original is filed with the clerk of the trial court. All subsequent documents bear the Supreme Court caption and are filed with the clerk of the Supreme Court.)

Form 2
NOTICE OF REVIEW
No. .....
State of Minnesota
In Supreme Court

A. B., Plaintiff-Respondent,
v.
C. D., Defendant-Appellant.
NOTICE OF REVIEW

To: Smith & Jones, Attorneys for Appellant C. D.:

Please take notice, that the Respondent A. B. will seek review of the order of the District Court entered on August 10, 1966, denying plaintiff's motion for new trial on the issue of damages.

Dated: September 8, 1966
JOHN BROWN
By .....
John Brown
Attorney for Respondent A. B.
(address and telephone number)

Form 3
PETITION FOR WRIT OF CERTIORARI
No. .....
State of Minnesota
In Supreme Court

A. B., Respondent,
v.
X. Y. Z. Co., et al, Relators.
PETITION FOR WRIT OF CERTIORARI

To: The Supreme Court of the State of Minnesota:

The relators above named hereby petition the Supreme Court for a Writ of Certiorari to review a decision of the Workmen's Compensation Commission filed on October 1, 1966, upon the grounds that it is not in conformity with the terms of the Workmen's Compensation Act and is unwarranted by the evidence.

Dated: October 15, 1966
SMITH & JONES
By .....
John Jones
Attorneys for Relators
(address and telephone number)

Form 4
WRIT OF CERTIORARI
(Title as in Form 3)

TO: The Workmen's Compensation Commission of Minnesota:

You are hereby ordered to return to this court within 30 days from date hereof the record, exhibits and proceedings in the above entitled matter to the end that the decision of the Workmen's Compensation Commission filed on October 1, 1966, may be reviewed by this court.

Copies of this writ and the petition herein shall be served forthwith personally or by mail by relator upon the Secretary of the Workmen's Compensation Commission and upon ....., attorneys (name) for respondent (at .....,) and (address) proof of service filed herein.

Witness the Honorable ....., Chief Justice of the Supreme Court of Minnesota, and the seal of this Court, this 17th day of October, 1966.

(SEAL)

.....
Clerk of Supreme Court

Form 5
PETITION FOR WRIT OF PROHIBITION
No. .....
State of Minnesota
In Supreme Court

A. B., Plaintiff-Petitioner,
v.
C. D., Defendant-Respondent.
PETITION FOR WRIT OF PROHIBITION

To: The Supreme Court of the State of Minnesota:

The Petitioner, A. B., requests a writ of prohibition on the following grounds:

1. On January 2, 1966, A. B., as plaintiff, commenced an action against C. D., as defendant, in the District Court, County of ....., ... Judicial District, to recover damages for personal injuries sustained in an automobile accident and caused by the negligence of Defendant C. D.

2. On February 1, 1966, Defendant C. D. noticed the deposition of Mrs. A. B., the wife of petitioner, a copy of which is attached.

3. On February 3, 1966, Plaintiff A. B. moved said District Court for a protective order restraining C. D. from taking the deposition of Mrs. A. B., a copy of which is attached.

4. On February 14, 1966, the Honorable .....

....., Judge of said District Court, made and filed an order denying said motion and directing that the deposition of Mrs. A. B. be held on March 1, 1966, a copy of which order is attached.

5. A. B. has asserted and continues to assert the marital privilege afforded to him by M.S.A. §595.02(1). The issue presented by these proceedings is whether that privilege is applicable to discovery depositions.

6. The order of February 14, 1966, is in violation of said statute and contrary to law in that the District Court lacks power or authority to compel the testimony of Mrs. A. B. in the instant case. If the deposition is taken, irreparable harm will result to petitioner who has no adequate remedy at law.

WHEREFORE, the petitioner prays for a writ of prohibition restraining the District Court from enforcing the order of February 14, 1966.

Dated: February 16, 1966

JOHN BROWN
By .....
John Brown
Attorney for Petitioner
(address and telephone number)

Form 6
ORDER
(Title as in Form 5)

ORDER

Upon the petition of A. B. for a writ of prohibition, IT IS ORDERED:

1. All further proceedings in the District Court, County of ....., ... Judicial District, in respect to the order of said court of February 14, 1966, denying A. B.'s motion to restrain C. D. from taking the deposition of Mrs. A. B., are stayed until further order of this court.

2. The petitioner shall forthwith serve copies of this order on ....., attorneys for Respondent C. D. and on ....., Judge of said District Court.

3. The petitioner shall serve and file a written brief on or before March 15, 1966. Respondent C. D. shall serve and file an answer to the petition and a written brief on or before April 10, 1966.

Dated: February 17, 1966 .....
Chief Justice

Form 7
WRIT OF PROHIBITION
(Title as in Form 5)

WRIT OF PROHIBITION

The State of Minnesota to the Honorable ....., Judge of District Court, County of .... Judicial District:

Whereas, upon consideration of the petition and brief of A. B. and the answer and brief of Respondent C. D., this Court has determined that A. B. is entitled to the relief requested in said petition.

NOW, THEREFORE, We do command and direct that you immediately upon receipt of a copy of this writ vacate and set aside your order of February 14, 1966, and that you grant to said A. B. the relief requested in his motion of February 3, 1966. Copies of this writ shall be served forthwith by mail by A. B. upon you and upon respondent and proof of service filed herein.

Witness the Honorable ....., Chief Justice of the Supreme Court of the State of Minnesota, and the seal of this Court, this 1st day of May, 1966.

(SEAL)

.....
Clerk of Supreme Court

Form 8
APPELLANT'S BRIEF AND APPENDIX
(cover)

No. .....
State of Minnesota
In Supreme Court

A. B.,
Plaintiff-Respondent,
v.
C. D.,
Defendant-Appellant.

APPELLANT'S BRIEF AND APPENDIX

JOHN BROWN Attorney for Respondent (address and telephone number)	SMITH & JONES John Jones Attorneys for Appellant (address and telephone number)

* * * * *

TABLE OF CONTENTS

* * * * *

TABLE OF AUTHORITIES

* * * * *

LEGAL ISSUES

I. Does one who, without negligence, participates in the creation of a dangerous condition in a public highway, have a duty to exercise reasonable care to remove the condition or warn others of its presence?

Trial court held: In the affirmative.

II. Does the driver of a vehicle on an arterial highway have an obligation to reduce his otherwise legal speed until such time as he reasonably should have seen that the driver of an automobile on an intersecting street was not going to stop?

Trial court held: In the affirmative.

III. May a physician, who is called as an expert witness, give an opinion concerning the physical condition of a party which opinion is based, in part, on the opinions of other physicians who did not testify?

Trial court held: In the affirmative.

* * * * *

STATEMENT OF FACTS

This is an action to recover damages sustained by plaintiff as a result of an automobile accident which occurred on May 5, 1965, at an intersection of North Street and West Avenue in Saint Paul, Minnesota (A. 1, 2). The matter was tried in the District Court, ... County, ... Judicial

District, Judge ..... presiding. The jury returned a verdict for plaintiff in the amount of $17,000 (A. 7). The defendant appealed from an order denying his motion for a new trial (A. 11, 12).

The accident occurred at 11:30 p.m. (T. 4). It was raining heavily at the time (T. 11, 15). The defendant C. D. was driving his Jaguar automobile in an easterly direction on West Avenue (T. 24). Plaintiff was .....**(The remainder of the facts should be stated in compliance with Rule 128.01(3) accompanied by appropriate citations to the appendix and transcript.)**

• • • • •

ARGUMENT

I. One who, without negligence, participates in the creation of a dangerous condition in a public highway does not have a duty to exercise reasonable care to remove the condition or warn others of its presence. **(Each legal issue should be argued separately. See Rule 128.01(4).)**

II. The driver of a vehicle on an arterial highway does not have an obligation to reduce his otherwise legal speed until such time as he reasonably should have seen that the driver of an automobile on an intersecting street was not going to stop.
(Argument)

III. A physician, who is called as an expert witness, may not give an opinion concerning the physical condition of a party which opinion is based, in part, on the opinions of other physicians who did not testify.
(Argument)

Conclusion

(The conclusion shall contain a statement of the precise relief sought)

Respectfully submitted,
SMITH & JONES
John Jones
Attorneys for Appellant
(address and telephone number)

• • • • •

Appendix

(The pages of the appendix shall be separately numbered. See Rule 132.01(1))

RULES OF THE SUPREME COURT FOR ADMISSION TO THE BAR

RULE I

STATE BOARD OF LAW EXAMINERS. The State Board of Law Examiners shall consist of nine members who shall be appointed by the Supreme Court each for a term of three years or until his successor is appointed and qualifies. Two of the members shall be lay people. The terms of office may be staggered by the court by any method it deems appropriate. From among its members the board shall elect a president and the Supreme Court shall designate a secretary. The board shall be charged with the duty of administering these rules and shall have authority to make its own rules not inconsistent herewith.

RULE II

GENERAL REQUIREMENTS OF APPLICANTS. No person shall be admitted to practice law who has not established to the satisfaction of the State Board of Law Examiners:

(1) That he is at least 18 years of age;

(2) That he is a person of good moral character;*

(3) That he is a resident of this state; or maintains an office in this state; or has designated the Clerk of the Supreme Court as his agent for the service of process for all purposes;

(4) That he has graduated from an approved law school;**

(5) That he has passed a written examination.

*Character traits that are relevant to a determination of good moral character must have a rational connection with the applicant's present fitness or capacity to practice law, and accordingly must relate to the State's legitimate interest in protecting prospective clients and the system of justice.

**An approved law school is a law school that is provisionally or fully approved by the Section of Legal Education and Admissions to the Bar of the American Bar Association.

RULE III

ADMISSION BY EXAMINATION. A. Except as otherwise provided, no person shall be admitted to practice law until he shall have satisfactorily passed a written examination. The examination shall test the following subjects:

Constitutional Law
Property — Real and Personal*
Contracts
Torts
Sales and Negotiable Instruments
Private Corporations
Equity Jurisprudence
Wills and Administration
Minnesota Practice and Pleading
Evidence
Criminal Law and Procedure
Legal Ethics and Attorney and Client
Federal Taxation

*As of July 1, 1978, Personal Property will be eliminated and Administrative Law will be substituted.

B. Two examinations will be held each year: one beginning on the third Monday in February and one beginning the third Monday in July, and at such place as the Board deems appropriate.

C. An applicant who fails to pass the examination may take a re-examination at any regular examination date within the next two years. At least thirty (30) days before the time for the commencement of such examination the applicant shall give the Board notice of his desire to take such examination by making a new application on forms provided by the Board, accompanying the application with a fee of $75.00 (payable to the State Board of Law Examiners as provided in Rule V), and presenting any additional information as the Board may require. No applicant who has failed three examinations shall be permitted to take a further examination.

RULE IV

EDUCATIONAL QUALIFICATIONS. The educational qualifications of all applicants desiring to take the examination shall be established by evidence satisfactory to the Board showing graduation with a Bachelor of Laws or equivalent degree, within a period of four years prior to making the application, from a law school which is approved by the Section of Legal Education and Admissions to the Bar of the American Bar Association.

The four year limitation shall not apply to applicants previously admitted to practice in another jurisdiction.

RULE V

APPLICATION FOR EXAMINATION. A. Every person desiring permission to take the examination shall make written application to the Board in the manner prescribed by the Board. Such application shall be filed in duplicate in the office of the Director of Bar Admissions at least 90 days prior to the first day of the examination for which application is being made, and shall be accompanied by:

1. A fee of $75.00 in the form of a check, bank draft, or money order payable to the State Board of Law Examiners.

2. Affidavits of at least two persons unrelated to the applicant by blood or marriage, setting forth the duration of time and the circumstances under which they have known the applicant, details respecting the applicant's habits and general reputation, and such other information as may be proper to enable the Board to determine the moral character of the applicant.

3. If the applicant has been admitted to the practice of law in another jurisdiction the Board shall require a Character Investigation Report of the National Conference of Bar Examiners. The application shall be accompanied by an additional fee in the amount of the National Conference charge for conducting the investigation.

B. Every person desiring permission to take the examination shall also file or cause to be filed with the Board at least 10 days prior to the examination a degree or certificate from an approved law school showing that he has graduated, or that he is eligible to be graduated within 60 days of the last day of the examination, with a Bachelor of Laws or equivalent degree.

C. If an application is filed late, but not later than 10 days after the last day for filing a timely applica-

tion, an additional late filing fee of $25.00 shall be paid. No application will be accepted which is filed less than 80 days after the last day for filing a timely application.

D. An applicant may withdraw his application and be refunded $50.00 by giving notice of withdrawal to the Board. Such notice shall be in writing and must be received in the office of the Board of Law Examiners not later than 4 days prior to the examination. An applicant who fails to take or complete the examination shall not be entitled to any refund.

E. An applicant who is denied permission to take the examination will be refunded the sum of $50.00 which represents the portion of the application fee charged for taking the examination.

RULE VI

ACCESS TO EXAMINATION DATA. An applicant who takes and fails to pass the bar examination has the right, within 60 days after the examination results have been announced, to inspect his answers and the grades assigned thereto. No applicant shall be allowed to procure copies of the examination questions or his answers.

RULE VII

EXAMINATIONS — AUTHORITY OF THE BOARD. 1. For the purpose of aiding the State Board of Law Examiners in the preparation, administration and prompt grading of bar examinations, the board is authorized:

(a) Subject to the approval of the Supreme Court, to employ a Director of Bar Admissions on a full-time or part-time basis; to prescribe his duties; and to fix his compensation;

(b) To secure examination questions, together with analyses of the questions, from qualified law teachers outside the State of Minnesota, and to pay a reasonable compensation for such questions;

(c) To employ from among the members of the bar of the State of Minnesota lawyers of high ability to serve as readers to grade the answers to examinations upon the basis of standards determined by the board for each question after consultation with the director, the reader concerned with the particular question, and representatives of the approved law schools within the state;

(d) To fix the minimum satisfactory grade for success on the examination;

(e) To appoint a Review Committee whose function will be to review the examination papers of not less than the top 20 percent of the applicants who fail to achieve a passing grade on the examination. Such review shall be accomplished without prior knowledge of the grades initially assigned. An applicant shall be considered as having passed the examination if his final grade as determined by the Review Committee is equal to or exceeds the minimum passing grade fixed by the State Board of Law Examiners.

RULE VIII

ATTORNEYS FROM OTHER STATES — HOW ADMITTED. A. The Supreme Court may, upon certification by the Board of Law Examiners, waive the examination requirement and admit to practice law in this state any individual who has established to the satisfaction of the board:

1. That he has met the requirements of Rule II (1), (2) and (3).

2. That he is duly admitted to practice in another state, territory, the District of Columbia or any jurisdiction where the common law of England constitutes the basis of jurisprudence.

3. That he has been admitted to practice in the highest court of such other jurisdictions and has as his principal occupation been actively engaged in the practice of law or has been engaged in full-time law teaching in an approved law school or schools or a combination of both for at least five of the seven years next preceding his application.

B. Such attorney shall accompany his application by the following:

1. A certified copy of his application for admission to the bar in the state, territory, District of Columbia or jurisdiction in which he has been admitted to the practice of law.

2. A certificate of his admission to the bar in said state, territory, district or jurisdiction.

3. A certificate from the proper court or body therein that he is in good standing and not under pending charges of misconduct.

4. A certificate of a judge of a court of record and affidavits of two practicing attorneys of said state, territory, district or jurisdiction, stating how long and under what circumstances they have known the applicant and what they know of applicant's character and his experience in the practice or teaching of the law.

5. A fee of $200.00 in form of check or money order payable to the order of the State Board of Law Examiners, no part of which shall be refunded should the application be denied.

If the Board doubts the character or qualifications of the applicant it may impose such other tests as in its discretion may seem proper.

When an application for admission is made by a person admitted to practice law in other states, territories or jurisdictions the Board may employ the National Conference of Bar Examiners to make investigation and report upon said application, and may pay to said National Conference of Bar Examiners to make investigation and report a reasonable fee for its services in making such investigation and report.

An attorney-at-law duly admitted to practice in another state, territory, the District of Columbia or jurisdiction desiring admission to the practice of law in this state but who has not been actively engaged in the practice of law or full-time teaching as his principal occupation for the period prescribed herein must be examined for admission in accordance with the provisions of Rule V hereof (except that his application need not be made within four years of his graduation from law school) and in addition must meet all the requirements of this rule (except that the fee shall be $75.00).

An approved law school is a law school that is provisionally or fully approved by the Section of Legal Education for Admissions to the Bar of the American Bar Association.

RULE IX

LIMITED PRACTICE. A. The Supreme Court may, upon certification by the Board of Law Examiners, issue a Special Temporary License to practice law in this state to any individual who has established to the satisfaction of the Board:

(1) That he has met the requirements of Rule II (1), (2) and (3).

(2) That he is duly admitted to practice in another state, territory, District of Columbia or any jurisdiction where the common law of England constitutes the basis of jurisprudence.

(3) That he is employed as house counsel by a person, firm, association, or corporation engaged in business in this state, which business does not include the selling or furnishing of legal advice or services to others, or that he is employed as a full-time faculty member of an approved law school of this state.

B. Any person who has been issued a Special Temporary License shall limit his professional activities to counseling and practice for his employer, and shall not offer legal services or advice to the public.

C. Application shall be made upon forms provided by the Board and shall be accompanied by the following:

(1) A certified copy of his application for admission to the bar in the state, territory, District of Columbia or jurisdiction in which he has been admitted to the practice of law.

(2) A certificate of his admission to the bar in said state, territory, district or jurisdiction.

(3) A certificate that he is in good standing and not under pending charges of misconduct in said state, territory, district or jurisdiction.

(4) A certificate of a judge of a court of record and affidavits of two practicing attorneys of said state, territory, district or jurisdiction, setting forth the duration and the circumstances under which they have known the applicant and details respecting the applicant's character and his experience in the practice of law.

(5) A fee of $200.00 in form of check or money order payable to the order of the State Board of Law Examiners, no part of which shall be refunded should the application be denied.

(6) An affidavit from his employer stating that the applicant is employed by him.

D. When an application for admission is made by a person under this section the Board may employ the National Conference of Bar Examiners to make investigation and report upon said application, and may pay a reasonable fee for such services.

RULE X

HEARINGS BEFORE BOARD AND REVIEW BY COURT. Before the Board shall deny an application for permission to take the bar examination, it shall give the applicant an opportunity to appear and answer questions of the Board and to make such explanation as he may choose.

If the Board thereafter denies the application it shall so notify the applicant by certified mail directed to him at the mailing address appearing in his application, specifying the grounds of its determination. Within ten days of his receipt of such notification the applicant may, by written request directed to the Board at the office of the Director of Bar Admissions, demand a formal hearing. The hearing may, at the discretion of the Board, be held before the Board or before a hearing examiner appointed by the Board to conduct the hearing.

At least thirty days prior to the hearing the Board shall notify the applicant of the time and place thereof, and that he may be represented by counsel and present such witnesses as he may choose. Similar notice shall be given the President of the Minnesota State Bar Association and any other person or organization who or which, in the judgment of the Board, may be aggrieved by its determination. The Board may require ten days written notice of intention to participate in the hearing of all parties aggrieved.

Upon the conclusion of such hearing the Board shall prepare and file with the Clerk of the Supreme Court of the State of Minnesota its findings of fact, conclusions of law and determination. A copy of the findings of fact and decision shall be served upon the applicant and all parties to the proceedings. Service upon the applicant shall be made in the same manner as service of the summons in a civil action. Service upon all other parties shall be by registered mail.

The applicant may appeal to the Supreme Court from any adverse decision of the Board by serving upon and filing with the Director of Bar Admissions and filing in the office of the Clerk of the Supreme Court of the State of Minnesota, within twenty days of receipt by the applicant of the findings, conclusions of law and decision of the Board, a petition for review. The procedure upon the filing of such a petition shall conform to the rules of this Court, so far as applicable, for review of charges of the Board of Professional Responsibility. The Board of Law Examiners may employ counsel to present evidence and argument relating to the issues raised by the petition for review in the same manner, within the same times and to the same extent as the State Administrative Director on Professional Conduct in proceedings pursuant to the rules of this court on Professional Responsibility may do.

RULE XI

ADDITIONAL INVESTIGATION OF APPLICANTS. As to any and all persons who apply to take the examination, or who apply for admission without examination, the Board may make such further inquiry and investigation, and require such further evidence regarding moral character and educational qualifications as it deems proper. In obtaining the required or desired information, the Board will obtain the aid of the officers of or committees of bar associations whenever available.

RULE XII

STATE BAR ADVISORY COUNCIL. The State Bar Advisory Council shall consist of the following:

1. The chairman of the Legal Education Committee of the Minnesota State Bar Association.
2. A past president of the Minnesota State Bar Association, to be designated and appointed by the President of the Minnesota State Bar Association.
3. Two members of the State Board of Law Examiners, to be designated and appointed by the Supreme Court.
4. The deans (or representatives appointed by them) of each of the approved law schools within the State of Minnesota.
5. The Secretary of the State Board of Law Examiners, who shall serve as the secretary of the State Bar Advisory Council.

Said council shall consider matters of general policy concerning admission to the bar, including proposed amendments to the rules for admission to the bar, and other matters either specifically referred to it or deemed worthy of consideration by it, and shall make such recommendations to the Supreme Court concerning matters under consideration as it deems advisable.

The Secretary of the State Board of Law Examiners shall call a joint meeting of the council and the board at least once each year. In addition thereto, the council shall meet at such other time as it may be called together by the Supreme Court, the State Board of Law Examiners, or on its own motion.

The members of the State Bar Advisory Council shall receive no compensation by way of fees or expenses.

RULE XIII

ADMISSION OF ATTORNEYS IN LEGAL SERVICES PROGRAM. A. An attorney who, after graduation from an approved law school, is employed by or associated with an organized legal services program providing legal assistance to indigents in civil or criminal matters, and who is admitted to practice in a court of last resort of another state, shall be admitted to practice before the courts of Minnesota in all causes in which he is associated with an organized legal service program which is sponsored, approved, or recognized by the local county bar association. Admission to practice under this rule shall be limited to the above causes and shall be effective upon filing with the Clerk of this Court (1) a certificate of the court of last resort of any state certifying that the attorney is a member in good standing of the bar of that court, and (2) a statement signed by a representative of the organized legal services program that the attorney is currently associated with the program.

B. Admission to practice under this rule shall cease to be effective whenever the attorney ceases to be associated with such program. When an attorney admitted under this rule ceases to be so associated a statement to that effect shall be filed with the Clerk of this Court by a representative of the legal services program. In no event shall admission to practice under this rule remain in effect longer than 2½ years for any individual admitted under this rule.

C. The temporary license granted herein may be revoked at any time by order of this court.

D. This rule is applicable notwithstanding (1) any rule of this Court governing admission to the bar which is in effect on the date this rule becomes effective, and (2) any rule of this Court governing admission to the bar which becomes effective after the effective date of this rule, except a rule which expressly refers to this rule.

COURT RULES ON CERTIFIED LAW STUDENTS

Rule I

LIMITED PRACTICE BY CERTIFIED LAW STUDENTS. Any eligible law student in a law school in this state accredited by The American Bar Association, may, upon written approval of the Supreme Court of Minnesota, interview, advise, negotiate, and appear in any court on behalf of any indigent person accused of crime, or on behalf of the prosecution, or may represent any indigent person in a civil action; or may represent any state, local, or other governmental unit or agency; provided, however, that the conduct of the case is under the supervision of a member of the State Bar of Minnesota. For purposes of this rule, an "eligible" law student is one who has completed, or is completing, the final two years of the law school curriculum, and who is identified as such during all proceedings.

Before any student shall be eligible to appear in court for or on behalf of any indigent person accused of crime, or on behalf of the prosecution, or represent any indigent person in a civil action, or may represent any state, local, or other governmental unit or agency, the Dean of the accredited law school of which he is a student shall file with the Supreme Court a list of names of the enrolled students who have been selected by the faculty to participate in the program. Upon written approval by the Supreme Court of a student so certified, and the filing of such written approval, or a certified copy thereof, with

the district court wherein the law school is located, such approved student shall be, and is hereby, authorized to appear in any court of the State of Minnesota when under the direct supervision of a member of the State Bar of Minnesota, on behalf of such indigent persons accused of crime, or on behalf of the prosecution, or to represent indigent persons in any civil action as may be assigned to them, or to represent any state, local, or other governmental unit or agency. The expression "direct supervision" shall be construed to require the personal attendance of the supervising member of the bar during any trial, plea and sentence, or any other critical stage of any proceeding in or out of the court room; provided, however, that the supervising attorney may authorize a student to appear alone in all such proceedings other than the actual trial whenever the supervising attorney shall deem his personal presence unnecessary to insure proper supervision. Such authorization shall be made in writing and shall be available to the court upon request. In all events representation afforded pursuant to this rule must comply with minimal standards required by the State and Federal Constitutions.

The written approval of each student by the Supreme Court of Minnesota shall remain in force and effect for a period of twelve months from the date of filing unless withdrawn earlier. Upon application by the certified student, the Supreme Court may extend the privilege.

RULES FOR REGISTRATION OF ATTORNEYS

RULE I

PROMULGATION OF RULES. Admission to the bar of the State of Minnesota and disciplinary proceedings shall be conducted according to rules promulgated by this court.

RULE II

ANNUAL REGISTRATION FEE. In order to defray the expenses of examinations and investigations for admission to the bar and disciplinary proceedings, over and above the amount paid by applicants for such admission, with exceptions hereinafter enumerated, each attorney admitted to practice law in this state and those members of the judiciary who are required to be admitted to practice as a prerequisite to holding office shall hereafter annually, on or before the first day of January of each year after his original admission, pay to the clerk of the supreme court a registration fee in the sum of Thirty Dollars ($30.00) or in such lesser sum as the court may annually hereafter determine. All sums received shall be allocated as follows:

$ 7.00 to the State Board of Law Examiners
$ 5.00 to the State Board of Continuing Legal Education
$18.00 to the State Board of Professional Responsibility.

The following attorneys and judges shall pay an annual registration fee of Twelve Dollars ($12.00):

(a) Any attorney who has reached the age of 70 years and files annually with the clerk of supreme court an affidavit that he is not engaged in the practice of law;

(b) Any attorney or judge whose permanent residence is outside the State of Minnesota and who does not practice law within this state;

(c) Any attorney who has not been admitted to practice for more than three years;

(d) Any attorney while on duty in the armed forces of the United States;

(e) Any judge who is retired and no longer serves on the bench or practices law.

The Twelve Dollars ($12.00) so received shall be allocated as follows:

$7.00 to the State Board of Law Examiners
$5.00 to the State Board of Continuing Legal Education.

RULE III

FAILURE TO PAY FEE; PENALTY. Upon failure to pay such fee, the right to practice law in this state shall be automatically suspended, and no individual shall be authorized to practice law in this state or to in any manner hold himself out as qualified or authorized to practice law while in default in the payment of such registration fee. Any individual who shall violate this rule shall be subject to all the penalties and remedies provided by law for the unauthorized practice of law in the State of Minnesota. It shall be the duty of each member of the judiciary to enjoin persons from appearing and practicing in his court whose failure to register has come to the attention of such court.

RULE IV

NOTICE. Annually on or before December 1 of each year, the clerk of the supreme court shall mail to each individual then authorized to practice law, who has not paid such registration fee, at his last known address, a statement showing the amount of the registration fee required for the next ensuing year. Failure to receive such notice shall not excuse payment of such fee. Every attorney at law shall immediately notify the clerk of this court of any change of address.

RULE V

REINSTATEMENT. The right to practice law may be reinstated by the court after suspension upon application and upon payment of all delinquent registration fees and the additional sum of $5. This court may, in hardship cases, waive payment of delinquent fees.

RULE VI

CERTIFICATE. Upon payment of the registration fee, the clerk of the supreme court shall issue and deliver to the person paying the same a certificate in such form as may be provided by this court, showing that such individual is an attorney at law in good standing and authorized to practice in the State of Minnesota.

RULE VII

SPECIAL FUND. All money collected from applicants for admission to the bar or as an annual registration fee as provided herein shall be deposited by the clerk in a special fund, as directed by this court, and shall be disbursed therefrom only upon vouchers signed by a member of this court.

RULE VIII

NONRESIDENT COUNSEL. Nothing herein shall prevent any court in this state from granting special permission to nonresident counsel to appear and participate in a particular action or proceeding in association with an authorized attorney of this state.

RULES OF THE SUPREME COURT ON PROFESSIONAL RESPONSIBILITY

RULE 1

PURPOSE. It is of primary importance to the members of the Bar and to the public that complaints involving alleged unprofessional conduct of attorneys be promptly investigated and disposed of and that disciplinary process be brought in those cases where investigation discloses it is warranted. Such investigations and proceedings shall be conducted in accordance with these rules.

RULE 2

DISTRICT ETHICS COMMITTEE. Each District Bar Association of the State shall appoint an Ethics Committee of not less than five (5) attorneys at law who practice in the district. In the event a District Bar Association fails to establish such District Ethics Committee, a Committee of not less than five members of the Bar of such district shall be appointed by this Court to serve in place thereof. The term "District Bar Association" includes the Range Bar Association.

RULE 3

STATE BOARD OF PROFESSIONAL RESPONSIBILITY. There is hereby established a State Board of Professional Responsibility to be appointed by this Court and consisting of eighteen members and a chairman. Until February 1, 1972, except as hereinafter provided, each shall be a member of the Bar of this State, with his principal office located in this State. Commencing February 1, 1972, except as hereinafter provided, one member who is not an attorney at law shall be appointed each year upon the expiration of the terms of current members until three such persons have been appointed; provided that persons who are not attorneys at law shall be appointed to fill any vacancy that sooner occurs due to the death or resignation of a member, but in no event shall more than one such appointment be made to terms that expire in the same year. Three members not attorneys at law having been appointed to the Board, thereafter the Board shall consist of eighteen members and a chairman. Sixteen shall be members of the Bar of this State with their principal office located in this State, and three members shall be persons who are not attorneys at law. Nine of the members of the

Board, other than the chairman, shall be nominated by the Minnesota State Bar Association in the manner determined by it. Of the members first appointed, six shall be appointed for one year, six for two years and six for three years, three in each instance from the nominees of the Minnesota State Bar Association. Thereafter, appointments shall be for a three year term. No member may serve more than two three year terms. The chairman of the Board shall be appointed by this Court for such time as it shall designate and shall serve at the pleasure of this Court. The members and the chairman shall serve without compensation but shall be paid their reasonable and necessary expenses incurred in the performance of their duties.

The Board shall have general supervisory authority over the administration of these Rules, may, from time to time, issue opinions on questions of professional conduct, and shall advise and assist the Administrative Director in the performance of his duties. For the purpose of considering complaints of professional misconduct and recommendations for disciplinary proceedings as provided by these Rules, the Board may sit in panels of not less than five. A panel may refer any matter before it to the entire Board for its consideration.

Except as otherwise provided herein or ordered by this Court, no petition charging a member of the Bar with professional misconduct shall be filed with this Court without the approval of the Board or a panel thereof.

RULE 4

ADMINISTRATIVE DIRECTOR. A State Administrative Director on Professional Conduct is hereby established. He shall be appointed by and serve at the pleasure of this Court, and shall be paid such salary as the Court shall fix, and in the manner provided in Rule 13. He shall be responsible and accountable to this Court, and, subject thereto, to the Board of Professional Responsibility, for the proper administration of the provisions of these Rules.

The Administrative Director when authorized and empowered by this Court may employ such persons as he may, from time to time, deem necessary at such compensation as this Court may approve.

RULE 5

INVESTIGATION. (a) Except as hereinafter provided, all complaints of alleged unprofessional conduct of attorneys shall, in the first instance be referred for investigation to the District Ethics Committee of the district wherein the attorney has his principal office. The investigation of the complaint may be assigned by the Committee to any of its members who shall report to the Committee the results of his investigation.

Upon receipt of a complaint, the District Ethics Committee shall promptly notify the Administrative Director in writing of the pendency thereof. It may at any time request the assistance of the Administrative Director in making this investigation. If the Committee after investigation determines that the complaint does not merit further disciplinary action, the complaint may be dismissed by the Committee and the attorney involved, the complainant and the Administrative Director shall be so notified. The Committee may also issue a private reprimand or admonition and the Administrative Director shall be so notified. Otherwise the Committee shall refer the complaint to the Director either for his further investigation and disposition in accordance with these Rules or with the recommendation that disciplinary proceedings be instituted.

If the complaint is under investigation without such Committee action for a period of more than 90 days, the Committee shall notify the Administrative Director concerning the status of the matter.

(b) After receiving a recommendation from a District Committee that disciplinary action be taken against an attorney and after such further investigation as the Administrative Director shall deem necessary, he shall submit the same to the Board of Professional Responsibility for its consideration. A time for hearing thereon shall be set and, unless he cannot be found, notice thereof and an opportunity to be heard shall be given to the attorney. The Board or a panel thereof may request the issuance of a subpoena as provided in Rule 45.05, Rules of Civil Procedure, requiring a person, other than the attorney charged, to appear before it and give testimony or produce documentary evidence or tangible things, or requiring the attorney charged to produce documentary evidence or tangible things which do not consist of his personal records or property and which are not subject to his clients' unwaived privilege of confidence.

If, upon the hearing, the Board or a panel thereof decides that no disciplinary measures are warranted, it shall direct the Administrative Director to so advise the District Committee, the attorney and the complainant. If the Board or a panel thereof decides that the conduct of the attorney merits a private warning or reprimand, the Board shall administer the same and notify the District Committee and the complainant thereof. If the Board or a panel thereof decides that disciplinary measures other than a private warning or reprimand are called for, it shall direct the Administrative Director to proceed with the filing of an appropriate petition in this Court.

(c) The Administrative Director may conduct an investigation of a complaint without referral to a District Committee when (1) the appropriate District Committee so requests, or (2) after consultation with the District Committee, the Administrative Director finds that the District Committee lacks the facilities or is otherwise unable or unwilling to make the necessary investigation and disposition of the complaint in accordance with these Rules or the Administrative Director finds unreasonable delay may occur in the consideration of the complaint.

For like reasons, the Board of Professional Responsibility may remove a complaint from the consideration of a District Committee and refer it to the Administrative Director.

If after investigation of the complaint so received the Administrative Director concludes that the complaint is without merit he may recommend to the appropriate District Committee that it approve the dismissal of the complaint and that it inform the attorney and the complainant of the action taken; or the Director may make like recommendation for like action to the Board of Professional Responsibility.

If the Director concludes that disciplinary action shall be taken, he shall submit the complaint to the Board of Professional Responsibility for its consideration and the matter shall proceed as in subdivision (b) of this Rule.

RULE 6

INITIATING DISCIPLINARY PROCEEDINGS. (a) When directed by the Board of Professional Responsibility or a panel thereof, as provided by these Rules, or by this Court, the Administrative Director shall present to this Court a verified petition for disciplinary action against the named attorney setting forth specifically the professional misconduct charged against him and shall request an order of this Court directing the attorney to answer the petition. If the order is issued, the Administrative Director shall thereupon prosecute and proceed with the handling of the proceedings with diligence and in such manner as he deems proper.

(b) The Administrative Director shall cause the petition, together with this Court's order directing the respondent to answer the same, to be served upon the respondent in the same manner as a summons in a civil action.

(c) If such respondent has a resident guardian duly appointed for such person services shall be made upon such guardian in like manner. Respondent shall, after service upon him, have 20 days exclusive of the day of service in which to answer the petition.

If respondent cannot be found in the State of Minnesota and his place of residence is unknown, and the sheriff of the county in which respondent last resided or practiced law makes a return to that effect, the Administrative Director shall file in this court an affidavit setting forth such facts. After the lapse of thirty days the Director may apply to this court for an order suspending respondent from the practice of law. A copy of such order, when made and filed, shall be mailed to each judge of the district court in this state. Within a reasonable time thereafter respondent may petition this court for a vacation of such order of suspension and for leave to answer the accusation made against him.

If within one year of the date of the sheriff's return of not found, respondent has not petitioned the court for vacation of such order of suspension and for leave to answer the accusation made against him, the Administrative Director shall petition the court for an order directing respondent to show cause to the court why appropriate disciplinary action should not be taken. Such order to show cause shall be returnable

not earlier than twenty (20) days following the service of such order on respondent. Such order may be served on respondent by publishing the same once each week for three (3) weeks in the regular issue of a qualified newspaper published in the county in which respondent was last known to practice. The service of the order shall be deemed complete twenty-one (21) days after the first publication: Personal service of such order without the state, proved by the affidavit of the person making the same, sworn to before a person authorized to administer an oath, shall have the same effect as a published notice herein provided for.

RULE 7

ANSWER. After service of the petition and order as herein provided, respondent shall file in duplicate in this Court a verified answer which denies or admits the accusations contained in the petition and states any defense that he may have thereto or any matter in mitigation of discipline.

If respondent fails to file such answer within the time herein provided or such extension of time as may be granted by this court, he shall be held to be in default and an order of discipline entered.

RULE 8

HEARING OF PETITION. Upon filing of an answer, this court may appoint a judge of a district court of this state or a former judge of the district court or former justice of the supreme court as referee with directions to hear and report the evidence submitted for or against the accusations contained in such petition and answer. Unless otherwise directed in the order of his appointment the hearing shall be conducted by the referee in accordance with the rules of civil procedure applicable to district courts and for the purposes of the proceedings he shall have all the powers of a district court judge. The referee shall have a court reporter make a stenographic report of all testimony given and all proceedings had before him as in civil cases. The reporter shall be paid his necessary expense, but no compensation except as hereinafter provided. Upon request of any person interested and payment or tender of his fees therefor, the reporter shall furnish a transcript of such record as in civil cases and shall be paid therefor the fee provided by law. The transcript of testimony shall be in the form required by Rule 110.02(4) of the Rules of Civil Appellate Procedure of this Court. It shall be the duty of the person ordering the transcript to see that the court reporter complies with this rule.

The referee shall make findings of fact, and conclusions and recommendations. The findings of fact and conclusions shall be conclusive, unless a record on appeal as provided in Rule 110 of the Rules of Civil Appellate Procedure of this court is submitted.

After a record of appeal is filed, the matter shall be heard by this court upon the record, oral arguments, and such printed briefs as the parties desire to file. On oral argument petitioner shall be entitled to 45 minutes and respondent 30 minutes.

RULE 9

DISPOSITION.

(a) This court, upon the basis of the record made, and upon being satisfied that appropriate disciplinary action should be be taken may (1) disbar the attorney; (2) suspend him indefinitely or for a stated period of time; (3) place the attorney on a probationary status for a stated period, or until further order of the court, with such conditions as the court may specify and to be supervised by the Administrative Director; (4) issue a public reprimand; or (5) dismiss the complaint.

(b) At any time after the institution of a disciplinary proceeding under Rule 6, where it appears that a continuation of the practice of law by the attorney during the pendency of the disciplinary proceedings may result in substantial risk of serious injury to the public, the Administrative Director, on direction of a Panel of the Board, at least five (5) members of such Panel voting in the affirmative, shall present to this Court a verified petition for an order suspending the respondent attorney during the pendency of the disciplinary proceedings, and shall request an order of the Court directing the attorney to answer the petition. The petition for temporary suspension shall set forth the acts or omissions of the respondent attorney contained in the pending petition for disciplinary action together with such other facts as may constitute grounds for suspension pending disciplinary proceedings. The petition for temporary suspension may be supported by a transcript of any evidence taken by the Panel and by documents or affidavits.

(c) If the order is issued, the Administrative Director shall cause the petition for temporary suspension, together with this Court's order directing the respondent to answer the same, to be served upon respondent in the same manner as provided in Rule 6 for the service of a petition for disciplinary action. Respondent shall, after service upon him, have twenty (20) days, exclusive of the day of service, in which to answer the petition. If respondent fails to file such answer within the time herein provided or such extension of time as may be granted by this Court, he shall be held to be in default and an order suspending him pending the final determination of the disciplinary proceedings entered. The last paragraph of Rule 6 is made a part hereof by reference.

(d) **Answer to the Petition.** The answer may contain additional facts relating only to the issue of substantial risk of serious injury to the public, shall be verified, and may be supported by documents or affidavits. The answer shall be filed in duplicate in this court.

(e) After the filing of an answer, if the Court, after an en banc hearing, finds a continuation of practice by the attorney may result in substantial risk of serious injury to the public, it may enter an order suspending such attorney from the practice of law pending final determination of the disciplinary proceedings.

RULE 10

FELONY CONVICTION. (a) Whenever an attorney is convicted of a felony under Minnesota Statute the Administrative Director shall forthwith submit to the court a petition for the attorney's suspension from the practice of law. Upon a plea of guilty to the court of such felony, or upon the final affirmance of a conviction of such felony, or expiration of the time for appeal, the Administrative Director shall forthwith institute proceedings for disbarment in accordance with these rules. For the purposes of this rule the Administrative Director need not obtain authorization from the State Board of Professional Responsibility.

(b) Upon final conviction of a felony under Federal Law or the laws of any other state the Administrative Director shall proceed as otherwise provided in these rules.

RULE XI

REINSTATEMENT. All petitions for reinstatement to practice law of attorneys suspended or disbarred shall be served upon the Administrative Director, the Chairman of the district Ethics Committee of the district in which the petitioner last practiced law, and the president of the State Bar Association. The original petition, with proof of service, and one copy, shall then be filed with the clerk of this court. Objections to the petition, if any, shall be served upon respondent and filed with the clerk of this court within forty days after service of the petition.

Upon the filing of a petition for reinstatement by an attorney and expiration of the time for filing objections thereto, as herein provided, the Administrative Director shall investigate the matter and make report to the Board of Professional Responsibility and to this court of his conclusions as to the desirability of readmitting such attorney to practice law. There shall be a hearing before this court on every petition for the reinstatement of a lawyer unless such hearing is waived by the Board of Professional Responsibility and the petitioner. Upon the filing of a verified petition for reinstatement of an attorney suspended or disbarred, and after reference thereof to the Administrative Director and report by him, as herein provided the court will determine whether a referee shall be appointed. In the event a referee is appointed, the same procedure shall be followed as in disciplinary proceedings.

RULE XII

CONFIDENTIALITY. Unless otherwise directed by this Court, the files, records and proceedings of the District Ethics Committees, the State Board of Professional Responsibility and the Administrative Director, as they may relate to or arise out of any complaint or charge of misconduct against, or investigation of, an attorney, shall be deemed confidential and shall not be disclosed, except as between the Committees, the Board and the Director in furtherance of their duties, or upon request of the attorney affected or as they may be introduced in evidence or otherwise produced in support of a

petition filed in accordance with these Rules or in proceedings consequent thereon, or in opposing a petition for reinstatement.

RULE XIII

PAYMENT OF EXPENSES. Payment of all miscellaneous and necessary expenses of the Administrative Director and the Board of Professional Responsibility and its members incurred from time to time and certified to this Court as having been incurred in the performance of their duties under these Rules and the compensation of the Administrative Director and of others employed by him in accordance with these Rules shall be made upon vouchers approved by this Court from its funds now or hereafter to be deposited to its credit with the State of Minnesota or elsewhere.

RULE XIV

SUPPLEMENTAL RULES. The State Board of Professional Responsibility and each District Ethics Committee may adopt rules and regulations, not inconsistent with these Rules, governing the conduct of business and performance of their duties.

RULES OF THE SUPREME COURT FOR CONTINUING LEGAL EDUCATION OF MEMBERS OF THE BAR

RULE 1

PURPOSE

It is of primary importance to the members of the Bar and to the public that attorneys continue their legal education throughout the period of their active practice of law. These rules will establish the minimum requirements for continuing legal education.

RULE 2

STATE BOARD OF CONTINUING LEGAL EDUCATION

There is hereby established a State Board of Continuing Legal Education, to be appointed by this Court, consisting of 12 members and a chairperson. Three of the members of the Board other than the chairperson may be persons who are not members of the Bar of this state. Each other member of the Board, with the exception of one who shall be a District Judge, shall be a member of the Bar of this state who practices in Minnesota with his principal office located in this state. Six of the members of the Board other than the chairperson shall be nominated by the Minnesota State Bar Association in the manner determined by it. Of the members first appointed, four shall be appointed for 1 year, four for 2 years, and four for 3 years, two in each instance from the nominees of the Minnesota State Bar Association and one in each instance being a lay member. Thereafter, appointments shall be for a 3-year term. No member may serve more than two 3-year terms. Each member shall serve until his successor is appointed and qualifies. The chairperson of the Board shall be appointed by this Court for such time as it shall designate and shall serve at the pleasure of this Court. This Court shall also designate a secretary of the Board. The chairperson, the secretary, and other members of the Board shall serve without compensation, but shall be paid their reasonable and necessary expenses incurred in the performance of their duties.

The Board shall have general supervisory authority over the administration of these rules. The Board shall accredit courses and programs which will satisfy the educational requirements of these rules and shall discover and encourage the offering of such courses and programs.

The Board shall at all times be subject to the direction and supervision of this Court in all matters.

RULE 3

REPORT OF CONTINUING EDUCATION

Each registered attorney duly admitted to practice in this state desiring active status must make a written report to the Board in such manner and form as the Board shall prescribe. Such report shall be filed with the Board in duplicate within 60 days after the close of the 3-year period within which such attorney is required to complete his continuing legal education requirements. Such report shall be accompanied by proof satisfactory to the Board that such attorney has completed a minimum of 45 hours of course work, either as a student or as a lecturer, in continuing legal education in courses approved by the Board as suitable and sufficient within the 3-year period just completed.

Any registered attorney duly admitted to practice in this state who desires restricted status as hereinafter defined shall so indicate in the space provided in his annual registration statement. A restricted attorney shall not be required to maintain the educational requirements provided by these rules. Other than himself, he may not represent any person in any legal matter or proceedings within the State of Minnesota except a full-time employer, spouse, son, daughter, father, mother, brother, sister, father-in-law, mother-in-law, brother-in-law, or sister-in-law. Judges, referees, judicial officers, or magistrates of any court of record of the State of Minnesota, or attorneys serving as legal counsel in any governmental unit of the State of Minnesota, are not eligible to apply for restricted status until they retire or leave their position.

A restricted attorney who desires to change his status to that of an active attorney may do so by filing with the Clerk of Court of the Supreme Court notice in writing of such intent and by further stating therein that he will conform to the rules and regulations of the State Board of Continuing Legal Education as approved by this Court and that he has not theretofore violated such rules or regulations.

In individual cases, the Board may grant waivers or extensions of the minimum educational or the reporting requirements.

RULE 4

FAILURE TO SATISFY ADDITIONAL REQUIREMENTS

If an active attorney fails to complete the minimum educational or the reporting requirements to the satisfaction of the Board, the Board shall report such failure to the Supreme Court for appropriate disposition.

The Board of Continuing Legal Education, before reporting any matter to the Court, shall investigate the facts in order to make a report on the reasons for noncompliance including affording the lawyer involved a hearing, upon his request, in accordance with the principles of due process of law. The Board shall, however, before reporting any noncompliance to the Court, attempt to resolve all matters on a confidential basis.

RULE 5

CONFIDENTIALITY

Unless otherwise directed by this Court, the files, records, and proceedings of the State Board of Continuing Legal Education, as they may relate to or arise out of any failure of an active attorney to satisfy the continuing legal education requirements, shall be deemed confidential and shall not be disclosed except in furtherance of its duties, or upon request of the attorney affected, or as they may be introduced in evidence or otherwise produced in proceedings in accordance with these rules.

RULE 6

PAYMENT OF EXPENSES

All miscellaneous and necessary expenses of the Board of Continuing Legal Education and its members certified to this Court as having been incurred in the performance of their duties under these rules shall be paid upon vouchers approved by this Court from funds now or hereafter deposited to its credit with the State of Minnesota or elsewhere.

RULE 7

SUPPLEMENTAL RULES

The State Board of Continuing Legal Education may make and adopt rules and regulations not inconsistent with these rules governing the conduct of business and performance of its duties.

APPENDIX 7

DISTRICT COURT RULES

CODE OF RULES
for the
DISTRICT COURT OF MINNESOTA
As adopted by the District Judges pursuant to section 484.33, as amended.

PART I
General Rules

RULE 1

ACTIONS BY REPRESENTATIVES; ATTORNEY'S FEES. In actions for personal injury or death by wrongful act, brought by persons acting in a representative capacity, contracts for attorney's fees shall not be regarded as determinative of fees to be allowed by the court.

RULE 2

ACTIONS FOR DEATH BY WRONGFUL ACT. Every application for the appointment of a trustee of a claim for death by wrongful act under section 573.02, shall be made by the verified petition of at least one heir of the decedent. The petition shall show the dates and places of the decedent's birth and death; his address at the time of his death; the name, age and address of each of his heirs; and the name, age, occupation and address of the proposed trustee. The petition shall also show whether or not any previous application has been made in any court for the appointment of a trustee for such claim, and if a previous application has been made, the facts with reference thereto and its disposition shall also be stated. The written consent of the proposed trustee to act as such shall be endorsed on or filed with such petition.

The petition will be heard upon such notice, given in such form and in such manner and upon such persons as may be determined by the court, unless waived by all heirs or the court.

The petition, any order entered thereon, and the trustee's oath, will be entitled: "In the matter of the appointment of a trustee for the heirs of _____, decedent."

If the trustee, after his appointment and qualification, commences an action for death by wrongful act in the District Court of his appointment, the summons and complaint when filed will be given the same file number as the petition and order for the trustee's appointment. If the venue of such action be later changed to another county of the State of Minnesota, jurisdiction over the trust will thereupon be transferred in the same file to the District Court of that county.

If the trustee, after his appointment and qualification, commences an action in the District Court of a county other than that in which he was appointed, a certified copy of the petition, the order entered thereon and the oath shall be filed in the District Court where such action be commenced, at the time the summons and complaint are filed therein, and jurisdiction over the trust will thereupon be transferred to such District Court.

Application for the distribution of money recovered under section 573.02 shall be by verified petition of the trustee. Such petition shall show the amount which has been received upon action or settlement; a detailed statement of disbursements paid or incurred, if any; the amount, if any, claimed for services of the trustee and of his attorney; the amount of the funeral expenses and of demands for the support of the decedent; the name, age and address of each heir and the share to which each is entitled.

If an action were commenced, such petition shall be heard by the court in which the action was tried, or in the case of a settlement, by the court in which the action was pending at the time of settlement. If an action were not commenced, the petition shall be heard by the court in which the trustee was appointed.

The petition will be heard upon such notice, given in such form and in such manner and upon such persons as may be determined by the court, unless waived by all heirs or the court.

The court by order, or by decree of distribution, will direct distribution of the money to the persons entitled thereto by law. Upon the filing of a receipt from each distributee for the amount assigned to him, the trustee shall be discharged.

The foregoing procedure will, so far as can be applicable, also govern the distribution of money recovered by personal representatives under the Federal Employers' Liability Act (45 U.S.C.A. 51) and under section 219.77.

FORMS

FORM—PETITION FOR APPOINTMENT OF TRUSTEE

STATE OF MINNESOTA — DISTRICT COURT
County of ..... — ..... Judicial District

In the matter of the appointment of a trustee for the heirs of ....., decedent. — File No. .....

PETITION FOR APPOINTMENT OF TRUSTEE

Your petitioner respectfully represents to the court:

1. That—he is one of the heirs of the above named decedent;

2. That said decedent was born on ....., 1....., at ..... and died on ....., 19....., then residing at .....;

3. That the names, ages, relationship and addresses of all the heirs of the decedent are:

NAME AGE RELATIONSHIP ADDRESS

4. That the death of the decedent was caused by the wrongful act or omission of ..... in ..... County, Minnesota, on ....., 19.....; and that a cause of action therefor exists under M.S.A. 573.02;

5. That no previous application has been made to any court for the appointment of any trustee except .....;

6. That ....., who is ..... years of age, whose occupation is ..... and whose address is ..... is a suitable and competent person to be appointed trustee to maintain such action according to law.

WHEREFORE, your petitioner prays that said .....be appointed such trustee.

Dated ..... 19... .....

STATE OF MINNESOTA
County of .....

....., being duly sworn, say—that—he is the petitioner in the above entitled proceedings; that—he has read the foregoing petition and knows the contents thereof; and that the same is true of h..... own knowledge, except as to those matters therein stated on information and belief, and as to those matters—he believe—it to be true.

Subscribed and sworn to before ..... me this ..... day of ....., 19.....

.....
Notary Public, ...County, Minn.
My commission expires .....

[Reverse side of form]

CONSENT

I hereby consent to act as trustee herein.

Dated ..... 19.... .....

WAIVER OF NOTICE AND BOND

The undersigned, being all of the heirs of the decedent named in the foregoing petition, hereby waive notice of hearing on the foregoing petition, consent to the appointment of the trustee therein nominated, and request that—he serve without bond

.....
....
....
....

FORM—ORDER APPOINTNG TRUSTEE

STATE OF MINNESOTA — DISTRICT COURT
County of ..... — ..... Judicial District
File No. .....

In the matter of the appointment of a trustee for the heirs

of ....., decedent.

ORDER APPOINTING TRUSTEE

The foregoing petition having been duly considered,

IT IS ORDERED that, upon the filing of an oath pursuant to M.S.A. 358.06—and of a bond in the amount of $..... approved by the court—..... be appointed trustee to maintain the action described in said petition.

Dated ..... 19.... .....
District Judge

FORM—OATH OF TRUSTEE

STATE OF MINNESOTA DISTRICT COURT
County of .... Judicial District
File No. .....

In the matter of the appointment of a trustee for the heirs of ....., decedent.

OATH OF TRUSTEE

STATE OF MINNESOTA
County of .....

I, ..., do swear that I will faithfully and justly perform all the duties of the office and trust which I now assume as trustee in the above entitled matter, to the best of my ability. So help me God.

.....

Subscribed and sworn to before me this ..... day of ..... 19.....

.....
Notary Public, ... County, Minn.
My commission expires .....

RULE 3
ACTION OR CLAIM ON BEHALF OF INFANT OR INCOMPETENT PERSON FOR PERSONAL INJURIES—DISPOSITION OF PROCEEDS TO BE APPROVED BY THE COURT IN ALL CASES—PROCEDURE DETAILED

(a) **When Petition and Order Are Required.** No part of the proceeds of any action or claim for personal injuries on behalf of any infant or incompetent person shall be paid to any person except upon written petition to the Court and written order of the Court as hereinafter provided. This rule governs a claim or action brought by a parent of an infant, by a guardian ad litem or general guardian of an infant or incompetent person, or by the guardian of a dependent, neglected or delinquent child, and applies whether the proceeds of the claim or action have become fixed in amount by a settlement agreement, jury verdict or court findings, and even though the proceeds have been reduced to judgment.

(b) **Contents and Filing of Petition.** The petition shall be verified by the parent or guardian, shall be filed before the Court makes its order, and shall include the following:

(1) The name and birth date of the infant or other incompetent person.

(2) A brief description of the nature of the claim if a complaint has not been filed.

(3) An attached affidavit or letter of a doctor showing the nature of the injuries, the extent of recovery and the prognosis if the Court has not already heard testimony covering these matters.

(4) Whether or not the parent, or the infant or incompetent person, has insurance covering any part of the principal and derivative claims and whether subrogation rights are held by the insurer.

(5) The proposed disposition to be made of the proceeds of the claim and derivative claims, including expenses and attorneys fees.

(c) **Hearing on the Petition.** The infant or incompetent person and the petitioner shall personally appear before the Court at the hearing on the petition unless their appearance is specifically waived by the Court because the action has been fully or partially tried or for other good cause. The reporter shall, when ordered by the Court, keep a record of the hearing. The hearing shall be ex parte unless otherwise ordered.

(d) **Terms of the Order.** The Court's order shall:

(1) Approve or modify the proposed disposition and specify the persons to whom the proceeds are to be paid.

(2) State the reason or reasons why the proposed disposition is approved if the Court is approving a settlement for an amount which it feels is less than what the injuries and expenses, might seem to call for, e.g., limited insurance coverage, dubious liability, comparative negligence or other similar considerations.

(3) Determine what expenses may be paid from the proceeds of any recovery by action or settlement, including the attorney's fee. Attorney's fees will not be allowed in any amount in excess of one-third of the recovery, except on a showing that: (I) an appeal to an appellate court has been perfected and a brief by the plaintiff's attorney has been printed therein and (II) there has been an expenditure of time and effort throughout the proceeding which is substantially disproportionate to a one-third fee. No sum will be allowed, in addition to attorney fees, to reimburse any expense incurred in paying an investigator for services and mileage, except in unusual circumstances, such as those where the attorney's fee is not fully compensatory or where the investigation must be conducted in an area so distant from the principal offices of the attorney so employed that expense of travel and related expense would be substantially equal to, or in excess of, usual investigating expenses.

(4) Specify what disposition will be made of the balance of the proceeds of any recovery after payment of the expenses authorized by the Court. The Court may authorize investment of all or part of such balance of the proceeds in securities of the United States, but otherwise shall order the balance of the proceeds deposited in one or more banks, savings and loan associations or trust companies where the deposits will be fully covered by Federal deposit insurance, provided, however, that in lieu of such disposition of the proceeds, the Order may provide for the filing by the petitioner of a surety bond approved by the Court conditioned for payment to the ward in a manner therein to be specified of such moneys as the ward is entitled to receive, including interest which would be earned if the proceeds were invested.

(5) If part or all of the balance of the proceeds are ordered deposited in one or more financial institutions, the Court's order shall direct: (a) that the defendant pay the sum to be deposited directly to the financial institution; (b) that the deposit book (or other deposit document) be issued in the name of the minor or incompetent person; (c) that the deposit book (or other deposit document) be transmitted by the financial institution to the Clerk of Court for safekeeping (subject to further order of the Court) within 5 days after its receipt of the deposit; (d) that the financial institution shall not make any disbursement from the deposit except upon order of the Court; and (e) that a copy of the Court's order shall be delivered to said financial institution by the defendant with the remittance for deposit. The financial institution(s) and the type of investment therein shall be as specified in Section 540.08 of the Minnesota Statutes or amendments thereof. Two or more institutions shall be used if necessary to have full Federal deposit insurance coverage of the proceeds plus future interest.

(6) The Court will authorize or direct the investment of proceeds of the recovery in securities of the United States only if practicable means are devised comparable to the provisions of paragraphs (4) and (5) above, to insure that funds so invested will be preserved for the benefit of the infant or incompetent person.

(7) Direct that the appropriate party or parties will be entitled to receive appropriate receipts, releases or a satisfaction of judgment when he has made the payments called for in the Court's order.

(e) **General Guardians.** When an action is brought by a general guardian appointed and bonded by a court of competent jurisdiction, the requirements of this Rule 3 may be modified as deemed desirable by the Court because of bonding or other action taken by the appointing court, except that there must be

compliance with the settlement approval requirements of Section 540.08 of the Minnesota Statutes or amendments thereof.

RULE 4

ATTORNEYS AS SURETIES. No practicing attorney shall be accepted as surety on a bond or undertaking required by law.

RULE 5

BANKS IN LIQUIDATION, SALE OF ASSETS, FINAL DIVIDENDS. Petitions for orders approving the sale or compounding of doubtful debts, or the sale of real or personal property, or authorizing a final dividend, of any bank, state or national, in liquidation, shall be heard after notice of all interested persons given as herein provided.

Upon the filing of the petition, the court shall enter an order reciting the substance of the petition and the time and place for hearing thereon, and advising all interested persons of their right to be heard.

A copy of the order shall be published once in a legal newspaper published near the location of the bank in liquidation, which publication shall be made at least ten days prior to the time fixed for the hearing; or the court may direct notice to be given by such other method as it shall deem proper. If it shall appear to the court that delay may prejudice the rights of those interested, the giving of notice may be dispensed with.

RULE 6

CONTINUANCE. No civil case on the general term calendar shall be continued by consent of counsel only, or otherwise than by order of the court for cause shown; provided that in counties having an assignment clerk the special rules of such county shall govern.

RULE 7

COSTS ON MOTION. (a) On granting or denying a motion the court may award such costs as it deems reasonable, which, in the discretion of the court, may be absolute or to abide the event of the action.

(b) It shall be the policy to impose costs of not less than $25.00 for:

(1) Failure of a party to respond to interrogatories within the time provided by Rules of Civil Procedure 33, or,

(2) Failure of a party to appear at the time and place fixed for the taking of his deposition if due notice thereof has been served as provided by Rules of Civil Procedure 30.01. [As amended June 1964, effective Oct. 1, 1964]

RULE 8

[Eliminated effective Oct. 1, 1964.]

RULE 9

DIVORCE ACTIONS. (a) Every application for temporary alimony, support, custody of children, attorneys' fees and disbursements, or for similar relief prior to trial, the notice of hearing thereon, the affidavit opposing such application, and the order thereon shall be in the following form so far as may be applicable.

STATE OF MINNESOTA
COUNTY OF .....
.....
Plaintiff,
v.
APPLICATION FOR TEMPORARY ALIMONY, ETC.
.....
Defendant.

DISTRICT COURT
.....JUDICIAL DISTRICT
File No. .....

STATE OF MINNESOTA
COUNTY OF.....

————, the plaintiff-defendant herein, being first duly sworn, respectfully represents to the court that:

1. The parties were married on ————; the wife's age is ——; the husband's age is——.
2. The parties have been separated —— months, during which the husband has paid $—— to the wife.
3. (a) There are —— children of the parties, aged ——, ——, ——, ——, ——, years now in custody of the wife-husband at ————————.
   (b) For the best interests of the children, they should be in custody of the husband-wife.
   (c) The husband-wife has —— minor children of a prior marriage.
4. The property of the parties, its market value and encumbrances are:

Item	Market Value Husband's	Wife's	Joint Tenancy	Encumbrances
Homestead	$——	$——	$——	$——
Other realty	$——	$——	$——	$——
Household goods	$——	$——	$——	$——
Automobiles	$——	$——	$——	$——
Stocks, bonds, notes	$——	$——	$——	$——
Cash and bank credits	$——	$——	$——	$——
Claims, accounts receivable, etc.	$——	$——	$——	$——
Total	$——	$——	$——	$——

5. (a) Unsecured debts of husband only not included above ..... $——
   (b) Unsecured debts of wife only not included above ..... $——
   (c) Unsecured joint debts not included above ..... $——
6. The necessary weekly-monthly expenses are:

		Husband's	Wife's	Children's (If Separate)
A.	Rent	$——	$——	$——
B.	Realty taxes	$——	$——	$——
C.	Realty contract payments	$——	$——	$——
D.	Personalty contract payments	$——	$——	$——
E.	Fuel	$——	$——	$——
F.	Food	$——	$——	$——
G.	Utilities	$——	$——	$——
H.	Insurance	$——	$——	$——
I.	Clothing	$——	$——	$——
J.	Transportation	$——	$——	$——
K.	Medical and Dental	$——	$——	$——
		$——	$——	$——
		$——	$——	$——
		$——	$——	$——
		$——	$——	$——
	Total	$——	$——	$——

7. The family home contains —— bedrooms; is owned-rented by the parties; and is now occupied by ————————
8. (a) Husband's total weekly-monthly income after deductions is ..... $——
   (b) Wife's total weekly-monthly income after deductions is..... $——
   (c) Children's total weekly-monthly income after deductions is..... $——
9. (a) A reasonable amount for support for——children is per week-month $——.
   (b) A reasonable amount for temporary alimony is $—— per week-month.
   (c) The dates for payment should be————————.
   (d) Husband's weekly-monthly necessary living expenses will be $————————.
10. $—— has been paid on wife's attorney's fees and disbursements.
11. $—— has been paid on husband's attorney's fees and disbursements.
12. $—— is reasonable for wife's temporary attorney's fees plus $—— for disbursements.
13. Additional Material Facts:

WHEREFORE, the applicant prays for an order granting such relief prior to trial as may be just and lawful.

Subscribed and sworn to before me this ——day of————, 19— ————

————————
Plaintiff-Defendant
Notary Public, —— County, Minn.
My commission expires ————

STATE OF MINNESOTA
COUNTY OF ————————

————————
Plaintiff,
vs.
————————
Defendant.

DISTRICT COURT
———— JUDICIAL DISTRICT
File No. ————

Notice of Hearing Application for Temporary Alimony, etc.

To The Above Named Defendant-Plaintiff

Notice is hereby given that the foregoing applica-

tion will be heard and that the applicant will move, upon the grounds therein stated, for an order granting relief therein prayed for, before the above named court —— at a Special Term thereof —— in Chambers —— in ———— Room No. ————, Court House, ————, Minnesota, on ——, 19—, at —— o'clock —— M., or as soon thereafter as counsel can be heard.

Attorney for Plaintiff-Defendant
Address ————
Phone No. ————

Caveat. The application will not be heard until after it and proof of service of it and of the notice have been filed with the clerk, and the entire file presented to the court. Upon the initial filing, the clerk's file number must be obtained and thereafter typewritten on each subsequent document.

STATE OF MINNESOTA
COUNTY OF ————

———— Plaintiff,

vs.

———— Defendant.

DISTRICT COURT
————JUDICIAL DISTRICT
File No. ————

ORDER FOR
TEMPORARY ALIMONY, ETC.

An application having been duly made for relief prior to trial, such application having duly come on for hearing on ————, 19—, before the undersigned judge of the above named court, and the matter having been duly submitted; ————, Esq., appearing in support of the application and ————, Esq., in opposition thereto;

It Is Ordered:

1. That the defendant-plaintiff pay to plaintiff-defendant, the following at the times, for the purposes, and in the manner specified:

$—— for temporary attorney's fees payable————

$—— for disbursements herein payable————

$—— per week-month for alimony payable————

$—— per week-month for support of the children payable ————

2. That the custody of the minor children is awarded temporarily to the plaintiff-defendant, subject to reasonable visitation by the defendant-plaintiff ————

3. That the plaintiff and defendant and their agents and servants are, and each is, enjoined and restrained from:

(a) doing, or attempting to do, any act of injuring, maltreating or vilifying the adverse party, or any of the children, or otherwise molesting any of them in any way.

District Judge
Dated ————, 19—

(b) Deleted by order effective June 15, 1971.

(c) Orders for publication of summons in actions for divorce will be granted only upon an affidavit of the plaintiff made as provided by statute and showing specifically what efforts have been made to ascertain the residence of the defendant for the purpose of making personal service.

RULE 10

EX PARTE ORDERS. No order shall be made ex parte unless there shall be presented with the application therefor an affidavit showing whether any previous application has been made for the order requested, or for a similar order; and if there has been a previous application, to what ccurt or judge it was made, and the determination made thereof, and what new facts, if any, are shown upon such subsequent application that were not previously shown. For a failure to comply with the provisions of this rule, the order made on subsequent application may be vacated.

RULE 11

EXPERT WITNESS FEES. On affidavit showing that a fee equalling, or exceeding that has been billed, the clerk may tax $25.00 per day for an expert witness fee as a disbursement in a civil case, subject to increase or decrease by a judge on appeal. The maximum amount which normally will be allowed by a judge on appeal is $200.00 per day or fraction thereof for actual appearance in the court and giving testimony in addition to the usual mileage allowance, and the amount allowed shall be in such amount as is deemed reasonable for such services in the community where the trial occurred and in the field of endeavor in which the witness has qualified as an expert. No allowance shall be made for preparation or in conducting of experiments outside the courtroom by the expert. The judge in setting the fee on appeal is governed by the provisions of M.S.A. Sec. 357.25.

RULE 12

FILING ORDERS, PROMISSORY NOTES, CHECKS AND BILLS OF EXCHANGE; WITHDRAWAL OF FILE PAPERS FROM CLERK'S CUSTODY. (a) All orders, together with the affidavits and other papers upon which the same are based, which orders are not required to be served, shall be filed forthwith in the office of the clerk. Orders required to be served shall be so filed within three days after the service thereof, and, unless seasonably served and filed, may be vacated.

(b) No papers on file in a cause shall be taken from the custody of the clerk otherwise than upon order of the court or local court rule.

(c) When judgment is entered in an action upon a promissory note, draft or bill of exchange under the provisions of Rules of Civil Procedure 55.01, such promissory note, draft or bill of exchange shall be filed with the clerk and made a part of the files of the action. [As amended June 1964, effective Oct. 1, 1964.]

RULE 13

ATTACHING PROOF OF SERVICE. Sheriffs' certificates or other proofs of service shall be affixed to all papers before filing in such a manner as not to obscure the identity of the instrument. [As amended effective Oct. 1, 1965.]

RULE 14

[Eliminated effective Oct. 1, 1964.]

RULE 15

GARNISHMENTS AND ATTACHMENTS; BONDS TO RELEASE; ENTRY OF JUDGMENT AGAINST GARNISHEE. (a) Garnishments or attachments shall not be discharged through a personal bond under section 571.30 without one day's written notice of the application therefor to the adverse party; but if a surety company's bond is given, notice shall not be required.

(b) Judgment against a garnishee shall be entered only upon notice to the garnishee and the defendant, if known to be within the jurisdiction of the court, showing the date and amount of the judgment against the defendant, and the amount for which plaintiff proposes to enter judgment against the garnishee after deducting such fees and allowances as the garnishee is entitled to receive. If the garnishee appears and secures a reduction of the proposed judgment, the court may make an appropriate allowance for fees and expenses incident to such appearance.

RULE 16

ILLEGITIMACY PROCEEDINGS. Upon certification to and filing of record in the district court of any proceeding to determine the paternity of an illegitimate child, the clerk shall immediately notify by mail the director of social welfare of the pendency of the proceedings.

RULE 17

JUDGMENT, ENTRY BY ADVERSE PARTY. When a party is entitled to have judgment entered in has favor upon the verdict of a jury, report of a referee, or decision or finding of the court, and neglects to enter the same for ten days after the rendition of the verdict or notice of the filing of the report, decision, or finding; or, in case a stay has been ordered, for ten days after the expiration of such stay, the opposite party may cause judgment to be entered on five days' notice to the party entitled thereto.

RULE 18

[Eliminated effective Oct. 1, 1964.]

RULE 19

NE EXEAT. Upon the allowance of a writ of ne exeat the court shall require an undertaking or bond in the penal sum of not less than $250.00, to be approved by the court. Such bond shall be conditioned upon payment to the party detained of such damages as he may sustain by reason of the writ, if the court shall eventually decide that the party applying was not entitled thereto.

RULE 20

[Eliminated effective Oct. 1, 1964.]

RULE 21

ORDER TO SHOW CAUSE. An order to show

cause will be issued only in a case where a statute or Rule of Civil Procedure provides that such an order may be issued or where the court deems it is necessary to require the party to appear in person at the hearing. [As amended effective Oct. 1, 1965.]

RULE 22

PLEADINGS. (a) In all cases where application is made for leave to amend a pleading or to answer or reply after the time limited by statute or rule, or to open a judgment and for leave to answer and defend, such application shall be accompanied with a copy of the proposed amendment, answer or reply, as the case may be, and an affidavit of merits and be served on the opposite party. [As amended June 1964, effective Oct. 1, 1964.]

(b) In an affidavit of merits made by the party the affiant shall state with particularity the facts relied upon as a defense or claim for relief, that he has fully and fairly stated the facts in the case to his counsel, and that he has a good and substantial defense or claim for relief on the merits, as he is advised by his counsel after such statement and verily believes true, and he shall also give the name and address of such counsel.

An affidavit shall also be made by counsel, who shall state therein that from the showing of the facts made to him by the party he verily believes that such party has a good and substantial defense or claim for relief on the merits. [As amended effective Oct. 1, 1965.]

RULE 23

RECEIVERS. (a) All actions or proceedings for the sequestration of the property of corporations or for the appointment of receivers thereof, except actions or proceedings instituted by the Attorney General in behalf of the state, shall be instituted in the county in which the principal place of business of said corporation is situated; provided, that for the convenience of witnesses and to promote the ends of justice the venue may be changed by order of court.

(b) Receivers, trustees, guardians, and others appointed by the court to aid in the administration of justice shall be wholly impartial and indifferent to all parties in interest, and selected with a view solely to their character and fitness. Except by consent of all parties interested, or where it clearly appears that prejudice will otherwise result, no person who is or has been during the preceding year a stockholder, director, or officer of a corporation shall be appointed as receiver for such corporation. Receivers shall be appointed only upon notice to interested parties, such notice to be given in the manner ordered by the court; but if it shall be clearly shown that an emergency exists requiring the immediate appointment of a temporary receiver, such appointment may be made ex parte.

(c) Every receiver after his appointment shall give a bond to be approved by the court in such sum and conditioned as the court shall direct, and shall make and file with the clerk an inventory and estimated valuation of the assets of the estate in his hands; and, unless otherwise ordered, appraisers shall then be appointed and their compensation fixed by order of the court.

(d) Claims of creditors of corporations, the subject of sequestration or receivership proceedings, shall be duly verified and filed in the office of the clerk of court. The court, by order, shall fix the time for presentation, examination and adjustment of claims and the time for objecting thereto, and notice of the order shall be given by such means, including publication if deemed desirable, as the Court therein shall direct. Written objection to the allowance of any claim may be made by any party to the proceeding by serving a copy of such objection upon the claimant or his attorney. Where no objection is made within the time fixed by said order, the claim may stand admitted and be allowed without proof. Issues of law and fact shall be tried as in other cases.

(e) Every receiver shall file an annual inventory and report showing the condition of the estate in his hands and a summary of his proceedings to date. The clerk shall keep a list of receiverships and notify such receiver and the court when such reports are due.

(f) When an attorney has been appointed receiver, no attorney for such receiver shall be employed except upon the order of the court, which shall be granted only upon the petition of the receiver, stating the name of counsel whom he wishes to employ and showing the necessity for such employment.

(g) No receiver shall employ more than one counsel, except under special circumstances requiring the employment of additional counsel; and in such case only after an order of court made on a petition showing such circumstance, and on notice to the party or person on whose behalf or application the receiver was appointed. No allowance shall be made to any receiver for expenses paid or incurred in violation of this rule.

(h) No receiver or other trustee appointed by the court, nor any attorney acting for such receiver or trustee, shall withdraw or use any trust funds to apply on his compensation for services except on written order of court, duly made after such notice as the court may direct, and filed in the proceeding.

(i) All applications for the allowance of fees to receivers and their attorneys shall be accompanied by an itemized statement of the services performed and the amount charged for each item shown.

Compensation of receivers and their attorneys shall be allowed only upon the order of the court after such notice to creditors and others interested as the court shall direct, of the amounts claimed as compensation and of the time and place of hearing the application for their allowance.

(j) Every receiver shall take a receipt for all disbursements made by him in excess of one dollar, shall file the same with his final account, and shall recite such filing in his verified petition for the allowance of such account. Final accounts shall disclose the status of the property of the estate as to unpaid or delinquent taxes and the same shall be paid by him to the extent that the funds in his hands permit, over and beyond costs and expenses of the receivership. [As amended June 1964, effective Oct. 1, 1964.]

RULE 24

RESTRAINING ORDER, BOND. Before any restraining order shall be issued, except in aid of writs of execution or replevin, or in actions for divorce, the applicant shall give a bond in the penal sum of at least $1,000, executed by him or by some person for him as a principal, approved by the court and conditioned for the payment to the party restrained of such damages as he shall sustain by reason of the order, if the court finally decides that the applicant was not entitled thereto. [As amended June 1964, effective Oct. 1, 1964.]

RULE 25

SERVICE, ADMISSION OF ATTORNEY. Rule 25 is superseded in respect of Practice and Procedure in the District Courts by Rule 5.02 of the Rules of Civil Procedure.

RULE 26

STAY. Rule 26 is superseded, in respect of Practice and Procedure in the District Courts by Rule 58.02 of the Rules of Civil Procedure.

RULE 27

TRIALS. (a) [Eliminated effective Oct. 1, 1964.]

(b) In civil cases called for trial by jury the court at the request of any party to the action may direct the clerk to draw 18 names from the jury box in the first instance, and the said 18 shall then be examined as to their qualifications to sit as jurors in the action; and if any of them be excused another shall be called in his place until there shall be 18 jurors in the box qualified to sit in the action; and the parties shall have the right to exercise their peremptory challenges as to those 18. When the peremptory challenges have been exercised, of those remaining the 12 first called into the jury box shall constitute the jury. In appropriate cases this rule may be modified in accordance with sections 546.10 and 593.15.

(c) Counsel on each side, in opening his case to the jury, shall confine himself to stating the facts which he proposes to prove.

(d) On the trial of actions but one counsel on each side shall examine or cross-examine a witness, and one counsel only on each side shall sum up the case to the jury, unless the judge shall otherwise order.

(e) In criminal trials involving sex offenses or in which the evidence is likely to be of a scandalous nature the court may, with the consent of the defendant, exclude the general public from the court room.

(f) Exceptions to remarks by counsel either in the opening statement to the jury or in the closing argument shall be taken while such statement or argument is in progress unless the same is being taken down in full by the court reporter, in which case exceptions taken at the close of the statement or argument shall be deemed seasonable. The services of the

court reporter shall be at the expense of the party desiring it, which shall not be taxable as costs. (Adopted at annual meeting of district court judges held in Minneapolis on July 5-6, 1982.)

RULE 28

TRUSTEES; ACCOUNTING. Every trustee subject to the jurisdiction of the district court shall file an annual account, duly verified, of his trusteeship with the clerk of the court within 60 days after the end of each accounting year. Such accounts shall contain the following:

(1) Statements of the total inventory or carrying value and of the total fair market value of the assets of the trust principal as of the beginning of the accounting period. In cases where a previous account has been rendered, the totals used in these statements shall be the same as those used for the end of the last preceding accounting period.

(2) A complete itemized inventory of the assets of the trust principal as of the end of the accounting period, showing both the inventory or carrying value of each asset and also the fair market value thereof as of such end of the accounting period, unless, because such value is not readily ascertainable or for other sufficient reason, this provision cannot reasonably be complied with. Where the fair market value of any item at the end of the accounting period is not used, a notation of such fact and the reason therefor shall be indicated on the account.

(3) An itemized statement of all income transactions during the period of such account.

(4) A summary statement of all income transactions during the period of such account, including the totals of distributions of income to beneficiaries and the totals of trustees' fees and attorneys' fees charged to income.

(5) An itemized statement of all principal transactions during the period of such account.

(6) A reconciliation of all principal transactions during the period of such account, including the totals of distributions of principal to beneficiaries and the totals of trustees' fees and attorneys' fees charged to principal as well as the totals of liquidations and reinvestments of principal cash.

An account shall be deemed to comply with the foregoing requirements which contains, in substance, where applicable, the following items:

RECONCILIATION OF PRINCIPAL

	Debit	Credit
Assets at beginning of accounting period:	$_____	
Increases:		
Proceeds of assets sold $_____		
Less inventory value _____		
Assets acquired	_____	
Premiums amortized	_____	
Other increases*	_____	
Decreases:		
Inventory value of assets sold $_____		
Less proceeds of sale _____		$_____
Cost to trust of acquired assets		_____
Income taxes chargeable against principal		_____
Discounts amortized		_____
Trustees' fees		_____
Attorneys' fees		_____
Distributions to beneficiaries		_____
Other decreases*		_____
Assets at end of accounting period		_____
	_____	_____
	$_____	$_____

*(List other decreases and increases by categories)

STATEMENT OF MARKET VALUE OF PRINCIPAL ASSETS

Beginning of period $_____
End of period $_____

(See notations as to any departures from fair market values at appropriate date elsewhere in this or the preceding account)

SUMMARY OF INCOME

	Debit	Credit
Balance (overdraft) at beginning of Accounting period	$_____	
Increases:		
Interest	$_____	
Dividends	_____	
Real estate income	_____	
Discounts amortized	_____	
Other increases*	_____	
Decreases:		
Premiums amortized		$_____
Accrued interest in assets purchased		_____
Real estate expenses		_____
Trustees' fees		_____
Attorneys' fees		_____
Income taxes chargeable against income		_____
Miscellaneous expenses		_____
Distributions to beneficiaries		_____
Other decreases*		_____
Balance (overdraft) at end of Accounting period		_____
	_____	_____
	$_____	$_____

*(List other increases and decreases by categories)

ITEMIZATION OF INCOME TRANSACTIONS
ITEMIZATION OF PRINCIPAL TRANSACTIONS
(Per separate schedules attached)

INVENTORY OF PRINCIPAL ASSETS AT END OF ACCOUNTING PERIOD

	Inventory Value	Market Value*
Bonds (list)	$	$
Preferred stocks (list)		
Common stocks (list)		
Common trust funds (list)		
Real estate (list)		
Other (list)		
Cash (list)		
	$_____	$_____

*(Note any exceptions to fair market value at end of accounting period and reasons therefor)

If any asset realized a net income less than one per cent of the inventory value or acquisition cost, describe the asset and explain in a supporting schedule what net income was realized and why it is deemed advisable to retain this asset.

Final accounts shall disclose the state of the property of the trust estate as to unpaid or delinquent taxes and such taxes shall be paid by the trustee to the extent that the funds in the trust permit, over and beyond the cost and expenses of the trust administration, except where a special showing is made by the trustee that it is in the best interests of the trust and is lawful for the unpaid or delinquent taxes not to be paid.

There shall also be filed with the clerk proof of mailing of such account to the last addresses known to the trustee of, or of the service of such account upon, such of the following beneficiaries or their natural or legal guardians as are known to, or reasonably ascertainable by, the trustee:

(a) Beneficiaries entitled to receive income or principal at the date of the accounting; and

(b) Beneficiaries who, were the trust terminated at the date of the accounting, would be entitled to share in distributions of income or principal.

The clerk shall keep a list of trusteeships and notify each trustee and the court when any such annual account has not been filed within 120 days from the end of the accounting year.

Hearings upon annual accounts may be ordered upon the request of any intrested party. A hearing shall be held on such annual accounts at least once every five years upon notice as set forth in Minnesota Statutes, Section 501.35; provided, that in trusts of the value of $20,000 or less, the five year hearing requirement may be waived by the court in its discretion. Any hearing on an account may be ex parte if each party in interest then in being shall execute waiver of notice in writing which shall be filed with the clerk, but no account shall be finally allowed except upon a hearing on the record in open court. Such five year hearings shall be held within 150 days after the end of the accounting period of each fifth annual unallowed account, and the clerk shall notify each trustee and the court if the hearing is not held within such 150 day period.

The changes in this rule made by this amendment shall be effective as to accounting periods commencing one year or more after the adoption hereof. As amended June 22, 1967. Except in those cases in which a trust company or national banking association having trust powers is the trustee or one of the trustees, the petition for confirmation of the appoint-

ment of the trustee or trustees shall include an inventory, including a description of the assets of the trust known to the petitioners and an estimate by them of the market value of such assets at the date of the petition. The petition shall also set forth the relationship, if any, of the trustee or trustees to the beneficiaries of the trust.

RULE 29

VENUE, CHANGE. A change of venue shall not be granted under the provisions of section 542.11 unless the party applying therefor uses due diligence to procure the same within a reasonable time after issue has been joined in the action and the ground for the change has come to the knowledge of the applicant. Nor shall a change be granted where the other party will lose the benefit of a term, unless the party asking for such change shall move therefor at the earliest reasonable opportunity after issue has been joined and he has information of the ground of such change.

RULE 30

DIVORCE ACTIONS, SERVICE. In every action for divorce brought against a foreign national, in which summons and complaint are not served by handing the same to the defendant within the continental United States, the attorney for plaintiff shall be requested forthwith, upon the commencement of such action, to notify the nearest consul or vice-consul of the country of which defendant is a national of the title and venue of such action, the manner in which jurisdiction was acquired and the date thereof and shall upon request furnish a copy of such summons and complaint or permit a copy thereof to be made.

RULE 31

CIVIL JURY CASES IN WHICH INSURANCE COMPANY INTERESTED IN DEFENSE OR OUTCOME OF ACTION—EXAMINATION OF JURORS. In all civil jury cases, in which an insurance company or companies are not parties, but are interested in the defense or outcome of the action, counsel for such company or companies may, and upon request of the presiding Judge shall, disclose the name of such company or companies to opposing counsel, out of the hearing of the jury, as well as the name of the local agent of such companies. When so disclosed, no inquiry shall be permitted by counsel as to such names in the hearing of the jury, nor shall disclosure be made to the jury that such insurance company is interested in the action.

In the examination of the jurors by counsel as to their qualifications, the jurors may be asked collectively whether any of them have any interest as policyholders, stockholders, officers, agents or otherwise in the insurance company or companies interested, but such question shall not be repeated to each individual juror. If none of the jurors indicate any such interest in the company or companies involved, then no further inquiry shall be permitted with reference thereto.

If any of the jurors manifest an interest in any of the companies involved, then counsel may further inquire of such juror or jurors as to his or their interest in such company, including any relationship or connection with the local agent of such interested company, to determine whether such interests or relationship disqualifies such juror.

The presiding Judge, in his discretion, may examine the jurors on this feature of the case and not permit counsel to do so.

RULES FOR UNIFORM DECORUM IN THE DISTRICT COURT OF MINNESOTA

COURTROOM

1. The flag of the United States shall at all times while court is in session be displayed on or in close proximity to the bench.

2. A courtroom is a temple of justice—unseemly conduct therein at any time is in poor taste. Tobacco in any form shall not be used; hats and overcoats should be removed at all times before entering the courtroom; dignity and solemnity of both judges and attorneys should be maintained in the courtroom at all times.

3. There shall be no unnecessary conversation, loud whispering, newspaper or magazine reading or other disconcerting or distracting activity by anyone in the courtroom during the progress of the trial.

OPENING AND SESSIONS OF COURT

4. At the opening of a term of court, the formality shall be as follows: Immediately before the scheduled time for opening, the sheriff or bailiff shall proceed from the judge's chambers, and by a rap of the gavel or other signal, direct all court officers and spectators to their seats. As the judge enters the courtroom, the bailiff shall require all present to arise and stand, and the bailiff shall say clearly and distinctly:

Hear Ye—Hear Ye—Hear Ye! The District Court of the —— Judicial District, County of ————, State of Minnesota is about to open for ———— term of court. All persons having business before this Court please come forward, let your wants be known and you shall be heard. This Court is now open. Judge ———— presiding.

All may then be seated and the business of the court will proceed.

(The procedure above outlined may be modified by the judge entering and standing in lieu of the judge being seated, and by the use of the usual "Hear Ye," prevailing in the different districts.)

5. In reconvening court in the morning and after the noon recess, the bailiff shall give warning by gavel or otherwise, and as the judge enters, cause all to stand until he is seated.

(The above rule (to) or (to not) apply to mid-morning and mid-afternoon recesses of the court at election of presiding judge.)

THE JURY

6. When trial is to a jury, the jurors shall take their respective places in the jury box before the judge enters the courtroom. In reconvening after a recess, it is the duty of the bailiff to give warning and assemble the jurors when court is reconvened.

7. When a jury has been selected and is to be sworn, the presiding judge or clerk shall request the jurors to arise, and on the oath being administered, everyone in the courtroom, including attorneys, except the presiding judge shall stand.

THE BAILIFF

8. It shall be the duty of the bailiff to maintain order at all times as litigants, witnesses and the public assemble in the courtroom and during the progress of the trial and during recesses of the court. This includes the duty to admit persons to the courtroom and direct them to seats, and to refuse admittance to the courtroom in such trials where the courtroom is occupied to its full seating capacity.

THE CLERK

9. When the witness is sworn, the clerk shall have the witness give the reporter his or her full name, and after being sworn, courteously invite him or her to be seated on the witness stand.

10. The clerk shall be alert, stand erect and administer the oath to jurors and witnesses in a slow, clear, and dignified manner. Witnesses when sworn should stand near the bench or witness stand, and the swearing of witnesses should be an impressive ceremony and not a mere formality.

THE LAWYER

11. The lawyers should advise their clients and witnesses of the formalities of the court, thereby avoiding embarrassment to them and the court as well.

12. The lawyer is an officer of the court and should at all times uphold the honor and maintain the dignity of the profession, and should maintain at all times a respectful attitude toward the court.

13. Except when making objections, lawyers should arise and remain standing while addressing the court or the jury. In addressing the court, the lawyer should refer to the judge as "Your Honor" or "The Court."

14. The lawyers should address the court from a position at the counsel table. If a lawyer finds it necessary to discuss some question out of the hearing of the jury at the bench, he may so indicate to the court and approach the bench for the purpose indicated. In such an instance, the lawyers should never lean upon the bench nor appear to engage the court in a confidential manner.

15. Lawyers shall be seated or stand at the counsel table while examining witnesses, except when identifying or examining exhibits, or because of physical defects of the witness, or other emergency, a modification of the procedure is required.

16. Lawyers during trial shall not exhibit undue familiarity with witnesses, jurors or opposing counsel, and the use of first names shall be avoided. In arguments to the jury, no juror should be singled out and addressed individually by name.

Canon Number 23 of Canons of Professional Ethics, American Bar Association, provides: "All attempts to curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the Court out of the jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause."

17. All lawyers, jurors, litigants and court officials shall wear coats while in attendance upon court, provided judicial discretion may be exercised otherwise in certain situations.

18. Lawyers shall state objections without argument. If there is to be an argument or offer of proof, the same shall be made out of the hearing of the jury.

19. When addressing the jury, the lawyers shall first address the court, who shall recognize the lawyer by "Mr. Smith" or "Counsel."

20. In examination of a witness, the lawyer should not indulge in personalities, but should treat the witness with courtesy and respect.

Canon No. 18 of Canons of Professional Ethics, American Bar Association, provides: "A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the lawyer's conscience in professional matters. He has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf."

21. The lawyers as far as possible shall refrain from interrupting each other, speaking at the same time or arguing across the counsel table. Unless observed, this will make a poor record for review later. Lawyers should instruct their witnesses to testify slowly and clearly so that the court and jury will hear their testimony, and should caution witnesses not to chew gum when testifying.

22. A lawyer or a party shall not thank the jury or the court for a favorable verdict that has been returned. It is the duty of the court to see that no demonstration occurs in the courtroom in connection with the rendering of a verdict.

THE JUDGE

23. The judge shall at all times be dignified, courteous, respectful and considerate of the lawyers, the jury and witnesses.

Canons number 9 and 10 of Canons of Judicial Ethics, American Bar Association, provide:

"9. A judge should be considerate of jurors, witnesses and others in attendance upon the court."

"10. A judge should be courteous to counsel, especially to those who are young and inexperienced, and also to all others appearing or concerned in the administration of justice in the court."

"He should also require, and, so far as his power extends, enforce on the part of clerks, court officers and counsel civility and courtesy to the court and to jurors, witnesses, litigants and others having business in the court."

24. Pursuant to resolution of the Minnesota District Judges' association, the judge shall wear a robe at all trials and court appearances, except that under certain circumstances, in the exercise of his discretion, the judge may dispense with the wearing of a robe in a court appearance.

25. The judge shall be punctual in convening court, and prompt in the performance of his judicial duties in the courtroom.

Canon number 7 of Canons of Judicial Ethics, American Bar Association, provides: "A judge should be prompt in the performance of his judicial duties, recognizing that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality on his part justifies dissatisfaction with the administration of the business of the court."

26. During the presentation of the case, the judge shall maintain absolute impartiality, and shall neither by word or sign indicate that he favors any party to the litigation.

27. The judge should refrain so far as possible from intervening in the examination of witnesses or argument of counsel; however, the judge shall intervene on his own motion to prevent a miscarriage of justice.

Canon number 15 of Canons of Judicial Ethics, American Bar Association, provides:

"A judge may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity, but he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, may tend to prevent the proper presentation of the cause, or the ascertainment of the truth in respect thereto."

"Conversation between the judge and counsel in court is often necessary, but the judge should be studious to avoid controversies which are apt to obscure the merits of the dispute between litigants and lead to its unjust disposition. In addressing counsel, litigants or witnesses, he should avoid a controversial manner or tone."

"He should avoid interruptions of counsel in their arguments except to clarify his mind as to their positions, and he should not be tempted to the unnecessary display of learning or a premature judgment."

28. The judge shall have the duty to see that each witness is sworn separately and that the oath is administered to witnesses in a manner calculated to impress them with the importance and solemnity of the oath taken.

29. The judge shall be impersonal in addressing the lawyers and other officers of the court by addressing the lawyers as "Counsel" or "Mr. Smith;" the bailiff as "Mr. Bailiff;" the clerk as "Mr. Clerk" or "Madame Clerk;" or the reporter as "Mr. Reporter" or "Madame Reporter."

30. The judge shall be responsible for order and decorum in the court and shall see to it at all times that parties and witnesses in the case are treated with proper courtesy and respect. Lecturing, browbeating, badgering or shouting at a witness shall not be allowed.

31. The judge shall be in complete charge of the trial at all times and shall see to it that everything is done to obtain a clear and accurate record of the trial. It is his duty to see that the witnesses testify clearly so that the reporter may obtain a correct record of all proceedings in court.

32. If in a trial the lawyers get into a personal colloquy or wrangle across the counsel table, it is the duty of the trial judge to interrupt; a simple suggestion that counsel request a ruling from the court, or a reminder that the reporter can report only one at a time, or the mere suggestion that each give the other the opportunity to speak, usually has the desired effect.

33. The judge shall exercise extreme care so as not to say anything before the jury or parties to an action that is critical of a lawyer or that may be embarrassing to him before his client or the jury. It is always well for the judge to remember that the lawyer is also an officer of the court. If the judge has a suggestion to make to the lawyer of a critical nature, he may call a recess or call the lawyer to the bench and speak to him in an undertone not audible to the jury.

34. The judge shall at all times exercise the highest degree of patience; it is better to lose time than to lose patience. The silent judge makes the better judge; a judge seldom regrets what he failed to say during a trial but many times he regrets and wishes he could recall some things he did say.

Canon number 5 of Canons of Judicial Ethics, American Bar Association, provides: "A judge should be temperate, attentive, patient, impartial, and, since he is to administer the law and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts."

35. The judge should exercise caution not to comment favorably or adversely upon the verdict of a jury during a court term; it may indirectly influence the action of the jury in the remaining cases to be tried.

36. The juror is always interested in what has happened to a case he is hearing. If a case is disposed of by motion, settlement or otherwise, it is a good practice to explain to the jury what has trans-

pired. The explanation with proper comments from the court can do much to alleviate the criticism that is frequently made of our jury trial procedure.

PART II
RULES FOR REGISTRATION OF LAND TITLES

PROCEEDINGS FOR INITIAL REGISTRATION

RULE 1

APPLICATION, INDORSEMENTS. Applications, approved as to form by the examiner, shall be presented in duplicate. There shall be indorsed thereon the name and address of the applicant's attorney, or of the applicant if he appears in person.

RULE 2

ABSTRACTS OF TITLE. The abstract when filed shall show the record of the patent or other conveyance from the United States, the record of the certified copy of the application, and all judgments, federal and state, taxes, assessments, and tax sales.

RULE 3

TITLE BASED UPON AN ADJUDICATION NOT FINAL, OR UPON ESTOPPEL. When the title of the applicant or the release or discharge of any encumbrance thereon, is based upon an adjudication not final, or upon estoppel, and there remains a right of appeal or contest, all parties having such right of appeal or contest shall be made parties defendant.

RULE 4

TITLE DERIVED THROUGH DECREE OR ADJUDICATED TAX SALE. Title based upon a judgment or decree of court in an action, or upon an adjudicated tax or local assessment sale, shall be registered only after the expiration of six months from the date of the judgment or decree; but this shall not apply to cases where in the action in which the judgment or decree was entered, or in the proceeding to register the title, the summons was served personally upon the parties who could alienate the fee title.

RULE 5

EXAMINER'S REPORT; PETITION AND ORDER FOR SUMMONS. The examiner's report shall specify the names of all parties he deems necessary parties defendant. Petitions for summons shall set forth such names and the names of such other parties as the applicant deems to be necessary, and the names, if known to the applicant, or ascertainable by him upon reasonable inquiry, of the successors in interest of such persons known to the applicant to be deceased. Where the place of residence of a defendant is unknown to the applicant, the petition shall so recite and shall set out the facts relating to the search for such defendant by the applicant.

RULE 6

PAPERS TO BE FILED, EFFECT OF NOTICE AND APPEARANCE. If a defendant, in addition to appearing or filing his answer, as by statute required, shall serve a copy thereof upon the applicant or his attorney, he shall be entitled to notice of all subsequent proceedings.

RULE 7

AFFIDAVIT OF NO ANSWER AND CLERK'S CERTIFICATE OF DEFAULT. The default of defendants who fail to appear and answer shall be shown by the certificate of the clerk entitled and filed in the action, and by the affidavit of the applicant's attorney, if he appears by attorney; otherwise by the applicant's affidavit.

RULE 8

HEARINGS IN DEFAULT CASES, FILING NOTE OF ISSUE AND PAPERS. Initial applications, where no issue has been joined, shall be heard by the court at any special term, unless by local rules adopted for any particular county or district, or by special order, other days have been designated for such hearings; or they may be heard by an examiner, to whom the matter has been specially referred, as referee. In counties where the examiner checks the proceedings in advance of the hearings, the note of issue and all papers necessary to complete the files shall be filed and all documentary evidence proposed to be used by the applicant or petitioner shall be delivered to the examiner at least three days before the hearing, together with the proposed order for judgment and decree.

RULE 9

ISSUES RAISED BY ANSWER, REPLY. All facts alleged in an answer, which are not in accordance with the allegations of the applicant, shall be considered at issue without reply by the applicant. If the answer sets up rights admitted in the application, or in a reply of the applicant, the hearing may proceed as in case of a default, and the registration shall be subject to such rights.

RULE 10

TRIAL OF CONTESTED ISSUES. In all cases where the answer raises an issue which is undisposed of by stipulation or otherwise, the matter shall be noted for trial at the general term. The procedure and the method of determination shall be the same as in the trial of similar issues in civil actions or proceedings.

RULE 11

INTERLOCUTORY DECREE ESTABLISHING BOUNDARIES. When the applicant seeks to fix and establish the boundary lines of the land, he shall have the premises surveyed by a competent surveyor and shall cause to be filed in the proceeding a plat of the survey showing the correct boundaries of the premises. He shall furnish the examiner with such abstracts of title of adjoining lands as the latter shall require in determining the necessary parties defendant in the fixing and establishing of such boundaries. The hearing upon such application may be separate from or in connection with the hearing upon the application to register, but before any final adjudication of registration, the court by order shall fix and establish such boundaries and direct the establishment of "Judicial Landmarks" in the manner provided by section 559.25. In the decree of registration thereafter entered, and in certificates of title thereafter issued, the description of the land shall contain appropriate reference to such "Judicial Landmarks."

RULE 12

PROTECTION OF INTERESTS ACQUIRED PENDENTE LITE; PROVISION FOR IMMEDIATE REGISTRATION AFTER HEARING. At the time of the hearing of the application for judgment, the applicant shall satisfy the court by continuation of abstract and other proper proof, of changes, if any, in the title, or in the encumbrances thereon arising since the filing of the application. When the decree is signed, the applicant shall forthwith file the same with the clerk, together with a receipt of the registrar showing payment of all sums due him for the registration of the decree, and the issuance of a certificate of title in pursuance to said decree, and thereupon the clerk shall certify a copy of the decree and file the same for registration with the registrar.

PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION

RULE 13

TITLE OF PROCEEDINGS. Proceedings subsequent to the initial registration under sections 508.44, 508.45, 508.58, 508.59, 508.61, 508.67, 508.68, 508.69, 508.70, 508.71, and 508.73 shall be commenced by filing with the clerk a verified petition by a party in interest, which shall be entitled:

"In the Matter of the Petition of..... in Relation to (description of property) registered in Certificate of Title No..... for (relief sought)."

The petition shall allege the facts justifying the relief sought, the names of all interested parties as shown by the certificate of title, and their interests therein.

RULE 14

TRIAL AND HEARING. In proceedings where no notice is required and in proceedings where the required process of notice has been served and the time for appearance has expired without any issue having been raised, the proceedings shall be noted for trial and heard the same as in proceedings upon default for initial registration. Issues raised in these proceedings shall be noted for trial and disposed of the same as similar issues in other civil proceedings.

RULE 15

NEW CERTIFICATES, AMENDMENTS, ETC. In proceedings under sections 508.44, 508.45, 508.58, 508.59, 508.61, 508.67, 508.68, 508.69, 508.70, 508.71, and 508.73, the petition for relief, duly verified, before being presented, shall be approved as to form by the examiner of titles. The examiner shall make such examination as to the truth of the allegations contained in the petition as to him may seem necessary, or as directed by the court. In all cases where notice is necessary and the manner thereof is not prescribed

by statute, it shall be by an order to show cause, which shall designate the respondents, the manner of service, and the time within which service shall be made. Any final order or decree directed in such proceeding shall be approved as to form by the examiner before presentation to the court.

RULE 16

NEW DUPLICATE CERTIFICATE. Every petition for a new duplicate shall be filed with the clerk and show by a receipt of the registrar of titles indorsed thereon that a duplicate original has been delivered to him. Thereupon the court shall issue a citation addressed "To Whom It May Concern," fixing a time and place of hearing and prescribing the mode of service. No order shall be made for a new duplicate except upon hearing and due proof that the duplicate theretofore issued has been lost or destroyed or cannot be produced. If it shall appear at the hearing that there are any known parties in interest to whom notice should be given, the hearing shall be continued and an order entered accordingly.

SPECIAL RULES APPLICABLE TO PARTICULAR DISTRICTS

FIRST JUDICIAL DISTRICT

RULE 1

CALL OF THE CALENDAR: The call of the calendar shall be had at the hour of 10:00 o'clock A.M. on the opening day of each General Term. At the call, counsel shall announce the nature of the disposition to be made of the case, including motions to dismiss, strike, change the order on the calendar, or such other motions as are proper to be noticed at said time.

RULE 2

PRE-TRIAL: The first week will be devoted to the calling of the calendar, hearing motions and pre-trial conferences.

The court may, in its discretion, direct the attorneys for the parties to appear before it for a pre-trial conference pursuant to Rule 16, Rules of Civil Procedure.

The order of pre-trial shall be fixed by the clerk under direction of the court, and all parties to any actions pending and their respective attorney or attorneys shall be prepared to proceed in the order designated. Only those attorneys, representing all the parties, who are familiar with the cause and are fully authorized to make binding stipulations therein will be permitted to appear, having with them their complete files. Failure to comply herewith will authorize such disposition as to the court seems just under the circumstances.

RULE 3

PETIT JURY: The petit jury will be summoned to appear on the Monday following the first day of the term in each county; but in the event pre-trial of cases is not to be held by the court, then the jury shall appear at 10:00 o'clock A.M. on Wednesday following the call of the calendar.

RULE 4

TRIAL OF CASES: All court and jury cases are set for trial on the first day of the General Term. The trial of all jury cases shall begin as herein stated and the trial of court cases shall immediately follow the completion of the jury cases. Trial of all cases begins at 10:00 o'clock A.M., unless otherwise announced by the court.

RULE 5

STAY OF PROCEEDINGS: Upon the filing of a verdict or a decision, the court or referee may order a stay of all proceedings for a period not to exceed 30 days, provided that within 30 days the moving party shall order from the reporter a transcript of the evidence, unless a motion is made on the minutes of the court.

The court reporter shall, upon receiving an order for such transcript, immediately notify the clerk of the receipt of such order, and upon such notice to the clerk a further stay of all proceedings shall be in effect until 30 days after said reporter notifies the clerk and requesting party in writing that such transcript has been completed and is ready for delivery. It shall be the duty of said reporter to transcribe and prepare transcripts of evidence, taken in all trials and proceedings, in the order requested and with reasonable dispatch.

Within said 30 days said requesting party shall bring on for hearing before the court such motion or proceedings as it deems advisable and necessary, preparatory to an appeal to the Supreme Court, provided however, in extra-ordinary cases, said 30-day period may be extended by application of either party to the court. Upon submission of such motion or proceedings to the court, all proceedings shall be stayed up to and including the filing of the decision by the court. The foregoing provisions apply to civil proceedings only.

RULE 6

GENERAL TERMS: General Terms of court will be held as provided in Section 484.09, Minnesota Statutes, as amended.

RULE 7

SPECIAL TERMS: Article I. Generally. Special Terms of court for hearing of all matters except issues of fact shall be held as follows:

GLENCOE, McLEOD COUNTY: The second and fourth Fridays of each month commencing at 10:00 o'clock A.M.;

HASTINGS, LE SUEUR COUNTY: The first and third Fridays of each month commencing at 10:00 o'clock A.M.;

SHAKOPEE, SCOTT COUNTY: The first and third Fridays of each month commencing at 10:00 o'clock A.M.;

RED WING, GOODHUE COUNTY: The second and fourth Fridays of each month commencing at 10:00 o'clock A.M.;

HASTINGS, DAKOTA COUNTY: The first and third Fridays of each month commencing at 10:00 o'clock A.M.;

GAYLORD, SIBLEY COUNTY: The first Friday of each month commencing at 10:00 o'clock A.M.

Article II. Special Term Note of Issue

A Special Term Note of Issue, or a letter of counsel containing the necessary details shall be filed with the Clerk of Court of the County where the Special Term is to be held prior to noon of the Thursday preceeding the Special Term at which the matter is to be heard. This Note of Issue shall be in the usual form and in addition shall state:

A. Whether the matter is to be heard ex parte or is contested.
B. Whether or not testimony will be presented or required.
C. The length of time estimated required for presentation.

Article III. Calendar

Each Clerk of Court for the several counties within the district shall prepare Special Term Calendars for each Special Term in his county. No matter will be set on any Special Term Calendar until a Note of Issue is filed with the Clerk as required by Article II above.

The Clerks will prepare the calendar setting the matters thereon in the order in which the Notes of Issue are filed with him and in the following general classifications:

First: Matters where no testimony will be presented.
Second: Matters where testimony will be presented.

Special Term Calendar will indicate counsel's estimate of time required and counsel are urged to limit themselves accordingly.

The Presiding Judge may consider matters not properly on the Special Term Calendar at the conclusion of a hearing of the calendar if time permits.

RULE 8

SERVICE OF BRIEFS: In all cases tried to the court without a jury, if submitted on briefs, the party having the burden of proof shall have 20 days within which to serve his brief after the submission of the case, and the other party shall have 20 days within which to serve his brief from and after the service of the brief on him, and the party serving the first brief shall have 10 days in which to reply to the answer brief on him. At the expiration of 50 days the case will be considered as submitted to the court for its decision whether briefs have been served or not; provided, that where a transcript of the evidence is to be furnished, the time for serving briefs shall commence to run from the date of delivery of the transcript by the court reporter. Time for service of briefs may be shortened or lengthened at the discretion of the court.

RULE 9

a. No court approval of any settlement shall be made by the court without representation by counsel of all the parties concerned in the action.

b. All claims of minors in personal injury suits are to be settled and approved in open court, and a record kept by the reporter.

c. The maximum fee to be allowed for attorneys for services rendered in minors' cases shall not be greater than 25 per cent of the amount recovered, save and except where the case is tried, and in no event shall the fee be greater than 33⅓ per cent.

RULE 10

REPORTS OF TRUSTEES AND RECEIVERS: All reports of trustees and receivers shall be heard at the General Term in the respective counties, or at a Special Term of this court.

RULE 11

REGISTRATION OF LAND TITLE RULE:

I. Cases in Which the Registrar of Titles May Act Without Special Order of Court.

Without special order of this court, the registrar of titles may receive and register as memorials upon any certificate of title to which they pertain, the following instruments:

A. Receipt or certificate of county treasurer showing redemption from any tax sale or payment of any tax described in a certificate of title;

B. A marriage certificate which shows the subsequent marriage of any owner shown by a certificate of title to be unmarried;

C. A certified copy of the death certificate of a party listed in any certificate of title as being the spouse of the registered owner, when said death certificate is accompanied by an affidavit, satisfactory to the Registrar, identifying the decedent with said spouse.

D. An official birth certificate showing the date of birth of a registered owner named in a certificate of title, provided there is attached to said birth certificate an affidavit by a party claiming to be familiar with the fact recited, stating that the party named in said birth certificate is the same party named as an owner in said certificate of title. Thereafter the registrar of titles shall treat said registered owner as having attained the age of majority at a date twenty-one (21) years after the date of birth shown by said birth certificate.

II. Manner of Service on Defendants.

The recitals in an order for Summons pertaining to a defendant's address or that his address is unknown, shall constitute prima facie evidence of the defendant's address or that his address is unknown and Service of the Summons shall be made accordingly as prescribed by statute.

III. Practice in Relation to Apartment Ownership Act, Order Required.

When an owner of registered land desires to submit his land to the provisions of Chapter 457, Laws of 1963, as amended, known as the Apartment Ownership Act, he shall deliver the appropriate organizing documents to the registrar of titles, and at the same time file with the clerk of the district court a petition in a proceeding subsequent to initial registration of land for such purpose.

A. The petition shall request the court:
   (1) That the instruments so submitted be accepted for filing by the registrar;
   (2) That the court issue its order determining that the documents comply with the requirements of said act;
   (3) That thereafter the land shall become subject to the provisions, restrictions, conditions of, and be administered in accordance with said chapter, and any amendments thereto.

B. The court shall thereupon refer the petition and the organizing documents so submitted to the examiner of titles for a report as to whether the documents are legally sufficient to comply with the requirements of said act, and any amendments thereto.

C. The documents so submitted shall include:
   (1) The declaration containing the requirements set forth under Minnesota Statutes, Section 515.11,
   (2) The by-laws or amendment or amendments thereto required by Minnesota Statutes, Sections 515.18 and 515.19,
   (3) The floor plans required by Minnesota Statutes, Section 515.13,
   (4) A plat of survey showing the location of the buildings in relation to the boundary lines of the premises, and
   (5) Any other instruments said owner desires to submit for the purpose intended.

D. If the examiner's report to the court shows said organizing instruments satisfy the requirements of said chapter and any amendments thereto, and that the land and the documents in all respects are acceptable and qualify for administration in accordance with the provisions of said act, the court shall issue its Order:
   (1) Adjudicating that such documents do comply with the requirements of said chapter 457 and any amendments thereto, and
   (2) That the land (here describing the same together with the certificate or certificates of title under which it is registered) shall thereafter be deemed to be governed and administered under the provisions of said chapter and any amendments thereto.
   (3) Directing the registrar of titles to:
      a. Accept and file the necessary organizing documents,
      b. Enter such instruments as memorials on the described certificate or certificates, and
      c. Thereafter show such memorials on each certificate of title subsequently issued relating to any part of the property or parcels thereof governed by said chapter of any amendments thereto.

E. No registered land shall be submitted to the provisions of the apartment ownership act, unless all the land embraced by the organizing documents is registered land.

F. The original and one or more identical copies of each floor plan shall be prepared in black on white mat surface graphic card stock with double cloth back mounting or material of equal quality, said Plan to be either 20 inches by 30 inches, or 30 inches by 40 inches from outer edge to outer edge. One exact transparent reproductible copy of the original shall be prepared by reproduction on linen tracing cloth by a photographic process, or the original traced in black ink on linen tracing cloth or on material of equal quality.

G. The fees to be charged by the registrar of titles for filing instruments in connection with the apartment ownership act are as follows:
   (1) For filing the declaration, amendments thereto, by-laws, amendments thereto, and any other instrument to the administration of said act other than the floor plans and other documents for which fees have otherwise been set, the sum of $2 each.
   (2) For filing two copies of the floor plans, the sum of $10.

RULE 12

CONDUCT. The regular convening hours of the court shall be 10:00 o'clock A.M. and 1:30 P.M. The court will recess at 12:00 o'clock noon each day, and adjourn for the day at 5:00 o'clock P.M. Regular convening, recessing, and adjourning hours may be varied by special directions of the court.

All persons entering the courtroom while court is in session shall immediately be seated and shall conduct themselves in a quiet and orderly manner.

Counsel shall at all times be courteous to each other, and may approach the judge's bench, while court is in session, with opposing counsel to discuss any point of law pertinent to the matter being tried.

The examination of witnesses by counsel shall be conducted in a courteous manner; but one counsel of each side shall be permitted to examine witnesses unless by permission of the court.

Counsel will observe the assignment of cases and keep advised on the progress of business in court and be ready when cases are reached. No arrangement as to time or order of trial will be recognized unless approved by the court.

RULE 13

EXECUTION. Before the clerk of this court shall issue an execution upon any judgment for any one other than the judgment creditor or the assignee of such judgment creditor or the attorney for the judgment creditor or the assignee of such judgment creditor, the person applying therefor shall file with the clerk of this court written authority to make such application and to act for the judgment creditor or assignee, as the case may be.

RULE 14

RIGHT RESERVED. The court shall reserve the right to relax the provisions of any of the foregoing rules in the interest of justice.

FIRST JUDICIAL DISTRICT — APPELLATE COURT RULES

1. The District Court which shall hear all appeals from the County Courts within the First Judicial District of the State of Minnesota arising pursuant to MSA 487.14 and 487.39, Subdivision 1, shall be denominated the District Court for the First Judicial District, Appellate Division.

2. Such Appellate Division shall be divided into two districts designated as the Eastern District and the Western District.

a. The Eastern District shall include the counties of Dakota and Goodhue.

b. The Western District shall include the coutnies of Scott, Carver, LeSueur, McLeod and Sibley.

3. a. The Appellate Division shall hold two terms of Court each year for the Eastern District of the Appellate Division at the Court House at Hastings, Minnesota as follows:

First Monday in March,

Second Monday in September,

commencing at 10:00 A.M. or such other time or county seat as the Chief Judge of the District may direct.

b. The Appellate Division shall hold two terms of Court each year for the Western District of the Appellate Division at the Court House at Chaska, Minnesota, as follows:

First Monday in June,

First Monday in December,

commencing at 10:00 A.M. or such other time or county seat as the Chief Judge of the District may direct.

4. Such Appellate Division shall consist of three judges of the District Court of said district appointed by the Chief Judge of the District, who shall hear and decide all appeals en banc. The Senior Judge of the Appellate Division shall assign the cases on appeal. The Judge to who each case is assigned shall write and sign the opinion rendered by the Appellate Division.

5. The Clerk of District Court of Dakota County shall be the Clerk of the Eastern District of the Appellate Division, and the Clerk of District Court of Carver County shall be the Clerk of the Western District of the Appellate Division. All appeal papers shall be filed with the Clerk of District Court of the county wherein the appeal arises. After recording the papers, said Clerk shall immediately forward the entire file and any subsequently filed papers to the appropriate District Appellate Division Clerk.

6. a. Where the parties have not filed an election to brief or argue the appeal pursuant to Rule 134.01, Rules of Civil and Criminal Appellate Procedure, the District Appellate Division Clerk shall immediately transmit the file after the transcript has been filed, to the Senior Judge of the District Apellate Division for assignment and opinion.

b. Where the parties have elected to file briefs and after briefs are filed the District Appellate Division Clerk shall transmit the file, including briefs, to the Senior Judge of the District Appellate Division for assignment and opinion.

c. Where the parties have elected to make oral argument, the District Appellate Division Clerk shall set the case for argument at the next term of the District Appellate Division commencing more than 10 days subsequent to the filing of Appellant's reply brief or the filing of the transcript if no briefs are elected to be submitted.

7. Prior to the commencement of a term of the District Appellate Division, the District Appellate Division Clerk shall prepare a calendar of the cases set for argument and the time therefore. Such calendar will be sent out to all interested attorneys and Appellate Division Judges at least three days prior to the opening of the District Appellate Division Term.

8. The foregoing rules shall become effective from and after the 1st day of July, 1973, and shall remain in full force and effect until changed by rule of Court.

SECOND JUDICIAL DISTRICT STATEMENT OF POLICY PERTAINING TO CALENDAR MATTERS

For the information of those who may be affected, a statement of policy concerning calendar matters appears advisable. While most of the problems arise in connection with the civil jury calendar, this statement applies equally to non-jury and criminal cases.

Cases on the civil calendars are set for trial in the order in which notes of issue are filed and are set for trial on a day certain. Approximately six weeks prior to the day certain a card is sent to counsel of record in the case notifying them of the trial date. Such notice means that the case is set for trial on that date. Counsel are advised to complete their preparations for trial. Because of the day-certain scheduling of cases, it is imperative that the name of counsel who is actually handling the case appear on the note of issue so that multiple settings for the same counsel can be avoided. If the name of the counsel handling the case is not on the note of issue, counsel handling the case should promptly advise the Administrator's office accordingly.

All papers required to be filed shall be filed promptly upon notice of the day-certain trial date. All papers required to be filed shall bear the file number of the case.

It is not unreasonable to assume that prior to the trial date there has been adequate opportunity to have employed all discovery procedures, that all adverse medical examinations have been held, that all third-party proceedings have been completed, that all amendments to pleadings have been completed and that all other matters, including necessary pretrial motions, have also been completed.

Counsel, as a part of his or her preparation for trial, should be in touch with the party he or she represents and the witnesses he or she intends to call. The trial of any case necessarily affects many people and it would be unusual if a time could be found that would suit the convenience of all who may be involved. Recognition of this fact should suggest the advisability of taking appropriate depositions, the submission of interrogatories, or the taking of depositions upon written interrogatories.

We are aware of the difficulty that counsel frequently encounter with their medical experts. The time when it may be necessary to testify cannot always be one that suits the convenience of a particular doctor. While we desire to cooperate with the medical profession, such cooperation cannot be permitted to proceed to the point where its disrupts the orderly running of the calendar. While plaintiff's counsel cannot usually determine what doctor will be the attending physician, defendant's counsel presumably have some voice in the selection of a doctor for an adverse examination and it would appear appropriate to advise the doctor at the time of selection that he may be called to testify and that plans should accordingly be made. Counsel who insist upon using doctors who are too busy to testify or who are out of state when the case comes on for trial will have to get along without them or take their depositions in advance.

Some counsel entertain the view that, because he "expects" to be called out for trial in another court, this constitutes a sufficient excuse to postpone the trial of a case in this county which has been set down for a day certain. While we desire to cooperate with other courts, counsel must be aware that our calendar is as important as the calendars of other courts. When counsel initiate litigation or undertake the defense of litigation in this county, they must recognize that such initiation or defense carries with it the obligation to be ready for trial. The mere assignment in another court has been held not to be a sufficient reason for continuance. See West v. Hennessey, 63 Minn. 378, 65 N.W. 639, and Adamek v. Plano Manufacturing Co., 64 Minn. 304, 66 N.W. 981.

We recognize that the military service of a party of witness may make impossible the trial of a case on the date set. However, there have been many instances where a party or a witness is in military service and counsel has no information as to when he went, where he presently is and when he is expected to be released. In some instances, the fact of military service of a party or a witness is only ascertained after the case has been set for trial. If you have a witness or represent a party who is in or apt to be in military service, it is essential that you keep in touch with the individual and know where he can be located.

It is our policy that no assignment of cases be made for trial which in any way would hamper or impede the activity of our armed forces. We are aware of the requirements of the Soldiers and Sailors Civil Relief Act. However, a non-military party to litigation should not be unduly delayed or deprived of the opportunity to proceed with the case which he has instituted or which he is defending simply because another party is now in military service.

The following suggestions are made to assist in solving the questions arising out of situations where a party is in military service.

Where the party or witness serviceman is in this country, every effort should be made to obtain a military leave for the purposes of the trial of the particular case. The assignment clerk will set the case for a day certain if it is definitely ascertained that such leave will be granted.

More use should be made of depositions for parties and witnesses who are now available but may not be available at the time of trial. Depositions, interrogatories, depositions on written interrogatories and other pre-trial devices should be employed where feasible.

Where it is impossible to try a case because of military service, the most satisfactory method of handling the situation is to secure a stipulation of counsel to this effect, together with agreement that the case is to be stricken from the calendar and is to be reinstated when counsel all agree that the case is ready for trial.

If cases on our civil calendar are within the jurisdiction of the St. Paul Municpal Court, such cases will be forthwith transferred to the Municipal Court for trial. There are also cases on our civil calendar where the amount demanded in the complaint puts the case beyond the jurisdiction of the St. Paul Municipal Court, but based upon the facts and the special damages the total amount to be reasonably recovered is well within the jurisdiction of the St. Paul Municipal Court. Obvious attempts to avoid Municipal Court jurisdiction by overpleading will not be tolerated. The jurisdiction of the St. Paul Municipal Court was increased to $6,000 by the 1967 Legislature and the jurisdiction was otherwise extended. (See Laws 1967, Chap. 747)

Cases appear on our civil calendars where it is apparent that Ramsey County is not the proper county for venue, and yet no motion is made for a change of venue. While we recognize that we have jurisdiction in such cases, we are unaware of any logical basis upon which there can be justified the resulting unnecessary expense to Ramsey County. When the fact of improper venue exists, such cases may be dismissed without prejudice or, upon agreement of counsel, will be transferred to the county of proper venue.

Occasionally cases appear on our civil jury calendar in which all of the persons who could institute suit as plaintiffs in that lawsuit have not done so. The typical situation is an action by a wife or minor child for personal injuries where the derivative action is not brought in that case or in a separate action, although admittedly not abandoned. Under Rule 19 of the Minnesota Rules of Civil Procedure, such cases will be stricken from the calendar until such time as the companion case or cases are ready for trial and the cases will then be consolidated for trial.

There are from time to time requests for the advancement of cases on the civil jury calendar. As noted earlier, we try cases in the order in which the notes of issue are filed. To single out any individual case or cases for advancement is to delay those cases where the notes of issue were filed earlier. The health, age or economic distress of those parties may be as great as that of the one who seeks advancement. Do not be surprised if your request for advancement is denied. This does not, of course, apply to criminal cases and those where advancement is required by statute.

The foregoing, so far as it is applicable, applies to non-jury cases as well as jury cases.

To prevent any undue delay in criminal cases, and in order to keep this calendar as current as reasonably possible, a number of judges are assigned each week to hear criminal cases and criminal appeals. Under present required procedures it takes more time to process a criminal case than heretofore, and pretrial motions for suppression and other relief are first heard by the judge to whom the case is assigned. Criminal cases are required to be given trial preference (M.S. 630.36), and the setting of criminal cases for trial is the duty of the Court. When the State undertakes the prosecution by the filing of an information or indictment it is presumed that the State is ready for such motions as may be made and is also ready for trial. The defendant will, of course, be afforded a reasonable opportunity to make such motions as he desires and a reasonable time to get ready for trial (M.S. 630.36 gives a defendant at least four days after plea). Any undue delay in the trial of criminal cases, particularly when the defendant is in custody, will not be tolerated.

It is the policy of this Court in connection with the foregoing statement to place the basic responsibility for its implementation and administration upon the Court Administrator, Second Judicial District. Except in very unusual circumstances, his decisions on calendar matters will be adhered to by the Court.

The foregoing statement of policy with regard to calendar matters was approved by the Judges of the District Court of Ramsey County at St. Paul, Minnesota, December 14, 1971.

John W. Graff

CHIEF JUDGE

SECOND JUDICIAL DISTRICT RULES

RULE 1
FILING OF PLEADINGS

a. The party filing a note of issue shall at the same time file such of his pleadings and other papers served by him which were not theretofore filed.

b. All papers required to be filed shall be filed promptly upon notification of the day certain setting.

RULE 2
ADDITIONAL PARTIES

a. When an order has been issued in a case bringing in an additional party or parties plaintiff or defendant, the moving party shall forthwith file said order and serve a copy thereof on the impleaded party.

b. A moving party bringing in additional parties shall also immediately notify in writing the assignment clerk of the names of the additional parties and their attorneys.

c. A lien claimant filing an answer in a mechanics lien action or made a party thereto shall forthwith notify the assignment clerk in writing of his and his attorney's name and address, sending therewith a copy of any order making him a party.

RULE 3
DEPOSITIONS

Before any deposition is taken, the notice for taking said deposition shall be filed.

RULE 4
NOTES OF ISSUE

a. Notes of Issue shall be served and filed in all cases required by the Minnesota Rules of Civil Procedure.

b. A Note of Issue shall be served and filed by the moving party joining a third party when such impleaded party has served an answer.

c. If the name of individual counsel handling the case is not on the note of issue, it is his duty to notify promptly the Administrator's Office accordingly.

d. Notes of Issue are not required in the following cases:

(1) Appeals from awards only in condemnation cases instituted by governmental agencies.

(2) Petitions for review of taxes assessed under M.S. Chapters 277 and 278.

(3) Appeals of civil cases from Municipal Courts to District Court.

(4) Appeals from Probate Court under M.S. 253A.21.

(5) Implied Consent Cases.

(6) Declaratory Judgment Cases.

(7) Review of Assessment under M.S. 429.081.

RULE 5
SETTING OF CASES FOR TRIAL

a. Trial dates for felonies and gross misdemeanors are set by the Court at the time of arraignment.

b. Trial dates for all civil cases are set for a day certain by the Court Administrator's Office.

c. Trial dates for appeals from misdemeanor convictions in Municipal Court are set on the criminal calendar by the Court Administrator's Office.

d. Family Court hearing dates are set by the Family Court Assignment Clerk.

RULE 6
CALENDAR MATTERS

Civil Calendar matters will be handled by the Court Administrator's Office according to the procedural rules herein set forth.

RULE 7
CIVIL CALENDAR PROCEDURAL RULES

a. Re-setting and continuances.

(1) Requests for re-setting of a case because of conflicts or witness problems, when made within ten days of the mailing of the day certain card, will be granted routinely at the request of either party. This will usually be a period of approximately two weeks from the setting of the original trial date.

(2) Up to ten days prior to the trial date a case may be reset for a reason which is legitimate and beyond the control of the parties or counsel. This will normally require concurrence by all parties involved through their counsel.

(3) A continuance or re-setting if requested less than ten days prior to the trial date will be granted only for a substantial reason which was reasonably unforeseeable. This does not normally include unavailability of witnesses or parties who should have been alerted at the time of receiving the trial date notice.

(4) When counsel is actually in trial on the date set for trial, the case will be carried on a standby basis until the case in trial is completed, at which time he is expected to appear for trial in this district on the standby case, regardless of other commitments.

(5) Cases which have been reinstated on the calendar by stipulation for a day certain for trial will be re-set or continued only under extraordinary circumstances, since the stipulation as to the day certain represents that the case is ready for such day certain.

b. Striking from the Calendar.

(1) Where a legitimate reason exists for postponing trial for a longer period of time than the normal calendar rotation of six weeks, or where a case has been on the calendar for trial and has been re-set or continued previously, no further re-setting or continuance will be granted. The parties through their counsel must in such case by stipulation agree to the striking of the case subject to reinstatement at a later date. With respect to striking for cause, a failure on the part of counsel to prepare his case adequately or timely is not deemed sufficient reason and the case will be scheduled for trial on the date set. Legitimate reasons for striking for cause include:

(a) Military service of a party.

(b) Medical evaluation not complete due to injuries or physical conditions not being capable of accurate evaluation.

(c) Recent substitution of counsel for good cause.

(d) Recent addition of parties not known before or all parties not sued or cases consolidated.

(e) Long-term illness of counsel who cannot be replaced by some other member of the firm.

(2) Cases stricken for cause must be reinstated within the time set in the order or the Court will place the matter on the calendar as if a new Note of Issue had been filed.

c. Transfers to Municipal Court.

Cases which are within the jurisdiction of the Municipal Court will be transferred to that Court forthwith upon ascertainment of that fact.

d. Advancement on Calendar.

Requests for advancement of a case on the calendar normally will not be granted. Advancement, if granted, will be for only extraordinary and compelling reasons.

e. Resolution of problems.

All calendar and scheduling problems are to be resolved through the office of the Court Administrator. No motions with respect to such problems will be heard at Special Term or at time of trial unless relief has been sought beforehand through the Court Administrator who also functions as Calendar Referee. The Court Administrator's decision will not be modified or reversed except for extraordinary and compelling reasons.

RULE 8
SPECIAL TERM

a. Days Held. Special Term will be held every day except Saturday, Sunday and Holidays.

b. Length of Hearing. Any Special Term matter which will last longer than one-half day will be transferred to the Court Calendar for hearing. Only the matter noticed for Special Term is so transferred. Trial of the case on the merits will be placed upon the calendar according to the normal procedure under the RCP and these rules.

c. Adherence to Time Schedule. The setting of a time certain for the hearing of special term motions is basically for the convenience of Counsel and not the convenience of the Court. Therefore, the matter may be stricken if Counsel does not appear.

d. Filing of Moving Papers. Scheduled matters will not be heard if the movant (or petitioner) has not filed the moving papers at least two days (48 hours) prior to the time set for the hearing.

e. Added Motions. Additional motions (motions germane to the main case, but not included in the subject matter of the noticed matter), not scheduled, will not be heard at the time scheduled for the original matter, but must be scheduled separately.

f. Motions for Summary Judgment.

1. Parties desiring to file a brief shall do so on the day of the hearing. This shall also apply to motions under Rule 12.03, Minnesota Rules of Civil Procedure.

2. In actions for declaratory judgment, motions for summary judgment will not be scheduled on Special Term since those actions take precedence on the court calendar.

3. After a case has been scheduled for trial for a date certain, no motions for summary judgment will be heard on Special Term unless prior approval has been obtained from the Court Administrator.

g. Injunctive Relief.

1. **Temporary Restraining Orders.** Generally, ex parte temporary restraining orders affecting the city, county, state or other governmental agency will be denied.

(Attention is invited to the Advisory Committee's note to Rule 65.03, Minnesota Rules of Civil Procedure).

2. **Temporary Injunctions.**

a. Motions for temporary injunctions may be scheduled on Special Term for up to two hours. If more time is needed, it must be scheduled on the court calendar with the approval of the Court Administrator.

b. At a hearing pursuant to an order to show cause, a date may also be set for trial of the main action if circumstances warrant an advancement.

h. Motions to Consolidate. A motion to consolidate a case with one previously filed shall not result in a delay of trial date for the first case. If consolidated for trial, the case or cases filed after the first case will be advanced for trial, so that the trial date will coincide with the trial date of the first case filed.

RULE 9
NOTICE OF SETTLEMENT OR OTHER DISPOSITIONS

If a matter is disposed of prior to the time set for hearing or trial, counsel shall immediately notify the appropriate Assignment Clerk, or the Special Term Clerk.

RULE 10
DEFAULTS

Default matters shall be scheduled and heard by the Special Term Judge.

RULE 11
EXHIBITS

It shall be the duty of respective counsel to remove all exhibits from the custody of the Court Reporter upon final disposition of a case. Failure to do so will be deemed authorization to destroy such exhibits.

RULE 12
PICTURES AND VOICE RECORDINGS

No pictures or voice recordings, except the recording made by the official court reporter, shall be taken in any courtroom during a trial or hearing of any case or special proceeding incident thereto, or in connection with any Grand Jury proceeding.

RULE 13
JURY SERVICE

a. All excuses, or deferments from service as a juror will be handled through the office of the Court Administrator.

b. No person shall be certified for the Grand Jury who has served on a Grand Jury within the preceeding three years.

RULE 14
JOINT RULE ON USE OF JURORS IN MUNICIPAL COURT

a. Petit Jurors selected to serve in this court may serve also as Petit Jurors in the Municipal Court of the City of Saint Paul.

b. Jurors shall be selected and sent to the Municipal Court of the City of Saint Paul in the same manner as to the District Court.

c. Petit Jurors, once duly summoned to serve, shall report to and be excused, governed, instructed, controlled, and paid by the Court Administrator of the District Court of Ramsey County or his assistants.

RULE 15

PLAT OR DIAGRAM

Any party desiring to use a plat or diagram in any civil or criminal trial shall prepare such plat or diagram outside of trial hours. When practicable, the scale should be 1" = 10'.

RULE 16

REGISTRATION OF LAND TITLE RULES

I. Cases in which the Registrar of Titles May Act without Special Order of Court. Without special order of this Court, the Registrar of Titles may receive and register as memorials upon any certificate of title to which they pertain, the following instruments:

A. Receipt or certificate of county treasurer showing redemption from any tax sale or payment of any tax described in a certificate of title;

B. A marriage certificate which shows the subsequent marriage of any owner shown by a certificate of title to be unmarried;

C. A certified copy of the death certificate of a party listed in any certificate of title as being the spouse of the registered owner, when said death certificate is accompanied by an affidavit, satisfactory to the Registrar, identifying the decedent with said spouse.

D. An official birth certificate showing the date of birth of a registered owner named in a certificate of title, provided there is attached to said birth certificate an affidavit by a party claiming to be familiar with the fact recited, stating that the party named in said birth certificate is the same party named as an owner in said certificate of title. Thereafter the Registrar of Titles shall treat said registered owner as having attained the age of majority at a date twenty-one (21) years after the Registrar of Titles shall treat said certificate.

II. Manner of Service on Defendants. The recitals in an Order for Summons pertaining to a defendant's address or that his address is unknown, shall constitute prima facie evidence of the defendant's address or that his address is unknown and Service of the Summons shall be made accordingly as prescribed by statute.

III. Practice in Relation to Apartment Ownership Act, Order Required. When an owner of registered land desires to submit his land to the provisions of Chapter 457, Laws of 1963, as amended, known as the Apartment Ownership Act, he shall deliver the appropriate organizing documents to the Registrar of Titles, and at the same time file with the Clerk of the District Court a Petition in a Proceeding Subsequent to Initial Registration of Land for such purpose.

A. The Petition shall request the Court:
   (1) That the instruments so submitted be accepted for filing by the Registrar;
   (2) That the Court issue its Order determining that the documents comply with the requirements of said Act;
   (3) That thereafter the land shall become subject to the provisions, restrictions, conditions of, and be administered in accordance with said Chapter, and any amendments thereto.

B. The Court shall thereupon refer the Petition and the organizing documents so submitted to the Examiner of Titles for a Report as to whether the documents are legally sufficient to comply with the requirements of said Act, and any amendments thereto.

C. The documents so submitted shall include:
   (1) The Declaration containing the requirements set forth under Minnesota Statutes, Section 515.11,
   (2) The By-Laws or amendment or amendments thereto required by Minnesota Statutes, Sections 515.18, 515.19,
   (3) The Floor Plans required by Minnesota Statutes, Section 515.13,
   (4) A Plat of Survey showing the location of the buildings in relation to the boundary lines of the premises, and
   (5) Any other instruments said owner desires to submit for the purpose intended.

D. If the Examiner's Report to the Court shows said organizing instruments satisfy the requirements of said Chapter and any amendments thereto, and that the land and the documents in all respects are acceptable and qualify for administration in accordance with the provisions of said Act, the Court shall issue its Order:
   (1) Adjudicating that such documents do comply with the requirements of said Chapter 457 and any amendments thereto, and
   (2) That the land (here describing the same together with the certificate or certificates of title under which it is registered) shall thereafter be deemed to be governed and administered under the provisions of said Chapter and any amendments thereto.
   (3) Directing the Registrar of Titles to:
      a. Accept and file the necessary organizing documents,
      b. Enter such instruments as memorials on the described certificate or certificates, and
      c. Thereafter show such memorials on each certificate of title subsequently issued relating to any part of the property or parcels thereof governed by said Chapter of any amendments thereto.

E. No registered land shall be submitted to the provisions of the Apartment Ownership Act, unless all the land embraced by the organizing documents is registered land.

F. The original and one or more identical copies of each Floor Plan shall be prepared in black on white mat surface graphic card stock with double cloth back mounting or material of equal quality, said Plan to be either 20 inches by 30 inches, or 30 inches by 40 inches from outer edge to outer edge. One exact transparent reproductible copy of the original shall be prepared by reproduction on linen tracing cloth by a photographic process, or the original traced in black ink on linen tracing cloth or on material of equal quality.

G. The fees to be charged by the Registrar of Titles for filing instruments in connection with the Apartment Ownership Act are as follows:
   (1) For Filing the Declaration, Amendments thereto, By-Laws, Amendments thereto, and any other instrument to the administration of said Act other than the Floor Plans and other documents for which fees have otherwise been set, the sum of $2.00 each.
   (2) For filing two copies of the Floor Plans, the sum of $10.00.

IV. Time Within Which Examiner's Report Shall Be Issued. The Examiner of Titles shall issue his report as to each matter coming before him within the following time periods:

A. Initial Registration— 60 days from the date of receiving abstract of title.

B. Proceedings subsequent— 30 days from date of filing of petition.

In the event the Examiner of Titles shall fail to issue a report within such applicable time period he shall, within 10 days of the expiration thereof, furnish to the Chief Judge of the District Court of the Second Judicial District a brief written explanation of the reason therefor and shall forward a copy thereof to the attorney of record.

RULE 17

SPECIAL RULES OF FAMILY COURT

PREAMBLE

These rules are designed to assist the Court and practitioners in the Family Court Division to achieve a degree of uniformity without sacrificing the ad hoc nature of every domestic relations matter. Compliance with these rules will substantially aid in achieving the best results with a minimum of time. The rules, of course, will not cover every conceivable situation and the practitioner must also be guided by pertinent statutory and case law, as well as the Minnesota Rules of Civil Procedure which may be applicable, even though not specifically contained herein.

I. GENERAL

1.01 Rules of Civil Procedure

The Minnesota Rules of Civil Procedure for the District Courts of Minnesota shall apply to practice in the Family Court Division, except where in conflict with applicable statutes.

1.02 Time

Times limited by these Rules for good cause shown may be shortened on occasion. Shortening of such times shall be the exception and not the rule, and only upon Order of the Court upon demonstration of unusual circumstances.

1.03 Guardians of Infants or Incompetents

No trial will be held in any proceding in the Family Court Division, involving any minor or incompetent party, until a guardian ad litem has been duly appointed by the Court pursuant to Rule 17.02, M.R.C.P.

1.04 Substitution of Counsel

Where an attorney has been substituted for counsel of record, a notice of substitution of attorney and consent by counsel of record shall be filed with the Clerk of District Court at least three days prior to trial. See M.S.A. 481.11 and 481.12.

1.05 Public Assistance; Financial Investigation; Approval of Stipulations

The Court must be advised by counsel at all hearings if either party is the recipient of public assistance. Where a matter is submitted on a stipulation of the parties, and it appear that public assistance is or may be involved, the Court may order an investigation into the financial status of the parties before the stipulation will be approved or judgment entered, to insure that the stipulation is fair, reasonable and equitable as to the parties, any minor children involved, and to the taxpayers.

When a party receives, or has applied for public assistance, Petitioner shall file with the Clerk of District Court a Notice to (insert name) Welfare Department, stating the pertinent facts as to assistance. Copies shall be served by mail upon the other party (or Counsel) and the Welfare Department involved. (For Ramsey County, mail to Attn: Legal Resources Unit.) The Court shall direct that all payments for child support and alimony shall be made to the agency providing the assistance. M.S.A. 518.551. Failure to provide notice may result in striking pleadings and/or hearings, at the discretion of the Court.

1.06 Custody Motions; Procedure

Requests for custody hearings will be assigned to a one-half hour hearing time upon the special term calendar of the Referees. If the matter cannot adequately be heard in one-half hour, the hearing shall be utilized as a pretrial conference and to determine the need for additional hearing time. If the time sought is not in excess of one-half day, the referee may so determine and the matter shall be scheduled at the earliest available date. Requests for hearings in excess of one-half day shall be upon written petition directed to the Family Court, Judge via the referee. Said petition shall specifically set forth the necessity for the time requested, names of the witnesses to be called, expected length and nature of testimony, number and types of exhibits and whether either party desires the Court to interview minor children. No child under the age of 14 years will be allowed to testify without prior written notice to the other party and Court approval.

1.07 Evidentiary Hearings

All Motions, except for custody or contempt proceedings or Motions to vacate a Judgment and Decree, shall be submitted on Affidavits and argument of counsel unless otherwise ordered by the Court, in its discretion, upon good cause shown.

Requests for hearing time in excess of one-half hour shall be assigned for hearing upon the Special Term Calendar of the Referees, and shall be submitted by written petition specifically setting forth the necessity and reason that evidence cannot be submitted by affidavit. The petition shall include names of witnesses, nature and length of testimony, including cross examination, and types of exhibits, if any. The hearing shall be utilized as a pre-trial conference if the petition is granted.

1.08 Attendance at Hearings; Writ of Attachment; Continuance

Upon the failure of a party to appear in response to an Order of the Court compelling his personal appearance, of which there has been personal service, the Court may, in its discretion, order the arrest of said party upon a Writ of Attachment or strike the hearing and/or pleadings.

1.09 Interim Support Order; Occupancy of Home

[1] To insure support for an unemployed party or a party with children pending a full temporary hearing, an initial Order to Show Cause may if the situation warrants, contain the following language:

> IT IS FURTHER ORDERED that pending the aforesaid schedule hearing, you, ..., shall pay to the [petitioner] [respondent], commencing forthwith ....% of your net earnings after and usual deductions for F.I.C.A., withholding taxes and group insurance, such payments to be made within 24 hours of your receipt of such earnings for each pay period. These payments are to insure that ample provision is made by you for the support of your [wife] [husband] [and] [children] pending the aforesaid hearing.

The percentage to be used will be in accordance with the following schedule:

Unemployed spouse and no children	25% of net income
Employed spouse and one child	30% of net income
Unemployed spouse and one child	30% of net income
Employed spouse and two children	30% of net income
Unemployed spouse and two children	35% of net income
Employed spouse and three children	35% of net income
Unemployed spouse and three children	40% of net income
Employed spouse and four children	40% of net income
Unemployed spouse and four children	45% of net income
Employed spouse and five children	45% of net income
Unemployed spouse and five children or more	50% of net income
Employed spouse and six children or more	50% of net income

There must be a showing in the Application for Temporary Relief, or separate affidavit, of the necessity for the interim Order for support.

[2] Where it is necessary to determine whether one party or the other should be granted exclusive occupancy of the home of the parties pending a full temporary hearing, a hearing may be scheduled by inclusion of the following language in the initial Order to Show Cause:

> IT IS FURTHER ORDERED that you appear before the Honorable ....., Judge of District Court, on ....., 197...., at ..... o'clock .....m., in Room ....., Court House, Saint Paul, Minnesota, and show cause, if any you have, why the [petitioner] [respondent], should not have exclusive occupancy of the premises now occupied by both of you.

Time for said hearing shall be obtained from the Assignment Clerk of Family Court Division. There shall be a proper showing by separate detailed Affidavit of the facts supporting an application for exclusive occupancy; the response thereto shall be by Affidavit and the hearing thereon shall be based on said Affidavits and the arguments of counsel. [Carlson v. Carlson, 234 Minn. 258, 48 N.W.2d 58, and McCauley v. McCauley, 267 Minn. 544, 124 N.W.2d 411]

II. JURISDICTIONAL MATTERS

2.01 Service of Summons and Petition

Service of summons and petition in all actions of dissolution, seperate maintenance and annulment shall be made personally upon the respondent pursuant to M.S.A. 518.11, or by publication upon Order of the Court pursuant to said statute and Rule 4 of the M.R.C.P. [Fowler v. Cooper, 81 Minn. 19, 83 N.W. 464]

2.02 Service Outside of State; Affidavit

Where personal service is made outside of the State of Minnesota, and within the United States, it may be proved by Sheriff's return or the affidavit of the person making the same, as provided by M.S.A. 581.11.

2.03 Relief Limited

Where personal service of the summons and petition has not been made upon the respondent within the State of Minnesota so as to confer upon the Court in personam jurisdiction over the defendant, relief

shall be limited to: A decree of either divorce, separate maintenance or annulment; custody of children within the jurisdiction of the Court; and a division of property—real and personal—located within the State of Minnesota, provided that statutory procedures and Rules of Civil Procedure have been followed with respect to said property. [Allegrezza v. Allegrezza, 236 Minn. 464, 53 N.W.2d 133; Rule 4.041, M.R.C.P.]

III. PLEADINGS

3.01 Requisites of Petition; Additional Information

The petition in a proceeding for dissolution or separate maintenance shall affirmatively allege the following information. [M.S.A. 518.10]:

1. Name, address, and date of birth of the Petitioner, and the name of Counsel;
2. Date and place of the parties' marriage;
3. Name, address (or last known), and date of birth of the Respondent;
4. Names, ages, and dates of birth of natural and adopted minor and dependent children (If no children were born or adopted during the marriage, or all children if emancipated, so state);
5. An affirmative allegation of residency of the Petitioner in the State of Minnesota for at least one year immediately preceding commencement of the proceeding (dissolution) and actual residency in Ramsey County at the time the proceeding is commenced (See M.S.A. 518.09);
6. State whether or not a separate proceeding has been commenced by either party in any court in this state or elsewhere;
7. Allege that the petition has been filed in good faith and for the purposes set forth;
8. The statutory ground of the proceeding.

Additionally, pleading the following will materially assist the Court in achieving a just result:

1. A description of the property—real and personal—owned by the parties, or either of them [including the market values, encumbrances and legal description of real estate], and whether said property, or some portion thereof, is other than property acquired during coverture. [M.S.A. 518.54]
2. Whether the petitioner [or respondent in a counter-petition] is seeking title to any property of the parties.
3. In all cases involving minor and dependent children and their custody, an allegation as to which parent will best serve the interest and welfare of the minor or dependent children.
4. The earning capacity and actual earnings, gross and net, of each party to the action and the indebtedness of the parties.
5. Any other allegations or prayers for relief as may be deemed necessary in the particular case.

3.02 Motions; Service and Filling

All moving papers including the application for temporary relief shall be properly completed and shall be served on the other party or counsel as provided in the M.R.C.P. not later than five days prior to the scheduled hearing. All moving papers shall be filed with the Clerk of District Court not later than three days prior to the date set for the scheduled hearing, exclusive of intervening Saturdays, Sundays and holidays. [M.R.C.P., Rules 5.04[1] and [3]; 6.01; 6.04] The hearing may be stricken for failure to comply with this ruie.

3.03 Motions to be Supported by Affidavits; Multiple Motions

All Motions, including those seeking a change of custody of minor or dependent children, or Motions to hold any party in contempt, shall be numerically paragraphed and accompanied by appropriate supporting sworn affidavits which shall follow the numerical format of the Motion and shall be specific and factual as to the basis of the Motion and the circumstances or change of circumstances involved. [RCP 7.02]

3.04 Notice of Time to be Given

All Motions and Orders to Show Cause shall contain the following statement:

> All responsive pleadings shall be served and filed no later than two days prior to the scheduled hearing, exclusive of intervening Saturdays, Sundays and holidays; that the Court *may, in its discretion, disregard any* responsive pleadings served and filed less than two days prior to such hearing, in ruling on the Motion or matter in question.

3.05 Responsive Pleadings; Service and Filing; Time; Notice

Responsive pleadings, including the responsive affidavit to the Application for Temporary Relief, shall be served on counsel for the moving part or personally on the moving party, and shall be filed with the Clerk of District Court not later than two days prior to the scheduled hearing, exclusive of intervening Saturdays, Sundays or holidays. [M.R.C.P., Rule 6.04]

3.06 Application for Temporary Relief and Responsive Affidavit; Form and Content

The form of Application for Temporary Relief and the responsive affidavit thereto shall be as prescribed in Rule 9, Part I, Code of Rules for the District Courts of Minnesota, M.S.A. Volume 27[B]; said affidavit shall also list the employer of each party, the verified gross income of each party on a weekly or monthly basis, the number of exemptions claimed, and all payroll deductions by which the net income figure is attained, for the current and preceding year. Either party may serve and file narrative affidavits in addition to the form affidavit prescribed by Rule 9, Part I, Code of Rules for the District Courts of Minnesota, providing said narrative affidavits are relevant and material to the temporary hearing.

3.07 Preparation of Orders, Judgment and/or Decrees

Whenever the Court requests that a party prepare an Order, Judgment and/or Decree, the Order, Judgment and/or Decree shall be submitted to the Court for execution within thirty (30) days of the request, or the date of the last hearing, whichever is later. If the Order, Judgment and/or Decree is not received within said time limit, the Court, without further notice, may strike the hearing and applicable pleadings.

3.08 Judgment providing for Support and/or Alimony

All judgments and decrees which include the award of child support (and/or alimony), unless otherwise directed by the Court, shall include the following provisions:

> "That both parties are hereby notified that:
>
> (a) Payment of support and/or alimony is to be as ordered herein, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation.
>
> (b) Payment of support must be made as it becomes due, and failure to secure or denial of rights of visitation is not an excuse for non-payment, but the aggrieved party must seek relief thru a proper motion filed with the Court.
>
> (c) The payment of support and/or alimony takes priority over payment of debts and other obligations.
>
> (d) A party who remarries after dissolution and accepts additional obligations of support does so with the full knowledge of his or her prior obligations under this proceeding, and will be given no consideration for those additional obligations when accused of "contempt of court" for failure to make the payments as ordered.
>
> (e) Child support and/or alimony is based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that payments are made regularly throughout the year as ordered."

3.09 Designation af Parties

All parties previously designated as Plaintiff or Defendant shall henceforth be referred to as Petitioner and Respondent, respectively. After so designating the parties, it is permissible to refer to them as Husband and Wife by inserting the following in any petition, order, decree, etc.:

> That Petitioner shall hereinafter be referred to as (Wife/Husband), and Respondent as (Husband/Wife).

IV. DEFAULT PROCEDURE

4.01 General Procedure

To place a matter on the default calendar for trial, there must be filed with the Clerk of District Court a default note of issue, an affidavit of default by the other party, and an affidavit of non-military status *of the party in default, or a waiver by said party of* his rights under the Soldiers and Sailors Relief Act of

1940. Said affidavits may be signed by either the party or the attorney.

4.02 Default Trial; Notice

Where the defaulting party has appeared in an action by a pleading other than an answer or personally without a pleading, and has not affirmatively waived notice of the other party's right to a default trial, the defaulting party shall be notified in writing, within 10 days after the filing of a default note of issue, of the intention to proceed to judgment. (See Rules 55.01 and 5.02 of M.R.C.P.) Such notice shall be, in substance, as follows:

> You are hereby notified that the petitioner has applied for a final hearing to be held not sooner than three days from the date of this notice. You are further notified that the Court will be requested to enter a default decree of dissolution of your marriage at the hearing.

A default hearing will not be scheduled until such notice has been served and filed.

4.03 Default Involving Stipulations

Whenever a stipulation has been executed by the parties, which specifically includes a waiver and consent that one party proceed to final hearing on the default calendar, a default note of issue shall be filed, together with the stipulation and an affidavit of non-military status of the defaulting party or waiver by said party of his rights under the Soldiers and Sailors Relief Act of 1940. If a case is on the contested calendar and has not been set for trial or pre-trial when a stipulation is reached, the case shall be transferred to the default calendar for final hearing upon the filing of the stipulation and a default note of issue. All stipulations shall bear the signatures of both parties, their counsel, and any guardians ad litem, and be filed with the Clerk of District Court not later than five days prior to the scheduled hearing, exclusive of intervening Saturdays, Sundays, and holidays.

In all stipulations where one of the parties appears pro se, the following waiver shall be appended to the stipulation and be executed by the party so appearing:

> I have been advised of my rights to have counsel of my choice, and I hereby expressly waive that right, and have freely and voluntarily signed the foregoing stipulation.

4.04 Continuing Affidavits to Date of Trial

In all default cases, whether or not a stipulation has been filed, the Court shall be provided with an affidavit of continuing default and of non-military status of the defaulting party or a waiver by that party of any rights under the Soldiers' and Sailors' Relief Act of 1940, which affidavits shall be effective to the date of trial.

4.05 Findings; Decree; Preparation

Proposed findings of fact, conclusions of law, order for judgment and judgment and decree shall be prepared by counsel and submitted to the Court, whenever possible, at the commencement of the trial. The original and one copy of the judgment and decree shall be furnished to the Court, together with as many additional copies of the judgment and decree as are to be conformed or certified. (See Rule 3.08 when child support or alimony is ordered.)

4.06 Decree with Public Assistance

When a party is receiving public assistance, the Decree shall direct that all payments of child support and alimony shall be made to the agency providing the assistance. A copy of the Decree shall be served by mail, by the party submitting the Decree for execution, upon the welfare department involved. (For Ramsey County, mail to ATTN: Legal Resources Unit.)

4.07 Decree; Registered Property

Where an interest in registered (Torrens) real property is to be affected by a decree of dissolution, language similar to the following should be employed to transfer title thereto:

> That title to the real estate described below, located in the County of ..... State of Minnesota, acquired during coverture and vested in ..... and ....., Certificate of Title No. ....., to wit:
> Lot 3, Block . . .
> is hereby awarded to ....., and said ..... is hereby divested of all right, title, and interest in said real estate. (If applicable, insert lien of other spouse.)
> IT IS FURTHER ORDERED that the Registrar of Titles of ..... County, Minnesota cancel Certificate of Title No. ..... insofar as it relates to the property above described, and issue a new certificate of title for said property in favor of ..... (If applicable, insert "subject to the aforesaid lien".)

V. CONTESTED PROCEDURE

5.01 General Procedure

To place a matter on the contested calendar for hearing, there must be filed with the Clerk of District Court a contested note of issue by either party. A copy shall be served properly upon the other party.

5.02 Counter-petition

No answer to a counter-petition shall be required, and the Court will consider those matters in conflict with the petition as having been generally denied.

5.03 Transfer to Default Calendar

When a contested matter has been resolved, it may be transferred to the default calendar by filing the written stipulation of the parties and a default note of issue in accordance with Rule 4.03. Absent a stipulation, transfer shall be by motion and/or order of Court.

5.04 Advancement on Calendar

Contested matters will not be advanced for final hearing except on written motion, for good cause shown in compelling and extreme circumstances.

5.05 Pre-trial Conference

All contested matters shall be scheduled for pre-trial conference by the Family Court Assignment Clerk, before being scheduled for final hearing. Upon receipt of the Notice of Pre-Trial Conference, each party shall complete a Pre-Trial Statement and file same with the Clerk of District Court and serve a copy on the other party, not later than five days prior to the conference. Both parties and counsel shall appear personally.

5.06 Final Hearing

If the parties are not successful in resolving all issues at the pre-trial conference, the matter will be scheduled for final hearing. The Court will enter its Pre-trial Order setting the hearing date, and will dispose of the matter on that day, without further notice to a defaulting party.

VI. CONTEMPT PROCEDURE

6.01 Moving Papers; Service; Notice

Contempt proceedings shall be initiated by an Order to Show Cause personally served upon a party together with a Notice of Motion and Motion accompanied by appropriate supporting affidavits which shall conform to the provisions of Sections 3.02-3.04 of these Rules.

6.02 Pleadings; Contents

In any Order to Show Cause and Motion for constructive civil contempt for alleged violation of an order or decree, the motion and affidavit shall clearly and specifically set forth the alleged violation. Where the alleged violation as a failure to pay sums of money, the allegation shall state the nature of the payments in default, i. e. support, alimony and/or attorney's fees, the period of time covered, and the total amount(s) due and paid, as well as the total amount of the arrearage(s), and shall specifically set forth the amounts due, paid and unpaid, by month. [Hopp v. Hopp, 279 Minn. 170, 156 N.W.2d 212; Clausen v. Clausen, 250 Minn. 293, 84 N.W.2d 675] The response shall be by affidavit of the defaulting party which shall set forth the nature, date, and amount of payments, if any, and shall be served and filed no later than two days prior to the scheduled hearing, exclusive of intervening Saturdays and Sundays and holidays.

6.03 Hearing; Procedure

The party alleged to be in contempt must personally appear before the Court and will be afforded the opportunity to resist the motion for contempt by sworn testimony. The Court will not act upon affidavits alone, absent express waiver by the party of his right to offer such sworn testimony. [Hopp v. Hopp, 279 Minn. 170, 156 N.W.2d 212; Clausen v. Clausen, 250 Minn. 293, 84 N.W.2d 675]

6.04 Order in Contempt; Default

Where the Court has entered an Order in Contempt with a suspended sentence and there has been a default of the conditions for suspension, the following procedure must be followed before a writ of attachment will be entered:

(a) An affidavit of default of the conditions of the order must be served and filed with the Clerk of District Court.

(b) An affidavit of Non-Compliance must be served and filed.

(c) At least one of the above affidavits must have been served personally upon the defaulting party.

(d) A proposed Recommendation and Order for Writ of Attachment shall be submitted to the Judge or Referee who conducted the contempt hearing.

RULE 18

PATERNITY PROCEEDINGS

I. APPLICATION OF RULES OF CIVIL PROCEDURE

1. The Rules of Civil Procedure for the District Courts of Minnesota shall be applicable to paternity proceedings unless otherwise specified herein.

II. COMMENCEMENT OF ACTION; PROCESS

2.01 A civil action for paternity is commenced against the defendant when the verified complaint of the mother, child, or the public authority chargeable by law with the support of the child, is filed in the District Court of Ramsey County.

2.02 The Summons and a copy of the Complaint shall be served personally upon the defendant in accordance with Rule 4.03(a), M.R.C.P. No other service shall be effective to confer jurisdiction on the Court.

2.03 The Summons shall set the date and place for appearance of the defendant before the District Court, shall require him to bring to court a copy of his most recent federal and state income tax returns and an earnings statement for the preceding thirty days, and shall otherwise conform to the requirements of Rule 4.01, M.R.C.P. [See Form Number 1]

III. APPEARANCE

3. When the defendant appears before the Court, he shall be requested to affirm or deny the allegations in the Complaint orally. (a) If the defendant orally affirms the allegations of the Complaint, the Court shall thereupon adjudicate the defendant to be the father of the child and shall order the entry of judgment thereon. The Court then shall refer the matter to the Ramsey County Department of Court Services for a financial investigation of the defendant and shall set the date and place for a hearing for the setting of reasonable confinement expenses and for an order for the support and education of the child and for the repayment of the confinement expenses. Pursuant to said hearing, the Court shall make its order and shall order the entry of judgment thereon. (b) If the defendant fails to appear or having appeared orally denies the allegations of the Complaint, no further action shall be taken until the time for Answer has expired.

IV. PLACING ACTION ON CALENDAR

4. Upon the service and filing of an Answer, a party desiring to have the action placed on the calendar for trial shall comply with the provisions of Rule 38.03, M.R.C.P.

V. DISCOVERY

5. All discovery proceedings shall be completed without delay. Any failure to complete such proceedings shall not be grounds for delaying the trial of the action.

VI. DEFAULT PROCEDURE

6. When a party in a paternity proceeding against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed by the Minnesota Rules of Civil Procedure, even though he may have otherwise appeared personally on the hearing date, and that fact is made to appear by affidavit, judgment by default shall be entered against him as follows:

(a) Upon the filing of an Affidavit of Default, a copy of which shall be furnished to the Family Court Assignment Clerk, and upon proper evidence being adduced establishing paternity, the Court shall thereupon adjudicate the defendant to be the father of the child and shall order the entry of judgment thereon. The Court then shall refer the matter to the Ramsey County Department of Court Services for a financial investigation of the defendant and shall set the date and place for a hearing for the setting of reasonable confinement expenses and for an order for the support and education of the child and for the repayment of the confinement expenses. Pursuant to said hearing, the Court shall make its order and shall order the entry of judgment thereon.

(b) If the defaulting party fails to cooperate with the Department of Court Services in its financial investigation, the Court may issue an Order to Show Cause requiring the defaulting party to show cause why he has failed to cooperate in such investigation.

(c) The setting described in subdivision (a) of this rule shall be known as the Default Paternity Calendar.

(d) At least five days prior to hearing on the Default Paternity Calendar, the defaulting party shall be notified in writing by opposing counsel as follows:

YOU ARE HEREBY NOTIFIED THAT not less than three days from the date of this notice, plaintiff will apply for adjudication of paternity and for judgment for reasonable confinement expenses and education and support for the child (children) in the above captioned case.

(e) Upon an adjudication of paternity and upon the entry of an order setting the confinement expenses and providing for the payment of the support and education of the child and for the repayment of the confinement expenses, counsel for the opposing party shall serve the defaulting party with a true copy of said adjudication or order and file with the Clerk of Family Court an affidavit of service thereof.

VII. PROCEEDINGS AFTER TRIAL

7. If upon trial, the defendant is determined to be the father of a child, adjudication of paternity and the setting of support shall be made in conformity with Rule 3(a) of these rules.

VIII. GUARDIAN AD LITEM

8. No answer shall be served or filed by, nor shall any judgment be entered against, any person who is an infant or incompetent until a guardian ad litem is appointed by the Court in conformity with Rule 17.02, M.R.C.P.

FORM NUMBER 1

SUMMONS

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY
SECOND JUDICIAL DISTRICT
FAMILY COURT DIVISION

.....

A. B.,
Plaintiff,
vs. SUMMONS
C. D.,
Defendant.

.....

The State of Minnesota to the Above-Named Defendant:

You are hereby summoned and required to appear before the Honorable ....., in Room ..... Court House, on the ..... day of ....., 1971, to affirm or deny orally the allegations of the complaint of the plaintiff which is on file in the office of the clerk of the above-named court and you are further required to bring with you at that time a copy of your most recent federal and state income tax return and an earnings statement for the preceding thirty days.

You are further summoned and required to serve upon the plaintiff's attorney an answer to the aforesaid complaint within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so judgment by default will be taken against you for the relief demanded in the complaint.

Signed: .....
Attorney for Plaintiff.

Address: .....

THIRD JUDICIAL DISTRICT
SPECIAL RULES

RULE 1

WISCONSIN ATTORNEYS' APPEARANCE IN THIRD JUDICIAL DISTRICT. Attorneys duly admitted to practice in the State of Wisconsin before the Wisconsin Trial Courts may appear in the District Courts in the Third Judicial District in the State of Minnesota provided (a) the pleadings are also signed by an attorney duly admitted to practice in the State of Minnesota, and a resident therein, and (b) provided such Minnesota attorney is also present before the Court, in Chambers or in the court-room, at all hearings, and (c) the Wisconsin attorney may in the discretion of the trial judge, actually conduct the proceedings.

RULE 2

DOMESTIC RELATIONS, DIVORCE, NOTE OF ISSUE. Before a divorce action may be proved up as either a contested or defaut matter, a Note of Issue shall be filed, placing said action on the calendar, or a motion to place said action on the calendar shall be made by one of the parties and approved by the Court.

RULE 3

DOMESTIC RELATIONS, DIVORCE, DEFAULT. There shall be a 90 day waiting period from the time the divorce or separate maintenance complaint is served before said action can be proved up by a default, unless application is made to the Court to waive this rule for good cause shown.

RULE 4

DOMESTIC RELATIONS, DIVORCE, OCCUPANCY OF HOUSE. It is contrary to public policy to eject a man from his home upon the commencement of a divorce or separate maintenance action. This relief shall not be granted by the Court ex parte without a showing of a clear and present danger of bodily harm to the wife and/or children of the parties existing at the time the relief is requested. Only in the exceptional case shall the Court grant such relief without notice to the opposing party.

RULE 5

TRUST ACCOUNTS. All receipts and vouchers shall be filed along with the annual accounting, with the Clerk of District Court, so that said account can be audited by the Court according to law.

RULE 6

USE OF CLERK'S FILES. No Clerk's files or papers in a Clerk's file shall be taken from the custody of the Clerk except upon written order of the Court (Rule 12(b) Code of Rules, District Courts of Minnesota).

THIRD JUDICIAL DISTRICT APPELLATE RULES

These rules supplement rules of Civil Appellate Procedure from Minnesota County Courts.

Pursuant to Rule 103.01(3), Rules of Appellate Procedure from the Minnesota County Courts, and for purposes of appeal from the County Courts located within the Third Judicial District, the following rules shall apply.

DISTRICTS DIVIDED INTO DIVISIONS. 1. The Third Judicial District shall be divided into two divisions which shall be designated the "Western Division" and the "Eastern Division".

a. The Western Division shall include the following counties: Rice, Steele, Waseca, Freeborn and Mower.

b. The Eastern Division shall include the following counties: Winona, Wabasha, Houston, Fillmore, Dodge, and Olmsted.

DIVISIONAL APPEAL JUDGES. 2. The District Court Judges who are chambered in each division shall compose the Appeal Court for that Division; or in case of disability such Judges as shall be designated by the Chief Judge of the Third Judicial District.

ALL APPEALS HEARD EN BANC. 3. The Appeal Court for each Division sitting en banc, shall hear all appeals from the County Courts located within that Division.

ASSIGNMENT OF CASES BY DIVISIONAL SENIOR JUDGE. 4. Cases will be assigned within each Division by the Senior Judges of that Division in terms of service. The District Judge to whom each case is assigned shall write and sign the opinion rendered by the Divisional Court of Appeals.

CLERK OF DIVISIONAL COURT OF APPEALS. 5. The Clerk of District Court holding that office in the County wherein the Senior District Judge has his Chambers, shall be designated the Clerk of the Divisional Court of Appeals for the Division wherein said Clerk holds his office.

a. Appeal papers will all be filed with the Clerk of District Court located within the County from whence the appeal arises.

b. The Clerk of the County of origin will properly record said appeal papers and immediately forward the entire file to the Clerk of the Divisional Court of Appeals.

SESSIONS. 6. Each Divisional Court of Appeals will have two sessions per year. The first session shall commence at 1:30 o'clock P. M. on the first Tuesday in September, and the second session at 1:30 o'clock P.M. on the first Tuesday in January, and the third session shall commence at 1:30 o'clock P.M. on the first Tuesday in April.

LOCATION OF DIVISIONAL COURT. 7. The Divisional Court of Appeals will sit in the Court House in the County wherein the said Senior District Judge is chambered; where it will hear all appeals arising from within that Division.

FILING DATE. 8. The last date for filing an appeal shall be ten business days prior to the date when the appeal session begins.

a. Prior to the commencement of the Division Appeal Session, the Clerk of the Divisional Court of Appeals shall prepare a calendar of the cases properly noted for appeal. He shall indicate which cases have been set down for oral argument, and the date and time when the argument will be heard. Cases will not be set down for oral argument unless requested by one of the parties, and granted by the said Senior Divisional Judge; or when otherwise ordered by said Judge, all pursuant to Rule 134.01, Rules of Civil Appellate Procedure from Minnesota County Courts.

b. The Divisional Appeals Calendar will be sent out to all interested attorneys and Judges, three days prior to the commencement of the Divisional Appeal Session.

FOURTH JUDICIAL DISTRICT STATEMENT OF POLICY ADOPTED BY THE JUDGES OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF MINNESOTA

It is obvious to the bench and bar as well as to the public that prompt disposition of the ever increasing numbers of civil actions and criminal prosecutions continues to present problems to metropolitan courts. The judges of the Fourth Judicial District have in the past made every effort to dispose of cases as speedily as possible consistent with concepts of due process and the requirements of the law. They will continue to do so. The cooperation of the bar, however, is indispensable to the success of that effort.

One of the two chief causes of delay in advancing the calendar is availability of counsel for trial. The other is the availability of witnesses.

Every effort is made to give adequate advance notice of the date of trial in the hope that the lawyers thereby will be able to avoid or resolve possible conflicting assignments in other courts. While the judges of the Fourth Judicial District desire to be cooperative with other courts, they believe that their calendar of cases both civil and criminal is no less important than that of other trial courts and do not regard trial assignment elsewhere as an absolute ground for continuance. Rather it is the policy of the court to insist that cases assigned for trial proceed to trial unless a conflict arises by reason of a prior assignment in some other court.

The judges are also aware that lawyers frequently encounter difficulty in arranging for the testimony of experts, particularly physicians and surgeons. We recognize that attendance in court to give testimony may not always be convenient to the witness. To the extent possible, therefore, effort will be made to accommodate such witnesses when prompt notice is given that a witness will be unavailable on the assigned trial date. It must, nevertheless, be remembered that the court's principal function and objective is to dispose of litigation in an orderly and expeditious manner. Unavailability of a witness, therefore, will not be regarded as sufficient cause for continuing the trial of a case. Counsel must be prepared to proceed to trial without the witness or take measures to perpetuate the witness's testimony by deposition or videotape.

The judges are increasingly concerned with the growing number of criminal matters appearing on the calendar. Criminal cases must be given priority on the calendar. Hence, as many judges will be assigned to hear criminal matters as is necessary to maintain the criminal calendar in a reasonably current status, although doing so may decrease the availability of judges to preside in civil trials.

The problems created by the constantly growing criminal calendar are further enlarged by the fact that more time now is needed to follow the required pretrial procedures. Accordingly, the judges urgently request that counsel in criminal cases adhere to the court's calendars and make every effort to minimize the number and length of the pretrial hearings.

RULE 1

FILING OF PLEADINGS. The party filing a

note of issue shall at the same time file such of his pleadings and other papers as have been served by him not theretofore filed. Each party shall file his pleadings and other papers served, but not theretofore filed, when he files his statement of the case as required by Rule 28. For failure to observe this rule with respect to pleadings the clerk shall assess $10.00 as special costs against each delinquent party, and with respect to other papers, an assessment shall be made as directed by the Court.

RULE 2

DEFAULT DIVORCE CALENDAR. (a) The clerk shall prepare a calendar, which shall be known as the default divorce calendar (no children), and shall enter therein: (1) Default divorce cases, wherein children are not involved, which shall have been continued to such term, in the order in which the same shall have appeared upon the calendar of the term from which the continuance was had;

(2) all other default divorce cases, wherein children are not involved, in which notes of issue shall have been filed, prior to such term, or during the continuance thereof: Provided, however, that no default divorce case wherein children are not involved shall be entered for trial at an earlier date than 30 days after the time to answer has expired and affidavit of no answer and note of issue has been filed, except by order of the Court based upon an affidavit of counsel or of a party showing cause therefor.

(b) The clerk shall also, prepare a calendar which shall be known as the default divorce calendar (children involved), and shall enter therein: (1) default divorce cases, wherein children are involved, which shall have been continued to such term, in the order in which the same shall have appeared upon the calendar of the term from which a continuance was had; (2) all other default divorce cases, wherein children are involved, in which notes of issue shall have been filed, prior to such term, or during the continuance thereof: Provided, however, that no default divorce case, wherein children are involved, shall be entered for trial at an earlier date than 90 days after the time to answer has expired and affidavit of no answer and note of issue has been filed.

DIVORCE MOTION CALENDAR. (children involved) A written motion and notice of the hearing thereof shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by order of the court. (Rule 6.04 M.R.C.P.) All moving papers, including pleadings, orders, notices, affidavits and other papers proper to be filed must be, to entitle them to be read, filed with the clerk not less than three (3) days before the day on which the hearing is to be held, unless for some reason other than neglect, the paper could not have been sooner filed, or unless the occasion for the use of the paper arises at the hearing from some cause not previously apparent. All responsive affidavits to the moving papers and all other papers to be used by the party responding to the moving papers must be, to entitle them to be read, filed with the clerk at least one full day before the day on which the motion is to be heard, unless for some reason other than neglect, the paper could not have been sooner filed, or unless the occasion for the use of the paper arises at the hearing for some cause not previously apparent. Only causes properly on the calendar when the court opens will be heard, unless they have been omitted by mistake or inadvertence of the clerk.

An application for temporary relief shall be made on the form prescribed in District Court Rule No. 9, approved by the Minnesota District Judges Association and Minnesota State Bar (December, 1953). The party responding to such application shall use the form prescribed in District Court Rule No. 9 as a responsive affidavit and show the claims on the part of the party responding to such moving papers. The heading on said form shall be prefixed by the words "Responsive affidavit to" immediately above the words "Application for temporary allmony, etc." In addition to answering the questions in said form, a party, if employed, shall state the name of his or her employer, the address and telephone number of the latter, as well as the gross earnings, the specific deductions, the amounts thereof, and the net earnings.

The parties to an action shall be present in court at the hearing on said motions.

The home addresses of the parties shall be stated under their respective names in the caption of the action.

The moving party at the time of filing the note of issue shall furnish the clerk with a duplicate copy thereof, stating the nature of the motion and, in the case of an Order to Show Cause, the time set for the hearing, and it shall be the duty of the clerk to deliver said duplicate to the Department of Court Services as notice of the pending motion.

The strict enforcement of the provisions of this rule may be relaxed in favor of attorneys from other counties and in all other cases where excused by the presiding judge of the Family Court division of this court.

RULE 3

RESETTING OF CASES. After a case has been assigned to a Judge for immediate trial, an application for continuance may be based only on an emergency arising after such assignment. Such motion or application shall be made immediately upon the discovery of such emergency and shall be heard and determined forthwith by the Judge to whom the case is assigned or at his option, by the Chief Judge or his designee.

RULE 4

SPECIAL TERM AND CALENDAR MATTERS. (a) **TIME FOR HEARING—MUST BE ON CALENDAR.** Special term shall be held every day except Saturdays, Sundays and holidays. No hearing will be set down for the afternoon, or continued beyond the morning session, unless for urgent reasons and then only upon approval of the judge. Only causes properly on the calendar when the court opens will be heard, unless they have been omitted by mistake or inadvertence of the clerk. The strict enforcement of the provisions of this rule may be relaxed in favor of attorneys from other counties.

(b) **TRUST HEARINGS.** Hearings on trust accountings and other trust matters are scheduled only on Wednesdays at 2:00 p.m.

(c) **DEFAULT DIVORCES.** Hearings on default divorces not involving minor children are scheduled for Mondays, Tuesdays, Thursdays and Fridays at 11.00 a.m. or 2:00 p.m., as the judge then in charge of the Special Term calendar shall designate.

(d) **BRIEF AND PROPOSED ORDER TO ACCOMPANY MOTION.** A memorandum or brief and a proposed court order shall in all cases accompany a motion and notice of motion upon service and filing.

(e) **TIME FOR FILING PAPERS—SPECIAL FILING IF LATE.** Except when specially filed as hereinafter provided, all special term notes of issue, motions, notices, proposed orders, memoranda, briefs, affidavits, pleadings and other papers opposing or supporting a motion must be filed at least three court days before the special term hearing date so that they can be processed properly into the file. Any paper which cannot be filed within the three day time limit shall be filed with the special term filing clerk and there shall be attached to the paper a statement that there is to be a special term hearing on a specified date at which the paper will be needed. This statement shall be called to the attention of the clerk. No special term note of issue or other paper shall be accepted by the clerk for filing nor shall any matter be placed on the special term calendar except in compliance with this subparagraph (e) and the other provisions of this Rule 4.

(f) **CALENDAR CALL.** The special term judge shall call the calendar at 9:30 a.m. (1) Default matters will be heard first. (2) Where a motion is brought on a case already assigned to a judge's block for trial, it shall be referred to him for hearing. If it is a calendar motion, it shall be handled per paragraph (g).

(g) **CALENDAR MOTIONS.** All calendar motions, including those of cases assigned to a judge's block and cases assigned by the assignment clerk to a specific judge for trial on a specific date at a specific hour, shall be heard by the Chief Judge or his designee normally at 9:00 o'clock a.m. on Tuesdays and Thursdays, but also at such other time as the Chief Judge or his designee may set informally or otherwise. Calendar motions are those for advancement, continuance, reinstatement or nonreadiness, or other motions directly affecting the operation of the trial calendar. The filing time requirements above set forth for special term matters also shall apply to calendar motions.

RULE 5

ASSIGNMENT OF CASES. (a) The following phrases as used in these rules shall have these meanings:

(1) "Ready for trial status" means (1) that a statement of readiness for trial and a statement of the case have been on file for 15 days and have not been timely controverted, or (2) that a judge has ordered that the case is ready for trial, or (3) that the effectiveness of a certificate of non-readiness has expired.

(2) "Alert status" means that a judge, a referee or the assignment clerk has notified the parties that the case is subject to being assigned out for trial on one hour notice.

(b) In all cases, the name of the attorney who will try the case for a party shall be given to the assignment clerk and to all other counsel in writing at the time of filing the statement of the case as provided by Rule 28. No trial shall be delayed by failure to observe this requirement.

(c) When an attorney who is to try a case on an alert status is actually engaged in another court he shall file a statement on a form prepared and kept for use in the office of the assignment clerk setting forth the court wherein he is engaged. Upon being released from such case the attorney shall immediately notify the assignment clerk by phone.

RULE 6

DEFAULTS. (a) Divorce cases, in which the time for answering has expired, and default has been made, and in which the summons and complaint, with proof of service thereof, have been filed with the clerk, shall, upon filing with the clerk a note of issue, containing the title of the cause, a statement of the foregoing requisites, and the address of counsel, be placed upon the calendar and set for trial as provided for in rule 2.

(b) All causes, other than divorce and tax cases, requiring the taking of testimony, in which the time for answering has expired and default has been made, and in which the summons and complaint, with proof of service, have been filed with the clerk, shall, upon filing with the clerk a note of issue containing the title of the cause, a statement of the foregoing requisites, and the address of counsel, be placed upon the special term calendar for such date as may be specified by the party filing the note of issue.

RULE 7

CLERK'S FEE. All clerk and trial fees must be paid before the jury is called.

RULE 8

EXHIBITS. (a) All exhibits offered in evidence shall be placed in the custody of the clerk of the court who shall be responsible for their care and production and delivery to the party to whom the same may belong for a period of 48 hours following a verdict in cases of trial by jury or rendition of decision by the court without a jury. After the expiration of the 48 hours the care and responsibility for such exhibits shall be upon the parties themselves. Upon surrendering the custody of any such exhibits, the clerk shall take a receipt therefor from the party to whom delivered.

(b) Exhibits in criminal cases shall be kept by the clerk for six months after verdict of the jury, unless surrender of the same shall be directed by written order of the judge before whom the case was tried.

RULE 9

FINDINGS IN DIVORCE CASES. (a) In divorce cases upon signing the findings, the judge so signing shall deliver the same to the clerk for filing.

(b) No judgment will be entered for unpaid alimony ex parte. Judgment can be entered only upon Notice of Motion duly made and placed upon the Special Term Calendar. If personal service cannot be had such service shall be made as the Court shall direct.

(c) No change of venue to other jurisdictions shall be granted in divorce cases except upon statutory grounds.

RULE 10

FILES. (a) The clerk may release court files to attorneys at law for a period of not to exceed ten calendar days.

(b) The clerk shall require each attorney withdrawing a file to sign a receipt for the file on a daily register sheet showing all files withdrawn that day. The clerk shall have the attorney also sign a gummed receipt slip (affixed on the front cover of each withdrawn file) reading:

> This file was withdrawn on the date hereof and must be returned to the Clerk's office by ..... (date).
>
> The undersigned acknowledges that he is familiar with Rule 10(c) for the Fourth Judicial District which reads: (here reproduce paragraph (c) of this Rule).
>
> Received file ..... (date).
>
> .....
> Attorney's signature

(c) If the file is not returned by the designated date, the attorney's privilege to remove files shall be suspended by the clerk for one year.

RULE 11

FEES IN CONDEMNATION PROCEEDINGS. Each commissioner in condemnation proceedings shall be allowed a fee not to exceed the sum of $50 per day.

RULE 12

ORDERS IN SUPPLEMENTARY PROCEEDINGS.

(a) Orders in supplementary proceedings shall provide that in the examination of the judgment debtor the referee shall not grant more than two continuances.

(b) Referees in supplementary proceedings and in garnishment disclosures shall be notaries public or attorneys-at-law.

RULE 13

GARNISHMENT DISCLOSURE. All orders of reference in garnishment matters shall provide for the disclosure being taken at the office of the clerk of the district court, except by agreement of all parties that it be taken elsewhere.

RULE 14

RECEIVERS AND TRUSTEES. (a) All applications for allowance of fees to assignees, receivers, and attorneys, which allowance is asked to be made from the funds of any insolvent estate or estate in the hands of any receiver for settlement, shall be heard by the full bench, or a division thereof consisting of at least three judges. Four copies of the account shall be delivered to the clerk together with the application.

(b) In any case where an order for compensation to a receiver, or attorneys, would appear necessary or expedient, in the exercise of sound discretion, for the preservation of the estate, pending the next full bench meeting when the matter may be presented, the judge who appointed the receiver in the first instance, or his successor, may, by written order, make such interim allowance.

(c) In receivership matters all interlocutory motions and orders shall be referred to and considered by the judge who appointed the receiver in the first instance.

(d) Every receiver or trustee in submitting his final account shall disclose to the court as a part thereof the status of the property of the estate as to unpaid or delinquent taxes, both personal and real, and the same shall be paid by him to the extent that the funds in his hands permit over and above the costs and expenses of the receivership and debts due to the United States.

(e) Every trustee of an express trust whose appointment has been confirmed pursuant to the provisions of Minnesota Statutes, Section 501.33, shall render to the Court at least annually a verified account containing a complete inventory of the trust assets and itemized principal and income accounts.

A hearing shall be held on such annual accounts at least once every 5 years upon notice as set forth in Minnesota Statutes, Chapter 501.

Where the sureties on a trustee's bond are unincorporated, the trustee or trustees shall certify under oath which shall be attached to the annual account that each surety is living, is a resident of this state, is not under disability, and is worth the amount in which he or she justified in said trust.

(f) Before the Court shall consider any application for the appointment of a Trustee pursuant to the provisions of Minnesota Statutes, Section 501.33, such applicant shall first file a certified copy of the will or other written instrument and if based upon a will shall file and exhibit to the Court a certified copy of a partial or final decree of distribution from the Court wherein said will was probated.

Rule 14 of the Rules of this Court may be waived and suspended insofar as the same requires that a hearing be held on the trustee's annual accounts at least once every five years with respect to trusts of $20,000 or less, the assets of which are invested in common trust funds established by a corporate trustee under the following terms and conditions:

1. At the time of the mailing of an annual account for the last year of a five-year period to the beneficiaries of a trust, the trustee shall notify said beneficiaries by letter that there will be no hearing on the trustee's annual accounts for the preceding five years unless a beneficiary requests such a hearing.

2. At the time of the filing of an annual account for the last year of a five-year period the trustee shall mail to the Chief Judge of the Court a copy of said account and a copy of the letter mailed to the beneficiaries of the trust; provided further that in the event any beneficiary is a minor or incompetent, that fact, together with the names and ages of the minor or incompetent shall be indicated in connection with the transmittal to the Chief Judge.

RULE 15

AUDIO-VIDEO RECORDING OF DEPOSITIONS. Upon duly noticed motion and a showing that any circumstance stated in R.C.P. 26.04(3) may exist at the time of trial, the Court may enter an order that an audio-video recording of the deposition of a witness be made in addition to the stenographic and transcribed recording provided for by R.C.P. 30.03.

Such recording may be used at trial upon a showing that any circumstance stated in R.C.P. 26.04(3) then exists.

RULE 16

JURY SERVICE. (a) Application for excuse from jury duty shall be made or referred to the judge to whom the juror has been ordered to report.

(b) No person shall serve as a member of the grand jury or petit jury who has served within eight **years as a member of the grand or petit jury either in the United States District Court or the District Court of Minnesota, or as petit juror in the Municipal Court.**

(c) Each judge shall select eight (8) names for the grand jury panel before December 1st of each year.

(d) Any person whose name is drawn for grand jury service shall serve for the period drawn or be excused. In no case shall the service of such person be continued until a later date or nave his name replaced in the jury box.

RULE 17
(VACATED)

RULE 18

ACTIONS ON BEHALF OF MINORS—SETTLEMENT. In approving minor settlements, no sum shall be allowed, in addition to attorney's fees, to cover the special expense of an attorney in paying an investigator for services and mileage, except in unusual circumstances, such as those where the attorney's fee is not fully compensatory or where the investigation must be conducted in an area distant from Minneapolis so far that the expenses of the attorney in traveling to the area would be substantially equal to, or in excess of, investigation expenses. This is because the Court deems that investigation is part of the obligation undertaken by an attorney and should be included within his fee.—**Note by the Court:** See State District Court Rule 3 for other requirements relating to minor settlement approvals.

RULE 19

(VACATED)

RULE 20

PRELIMINARY EXAMINATION OF VENIREMEN. (a) The Clerk shall mail to each prospective venireman a questionnaire substantially in the form set out in paragraph (e) hereof, with a letter of instruction and a stamped return envelope.

(b) Each such person mailed a questionnaire shall be directed to complete and return it within 10 days from receipt thereof.

(c) The Clerk upon the return of a questionnaire shall examine it and report to the appropriate judge any indicated disqualifications, request to be excused, or other matter deemed important.

(d) From the list of prospective veniremen duly qualified to serve as jurors, the Clerk shall provide the Sheriff, from time to time, with the names of persons to be summoned for jury service.

(e) The questionnaire shall be substantially as follows:

PRELIMINARY QUALIFICATION
QUESTIONNAIRE FOR JURY SERVICE
(Please Print)

1. Name (Mr.Mrs.Miss) .....
2. Home address .....
Street City State Zip Code
3. Telephone Business ..... Home .....
4. Birth date ..... Birth Place .....
Month Day Year Age
5. Are you a citizen of the United States? .....
6. Marriage status: single ( ) married ( ) divorced ( )
7. If you have children, list ages .....
8. Can you speak and understand the English language? .....
9. Are you presently employed? .....
Occupation .....
10. Name of employer .....
11. Address of employer .....
Street City
12. If married, what is your spouse's occupation .....
13. Have you ever been convicted of a felony? .....
If so, state date, court and felony .....
.....
14. If so, have your civil rights been restored? .....
15. Have you ever served as a Juror? .....
When .....What court? .....Federal ..... District ..... Municipal.....
16. Have you any disability impairing your capacity to serve as a juror including impaired eyesight or hearing? ..... If so, state its nature and extent .....
17. Have you or any member of your immediate family been a PARTY to any LAW SUIT? .....
.....
If so, when and in what court? .....
18. Has a CLAIM for PERSONAL INJURY ever been made against you or have you ever made any claim for personal injury? .....
.....
19. Are you related to or close friends with ANY LAW ENFORCEMENT OFFICER? .....
20. Are you a qualified voter in this state? .....
21. Length of residency in Hennepin County .....
22. How many miles from your home to the Court House, one way .....

The foregoing statements are true and correct to the best of my knowledge and belief.

.....
Signature

Date .....

RULE 21
(VACATED)

RULE 22

PICTURES AND VOICE RECORDINGS. Neither *pictures nor voice recordings* shall be taken in the City Hall-Courthouse, Government center, or any building in which a court is conducted of any attorney, party, witness, or juror involved in the trial or hearing of any case, civil or criminal, or proceeding incident to any such case, or in connection with any session of the Hennepin County Grand Jury. This rule shall not preclude the use of a voice recording instrument by the court reporters officially in attendance at any trial, hearing or proceeding for the purpose of making a record thereof.

RULE 23

LAND TITLE CALENDAR. There is hereby created what shall be known as a Land Title Calendar. Upon that calendar shall be placed the default Torrens cases which have heretofore been noted upon the Torrens Calendar and the default title cases which have heretofore been placed upon the General Term Calendar. Cases placed upon the Land Title Calendar shall be heard each Tuesday by the Examiner of Titles or Deputy Examiner as Referee, and the Judge in Chambers shall from time to time enter upon said calendar appropriate orders of reference referring said cases to said referees for hearing.

RULE 24

REGISTRATION OF LAND TITLE RULES

(a) Cases in which the Registrar may act without Special order of the Court. In the following cases the special order of the court need not be required unless it shall be requested by the registrar or examiner:

(b) Registration of a receipt of county treasurer or certificate of county auditor, showing redemption from or cancellation of any tax sale described in a

certificate of title; a marriage certificate showing marriage of any owner of an interest in or incumbrance upon real property, subsequent to registration of such interest or incumbrance; a certified copy of the record of the death of a party listed in any certificate of title as being the spouse of the registered owner, when accompanied by an affidavit satisfactory to the registrar, identifying the decedent with said spouse; and in all subsequent dealings with the land covered by certificates upon which said instruments are registered, the registrar shall give full faith to the memorials thereof.

(c) In the case of certificate of title outstanding to two or more owners as joint tenants, upon the filing for registration of such a certificate of death and affidavit of identity as hereinbefore described, and upon the surrender of the owner's duplicate certificate of title, the registrar shall issue a new certificate of title for the premises to the survivor in severalty or to the survivors in joint tenancy, as the case may be.

(d) When instruments affecting registered land have been recorded in the office of any Register of Deeds in this State, including the office of the Register of Deeds of this county, a certified copy thereof may be filed for registration and registered with like effect as the original instrument.

(e) When the interest of a life tenant has been terminated by death, the Registrar may receive and enter a memorial of a duly certified copy of the official death certificate and an affidavit of identity of the decedent with the life tenant named in the certificate of title; and in such case the memorial of said certificate and affidavit shall be treated as evidence of the discharge of said life tenancy.

(f) Practice in relation to the state tax deeds. Excepting those cases where a certificate of title is outstanding in favor of State of Minnesota, whenever a deed from the State of Minnesota in favor of the registered owner is offered for registration, it shall be registered as a memorial upon the certificate of title as evidence of discharge of any claim of title by the State evidenced by the prior memorial of an Auditor's Certificate of forfeiture to the State; and the same practice shall be followed in those cases where subsequent to or concurrent with a repurchase from the State by the registered owner, the latter shall have conveyed either by Quitclaim Deed or Warranty Deed the affected premises and the deed from the State in favor of said registered owner is dated subsequent to the date of conveyance of said registered owner or subsequent to the entry of certificate in favor of the registered owner's grantee, in which case the fact that the repurchase from the State was concurrent with or prior to the date of the deed by the registered owner making such purchase shall be evidenced by an endorsement to that effect upon the State Deed made by the County Auditor, one of his deputies or the County Land Commissioner.

(g) Amendment to Rule 16 of District Court Rules. Rule 16 in the Minnesota District Court rules pertaining to registration of land titles is amended as to proceedings in Hennepin county by omission of the provision that petitions for a new duplicate certificate shall show by a receipt of the registrar of titles endorsed thereon that duplicate of the petition has been delivered to him.

(h) Deeds From Federal Housing Administrator. In the registration of deeds or other instruments hereinafter listed for titles or interests registered in the name of an individual as Federal Housing Administrator, the registrar of titles shall be guided by Section 204 (g) of the National Housing Act as amended by the act of June 3, 1939, which confers upon any assistant administrator the power to convey and to execute in the name of the administrator deeds of conveyance, deeds of release, assignments of mortgages, satisfactions of mortgages, and any other written instrument relating to real property or any interest therein which has been acquired by the administrator; and that the registrar of titles shall accept the statement of the certificate of acknowledgment attached to any such instrument as evidence of the official character of the administrator or the assistant administrator executing the instrument.

(i) The Registrar of Titles is authorized to receive for registration of memorials upon any outstanding certificate of title an official birth certificate pertaining to a registered owner named in said certificate of title showing the date of birth of said registered owner, providing there is attached to said birth certificate an affidavit of an affiant who claims therein to be familiar with the facts recited, stating that the party named in said birth certificate is the same party as one of the owners named in said certificate of title; and that thereafter the Registrar of Titles shall treat said registered owner as having attained the age of majority at a date 21 years after the date of birth shown by said certificate.

(j) The Registrar of Titles may receive official **certificates of death issued by the War Department, Navy Department and every military department of the United States Government in lieu of a certificate of death.**

(k) **Practice in relation to apartment ownership act, order required.** When an owner of registered land desires to submit his land to the provisions of Chapter 457, Laws of 1963, known as the Apartment Ownership Act, he shall deliver his organizing documents to the Registrar of Titles and at the same time file with the Clerk of the District Court a Petition in Proceedings Subsequent to Initial Registration of Land for such purpose. The Petition shall request of the Court that the instruments so submitted be accepted for filing by the Registrar and that the Court issue its Order determining that the documents comply with the requirements of said Act, and that thereafter the land shall become subject to the provisions, restrictions, and conditions, and be administered in accordance with said Chapter, and any amendments. The Court shall thereupon refer the Petition and the organizing documents so submitted to the Examiner of Titles for a report as to whether the documents are legally sufficient to comply with the requirements of said Act, and any amendments. The documents so submitted shall include the Declaration containing the requirements set forth under M.S. Sec. 515.11, the By-Laws or Amendment or Amendments thereto under M.S. Sec. 515.18 and Sec. 515.19, and the Floor Plans under M.S. Sec. 515.13, together with any other instruments said owner desires to submit for the purpose intended. If the Examiner's report to the Court shows said organizing instruments satisfy the requirements of said Chapter and any amendments, and that the land and the documents in all respects are acceptable and qualify for administration in accordance with the provisions of said Act, the Court shall issue its Order adjudicating that such documents do comply with the requirements of said Chapter 457 and any amendments, and that the land (here describing the same together with the Certificate or Certificates of Title under which it is registered) shall thereafter be deemed to be governed and administered under the provisions of said Chapter and any amendments. Said Order shall direct the Registrar to accept and file the necessary organizing documents, to enter such instruments as memorials on the described Certificate or Certificates, and thereafter show such memorials on each Certificate of Title subsequently issued relating to any part of the property or parcels thereof governed by said Chapter, or any amendments thereto.

RESOLUTION

1. That the procedure for submitting land already registered to the provisions of the chapter shall be by way of a Proceeding Subsequent wherein the organizing documents, when found to be legally sufficient, shall be adjudicated to comply with the requirements of the chapter and acceptable for filing.

2. That organizing documents requisite for such adjudication include the declaration (M.S. 515.11), the by-laws or amendments thereto (M.S. 515.18 and 19), and the floor plans (M.S. 515.13).

3. That any order so procured, when found by the Examiner proper to do so, shall direct the Registrar of Titles to file and register the documents and enter them as memorials on the Certificate of Title of the land submitted for operation under the Act.

4. That fees to be charged by the Registrar of Titles for the filing of documents under the Apartment Ownership Act shall include the following:

a. For filing the Declaration and entering the memorial thereof, amendment thereto and memorial, by-laws and memorial — $2 each.

b. For filing two copies of the Floor Plans and entering the memorial thereof — $10.

5. That the Examiner of Titles be directed to deliver to the Registrar of Titles a letter proposed by him as further guides to the Registrar in the handling of condominium property.

PRACTICE AND PROCEDURE FOR ADMINISTRATION OF THE APARTMENT OWNERSHIP ACT

These instructions and suggestions are outlined as follows:

1. The declaration or any amendments to the declaration, to be recordable in the office of the Register of Deeds or filed in the office of the Registrar

of Title must be executed and acknowledged and embrace land within the county. Such documents must be properly witnessed, like in the case of most documents to be recorded or registered.

2. A copy of the floor plans must be filed simultaneously with the declaration.

3. While the act does not specify any required size or quality of paper to be used for the floor plans or the number of copies to be filed, it is suggested that in order to have uniformity in the recording offices and to protect the interests of the public generally, the general requirements of M.S. Section 505.08 as to the platting of land, should be followed, such as:

a. Two standard sizes of paper are to be used, either 20 x 30 inches or 30 x 40 inches from outer edge to outer edge.

b. The original and one or more identical copies of each floor plan should be prepared in black on white mat surface photographic card stock with double cloth back mounting or material of equal quality. One exact transparent reproductible copy of the original shall be prepared by reproduction on linen tracing cloth by a photographic process, or the original traced in black ink on linen tracing cloth, or on material of equal quality.

4. The floor plans are to be numbered serially and it is suggested that the numbers run consecutively within the Torrens office and the Abstract office with each one designated as an "Apartment Ownership Number ....." with the name of the building, if any, and each must contain a reference to the book, page and date of recording or registering of the declaration or amendments thereto.

5. The law requires that the recording officer shall maintain an index or indices whereby the record of each declaration shall contain a reference to the record of each conveyance of an apartment affected by such declaration, and it is suggested that the Tract Index books be modified to carry a section as to "Apartment Ownership Number ....." with a breakdown as to the number of individual apartments or units contained therein and that the Tract Index book contain a reference to the file number of the floor plans in reference to the declaration of the building of which such apartments or units are a part.

6. The floor plans should be kept in a separate book, similar to plat books, designated "Apartment Ownership Number ....." and each must contain a reference as to the book, page and date of recording or registration of the declaration.

7. Where registered land is to be submitted for administration under said act, the applicant, at the time of filing his organizing documents shall obtain an Order of the Court in a Proceeding Subsequent to Initial Registration of Land that the Declaration, any amendments thereto, the By-Laws and the Floor Plans, as submitted, comply with the various requirements of the Act, and any amendments thereto. The Order shall direct the Registrar of Titles to accept such documents for registration and to enter them as separate memorials on the Original Certificate of Title and on the Owner's Duplicate Certificate thereof. Such memorials should be carried forward to each succeeding Certificate, including any Mortgagee's or Lessee's Duplicate Certificate, so that at all times the parties dealing with such Certificate will know that the parcel of land described therein is subject to the restrictions, conditions and provisions of the Apartment Ownership Act.

8. Where the organizing documents embrace registered land for administration under such Act, the subject land should not include both registered land and unregistered land, but should consist only of land that is all registered under the Torrens Act.

9. Filing fees to be charged by the Registrar of Titles, are those determined by statute or rule of Court. A Rule of Court has been made, setting the filing fees for documents registered in the office of the Registrar of Titles as follows:

(1) For filing the Declaration, and entering a memorial thereof, Amendment thereto and memorial thereof, By-Laws and memorial thereof, and any other instrument incidental to the administration of said Act other than the Floor Plans and other documents for which fees otherwise have been set, the sum of $2.00 each.

(2) For filing two copies of the Floor Plans and entering a memorial thereof, the sum of $10.00.

The original Apartment Ownership Act, Chapter 743, L.1963, and the 1965 amendment thereto, Chapter 602, L.1965 do not prescribe many details as to the size, and kind of paper to be used for the organizing documents involved, the method of numbering and indexing by the recording officer of such documents, and other administrative details essential for the orderly handling and servicing of the instruments described in the various sections of the law. Such details apparently are left to the public officials to formulate and adopt.

The foregoing rules and suggestions adopted through the joint cooperation of the County Attorney, the Examiner of Titles, the Register of Deeds and the Registrar of Titles are deemed sufficiently clear and workable for the administration of the law until some other manner or method of practice is to be determined by the legislature, or by additional rule and decision of the courts.

RULE 25

NOTICE TO ASSIGNMENT CLERK OF BRINGING IN ADDITIONAL PARTIES. A moving party in third party proceedings shall in addition to complying with Rule 29 notify the assignment clerk of the names of the additional parties and their attorneys, if any, and such information shall be transmitted in writing to the assignment clerk immediately after a responsive pleading has been served or default has occurred.

A lien claimant filing an answer in a Mechanics Lien action or made a party thereto by consolidation or otherwise shall forthwith notify the assignment clerk in writing of his and his attorney's name and address, transmitting therewith a copy of any order of court making him a party.

RULE 26

GOOD BEHAVIOR. Unless otherwise directed by the court, whenever any person is committed to either the Minneapolis City Workhouse, the Minneapolis Women's Detention Home or County Jail, the superintendent in charge of either of said institutions shall give credit to such person of one day for each week of seven days for good behavior. Otherwise, such person shall serve his or her full time as imposed by the Court. In the event that any person is committed to either the Minneapolis City Workhouse or the Minneapolis Women's Detention Home and is thereafter placed on probation, if such person is thereafter recommitted because of violation of the terms thereof, such person shall not be entitled to credit for good behavior as hereinbefore set forth and shall serve his or her full time as imposed by the court.

RULE 27

MANDAMUS ACTION, TRIAL. After return is made in a Mandamus action it shall be referred to the assignment clerk for immediate trial, if in general term, otherwise at the first open date when a Judge is available.

RULE 28

PRE-TRIAL PROCEDURE
CIVIL TRIALS

A. No case shall have a ready for trial status until a certificate of readiness and a written statement of the case have been served and filed in the forms set forth in paragraphs D and E hereof.

B. Unless an adverse party files a certificate indicating non-readiness for trial within ten days from the date of service of the certificate, such adverse party is deemed to have joined in the certificate of readiness. Thereafter no further discovery procedures shall be allowed. The filing of the certificate when a party is not ready for trial or the failure to indicate non-readiness where the same exists, shall subject counsel to sanctions.

The case shall be placed on the ready for trial status after 15 days from the date of service thereof, unless a certificate of non-readiness is filed by an adverse party.

C. A certificate of non-readiness shall not be effective for more than 90 days unless extended by order of court.

D. The form of Certificate of Readiness shall be as follows:

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

.....
Plaintiff

–vs– File No. .....
Cal. No. .....

.....
Defendant

CERTIFICATE OF READINESS FOR TRIAL

The undersigned hereby certifies that:

1. The issues are joined and the case is ready for trial in all respects;

2. All amendments to pleadings have been made;
3. Necessary use of discovery procedures has been completed, demands for admissions have been made, and the taking of desired depositions concluded by the undersigned;
4. Sufficient time has elapsed to afford the adversary party reasonable opportunity to be ready for trial;
5. Settlement of the case has been discussed; good-faith efforts to settle the same have been exhausted;
6. A copy of this certificate has been mailed or delivered to every other party.

NOTICE TO ADVERSE PARTIES

Each other party is hereby notified that Rule 28B of the above Court reads:

(Herein set forth Rule 28B)

Dated:

By .....
Attorney(s) for .....
Address .....
Telephone No. .....

To: .....
Attorney(s) for .....
Address .....
Telephone No. .....

To: .....
Attorney(s) for .....
Address .....
Telephone No. .....

E. At the time of filing the Certificate of Readiness there shall be served and filed a written statement of the case, including, to the extent applicable, the following:

a. Name, address and occupation of the client.
b. Name of insurance carriers involved.
c. Names and addresses of all witnesses known to attorney or client who may be called at the trial by the party, including doctors and other expert witnesses.
d. A concise statement of the party's version of the facts of the case including, in accident cases, the date and hour of accident, its location, a brief description of how it occurred and, where appropriate, a simple sketch showing manner of occurrence.
e. A description of vehicles or other instrumentalities involved with information as to ownership or other relevant facts.
f. In accident cases all claims of negligence, contributory negligence or assumption of risk, giving claimed statutory violations by statute number. In other cases, a brief summary of party's claims.
g. A list of all exhibits that may be offered at the trial.
h. In accident cases, a statement by each claimant, whether by complaint or counterclaim, of the following:
(1) Names and addresses of doctors not listed above who have examined the injured party.
(2) A detailed description of claimed injuries, including claims of permanent injury. If permanent injuries are claimed, the name of the doctor or doctors who will so testify.
(3) Whether party will exchange medical reports (See R.C.P. 35.04).
(4) An itemized list of all specials including, but not limited to, (a) car damage and method of proof thereof, (b) x-ray charges, hospital bills and other doctor and medical bills to date, and (c) loss of earnings to date fully itemized.

F. Opposing counsel shall serve and file his written statement of the case within ten days of the filing of a certificate of readiness unless a certificate of non-readiness is filed as provided herein, or within ten days after the effectiveness of a certificate of non-readiness has expired.

G. When a certificate of Non-Readiness is filed which is believed frivolous, the ready party may move the court, returnable before the Chief Judge or his designee, requiring a party who has filed such certificate to show that the same is not frivolous or for purposes of delay. If the Chief Judge or his designee determines that the certificate is not justified on the basis of the showing made, sanctions may be imposed, and the case may be ordered to be on a ready for trial status.

H. After a case has attained a ready for trial status, no pleading amendments, discovery procedures, admission requests, or depositions shall be permitted except on an order of court.

I. The Chief Judge or his designee may from time to time conduct calendar calls of cases, at which counsel may be required to show cause why such cases should not be stricken or dismissed.

PRE-TRIAL AND SETTLEMENT CONFERENCE ASSIGNMENTS

J. Each judge may establish and supervise a pre-trial and/or settlement conference calendar of cases on a ready for trial status assigned to him.

K. The Chief Judge, upon written application of a party, may assign a case on a ready for trial status to a judge or referee for a pre-trial and/or settlement conference provided the trial will not be delayed thereby.

L. The Order setting the pre-trial and/or settlement conference may be served by mail upon all counsel, shall be promptly delivered to the assignment clerk, and shall be in the following form:

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

....., Plaintiff
vs. File No. .....
....., Defendant Cal. No. .....

ORDER SETTING PRE-TRIAL CONFERENCE

On ....., 19....., at ..... o'clock, before ..... in Room .....

The attorneys in the above-entitled action are notified to appear for a pre-trial conference at the above time and place and to comply with the following instructions:

I. Before the conference counsel shall permit inspection of his exhibits by opposing counsel, if requested, or furnish copies of such exhibits to such counsel. Requested inspection of hospital records, medical records and x-rays should be permitted before the pre-trial or settlement conference.

Before the conference counsel shall discuss prospects of settlement and be prepared to report thereon at the conference.

II. At the pre-trial conference the Court may:

A. Rule as desired on the admissibility of all documentary evidence marked for identification and intended to be used at the trial.

B. Discuss with counsel the issues in the case with a view to further simplification.

C. Consider other matters as may aid in the disposition of the case, such as possible agreements as to admissions of fact including, but not limited to, agreements on foundation and admissibility of documents and exhibits and agreements on the amount of special damage items.

D. Explore with counsel the prospects of settlement.

E. Specify the estimated time for trial.

III. Counsel who actually will try the case shall attend the pre-trial or settlement conference and bring with them either the party represented or someone else fully authorized by the party to settle the case and make admissions, unless the attorney is so authorized.

IV. Counsel shall immediately notify the assignment clerk of any disposition of a case prior to the pre-trial date and shall be subject to sanctions for any failure to notify.

V. Sanctions may be imposed for failure to prepare, exchange and submit the statement of the case outlined above and for failure to cooperate in the pre-trial or settlement conference.

VI. This order and the written statements of the case outlined above shall serve as the agenda for the conference when held and, when applicable to the facts in the case, each such item shall be taken up at the conference.

VII. Agreements reached and orders made at the pre-trial or settlement conference shall control the subsequent course of proceedings. Witnesses not named or exhibits not identified in the statements of the case or during the pre-trial or settlement conference shall not be presented at the trial except to prevent manifest injustice, unless the need for or identity of such witness or exhibit is ascertained subsequent to the pre-trial or settlement conference. In the latter event, opposing counsel and the Court shall be notified immediately. The Court may, in appropriate cases, make final determinations relating to a case at a pre-trial conference.

Dated:

.....
Judge of the District Court

PRE-TRIAL ORDER. Each judge shall in each case pre-tried determine whether or not to prepare a pre-trial order and notify counsel at the conference of such determination. If the judge determines not to prepare such an order, any party may request a formal order, in which event the party making the request shall prepare a proposed order.

A Pre-Trial Order shall be in the following form:

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

....., Plaintiff

vs.

....., File No. .....
....., Cal. No. .....
Defendant

Following pre-trial proceedings held pursuant to Rule 16, M.R.C.P.
IT IS ORDERED:

1. This is an action for:
   (Here state nature of action)
2. The names, occupations and addresses of the parties are:
3. Insurance companies having a possible interest are:
4. The following facts are admitted and require no proof:
   (Here list each admitted fact including, but not limited to, agreements on special damages and other damages, and the genuineness, validity and admissibility of documents and other exhibits.)
5. The following issues of fact, and no others, remain to be litigated upon the trial:
   (Be specific; a mere general statement will not suffice.)
6. The following witnesses may testify at the trial — to be called by:
   Plaintiff: (List names and addresses.)
   Defendant: (List names and addresses.)
   Other Parties: (List names and addresses.)
7. The following exhibits may be offered at the trial by:
   Plaintiff: (Give brief identification.)
   Defendant: (Give brief identification.)
   Other parties: (Give brief identification.)
8. The following rulings (as distinguished from agreements) are made with reference to admission of exhibits:
   (The Court may defer rulings on exhibits until trial.)
9. The Court makes the following additional rulings and orders:
   (Here set forth any rulings or orders such as those on amendments to pleadings, limitation of expert witnesses, etc.)
10. The following issues of law, and no others, remain to be litigated at the trial:
    (Here set forth a concise statement of each.)
11. The case will be tried by: (Court of jury.)
    (At this point include any additional agreements or orders as to the jury, such as alternates, number of peremptory challenges, number of jurors, sealed verdict, etc.)
12. The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remaining to be litigated, this order shall supplement the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.
13. State other matters not covered by the foregoing **but appropriate for the particular case, including estimated length of trial.**
14. **This case is subject to trial at any time upon one hour notice.**

.....
District Judge

Dated:

M. Upon stipulation of counsel for all of the parties or upon the application of counsel for any party and affidavit showing a need therefor, the Court may order a pre-trial medical conference before the appropriate Judge of the District Court or, on agreement of counsel, before any other person duly authorized to administer oaths. Upon the issuance of such order, the Clerk of the District Court shall issue subpoenas duces tecum for the production at such conferences of hospital, clinical or medical records, X-rays, reports or other written, graphic or photographic documents pertaining to the physical or mental condition of any party who has voluntarily placed in controversy the physical, mental or blood condition of himself, or a decedent, or a person under his control.

N. Once a case has been certified Ready for Trial no case may be stricken from the trial calendar except upon written order of the judge to whose block said case has been assigned. If not assigned, the case may be stricken upon written stipulation of all counsel filed with the Court Administrator.

RULE 29

THIRD PARTY PLAINTIFF OR DEFENDANT. When an application is made to the Court to bring in a third party plaintiff or defendant and an order therefor issued, the Court shall require the moving party to file said order forthwith and serve a copy thereof on the impleaded party. Said order shall further require the moving party to serve upon said impleaded party a Note of Issue in the event an answer is served by said party, and further require the filing of said Note of Issue in the office of the Clerk of the District Court and to simultaneously deposit a copy of said Note of Issue with the Assignment Clerk of said office.

RULE 30

DEPOSITION, NOTICE; FILING. Before any deposition is taken, the notice for taking the same shall be filed.

RULE 31

CONDEMNATION CASES; NOTICES OF APPEAL AND NOTES OF ISSUE. (a) In condemnation cases all notices of appeal and notes of issue shall set forth therein the particular parcel involved together with the name of owner or particular claimant involved therein.

(b) Insofar as practical and desirable, the commissioners appointed in a condemnation proceeding shall consist of: (1) a real estate broker or other person familiar with current real estate market values, (2) a qualified real estate appraiser and (3) an attorney knowledgeable in eminent domain or real estate law.

(c) The petitioner in a condemnation proceeding shall mail to all respondents a proposed form of award at least five (5) days before it is filed.

(d) Unless requested by a judge, neither the petitioner nor any respondent shall recommend any person to act as a commissioner in a condemnation proceeding.

(e) Within five (5) days after learning the names of the commissioners appointed in a condemnation proceeding, the petitioner or any respondent may serve on all other parties and file with the appointing judge an affidavit objecting to the appointment of any one or more of the commissioners and setting forth the reasons for the objection. Within five (5) days after receiving such an objection, the judge in his discretion may appoint a new commissioner to replace any commissioner concerning whom objection has been made. If the judge does not appoint a new commissioner within five (5) days, he shall be deemed to have overruled the objection.

RULE 32

CASE DESIGNATION. At the time a civil case is filed, the Clerk shall require counsel to describe on the file jacket, or on a form to be provided therefor, the type of action instituted, and if damages are sought, the amount sought.

If a case is filed which is within the jurisdictional limits of the Municipal Court, counsel filing the same shall express thereon the reason or reasons for filing it in the District Court.

RULE 33

VOIR DIRE EXAMINATION OF JURORS. The voir dire examination of a jury panel shall be conducted by the trial judge. The judge's examination may be followed by questions by the lawyers for the parties, but only to the extent that such questions do not duplicate questions asked by the judge and do not inquire into the law involved in the case.

RULE 34

NOTICE OF SETTLEMENT OR OTHER DISPOSITION. If a matter is settled or otherwise disposed of prior to the time set for any hearing, or for pre-trial conference, or for trial, counsel immediately shall notify the assignment clerk in civil cases, and the deputy clerk of the Family Court in domestic relations cases where minor children are involved.

RULE 35

(VACATED)

RULE 36

FORM OF PLEADINGS AND MOTIONS. a. All pleadings, motions and other papers shall be legibly typewritten or printed on the front side thereof, double spaced, on plain, unglazed paper of good texture. Every page shall have a top margin of not less

than one inch, free from all typewritten, printed, or other written matter. No certificate, return, affidavit, or other like paper shall be attached or stapled to any pleading, motion, or other paper closer than one inch from the top thereof.

b. No pleading, motion or other paper offered to the clerk of court for filing, except orders of the court, shall be backed or otherwise enclosed in a covering.

c. All pleadings, motions and other papers offered to the clerk of court for filing shall conform to the requirements of Rule 10 of the Minnesota Rules of Civil Procedure and shall include all of the following: (1) the file number, if one has been assigned; (2) the calendar number, if one has been assigned; (3) a designation of the document descriptive of its contents; and (4) the attorney's name, office address, and telephone number.

d. With respect to any pleading, motion or other paper which fails to satisfy the requirements of this rule, the clerk may refuse the same for filing; or if said paper has already been filed, it may be stricken by the court upon motion.

RULE 37

FAILURE TO OBSERVE RULES. Any party or attorney failing to observe any rule contained herein requiring affirmative action shall be subject to sanctions.

RULE 38

MODIFICATION OF RULES. Any judge shall have the right to modify the provisions of any of the foregoing rules to prevent manifest injustice.

FIFTH JUDICIAL DISTRICT

RULE 1

SPECIAL TERMS. (No scheduled special terms will be held in August).

(A) On the first Monday of each month in Blue Earth, Nicollet, Lincoln, Murray and Nobles Counties (Slayton, A.M.; Worthington, P.M.)

(B) On the second Monday of each month in Watonwan, Faribault, Blue Earth, Pipestone, and Nobles Counties. (Mankato, A.M.; St. James, P.M.)

(C) On the third Monday of each month at Blue Earth, Jackson, Redwood, and Rock Counties.

(D) On the fourth Monday of each month in Blue Earth, Brown, Martin, Lyon, and Cottonwood Counties.

Each clerk of court for the several counties within the district shall prepare special term calendars for each special term regularly set in his county. No matter will be set on any special term calendar unless, prior to noon on the Friday preceding the special term at which the matter is to be heard, motion papers are filed with the clerk of the district court of the county concerned. Counsel will specify the estimated time required to handle the matters so set. Matters will be set by the clerk on the calendar for special term in the order they are filed with his office. Counsel unable to procure a satisfactory special term setting from the clerk may contact the several judges for an alternate setting on appointment basis. Special term matters may not be transferred from the county of venue except by approval of the special term judge.

RULE 2

CALL OF THE CALENDAR. Hereafter and until the further order of this Court the call of the calendar shall be held at 10:00 o'clock in the forenoon of the opening day of each general term.

RULE 3

PETIT JURY. The petit jury shall be summoned to appear at 9:30 o'clock in the forenoon of the first Tuesday following the opening day of each general term.

RULE 4

ADDING CASES TO CALENDAR. Cases may not be added at the call of the calendar; on motion, upon notice and for good cause shown, cases may be added to the calendar less than 28 and more than 15 days before the beginning of a general term, but not otherwise.

RULE 5

MOTIONS. All motions made on the call of the calendar shall be heard on the opening day of each general term, and motions made upon notice for hearing at the term shall be set for the opening day, and all motions shall be heard in the order in which they appear.

Default cases shall be heard after the hearing of motions.

RULE 6

TRIALS; TIMES OF OPENING AND CLOSING. Hereafter and until further order of this Court at all regular jury terms held in this District, court shall open at 9:30 o'clock in the forenoon and close at 4:30 o'clock in the afternoon, with an intermission of an hour and thirty minutes at noon and a fifteen minute recess in the forenoon and afternoon of each day, subject, however, to the right of the presiding Judge to change the times of opening and closing as conditions may require or as such Judge shall deem feasible under the circumstances.

No court shall be held on Saturdays unless the presiding Judge deems it necessary or expedient.

RULE 7

STRIKING CASES FROM CALENDAR. When a case is not ready for trial, without just cause, it may be stricken from the calendar. A case shall be stricken from the calendar: (a) if Summons was served at least sixty (60) days prior to call of the calendar and all discovery proceedings, including medical examinations, are not completed prior to the call of the calendar; and (b) in all other cases if notice for all discovery proceedings, including medical examinations, has not been served prior to the call of the calendar.

RULE 8

DIVORCE CASES. Divorce cases may not be heard until after 90 days following service of summons and complaint. Where contested, note of issue may be served and filed within the 90 day period, but the case will not be tried until the 90 days has expired.

The clerk of district court in each county shall maintain a register of each divorce action heard which is venued in the county of such clerk, and shall record in such register the date of the hearing of such divorce action and the date of the filing of the findings of fact, conclusions of law and order for judgment pertaining thereto.

At the end of each month said clerk shall notify in writing the district judge who presided at the hearing of the divorce action in question of all divorce actions previously heard for which no findings of fact, conclusions of law and order for judgment pertaining thereto had been filed.

RULE 9

MINOR SETTLEMENTS. In minor settlements the minor shall be represented by counsel.

RULE 10

DEPOSITIONS. All depositions filed with the clerk of court shall be immediately opened by such clerk who shall thereupon discard the envelope, make note of the contents and file the same in the usual manner.

Such depositions shall become a public record available for inspection in the same manner as other public records. Provided, however, any interested person may apply to the court for an order sealing all or any part of the court file pursuant to rules 30.02 and 31.04 of the rules of civil procedures for the district courts.

The clerk of court shall not allow the court file, or any part thereof, to be removed from his possession except by direction of the court or, as to documents which by their nature or content must be personally served, for delivery to an officer for service and prompt return.

RULE 11

CLERKS' MINUTES. The clerks of district court throughout the district shall be responsible for the taking of minutes of all district court hearings held within their respective counties whether the matter heard is venued in the county in which the hearing is held or not.

After the completion of the hearing held by the district court in a county other than the one in which the matter is venued, the clerk of district court wherein the matter is heard shall forthwith transmit the minutes of such hearing to the clerk of the district court of the county wherein the action is venued, for filing therein.

RULE 12

BLUE EARTH COUNTY. The following rules, insofar as they are inconsistent with the foregoing rules, shall apply only to Blue Earth County:

1. The call of the calendar shall be held at 10:00 o'clock A.M. on the opening day of the term. Cases will be set for trial in order of filing notes of issue in accordance with M.R.C.P., No. 38.03, relating to courts with one term per year, unless on motion due to special circumstances the Court orders earlier trial.

2. The term may be adjourned for a period of one week or more to enable the presiding judge to serve elsewhere, or for a grand jury, or for other good cause.

3. A petit jury of 35 members shall be called by order of the Court to appear on the Monday following the opening day of the term, to serve for a period of four weeks, and a new petit jury shall be called each four weeks thereafter.

If the term is adjourned for a period of one week or longer, said four week period of jury service shall be extended to coincide with the period of adjournment.

4. The Court may order a supplemental call of the calendar at any time during the term, and the Clerk shall notify the attorneys affected by said Order not less than five days prior thereto.

5. The clerk shall prepare a printed calendar of the cases for trial. Cases will be tried, as nearly as practical, in the order in which they appear on the calendar.

The court may direct the clerk to mimeograph and to distribute to the attorneys involved a list of the cases on the calendar called for trial within the next two or three weeks. Upon receipt thereof the lawyers affected shall immediately notify the court of any motion, need for depositions or interrogatories, medical examination, pre-trial requests, or other matters which may affect the time of trial thereof.

6. In applications for temporary alimony or support, affidavits in form prescribed by general rules for district court shall be furnished, and no oral testimony shall be taken on hearings thereof.

RULE 13

ORDERS. Orders when signed will be delivered by the Court to the Clerk for filing.

RULE 14

REGISTRATION OF LAND TITLE RULE. Without order of the court unless it shall be requested by the Registrar or Examiner, the Registrar of Titles may receive and register as memorials upon any certificate of title to which they pertain the following instruments:

Receipt or certificate of county treasurer showing redemption from any tax sale or payment of any tax described in a certificate of title, a marriage certificate showing the subsequent marriage of any owner shown by a certificate of title to be unmarried, a certified copy of the death certificate of party listed in any certificate of title as being the spouse of the registered owner when accompanied by an affidavit satisfactory to the registrar identifying the decedent with said spouse; and in all subsequent dealings with the land covered by such certificates the registrar shall give full faith to these memorials.

RULE 15

COUNTY COURT APPELLATE RULES FOR THE FIFTH JUDICIAL DISTRICT

Pursuant to the Statute and the Rules of Appellate Procedure from the Minnesota County Courts, and for purposes of appeal from the County Courts located within the Fifth Judicial District, the following rules shall apply.

1. The Fifth Judicial District shall be divided into five divisions which shall be designated and judges assigned thereto as follows:

Mankato Division. The appeal judge for said Division shall be the District Judge with permanent chambers in Mankato, Minnesota.

Fairmont Division. The appeal judge for said Division shall be the District Judge with permanent chambers in Fairmont, Minnesota.

Marshall Division. The appeal judge for said Division shall be the District Judge with permanent chambers in Marshall, Minnesota.

New Ulm Division. The appeal judge for said Division shall be the District Judge with permanent chambers in New Ulm, Minnesota.

Windom Division. The appeal judge for said Division shall be the District Judge with permanent chambers in Windom, Minnesota.

The Mankato Division shall include the following counties: Blue Earth and Watonwan.

The Fairmont Division shall include the following counties: Faribault, Jackson and Martin.

The Marshall Division shall include the following counties: Lincoln, Lyon, Pipestone and Redwood.

The New Ulm Division shall include the following counties: Brown and Nicollet.

The Windom Division shall include the following counties: Cottonwood, Murray, Nobles and Rock.

2. Pursuant to Rules of Appellate Procedure from the Minnesota County Courts, Rule 103.01(3), the Clerk of District Court shall, within ten days of receipt of Notice of Appeal from the County Court, give written Notice to the appeal judge of the appropriate Division. Said Notice shall contain the following information:

(a) Title and venue;

(b) Name, address and telephone number of each attorney of record;

(c) Date appeal filed.

When all necessary appeal papers have been filed, or upon Order of the Court, the Clerk shall send the complete file to the appeal judge.

3. Pursuant to Rules of Appellate Procedure from the Minnesota County Courts, Rule 134.01, if demand has been made therefor, the appeal judge shall notify the Clerk of the time and place at which oral argument will be heard.

4. To promote the prompt and efficient disposition of appeals from the County Court, the Chief Judge of the District may, by his Order:

(a) Assign and reassign such appeals to a judge other than the regularly assigned appeal judge; and

(b) Provide that an appeal shall be heard and considered by more than one appeal judge. In such case the judges so assigned shall designate one of their number to write and sign the opinion or the Chief Judge may so provide by his Order.

The Chief Judge shall file his Order with the appropriate Clerk of District Court and said Clerk shall, forthwith, mail copies thereof to the regularly assigned and newly assigned judges, and to the attorneys of record.

RULE 16

TRANSFER OF CASES TO COUNTY COURT. No action or proceeding shall be transferred from the District Court to the County Court except by order of a District Judge.

SIXTH JUDICIAL DISTRICT

RULE 1

SPECIAL TERMS. Special terms of the District Court in the Sixth Judicial District shall be held as follows:

Carlton County. At 2:00 o'clock, P.M. on the first and third Wednesday of each month excepting July and August, and at 2:00 o'clock, P.M. on the third Wednesday in July and August.

Cook County. Special term matters may be noted to be heard at the call of the calendar at any general term.

Lake County. At 2:00 o'clock, P.M. on the fourth Wednesday of each month.

Special term matters of which the venue would normally be in Carlton, Cook, or Lake County may be heard on the regular special term to be held in Duluth upon order of a District Judge.

St. Louis County:

At Duluth: At 9:30 o'clock, A.M. on Monday through Wednesday of each week for all domestic relations matters, except contested change of custody motions, to be heard by the Referee. At 9:30 o'clock, A.M. on Thursday of each week for all other matters. At 2:00 o'clock, P.M. on Thursday of each week for criminal arraignments and sentencings.

At Virginia: At 9:30 o'clock, A.M. on Thursday of each week for all domestic relations matters, except change of custody motions, to be heard by the Referee. At 9:30 o'clock, A.M. on the second and fourth Friday of each month, except August, for all other matters.

At Hibbing: At 9:30 o'clock, A.M. on Friday of each week for all domestic relations matters, except change of custody motions, to be heard by the Referee. At 9:30 o'clock, A.M. on the first and third Friday of each month, except August, for all other matters.

Special term matters of which the venue would be Ely may be noted to be heard at Virginia at any special term for that city.

Special term matters for the County of St. Louis shall be noted for and heard at the place of trial designated for contested matters in Sections 484.47-484.52 unless otherwise ordered by a District Judge.

RULE 2

MOTIONS, PETITIONS, AND APPLICATIONS

2.1 Calendar.

Motions, petitions and applications may be heard

on any special term. (Question of facts). No matter shall be heard at a special term in which controversy exists which will require the taking of testimony, except such matters as are specifically provided for by law, unless special arrangements are made prior to said hearing with the special term Judge.

2.2 Briefs.

Except upon good cause shown to the Court and except for application for temporary relief in proceedings for dissolution of marriage or separate maintenance, a brief or memorandum of law shall in all cases be served and filed with a motion and notice of motion. The notice of a motion accompanied by a brief shall refer to this rule and set the date for service and filing of a responsive brief, if any, and the date for hearing. The date for service and filing of a responsive brief shall be not less than 10 days from service of the motion, plus three days if service is made by mail, and at least one full day before the date for hearing. The Clerk of Court shall not assign a motion to the special term calendar if the moving party has not complied with this rule.

RULE 3

APPLICATIONS IN DIVORCE ACTIONS. In applications for temporary alimony, support of the parties, custody, or attorney's fees in divorce actions, affidavits in support of or in opposition thereto shall be in the form prescribed by Rule No. 9 of the General Rules for District Courts. No oral testimony shall be taken on hearings in special term upon such matters unless specifically authorized by the Judge in charge of such term.

RULE 4

DIVORCE CASES; DEFAULT, SETTING. Divorce cases in which the 30 days time for answering has expired and default has been made and in which the summons and complaint with proof of service thereof have been filed with the Clerk of Court, and all causes requiring the taking of testimony in which the time for answering has expired and default has been made, and in which the summons and complaint with proof of service have been filed with the Clerk, shall, upon filing with the Clerk a note of issue, be placed upon the special term calendar for such date as may be specified by the party filing the note of issue.

RULE 5

RESTRAINING ORDER OR TEMPORARY INJUNCTION. The Judge who issues or denies a restraining order or temporary injunction in a matter other than one arising out of domestic relations shall retain jurisdiction of such matter therein unless otherwise ordered.

RULE 6

PETIT JURY; CALL OF CALENDAR. The calendar for each general term in the district will be called at 10:00 o'clock, A.M. on the opening day of such term in the courthouse where such term will be held. All calendar motions, including motions involving setting of cases for such term or continuances, and all requests for pre-trial conferences shall be made at the call of the calendar.

The petit jury for each term to be held at Duluth, Virginia, and Hibbing shall be summoned as soon as deemed necessary after the call of the calendar.

The petit jury to be summoned for Ely or for Carlton County, Cook County, or Lake County shall be summoned for the day following the call of the calendar unless otherwise ordered by the Judge presiding at such term. At each general jury term held at the City of Duluth, a new panel or jurors will be called every two weeks unless otherwise ordered by the Presiding Judge.

RULE 7

FILING; SUMMONS, COMPLAINTS, NOTE OF ISSUE. Summons and complaints are to be filed in the Clerk's office no later than the time for filing notes of issue. The party filing a note of issue shall state thereon the date of service of summons and complaint on the last defendant, not including third-party defendants. No matter may be placed upon any calendar unless the note of issue was filed with the clerk as provided by Rule 38.03 of the Rules of Civil Procedure, and Rule 12 of these rules.

A case may be moved on the calendar for trial at the call of any calendar only if all the following are complied with:

1. A personal appearance at the call requesting that said matter be moved on.

2. A stipulation of agreement between the parties that said matter may be moved on.

3. A note of issue shall have been filed with the clerk of the District Court at least 24 hours before the call.

RULE 8

FILING PLEADINGS. All pleadings and other papers must be plainly endorsed on the outside of the paper with the title of the case and the name or character of the paper endorsed thereon below the title of the case before the same is presented to the Clerk of the District Court for filing, and in contested cases, all pleadings and other papers required to be filed shall be filed on or before the second day of the term at which the action is noticed for trial.

RULE 9

PRE-TRIAL CONFERENCE. On the filing of note of issue or a certificate of readiness in any action, the party filing the same may note a request for a pre-trial conference, whereupon the Clerk of Court, in making up the calendar of actions for trial, will note on the calendar, "Pre-trial conference requested." If such pre-trial is not requested, any other party may, at the call of the calendar, request pre-trial conference. If pre-trial conference is requested, the presiding Judge shall, at the call of the calendar, fix a time and place for such pre-trial conference. The presiding Judge at a general term, or the Judge to whom a case is assigned for trial, may, upon his own motion, order that a pre-trial conference be had. After pre-trial conference, the Judge hearing the same small make a pre-trial order regulating the matters covered by such conference.

RULE 10

CALENDAR. In preparing calendars for each term of Court, the Clerk shall list separately cases to be tried by the jury and by the Court, and on each separate calendar, the continued cases shall appear first, being so designated and appearing in the order in which they appeared on the last term from which they were continued, and the calendar shall designate the term on which they first appeared for trial. After the continued cases, the Clerk shall list the new cases which shall appear on the calendar in the order in which notes of issue were filed in such cases and shall note upon the calendar the date of the service of the first proceeding in such cause.

No civil case on the General Term Calendar shall be continued by consent of counsel only, or otherwise than by order of the Court for cause shown. When a case has appeared on a General Term calendar at three consecutive terms of the Court without being tried or disposed of, the same shall be stricken unless at the said third General Term good cause shall be shown in writing and presented to the presiding Judge at the term why the same should be continued on the calendar.

RULE 11

ASSIGNMENT CLERK; DUTIES. The Clerk shall assign a duly appointed deputy clerk from his office who shall be designated as the assignment clerk, and he shall act under the general instructions of the presiding Judge in connection with the assignment of civil cases to the several Judges for trial.

It shall be the duty of the assignment clerk to set for trial each day that the Court is in session a sufficient number of cases to keep the Courts occupied, and he shall notify all attorneys as to the day their cases are set for trial.

The clerk shall also assign to each Trial Court a deputy clerk who shall be in constant attendance during the sessions of the Court, and whose first duty shall be the clerical details of and pertaining to the trial work

Each case shall be assigned for trial in accordance with the regular order of setting to the first Judge who is ready for a new case. Such assignments shall be maintained and the cases tried in such order and before such Judge unless affidavit of prejudice is filed in accordance with the statutes against such Judge, in which event the case shall be assigned to the next available Judge.

If any Judge shall feel for personal reasons or otherwise that he cannot try a particular case assigned to him, he shall so report to the presiding Judge.

The assignment clerk shall never under any consideration assign cases to Judges other than in their regular order, and in the regular order in which

the Judges notify him that they are ready for cases, except as hereinbefore provided.

RULE 12

TRIAL DATES. Cases shall be assigned trial dates as nearly as possible in the order in which they appear on the ready calendar, provided that no trial date assigned to a case shall be less than 80 days from the date the summons and complaint was served on the last defendant, not including third-party defendants. However, upon notice and a showing of hardship by a party, the Court may assign to a case a trial date less than 80 days after such service of summons and complaint.

RULE 13

READY CALENDAR. There shall be established, in addition to the regular calendar, a trial calendar called the Ready Calendar. No case shall go on the Ready Calendar until a Certificate of Readiness is filed. Cases that are certified as ready for trial, and in accordance with the following rules, shall be placed on the Ready Calendar. A Certificate of Readiness may be filed by any party to the lawsuit, signed by their attorney, and shall contain the following:

1. That the eighty-day rule has been complied with or has been waived by all opposing counsel.
2. That the case is ready for trial in all respects.
3. That the necessary use of discovery procedures has been completed and desired depositions taken and interrogatories concluded by the undersigned.
4. That personal injuries, if any, have stabilized.
5. That settlement of the case has been discussed, and that good-faith efforts to settle the same have been exhausted.
6. That prior to the filing of this certificate on the ..... day of ....., 19....., a copy of the same was served on counsel for each adverse party.
7. That all amendments to pleadings have been made.
8. That there is a bona fide controversy involving in excess of $5000.00.

Unless an adverse party files a motion to stay the placing of the case on the Ready Calendar within ten days from the date of the service of the Certificate of Readiness, such adverse party is deemed to have joined therein. Thereafter, no further discovery procedures should be allowed. The filing of this Certificate when a party is not ready for trial or the failure of the adverse party to make timely motion where grounds exist for the stay shall subject counsel to sanctions.

The case shall be placed on the Ready Calendar after fifteen days from the date of the service thereof; however, if all counsel have joined in the Certificate, the case will be placed on the Ready Calendar immediately unless a motion objecting thereto is filed by an adverse party.

If there is a motion to stay the placing of the case on the Ready Calendar by an adverse party, it shall be brought on for hearing before the presiding Judge, and said motion must be made so that the time for hearing is within 15 days of the service of the Certificate of Readiness.

All cases on the Ready Calendar will be subject to call for trial on two-weeks preliminary notice and on forty-eight hours telephone notice. The established policy of assignment of cases will be in the order, as nearly as possible, as they appear on the Readiness Calendar.

Approximately every sixty days, the clerk's office shall mimeograph a list of cases that are on the Ready Calendar.

A copy of such Ready Calendar shall be posted in the office of the assignment clerk, showing the current position of all cases on the calendar, so that lawyers can see where their case appears numerically on the Ready Calendar and can plan their schedules accordingly.

The assignment clerk will have trial post cards and, at least two weeks in advance of the date the case is expected to be reached for trial, will notify the attorneys by such cards.

The assignment clerk will assign sufficient cases for each Trial Judge available. Such assignment of cases shall be made forty-eight hours before the trial date and notice thereof given by telephone.

Any request for continuance shall be presented to the presiding Judge and shall not be granted by him except for good cause shown. Good cause shall include causes not certified to in the Certificate of Readiness, such as sickness of party, counsel, etc.

The assignment clerk, in making the telephone assignment of a case and alternate cases, will accept no excuses for a change of his telephone assignment, except prior assignment for trial within the Sixth Judicial District for that date.

Attorneys shall not enter appearances in cases in any county in which their principal office is located unless they are prepared to have trial counsel available to proceed immediately upon the case being reached.

Lawyers who have cases on the Federal term shall notify the assignment clerk of that fact, and the name of such case or cases together with their tentative trial dates, and the assignment clerk shall, to the extent possible, make such assignments from the Ready Calendar so as to avoid conflicts between both Courts.

A case stricken from any calendar may be returned to the calendar only by the filing of a new note of issue and a Readiness Certificate.

MEMORANDUM

TO THE MEMBERS OF THE SIXTH JUDICIAL DISTRICT BAR, AND TO THE CLERKS OF DISTRICT COURT IN ST. LOUIS, CARLTON, LAKE AND COOK COUNTIES:

Rule No. 13 of the Special Rules of Practice of the District Court, Sixth Judicial District, providing for a Ready Calendar, heretofore applicable only to the general terms held in Duluth, has now been extended to cover all general terms in St. Louis, Carlton, Lake and Cook Counties, effective July 1, 1969.

Under provisions of this Rule, no case will be set for trial at any general term of court held in the Sixth Judicial District commencing after July 1, 1969, unless it has been placed on the Ready Calendar. This includes all cases continued over from the preceding general terms as well as all new cases. On all continued cases, you are advised to get your Certificate of Readiness in forthwith. Forms can be obtained from the clerk in each county. The Clerks of Court in St. Louis, Carlton, Lake and Cook Counties are requested to prepare and furnish such certificates with appropriate designations for use in their courts.

Please note that it will still be necessary to file a Note of Issue in order to place a new case on the General Term Calendar. However, the case will not be set for trial or placed on the Readiness Calendar until a Certificate of Readiness has been filed. We will continue to have the regular Call of the Calendar at the regularly assigned statutory time. Calendar motions will still be heard at the Call, but it is anticipated these will be materially reduced in numbers.

Please note carefully the requirements of the new rule, to the effect that the adverse party has 10 days in which to object to the Certificate of Readiness and that a motion objecting thereto must be heard by the presiding Judge within 15 days of the date of service of said Certificate of Readiness.

Please also note the provisions of the new rule as to two weeks' preliminary notice to be given by the assignment clerk of the setting of the case for trial, and the 48-hour telephone notice to be given by the assignment clerk of final setting.

It is anticipated that the Readiness Calendar will save the Judges and assignment clerk much time that is now being wasted in trying to line up cases for trial, will expedite the trial of cases, and will enable the members of the bar to plan and coordinate their trial work with their office work on a more efficient basis.

The Court will adhere strictly to the requirements of the rule and will expect the members of the Bar to do the same. Cooperation of the Bench and Bar in the efficient and expeditious trial and determination of cases will enable the law profession to better serve the public.

Yours truly,
Donald C. Odden
N. S. Chanak
Mitchell A. Dubow
Donald E. Anderson
C. L. Eckman
Patrick D. O'Brien
Judges of the District Court

RULE 14

CALENDAR; SETTLEMENTS. Counsel shall promptly advise the Judge in charge of the calendar of settlements made.

RULE 15

COURT SESSIONS. Court sessions will be held from 9:30 A.M. until 12:00 o'clock noon, and from 2:00 P.M. until 4:30 in the afternoon, and inso-

far as possible the Court will not allow time to be taken up during those hours with discussion with counsel concerning possible settlement or other matters.

The attorneys for the parties shall report to the Judge assigned to the trial of the case not later than one-half hour prior to the time the jury is scheduled to be selected in their particular case.

RULE 16

CONTINUANCES. When a case has been noted for trial at a term of the District Court and has been set for trial, it may not be continued except upon order of the presiding judge.

RULE 17

EXHIBITS. All exhibits, introduced in evidence by any party in the trial of all actions, shall be marked by the stenographer and shall be left in custody of the stenographer until the close of the trial of said cause, and when the trial of any cause is completed, the stenographer shall deliver all exhibits introduced in evidence in each case, to the clerk of the said Court, and the said clerk shall cause the same to be filed and kept in a proper and safe place, and shall cause to be made and shall keep a proper index or reference book, wherein shall be kept a list of all such exhibits, with reference to their place of deposit, so that they can be readily found by any parties interested therein, and no person or persons shall be permitted to remove any of such exhibits from such depository, except upon the written order of the Court: Provided, that all attorneys and interested parties shall have an opportunity to examine the same in the office of the said clerk, under reasonable provisions to be provided therefor.

RULE 18

EXAMINATIONS; MEMBERS OF PANEL. All members of the panel selected for a particular case shall, before examination as to their qualifications, be sworn to make true answers to all questions asked of them bearing on their qualifications to serve as jurors in such case.

RULE 19

PETIT JURY; LIMITATION ON SERVICE. No person shall serve as a member of the petit jury who has served within two years on a petit jury in the county for which he is summoned. This provision shall not apply to talesmen who are summoned by the sheriff for a particular case where a shortage of jurors available in the general term panel develops.

RULE 20

JURISDICTION OF JUDGE; CRIMINAL MATTERS. The Judge before whom a person charged with crime is arraigned shall retain jurisdiction of such matter until disposed of unless the trial of such matter on the merits shall be commenced before a different Judge on a general term or unless otherwise ordered.

RULE 21

APPEALS FROM MUNICIPAL COURT. When an appeal is perfected from the Municipal Court to the District Court, said appeal shall be heard as a Court case by a single District Court Judge at the next general term of Court.

RULE 22

WITHDRAWAL OF FUNDS OF MINOR. Any party desiring to withdraw funds which have been previously deposited with the Clerk of the District Court to the credit of a minor shall present such request in the first instance to the Clerk, who shall prepare a petition reciting the necessary facts, which shall include the amount requested, the reasons for the request, shall see that the same is executed and then present the matter to the Judge then in chambers.

RULE 23

RESIDENCY OF JUDGE. 1. There shall be a resident Judge in Hibbing and Virginia and four resident Judges in Duluth. By resident is meant that a Judge shall have his permanent office in the County courthouse situated in said city or village. (A Judge may make his personal home in any city or rural area in the Sixth Judicial District.)

2. When the position of Judge of the Sixth Judicial District is vacant by reason of death, resignation, by a sitting Judge being defeated in a duly held election, or otherwise vacant under the law, a Judge senior in service may choose to fill said residency as previously defined by filing with the Chief Judge of the District his intention to change his present residency, said intention to change residency shall be filed within ten days after the vacancy in office by death, or in the case of retirement, within ten days after retirement, or within ten days after a duly held election.

3. A Judge elected to fill the vacancy, or a Judge appointed by the Governor of the State of Minnesota to fill the vacancy, or a Judge otherwise elected to office shall not take precedence over said residency where an intention to fill the vacancy has been filed by a Judge senior in service and who has filed his intention to change his residency. A Judge elected to office, or appointed to office by the Governor, shall be bound by this Rule concerning residency.

4. It is the intention of this Rule to give a Judge senior in service the right to change his residency whenever a vacancy exists in office due to death, or resignation, or by a Judge being replaced by a Judge duly elected, or by a Judge being replaced by other legal procedure.

5. This Rule shall not affect Judges of the Sixth Judicial District duly holding office as of September 9, 1964.

RULE 24

SPECIAL RULES APPLICABLE IN PROCEEDINGS WITH REFERENCE TO REGISTERED PROPERTY. In St. Louis County, without an order of Court (unless such order is requested by the examiner or by the registrar), where the certificate of title shows:

1. The owner to be unmarried; and after its issuance the owner has married; the registrar may receive and register as memorials upon any certificate of title to which they pertain, a certified copy of the marriage record showing the subsequent marriage of the owner; and in all subsequent dealings with the land covered by such certificate the registrar shall give full faith to these memorials.

2. The owner to be married; and after its issuance the owner's spouse has died; the registrar may receive and register as memorials upon any certificate of title to which they pertain, a certified copy of the death record of the owner's spouse, when accompanied by an affidavit satisfactory to the registrar identifying the decedent named in the death record as the deceased spouse; and in all subsequent dealings with the land covered by such certificate the registrar shall give full faith to these memorials.

3. The owner to be under disability by reason of minority; the registrar may receive and register as memorials upon any certificate of title to which they pertain, a certified copy of the birth record of the owner, when accompanied by an affidavit satisfactory to the registrar identifying the person whose date of birth is established by the birth record as the owner and also stating that said person is under no other disability; and the registrar shall thereafter treat the owner as having attained the age of majority at a date 21 years after the date of birth shown by the birth record.

4. Two or more owners as joint tenants; and after its issuance one of them has died; the registrar may receive and register as memorials upon any certificate of title to which they pertain, a certified copy of the death record of the joint tenant who died, when accompanied (a) by an affidavit satisfactory to the registrar identifying the decedent as the joint tenant who died and (b) by the certificate of the Commissioner of Taxation of the State of Minnesota that any lien for inheritance taxes that the State of Minnesota may have upon the property described in the certificate of title is waived or is satisfied; and upon the surrender of the owner's duplicate certificate of title accompanied by the grantee's affidavit described in section 508.13 of Minn. Stat. 1957, the registrar shall issue a new certificate of title to the survivor in severalty or to the survivors in joint tenancy, as the case may be.

RULE 25

CRIMINAL CALENDAR CALL FOR GENERAL TERM. The criminal calendar for each General Term in the District will be called at two p.m. on the opening day of each such term, in the Court House where such term will be held. The prosecuting attorneys and all public defenders and privately retained attorneys who have cases on the calendar must attend the call.

RULE 26

NOTE OF ISSUE FOR SPECIAL TERM. A Note of Issue for all Special Term matters to be held at all Courthouses in this County, except for the City of

Virginia for which provision has heretofore been made, must be filed with the Clerk of District Court by 9:30 A.M. on the last working day prior to the day the matter is to be heard.

The Clerk of the District Court shall provide the calendar and files to the Special Term Judge by 12:00 noon of the day prior to the date set for hearing.

Adopted Jan. 8, 1973, effective Feb. 1, 1973, as amended Sept. 26, 1973.

Editorial Note. The terms of the order of September 26, 1973, were merged into Rule 26 even though they did not specifically purport to amend Rule 26.

RULE 27

TRANSFER OF PLACE OF TRIAL. 1. No Special Term matters may be transferred from one county or place of trial to another county or place of trial without permission of the Judge in chambers.

2. No General Term matters may be transferred from one county or place of trial to another county or place of trial without a Court Order, except for the provisions of M.S.A. 484.50.

RULE 28

PICTURES, PHOTOGRAPHS, SKETCHES, DRAWINGS OR VOICE RECORDINGS. No pictures, photographs, sketches, drawings, or voice recordings shall be taken in any Court House located within the Sixth Judicial District of any attorney, party, witness, juror, judge or court attendant involved in the trial of any case, civil or criminal, or proceeding incident to such case, or in connection with any session of any county grand jury within said district. This rule shall not preclude the use of a voice recording instrument by the court reporters officially in attendance at any trial, hearing or proceeding, for the purpose of making a record thereof. This rule shall include any building in which any session of this District Court is conducted.

RULE 29

APPELLATE RULES. 1. Pursuant to Rule 102.01(3), Rules of Civil and Criminal Appellate Procedure from the Minnesota County Courts to the District Courts, and for purposes of appeals from the County Courts located within the Sixth Judicial District of the State of Minnesota, the following rules shall apply in both civil and criminal appeals.

DESIGNATION OF COURT

2. When exercising its appellate jurisdiction for the determination of appeals from the County Courts located within the Sixth Judicial District, this Court shall be designated as the District Court (Appellate Division) for the Sixth Judicial District of the State of Minnesota.

COMPOSITION OF COURT

3. The District Court (Appellate Division) for the Sixth Judicial District of the State of Minnesota shall be composed of two panels, each composed of three members of the six Judges of the District Court, sitting en banc. Cases assigned to each of the panels shall be decided by a majority of such panel. The members designated for each of the two panels shall be selected to serve for the ensuing year at the annual meeting of the Judges of the District Court, Sixth Judicial District. In case of the disability of any Judge, the Chief Judge shall designate another Judge of the Court to replace him, and in the event of the disability of the Chief Judge, the Judge most senior in terms of service shall make the designation.

ASSIGNMENT OF CASES

4. Cases will be assigned within each panel by the Presiding Judge who shall be the Chief Judge of the panel of which he is a member and who shall be the Judge most senior in terms of service of the other panel. Decisions of the Court by the panel may be made per curiam or may be written and signed by the District Judge to whom the case is assigned, as the Judges of the panel may determine.

APPELLATE RECORDS

5. All appeal notices, documents and the record in each case shall be transmitted to and filed with the Clerk of District Court located within the County from which the appeal arises. In St. Louis County appeals from the Probate and Juvenile Divisions of the St. Louis County Court and from the south, northwest and northeast districts of the St. Louis County Court, the same shall be transmitted to and filed with the Clerk of the District Court of St. Louis County at his office in the Courthouse in the City of Duluth, the County seat. The Clerk of the District Court will properly record the appellate documents and records of each case in a separate and distinct appellate file, and immediately notify the Chief Judge and Court Administrator of the Sixth Judicial District in writing of the receipt and filing of the same, or any motion, and the dates thereof.

PANEL TERMS AND SESSIONS

6. Each panel of the District Court (Appellate Division) will have one term per year. The first panel's term shall commence on the first Tuesday in February and end on the last day of June. The second panel's term shall commence on the 1st Tuesday after the first Monday in September and terminate on the day prior to the first Tuesday in February. Sessions of the panels may be adjourned from time to time as the Judges thereof may direct. All sessions of the District Court (Appellate Division) shall be held at the St. Louis County Courthouse in the City of Duluth unless otherwise designated by the Court. The last date for filing the record and briefs on an appeal in order to be heard at any particular session of the District Court (Appellate Division) shall be ten business days prior to the date when the appellate session begins. After such date appeals may only be heard at such sessions on grant of a motion of a party thereto for good cause shown.

CALENDARS AND ARGUMENT

7. Prior to the commencement of each appellate session the Court Administrator of the Sixth Judicial District shall prepare a calendar of the cases properly noted for appeal at such session. He shall indicate the date and time when the argument will be heard. All parties shall file a brief and make oral arguments unless upon motion it is waived by the Court. Briefs are to filed, three copies shall be furnished to the Court. The calendar of each appellate session shall be sent to all interested attorneys and Judges at least 14 days prior to the commencement of the session.

RULE 30

GARNISHMENTS, FILING FEES. For the purpose of this rule, all garnishments; unless otherwise ordered by the court, shall be deemed proceedings, and it shall be the duty of the clerk of such court to demand and receive a fee of $3.00 for each action filed.

SEVENTH JUDICIAL DISTRICT

RULE 1

SPECIAL TERM. A special term shall be held in each county of the district during the months of June, July and August of each calendar year by such judge and at such day and hour as may be designated by an order of the Chief Judge of the district from time to time, and other special terms shall be held in each county when ordered by any judge of the district if deemed necessary by such judge.

RULE 2

DIVORCE JUDGMENT; REOPENING. Proceedings to reopen and to modify judgment in divorce matters, whether pertaining to alimony and property settlement or to the custody, maintenance and support of minor children, shall be heard by the Judge upon whose order such decree was docketed if said Judge then continues to hold judicial office in this district, unless he be then incapacitated or otherwise disqualified.

RULE 3

DIVORCES AND ACTIONS FOR SEPARATE MAINTENANCE. No action for divorce or separate maintenance shall be heard upon its merits within thirty days following the service of the Summons upon the defendant.

Any Findings of Fact, Conclusions of Law and Order for Judgment as executed by the trial judge, shall be filed with the clerk of court within three days after its signing and Judgment shall be entered promptly thereafter.

RULE 4

ADOPTION. In adoption proceedings a child under fourteen (14) years of age shall be present before the Court, and if such child be over fourteen years of age he or she shall consent in writing. If one to be adopted shall be an adult, he or she shall join as a party to the proceeding and be a resident of the county in which the action is brought. An adult, to be adopted, shall appear before the Court in person or by counsel, but if not personally present to testify, then his or her deposition or verified consent shall be presented in manner provided by law. If the petition of an adult seeks also a change of name, it shall conform to section 259.10.

RULE 5

MINORS; APPROVAL OF SETTLEMENT. Applications for the approval of settlement, in actions brought on behalf of minor children, shall bear the endorsement of counsel for such minor and shall disclose whether or not counsel therein is in fact retained by or to be compensated, directly or indirectly, by a person whose interests are adverse to said minor.

RULE 6

MINOR SETTLEMENT, RELEASE OR DISBURSEMENT OF FUNDS AND SECURITIES. Whenever the Court shall approve settlement on behalf of a minor and order that in lieu of bond any money so received be deposited as a savings account in a banking institution or trust company, or that it be invested in approved securities, the account so established shall continue until said minor shall have become of lawful age, or until a general guardian shall have been duly appointed and qualified, whereupon the Court may order payment by said depository of said trust fund to the lawful owner or guardian, as the case may be, a copy of the order designating such depository and a copy of any subsequent order relating thereto to be furnished said depository, the deposit book or other securities to be filed with the Clerk of Court.

Funds so deposited may be released by the order of any judge of the district in response to a written application verified by the minor or either parent showing a reasonable need for the use of the funds proposed to be released. When such minor attains the age of eighteen and is under no other disability, any such judge may by written order direct the depository to forthwith disburse all funds to such minor upon receipt of any written communication requesting the release of such funds for such reason, the order directing such release when presented to the banking institution or trust company to be accompanied by the deposit book or other evidence of the deposit of such funds. Any securities in the possession of the clerk of court shall also be delivered to such minor or his agent by the clerk upon order of any judge of the district in response to such a written communication.

RULE 7

PRE-TRIAL CONFERENCE. After the filing of a note of issue and not less than ten (10) days *before the opening of a general term, any party* to any action desiring a pre-trial conference pursuant to Rule 16 of the Rules of Civil Procedure for the District Courts, shall make a written request therefor addressed to the Judge assigned to preside at the general term at which such action is pending. The Judge, in the exercise of discretion, may thereupon make and file an order directing the attorneys to appear at a time and place therein specified, to consider matters contemplated by said rule.

RULE 8

ORDER FOR PLACING CASES ON PRINTED CALENDAR. Upon the filing of the Note of Issue required by Rule 38.03 of the Rules of Civil Procedure, the Clerk shall enter the cause on the calendar according to the time of filing of the Note of Issue. Adopted March 8, 1952.

No civil action shall be added to the printed Calendar at the call thereof except for cause or excusable neglect and then only if:

(a) all the pleadings have been filed with the Clerk prior to the motion and

(b) *if all parties to the action join in said* motion.

(Such motion shall be in writing and the essential facts shall be set forth by affidavit attached thereto.)

RULE 9

NONRESIDENT ATTORNEY. An attorney or counsellor at law residing in a sister state or territory wherein he or she is duly licensed to practice, when present before the court and desirous of conducting or participating in the trial of a proceeding here pending and in which he is authorized to represent one or more of the litigants, may, pursuant to section 481.02 and subject to our Rules of Civil Procedure, on motion duly made of record by a member of the bar of this state associated in said cause and to continue present throughout said trial as one of counsel for said litigant, at the court's discretion be permitted to take part in and to conduct the presentation of such cause, to all intents and purposes as though duly licensed to practice his profession in this state.

RULE 10

EXHIBITS. All exhibits received in evidence upon the trial of causes shall remain thenceforth in the custody of the court reporter until submitted to a jury; provided that when a cause is taken under advisement by the court such exhibits shall be retained by the clerk of court subject to further order. Upon the return of a sealed verdict, or immediately upon the reception of a verdict, or upon the discharge of a jury because of inability to agree, the bailiff in charge shall return all exhibits to the clerk, who shall receive and safely retain them subject to further order. Six months after final disposition of any cause tried in said court and after written notice to counsel, the clerk shall destroy or otherwise dispose of all exhibits, except public records, pertaining to said cause then remaining in his custody, the purpose of this rule being that all exhibits in any cause tried in the District Court of the Seventh Judicial District of the State of Minnesota shall be received subject to the right of destruction or other disposition in conformity with the terms hereof. Six years after final disposition of the cause in which they were made and filed, the clerk may destroy the court reporter's shorthand notes then in his custody.

RULE 11

AUTOMATIC STAY. Unless otherwise directed, the Clerk shall enter an automatic 30 day stay of entry of judgment upon the receipt of any verdict of a jury.

RULE 11A

SPECIAL RULE APPLICABLE IN PROCEEDINGS WITH REFERENCE TO REGISTERED PROPERTY. In each county of the Seventh Judicial District, without an order of the court, unless such order is requested by the examiner or by the Registrar of Titles, the Registrar of Titles shall receive and register as memorials upon any Certificate of Title to which they pertain, the following instruments: Receipt or Certificate of county treasurer showing redemption from any tax sale or payment of any tax described in a Certificate of Title, a Marriage Certificate showing the subsequent marriage of any owner shown by a Certificate of Title to be unmarried, a Certified Copy of the Death Certificate of a party listed in any Certificate of Title as being the spouse of the registered owner when accompanied by an affidavit satisfactory *to the registrar identifying the decedent* with said spouse; and thereafter in all subsequent transactions with the land covered by said certificates, the Registrar of Titles shall give full faith to such memorials.

RULE 12

APPEALS FROM COUNTY COURT. All appeals from the County Court of any county in the district shall be addressed to and be heard and considered and determined by the judge of the district then currently holding a term of court in said county or has been designated to hold the next general term thereof if no term is being held in said county when the appeal is perfected. The same shall be considered and determined as soon as reasonably possible, but arguments may be heard and briefs considered if such judge deems the same necessary and so orders.

RULE 13

TORRENS TITLE ACTIONS. In all applications for the conveyance of a Torrens Title, the court may, when deemed necessary, require a new or additional survey at the expense of the applicant. It is the declared policy of the court to allow minimum fees and expenses to the examiner of titles so that the conveyance costs of real estate subject to Torrens Title shall not be prohibitive.

EIGHTH JUDICIAL DISTRICT

RULE 1

SPECIAL TERMS

Every Monday at Morris, Montevideo and Willmar, commencing at 9:30 a.m.

RULE 2

SPECIAL TERM CALENDAR— FILING OF MOTION PAPERS, ETC.

Counsel for the moving party is required to advise the Clerk of the respective counties where Special Terms are held of any matter to be placed upon the Special Term Calendar for hearing not less than three (3) days before such Special Term, and that any motion papers, pleadings, et cetera, to be presented by the moving party in connection with such Special Term matter be filed not later than one (1) day preceding

such Special Term. Failure to comply with same will result in assessment of a penalty or other sanctions.

RULE 3

ENTRY OF JUDGMENT IN CONTESTED MATTERS

In contested matters no judgment shall be entered until the expiration of thirty (30) days after verdict or findings.

RULE 4

DIVORCE ACTIONS— DATE OF BIRTH OF PARTIES

Pursuant to M.S.A. 518.001 all Complaints in divorce actions and proposed findings shall recite the date of birth of the husband and of the wife.

NINTH JUDICIAL DISTRICT

RULE 1

DIVISIONS AND DEFINITIONS

1.01 **Divisions.** For purposes of dividing between the judges and otherwise regulating the business of the Court the district may be divided into six divisions. So far as practically may be each division shall consist of two or more counties, shall be given a number for convenience of reference, and shall have therein the permanent chambers of one of the judges. The designation of the counties constituting each division, the numbering thereof, and the designation of a particular judge to act as the division judge thereof may be made from time to time by orders of the judges filed with the clerk in each of the counties of the district. Until otherwise ordered the district shall be deemed divided into divisions, numbered, and consisting of counties as follows: the First Division shall consist of the counties of Kittson, Marshall, Pennington and Roseau; the Second Division shall consist of the counties of Koochiching and Lake of the Woods; the Third Division shall consist of the counties of Mahnomen, Norman, Polk and Red Lake; the Fourth Division shall consist of the counties of Beltrami, Clearwater and Hubbard; the Fifth Division shall consist of the counties of Itasca and Cass; and the Sixth Division shall consist of the counties of Aitkin and Crow Wing.

1.02 **Definitions.** Unless the language or context indicates that a different meaning is intended the following words, terms, phrases and abbreviations, for the purposes of these rules, shall be given the meaning subjoined to them.

(a) "Clerk" means the Clerk of the District Court for the appropriate county.
(b) "District" means the Ninth Judicial District of the state for the District Court.
(c) "Division" means one of the divisions into which the district is deemed to be divided.
(d) "Chief Judge" means the judge elected as such for the district in accordance with M.S.A. Sec. 484.34.
(e) "Judge of the Division" or "Division Judge" means the judge having his permanent chambers in the division or who has been designated by an order as the judge of the division.
(f) "Term Judge" means the judge assigned to preside at a term of court.
(g) "Trial Judge" means the judge who has presided, or is presiding, or who has been designated or assigned to preside, or who is likely to preside at the hearing or trial of a particular matter.
(h) "Preliminary Call" means the preliminary call of the cases upon the calendar of a general term of court.
(i) "Peremptory Call" means the peremptory call for trial of cases to be tried at a general term of court.
(j) "Person" includes an individual, corporation, partnership, or other association.
(k) "Spring Term" means a general term of court in a county, the opening day of which occurs between the first day of February and the thirty-first day of May in any year.
(l) "Fall Term" means a general term of court in a county, the opening day of which occurs between the first day of September and the thirty-first day of December in any year.
(m) "M.S.A." means Minnesota Statutes Annotated.
(n) "R.C.P." means Rules of Civil Procedure for the District Court of Minnesota.

RULE 2

JUDGES WHO WILL PRESIDE AT TERMS.

2.01 Unless designations, assignments, or arrangements are made otherwise, judges will preside at terms of court as herein provided:

(a) **Fall General Terms.** The judge of a division shall be deemed to have been designated and assigned to preside at the fall general term of court in each of the counties of his division.
(b) **Spring General Terms.** The judges of the district, by action taken at a meeting or by a joint order, may designate and assign the judge or judges who will preside at the spring general term of court in each county of the district. In the event the judges of the district do not so designate and assign a judge to preside at the spring general term in any county before the first day of January preceding the term, then the chief judge shall designate and assign one or more judges of the district to preside at the spring general term in such county in accordance with M.S.A. Sec. 484.34. The judge of a division shall not be designated or assigned to preside at a spring general term in any county of his division.
(c) **Special Terms.** The judge of a division shall preside at the special terms of court which are appointed to be held in the counties of his division.

RULE 3

HANDLING OF BUSINESS OF COURT BY JUDGES.

3.01 **Division of Business.** The business of the court may be divided between the judges of the district and otherwise regulated by orders of the judges made from time to time and filed with the clerk in each of the counties of the district. Until otherwise ordered the business of the court is divided between the judges and matters shall be handled by individual judges as in this rule provided, unless a particular matter is otherwise assigned to be handled.

(a) **Matters Upon the Calendar.** Except as otherwise provided in these rules the term judge shall preside at the hearing and trial and shall be considered primarily responsible for the disposition of all matters upon the calendar of a term of court. He shall handle the business of the court pertaining to the holding of the term. It shall, however, be considered proper for the division judge, to the extent he has the time available and may conveniently do so, to assist the term judge in the handling of the business of the court pertaining to the holding of the term.
(b) **Pretrial Matters.** All pretrial applications, motions, conferences and proceedings in any action likely to be heard or tried at a current or next ensuing term of court in any county shall be brought on for hearing and be heard by the trial judge.
(c) **Post-trial Matters.** Except as otherwise provided in these rules, post-trial applications, motions and proceedings in an action shall be brought on for hearing and be heard by the trial judge.
(d) **Enforcement of or Relief from Final Orders or Judgments in Marital Actions.** All applications, motions and proceedings to enforce or to amend, vacate, or obtain relief from a judgment in an action for divorce or separate maintenance or any final order therein made pertaining to the marital relationship, a property settlement, the award of the custody of a child, the award of alimony or support money or other matters involved in the action shall be brought on for hearing and be heard by the judge who made such order or the order directing the entry of the judgment.
(e) **Enforcement of or Relief from Orders and Certain Judgments in Non-Marital Actions.** Except as otherwise provided in these rules, all applications, motions and proceedings to enforce or to amend, vacate, or obtain relief from any order or from any judgment entered pursuant to an order in any action other than one for divorce or separate maintenance shall be brought on for hearing and be heard by the judge who made such order or the order directing the entry of such judgment.
(f) **Post-judgment Proceedings in Paternity Actions.** Proceedings in a paternity action instituted for the purpose of having the defendant adjudged in contempt because of his disobedience of a judgment or final order or to enforce the obligations therein imposed upon the defendant shall be brought on for hearing and be heard by the division judge.
(g) **Matters Extensively Handled by a Judge.** Where a judge has handled extensively motions, pro-

ceedings or other business of the court in a particular matter he shall continue to handle the subsequent business of the court in that matter if another judge cannot readily handle such subsequent business without considerable study or examination of the files and records of the court.

(h) **Retrial of Action.** If a new trial is granted in an action, it shall be assigned to be retried by a judge other than the one who presided at the previous trial.

(i) **Criminal Actions Not on Calendar.** Arraignments, applications, motions and proceedings in criminal actions not upon the calendar of a term of court, shall be brought on to be heard by the division judge but he may direct a defendant who is to be tried by jury, to appear for trial and subsequent proceedings in the action before the term judge of the next ensuing term or the term judge of a current term if the jury trial work upon the calendar of such current term has not been completed.

(j) **Other Business.** Except as hereinabove otherwise provided all applications, motions, proceedings, matters or other business of the court in any county shall be presented for attention to or brought on to be heard by the division judge who shall be considered primarily responsible for the handling and disposition of the same. It shall, however, be considered proper for any judge of the district, to the extent he has the time available and may conveniently do so, to assist the division judge in the handling of the business of the court within the county. A judge of the district, when within a county on assignment to preside at a term of court therein, shall freely give assistance in handling the business of the court in the county if he may conveniently do so.

3.02 Dispensation from Compliance. Any judge of the district may dispense a person from complying with any provision of this rule in a particular matter and consent to handle such matter himself if he considers that under the circumstances compliance with such provision would result in grossly excessive expenses, delay, travelling or other substantial hardship.

RULE 4

DRAWING AND SUMMONING PETIT JURORS, SELECTION OF JURORS.

4.01 Number of Petit Jurors to be Drawn. Unless otherwise ordered there shall be drawn for the petit jury panel for a general term of court in each of the counties hereafter named the number of jurors set after the name of the county, to-wit:

Aitkin	36	Lake of the Woods	30
Beltrami	45	Mahnomen	36
Cass	36	Marshall	40
Clearwater	30	Norman	36
Crow Wing	45	Pennington	40
Hubbard	36	Polk	45
Itasca	40	Red Lake	36
Kittson	36	Roseau	36
Koochiching	36		

4.02 Notification of Jurors and Questionnaire. The clerk immediately after the petit jurors are drawn for the panel of a general term shall mail a letter to each juror notifying him; that he has been so drawn for jury service; the date he will likely be called to report for service; that any application for excusal from service must be presented so that the term judge may pass upon it at 10:00 A.M. on the opening day of the term, and requesting the juror to return to the clerk within five days a questionnaire in a form approved by the judges of the district which is enclosed with the letter.

4.03 Abstract of Information on Questionnaires. The clerk shall compile an abstract of the information contained in the questionnaires which the jurors shall return to him. A copy of this abstract shall be made available for use of the attorneys participating in the trial of a jury case at the term.

4.04 Summoning Petit Jurors. Following the call of the calendar at the general terms of court, the jury shall be directed to report for duty at such times as the presiding judge directs.

4.05 Selection of Jurors for a Civil Case. Prior to the trial of each civil jury trial, the presiding judge will direct the clerk to draw a sufficient number of jurors names from the jury ballot box who will be summoned by the clerk to report for duty. The jury will be seated in the jury box following the procedure provided for in M.S. 546.10.

RULE 5

CALENDARS.

5.01 Form of Calendars. The calendars to be provided by the clerk for a general term of court in a county required by M.S.A. Sec. 485.11, as near as practically may be, shall be in booklet form approximately five and a half inches wide and eight and a half inches high, or upon order of the division judge the clerk may prepare the calendar upon legal size paper by use of mimeograph copy.

5.02 Contents of Calendar. The calendar shall contain a suitable title page; the names and addresses of the officers of the court; the names and addresses of the attorneys who have been admitted to and are actively engaged in the practice of law within the state and who reside within the county; the names and addresses of the veniremen, listed alphabetically as to surnames and consecutively numbered, who have been drawn for the petit jury panel at the term; a civil cases section; a criminal cases section; a quasi-criminal cases section; a pretrial conferences section; space for the "Term Trial Docket"; and an index of the cases in the civil cases section if they exceed twenty in number. In entering the cases in the sections above mentioned not more than two cases shall be entered on each page and as to each case there shall be accurately set forth, its calendar and its register number, the names and addresses of the attorneys representing parties; and following each case at least two inches of space shall be provided to permit the making of notations. In entering each case in the civil cases section there shall also be set forth whether the issue is one of fact or of law and if an issue of fact whether it is triable by court or by jury as appears from the note of issue or any stipulation on file. In entering each case in the criminal cases section the nature of the charge against the defendant shall be set forth. A citation issued pursuant to M.S.A. Sec. 277.06 shall not be entered in the civil cases section unless there has been an appearance by the delinquent to whom the citation was issued and the matter is likely to be tried.

5.03 Civil Cases Section. In the civil cases section the clerk shall enter: (1) all civil cases continued for trial at the term and all civil cases appearing in the civil cases section of the calendar of the previous term which were not tried, otherwise disposed of, or stricken from the calendar, such cases to be so entered in the order in which the same appeared in the civil cases section of the calendar of the previous term; (2) all civil cases in which a note of issue shall have been filed in accordance with R.C.P. Rule 38.03 for the purpose of placing the action upon the calendar for trial at the term, such cases to be so entered in the order of the time of the filing of the notes of issue; and (3) all other civil cases commenced in the district court or appealed or transferred thereto and required by law to be placed upon the calendar, the same to be entered thereon at the time and in the manner prescribed by law upon compliance being had with the provisions of the respective statutes relating thereto. The motion of a party who has neglected to timely file a note of issue as required by R.C.P. Rule 38.03 to place a civil case upon the calendar may be denied even when there is consent of the adverse party unless there is a showing that the neglect was excusable.

5.04 Criminal Cases Section. In the criminal cases section the clerk shall enter: (1) all criminal cases pending to be tried in which an indictment or information has been filed enumerating them according to the date of the filing of such indictment or information and specifying the information required to be stated by M.S.A. Sec. 630.35; (2) all criminal cases in the order they appear in the register of criminal actions, triable at the term wherein the defendant has been bound over to appear before the court but wherein no indictment or information was filed before the preparation of the calendar; and (3) all criminal cases and violations of ordinances in the order they appear in the register of criminal actions appealed to or transferred to the court which are triable at the term.

5.05 Pretrial Conferences Section. The clerk shall enter in the pretrial conferences section the following: (1) such of the cases entered in the civil cases section wherein, as appears from the files, a claim is involved arising out of a transaction which occurred out of the state; (2) such of the cases entered in the civil cases section wherein, as appears

from the files, the court may be asked to take judicial notice of the laws of a state, territory or jurisdiction other than Minnesota; (3) such of the cases in the civil cases section wherein, as appears from the files, an accounting from one party to another is prayed for in a pleading; and (4) such other cases as may be ordered to be so entered before the preparation of the calendar.

5.06 Term Trial Docket. Space shall be provided in a part of the calendar which shall be entitled "Term Trial Docket" and which will permit the court officers and attorneys at the preliminary call or thereafter to enter and set forth in their respective copies of the calendar the cases appearing in the various sections having issues to be tried at the term as the same may be set for trial by order or rule of court. Such space shall provide three columns which shall be entitled substantially as follows:

TERM TRIAL DOCKET

Calendar Number	Position or Day Certain	Abbreviated Title of Case and Memorandum

5.07 Numbering of Cases in Calendar. The clerk shall give to each case entered in the civil cases section, the criminal cases section and the quasi-criminal cases section a calendar number, numbering the cases consecutively in the order they appear in each of said sections beginning with Number 1. To avoid confusion the number given a case in the criminal cases section shall be prefixed by the abbreviation "Cr." and the number given a case in the quasi-criminal cases section shall be prefixed by the abbreviation "Q.Cr." A case entered in the pretrial conferences section shall retain the calendar number given to it as appears in the civil cases section.

RULE 6

PRETRIAL CONFERENCES UNDER R.C.P. RULE 16.

6.01 To Whom Assigned for Hearing. Unless assigned to be held otherwise a pretrial conference under R.C.P. Rule 16 shall be deemed assigned to be held and heard by the trial judge in the case.

6.02 Motion for Conference. Upon notice given in accordance with R.C.P. Rule 16 a party may move the court before the opening day of the general term during which a case is to be tried or when his case is called at the preliminary call on that day for an order directing the attorneys for the parties and any party not represented by attorney to appear before it for a conference at such time and place as may be designated by the court. When the motion is noticed to be made at the preliminary call, the parties should anticipate that if the motion is granted the court may direct the conference to be held at a time designated in the afternoon of the opening day of the term or, if necessary, on a day following in the same week.

6.03 Order for Conference. An order in writing directing a conference under R.C.P. Rule 16 may be made at any time by a judge, and may be made by the clerk under the authority of the court in a case appearing in the pretrial conferences section of the calendar when directed to do so by the judge who is to hold the conference. A copy of such written order shall be mailed to the attorneys and parties, if any, directed to appear at the conference, at least five days before the time designated for the conference. The judge presiding at the preliminary call on the opening day of a general term may direct such a conference in any action properly on the calendar by an oral order made in open court and entered in the minutes of the court.

6.04 Attendance at Conference. A party not represented by attorney who has been directed to appear for a conference shall personally appear therefor before the court at the time and place designated. A party whose attorney has been directed to appear for a conference shall cause such attorney (preferably the attorney who will try the case in his behalf) to appear therefor before the court at the time and place designated and the party shall vest the attorney so appearing with full authority of a trial attorney to make admissions and disclosures and to enter into agreements and stipulations with respect to all matters to be considered at the conference within the purview of R.C.P. Rule 16.

6.05 Exhibits. A party or his attorney when directed to appear for any such conference shall bring with him all exhibits within the custody or control of such party or his attorney which will be offered in evidence by the party at the trial to the end that all such exhibits may be marked for identification and examined by the adversary at the conference and such party shall disclose at the conference the identity of all exhibits not then in his custody or control, which he intends to offer at the trial. Any exhibit which without good cause a party does not produce to be marked for identification at the conference if it is then in his custody or control, or the identity of which he does not disclose at the conference if it is not in his custody or control, may be denied admission when offered in evidence by such party at the trial, but such exhibit may be admitted in evidence in the discretion of the court to prevent manifest injustice.

6.06 Evidence or Notice of Laws of Another Jurisdiction. If a pretrial conference is held in a case in which evidence would be admissible or judicial notice should be taken of the common law or statutes of a state, territory, or jurisdiction other than Minnesota in accordance with the Uniform Judicial Notice of Foreign Law Act (M.S.A. Sections 599.04 to 599.10) each of the parties shall serve upon the adverse party and present at the conference a written notice specifically setting forth a concise statement of the common law and the particular provisions of the statutes of which he will at the trial offer evidence or request the court to take judicial notice. He shall furnish to the court at the conference citations of the sources and authorities which he contends will support the offer or request.

6.07 Evidence or Notice of Charters, Ordinances, Regulations, etc. If a pretrial conference is held in a case in which evidence would be admissible or judicial notice may be taken of any private act or resolve, of any charter, ordinance or by-law of a municipality, or of any rule, regulation or order of a governmental division or agency, a party intending to offer evidence or request the taking of judicial notice thereof at the trial, shall submit at the pretrial conference the particular provisions or which he will offer evidence or request the taking of judicial notice together with sufficient information to enable the court to properly pass upon the offer or request.

6.08 Judicial Notice of Other Matters. If a pretrial conference is held in a case in which a party intends to request that the court take judicial notice at the trial of specific facts which he contends to be so notorious as not to be the subject of reasonable dispute, or specific facts or propositions of generalized knowledge which he contends are capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy, he shall at the pretrial conference submit to the court his request in writing setting forth such specific facts or propositions and furnish information which he contends to be sufficient to enable the court to comply with the request.

6.09 Certificate of Readiness. In lieu of holding a pretrial conference in any case which appears in the pretrial conferences section of the calendar or wherein such a conference has been ordered, the trial judge may accept and cause to be filed a certificate of readiness in such form as he may approve, signed by the attorneys representing the parties.

RULE 7

CALLS OF CALENDAR — TERM TRIAL DOCKET.

7.01 Preliminary Call. The preliminary call of the cases upon the calendar shall be made, unless otherwise ordered, commencing at 10:00 A.M. on the opening day of a general term of court. The judge presiding, or under his direction, the clerk shall then call each case in the order appearing in the civil cases section, the criminal cases section, and the quasi-criminal cases section of the calendar. As each case is called the judge may hear and determine or set for later hearing and determination any motion of a party with respect to the case which may properly then be made. At the preliminary call with respect to the cases upon the calendar the court upon its own motion or upon motion of a party may determine or set for later hearing and determination whether or not a case is properly upon the calendar, whether or not a case is to be tried at the term, whether or not there are issues in a case to be tried by jury, the form of any question to be submitted to a jury, whether or not two or more civil cases are to be consolidated or issues therein jointly tried, whether or not

claims or issues in a civil case are to be separately tried, whether or not the parties in a civil case or their attorneys shall be directed to appear for a pretrial conference and if so the time and place thereof, whether or not there should be a reference in accordance with R.C.P. Rule 53, the order in which the cases to be tried at the term shall be heard, the day upon which any case set for a day certain shall be called for trial and the court may make orders pursuant to R.C.P. Rules 14.03, 39.02, 40, 41.02 (1), 42, and 53.

7.02 Appearances in Criminal and Quasi-Criminal Cases. A defendant in a criminal case, a quasi-criminal case or a case charging a violation of an ordinance who is not in custody awaiting trial of the case, unless excused from so doing by the court, shall personally appear with his attorney at the preliminary call, shall thereafter personally appear at the daily court sessions during the term until the disposition of his case, shall not depart from the court without leave, and shall abide the orders and judgments of the court. The attorney for a defendant who is in custody in such a case, shall appear at the preliminary call.

7.03 Appearances, Representations, Motions, Objections, etc. in Civil Cases, at Preliminary Call. The parties and their attorneys will take notice that there are matters of importance pertaining to the cases upon the calendar which must be determined and settled by the court at the preliminary call. It shall be incumbent upon each party in any civil case properly upon the calendar to be represented by attorney, or to personally appear if he does not have an attorney, at the preliminary call. A party in a civil case who has knowledge or who has received notice or information that his case is or is likely to be upon the calendar will be considered to have waived any grounds he may have for a motion to strike the case from the calendar, and the case will be deemed properly upon the calendar, if he does not make such motion when the case is called at the preliminary call. A party in a case properly upon the calendar may be considered to have waived any grounds which he then knows or in the exercise of due diligence he should know for a motion to continue his case, if he does not make the motion when his case is called at the preliminary call. Unless otherwise provided by any rule of court, a party in a civil case to be tried at the term may be considered to have waived any grounds he has to make a motion permitted under R.C.P. Rule 12 which can properly be made at the preliminary call if he does not then make the motion when the case is called. A party in a case properly upon the calendar who has objections to the granting of a motion made at the preliminary call shall present his objections to the court when the motion is made. A party in a case properly upon the calendar who has objections to the action taken or an order made at the preliminary call pertaining to his case within the purview of Rule 7.02 shall present his objections to the court at the preliminary call. The failure of a party to present objections as required by this rule may be deemed a waiver thereof. A party in a case properly upon the calendar who fails to appear or to be represented by attorney at the preliminary call shall be presumed to have had immediate knowledge and notice of all action taken and orders made pertaining to his case at the preliminary call to the same extent as if he had appeared or had been represented by attorney thereat. Notwithstanding any waiver the court may in its discretion permit the making of motions and objections after the preliminary call to prevent manifest injustice, but a mere showing that a party failed to appear or to be represented by attorney at the preliminary call shall not constitute sufficient grounds to relieve a party from the effect of any waiver.

7.04 Term Trial Docket and Setting Cases Thereon. At the preliminary call, after determining the cases in which there are issues to be tried by jury and the cases in which there are issues to be tried by the court without a jury, the court may by order made in accordance with R.C.P. Rule 40 set the cases which are to be tried at the term and thereby constitute the "Term Trial Docket." The term trial docket may consist of two parts, one designated as the "Term Jury Trial Docket" in which will be entered the cases having issues to be tried by jury at the term, and the other designated as the "Term Nonjury Trial Docket" in which will be entered cases having issues to be tried at the term by the court without a jury. The court may fix the order in which the cases upon a term trial docket not set for trial on a day certain will be called for trial and heard, and may fix the day upon which a case set for trial on a day certain will be called for trial. In the event the court does not provide for the order in which the cases to be tried at the term shall be called for trial and heard then, unless otherwise directed, the clerk as soon after the conclusion of the preliminary call of the calendar as practically may be shall list in the minutes of the court under the designation "Term Trial Docket" the cases to be tried at the term in the following order, the cases in each category being listed in the order they appear upon the calendar, to-wit: (1) criminal cases charging commission of a felony where defendant is in custody; (2) criminal cases charging commission of a misdemeanor where defendant is in custody; (3) criminal cases charging commission of a felony where defendant is not in custody; (4) criminal cases charging commission of a misdemeanor where defendant is not in custody; (5) cases charging a violation of an ordinance; (6) quasi-criminal cases; (7) civil cases not set for trial on a day certain in which there are issues to be tried by jury; (8) civil cases ordered by the court to be called for trial on a day certain in which there are issues to be tried by jury; (9) civil cases not set for trial on a day certain in which there are issues of fact to be tried by the court without a jury; (10) civil cases ordered by the court to be called for trial on a day certain in which there are issues of fact to be tried by the court without a jury; and (11) civil cases in which there are issues of law to be tried by the court. When issues in two or more cases are to be jointly tried, the cases shall assume in the order of listing the position of the one of such cases having the lowest calendar number. When the calendar number of cases entered on the term trial docket are bracketed, it shall indicate that such cases are consolidated or will be jointly tried.

7.05 Setting Trial for Day Certain. The request of a party to set a civil case triable by jury so that it will be called for trial on a day certain shall be denied unless a showing is made and the court is satisfied that extraordinary expenses or hardship will result to the party if the case is not so set.

7.06 Certain Motions After Preliminary Call. A motion made after the preliminary call to strike a case from the term trial docket, to reset for trial a case thereon, or to continue a case thereon for a cause which became known after the call will be granted only if it is made promptly, if due notice is given to the adverse party, and if there is sufficient showing of good cause for granting the motion.

7.07 Peremptory Call. The peremptory call, unless otherwise ordered, shall begin at 10:30 A.M. on the day the petit jurors report to begin service at the term and the case then remaining for trial appearing first in the order of listing of the cases upon the term trial docket will be peremptorily called for trial and heard. Thereafter as each case is disposed of by trial or otherwise, the case next in order of listing remaining for trial upon the term trial docket will be peremptorily called and heard. However, the order of the trial of cases upon the term trial docket which were not set to be called for trial on a day certain will be interrupted to permit the trial and hearing of any case which was set to be called for trial on a day certain and such a case will be called for trial, unless otherwise ordered, at 9:30 A.M. on the day designated but if the trial judge is then engaged in hearing a matter previously commenced he shall call the case for trial as soon thereafter as it may be reasonable to do so.

7.08 Anticipating Call of Case, etc. Each party and each attorney who will represent a party at the trial in any case upon the term trial docket shall keep himself informed of the progress of the business of the court and of the disposition of cases set ahead of his case upon the docket and the time when his case is likely to be reached to the end that he may appear and be ready for trial when his case is called. Upon written request the clerk shall mail a copy of the term trial docket, as soon after the opening day of the term as practically may be, to an attorney who has filed with the clerk a pleading or other writing showing him to be attorney of record for a party in such a case. With respect to any case which at the preliminary call was not set for trial on a day certain, such attorney may in a writing to be placed in the files of the case furnish a telephone number and request the clerk to make a station-to-station call to such number and give to the person answering the

call a message specifying the time as near as may be foreseen when the case will be called for trial, at least eight hours in advance of such time. The attorney shall assume the responsibility for the transmission to him of such message by the person who receives the telephone call. The clerk shall, however, be relieved from any duty to give such a telephone message if he makes three calls to such number at reasonable intervals during ordinary business hours without obtaining a response.

RULE 8

ATTORNEYS — APPEARANCES OF RECORD, NOTICES TO, FILING OF WRITINGS BY, ETC.

8.01—Filing of Writings and Appearances by Attorneys. At or prior to the appearance of an attorney at any hearing in an action the attorney shall file with the clerk in accordance with R.C.P. Rule 5.04 all affidavits, notices and other papers designed to be used at the hearing and also any pleading he has theretofore served in the action.

8.02 Attorney of Record. An attorney representing a party in an action shall not be entitled to be recognized by the court or clerk as the attorney of record for such party unless he has filed with the clerk in the action a notice of appearance, a notice of substitution of attorney, a pleading for such party, or other writing which establishes him in the files of the action to be such attorney of record. Such attorney may not assume that he will be recognized by the court or clerk as an attorney of record in the action because of recitals or anything else appearing in or upon writings filed by an adverse party.

8.03 Notices by Court or Clerk to Attorney. An attorney for a party in an action shall not be entitled to receive any notice from the clerk pursuant to R.C.P. Rule 77.04 or any other notice in the action from the clerk or court unless he has filed with the clerk in the action a notice of appearance, a notice of substitution of attorney, a pleading for such party, or other writing which establishes him in the files of the action to be attorney of record therein for the party.

8.04 Nonresident Attorney. A person who is a resident of and is admitted to practice as an attorney at law in another state may be permitted, in the discretion of the court and subject to the provisions of M.S.A. Sec. 481.02 and the Rules of Civil Procedure to appear as attorney for a party and participate in a presentation, hearing or trial in an action or proceeding before the District Court of this district, provided: (1) he is associated in representing such party with an attorney at law admitted as such and residing in this state who appears as the attorney of record in the action or proceeding; (2) the resident attorney appears before the court at the presentation, hearing or trial and moves for an order granting permission to such nonresident attorney to so participate therein; and (3) the resident attorney remains present in court during the presentation, hearing or trial as the attorney of record in the action or proceeding.

RULE 9

DIVORCE ACTIONS.

9.01 Hearing of Default Action. A divorce action in default for want of any appearance by the defendant may with the consent of the court be brought on for trial and be heard at a special term of the court held 45 days or more after the commencement of the action.

9.02 Hearing of Non-default Action. A divorce action in which there has been an appearance by the defendant by interposing a pleading, entering into a stipulation or otherwise shall be brought on for trial and be heard upon its merits at a general term of the court except that such an action may upon stipulation of the parties and with the consent of the court be brought on for trial and be heard upon its merits in advance of the general term but not less than 45 days after the commencement of the action. A party bringing any such action on for trial in advance of the term shall give due notice of the time and place of the trial to the adverse party unless it appears from the files that such adverse party has knowledge thereof. The court will not recognize any stipulation by a party purporting to authorize the trial of an action or counterclaim for divorce at a time or place of which he does not have knowledge or notice, or agreeing to withdraw his opposition thereto or to make no defense thereagainst.

9.03 Record of Testimony. A stenographic record shall be made of the testimony and proceedings in the trial of a divorce action heard upon the merits whether or not it is in default. The court may direct the reporter to make and file with the clerk a transcript of such record or part thereof and direct that a party shall pay the cost thereof.

RULE 10

MINOR'S ACTION.

10.01 Record of Hearing. A stenographic record shall be made of the testimony and proceedings at a hearing upon an application for the approval of the settlement or compromise of an action brought on behalf of a minor in accordance with M.S.A. Sec. 540.08.

10.02 Delivery of Property Upon Majority. When there is deposited with the clerk for a person then a minor, pursuant to an order of the court, property, securities or the evidence of a deposit of property, the clerk shall be deemed authorized, without any order of court, to deliver all of said property, securities or the evidence of a deposit of property, which may be in his custody to such person upon the attainment of his majority or to anyone he may designate in a writing executed after attaining his majority and filed with the clerk, if a certified copy of his birth certificate is filed with the clerk or if the court has determined the date of the birth of such person as appears from the files, provided, that if it appears from the files that such person is incompetent, then the clerk shall deliver the property, securities or evidence of the deposit of property only to the guardian of the estate of such person appointed by the Probate Court.

RULE 11

RELATING TO PATERNITY PROCEEDINGS

11.01 Application of Rules of Civil Procedure. The Rules of Civil Procedure for the District Courts of Minnesota shall be applicable to paternity proceedings unless otherwise specified herein.

11.02 Commencement of Action; Process. a. A civil action for paternity is commenced against the defendant when the verified Complaint of the mother, child, or the public authority chargeable by law with the support of the child, is filed in the office of the Clerk of the District Court having jurisdiction by statute.

b. The Summons and a copy of the Complaint shall be served personally upon the defendant in accordance with Rule 4.03(a), M.R.C.P. No other service shall be effective to confer jurisdiction on the Court.

c. The Summons shall conform to the requirements of Rule 4.01, M.R.C.P.; and the Summons or Complaint shall set a date and place for appearance of the defendant before the District Court, which shall be the first day of the next General Term of the Court in which the action is commenced, which is more than twenty days subsequent to the service of the Summons and Complaint upon the defendant, which appearance may be waived in writing by the plaintiff.

11.03 Appearance. a. When the defendant appears before the Court he shall be requested to affirm or deny the allegations of the Complaint orally.

(1) If the defendant orally affirms the allegations of the Complaint, the Court shall thereupon adjudicate the defendant to be the father of the child, and shall set a date of and place for a hearing to determine and adjudicate the amount of reasonable confinement expenses and support and education of the child to be paid by the defendant.

(2) If the defendant fails to appear, he shall be deemed to be in default for want of an Answer or other appearance and further proceedings shall be had and held as a default procedure as hereinafter provided.

(3) If the defendant is excused from appearance, or having appeared, orally denies the allegations of the Complaint, his appearance shall be noted in the proceedings and it shall be deemed that he has served and filed an Answer denying the allegations of the Complaint.

11.04 Placing Action on Calendar. Upon the service and filing of an Answer, a party desiring to have the action placed on the calendar for trial shall comply with the provisions of Rule 38.03, M.R.C.P. The parties may agree at any time that the action be placed upon a current calendar for trial even if issue is joined after the commencement of the term of court then in session.

11.05 Discovery. All discovery proceedings shall be completed without delay. Any failure to complete such proceedings for any cause shall not be grounds for delaying the trial of the action.

11.06 Default Procedure. When a party in a paternity proceeding against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed by the Minnesota Rules of Civil Procedure, and that fact is made to appear by affidavit, judgment by default shall be entered against him as follows:

a. Upon the filing of an Affidavit of Default, the Court shall set a date for adjudication of paternity and the setting of reasonable confinement expenses and support and education of the child to be paid by the defendant.

b. At least five days prior to hearing the proceedings as a default matter, the defaulting party shall be notified in writing at his last known address by opposing counsel substantially as follows:

YOU ARE HEREBY NOTIFIED THAT, on ....., the ..... day of ....., 19..... at ..... o'clock .....M., in the courtroom, in the courthouse, in the City of ....., County of ....., Minnesota, plaintiff will apply for adjudication of paternity and for judgment for reasonable confinement expenses and education and support for the child (children) in the above captioned case.

11.07 Proceedings after Trial. If upon trial, the defendant is determined to be the father of a child, the defendant shall subsequently be adjudicated to be the father of such child, and the Court shall proceed to determine reasonable confinement expenses incurred by the mother and the reasonable costs to be incurred for the support and education of the child which is to be paid by the defendant. A hearing shall be held by the Court to determine such facts, which shall be held at a time, hour and place to be designated by Order of the Court, reasonable notice thereof to be given counsel of record of all parties, said hearing may be conducted by the Court either in open court or in chambers with the consent of the parties. After hearing all evidence which either party may elect to submit, the Court shall make the determination as to the amount to be paid by the defendant for expenses of pregnancy and confinement, and for support and education of the child.

11.08 Minor Defendant. No Answer shall be served or filed by, nor shall any judgment be entered against, any person who is an infant or incompetent until a guardian ad litem is appointed by the Court in conformity with Rule 17.02, M.R.C.P.

STATE OF MINNESOTA } ss. IN DISTRICT COURT
COUNTY OF ..... } NINTH JUDICIAL DISTRICT

A. B.,
Plaintiff,
-vs.-
C. D.,
Defendant.

SUMMONS
&
NOTICE TO APPEAR

The State of Minnesota to the Above-Named Defendant:

You are hereby summoned and required to appear before the Honorable ....., one of the judges of this court, in the courtroom, in the courthouse, in the City of ....., said county and state on the ..... day of ....., 19..... at ..... o'clock .....M., to affirm or deny orally the allegations of the Complaint of the plaintiff which is on file in the office of the clerk of the above-named court and a copy of which is attached hereto and herewith served upon you.

You are further summoned and required to serve upon the plaintiff's attorney an Answer to the aforesaid Complaint within twenty days after the service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint, and pursuant to the statute in such case made and provided.

Signed: .....
Attorney for Plaintiff.
Address: .....

RULE 12

EXHIBITS; FILES AND RECORDS OF CLERK.

12.01 Custody of Exhibits. An exhibit admitted in evidence in a case shall thenceforth remain in the custody of the clerk, subject to the orders of the court until returned, delivered, or disposed of as hereinafter provided.

12.02 Return of Exhibits. Six months after the final termination of the case the clerk shall be authorized, without an order of court, to return to the attorney for the party who offered the same in evidence or to any person entitled thereto any exhibit admitted in evidence which cannot well be kept in the files of the case and the clerk may request such attorney or person to call at his office for the delivery of such exhibit. In lieu of making such request the clerk may forward the exhibit by mail or otherwise to such attorney or person. If the clerk makes such request and if the attorney or person so requested does not call within thirty days thereafter at the office of the clerk for the exhibit, the clerk shall be authorized to destroy the same if it is not a public record.

12.03 Redelivery of Exhibit to Clerk. Any exhibit admitted in evidence which by order of the court is returned to a party, or attorney, or any other person prior to the final termination of the case shall be deemed so returned upon the condition that if the court, the clerk, or the court reporter so requests, the exhibit shall be redelivered back to the custody of the clerk and be retained in his custody, subject to the orders of the court, but six months after the final termination of the case the provisions of Rule 12.02 shall apply.

12.04 Public Records. The court may deny admission in evidence as an exhibit in a case any original public record or document unless the officer or agency entitled to the custody thereof consents to such admission, if a certified copy of the record or document is admissible and would have as much probative force upon the issues of the case as the original.

12.05 Exhibits Offered but not Admitted. The court may order that an exhibit which was offered but not admitted in evidence be placed in the custody of the clerk and remain in such custody under the provisions of this rule the same as if it had been admitted. If an exhibit offered but not admitted in evidence is not in the custody of the clerk, the party who offered the same in evidence shall upon request of the clerk or court reporter deliver it to the clerk to remain in his custody under the provisions of this rule the same as if it had been admitted, when a transcript of the evidence is ordered, when a motion for a new trial is made, when an appeal is perfected, or whenever any other post-trial motion is made or proceeding taken wherein the offered exhibit may have a bearing on a question to be determined.

12.06 Certain Orders Made in Open Court. The clerk shall enter in the minutes of the court all orders made in open court except rulings made upon the admission of evidence. Excepting rulings made upon the admission of evidence and other orders made during a hearing or trial of which the court reporter has made a stenographic record, the clerk shall cause to be placed in the files of a case a memorandum referring to each order made in open court affecting the case. The memorandum shall, by a copy of the order as appears from the minutes of the court, an excerpt therefrom, or otherwise, indicate the action of the court affecting the case and shall also state the book and page of the minutes of the court where the order is recorded.

RULE 13

SESSIONS OF THE COURT.

13.01 Regular Hours of Sessions. The morning session of the court shall regularly convene at 9:30 A.M. and regularly recess at 12:00 o'clock noon and there shall ordinarily be a midmorning recess of approximately ten minutes. The afternoon session of the court shall regularly convene at 1:30 P.M. and regularly adjourn for the day at 4:30 P.M. and there shall ordinarily be a midafternoon recess of approximately fifteen minutes. Regular convening, recessing and adjourning hours may be varied by special directions of the court.

13.02 Opening of Sessions. Except for the opening of a term of court (the formality for which is prescribed by Paragraph 4 of Rules for Uniform Decorum in the District Courts of Minnesota) in convening court at the opening of a morning session and at the opening of an afternoon session, as the judge enters, the bailiff shall cause the persons in the court room to arise and stand while he says:

Hear Ye—Hear Ye!
This Court is now open.
Judge....., presiding.

There shall be no opening of court and the persons in the court room shall not be required to arise when the judge enters after a recess occurring during the morning or afternoon session.

RULE 14

APPEALS FROM COUNTY COURT

Pursuant to Rule 102.01(3), Rules of Appellate Procedure from the Minnesota County Courts, and for the purpose of appeal from the County Courts located within the Ninth Judicial District, the following rules shall apply:

14.01 The Clerk of District Court for the county in which an appeal from the County Court proceedings is filed shall give notice to the division resident judge and the chief judge a copy of the "notice of appeal." Thereafter, the clerk shall notify said judges at the time the transcript of testimony in the County Court is filed and advise whether the party has elected to make oral argument pursuant to Rule 134.01 and thereafter advise said judges of the filing of briefs of counsel pursuant to Rule 131.01.

14.02 After the transcript and briefs of counsel are filed, the chief judge of the district shall set a time and place for the hearing of the appeal and assign three judges of the district, one of whom shall be the division resident judge, unless such judge requests excusal, to hear and decide the appeal. Opinions shall be written by the judge assigned by the chief judge on a rotating basis where practical. Each division resident judge shall preside during the conduct of the appeal proceedings emanating from a county in his division.

14.03 Appeals will ordinarily be heard in the courtroom of the designated chambers of the division resident judge. All appeals shall be heard not later than sixty days from the filing of the appellant's brief.

14.04 Counsel shall file with the clerk an original and three copies of their briefs.

TENTH JUDICIAL DISTRICT

RULE 1

SPECIAL TERMS. Special terms of court in the Tenth Judicial District of Minnesota for the hearing of issues of law, applications, motions, orders to show cause, default cases and summary matters except trial of issues of fact, are hereby fixed as follows:

(a) All terms of court at the County of Anoka shall be held in the county court house in the City of Anoka, Minnesota, on Friday of each week.

(b) All terms of court at the County of Washington shall be held at the county court house in the City of Stillwater, Minnesota, on Thursday of each week.

(c) In the event any day set for holding any of the above terms is a legal holiday, all matters on the calendar shall be continued to the next special term.

(d) All terms of court in the counties of Chisago, Isanti, Kanabec, Pine, Sherburne, and Wright shall be held at the county court house pursuant to special order of the Court.

(e) The call of the calendar shall be at 9:30 o'clock a.m. unless otherwise ordered by the Court.

RULE 2

CALL OF CALENDAR. The call of the calendar shall be had at the hour of 10:00 o'clock a.m., on the opening day of each General Term. At each General and Special Term, counsel shall advise the court as to the nature of the case, including motions to dismiss, strike, change the order on the calendar, and such other motions as are proper to the determination of the issues to remain on the calendar for disposition.

In the event of any default, the case will be forthwith called for trial and the court will exercise the same powers as in the event of a default. Where no response is made by either party to a case, the case shall be stricken from the calendar. Appearance by Counsel under this rule will not be required in cases where pre-trial notice has been given by the Clerk of Court. Any action stricken from the calendar, shall not be reinstated on the calendar except by written order of the court filed in the office of the clerk.

RULE 3

PRE-TRIAL. Pursuant to Rule 16, Rules of Civil Procedure for the District Courts of Minnesota, a pre-trial calendar is hereby established. All jury actions, and such other actions as the Court may order, shall be placed on such calendar for consideration.

Pre-trial hearings of the cases on the pre-trial calendar shall be held on such days as the Court shall order.

In all causes on such calendar, the Clerk of Court shall mail to all parties and their attorneys, notice of hearing to be held at a time to be fixed by said clerk, not less than seven (7) days after the date of mailing. On the date and hours so fixed, only those attorneys (representing all the parties) who are familiar with the cause and are fully authorized to make binding stipulations therein will be permitted to appear, and such attorneys are required to appear together with their complete files. In the event of any default, the Court will exercise the same powers as in the event of a default.

Unless otherwise designated, the judge holding a pre-trial hearing will be the judge assigned to hear the trial.

RULE 4

(VACATED)

RULE 5

PHOTOGRAPHS. The taking of photographs in the court rooms or within 40 feet of the entrance of any court room or of a prisoner in the jail or on his way to or from any session of court is forbidden.

RULE 6

EXHIBITS. The Clerk of Court may release all exhibits in his custody to the parties entitled thereto after final termination of an action without an order of the Court. It shall be the responsibility of the attorneys to obtain their exhibits after such termination, and if not so obtained, the responsibility of the Clerk of Court therefor shall cease at the expiration of sixty (60) days from the termination of the action.

RULE 7

EXAMINATION OF INJURED PERSON. In a personal injury case in which, prior to trial thereof, a Judge shall be of the opinion that an examination of the injured person and report thereon by an impartial medical expert or experts would be of material aid to the just determination of the case, he may, after consultation with Counsel for the respective parties and after giving Counsel a hearing, if such hearing be requested by either Counsel, order such examination and report. The order of appointment shall specify the conditions and scope of such examination, and the person or persons by whom it is to be made.

Copies of the report of the examining physician will be made available to the respective parties. If the case proceeds to trial after such examination and report, either party may call the examining physician or physicians to testify, or the trial Judge may, if he deems it desirable to do so, call the examining physician or physicians as a witness or witnesses for the court, subject to questioning by any party, but without compensation by any litigant. The payment of compensation of such medical expert or experts may be made a condition of the order directing the examination, and the amount of such compensation shall be fixed by the Judge ordering the examination, and unless otherwise provided for, payment shall be made by such party or parties and in such amount as the Judge in his discretion orders, in order to meet the factual situation.

RULE 8

QUESTIONNAIRES TO PROSPECTIVE JURORS. The Clerks of the District Court are directed to send out questionnaires to such prospective jurors and in such form as the Court shall direct, requesting of such prospective jurors, information regarding their qualifications and availability to serve as jurors and such other information as the Court may direct.

RULE 9

REGISTRATION OF LAND TITLE RULE.

Cases in which the Registrar may act without special order of the Court.

In the following cases, a special order of the Court need not be required unless it shall be requested by the Registrar or Examiner:

When the inchoate interest of a spouse of the registered owner has terminated by death, the Registrar may receive and enter as a memorial, a duly certified copy of the official death certificate and an affidavit of identity of such deceased spouse;

When the interest of a joint tenant has terminated by death, the Registrar may receive and enter as a memorial, a duly certified copy of the official death certificate and an affidavit of identity together with a tax waiver as authority for entry of a new certificate in favor of the survivor or survivors in joint tenancy;

When the registered owner has married since the issuance of the certificate, the Registrar may receive and enter as a memorial a duly certified copy of the certificate of marriage;

When the interest of a life tenant has been terminated by death, the Registrar may receive and enter a memorial of a duly certified copy of the official death certificate and an affidavit of identity of the decedent with the life tenant named in the certificate of title; and in such case the memorial of the certificate and affidavit shall be treated as evidence of the discharge of the life tenancy.

RULE 10

STAY OF ENTRY OF JUDGMENT

Unless otherwise directed, the clerk of each court shall enter a thirty day stay of entry of judgment upon the receipt of any verdict of a jury.

RULE 11

APPEALS. (a) All appeals from county court shall be first considered by the sitting judge in the county in which said appeal was taken. The judge last sitting in the six counties, other than Anoka and Washington, will be the proper judge to whom the matters shall be submitted.

(b) The appealing attorney shall confirm his order of the transcript by letter from the reporter from whom the transcript is ordered in the same manner as confirmations are made in appeals to the Supreme Court. It shall be the duty of the appellant to serve a copy of the transcript upon the respondent's attorney within three days of the receipt thereof. The appealing attorney must file his brief within sixty days after the transcript is delivered, and the answering brief must be filed within thirty days after the filing of the appellant's brief. Unexcused delay may be grounds for dismissal.

(c) Failure to file an appeal bond in civil cases will be grounds for automatic dismissal of the appeal unless such bond is waived by stipulation of the respective attorneys.

APPENDIX 8

RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURT OF MINNESOTA

TABLE OF RULES

RULES OF CIVIL PROCEDURE for the DISTRICT COURTS OF MINNESOTA

I. SCOPE OF RULES—ONE FORM OF ACTION

RULE 1 SCOPE OF RULES

These rules govern the procedure in the district courts of the State of Minnesota in all suits of a civil nature, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

RULE 2 ONE FORM OF ACTION

There shall be one form of action to be known as "civil action."

II. COMMENCEMENT OF THE ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

RULE 3 COMMENCEMENT OF THE ACTION; SERVICE OF THE COMPLAINT

3.01 Commencement of the Action

A civil action is commenced against each defendant when the summons is served upon him or is delivered to the proper officer for such service; but such delivery shall be ineffectual unless within 60 days thereafter the summons be actually served on him or the first publication thereof be made.

3.02 Service of Complaint

A copy of the complaint shall be served with the summons, except when the service is by publication as provided in Rule 4.04.

RULE 4 PROCESS

4.01 Summons; Form

The summons shall state the name of the court and the names of the parties, be subscribed by the plaintiff or by his attorney, give an address within the state where the subscriber may be served in person and by mail, state the time within which these rules require the defendant to serve his answer, and notify him that if he fails to do so judgment by default will be rendered against him for the relief demanded in the complaint.

4.02 By Whom Served

The sheriff of the county in which the defendant is found may make service of summons and other process, and fees and mileage shall be allowed therefor.

Any person not a party to the action may make service of a summons.

4.03 Personal Service

Service of summons within the state shall be made as follows:

(a) **Upon an Individual.** Upon an individual by delivering a copy to him personally or by leaving a copy at his usual place of abode with some person of suitable age and discretion then residing therein.

If the individual has, pursuant to statute, consented to any other method of service or appointed an agent to receive service of summons, or if a statute designates a state official to receive service of summons, service may be made in the manner provided by such statute.

If the individual is confined to a state institution, by serving also the chief executive officer at the institution.

If the individual is an infant under the age of 14 years, by serving also his father or mother, and if he have neither within the state, then a resident guardian if he have one known to the plaintiff, and if he have none, then the person having control of such defendant, or with whom he resides, or by whom he is employed.

(b) **Upon Partnerships and Associations.** Upon a partnership or association which is subject to suit under a common name, by delivering a copy to a member or the managing agent of the partnership or association. If the partnership or association has, pursuant to statute, consented to any other method of service or appointed an agent to receive service of summons, or if a statute desig-

nates a state official to receive service of summons, service may be made in the manner provided by such statute.

(c) **Upon a Corporation.** Upon a domestic or foreign corporation, by delivering a copy to an officer or managing agent, or to any other agent authorized expressly or impliedly or designated by statute to receive service of summons, and if the agent is one authorized or designated under statute to receive service any statutory provision for the manner of such service shall be complied with. In the case of a transportation or express corporation, the summons may be served by delivering a copy to any ticket, freight, or soliciting agent found in the county in which the action is brought, and if such corporation is a foreign corporation and has no such agent in the county in which the plaintiff elects to bring the action, then upon any such agent of the corporation within the state.

(d) **Upon the State.** Upon the state by delivering a copy to the attorney general, a deputy attorney general or an assistant attorney general.

(e) **Upon Public Corporations.** Upon a municipal or other public corporation by delivering a copy

(1) To the chairman of the county board or to the county auditor of a defendant county.
(2) To the chief executive officer or to the clerk of a defendant city, village or borough.
(3) To the chairman of the town board or to the clerk of a defendant town.
(4) To any member of the board or other governing body of a defendant school district.
(5) To any member of the board or other governing body of a defendant public board or public body not hereinabove enumerated.

If service cannot be made as provided in this Rule 4.03 (e), the court may direct the manner of such service.

4.04 Service by Publication; Personal Service out of State

The summons may be served by three weeks' published notice in any of the cases enumerated hereafter when there shall have been filed with the court the complaint and an affidavit of the plaintiff or his attorney stating the existence of one of such cases, and that he believes the defendant is not a resident of the state, or cannot be found therein, and either that he has mailed a copy of the summons to the defendant at his place of residence or that such residence is not known to him. The service of the summons shall be deemed complete 21 days after the first publication. Personal service of such summons without the state, proved by the affidavit of the person making the same sworn to before a person authorized to administer an oath, shall have the same effect as the published notice herein provided for.

Such service shall be sufficient to confer jurisdiction:

(1) When the defendant is a resident individual having departed from the state with intent to defraud his creditors, or to avoid service, or keeps himself concealed therein with like intent;

(2) When the plaintiff has acquired a lien upon property or credits within the state by attachment or garnishment, and

(a) The defendant is a resident individual who has departed from the state, or cannot be found therein, or

(b) The defendant is a nonresident individual, or a foreign corporation, partnership or association;

When quasi in rem jurisdiction has been obtained, a party defending such action thereby submits personally to the jurisdiction of the court. An appearance solely to contest the validity of such quasi in rem jurisdiction is not such a submission.

(3) When the action is for divorce or separate maintenance and the court shall have ordered that service be made by published notice;

(4) When the subject of the action is real or personal property within the state in or upon which the defendant has or claims a lien or interest, or the relief demanded consists wholly or partly in excluding him from any such interest or lien;

(5) When the action is to foreclose a mortgage or to enforce a lien on real estate.

4.041 Additional Information to be Published

In all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon, real property is involved or affected or is brought in question, the publication shall also contain a description of the real property involved, affected or brought in question thereby, and a statement of the object of the action. No other notice of the pendency of the action need be published.

4.042 Service of the Complaint

If the defendant shall appear within ten days after the completion of service by publication, the plaintiff, within five days after such appearance, shall serve the complaint, by copy, on the defendant or his attorney. The defendant shall then have at least ten days in which to answer the same.

4.043 Service by Publication; Defendant May Defend; Restitution

If the summons be served by publication, and the defendant receives no actual notification of the action, he shall be permitted to defend upon application to the court before judgment and for sufficient cause; and, except in an action for divorce, the defendant, in like manner, may be permitted to defend at any time within one year after judgment, on such terms as may be just. If the defense be sustained, and any part of the judgment has been enforced, such restitution shall be made as the court may direct.

4.044 Nonresident Owner of Land Appointing an Agent

If a nonresident person or corporation owning or claiming any interest or lien in or upon lands in the state appoints an agent pursuant to § 557.01 service of summons in an action involving such real estate shall be made upon such agent or his principal in accordance with Rule 4.03, and service by publication shall not be made upon the principal.

4.05 Process Other Than Summons and Subpoena; Service of

Process other than summons and subpoena shall be served as directed by the court issuing the same.

4.06 Return

Service of summons and other process shall be proved by the certificate of the sheriff making it, by the affidavit of any other person making it, by the written admission of the party served, and, if served by publication, by the affidavit of the printer or his foreman or clerk. The proof of service in all cases other than by published notice shall state the time, place, and manner of service. Failure to make proof of service shall not affect the validity of the service.

4.07 Amendments

The court in its discretion and on such terms as it deems just may at any time allow any summons or other process or proof of service thereof to be amended, unless it clearly appears that substantial rights of the person against whom the process issued would be prejudiced thereby.

RULE 5
SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

5.01 Service; When Required; Appearance

Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4. A party appears when he serves or files any paper in the proceeding.

5.02 Service; How Made

Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Written admission of service by the party or his attorney shall be sufficient proof of service. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this rule means: Handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

5.03 Service; Numerous Defendants
If the defendants are numerous, the court, upon motion or of its initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading with the court and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the courts directs.

5.04 Filing
(1) All pleadings, affidavits, bonds, and other papers in an action shall be filed with the clerk, unless otherwise provided by statute or by order of the court.

(2) All pleadings shall be so filed on or before the second day of the term at which the action is noticed for trial; otherwise the court may continue the action or strike it from the calendar.

(3) All affidavits, notices and other papers designed to be used in any cause shall be filed prior to the hearing of the cause unless otherwise directed by the court.

RULE 6
TIME

6.01 Computation
In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

6.02 Enlargement
When by statute or by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion, (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 4.043, 59.03, 59.05, and 60.02 except to the extent and under the conditions stated in them.

6.03 Unaffected by Expiration of Term
The continued existence or the expiration of a term of court does not affect or limit the period of time provided for the doing of any act or the taking of any proceeding, or affect the power of the court to do any act or take any proceeding in any action which has been pending before it.

6.04 For Motions; Affidavits
A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. A motion may be supported by papers on file by reference; supporting papers not on file shall be served with the motion; and, except as otherwise provided in Rule 59.04, opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.

6.05 Additional Time After Service by Mail
Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon him, or whenever such service is required to be made a prescribed period before a specified event, and the notice or paper is served by mail, three days shall be added to the prescribed period.

III. PLEADINGS AND MOTIONS

RULE 7
PLEADINGS ALLOWED; FORM OF MOTIONS

7.01 Pleadings
There shall be a complaint and an answer (including such pleadings in a third-party proceeding when a third-party claim is asserted); a reply to a counterclaim denominated as such; and an answer to a cross-claim if the answer contains a cross-claim. No other pleading shall be allowed except that the court may order a reply to an answer. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

7.02 Motion and Other Papers
(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. Motions provided in these rules are motions requiring a written notice to the party and a hearing before the order can be issued unless the particular rule under which the motion is made specifically provides that the motion may be made ex parte.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

RULE 8
GENERAL RULES OF PLEADING

8.01 Claims for Relief
A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which he deems himself entitled, and if a recovery of money be demanded the amount shall be stated. Relief in the alternative or of several different types may be demanded.

8.02 Defenses; Form of Denials
A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, he may do so by general denial subject to the obligations set forth in Rule 11.

8.03 Affirmative Defenses
In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

8.04 Effect of Failure to Deny
Averments in a pleading to which a responsive pleading is required, other than those as to amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

8.05 Pleading to be Concise and Direct; Consistency
(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

8.06 Construction of Pleadings
All pleadings shall be so construed as to do substantial justice.

RULE 9
PLEADING SPECIAL MATTERS

9.01 Capacity
It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of a partnership or an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

9.02 Fraud, Mistake, Condition of Mind
In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

9.03 Conditions Precedent
In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

9.04 Official Document or Act
In pleading an official document or official act, it is sufficient to aver that the document was issued or the act done in compliance with law; and in pleading any ordinance of a city, village, or borough or any special or local statute or any right derived from either, it is sufficient to refer to the ordinance or statute by its title and the date of its approval.

9.05 Judgment
In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

9.06 Time and Place
For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

9.07 Special Damages
When items of special damage are claimed, they shall be specifically stated.

9.08 Unknown Party; How Designated
When a party is ignorant of the name of an opposing party and so alleges in his pleading, the opposing party may be designated by any name, and when his true name is discovered the process and all pleadings and proceedings in the action may be amended by substituting the true name.

RULE 10
FORM OF PLEADINGS

10.01 Caption; Names of Parties
Every pleading shall have a caption setting forth the name of the court and the county in which the action is brought, the title of the action, and a designation as in Rule 7. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

10.02 Paragraph; Separate Statements
All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

10.03 Adoption by Reference; Exhibits
Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part of the statement of claim or defense set forth in the pleading.

RULE 11
SIGNING OF PLEADINGS

Every pleading of a party represented by an attorney shall be personally signed by at least one attorney of record in his individual name and shall state his address. A party who is not represented by an attorney shall personally sign his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certification by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken, as provided in Rule 12.06, as sham and false and the action may proceed as though the pleading had not been served. An attorney may be subjected to appropriate disciplinary action for a wilful violation of this rule or for the insertion of scandalous or indecent matter in a pleading.

RULE 12
DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED; BY PLEADING OR MOTION; MOTION FOR JUDGMENT ON PLEADINGS

12.01 When Presented
Defendant shall serve his answer within 20 days after service of the summons upon him unless the court directs otherwise pursuant to Rule 4.043. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows unless a different time is fixed by order of the court: (1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after service of notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

12.02 How Presented
Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) Lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; (4) insufficiency of service of process; (5) failure to state a claim upon which relief can be granted; and (6) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense that the pleading fails to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

12.03 Motion for Judgment on the Pleadings
After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on such motion, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided for in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

12.04 Preliminary Hearing
The defenses and relief enumerated in Rules 12.02 and 12.03, whether made in a pleading or by motion, shall be heard and determined before trial on application of any party unless the court orders that the hearing and determination thereof be deferred until the trial.

12.05 Motion for More Definite Statement, for Paragraphing and for Separate Statement
If a pleading to which a responsive pleading is permitted violates the provisions of Rule 10.02, or is

so vague and ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a compliance with Rule 10.02 or for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after service of notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

12.06 Motion to Strike

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him, or upon the court's own initiative at any time, the court may order any pleading not in compliance with Rule 11 stricken as sham and false, or may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

12.07 Consolidation of Defenses in Motion

A party who makes a motion under this rule may join with it the other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in Rule 12.08 (2) hereof on any of the grounds there stated.

12.08 Waiver or Preservation of Certain Defenses

(1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in Rule 12.07, or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15.01 to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7.01, or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

RULE 13

COUNTERCLAIM AND CROSS-CLAIM

13.01 Compulsory Counterclaims

A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction, except that such a claim need not be so stated if at the time the action was commenced the claim was the subject of another pending action.

13.02 Permissive Counterclaims

A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction that is the subject matter of the opposing party's claim.

13.03 Counterclaim Exceeding Opposing Claim

A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

13.04 Counterclaim Against the State of Minnesota

These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the State of Minnesota or an officer or agency thereof.

13.05 Counterclaim Maturing or Acquired After Pleading

A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

13.06 Omitted Counterclaim

When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment.

13.07 Cross-Claim Against Co-Party

A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

13.08 Joinder of Additional Parties

Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

13.09 Separate Trials; Separate Judgment

If the court orders separate trials as provided in Rule 42.02, judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54.02 even if the claims of the opposing party have been dismissed or otherwise disposed of.

RULE 14

THIRD-PARTY PRACTICE

14.01 When Defendant May Bring in Third Party

Within 45 days after service of the summons upon him, and thereafter by leave of court granted on motion upon notice to all parties to the action, a defendant as a third-party plaintiff may serve a summons and complaint, together with a copy of plaintiff's complaint, upon a person, whether or not he is a party to the action, who is or may be liable to him for all or part of the plaintiff's claim against him and after such service shall forthwith serve notice thereof upon all other parties to the action. Copies of third-party pleadings shall be furnished by the pleader to any other party to the action within 5 days after request therefor. The person so served, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12 and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and cross-claims as provided in Rule 13. A third-party defendant may proceed under this rule against any person who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

14.02 When Plaintiff May Bring in Third Party

When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under Rule 14.01 would entitle defendant to do so.

14.03 Orders for Protection of Parties and Prevention of Delay

The court may make such orders as will prevent a party from being embarrassed or put to undue expense, or prevent delay of the trial or other proceedings, by the assertion of a third-party claim, and may dismiss the third-party claim, order separate trials, or make other orders to prevent delay or prejudice. Unless otherwise specified in the order, a dismissal under this rule is without prejudice.

RULE 15

AMENDED AND SUPPLEMENTAL PLEADINGS

15.01 Amendments

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, which

ever period may be longer, unless the court otherwise orders.

15.02 Amendments to Conform to the Evidence

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

15.03 Relation Back of Amendments

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

15.04 Supplemental Pleadings

Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting fourth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a claim for relief or of a defense. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

RULE 16
PRE-TRIAL PROCEDURE; FORMULATING ISSUE

In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

(1) The simplification of the issues;
(2) The necessity or desirability of amendments to the pleadings;
(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
(4) The limitation of the number of expert witnesses;
(5) The advisability of a preliminary reference of issues to a referee;
(6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to nonjury actions or extend it to all actions.

IV. PARTIES

RULE 17
PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

17.01 Real Party in Interest

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute, may sue in his own name without joining with him the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

17.02 Infants or Incompetent Persons

Whenever a party to an action is an infant or is incompetent and has a representative duly appointed under the laws of this state or the laws of a foreign state or country, the representative may sue or defend on behalf of such party. A party who is an infant or is incompetent and is not so represented shall be represented by a guardian ad litem appointed by the court in which the action is pending or is to be brought. The guardian ad litem shall be a resident of this state, shall file his consent and oath with the clerk, and shall give such bond as the court may require.

Any person, including an infant party over the age of 14 years and under no other legal disability, may apply under oath for the appointment of a guardian ad litem. The application of the party or of his spouse or his parent or testamentary or other guardian shall have priority over other applications. If no such appointment is made in behalf of a defendant party before answer or default, the adverse party or his attorney may apply for such appointment, and in such case the court shall allow the guardian ad litem a reasonable time to respond to the complaint.

The application for appointment shall show (1) the name, age and address of the party, (2) if he be a minor, the names and addresses of his parents, and, if his parents be dead or have abandoned him, the name and address of his custodian or his testamentary or other guardian, if any, (3) the name and address of his spouse, if any, and (4) the name, age and address and occupation of the person whose appointment is sought.

If the appointment is applied for by the party or by his spouse, parent, custodian, or testamentary or other guardian, the court may hear the application with or without notice. In all other cases written notice of the hearing on the application shall be given at such time as the court shall prescribe, and shall be served upon the party, his spouse, parent, custodian and testamentary or other guardian, if any, and, if he be an inmate of a public institution, the chief executive officer thereof. If the party be a non-resident, or if after diligent search he cannot be found within the state, notice shall be given to such persons and in such manner as the court may direct.

RULE 18
JOINDER OF CLAIMS AND REMEDIES

18.01 Joinder of Claims

A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal, or equitable, as he has against an opposing party.

18.02 Joinder of Remedies; Fraudulent Conveyances

Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

RULE 19
JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

19.01 Persons to be Joined if Feasible

A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he

should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.

19.02 Determination by Court Whenever Joinder not Feasible

If a person as described in Rule 19.01(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

19.03 Pleading Reasons for Nonjoinder

A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in Rule 19.01(1)-(2) hereof who are not joined, and the reasons why they are not joined.

19.04 Exception of Class Actions

This rule is subject to the provisions of Rule 23.

RULE 20
PERMISSIVE JOINDER OF PARTIES

20.01 Permissive Joinder

All persons may join in one action as plaintiffs if they assert any right to relief, jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of fact or law common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

20.02 Separate Trials

The court may make such order as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

RULE 21
MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on a motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

RULE 22
INTERPLEADER

Persons having claims against the plaintiff may be joined as defendants and required to interplead, in an action brought for that purpose, when their claims are such that the plaintiff is or may be exposed to multiple liability. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. If such a defendant admits he is subject to liability, he may, upon paying the amount claimed or delivering the property claimed or its value into court or to such person as the court may direct, move for an order to substitute the claimants other than the plaintiff as defendants in his stead. On compliance with the terms of such order, the defendant shall be discharged and the action shall proceed against the substituted defendants. It is not ground for objection to such joinder or to such motion that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical with but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. The provisions of this rule do not restrict the joinder of parties permitted in Rule 20.

RULE 23
CLASS ACTIONS

23.01 Prerequisites to a Class Action

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

23.02 Class Actions Maintainable

An action may be maintained as a class action if the prerequisites of Rule 23.01 are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

23.03 Determination by Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under Rule 23.02(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under Rule 23.02(1) or 23.02(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under Rule 23.02(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in Rule 23.03(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

23.04 Orders in Conduct of Actions

In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent

of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

23.05 Dismissal or Compromise

A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

23.06 Derivative Actions by Shareholders or Members

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interest of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

23.07 Actions Relating to Unincorporated Associations

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23.04 and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23.05.

RULE 24
INTERVENTION

24.01 Intervention of Right

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

24.02 Permissive Intervention

Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

24.03 Procedure

A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

24.04 Notice to Attorney General

When the constitutionality of an act of the legislature is drawn in question in any action to which the state or an officer, agency or employe of the state is not a party, the party asserting the unconstitutionality of the act shall notify the attorney general thereof within such time as to afford him an opportunity to intervene.

RULE 25
SUBSTITUTION OF PARTIES

25.01 Death

(1) If a party dies and the claim is not extinguished or barred, the court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of process.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be indicated upon the record and the action shall proceed in favor of or against the surviving parties.

25.02 Incompetency

If a party becomes incompetent, the action shall not abate because of the disability, and the court upon motion served as provided in Rule 25.01 may allow it to be continued by or against his representative.

25.03 Transfer of Interest

In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of this motion shall be made as provided in Rule 25.01.

25.04 Public Officers; Death or Separation from Office

When any public officer is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor if it is satisfactorily shown to the court that there is a substantial need for so continuing and maintaining it. Substitution pursuant to this rule may be made when it is shown by supplemental pleading that the successor of any officer adopts or continues or threatens to adopt or continue the action of his predecessor. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to object.

V. DEPOSITIONS AND DISCOVERY

RULE 26
GENERAL PROVISIONS GOVERNING DISCOVERY

26.01 Discovery Methods

Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical (including blood) and mental examinations; and requests for admission. Unless the court orders otherwise under subdivision 26.03 of this rule, and except as provided in Rule 33.01, the frequency of use of these methods is not limited.

26.02 Scope of Discovery

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) **In General.** Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) **Insurance Agreements.** In any action in which there is an insurance policy which may afford coverage, any party may require any other party to disclose the coverage and limits of such insurance and the amounts paid and payable thereunder and

under Rule 34 may obtain production of the insurance policy, provided, however, that the above provision will not permit such disclosed information to be introduced into evidence unless admissible for other grounds.

(3) **Trial Preparation; Materials.** Subject to the provisions of subdivision 26.02 (4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision 26.02 (1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party, or a party, may obtain without the required showing a statement concerning the action or its subject matter previously made by that person who is not a party. If the request is refused, the person may move for a court order. The provisions of Rule 37.01 (4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) **Trial Preparation; Experts.** Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision 26.02 (1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision 26.02 (4) (C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35.02 or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions 26.02 (4) (A) (ii) and 26.02 (4) (B) of this rule; and (ii) with respect to discovery obtained under subdivision 26.02 (4) (A) (ii) of this rule the court may require, and with respect to discovery obtained under subdivision 26.02 (4) (B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

26.03 PROTECTIVE ORDERS

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37.01 (4) apply to the award of expenses incurred in relation to the motion.

26.04 Sequence and Timing of Discovery

Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

26.05 Supplementation of Responses

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

RULE 27

DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

27.01 Before Action

(1) Petition. A person who desires to perpetuate his own testimony or that of another person regarding any matter may file a verified petition in the district court of the county of the residence of an expected adverse party. The petition shall be entitled in the name of the petitioner and shall show (a) that the petitioner expects to be a party to an action but is presently unable to bring it or cause it to be brought, (b) the subject matter of the expected action and his interest therein, (c) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it, (d) the names or a description of the persons he expects will be adverse parties and their addresses so far as known, and (e) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the deposition of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the state in the manner provided in Rule 4.03 for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4.03, an attorney who shall represent them, and, in case they are not

otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent, the provisions of Rule 17.02 apply.

(3) **Order and Examination.** If the court is satisfied that the perpetuation of testimony may prevent a failure or delay of justice, it shall make an order designating and describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The deposition may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) **Use of Deposition.** If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in this state, in accordance with the provisions of Rule 26.04.

27.02 Pending Appeal

If an appeal has been taken from a judgment or order of a district court, or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment or order was rendered may allow the taking of the deposition of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case, the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each, and (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.

27.03 Perpetuation by Action

This rule does not limit the power of the court to entertain an action to perpetuate testimony.

RULE 28
PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

28.01 Within the United States

Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

28.02 In Foreign Countries

In a foreign country depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letters rogatory shall be issued on application and notice, and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letters rogatory may be addressed "To the Appropriate Judicial Authority in (here name the country)." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these Rules.

28.03 Disqualification for Interest

No deposition shall be taken before a person who is a relative or employe or attorney or counsel of any of the parties, or is a relative or employe of such attorney or counsel, or is financially interested in the action.

RULE 29
STIPULATION REGARDING DISCOVERY PROCEDURE

The parties may by stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner, and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery.

RULE 30
DEPOSITIONS UPON ORAL EXAMINATION

30.01 When Depositions May Be Taken

After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4.04, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision 30.02 (2) of this rule. The attendance of witnesses may be compelled by subpoena as provided by Rule 45.

30.02 Notice of Examination; General Requirements; Special Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (a) states that the person to be examined will be unavailable for examination within the state unless his deposition is taken before expiration of the 30-day period, and (b) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that after he was served with notice under this subdivision (2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition of himself or other person, the deposition may not be used against such party.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The court may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense.

(5) The notice to a party deponent may include or be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents,

or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (6) does not preclude taking a deposition by any other procedure authorized in these rules.

30.03 Examination and Cross-Examination; Record of Examination; Oath; Objections

Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 43.02. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by some one acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision 30.02 (4) of this rule. If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objection. In lieu of participating in the oral examination, a party may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

30.04 Motion to Terminate or Limit Examination

At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26.03. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37.01 (4) apply to the award of expenses incurred in relation to the motion.

30.05 Submission to Witness; Changes; Signing

When the testimony is stenographically transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness, or the fact of the refusal to sign, together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 32.04 (4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

30.06 Certification and Filing by Officer; Copies; Notice of Filing

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then place the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert the name of witness)" and shall promptly deliver or mail it to the clerk of the court in which the action is pending.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (a) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (b) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

30.07 Failure to Attend or to Serve Subpoena; Expenses

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him, and the witness because of such failure does not attend, and if another party attends **in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.**

RULE 31
DEPOSITIONS OF WITNESSES UPON WRITTEN QUESTIONS

31.01 Serving Questions; Notice

After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45.

A party desiring to take the deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the the provisions of Rule 30.02 (6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

31.02 Officers to Take Responses and Prepare Record

A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rules 30.03, 30.05, and 30.06, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

31.03 Notice of Filing

When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties.

RULE 32
USE OF DEPOSITIONS IN COURT PROCEEDINGS

32.01 Use of Depositions

At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, and subject to the provisions of Rule 32.02, may be used against any party who was present or

represented at the taking of the deposition or who had reasonable notice thereof in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, employee or managing agent or a person designated under Rule 30.02 (6) or 31.01 to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (a) that the witness is dead; or (b) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or (c) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (d) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (e) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witness orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

32.02 Objections to Admissibility

Subject to the provisions of Rules 28.02 and 32.04 (3), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of evidence if the witness were then present and testifying.

32.03 Effect of Taking or Using Depositions

A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision 32.01 (2) of this rule. At the trial or hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

32.04 Effect of Errors and Irregularities in Depositions

(1) As to Notice

All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Officer

Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition

(a) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(b) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(c) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to Completion and Return of Deposition

Errors and irregularities in the manner in which the testimony is transcribed, preserved or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

RULE 33
INTERROGATORIES TO PARTIES

33.01 Availability; Procedure for Use

(1) Any party may serve upon any other party written interrogatories. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action, and upon any other party with or after service of the summons and complaint upon that party. No party may serve more than a total of 50 interrogatories upon any other party unless permitted to do so by the court upon motion, notice and a showing of good cause. In computing the total number of interrogatories each subdivision of separate questions shall be counted as an interrogatory.

(2) The party upon whom the interrogatories have been served shall serve separate written answers or objections to each interrogatory within 30 days after service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of summons and complaint upon that defendant. The court, on motion and notice and for good cause shown, may enlarge or shorten the time.

(3) Objections shall state with particularity the grounds for the objection and may be served as a part of the document containing the answers or separately. Within 15 days after service of objections to interrogatories, the party proposing the interrogatory shall serve notice of hearing on the objections at the earliest practicable time. Failure to serve said notice shall constitute a waiver of the right to require answers to each interrogatory to which objection has been made. Answers to interrogatories to which objection has been made shall be deferred until the objections are determined.

(4) Answers to interrogatories shall be stated fully in writing and shall be signed under oath by the party served or, if the party served is the state or a corporation or a partnership or an association, by any officer or managing agent, who shall furnish such information as is available. A party shall restate the interrogatory being answered immediately preceding the party's answer to that interrogatory.

33.02 Scope; Use at Trial

Interrogatories may relate to any matters which can be inquired into under Rule 26.02, and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

33.03 Option to Produce Business Records

Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

RULE 34
PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

34.01 Scope

Any party may serve on any other party a request

(1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devises into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26.02 and which are in the possession, custody or control of the party upon whom the request is served, or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26.02.

34.02 Procedure

The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

34.03 Persons Not Parties

This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

RULE 35
PHYSICAL, MENTAL AND BLOOD EXAMINATION OF PERSONS

35.01 Order of Examinations

In an action in which the mental or physical condition or the blood relationship of a party, or of an agent of a party, or of a person under control of a party, is in controversy, the court in which the action is pending may order the party to submit to, or produce such agent or person for, a mental or physical or blood examination by a physician. The order may be made only on motion for good cause shown and upon notice to the party or person to be examined and to all other parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is made.

35.02 Report of Findings

(1) If requested by the party against whom an order is made under Rule 35.01 or by the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings and conclusions, together with like reports of all earlier examinations of the same condition. After such request and delivery, the party causing the examination to be made shall be entitled, upon request, to receive from the party or person examined a like report of any examination, previously or thereafter made, of the same mental or physical or blood condition. If the party or person examined refuses to deliver such report, the court, on motion and notice, may make an order requiring delivery on such terms as are just, and, if a physician fails or refuses to make such a report, the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the adverse party waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him or the person under his control in respect of the same mental or physical or blood condition.

35.03 Waiver of Medical Privilege

If at any stage of an action a party voluntarily places in controversy the physical, mental, or blood condition of himself, of a decedent, or a person under his control, such party thereby waives any privilege he may have in that action regarding the testimony of every person who has examined or may thereafter examine him or the person under his control in respect of the same mental, physical or blood condition.

35.04 Medical Disclosures and Depositions of Medical Experts

When medical privilege has been waived by a party under Rule 35.03, such party within ten days of a written request by any other party,

a) shall furnish to the requesting party copies of all medical reports previously or thereafter made by any treating or examining medical expert, and

b) shall provide written authority signed by the party of whom request is made to permit the inspection of all hospital and other medical records, concerning the physical, mental or blood condition of such party as to which privilege has been waived.

Depositions of treating or examining medical experts shall not be taken except upon order of the court for good cause shown upon motion and notice to the parties and upon such terms as the court may provide.

Disclosures under this Rule shall include the conclusions of such treating or examining medical expert.

RULE 36
REQUESTS FOR ADMISSION

36.01 Request for Admission

A party may serve upon any other party a written request for the admission for purposes of the pending action, only, of the truth of any matters within the scope of Rule 26.02 set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request, unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefore shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and, when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37.03, deny the matter of set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of

these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37.01 (4) apply to the award of expenses incurred in relation to the motion.

36.02 Effect of Admission

Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

RULE 37
FAILURE TO MAKE DISCOVERY; SANCTIONS

37.01 Motion for Order Compelling Discovery

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) **Appropriate Court.** An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deponent's failure to answer questions propounded or submitted under Rule 30 or Rule 31, to the court in the county where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the county where the deposition is being taken.

(2) **Motion.** If a deponent fails to answer a question propounded or submitted under Rule 30 or Rule 31, or a corporation or other entity fails to make a designation under Rule 30.02 (6) or Rule 31.01, or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26.03.

(3) **Evasion or Incomplete Answer.** For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) **Award of Expenses of Motion.** If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonabe expenses incurred in relation to the motion among the parties and persons in a just manner.

37.02 Failure to Comply with Order.

(1) **Sanctions by Court in County Where Deposition is Taken.** If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) **Sanctions by Court in Which Action is Pending.** If a party or an officer, director, employee or managing agent of a party or a person designated under Rule 30.02 (6) or Rule 31.01 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision 37.01 of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(a) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(d) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination.

(e) Where a party has failed to comply with an order under Rule 35.01 requiring him to produce another for examination, such orders as are listed in paragraphs (a), (b), and (c) of this subdivision, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

37.03 Expenses on Failure to Admit

If a party fails to admit the genuineness of any documents or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of any such matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36.01, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

37.04 Failure of Party to Attend at Own Deposition or Serve Answers

If a party or an officer, director, employee or managing agent of a party or a person designated under Rule 30.02 (6) or Rule 31.01 to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (a), (b), and (c) of subdivision 37.02 (2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26.03.

VI. TRIALS

RULE 38
JURY TRIAL OF RIGHT

38.01 Right Preserved

In actions for the recovery of money only, or of specific real or personal property, or for a divorce on the ground of adultery, the issues of fact shall

be tried by a jury, unless a jury trial be waived or a reference be ordered.

38.02 Waiver

In actions arising on contract, and by permission of the court in other actions, any party thereto may waive a jury trial in the manner following:

(1) By failing to appear at the trial;

(2) By written consent, by the party or his attorney, filed with the clerk;

(3) By oral consent in open court, entered in the minutes.

38.03 Placing Action on Calendar

A party desiring to have an action placed on the calendar for trial shall, after issue is joined, prepare a note of issue setting forth the title of the action, whether the issue is one of fact or of law, and if an issue of fact whether it is triable by court or by jury, and the names and addresses and the telephone numbers of the respective counsel, and shall serve the same on counsel for all parties not in default and file it, with proof of service, with the clerk within 10 days after such service in all districts where but one term of court is held annually and in all other districts at least 28 days before the beginning of a general term; and thereupon the action shall be placed on the calendar for trial and shall remain thereon from term to term until tried or stricken therefrom. The party serving a note of issue shall, and any other party may, serve a note of issue upon counsel for any person who becomes a party to the action subsequent to the initial service.

RULE 39

TRIAL BY JURY OR BY THE COURT

39.01 By Court

Issues of fact not submitted to a jury as provided in Rule 38 shall be tried by the court.

39.02 Advisory Jury and Trial by Consent

In all actions not triable of right by a jury the court, upon motion or of its own initiative, may try an issue with an advisory jury, or the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

39.03 Preliminary Instructions in Jury Trials

After the jury has been impaneled and sworn, and before opening statements of counsel, the court may instruct the jury as to the respective claims of the parties and as to such other matters as will aid the jury in comprehending the trial procedure and sequence to be followed. Preliminary instructions may also embrace such matters as burden of proof and preponderance of evidence, the elements which the jury may consider in weighing testimony or determining credibility of witnesses, rules applicable to opinion evidence, and such other rules of law as the court may deem essential to the proper understanding of the evidence.

39.04 Opening Statements by Counsel

Before any evidence is introduced, plaintiff may make an opening statement; whereupon any other party may make an opening statement or may reserve the same until his case in chief is opened. Opening statements may be waived by any party to the action without affecting the right of any other party to make such an opening statement.

RULE 40

ASSIGNMENT OF CASES FOR TRIAL

The judges of the court may, by order or by rule of court, provide for the setting of cases for trial upon the calendar, the order in which they shall be heard and the resetting thereof.

RULE 41

DISMISSAL OF ACTIONS

41.01 Voluntary Dismissal; Effect Thereof

(1) **By Plaintiff; by Stipulation.** Subject to the provisions of Rule 23.03 and of Rule 66, an action may be dismissed by the plaintiff without order of court (a) by filing a notice of dismissal not less than 10 days before the opening of the term of court at which the action is noted for trial or, in counties having continuous terms of court, not less than 10 days before the day on which the action is first set for trial, if a provisional remedy has not been allowed or a counterclaim made or other affirmative relief demanded in the answer, or (b) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) **By Order of Court.** Except as provided in paragraph (1) of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

41.02 Involuntary Dismissal; Effect Thereof

(1) The court may on its own motion, or upon motion of a party, and upon such notice as it may prescribe, dismiss an action or claim for failure to prosecute or to comply with these rules or any order of the court.

(2) After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. In an action tried by the court without a jury the court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52.01.

(3) Unless the court in its order for dismissal otherwise specifies, a dismissal under this rule and any dismissal not provided for in this rule or in Rule 41.01, other than a dismissal for lack of jurisdiction, for forum non conveniens or for failure to join a party indispensable under Rule 19, operates as an adjudication upon the merits.

41.03 Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim

The provisions of Rules 41.01 and 41.02 apply to the dismissal of any counterclaim, cross-claim, or third-party claim.

41.04 Costs of Previously Dismissed Action

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

RULE 42

CONSOLIDATION; SEPARATE TRIALS

42.01 Consolidation

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

42.02 Separate Trials

The court in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

RULE 43

EVIDENCE

43.01 Form and Admissibility

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules. All evidence shall be admitted which is admissible under the statutes of this state, or under the rules of evidence heretofore applied in the trials of actions in the courts of this state. In any case, the statute or rule which favors the reception of the evidence governs, and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.

43.02 Examination of Hostile Witnesses and Adverse Parties

A party may interrogate an unwilling or hostile witness by leading questions. A party may call an adverse party or his managing agent or employe or an officer, director, managing agent or employe

of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate him by leading questions and contradict and impeach him on material matters in all respects as if he had been called by the adverse party. Where the witness is an adverse party he may be examined by his counsel upon the subject matter of his examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted and impeached by any other party adversely affected by his testimony. Where the witness is an officer, director, managing agent, or employe of the adverse party he may be cross-examined, contradicted and impeached by any party to the action.

43.03 Record of Excluded Evidence
In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. The court may require the offer to be made out of the hearing of the jury. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. In actions tried without a jury the same procedure may be followed, except that the court, upon request, shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

43.04 Affirmation in Lieu of Oath
Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

43.05 Evidence and Motions
When a motion is based on facts not appearing of record, the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

43.06 Res Ipsa Loquitur
Res ipsa loquitur shall be regarded as nothing more than one form of circumstantial evidence creating a permissive inference of negligence. The plaintiff shall be given the benefit of its natural probative force existing at the close of all the evidence even though he has introduced specific evidence of negligence or made specific allegations of negligence in his pleadings.

43.07 Interpreters
The court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

RULE 44
PROOF OF OFFICIAL RECORD

44.01 Authentication
(1) **Domestic.** An official record kept within the United States, or any state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or any entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.

(2) **Foreign.** A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

44.02 Lack of Record
A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in Rule 44.01(1) in the case of a domestic record, or complying with the requirements of Rule 44.01(2) for a summary in the case of a foreign record, is admissible as evidence that the records of his office contain no such record or entry.

44.03 Other Proof
This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

44.04 Determination of Foreign Law
A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43. The court's determination shall be treated as a ruling on a question of law.

RULE 45
SUBPOENA

45.01 For Attendance of Witnesses; Form; Issuance
Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence or tangible things, signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service.

45.02 For Production of Documentary Evidence
A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable or oppressive, or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

45.03 Service
A subpoena may be served by the sheriff, by his deputy, or any other person who is not a party. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person or by leaving a copy at his usual place of abode with some person of suitable age and discretion then residing therein and by tendering to him the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the state of Minnesota or an officer or agency thereof, fees and mileage need not be tendered.

45.04 Subpoena for Taking Depositions; Place of Examination
(1) Proof of service of notice to take a deposition as provided in Rules 30.02 and 31.01 or in a state where the action is pending constitutes a sufficient authorization for the issuance of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26.02, but in that event the subpoena will be subject to the provisions of Rules 26.03 and 45.04 (2).

(2) The person to whom the subpoena is directed may, within 10 days after service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to the production, inspection or copying of any or all of the designated materials. If objection is

made, the party serving the subpoena shall not be entitled to the production or, nor the right to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(3) A resident of this state may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of court. A nonresident of the state may be required to attend in any county of the state.

45.05 Subpoena for a Hearing or Trial

At the request of any party, the clerk of the district court shall issue subpoenas for witnesses in all civil cases pending before that court, or before any magistrate, arbitrator, board, committee, or other person authorized to examine witnesses. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.

45.06 Contempt

Failure to obey a subpoena without adequate excuse is a contempt of court.

RULE 46
EXCEPTIONS UNNECESSARY

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been taken it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him. A minute of the objection to the ruling or order shall be made by the judge or reporter.

RULE 47
JURORS

47.01 Examination of Jurors

The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper.

47.02 Alternate Jurors

The court may direct that one or two jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the principal jurors. An alternate juror who does not replace a principal juror shall be discharged after the jury retires to consider its verdict. If one or two alternate jurors are called, each party is entitled to one peremptory challenge in addition to those otherwise allowed by law. The additional peremptory challenge may be used only against an alternate juror, and the other peremptory challenges allowed by law shall not be used against the alternates.

47.03 Separation of Jury

After the jury has retired for its deliberations, the court, in its discretion, may permit the jury to separate overnight and return to its deliberations the following morning.

RULE 48
JURIES OF LESS THAN TWELVE; MAJORITY VERDICT

The parties may stipulate that the jury shall consist of any number less than 12, or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

RULE 49
SPECIAL VERDICTS AND INTERROGATORIES

49.01 Special Verdicts

(1) The court may require a jury to return only a **special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and require written findings thereon as it deems most appropriate. The court shall give to the jury such explanations and instructions concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord** with the judgment on the special verdict. Except as provided in Rule 49.01(2), neither the court nor counsel shall inform the jury of the effect of its answers on the outcome of the case.

(2) In acts involving Minn. Stat. 1971, Sec. 604.01, the court shall inform the jury of the effect of its answers to the percentage of negligence question and shall permit counsel to comment thereon, unless the court is of the opinion that doubtful or unresolved questions of law, or complex issues of law or fact are involved, which may render such instructions or comment erroneous, misleading or confusing to the jury.

49.02 General Verdict Accompanied by Answer to Interrogatories

The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the **decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make** answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. **When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other, but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the** general verdict, or may return the jury for further **consideration of its answers and verdict, or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment, but may return the jury for further consideration of its answers and verdict, or may order a new trial.**

RULE 50
MOTION FOR A DIRECTED VERDICT; JUDGMENT NOTWITHSTANDING VERDICT; ALTERNATIVE MOTION

50.01 Directed Verdict; When Made; Effect

A motion for a directed verdict may be made at the close of the evidence offered by an opponent or at the close of all the evidence. A party who moves for a directed verdict at the close of the evidence offered by an opponent shall, after denial of the motion, have the right to offer evidence as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the **action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. If the evidence is sufficient to sustain a verdict for the opponent, the motion shall not be** granted. **The order of the court granting the motion for a directed verdict is effective** without any assent of the jury.

50.02 Judgment Notwithstanding Verdict

(1) A party may move that judgment be entered notwithstanding the verdict or notwithstanding the jury has disagreed and been discharged, whether or not he has moved for a directed verdict, and the court shall grant the motion if the moving party would have been entitled to a directed verdict at the close of the evidence.

(2) A motion for judgment notwithstanding the verdict may include in the alternative a motion for a new trial.

(3) A motion for judgment notwithstanding the verdict or notwithstanding the jury has disagreed and been discharged shall be made within the time specified in Rule 59 for the making of a motion for a new trial and may be made on the files, exhibits and minutes of the court. On a motion for judgment notwithstanding the jury has disagreed and been dis-

charged, the date of discharge shall be the equivalent of the date of rendition of a verdict within the meaning of that rule, but such motion must in any event be made before a retrial of the action is begun.

(4) If the motion for judgment notwithstanding the verdict is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the respondent on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(5) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Rule 59 except that the times for serving and hearing said motion shall be determined from the date of notice of the trial court's order granting judgment notwithstanding rather than the date the verdict is returned.

(6) If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as respondent, assert grounds entitling him to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the respondent is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

RULE 51
INSTRUCTIONS TO JURY; OBJECTION

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform the counsel of its proposed action upon the requests prior to their arguments to the jury, and such action shall be made a part of the record. The court shall instruct the jury after the arguments are completed except, at the discretion of the court, preliminary instructions need not be repeated. No party may assign as error unintentional misstatements and verbal errors, or omissions in the charge, unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objections. An error in the instructions with respect to fundamental law or controlling principle may be assigned in a motion for a new trial though it was not otherwise called to the attention of the court.

RULE 52
FINDINGS BY THE COURT

52.01 Effect

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless cleary erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a referee, to the extent that the court adopts them, shall be considered as the findings of the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41.02.

52.02 Amendment

Upon motion of a party made not later than the time allowed for a motion for new trial pursuant to Rule 59.03, the court may amend its findings or make additional findings, and may amend the judgment accordingly if judgment has been entered. The motion may be made with a motion for a new trial and may be made on the files, exhibits, and minutes of the court. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

RULE 53
REFEREES

53.01 Appointment and Compensation

The court in which any action is pending may appoint a referee therein. When the court shall state in its order of appointment that the reference is made necessary by press of business, the fees of the referee, as taxed and allowed by the court, shall be paid out of the county treasury, as the salaries of county officers are paid. In other cases the compensation to be allowed to a referee shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action which is in the custody and control of the court as the court may direct. The referee shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the referee is entitled to a writ of execution against the delinquent party.

53.02 Reference

A reference to a referee shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.

53.03 Powers

The order of reference to the referee may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the referee's report. Subject to the specifications and limitations stated in the order, the referee has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the referee shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 43.03 for a court sitting without a jury.

53.04 Proceedings

(1) **Meetings.** When a reference is made, the clerk shall forthwith furnish the referee with a copy of the order of reference. Upon receipt thereof, unless the order of reference otherwise provides, the referee shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the referee to proceed with all reasonable diligence. Either party, on notice to the parties and referee, may apply to the court for an order requiring the referee to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the referee may proceed ex parte or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) **Witnesses.** The parties may procure the attendance of witnesses before the referee by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) **Statement of Accounts.** When matters of accounting are in issue before the referee, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public

accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the referee may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

53.05 Report

(1) **Contents and Filing.** The referee shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) **In Non-Jury Actions.** In an action to be tried without a jury the court shall accept the referee's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6.04. The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) **In Jury Actions.** In an action to be tried by a jury the referee shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) **Stipulation as to Findings.** The effect of a referee's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a referee's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) **Draft Report.** Before filing his report, a referee may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

RULE 54
JUDGMENTS; COSTS

54.01 Definition; Form

Judgment as used in these rules includes a decree and means the final determination of the rights of the parties in an action or proceeding. A judgment shall not contain a recital of pleadings, the report of a referee, or the record of prior proceedings.

54.02 Judgment upon Multiple Claims

When multiple claims for relief or multiple parties are involved in an action, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

54.03 Demand for Judgment

A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every other judgment shall grant the relief to which the party in whose favor it is rendered is entitled.

54.04 Costs

Costs and disbursements shall be allowed as provided by statute. Costs and disbursements may be taxed by the clerk on two days' notice, and inserted in the judgment. The disbursements shall be stated in detail and verified by affidavit, which shall be filed, and a copy of such statement and affidavit shall be served with the notice. The party objecting to any item shall specify in writing the ground thereof; a party aggrieved by the action of the clerk may file a notice of appeal with the clerk, who shall forthwith certify the matter to the court. The appeal shall be heard upon eight days' notice and determined upon the objections so certified.

RULE 55
DEFAULT

55.01 Judgment

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed therefor by these rules or by statute, and that fact is made to appear by affidavit, judgment by default shall be entered against him as follows:

(1) When the plaintiff's claim against a defendant is upon a contract for the payment of money only, or for the payment of taxes and penalties and interest thereon owing to the state, the clerk, upon request of the plaintiff and upon affidavit of the amount due, which may not exceed the amount demanded in the complaint, shall enter judgment for the amount due and costs against the defendant.

(2) In all other cases, the party entitled to a judgment by default shall apply to the court therefor. If a party against whom judgment is sought has appeared in the action, he shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If the action be one for the recovery of money only, the court shall ascertain, by a reference or otherwise, the amount to which the plaintiff is entitled, and order judgment therefor.

(3) If other relief than the recovery of money be demanded and the taking of an account, or the proof of any fact, be necessary to enable the court to give judgment, it may take or hear the same or order a reference for that purpose, and order judgment accordingly.

(4) When service of the summons has been made by published notice, or by delivery of a copy without the state, no judgment shall be entered on default until the plaintiff shall have filed a bond, approved by the court, conditioned to abide such order as the court may make touching the restitution of any property collected or obtained by virture of the judgment in case a defense is thereafter permitted and sustained; provided, that in actions involving the title to real estate or to foreclose mortgages thereon such bond shall not be required.

55.02 Plaintiffs; Counterclaimants; Cross-Claimants

The provisions of this rule apply whether the party entitled to judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases, a judgment by default is subject to the limitations of Rule 54.03.

RULE 56
SUMMARY JUDGMENT

56.01 For Claimant

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

56.02 For Defending Party

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

56.03 Motion and Proceedings Thereon

The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

56.04 Case not Fully Adjudicated on Motion

If, on motion under this rule, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the

hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

56.05 Form of Affidavits; Further Testimony; Defense Required

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. When a motion for summary judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere averments or denials of his pleading but must present specific facts showing that here is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

56.06 When Affidavits are Unavailable

Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present, by affidavit, facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

56.07 Affidavits Made in Bad Faith

Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

RULE 57
DECLARATORY JUDGMENTS

The procedure for obtaining a declaratory judgment pursuant to M.S.A. 1949, c. 555, shall be in accordance with these rules, and the right to trial by jury is retained under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

RULE 58
ENTRY OF JUDGMENT; STAY

58.01 Entry

Unless the court otherwise directs, and subject to the provisions of Rule 54.02, judgment upon the verdict of a jury, or upon an order of the court for the recovery of money only or for costs or that all relief be denied, shall be entered forthwith by the clerk; but the court shall direct the appropriate judgment to be entered upon a special verdict or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49 or upon an order of the court for relief other than money or costs. Entry of judgment shall not be delayed for the taxation of costs, and the omission of costs shall not affect the finality of the judgment. The judgment in all cases shall be entered and signed by the clerk in the judgment book; this entry constitutes the entry of the judgment; and the judgment is not effective before such entry. A copy thereof, also signed by the clerk, shall be attached to the judgment roll.

58.02 Stay

The court may order a stay of entry of judgment upon a verdict or decision for a period not exceeding the time required for the hearing and determination of a motion for new trial or for judgment notwithstanding the verdict or to set the verdict aside or to dismiss the action or for amended findings, and after such determination may order a stay of entry of judgment for not more than 30 days. In granting a stay of entry of judgment under this rule for any period exceeding thirty (30) days after verdict or decision, the court, in its discretion, may impose such conditions for the security of the adverse party as may be deemed proper.

RULE 59
NEW TRIALS

59.01 Grounds

A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes:

(1) Irregularity in the proceedings of the court, referee, jury, or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair trial;

(2) Misconduct of the jury or prevailing party;

(3) Accident or surprise which could not have been prevented by ordinary prudence;

(4) Material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;

(5) Excessive or insufficient damages, appearing to have been given under the influence of passion or prejudice;

(6) Errors of law occurring at the trial, and objected to at the time or, if no objection need have been made under Rules 46 and 51, plainly assigned in the notice of motion;

(7) The verdict, decision, or report is not justified by the evidence, or is contrary to law; but, unless it be so expressly stated in the order granting a new trial, it shall not be presumed, on appeal, to have been made on the ground that the verdict, decision, or report was not justified by the evidence.

On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct entry of a new judgment.

59.02 Basis of Motion

A motion made under Rule 59.01 shall be made and heard on the files, exhibits and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit. A full or partial transcript of the court reporter's notes may be used on the hearing of the motion.

59.03 Time for Motion

A notice of motion for a new trial shall be served within 15 days after a general verdict or service of notice by a party of the filing of the decision or order; and the motion shall be heard within 30 days after such general verdict or notice of filing, unless the time for hearing be extended by the court within the 30 day period for good cause shown.

59.04 Time for Serving Affidavits

When a motion for new trial is based upon affidavits, they shall be served with the notice of motion. The opposing party shall have 10 days after such service in which to serve opposing affidavits, which period may be extended by the court upon an order extending the time for a hearing under Rule 59.03. The court may permit reply affidavits.

59.05 On Initiative of Court

Not later than 15 days after a general verdict or the filing of the decision or order, the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

59.06 Stay of Entry of Judgment

A stay of entry of judgment under Rule 58 shall not be construed to extend the time within which a party may serve a motion hereunder.

RULE 60
RELIEF FROM JUDGMENT OR ORDER

60.01 Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the appellate court.

60.02 Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment (other than a divorce decree), order, or proceeding and may order a new trial or grant such other relief as may be just for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.03; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this Rule 60.02 does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Rule 4.04*3*, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

RULE 61
HARMLESS ERROR

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

RULE 62
STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

62.01 Stay on Motions

In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment notwithstanding the verdict made pursuant to Rule 50.02, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52.02.

62.02 Injunction Pending Appeal

When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

62.03 Stay Upon Appeal

When an appeal is taken, the appellant may obtain a stay only when authorized and in the manner provided in Rules of Civil Appellate Procedure, Rules 107 and 108.

62.04 Stay in Favor of the State or Agency Thereof

When an appeal is taken by the state or an officer or agency or governmental subdivision thereof, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

62.05 Power of Appellate Court not Limited

The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

62.06 Stay of Judgment Upon Multiple Claims

When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 54.02, the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefits thereof to the party in whose favor the judgment is entered.

RULE 63
DISABILITY OR DISQUALIFICATION OF JUDGE; AFFIDAVIT OF PREJUDICE; ASSIGNMENT OF A JUDGE

63.01 Disability of Judge

If by reason of death, sickness, or other disability a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

63.02 Interest or Bias

No judge shall sit in any cause if he be interested in its determination or if he might be excluded for bias from acting therein as a juror. If there be no other judge of the district who is qualified, or if there be only one judge of the district, such judge shall forthwith notify the chief justice of the supreme court of his disqualification.

63.03 Affidavit of Prejudice

Any party or his attorney may make and serve on the opposing party and file with the clerk an affidavit stating that, on account of prejudice or bias on the part of the judge who is to preside at the trial or at the hearing of any motion, he has good reason to believe and does believe that he cannot have a fair trial or hearing before such judge. The affidavit shall be served and filed not less than 10 days prior to the first day of a general term, or 5 days prior to a special term or a day fixed by notice of motion, at which the trial or hearing is to be had, or, in any district having two or more judges, within one day after it is ascertained which judge is to preside at the trial or hearing. Upon the filing of such affidavit, with proof of service, the clerk shall forthwith assign the cause to another judge of the same district, and if there be no other judge of the district who is qualified, or if there be only one judge of the district, he shall forthwith notify the chief justice of the supreme court.

63.04 Assignment of Judge

Upon receiving notice as provided in Rules 63.02 and 63.03, the chief justice shall assign a judge of another district, accepting such assignment, to preside at the trial or hearing, and the trial or hearing shall be postponed until the judge so assigned can be present.

VII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

RULE 64
SEIZURE OF PERSON OR PROPERTY

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the state.

RULE 65
INJUNCTIONS

65.01 Temporary Restraining Order; Notice; Hearing; Duration

A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (a) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (b) the applicant's attorney states to the court in writing the efforts, if any, which have been made to give notice or the reasons supporting his claim that notice should not be required. In the event that a temporary restraining order is based upon any affidavit, a copy of such affidavit must be served with the temporary restraining order. In

case a temporary restraining order is granted without notice, the motion for a temporary injunction shall be set down for hearing at the earliest practicable time and shall take precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction, and, if he does not do so, the court shall dissolve the temporary restraining order. On written or oral notice to the party who obtained the ex parte temporary restraining order, the adverse party may appear and move its dissolution or modification, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

65.02 Temporary Injunction

(1) No temporary injunction shall be granted without notice of motion or an order to show cause to the adverse party.

(2) A temporary injunction may be granted if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefor.

(3) Before or after the commencement of the hearing of a motion for a temporary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing on the motion. Even when this consolidation is not ordered, any evidence received upon a motion for a temporary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

65.03 Security

(1) No temporary restraining order or temporary injunction shall be granted except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

(2) Whenever security is given in the form of a bond or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

RULE 66
RECEIVERS

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. A foreign receiver shall have capacity to sue in any district court, but his rights are subordinate to those of local creditors. The practice in the administration of estates by the court shall be in accordance with M.S.A. 1949, c. 576, and with the practice heretofore followed in the courts of this state or as provided in rules promulgated by the district courts. In all other respects, the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

RULE 67
DEPOSIT IN COURT

67.01 In an Action

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing.

67.02 When no Action is Brought

When money or other personal property in the possession of any person, as bailee or otherwise, is claimed adversely by two or more other persons, and the right thereto as between such claimants is in doubt, the person so in possession, though no action be commenced against him by any of the claimants, may place the property in the custody of the court. He shall apply to the court of the county in which the property is situated, setting forth by petition the facts which bring the case within the provisions of this section, and the names and places of residence of all known claimants of such property. If satisfied of the truth of such showing, the court, by order, shall accept custody of the money or other property, and direct that upon delivery, and upon giving notice thereof to all persons interested, personally or by registered mail, as in such order prescribed, the petitioner be relieved from further liability on account thereof. This rule shall apply to cases where property held under like conditions is garnished in the hands of the possessor; but in such cases the application shall be made to the court in which the garnishment proceedings are pending.

67.03 Court May Order Deposit or Seizure of Property

When it is admitted by the pleading or examination of a party that he has in his possession or control any money or other thing capable of delivery which, being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court or delivered to such other party, with or without security, subject to further direction. If such order be disobeyed, the court may punish the disobedience as a contempt, and may also require the sheriff or other proper officer to take the money or property and deposit or deliver it in accordance with the direction given.

67.04 Money Paid into Court

Where money is paid into the court to abide the result of any legal proceedings, the judge may order it deposited in a designated state or national bank or savings bank. In the absence of such order, the clerk of court is the official custodian of all moneys, and the judge, on application of any person paying such money into court, may require the clerk to give an additional bond, with like condition as the bond provided for in M.S.A. 1949, § 485.01, in such sum as the judge shall order.

RULE 68
OFFER OF JUDGMENT; TENDER OF MONEY IN LIEU OF JUDGMENT

68.01 Offer of Judgment

At any time more than one day before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property, or to the effect specified in his offer, with costs and disbursements then accrued. If before trial the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with the proof of service thereof, and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible, except in a proceeding to determine costs and disbursements. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs and disbursements incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.

68.02 Tender of Money in Lieu of Judgment

If the action be for the recovery of money, instead of the offer of judgment provided for in Rule 68.01, the defendant may tender to the plaintiff the full amount to which he is entitled, together with costs and disbursements then accrued. If such tender be not accepted, the plaintiff shall have no costs and disbursements unless he recover more than the sum tendered; and the defendant's costs and disbursements shall be deducted from the recovery, or, if they exceed the recovery, he shall have judgment for the excess. The fact of such tender having been made shall not be pleaded or given in evidence.

RULE 69
EXECUTION

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with Minnesota Statutes 1971, Chapter 550. In aid of the judgment or execution, the judgment creditor, or his successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

RULE 70
JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other docu-

ments or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court, and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others; and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution upon application to the clerk.

RULE 71

PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES

When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

(Note: Numbers 72 to 76 are reserved for future use.)

IX. DISTRICT COURTS AND CLERKS

RULE 77

DISTRICT COURTS AND CLERKS

77.01 District Courts Always Open

The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

77.02 Trials and Hearings; Orders in Chambers

All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

77.03 Clerk's Office and Orders by Clerk

All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but his action may be suspended or altered or rescinded by the court upon cause shown.

77.04 Notice of Orders or Judgments

Immediately upon the filing of an order or decision or entry of a judgment, the clerk shall serve a notice of the filing or entry by mail upon every party affected thereby or his attorney of record, whether or not such party has appeared in the action, at his last known address, and shall make a note in his records of the mailing, but such notice shall not limit the time for taking an appeal or other proceeding on such order, decision or judgment.

(*Note: Numbers 78 and 79 are reserved for future use.*)

RULE 80

STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE

Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by a reading of the transcript thereof duly certified by the person who reported the testimony. Such evidence is rebuttable and not conclusive.

RULE 81

APPLICABILITY; IN GENERAL

81.01 Statutory and Other Procedures

(1) *Procedures Preserved.* These rules do not govern pleadings, practice and procedure in the statutory and other proceedings listed in Appendix A insofar as they are inconsistent or in conflict with the rules.

(2) **Procedures Abolished.** The writ of quo warranto and information in the nature of quo warranto are abolished. The relief heretofore available thereby may be obtained by appropriate action or appropriate motion under the practice prescribed in these rules.

(3) *Statutes Superseded.* Subject to the provisions of subparagraph (1) of this rule, the statutes listed in Appendix B and all other statutes inconsistent or in conflict with these rules are superseded insofar as they apply to pleading, practice and procedure in the district court.

81.02 Appeals to District Courts

These rules do not supersede the provisions of statutes relating to appeals to the district courts.

81.03 Rules Incorporated into Statutes

Where any statute heretofore or hereafter enacted, whether or not listed in Appendix A, provides that any act in a civil proceeding shall be done in the manner provided by law, such act shall be done in accordance with these rules.

RULE 82

JURISDICTION AND VENUE

These rules shall not be construed to extend or limit the jurisdiction of the district courts of Minnesota or the venue of actions therein.

RULE 83

RULES BY DISTRICT COURTS

Any court may adopt rules governing its practice, and the judges of the district courts, pursuant to M.S.A.1949, §§ 484.33 and 484.52, may adopt rules, not in conflict with these rules.

RULE 84

APPENDIX OF FORMS

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

RULE 85

TITLE

These rules may be known and cited as Rules of Civil Procedure.

RULE 86

EFFECTIVE DATE

86.01 Effective Date and Application to Pending Proceedings

These rules will take effect on January 1, 1952. They govern all proceedings and actions brought after they take effect, and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the action was brought applies.

86.02 Effective Date of Amendments

The amendments adopted on November 10, 1967, will take effect on February 1, 1968. They govern all proceedings in actions brought after they take effect, and also all further proceedings in actions then pending, except as to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible, or would work injustice, in which event the former procedure applies.

APPENDIX OF FORMS

(See Rule 84)

INTRODUCTORY STATEMENT

1. The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a manual of forms.

2. Except where otherwise indicated, each pleading, motion, and other paper should have a caption similar to that of the summons, with the designation of the particular paper substituted for the word "SUMMONS." In the caption of the summons and in the caption of the complaint all parties must be named, but in other pleadings and papers it is sufficient to state the name of the first party on either side, with an appropriate indication of other parties. See Rules 4.01, 7.02(2), 10.01.

3. Each pleading, motion, and other paper is to be signed in his individual name by at least one attorney of record (Rule 11). The attorney's name is to be followed by his address as indicated in Form 2. In forms following Form 2 the signature and address are not indicated.

4. If a party is not represented by an attorney, the signature and address of the party are required in place of those of the attorney.

Form 1
SUMMONS

State of Minnesota, District Court
County of..... .....Judicial District

A. B., Plaintiff
vs. SUMMONS
C. D., Defendant

The State of Minnesota to the Above-Named Defendant:

You are hereby summoned and required to serve upon plaintiff's attorney an answer to the complaint [which is herewith served upon you] [which is on file in the office of the clerk of the above-named court] within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so judgment by default will be taken against you for the relief demanded in the complaint.

[This action involves, affects, or brings in question real property situated in the County of....., State of Minnesota, described as follows:
The object of this action is.....]

Signed: .....,
Attorney for Plaintiff.
Address: .....

N. B. Use language in first bracket when complaint is served with summons, language in second bracket when complaint is filed, and language in second and third brackets when action involves real property and summons is served by publication. Where one defendant is served personally and another is served by publication both forms of summons may be used.

Form 2
COMPLAINT ON A PROMISSORY NOTE

1. Defendant on or about June 1, 1948, executed and delivered to the plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant promised to pay to plaintiff or order on June 1, 1949 the sum of one thousand dollars with interest thereon at the rate of six percent per annum].

2. Defendant owes to plaintiff the amount of said note and interest.

Wherefore plaintiff demands judgment against defendant for the sum of one thousand dollars, interest, costs, and disbursements.

Signed: .....,
Attorney for Plaintiff.
Address: .....

Form 3
COMPLAINT ON AN ACCOUNT

1. Defendant owes plaintiff one thousand dollars according to the account hereto annexed as Exhibit A.

Wherefore (etc., as in Form 2).

Form 4
COMPLAINT FOR GOODS SOLD AND DELIVERED

1. Defendant owes plaintiff one thousand dollars for goods sold and delivered by plaintiff to defendant between June 1, 1948 and December 1, 1948.

Wherefore (etc., as in Form 2).

Form 5
COMPLAINT FOR MONEY LENT

1. Defendant owes plaintiff one thousand dollars for money lent by plaintiff to defendant on June 1, 1948.

Wherefore (etc., as in Form 2).

Form 6
COMPLAINT FOR MONEY PAID BY MISTAKE

1. Defendant owes plaintiff one thousand dollars for money paid by plaintiff to defendant by mistake on June 1, 1948, under the following circumstances: (here state the circumstances with particularity—see Rule 9.02).

Wherefore (etc., as in Form 2).

Form 7
COMPLAINT FOR MONEY HAD AND RECEIVED

1. Defendant owes plaintiff one thousand dollars for money had and received from one G. H. on June 1, 1948, to be paid by defendant to plaintiff.

Wherefore (etc., as in Form 2).

Form 8
COMPLAINT FOR NEGLIGENCE

1. On June 1, 1948, in a public highway called University Avenue, in St. Paul, Minnesota, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in the sum of ten thousand dollars and costs.

Form 9
COMPLAINT FOR NEGLIGENCE WHERE PLAINTIFF IS UNABLE TO DETERMINE DEFINITELY WHETHER THE PERSON RESPONSIBLE IS C. D. OR E. F. OR WHETHER BOTH ARE RESPONSIBLE AND WHERE HIS EVIDENCE MAY JUSTIFY A FINDING OF WILFULNESS OR OF RECKLESSNESS OR OF NEGLIGENCE

A. B., Plaintiff
vs. COMPLAINT
C. D. and E. F., Defendants

1. On June 1, 1948, in a public highway called University Avenue in St. Paul, Minnesota, defendant C. D. or defendant E. F., or both defendants C. D. and E. F. wilfully or recklessly or negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing said highway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against C. D. or against E. F. or against both in the sum of ten thousand dollars and costs and disbursements.

Form 10
COMPLAINT FOR CONVERSION

1. On or about December 1, 1948, defendant converted to his own use ten bonds of the ..... Company (here insert brief identification as by number and issue) of the value of one thousand dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of one thousand dollars, interest, costs, and disbursements.

Form 11
COMPLAINT FOR SPECIFIC PERFORMANCE OF CONTRACT TO CONVEY LAND

1. On or about December 1, 1948, plaintiff and defendant entered into an agreement in writing, a copy of which is hereto annexed as Exhibit A.

2. In accordance with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

3. Plaintiff now offers to pay the purchase price.

Wherefore plaintiff demands (1) that defendant be required specifically to perform said agreement, (2) damages in the sum of one thousand dollars, and (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of ten thousand dollars.

Form 12
COMPLAINT ON CLAIM FOR DEBT AND TO SET ASIDE FRAUDULENT CONVEYANCE UNDER RULE 18.02

A. B., Plaintiff
vs. COMPLAINT
C. D. and E. F., Defendants

1. Defendant C. D. on or about ..... executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]: (a copy of which is hereto annexed as Exhibit A); (whereby defendant C. D. promised to pay to plaintiff or order on ..... the sum of five thousand dollars with interest thereon at the rate of ..... percent per annum).

2. Defendant C. D. owes to plaintiff the amount of said note and interest.

3. Defendant C. D. on or about ..... conveyed all his property, real and personal (or specify and describe) to defendant E. F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore plaintiff demands:

(1) That plaintiff have judgment against de-

fendant C. D. for five thousand dollars and interest; (2) that the aforesaid conveyance to defendant E. F. be declared void and the judgment herein be declared a lien on said property; (3) that plaintiff have judgment against the defendants for costs and disbursements.

Form 13

COMPLAINT FOR INTERPLEADER AND DECLARATORY RELIEF

1. On or about June 1, 1948, plaintiff issued to G. H. a policy of life insurance whereby plaintiff promised to pay to K. L. as beneficiary the sum of ten thousand dollars upon the death of G. H. The policy required the payment by G. H. of a stipulated premium on June 1, 1948, and annually thereafter as a condition precedent to its continuance in force.

2. No part of the premium due June 1, 1948, was ever paid and the policy ceased to have any force or effect on July 1, 1948.

3. Thereafter, on September 1, 1948, G. H. and K. L. died as the result of a collision between a locomotive and the automobile in which G. H. and K. L. were riding.

4. Defendant C. D. is the duly appointed and acting executor of the will of G. H.; defendant E. F. is the duly appointed and acting executor of the will of K. L.; defendant X. Y. claims to have been duly designated as beneficiary of said policy in place of K. L.

5. Each of defendants, C. D., E. F., and X. Y., is claiming that the above-mentioned policy was in full force and effect at the time of the death of G. H.; each of them is claiming to be the only person entitled to receive payment of the amount of the policy and has made demand for payment thereof.

6. By reason of these conflicting claims of the defendants, plaintiff is in great doubt as to which defendant is entitled to be paid the amount of the policy, if it was in force at the death of G. H.

Wherefore plaintiff demands that the court adjudge:

(1) That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.

(2) That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.

(3) That, if the court shall determine that said policy was in force at the death of G. H., the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.

(4) That plaintiff recover its costs and disbursements.

Form 14

MOTION TO DISMISS, PRESENTING DEFENSES OF FAILURE TO STATE A CLAIM, OF LACK OF SERVICE OF PROCESS, AND OF LACK OF JURISDICTION UNDER RULE 12.02

The defendant moves the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

2. To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds: (Here state reasons, such as, (a) that the defendant is a corporation organized under the laws of Delaware and was not and is not subject to service of process within the State of Minnesota; (b) that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M. N. and X. Y. hereto annexed as Exhibit A and Exhibit B respectively).

3. To dismiss the action on the ground that the court lacks jurisdiction (no justiciable controversy is presented, or as the case may be).

Signed: .....,
Attorney for Defendant.
Address: .....

Notice of Motion

To: .....
Attorney for Plaintiff.

* * *

Please take notice, that the undersigned will bring the above motion on for hearing before the court at a special term thereof, to be held at the court house in the City of ..... on the ..... day of ....., 19....., at ..... o'clock in the (forenoon) (afternoon) or as soon thereafter as counsel can be heard.

Signed: .....,
Attorney for Defendant.
Address: .....

Form 15

ANSWER PRESENTING DEFENSES UNDER RULE 12.02

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

If defendant is indebted to plaintiffs for the goods mentioned in the complaint, he is indebted to them jointly with G. H. G. H. is alive; is a citizen and resident of this state; is subject to the jurisdiction of this court, as to both service of process and venue; can be made a party, but has not been made one.

Third Defense

Defendant admits the allegation contained in paragraphs 1 and 4 of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.

Fourth Defense

The right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

Counterclaim

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint.)

Cross-Claim Against Defendant M. N.

(Here set forth the claim constituting a cross-claim against defendant M. N. in the manner in which a claim is pleaded in a complaint.)

Form 16

ANSWER TO COMPLAINT SET FORTH IN FORM 7, WITH COUNTERCLAIM FOR INTERPLEADER

Defense

Defendant denies the allegations stated to the extent set forth in the counterclaim herein.

Counterclaim for Interpleader

1. Defendant received the sum of one thousand dollars as a deposit from E. F.

2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of it which he claims to have received from E. F.

3. E. F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

Wherefore defendant demands:

(1) That the court order E. F. to be made a party defendant to respond to the complaint and to this counterclaim.*

(2) That the court order the plaintiff and E. F. to interplead their respective claims.

(3) That the court adjudge whether the plaintiff or E. F. be entitled to the sum of money.

(4) That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.

(5) That the court award to the defendant its costs and attorney's fees.

* Rule 13.08 provides for the court ordering parties to a counterclaim, but who are not parties to the original action, to be brought in as defendants.

Form 17

SUMMONS AND COMPLAINT AGAINST THIRD-PARTY DEFENDANT

State of Minnesota, District Court
County of..... .....Judicial District

A. B.,
Plaintiff
vs.
C. D.,
Defendant and Third-Party Plaintiff
vs.
E. F.,
Third-Party Defendant
} SUMMONS

State of Minnesota to the Above-Named Third-Party Defendant:

You are hereby summoned and required to serve upon....., plaintiff's attorney whose address is

....., and upon....., who is attorney for C. D., defendant and third-party plaintiff, and whose address is....., an answer to the third-party complaint which is herewith served upon you within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint.

There is also served upon you herewith a copy of the complaint of the plaintiff which you may answer.

Signed: .....,
Attorney for Defendant and Third-Party Plaintiff.
Address: .....

A. B., Plaintiff
vs.
C. D., Defendant and Third-Party Plaintiff
vs.
E. F., Third-Party Defendant
} THIRD-PARTY COMPLAINT

1. Plaintiff A. B. has served upon C. D. a complaint, a copy of which is hereto attached as Exhibit .....

2. [Here state the grounds upon which C. D. is entitled to recover from E. F. all or part of what A. B. may recover from C. D. The statement should be framed as in an original complaint.]

Wherefore C. D. demands judgment against third-party defendant E. F. for all sums that may be adjudged against defendant C. D. in favor of plaintiff A. B.

Signed: .....,
Attorney for C. D., Third-Party Plaintiff.
Address: .....

Form 18

MOTION TO INTERVENE AS A DEFENDANT UNDER RULE 24

State of Minnesota, District Court
County of .... Judicial District

A. B., Plaintiff
vs.
C. D., Defendant
E. F. Applicant for Intervention
} MOTION TO INTERVENE AS A DEFENDANT

E. F. moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in his proposed answer, of which a copy is hereto attached, on the grounds (here state them) and as such has a defense to plaintiff's claim presenting (both questions of law and of fact) which are common to the main action.

Signed:.....,
Attorney for E. F., Applicant for Intervention.
Address: .....

Notice of Motion

(Contents the same as in Form 14)

State of Minnesota, District Court
County of .... Judicial District

A. B., Plaintiff
vs.
C. D., Defendant
E. F., Intervener
} INTERVENER'S ANSWER

First Defense

Intervener admits the allegations stated in paragraphs ..... and ..... of the complaint; denies the allegations in paragraphs ..... and .....

Second Defense

(Set forth any defenses.)

Signed: .....,
Attorney for E. F., Intervener.
Address: .....

Form 19

REQUEST FOR PRODUCTION OF DOCUMENTS, ETC., UNDER RULE 34

Plaintiff A. B. requests defendant C. D. to respond within ..... days to the following requests:

(1) That defendant produce and permit plaintiff to inspect and to copy each of the following documents:

[Here list the documents either individually or by category and describe each of them.]

[Here state the time, place, and manner of making the inspection and performance of any related acts.]

(2) That defendant produce and permit plaintiff to inspect and to copy, test, or sample each of the following objects:

[Here list the objects either individually or by category and describe each of them.]

[Here state the time, place, and manner of making the inspection and performance of any related acts.]

(3) That defendant permit plaintiff to enter [here describe property to be entered] and to inspect and to photograph, test or sample [here describe the portion of the real property and the objects to be inspected].

[Here state the time, place, and manner of making the inspection and performance of any related acts.]

Signed: .....
Attorney for Plaintiff.
Address: .....

Notice of Motion
(Contents the same as in Form 14)
Exhibit A

State of Minnesota,
County of .....

A. B., being duly sworn says:

(1) (Here set forth all that plaintiff knows which shows that defendant has the papers or objects in his possession or control.)

(2) (Here set forth all that plaintiff knows which shows that each of the above mentioned items is relevant to some issue in the action.)

(Jurat)

Signed: A. B.

Form 20

REQUEST FOR ADMISSION UNDER RULE 36

Plaintiff A. B. requests defendant C. D. within ..... days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this request, is genuine.

(Here list the documents and describe each document.)

2. That each of the following statements is true.

(Here list the statements.)

Signed: .....,
Attorney for Plaintiff.
Address: .....

Form 21

ALLEGATION OF REASON FOR OMITTING PARTY

When it is necessary, under Rule 19.03, for the pleader to set forth in his pleading the names of persons who ought to be made parties, but who are not so made, there should be an allegation such as the one set out below:

John Doe named in this complaint is not made a party to this action (because he is not subject to the jurisdiction of this court) or (for reasons stated.)

APPENDIX A

Special Statutory Proceedings under Rule 81.01

Following is a list of statutes pertaining to special proceedings which will be excepted from these rules insofar as they are inconsistent or in conflict with the procedure and practice provided by these rules:

M.S.A. 1949

48.525 to 48.527	Escheated funds of banks and trust companies
64.32	Quo warranto against fraternal benefit association
67.42	Quo warranto against town mutual fire insurance company
73.09 to 73.16	Actions on orders of State Fire Marshal
80.14 subd. 2	Actions by Commissioner of Securities
80.225	Proceedings by Commissioner of Securities
Chapters 105 to 113	Drainage
Chapter 117	Eminent domain proceedings
160.26*	Drainage of roads
162.20*	Establishment of roads by judicial proceedings
Chapter 166*	Roads or cartways jointly constructed or improved
Chapter 208*	Election contests
Chapter 259	Adoption; change of name
Chapter 277	Delinquent personal property taxes
Chapter 278	Objections and defenses to taxes on real estate
Chapter 279	Delinquent real estate taxes
284.07 to 284.26	Actions involving tax titles
325.21	Quo warranto for violation of statutes regulating trade

M.S.A. 1949	
462.56	Development plan
501.33 to 501.38	Proceedings relating to trusts
Chapter 503	Townsite lands
Chapter 508	Registration of title to lands
514.01 to 514.17	Mechanics liens
514.35 to 514.39	Motor vehicle liens
Chapter 518	Divorce
540.08	Insofar as it provides for action by parent for injury to minor child
Chapter 556	Action by attorney general for usurpation of office, etc.
Chapter 558	Partition of real estate (except that part of second sentence of 558.02 beginning 'a copy of which')
Chapter 559	Actions to determine adverse claims (except that part of third sentence of 559.02 beginning 'a copy of which')
561.11 to 561.15	Petition by mortgagor to cultivate lands
573.02	Action for death by wrongful act (as amended by Laws 1951, Chapter 697, and Laws 1965, Chapter 837)
Chapter 579	Actions against boats and vessels
	Writ of certiorari
	Writ of habeas corpus
	Writ of ne exeat
	Writ of mandamus

*NOTE:
Section 160.26, repealed by Laws 1957, Chapter 943, Section 72; subsequent re-enactment, M.S. 1957, Section 160.181, repealed by Laws 1959, Chapter 500, Article 6, Section 13.
Section 162.20, repealed by Laws 1959, Chapter 500, Article 6, Section 13.
Chapter 166, repealed by Laws 1959, Chapter 500, Article 6, Section 13.
Chapter 208, repealed by Laws 1959, Chapter 675, Article 13, Section 1. The law as to election contests is coded in M.S. 1961, Chapter 209.

APPENDIX B(1)

List of Rules Superseding Statutes

Rule	Statute Superseded M.S.A. 1949	
2.01	540.01	
3.01	541.12	
	543.01	
3.02	543.04	1st sentence
4.01	543.02	
4.02	543.03	
4.03		
(a)	543.05	
(b)	540.15	the clause "and the summons may be served on one or more of them"
	540.151	the clause "and the summons may be served on one or more of them"
(c) 1st sentence:	543.08	1st paragraph, 1st sentence of 3d paragraph, and 4th paragraph
(c) 2d sentence	543.08	2d clause of 1st sentence of 3d paragraph
	543.09	
	543.10	
(d)	543.07	
(e)	543.06	
	365.40, 373.07, 411.07	superseded to extent inconsistent
4.04	543.11	
	543.12	
	543.15	last clause of 1st sentence
4.042	543.04	2d and 3d sentences
4.043	543.13	
4.044	557.01	3d sentence through "but" following semicolon
4.05	None	484.03, 586.05 and 587.02 contain same provision
4.06	543.14	
4.07	544.30, 544.32, 544.34	superseded in part
5.01	543.16	
5.02	543.09	last sentence
	543.10	last sentence
	543.17	
	543.18	
	557.01	clause following semicolon in 3d sentence
	Dist. Ct. Rule 25	
5.04	544.35	
6.02	544.32, 544.34	superseded in part
6.03	544.32	superseded in part
6.04	545.01	
6.05	543.18	
7.01	544.01	
	544.03	
	544.06	3d sentence
	544.08	
	544.09	
	546.02	1st sentence
	Dist.Ct. Rule 7 and Rule 22(c)	
7.02	545.01	1st sentence
	Dist.Ct. Rule 20	
8.01	544.02	(2) & (3)
	544.04	(2)
8.02	544.04	(1), (2), and (3)
8.04	544.18	
8.05	544.05	
	544.06	1st sentence
	544.27	
8.06	544.16	
9 Generally	544.24	
	544.25	
	544.26	
9.03	544.23	
9.04	544.20	
9.05	544.19	
9.08	544.28	
10.01	544.02	(1)
10.02	544.06	2d sentence
	544.27	
	Dist.Ct. Rule 22(d)	to extent inconsistent
11	544.15	last paragraph and that part of 1st sentence as follows: "in a court of record shall be subscribed by the party or his attorney, and"
12.01	543.02	1st sentence
	544.29	2d sentence
	546.29	
12.02	544.03	
	Dist.Ct. Rule 7 and Rule 22(c)	
	543.15	2d sentence
	544.04	
	544.06	
	544.08	
	544.18	
12.05	544.10	
12.06	544.17	
12.08	544.03	subd. 3
13.01	544.05	
13.02	544.05	
13.05	544.05	
13.08	540.16	
14.01	540.16	
14.02	540.16	
15.01	544.29	1st sentence
	544.30	
15.02	544.30	
	544.31	
15.04	544.11	
17.01	540.02	
	540.04	
17.02	540.06	
18.01	544.27	
19.02	540.16	
20.01	540.10	
	544.05	
	544.27	
	548.02	(548.20 covers 2d sentence of 548.02)
22	50.12	to extent inconsistent
	227.17	
	228.20	
	544.12	

Rule	Statute Superseded M.S.A. 1949	
23.01	540.02	
24.01	50.12	to extent inconsistent
	544.13	
24.03	544.13	
25.01	540.12	to extent inconsistent
25.03	540.12	to extent inconsistent
26.01	597.01	
	597.04	
	597.05	
26.04	597.12	
	597.15	
	597.16	
26.05	597.12	
26.07	597.01	
27.01	598.01	
	598.02	
	598.03	
	598.05	to 598.11, inclusive
28.01	597.01	
	597.04	
28.02	597.01	
	597.04	
29	597.06	
30.01	597.01	
	597.02	
30.03	597.07	
	597.10	
30.05	597.07	
	597.08	
30.06	597.08	
	597.09	
30.07	597.14	
31.01	597.04	
	597.05	
31.02	597.07	
	597.08	
	597.09	
	597.10	
32.01	597.13	
32.02	597.13	
32.03	597.12	
	597.13	
32.04	597.13	
34	603.01	
37.02	597.11	
	603.01	
38.01	546.03	2d sentence
38.02	546.26	
38.03	546.05	1st four sentences
39.01	546.03	1st clause of 3d sentence
39.02	546.03	last clause of 3d sentence
40	546.05	5th sentence
41.01	546.39	
41.02	546.38	
	546.39	
42.01	546.04	1st sentence
42.02	546.04	2d sentence
43.02	595.03	
43.04	595.05	
45.04	597.11	
46	547.03	
47.01	Dist.Ct.	Rule 27(a)
47.02	546.095	
49.01	546.20	
	546.14	(Laws 1971, Ch. 715)
49.02	546.20	
50.02	605.06	1st and 2d sentences
51	546.14	
	547.03	
	546.14	(Laws 1971, Ch. 715)
52.01	546.27	1st sentence
53.01	546.33	1st paragraph
	546.34	
53.03	546.36	
53.04	546.36	
53.05	546.36	
54.03	548.01	
54.04	549.10	
55.01	544.07	
58.01	548.03	
58.02	546.25	2d sentence
	547.023	
	Dist.Ct.	Rule 26
59.01	547.01	
59.02	547.02	
59.03	547.02	
59.07	547.04	
	547.05	
59.08	547.06	
60.01	544.32	
	544.34	
60.02	544.32	
	544.34	
61	544.33	
63.02	542.13	
63.03	542.16	
63.04	542.13	
	542.16	
65	585.01	thru 585.04 to extent inconsistent
67.02	544.14	
67.03	576.02	
67.04	485.02	1st sentence
68.01	546.40	
68.02	546.41	
70	557.04	
77.01	546.30	1st sentence
77.04	546.30	3d sentence

APPENDIX B(2)
List of Statutes Superseded by Rules

Statute Superseded M.S.A. 1949		By Rule
50.12	to extent inconsistent	22
		24.01
227.17	to extent inconsistent	22
228.20	to extent inconsistent	22
365.40	to extent inconsistent	4.03(e)
373.07	to extent inconsistent	4.03(e)
411.07	to extent inconsistent	4.03(e)
485.02	1st sentence	67.04
540.01		2.01
540.02		17.01; 23.01
540.04		17.01
540.06		17.02
540.10		20.01
540.12	to extent inconsistent	25.01; 25.03
540.15	the clause "and the summons may be served on one or more of them"	4.03(b)
540.151	the clause "and the summons may be served on one or more of them"	4.03(b)
540.16		13.08; 14.01; 14.02; 19.02
541.12		3.01
542.13		63.02; 63.04
542.16		63.03; 63.04
543.01		3.01
543.02		4.01; 12.01
543.03		4.02
543.04		3.02; 4.042
543.05		4.03(a)
543.06		4.03(e)
543.07		4.03(d)
543.08	all except 2d paragraph and 2d sentence of 3d paragraph	4.03(c)
543.09		4.03(c); 5.02
543.10		4.03(c); 5.02
543.11		4.04
543.12		4.04
543.13		4.043
543.14		4.06
543.15		4.04; 12.01; & generally
543.16		5.01
543.17		5.02
543.18		5.02; 6.05
544.01		7.01
544.02		8.01; 10.01
544.03		7.01; 12.02; 12.08
544.04		8.01; 8.02; 12.02
544.05		8.05; 13.01; 13.02; 13.05; 20.01
544.06		8.05; 7.01; 10.02; 12.02
544.07		55.01
544.08		7.01; 12.02
544.09		7.01
544.10		12.06
544.11		15.04
544.12		22
544.13		24.01; 24.03
544.14		67.02
544.15	last paragraph and part of 1st sentence	

Statute Superseded M.S.A. 1949		By Rule
	reading "in a court of record shall be subscribed by the party or his attorney, and"	11
544.16		8.06
544.17		12.05; 12.06
544.18		8.04; 12.02
544.19		9.05
544.20		9.04
544.23		9.03
544.24		Generally
544.25		Generally
544.26		Generally
544.27		8.05; 10.02; 18.01; 20.01
544.28		9.08
544.29		12.01; 15.01
544.30		4.07; 6.02; 15.01; 15.02
544.31		15.02
544.32		4.07; 6.02; 6.03; 60.01; 60.02; 61
544.33		61
544.34		4.07; 6.02; 60.01; 60.02
544.35		5.04
545.01		6.04; 7.02
546.02	1st sentence	7.01
546.03	2d and 3d sentences	38.01; 39.01; 39.02
546.04		42.01; 42.02
546.05	all except last 3 sentences	38.03; 40
546.095		47.02
546.14	(Laws 1971, Ch. 715)	49.01; 51
546.20		49.01; 49.02
546.25	beginning with "or, in its discretion * * * "	58.02
546.26		38.02
546.27	1st sentence	52.01
546.29		12.01
546.30	1st and 3d sentences	77.01; 77.04
546.33	1st paragraph	53.01
546.34		53.01
546.36		53.03; 53.04; 53.05
546.38		41.02
546.39		41.01; 41.02
546.40		68.01
546.41		68.02
547.01		59.01
547.02		59.02; 59.03
547.023		58.02
547.03		46; 51
547.04		59.07
547.05		59.07
547.06		59.08
548.01		54.03
548.02		20.01
548.03		58.01
549.10		54.04
557.01	3d sentence	4.044; 5.02
557.04		70
576.02		67.03
585.01	to extent inconsistent	65
585.02	to extent inconsistent	65
585.03	to extent inconsistent	65
585.04	to extent inconsistent	65
595.03		43.02
595.05		43.04
597.01		26.01; 26.07; 28.01; 28.02; 30.01
597.02		30.01
597.04		26.01; 28.01; 28.02; 31.01
597.05		26.01; 31.01
597.06		29
597.07		30.03; 30.05; 31.02
597.08		30.05; 30.06; 31.02
597.09		30.06; 31.02
597.10		30.03; 31.02
597.11		37.02; 45.04
597.12		26.04; 26.05; 32.03
597.13		32.01; 32.02; 32.03; 32.04
597.14		30.07
597.15		26.04
597.16		26.04
598.01		27.01
598.02		27.01
598.03		27.01
598.05		27.01
598.06		27.01
598.07		27.01
598.08		27.01
598.09		27.01
598.10		27.01
598.11		27.01
603.01		34; 37.02
605.06	1st and 2d sentences	50.02

District Court Rules Superseded

Dist. Rule		By Rule
7		7.01; 12.02
20	to extent inconsistent	7.02
22(c) & (d)	to extent inconsistent	7.01; 10.02; 12.02
25		5.02
26		58.02

INDEX TO RULES OF CIVIL PROCEDURE

APPENDIX 9

RULES OF CRIMINAL PROCEDURE FOR THE DISTRICT COURT OF MINNESOTA

TABLE OF RULES

RULE 1

SCOPE, APPLICATION, GENERAL PURPOSE AND CONSTRUCTION

1.01 Scope and Application.

These rules govern the procedure in prosecutions for felonies, gross misdemeanors, misdemeanors, and petty misdemeanors in the municipal, county and district courts in the State of Minnesota. Except where expressly provided otherwise, misdemeanors as referred to in these rules shall include state statutes, local ordinances, charter provisions, rules, or regulations punishable either alone or alternatively by a fine or by imprisonment of not more than 90 days.

The term "County Court" as used in these rules shall include a Municipal Court, except where expressly stated otherwise.

1.02 Purpose and Construction.

These rules are intended to provide for the just, speedy determination of criminal proceedings. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

RULE 2

COMPLAINT

2.01 Contents; Before Whom Made.

The complaint is a written signed statement of the essential facts constituting the offense charged.

Except as provided in Rules 11.06 and 15.08, it shall be made upon oath before such judge, judicial officer, or justice of the peace as may be authorized by law to issue criminal process upon the offense charged in the complaint. Provided, however, when authorized by court rule, the oath may be made before the clerk or deputy clerk of court when the offense alleged to have been commited is punishable by fine only.

Except as provided in Rules 11.06 and 15.08, the facts establishing probable cause to believe that an offense has been committed and that the defendant committed it shall be set forth separately in writing in or with the complaint, or in supporting affidavits, and may be supplemented by sworn testimony of witnesses taken before the issuing officer. If such testimony is taken, a note so stating shall be made on the face of the complaint by the issuing officer. The testimony shall be recorded by a reporter or recording instrument and shall be transcribed and filed.

2.02 Approval of Prosecuting Attorney.

A complaint shall not be filed or process issued thereon without the written approval, endorsed on the complaint, of the prosecuting attorney authorized to prosecute the offense charged, unless such judge or judicial officer as may be authorized by law to issue process upon the offense certifies on the complaint that the prosecuting attorney is unavailable and the filing of the complaint and issuance of process thereon should not be delayed.

RULE 3

WARRANT OR SUMMONS UPON COMPLAINT

3.01 Issuance.

If it appears from the facts set forth separately in writing in or with the complaint and any supporting affidavits or supplemental sworn testimony that there is probable cause to believe that an offense has been committed and that the defendant committed it, a warrant for the arrest of the defendant shall be issued to any person authorized by law to execute it, or a summons for the appearance of the defendant shall issue in lieu thereof.

The warrant or summons shall be issued by such judge, judicial officer or justice of the peace as may be authorized by law to issue criminal process upon the offense charged in the complaint or indictment. Provided that when the offense is punishable by fine only, the clerk or deputy clerk of court may also issue the summons when authorized by court rule.

When the offense is punishable by fine only, in misdemeanor cases, a summons shall be issued in lieu of a warrant.

For all other misdemeanors, a summons shall be issued rather than a warrant unless it reasonably appears that there is a substantial likelihood that the defendant will fail to respond to a summons, or the whereabouts of the defendant is unknown, or the arrest of the defendant is necessary to prevent imminent bodily harm to himself or another.

The issuing officer may issue a summons instead of a warrant whenever he is satisfied that a warrant is unnecessary to secure the appearance of the defendant, and shall issue a summons whenever requested to do so by the prosecuting attorney authorized to prosecute the offense charged in the complaint.

If a defendant fails to appear in response to a summons, a warrant shall issue.

If a defendant corporation charged with a felony or gross misdemeanor fails to appear in response to a summons, the case shall be transferred to the district court for further proceedings.

3.02 Contents of Warrant or Summons.

Subd. 1 **Warrant.** The warrant shall be signed by the issuing officer and shall contain the name of the defendant, or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint, and the warrant and complaint may be combined in one form. For felonies and gross misdemeanors the amount of bail and other conditions of release may be set by the issuing officer and endorsed on the warrant. For misdemeanors, the amount of bail shall and other conditions of release may be set by the issuing officer and endorsed on the warrant.

Subd. 2. **Directions of Warrant.**

The warrant shall direct as follows:

(1) **Issuance By County or Municipal Court.**

When the warrant is issued by a county or municipal court, that the defendant be brought promptly before the court that issued the warrant if it is in session.

(2) **Issuance by Justice of Peace.**

When the warrant is issued by a justice of the peace, that the defendant be brought promptly before a county or municipal court in the county where the alleged offense was committed if such court is in session.

(3) **Available Judge or Judicial Officer.**

If the county or municipal court specified in Rule 3.02, subd. 2 (1) or (2) is not in session, that the defendant be brought before a judge or judicial officer of such court, without unnecessary delay, and in any event not later than 36 hours after the arrest, or as soon thereafter as such judge or judicial officer is available.

Subd. 3 **Summons.** The summons shall summon the defendant to appear at a stated time and place to answer the complaint before the court issuing it and shall be accompanied by a copy of the complaint. If the summons is issued by a justice of the peace it shall summon the defendant to appear before the county court or a municipal court in the county where the alleged offense was committed.

3.03 Execution or Service of Warrant or Summons; Certification.

Subd. 1 **By Whom.** The warrant shall be executed by an officer authorized by law. The summons may be served by any officer authorized to serve a warrant, and if served by mail, it may also be served by the clerk of the court from which it is issued.

Subd. 2 **Territorial Limits.** The warrant may be executed or the summons may be served at any place within the State except where prohibited by law.

Subd. 3 **Manner.** The warrant shall be executed by the arrest of the defendant. If the offense charged is a misdemeanor the defendant shall not be arrested on Sunday, or on a legal holiday, or between the hours of 9:00 o'clock p.m. and 9:00 o'clock a.m. on any other day unless the offense is punishable by incarceration, and then only by direction of the issuing officer, endorsed on the warrant when exigent circumstances exist. The officer need not have the warrant in his possession at the time of the arrest, but shall inform the defendant of the existence of the warrant and of the charge against him.

The summons shall be served on an individual defendant by delivering a copy to him personally or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address. A summons directed to a corporation shall be issued and served in the manner prescribed by law for service of summons on corporations in civil actions or by mail addressed to the corporation at its principal place of business or to an agent designated by the corporation to receive service of process.

Subd. 4 **Certification; Unexecuted Warrant or Summons.** The officer executing the warrant shall certify the execution thereof to the court before which the defendant is brought.

On or before the date set for appearance the officer or clerk of court to whom a summons was delivered for service shall certify the service thereof to the court before which the defendant was summoned to appear.

At the request of the prosecuting attorney made at any time while the complaint is pending, a warrant returned unexecuted or a summons returned unserved or a duplicate thereof may be delivered by the issuing officer to any authorized officer or person for execution or service.

3.04 Defective Warrant, Summons or Complaint.

Subd. 1 **Amendment.** A person arrested under a warrant or appearing in response to a summons shall not be discharged from custody or dismissed because of any defect in form in the warrant or summons, if the warrant or summons is amended so as to remedy the defect.

Subd. 2 **Issuance of New Complaint, Warrant or Summons.** During pre-trial proceedings affecting any person arrested under a warrant or appearing in response to a summons issued upon a complaint, the proceedings may be continued to permit a new complaint to be filed and a new warrant or summons issued thereon, provided the prosecuting attorney promptly moves for such continuance on the ground:

(a) that the initial complaint does not properly name or describe the defendant or the offense with which he is charged; or

(b) that on the basis of the evidence presented at the proceeding it appears that there is probable cause to believe that the defendant has committed a different offense from that charged in the complaint and that he intends to charge the defendant with such offense.

If the proceedings are continued, the new complaint shall be filed and process issued thereon as soon as possible. In misdemeanor cases, if the defendant during the continuance is unable to post any bail which might be required under Rule 6.02, subd. 1, then he must be released subject to *such non-monetary conditions as deemed necessary by the court under* that Rule.

RULE 4

PROCEDURE UPON ARREST UNDER WARRANT FOLLOWING A COMPLAINT OR WITHOUT A WARRANT

4.01 Arrest Under Warrant.

A defendant arrested under a warrant issued upon a complaint shall be taken before a court, judge or judicial officer as directed in the warrant.

4.02 Arrest Without a Warrant.

Following an arrest without a warrant:

Subd. 1 **Release by Arresting Officer.** If the arresting officer or his superior determines that further detention is not justified, such officer or his superior shall immediately release the arrested person from custody.

Subd. 2 **Citation.** The arresting officer or his superior may issue a citation to and release the arrested person as provided by these rules, and must do so if so ordered by the prosecuting attorney or by a judge or judicial officer of the county court of the county where the alleged offense occurred or by a judge of a municipal court in such county or by any person designated by the court to perform that function.

Subd. 3 **Notice to Prosecuting Attorney.** As soon as practical after the arrest, the arresting officer or his superior shall notify the prosecuting attorney of the arrest.

Subd. 4 **Release by Prosecuting Attorney.** The prosecuting attorney may order the arrested person released from custody.

Subd. 5 **Appearance Before Judge or Judicial Officer.**

(1) **Before Whom and When.**

If an arrested person is not released pursuant to this rule or Rule 6, he shall be brought before the nearest available judge of the county court of the county where the alleged offense occurred or judicial officer of such court or judge of a municipal court in such county. He shall be brought before such judge or judicial officer without unnecessary delay, and in any event, not more than 36 hours after the arrest, exclusive of Sundays and legal holidays, or as soon therafter as such judge or judicial officer is available. Provided, however, in misdemeanor cases, if the defendant is not brought before a judge or judicial officer within the 36-hour limit, he shall be released upon citation as provided in Rule 6.01, subd. 2.

(2) **Complaint Filed; Order of Detention; Felonies and Gross Misdemeanors.**

At or before the time of the defendant's appearance as required by Rule 4.02, subd. 5 (1), a complaint shall be presented to the judge or judicial officer referred to in rule 4.02, subd. 5 (1) or to any judge or judicial officer authorized to issue criminal process upon the offense charged in the complaint. The complaint shall be filed forthwith and an order for detention of the defendant may be issued, provided (1) the complaint contains the written approval of the prosecuting attorney or the certificate of the judge or judicial officer as provided by Rule 2.02; and (2) the judge or judicial officer determines from the facts set forth separately in writing in or with the complaint and any supporting affidavits or supplemental sworn testimony that there is probable cause to believe that an offense has been committed and that defendant committed it. Otherwise, the defendant shall be discharged, the complaint and any supporting papers shall not be filed, and no record made of the proceedings.

(3) **Complaint or Tab Charge; Misdemeanors.**

If there is no complaint made and filed by the time of the defendant's first appearance in court as required by this rule for a misdemeanor charge, the clerk shall enter upon the records a brief statement of the offense charged, including a citation of the statute, rule, regulation, ordinance or other provision of law which the defendant is alleged to have violated. This brief statement shall be the complaint and is referred to as a tab charge in these rules. However, if the judge orders, or if requested by the person charged or his attorney, a formal complaint shall be made and filed. Such formal complaint shall be made and filed within 48 hours after the demand therefore, if the defendant is in custody or within thirty (30) days of such demand if the defendant is not in custody. If no valid complaint has been made and filed within the time required by this rule, the defendant shall be discharged, the proposed complaint, if any, and any supporting papers shall not be filed, and no record shall be made of the proceedings. A complaint is valid when it (1) complies with the requirements of Rule 2, and (2) the judge has determined from the complaint and any supporting affidavits or supplemental sworn testimony that there is probable cause to believe that an offense has been committed. Upon the filing of a valid complaint, the defendant shall be arraigned. When a charge has been dismissed for failure to file a valid complaint and a valid complaint is thereafter filed, a warrant shall not be issued on that complaint unless a summons has been issued first and either could not be served, or, if served, the defendant failed to appear in response thereto.

RULE 5

PROCEDURE ON FIRST APPEARANCE

5.01 Statement to the Defendant.

When a defendant arrested with or without a warrant or served with a summons or citation appears initially before a judge or judicial officer, he shall be advised of the nature of the charge against him. If the *defendant has not previously received a copy of the complaint, if any,* and supporting affidavits and the transcription of any supplementary testimony, he shall be provided with copies thereof. Upon motion of the prosecuting authority, the court may require that the defendant be booked, photographed and fingerprinted. In cases of felonies and gross misdemeanors, the defendant shall not be called upon to plead.

The judge or judicial officer shall advise the defendant substantially as follows:

(a) That he is not required to say anything or submit to interrogation and that anything he says may be used against him in this or in any subsequent proceedings;

(b) That he has a right to counsel in all subsequent proceedings, including police line-ups and interrogations, and if he appears without counsel and is financially unable to afford counsel, that *counsel will forthwith be appointed* without cost to him if he is charged with an offense punishable upon conviction by incarceration;

(c) That he has a right to communicate with his counsel and that a continuance will be granted if necessary to enable defendant to obtain or speak to counsel;

(d) Whether he has a right to a jury trial or a trial to the court;

(e) That if the offense is a misdemeanor, he may either plead guilty or not guilty, or demand a complaint prior to entering a plea.

In misdemeanor cases, the judge or judicial officer may advise a number of defendants at once of these rights, but each defendant shall be asked individually before he is arraigned whether he heard and understood these rights as explained earlier.

5.02 Appointment of Counsel.

Subd. 1 **Felonies and Gross Misdemeanors.** If the defendant is not represented by counsel and is financially unable to afford counsel, the judge or judicial officer shall appoint counsel for him.

Subd. 2 **Misdemeanors.** Unless the defendant charged with a misdemeanor punishable upon conviction by incarceration voluntarily waives counsel in writing or on the record, the court shall appoint counsel for him if he appears without counsel and is financially unable to afford counsel. The court shall not accept the waiver unless the court is satisfied that it is voluntary and has been made by the defendant with full knowledge and understanding of his rights. If the court is not so satisfied, it shall not proceed until the defendant is provided with counsel either of his own choosing or by assignment.

Notwithstanding the waiver, the court may designate counsel to be available to assist a defendant who cannot afford counsel and to consult with him at all stages of the proceedings.

A defendant who proceeds at the arraignment without counsel does not waive his future right to counsel and the court must inform him that he continues to have that right at all stages of the proceeding. Provided that for misdemeanor offenses not punishable upon conviction by incarceration, the court upon request of the defendant or interested counsel may appoint an attorney for a defendant financially unable to afford counsel.

Subd. 3 **Standard of Indigency.** A defendant is financially unable to obtain counsel if he is financially unable to obtain adequate representation without substantial hardship for himself or his family.

Subd. 4 **Financial Inquiry.** An inquiry to determine financial eligibility of a defendant for the appointment of counsel shall be made whenever possible prior to the court appearance and by such persons as the court may direct. This inquiry may be combined with the pre-release investigation provided for in Rule 6.02, subd. 3.

Subd. 5 **Partial Eligibility and Reimbursement.** The ability to pay part of the cost of adequate representation at any time while the charges are pending against a defendant shall not preclude the appointment of counsel for the defendant. The court may require a defendant, to the extent of his ability, to compensate the governmental unit charged with paying the expense of appointed counsel.

5.03 Date of Appearance in District Court.

If the defendant is charged with a felony or gross misdemeanor, the judge or judicial officer shall set a date for and order the appearance of the defendant before the district court having jurisdiction to try the offense charged in accordance with a schedule or other directive established by order of the district court, which appearance date shall not be later than ten (10) days after defendant's initial appearance before such judge or judicial officer.

The defendant shall be informed of the time and place of such appearance. The time for appearance may be extended by the district court for good cause.

5.04 Plea in Misdemeanor Cases.

Subd. 1 **Entry of Plea.** If no complaint has been issued against the defendant, he shall be asked whether he wishes to exercise or waive his right to a complaint pursuant to Rule 4.02, subd. 5 (3). When a valid complaint has been made and filed, or a brief statement entered on the record as authorized under Rule 4.02, subd. 5 (3), the defendant shall be called upon to plead or be given time to plead. The arraignment shall be conducted in open court. A defendant may appear by counsel and a corporation shall appear by counsel or by a duly authorized officer.

Subd. 2 **Guilty Plea; Offenses From Other Jurisdictions.** If he enters a plea of guilty, the presentencing and sentencing procedures provided by these rules shall be followed. Following a plea of guilty, the defendant may be permitted upon his or his attorney's request, to plead guilty to other misdemeanor offenses committed within the jurisdiction of other county courts in the state provided that such plea has been approved by the prosecuting attorney of the governmental unit in which the offenses are or could be charged. Prior to the acceptance of such a plea, the defendant shall be tab charged with the offense pursuant to Rule 4.02, subd. 5 (3). Entry of such a plea constitutes a waiver of venue.

Any fines imposed and collected upon a guilty plea entered under this rule to an offense arising in another jurisdiction shall be remitted by the clerk of the court imposing the fine to the clerk of the court which originally had jurisdiction over the offense. The clerk of the court of original jurisdiction upon receiving the remittance shall disburse it as required by law for all other similar fines.

Subd. 3 **Not Guilty Plea and Jury Trial.** If the defendant enters a plea of not guilty to a charge on which he is entitled to a jury trial, he shall be asked whether he wishes to exercise or waive that right. The defendant may waive jury trial either personally in writing or orally on the record in open court. If the defendant fails to waive or demand a jury trial, a jury trial demand shall be entered in the record.

Subd. 4 **Demand or Waiver of Evidentiary Hearing.** If the defendant pleads not guilty and a notice of evidence and identification procedures has been given by the prosecution as required by Rule 7.01, the defendant and the prosecution shall each either waive or demand an evidentiary hearing as provided by Rule 12.04. Such demand or waiver may be made either orally on the record or in writing and shall be made at the first court appearance after the notice has been given by the prosecution.

Subd. 5 **Special Appearances Abolished.** Special appearances are abolished and any challenge to the personal jurisdiction of the court shall be decided as provided in Rule 10.02.

5.05 Bail or Release.

The judge or judicial officer shall set and advise the defendant of the conditions under which he may be released under these rules for appearance.

5.06 Record.

Minutes of the proceedings shall be kept unless the judge or judicial officer directs that a verbatim record thereof shall be made, and provided that any plea of guilty to an offense punishable by incarceration shall comply with the requirements of Rule 13.05 and Rule 15.09.

5.07 Transmission to District Court.

If the defendant is charged with a felony or gross misdemeanor, the record and all papers in the proceeding shall be transmitted to the clerk of the district court having jurisdiction to try the offense charged in the complaint.

RULE 6
PRE-TRIAL RELEASE

6.01 Release on Citation by Law Enforcement Officer Acting Without a Warrant.

Subd. 1 **Mandatory Issuance of Citation.**

(1) **For Misdemeanors.**

(a) **By Arresting Officers.** Law enforcement officers acting without a warrant, who have decided to proceed with prosecution, shall issue citations to persons subject to lawful arrest for misdemeanors, unless it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct, or that there is a substantial likelihood that the accused will fail to respond to a citation. The citation may be issued in lieu of an arrest, or if an arrest has been made, in lieu of continued detention. If the defendant is detained, the officer shall report to the court the reasons for the detention. Ordinarily, for misdemeanors not punishable by incarceration, a citation shall be issued if the accused signs the citation agreeing to appear as provided in Rule 6.01, subd. 3.

(b) **At Place of Detention.** When a person arrested without a warrant for a misdemeanor or misdemeanors, is brought to a police station or county jail, the officer in charge of the police station or the county sheriff in charge of the jail or an officer designated by the sheriff shall issue a citation in lieu of continued detention unless it reasonably appears to the officer that detention is necessary to prevent bodily harm to the accused or another or further criminal conduct or that there is a substantial likelihood that the accused will fail to respond to a citation. If the defendant is detained, the officer in charge shall report to the court the reasons for the detention. Provided, however, that for misdemeanors not punishable by incarceration, a citation shall be issued if the accused signs the citation agreeing to appear as provided in Rule 6.01, subd. 3.

(2) **For Misdemeanors, Gross Misdemeanors and Felonies When Ordered by Prosecuting Attorney or Judge.**

An arresting officer acting without a warrant or the officer in charge of a police station or other authorized place of detention to which a person arrested without a warrant has been brought shall issue a citation in lieu of continued detention if so ordered by the prosecuting attorney or by the judge of a district, county or municipal court or by any person designated by the court to perform that function.

Subd. 2 **Permissive Authority to Issue Citations for Gross Misdemeanors and Felonies.** When a law enforcement officer acting without a warrant is entitled to make an arrest for a felony or gross misdemeanor or a person arrested without a warrant for a felony or gross misdemeanor is brought to a police station or county jail, the officer in charge of the police station or the county sheriff in charge of the jail or an officer designated by the sheriff may issue a citation in lieu of arrest or in lieu of continued detention if an arrest has been made, unless it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct or that the accused may fail to appear in response to the citation.

Subd. 3 **Form of Citation.** A citation shall direct the accused person to appear before a designated court or violations bureau at a specified time and place, and need not be issued if the accused refuses to sign the citation promising to appear at that time and place. The citation shall state that if the defendant fails to appear in response to the citation, a warrant of arrest may issue.

Subd. 4 **Lawful Searches.** The issuance of a citation does not affect a law enforcement officer's authority to conduct an otherwise lawful search.

Subd. 5 **Persons in Need of Care.** Notwithstanding the issuance of a citation, a law enforcement officer may take the cited person to an appropriate medical facility if he appears mentally or physically unable to care for himself.

6.02 Release by Judge, Judicial Officer or Court.

Subd. 1 **Conditions of Release.** Any person charged with an offense shall be released without bail pending his first court appearance when ordered by the prosecuting attorney, the judge of a district or county court, or by any person designated by the court to perform that function. At his appearance before a judge, judicial officer, or court, a person so charged shall be ordered released pending trial or hearing on his personal recognizance or on order to appear or upon the execution of an unsecured appearance bond in a specified amount, unless the court, judge or judicial officer determines, in the exercise of his discretion, that such a release will be inimical of public safety or will not reasonably assure the appearance of the person as required. When such a determination is made, the court, judge or judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or hearing, or when otherwise required, or, if no single condition gives that assurance, any combination of the following conditions:

(a) Place the person in the care and supervision of a designated person or organization agreeing to supervise him;

(b) Place restrictions on the travel, association or place of abode during his period of release;

(c) Require the execution of an appearance bond in an amount set by the court with sufficient solvent sureties, or the deposit of cash or other sufficient security in lieu thereof; or

(d) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

In any event, the court shall also fix the amount of money bail without other conditions upon which the defendant may obtain his release.

The defendant's release shall be conditioned on his appearance at trial or hearing, including the Omnibus Hearing, evidentiary hearing and the pretrial conference prescribed by these rules, or at the taking of any deposition that may be ordered by the court.

Subd. 2 **Determining Factors.** In determining which conditions of release will reasonably assure such appearance, the judge, judicial officer or court shall on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, his record of appearance at court proceedings or flight to avoid prosecution, and the safety of any other person or of the community.

Subd. 3 **Pre-Release Investigation.** In order to acquire the information required for determining the conditions of release, an investigation into the accused's background may be made prior to or contemporaneously with the defendant's appearance before the court, judge or judicial officer. The court's probation service or other qualified facility available to the court may be directed to conduct the investigation. Any information obtained from the defendant in response to an inquiry during the course of the investigation and any evidence derived from such information, shall not be used against the defendant at trial. This shall not preclude the use of evidence obtained by other independent investigation.

Subd. 4 **Review of Conditions of Release.** Upon motion, the court before which the case is pending shall review the conditions of release.

6.03 Violation of Conditions of Release.

Subd. 1 **Warrant.** Upon an application of the prosecuting attorney alleging that a defendant has violated the conditions of his release, the judge, judicial officer or court that released the defendant may issue a warrant directing that the defendant be arrested and taken forthwith before such judge, judicial officer or court. A summons directing the defendant to appear before such judge, judicial officer or court at a specified time shall be issued instead of a warrant unless it reasonably appears that there is a substantial likelihood that the defendant will fail to respond to the summons or when the whereabouts of the defendant is unknown.

Subd. 2 **Arrest Without Warrant.** A law enforcement officer having probable cause to believe that a released defendant has violated the conditions of his release may, if it is impracticable to secure a warrant or summons as provided in this rule, arrest the defendant and take him forthwith before such judge, judicial officer or court. In a misdemeanor case, a citation shall be issued in lieu of an arrest or continued detention unless it reasonably appears that the arrest or detention is necessary to prevent bodily harm to the accused or another or to prevent further criminal conduct, or that there is a substantial likelihood that the defendant will fail to respond to the citation.

Subd. 3 **Hearing.** After hearing and upon finding that the defendant has violated conditions imposed on his release, the judge, judicial officer or court shall continue the release upon the same conditions or impose different or additional conditions for defendant's possible release as provided for in Rule 6.02, subd. 1.

Subd. 4 **Commission of Crime.** When it is shown that a complaint has been filed or indictment returned charging a defendant with the commission of a crime while released pending adjudication of a prior charge, the court with jurisdiction over the prior charge may, after notice and hearing, review and revise the conditions of his possible release as provided for in Rule 6.02, subd. 1.

6.04 Forfeiture.

The procedure for forfeiture of an appearance bond shall be as provided by the law.

6.05 Supervision of Detention.

The trial court shall exercise supervision over the detention of defendants within the court's jurisdiction for the purpose of eliminating all unnecessary detention. The officer in charge of a detention facility shall make at least bi-weekly reports to the prosecuting attorney and to the court having jurisdiction over the prisoners listing each defendant who has been held in custody pending criminal charges, arraignment, trial, sentence or revocation of probation or parole for a period in excess of ten (10) days in felony and gross misdemeanor cases, and in excess of two (2) days in misdemeanor cases.

6.06 Trial Date in Misdemeanor Cases.

A defendant shall be tried as soon as possible after entry of a not guilty plea. On demand made in writing or orally on the record by the prosecuting attorney or the defendant, the defendant shall be tried within sixty (60) days from the date of the demand unless good cause is shown by the prosecution or defendant why he should not be brought to trial within that period. The time period shall not begin to run earlier than the date of the not guilty plea. Where the defendant is in custody, he shall be tried within ten (10) days of his demand and if not so tried, he shall be released subject to such non-monetary release conditions as may be required by the court under Rule 6.02, subd. 1.

RULE 7
NOTICE BY PROSECUTING ATTORNEY OF EVIDENCE AND IDENTIFICATION PROCEDURES; COMPLETION OF DISCOVERY

7.01 Notice of Evidence and Identification Procedures.

In any case where a jury trial is to be held, when the prosecution has (1) any evidence against the defendant obtained as a result of a search, search and seizure, wiretapping, or any form of electronic or mechanical eavesdropping; (2) any confessions, admissions or statements in the nature of confessions made by the defendant; (3) any evidence against the defendant discovered as the result of confessions, admissions or statements in the nature of confessions made by the defendant; or (4) when in the investigation of the case against the defendant, any identification procedures were followed, including but not limited to lineups or other observations of the defendant and the exhibition of photographs of the defendant or of any other persons. The prosecuting attorney shall notify the defendant or his counsel in writing of such evidence and identification procedures. In felony and gross misdemeanor cases notice shall be given on or before the date set for the defendant's initial appearance in the district court as provided by Rule 5.03. In misdemeanor cases, notice shall be given on or before the date set for the defendant's pretrial conference if one is scheduled or seven (7) days before trial if no pretrial conference is to be held.

Such notice may be given either personally or by ordinary mail to the defendant's or his counsel's last known residential or business address or by leaving it at such address with a person of suitable age and discretion then residing or working there.

7.02 Notice of Additional Offense.

The prosecuting attorney shall notify the defendant or his counsel in writing of any additional offenses the evidence of which may be offered at the trial under any exceptions to the general exclusionary rule. In cases of felonies and gross misdemeanors, the notice shall be given at the Omnibus Hearing under Rule 11 or as soon thereafter as the offenses become known to the prosecuting attorney. In misdemeanor cases, the notice shall be given at or before the pretrial conference under Rule 12 if held or as soon thereafter as the offense becomes known to the prosecuting attorney. If no pretrial conference is held, then the notice shall be given at least seven (7) days before trial or as soon thereafter as known to the prosecuting attorney. Such additional offenses shall be described with sufficient particularity to enable the defendant to prepare for trial. The notice need not include offenses for which he has been previously prosecuted or those that may be offered in rebuttal of the defendant's character witnesses or as a part of the occurrence or episode out of which the offense charged against defendant arose.

7.03 Completion of Discovery.

Before the date set for the Omnibus Hearing, in felonies and gross misdemeanor cases, the prosecution and defendant shall complete the discovery that is required by Rule 9.01, subds. 1 and 2 to be made without the necessity of an order of court.

In misdemeanor cases, without order of court the prosecuting attorney on request of the defendant or his attorney shall, prior to arraignment or at any time before trial, permit the defendant or his attorney to inspect the police investigatory reports. Any other discovery shall be by consent of the parties or by motion to the court.

RULE 8
DEFENDANT'S INITIAL APPEARANCE BEFORE THE DISTRICT COURT FOLLOWING THE COMPLAINT IN FELONY AND GROSS MISDEMEANOR CASES

At a defendant's initial appearance before the district court following the complaint, the procedure shall be as follows:

8.01 Arraignment.

Unless the offense charged in the complaint is a homicide and the prosecuting attorney notifies the court that the case will be presented to a grand jury, or the offense is punishable by life imprisonment, the defendant shall be arraigned upon the complaint or the complaint as it may be amended, and the procedure prescribed by Rules 8.02 to 8.06 shall be followed. If the offense charged in the complaint is a homicide and the prosecuting attorney notifies the court that the case will be presented to the grand jury, or if the offense is punishable by life imprisonment, the presentation of the case to the grand jury shall commence within 14 days from the date of defendant's appearance in the district court under this rule, and an indictment or report of no indictment shall be returned within a reasonable time. If an indictment is returned, the Omnibus Hearing under Rule 11 shall be held as provided by Rule 19.04, subd. 5.

8.02 Plea of Guilty.

If he enters a plea of guilty, the pre-sentencing and sentencing procedures provided by these rules shall be followed.

8.03 Demand or Waiver of Hearing.

If the defendant does not plead guilty, the defendant and the prosecution shall each either waive or demand a hearing as provided by Rule 11.02 on the admissibility at trial of any of the evidence specified in the notice given by the prosecuting attorney under Rule 7.01 or the admissibility of any evidence obtained as a result of such evidence.

8.04 Plea and Time and Place of Omnibus Hearing.

(a) If the hearing on the issues set forth in Rule 8.03 is waived, the defendant may either enter a plea of guilty or be given time within which to plead. If he does not plead guilty, the Omnibus Hearing provided for by Rules 11.03 and 11.04, exclusive of such issues, shall be held within the time hereinafter specified.

(b) If hearing on either of the issues set forth in Rule 8.03 is demanded, the Omnibus Hearing provided for by Rules 11.02, 11.03 and 11.04, including such issues, shall be held within the time hereinafter specified.

(c) The Omnibus Hearing provided for by Rule 11 shall be scheduled for a date not later than fourteen (14) days after the defendant's initial appearance before the district court. The district court, or if the hearing is referred as provided by Rule 11.01, the county or municipal court, may extend such time for good cause upon motion of the defendant or the prosecution or upon the court's own motion.

8.05 Record.

A verbatim record shall be made of the proceedings at the defendant's initial appearance before the district court.

8.06 Conditions of Release.

In accordance with the rules governing bail or release, the district court may continue or amend those conditions for defendant's release fixed by the county or municipal court.

RULE 9
DISCOVERY IN FELONY AND GROSS MISDEMEANOR CASES

9.01 Disclosure by Prosecution.

Subd. 1 **Disclosure by Prosecution Without Order of Court.** Without order of court, the prosecuting attorney on request of defense counsel shall, before the date set for Omnibus Hearing provided for by Rule 11, make the following disclosures:

(1) **Trial Witnesses; Grand Jury Witnesses.**

(a) The prosecuting attorney shall disclose to defense counsel the names and addresses of the persons whom he intends to call as witnesses at the trial together with their prior record of convictions, if any, within his actual knowledge. He shall permit defense counsel to inspect and reproduce such witnesses' relevant written or recorded statements and any written summaries within his knowledge of the substance of relevant oral statements made by such witnesses to prosecution agents.

(b) The fact that the prosecution has supplied the name of a trial witness to defense counsel shall not be commented on in the presence of the jury.

(c) If the defendant is charged by indictment, the prosecuting attorney shall disclose to defense counsel the names and addresses of the witnesses who testified before the grand jury in the case against the defendant.

(2) **Statements of Defendants and Accomplices.**

The prosecuting attorney shall disclose and permit defense counsel to inspect and reproduce any relevant written or recorded statements made by defendants and accomplices within the possession or control of the prosecution, the existence of which is known by the prosecuting attorney, and shall provide defense counsel with the substance of any oral statements made by defendants and accomplices, whether before or after arrest, which the prosecution intends to offer in evidence at the trial.

(3) **Documents and Tangible Objects.**

The prosecuting attorney shall disclose and permit defense counsel to inspect and reproduce books, papers, documents, photographs and tangible objects which the prosecuting attorney intends to introduce in evidence at the trial, or which were obtained from or belong to the defendant, or concerning which the prosecuting attorney intends to offer evidence at the trial; and the prosecuting attorney shall also permit defense counsel to inspect and photograph buildings or places concerning which the prosecuting attorney intends to offer evidence at the trial.

(4) **Reports of Examinations and Tests.**

The prosecuting attorney shall disclose and permit defense counsel to inspect and reproduce any results or reports of physical or mental examinations, scientific tests, experiments or comparisons made in connection with the particular case.

(5) **Criminal Record of Defendant.**

The prosecuting attorney shall inform defense counsel of the record of prior convictions of the defendant that is known to the prosecuting attorney provided the defense counsel informs the prosecuting attorney of the record of defendant's prior convictions known to the defendant.

(6) **Exculpatory Information.**

The prosecuting attorney shall disclose to defense counsel any material or information within his possession and control that tends to negate or reduce the guilt of the accused as to the offense charged.

(7) **Scope of Prosecutor's Obligations.**

The prosecuting attorney's obligations under this rule extend to material and information in the possession or control of members of his staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to his office.

Subd. 2 **Discretionary Disclosure Upon Order of Court.** Upon motion of the defendant with notice to the prosecuting attorney, the trial court at any time before trial or a county or municipal court at the Omnibus Hearing provided by Rule 11 may, in its discretion, require the prosecuting attorney to disclose to defense counsel and to permit the inspection, reproduction or testing of any relevant material and information not subject to disclosure without order of court under Rule 9.01, subd. 1, provided, however, a showing is made that the information may relate to the guilt or innocence of the defendant or negate the guilt or reduce the culpability of the defendant as to the offense charged. If the motion is denied, the court upon application of the defendant shall inspect and preserve any such relevant material and information.

Subd. 3 **Information Non-Discoverable.** The following information shall not be discoverable by the defendant:

(1) **Work Product.**

(a) **Opinions, Theories or Conclusions.** Unless otherwise provided by these rules, legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecuting attorney or members of his staff or officials or official agencies participating in the prosecution.

(b) **Reports.** Except as provided in Rule 9.01, subd. 1 (1) to (6), reports, memoranda or internal documents made by the prosecuting attorney or members of his staff or by prosecution agents in connection with the investigation or prosecution of the case against the defendant.

(2) **Prosecution Witnesses Under Prosecuting Attorney's Certificate.**

The information relative to the witnesses and persons described in Rule 9.01, subd. 1 (1), (2) shall not be subject to disclosure if the prosecuting attorney files a written certificate with the trial court that to do so may subject such witnesses or persons or others to physical harm or coercion, provided, however, that non-disclosure under this rule shall not extend beyond the time the witnesses or persons are sworn to testify at the trial.

9.02 Disclosure by Defendant.

Subd. 1 **Information Subject to Discovery Without Order of Court.** Without order of court, the defendant on request of the prosecuting attorney shall, before the date set for the Omnibus Hearing provided for by Rule 11, make the following disclosures:

(1) **Documents and Tangible Objects.**

The defendant shall disclose and permit the prosecuting attorney to inspect and reproduce books, papers, documents, photographs, and tangible objects which the defendant intends to introduce in evidence at the trial or concerning which the defendant intends to offer evidence at the trial, and shall also permit the prosecuting attorney to inspect and photograph buildings or places concerning which the defendant intends to offer evidence at the trial.

(2) **Reports of Examinations and Tests.**

The defendant shall disclose and permit the prosecuting attorney to inspect and reproduce any results or reports of physical or mental examinations, scientific tests, experiments and comparisons made in connection with the particular case within the possession or control of the defendant which he intends to introduce in evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony.

(3) **Notice of Defense and Defense Witnesses and Criminal Record.**

(a) **Notice of Defense.** The defendant shall inform the prosecuting attorney in writing of any defense, other than that of not guilty, on which the defendant intends to rely at the trial, including but not limited to the defense of self-defense, entrapment, mental illness or deficiency, duress, alibi, double jeopardy, statute of limitations, collateral estoppel, defense under Minn. Stat. § 609.035, or intoxication. The defendant shall supply the prosecuting attorney with the names and addresses of persons whom the defendant intends to call as witnesses at the trial.

If the defendant gives notice that he intends to rely on the defense of mental illness or mental deficiency he shall also notify the prosecuting attorney whether he also intends to rely on the defense of not guilty.

(b) **Statements of Defense Witnesses.** The defendant shall permit the prosecuting attorney to inspect and reproduce any relevant written or recorded statements of the persons whom the defendant intends to call as witnesses at the trial and which are within the possession or control of the defendant and shall permit the prosecuting attorney to inspect and reproduce any written summaries within his knowledge of the substance of any oral statements made by such witnesses to defense counsel or obtained by the defendant at the direction of his counsel.

(c) **Alibi.** If the defendant intends to offer evidence of an alibi, the defendant shall also inform the prosecuting attorney of the specific place or places where the defendant contends he was

when the alleged offense occurred and shall inform the prosecuting attorney of the names and addresses of the witnesses he intends to call at the trial in support of the alibi.

(d) **Criminal Record.** Defense counsel shall inform the prosecuting attorney of any prior convictions of the defendant provided the prosecuting attorney informs defense counsel of the record of prior convictions known to the prosecuting attorneys.

Subd. 2 **Discovery Upon Order of Court.**

(1) **Disclosures Permitted.**

Upon motion of the prosecuting attorney with notice to defense counsel and a showing that one or more of the discovery procedures hereafter described will be of material aid in determining whether the defendant committed the offense charged, the trial court at any time before trial, or the county or municipal court, either when the defendant is admitted to bail or otherwise released, or at the Omnibus Hearing prescribed by Rule 11 may, subject to constitutional limitations, order a defendant to:

(a) Appear in a lineup;

(b) Speak for identification by witnesses to an offense or for the purpose of taking voice prints;

(c) Be fingerprinted or permit his palm prints or footprints to be taken;

(d) Permit measurements of his body to be taken;

(e) Pose for photographs not involving re-enactment of a scene;

(f) Permit the taking of samples of his blood, hair, saliva, urine, and other materials of his body which involve no unreasonable intrusion thereof; provided, however, that the court shall not permit a blood test to be taken except upon a showing of probable cause to believe that the test will aid in establishing the guilt of the defendant;

(g) Provide specimens of his handwriting; and

(h) Submit to reasonable physical or medical inspection of his body.

(2) **Notice of Time and Place of Disclosures.**

Whenever the personal appearance of the defendant is required for the foregoing purposes, reasonable notice of the time and place thereof shall be given by the prosecuting attorney to defense counsel.

(3) **Medical Supervision.**

Blood tests shall be conducted under medical supervision, and the court may require medical supervision for any other test ordered pursuant to this rule when the court deems such supervision necessary. Upon motion of the defendant, the court may order the defendant's appearance delayed for a reasonable time or may order that it take place at his residence, or some other convenient place.

(4) **Notice of Results of Disclosure.**

Unless otherwise ordered by the court, the prosecuting attorney, within five (5) days from the date the results of the discovery procedures provided by this rule become known to him, shall make available to defense counsel a report of the results.

(5) **Other Methods Not Excluded.**

The discovery procedures provided for by this rule do not exclude other lawful methods available for obtaining the evidence discoverable under the rule.

Subd. 3 **Information Not Subject to Disclosure by Defendant; Work Product.** Unless otherwise provided by these rules, legal research, records, correspondence, reports or memoranda to the extent they contain the opinions, theories, or conclusions of the defendant or his counsel or persons participating in the defense are not subject to disclousre.

Subd. 4 **Failure to Call Witness.** The fact that a witness' name is on a list furnished by defendant to the prosecution under this rule shall not be commented on in the presence of the jury.

9.03 Regulation of Discovery.

Subd. 1 **Investigations Not to be Impeded.** Except as otherwise provided as to matters not subject to discovery or covered by protective orders, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons having relevant material or information (except the accused) to refrain from discussing the case with opposing counsel or from showing opposing counsel any relevant materials, nor shall they otherwise impede opposing counsel's investigation of the case.

Subd. 2 **Continuing Duty to Disclose.**

(a) If subsequent to compliance with any discovery rule or order, a party discovers additional material, information or witnesses subject to disclosure, he shall promptly notify the other party of the existence of the additional material or information and the identity of the witnesses.

(b) Each party shall have a continuing duty at all times before and during trial to supply the materials and information required by these rules.

Subd. 3 **Time, Place and Manner of Discovery and Inspection.** An order of the court granting discovery shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

Subd. 4 **Custody of Materials.** Any materials furnished to an attorney under discovery rules or orders shall remain in his custody and be used by him only for the purpose of conducting his side of the case, and shall be subject to such other terms and conditions as the court may prescribe.

Subd. 5 **Protective Orders.** Upon a showing of cause, the trial court may at any time order that specified disclosures be restricted or deferred, or make such other order as is appropriate. All material and information to which a party is entitled must be disclosed in time to afford his counsel the opportunity to make beneficial use of it.

Subd. 6 **In Camera Proceedings.** Upon application of any party *with notice to the adverse party, the trial court upon a showing of good* cause therefor may permit any showing of cause for denial or regulation of discovery, or portion of such showing, to be made in camera. A record shall be made of the proceedings. If the court enters an order granting relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the reviewing court in the event of an appeal, habeas corpus proceedings, or post-conviction proceedings under Minn. Stat. §§ 590.01-590.06 (1971).

Subd. 7 **Excision.** When some parts of certain material are discoverable under these rules, and other parts not discoverable, as much of the material shall be disclosed as is consistent with discovery rules. Material excised pursuant to judicial order shall be sealed and preserved in the records of the court to be made available to the reviewing court in the event of an appeal, habeas corpus proceeding, or post-conviction proceedings under Minn. Stat. §§ 590.01-590.06 (1971).

Subd. 8 **Sanctions.** If at any time it is brought to the attention of the trial court that a party has failed to comply with an applicable discovery rule or order, the court may upon motion and notice order such party to permit the discovery or inspection, grant a continuance, or enter such order as it deems just in the circumstances. Any person who willfully disobeys a court order under these discovery rules may be held in contempt.

Subd. 9 **Filing.** All disclosures made pursuant to this rule shall be filed with the court pursuant to Rule 33.04, subject to Subd. 5 of this rule.

RULE 10
PLEADINGS AND MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTIONS

10.01 Pleadings and Motions.

Pleadings in criminal proceedings shall be by the indictment, complaint or tab charge and the pleas prescribed by these rules. Defenses, objections, issues, or requests which are capable of determination without trial on the merits shall be asserted or made before trial by a motion to dismiss or to grant appropriate relief.

10.02 Motions Attacking Jurisdiction of the Court in Misdemeanor Cases.

A motion to dismiss for want of personal jurisdiction shall not be made until after a complaint is filed and a not guilty plea entered unless the motion is heard and determined summarily. Notice of such a motion shall be given either orally on the record in court or in writing to the prosecution. Such notice shall be given no more than seven (7) days after entry of the not guilty plea or any challenge to the personal jurisdiction of the court is waived. The motion shall be served, heard and determined.

10.03 Waiver.

The motion shall incude all defenses, objections, issues and requests then available to the moving party. Failure to include any of them in the motion constitutes a waiver thereof, but the court for good cause shown may grant relief from the waiver. However, lack of jurisdiction over the offense or the failure of the indictment or complaint to charge an offense shall be noticed by the court at any time during the pendency of the proceeding. The defendant does not waive any defenses or objections by including them in any motion with other defenses, objections or issues.

10.04 Service of Motions; Hearing Date.

Subd. 1 **Service.** In felony and gross misdemeanor cases, motions shall be made in writing and served upon opposing counsel not later than three (3) days before the Omnibus Hearing unless the court for good cause shown permits the motion to be made and served at a later time.

In misdemeanor cases, except as otherwise permitted by Rule 10.04, subd. 2, motions shall be made in writing and along with any supporting affidavits shall be served upon opposing counsel at least three (3) days before they are to be heard unless the court for good cause shown permits the motion to be made and served at a later time.

Subd. 2 **Hearing Date.** In felony and gross misdemeanor cases, unless the motion is served after the Omnibus Hearing, it shall be heard at that hearing and shall be determined before trial as provided by Rule 11.

In misdemeanor cases, if a pretrial conference is held, the motion shall be heard there unless the court directs otherwise for the purpose of *hearing witnesses or for other good cause. If the motion is not heard at a* pretrial conference, it shall be heard immediately prior to trial, provided that the court may upon agreement by the prosecutor and defense counsel summarily hear and determine the motion at arraignment. If the motion is heard at the arraignment, it need not be in writing, but a record shall be made of the proceedings and in the court's discretion witnesses

may be called. The motion shall be determined before trial as provided by Rule 12.07.

RULE 11
OMNIBUS HEARING IN FELONY AND GROSS MISDEMEANOR CASES

If the defendant does not plead guilty at his initial appearance before the district court following a complaint, a hearing shall be held as follows:

11.01 Reference to County or Municipal Court.

The hearing shall be held in the district court in the judicial district wherein the alleged offense was committed. In cases wherein it is mutually agreed between the district court and the county or municipal court, or when ordered by the Supreme Court, the hearing may be referred to the county court or municipal court of the county wherein the alleged offense was committed.

11.02 Hearing on Evidentiary Issues.

Subd. 1 **Evidence.** If the defendant or prosecution has demanded a hearing on either of the issues specified by Rule 8.03, the court shall hear and determine them upon such evidence as may be offered by the prosecution or the defense.

Subd. 2 **Cross-Examination.** Upon such hearing, the defendant and the prosecution may cross-examine the other's witnesses.

11.03 Motions.

The court shall hear and determine all motions made by the defendant or prosecution, including a motion that there is an insufficient showing of probable cause to believe that the defendant committed the offense charged in the complaint, and receive such evidence as may be offered in support or oppostion. Each party may cross-examine any witnesses produced by the other. A finding by the court of probable cause shall be based upon the entire record including reliable hearsay in whole or in part. Evidence considered on the issue of probable cause shall be subject to the requirements of Rule 18.06, subd. 1.

11.04 Other Issues.

The court shall ascertain any other constitutional, evidentiary, procedural or other issues that may be heard or disposed of before trial and such other matters as will promote a fair and expeditious trial, and shall hear and determine them, or continue the hearing for that purpose.

11.05 Amendment of Complaint.

The complaint may be amended as prescribed by these rules.

11.06 Pleas.

If the hearing is held in the district court, the defendant as provided by Rule 15.07 may be permitted to plead to the offense charged in the complaint or to a lesser included offense, or an offense of lesser degree. If the hearing is held in a county or municipal court, the defendant may be permitted to enter a plea of guilty to a misdemeanor including ordinance violations in lieu of the offense charged in the complaint unless the prosecuting attorney objects. In that event, a new complaint shall be signed by the prosecuting attorney and filed in the county or municipal court. The complaint shall be in the form prescribed by Rule 2.01 except that it need not be made upon oath and the facts establishing probable cause to believe the defendant committed the offense charged need not be provided.

11.07 Continuances; Determination of Issues.

The court may continue the hearing or any part thereof from time to time as may be necessary. All issues presented at the Omnibus Hearing shall be determined before trial. When issues are determined, the court shall make appropriate findings in writing or orally on the record. The issues presented at the Omnibus Hearing shall be consolidated for hearing.

11.08 Record.

Subd. 1 **Reporter.** The proceedings shall be taken by a reporter.

Subd. 2 **Transcript.** Upon timely application to the reporter, counsel for the defendant or for the prosecution shall be furnished with a transcript of the proceedings upon the following conditions:

(a) If the transcript is to be furnished to defense counsel, the costs thereof shall be prepaid except when the defendant is represented by the public defender or assigned counsel, or when the defendant makes a sufficient affidavit that he is unable to pay or secure the costs and the court orders that he be supplied with the transcript at the expense of the appropriate governmental unit.

(b) The prosecution shall be furnished with the transcript without prepayment of costs.

(c) When a transcript is furnished to counsel, a copy shall be filed with the clerk of the court.

Subd. 3 **Filing.** The record and all papers and exhibits in the proceeding shall be filed or placed in the custody of the clerk of the court. Upon order of the court any exhibit may be returned to the party producing it.

11.09 Review.

Subd. 1 **Upon the Record.** In the event the hearing is held before a county or municipal court, the findings and determinations on the issues presented shall be subject to review by the district court before trial upon the record made before the county or municipal court, provided notice specifying the issues to be reviewed is served by the defendant or prosecution upon opposing counsel within five (5) days from the date of the determination of such issues by the county or municipal court and is filed in the office of the clerk of the district court within five (5) days after such service. The district court may at any time before trial on its own motion review the findings and determinations.

Subd. 2 **Action of District Court.** Upon review the district court shall not set aside, amend or modify any of the findings or determinations of the county or municipal court unless it finds them to be clearly erroneous or contrary to law.

Subd. 3 **Time for Determination.** The district court's decision upon review shall be made and entered at least four days before the date of trial.

11.10 Plea; Trial Date.

If the defendant is not discharged he shall plead to the complaint or be given additional time within which to plead. If he pleads not guilty, a trial date shall then be set. A defendant shall be tried as soon as possible after entry of a not guilty plea. On demand made in writing or orally on the record by the prosecuting attorney or the defendant, the trial shall be commenced within sixty (60) days from the date of the demand unless good cause is shown by the prosecution or the defendant why he should not be brought to trial within that period. The time period shall not begin to run earlier than the date of the not guilty plea.

11.11 Exclusion of Witnesses.

Before or during any Omnibus or other pretrial hearing or proceeding, witnesses may be sequestered or excluded from the courtroom, prior to their appearance, in the discretion of the court.

RULE 12
PRETRIAL CONFERENCE AND EVIDENTIARY HEARING IN MISDEMEANOR CASES

12.01 Pretrial Conference.

A pretrial conference may be held in such cases and at such time as the court orders to consider the motions and other issues referred to in Rules 12.02 and 12.03. Such motions and other issues shall be heard immediately prior to trial whenever there has been no pretrial conference or whenever the court has so ordered for the purpose of hearing witnesses or for other good cause.

12.02 Motions.

The court shall hear and determine all motions made by the defendant or prosecution and receive such evidence as may be offered in support or opposition. The defendant may offer evidence in his own behalf, and the defendant and prosecution may cross-examine the other's witnesses.

12.03 Other Issues.

The court shall ascertain any other constitutional, evidentiary, procedural or other issues that may be heard or disposed of before trial and such other matters as will promote a fair and expeditious trial, and shall hear and determine them, or continue the hearing for that purpose.

12.04 Hearing on Evidentiary Issues.

Subd. 1 **Evidence.** If the defendant or the prosecution has demanded a hearing on the issue specified by Rule 7.01, the court shall hear and determine the issue upon such evidence as may be offered by the prosecutor or the defense.

Subd. 2 **Cross-Examination.** Upon such hearing, the defendant and the prosecution may cross-examine the other's witnesses as to the evidentiary and identification issues raised as specified in Rule 7.01.

Subd. 3 **Time.** Any evidentiary hearing shall be held separately from the trial when the trial is to be before a jury and in the discretion of the court may be held either separately or as part of the trial when the trial is to the court. Any separate hearing shall be held immediately prior to trial unless the court for good cause otherwise orders.

12.05 Amendment of Complaint.

The complaint, if any, may be amended at the pretrial conference as prescribed by these rules.

12.06 Pleas.

At the pretrial conference the defendant may be permitted to withdraw any prior plea and to enter a plea of guilty to the offense charged or such other different offense as permitted in Rule 15.08.

12.07 Continuances; Determination of Issues.

The court may continue the pretrial conference as necessary and for the purpose of taking testimony or other good cause, and may continue the determination of any issues or motions until the day of trial. All motions and issues including those raised at the evidentiary hearing shall be determined before trial begins unless otherwise agreed to by the prosecution and the defense. When the motions and issues are determined, the court shall make appropriate findings in writing or orally on the record.

12.08 Record.

Subd. 1 **Reporter.** Unless waived by counsel, a verbatim record of the proceedings at the evidentiary hearing and at the pretrial conference shall be made. Electronic recording equipment may be used, but upon the request of any party, the court may require the proceedings to be recorded by a court reporter.

Subd. 2 **Transcript and Filing.** Transcript and filing shall be governed by the provisions of Rule 11.08, subd. 2 and subd. 3.

RULE 13
ARRAIGNMENT IN FELONY AND GROSS MISDEMEANOR CASES

The arraignment shall be conducted as follows:

13.01 In Open Court.

The arraignment shall be conducted in open court.

13.02 Right to Counsel.

If the defendant other than a corporation appears without counsel, the court shall advise him of his right to counsel, and when required, shall appoint counsel pursuant to Rule 5.02.

13.03 Copy and Reading of Charges.

The defendant shall be provided with a copy of the complaint or indictment if he has not previously received a copy. The complaint or indictment shall be read to him unless he waives the reading.

13.04 Plea.

The defendant shall be called on to plead or may be given time to plead.

13.05 Record.

A verbatim record of the arraignment shall be made.

RULE 14
PLEAS

14.01 Kind of Pleas.

A defendant may plead as follows:

(a) Guilty.

(b) Not Guilty.

(c) Not guilty by reason of mental illness or mental deficiency.

(d) Double jeopardy or that prosecution is barred by Minn. Stat. § 609.035 (1971), either of which may be pleaded with or without the plea of not guilty.

14.02 Who May Plead.

Subd. 1 **By an Individual in Felony and Gross Misdemeanor Cases.** A plea to an indictment or complaint by an individual defendant shall be made orally on the record by the defendant in person.

Subd. 2 **By an Individual in Misdemeanor Cases.** A plea to a complaint or tab charge by an individual defendant shall be made orally on the record or by the petition to plead guilty provided for in Rule 15.03, subd. 2. If the court is satisfied that the defendant has knowingly and voluntarily waived his right to be present, the plea may be entered by counsel.

Subd. 3 **By a Corporation.** A plea by a corporate defendant shall be made by counsel or a corporate officer, and shall be made orally on the record or in writing.

Subd. 4 **Defendant's Refusal to Plead.** If the defendant stands mute or refuses to plead, or if the court refuses to accept a plea of guilty, the court shall proceed as if the defendant had entered a plea of not guilty.

If a defendant corporation fails to appear, the court upon proof of the commission of the offense charged may enter judgment of conviction and impose such sentence as may be appropriate.

RULE 15
PROCEDURE UPON PLEA OF GUILTY; PLEA AGREEMENTS; PLEA WITHDRAWAL; PLEA TO LESSER OFFENSE

15.01 Acceptance of Plea; Questioning Defendant; Felony and Gross Misdemeanor Cases.

Before the court accepts a plea of guilty, the defendant shall be sworn and questioned by the court with the assistance of counsel as to the following:

1. Name, age and date and place of birth.

2. Whether he understands the charge against him.

3. Specifically, whether he understands that he has been charged with the crime of (name of offense) committed on or about _____ (month) _____ (day) _____ (year) in _____ County, Minnesota (and that he is tendering a plea of guilty to the crime of (name of offense) which is a lesser degree or lesser included offense of the crime charged).

4. a. Whether he has had sufficient time to discuss the case with his attorney.

b. Whether he is satisfied that his attorney is fully informed as to the facts of the case, and that his attorney has represented his interests and fully advised him.

5. Whether he has been told by his attorney and understands that if he wishes to plead not guilty, he is entitled to a trial by a jury of 12 persons, and that he cannot be found guilty unless all 12 persons agree.

6. a. Whether he has been told by his attorney and understands that he will not have a trial by either a jury or by a judge without a jury if he pleads guilty.

b. Whether he waives his right to a trial.

7. Whether he has been told by his attorney, and understands that if he wishes to plead not guilty and have a trial by jury or by a judge, he will be presumed to be innocent until his guilt is proved beyond a reasonable doubt.

8. a. Whether he has been told by his attorney, and understands that if he wishes to plead not guilty and have a trial, the prosecutor will be required to have the witnesses against him testify in open court in his presence, and that he will have the right, through his attorney, to question these witnesses.

b. Whether he waives his right to have these witnesses testify in his presence in court and be questioned by his attorney.

9. a. whether he has been told by his attorney and understands that if he wishes to plead not guilty and have a trial, he will be entitled to require any witnesses he thinks are favorable to him appear and testify.

b. Whether he waives this right.

10. Whether his attorney has told him and he understands that the maximum penalty that the court could impose for the crime with which he is charged (taking into consideration any prior conviction or convictions) is imprisonment for _____ years.

11. Whether his attorney has told him that he discussed the case with one of the prosecuting attorneys, and that the respective attorneys agreed that if he entered a plea of guilty the prosecutor will do the following: (state the substance of the plea agreement.)

12. Whether his attorney has told him and he understands that if the court does not approve the plea agreement, he has an absolute right to withdraw his plea of guilty and have a trial.

13. Whether, except for the plea agreement, any policeman, prosecutor, judge, his attorney, or any other person, made any promises to him or any member of his family, or any of his friends, or other persons, or threatened him or any member of his family, or any of his friends, or other persons, in order to obtain a plea of guilty from him.

14. Whether his attorney has told him and he understands that if his plea of guilty is for any reason not accepted by the court, or is withdrawn by him with the court's approval, or is withdrawn by court order on appeal or other review, that he will stand trial on the original charge (charges) against him namely (state the offense) (which would include any charges that were dismissed as a result of the plea agreement with his attorney) and that the prosecution could proceed just as if there had never been any agreement.

15. a. Whether he has been told by his attorney and understands, that if he wishes to plead not guilty and have a jury trial, he can testify if he wishes, but that if he decided not to testify, neither the prosecutor nor the judge could comment to the jury about his failure to testify.

b. Whether he waives this right, and agrees to tell the court about the facts of the crime.

16. Whether with knowledge and understanding of his rights he still wishes to enter a plea of guilty or whether he wishes to plead not guilty.

17. Whether he makes any claim that he is innocent.

18. Whether he is under the influence of intoxicating liquor or drugs or under mental disability or under medical or psychiatric treatment.

19. Whether he has any questions to ask or anything to say before he states the facts of the crime.

20. What is the factual basis for his plea.

(NOTE: It is desirable that the defendant also be asked to acknowledge that he has signed the Petition to Plead Guilty, suggested form of which is contained in the appendix A to these rules; that he has read the questions set forth in the petition or that they have been read to him, and that he understands them; that he gave the answers set forth in the petition, and that they are true.)

15.02 Acceptance of Plea; Questioning Defendant; Misdemeanor Cases.

Before the court accepts a plea of guilty to any offense punishable upon conviction by incarceration, any plea agreement shall be explained in open court. The defendant shall then be questioned by the court or counsel in substance as follows:

1. Specifically whether he understands that he has been charged with the crime of (name the offense) committed on or about (Month) (Day) (Year) in _____ County, Minnesota (and that he is tendering a plea of guilty to the crime of (name of offense)).

2. Whether he realizes that the maximum possible sentence is 90 days' imprisonment and $300 fine. (If the maximum sentence is less, it should be so stated.)

3. Whether he knows that he has a right to the assistance of counsel at every stage of the proceedings and that counsel will be appointed for him if he cannot afford counsel.

4. Whether he knows that he has a right:

(a) to trial by a jury of 6 persons;

(b) to confront witnesses against him;

(c) to subpoena witnesses for him;

(d) to remain silent at trial or at any other time; and

(e) that he is presumed innocent and the State must prove its case beyond a reasonable doubt.

5. Whether he waives these rights.

6. Whether he understands the nature of the offense charged.

7. Whether he believes that what he did constitutes the offense to which he is pleading guilty.

The court shall then determine whether there is a factual basis for the plea.

Where the guilty plea is being entered at the defendant's first appearance in court, the statement as to his rights required by Rule 5.01 may be

combined with the questioning required above prior to entry of a guilty plea.

15.03 Alternative Methods in Misdemeanor Cases.

Subd. 1 **Group Warnings.** The court may advise a number of defendants at once as to the consequences of a plea and as to their constitutional rights as specified in questions 2, 3 and 4 above. When such a procedure is followed the court's statement shall be recorded and each defendant when called before the court shall be asked whether he heard and understood the statement. He shall then be questioned on the record as to the remaining matters specified in Rule 15.02.

Subd. 2 **Petition to Plead Guilty.** The defendant or his attorney may file with the court a petition to plead guilty as provided for in the Appendix B to Rule 15 signed by the defendant indicating that he is pleading guilty to the specified misdemeanor offense with the understanding and knowledge required of defendants personally entering a guilty plea under Rule 15.02.

15.04 Plea Discussion and Plea Agreements.

Subd. 1 **Propriety of Plea Discussions and Plea Agreements.** In cases in which it appears that it would serve the interest of the public in the effective administration of criminal justice under the principles set forth in Rule 15.04, subd. 3 (2), the prosecuting attorney may engage in plea discussions for the purpose of reaching a plea agreement. He shall engage in plea discussions and reach a plea agreement with the defendant only through defense counsel.

Subd. 2 **Relationship Between Defense Counsel and Defendant.** Defense counsel shall conclude a plea agreement only with the consent of the defendant and shall ensure that the decision to enter a plea of guilty is ultimately made by the defendant.

Subd. 3 **Responsibilities of the Trial Court Judge.**

(1) **Disclosure of Plea Agreement.**

If a plea agreement has been reached which contemplates entry of a plea of guilty, the trial court judge may permit the disclosure to him of the agreement and the reasons therefor in advance of the time for tender of the plea. When such plea is tendered and the defendant questioned, the trial court judge shall reject or accept the plea of guilty on the terms of the plea agreement. The court may postpone its acceptance or rejection until it has received the results of a pre-sentence investigation. If the court rejects the plea agreement, it shall so advise the parties in open court and then call upon the defendant to either affirm or withdraw his plea.

(2) **Consideration of Plea in Final Disposition.**

The court may accept a plea agreement of the parties when the interest of the public in the effective administration of justice would thereby be served. Among the considerations which are appropriate in determining whether such acceptance should be given are:

(a) That the defendant by his plea has aided in ensuring the prompt and certain application of correctional measures to him;

(b) That the defendant has acknowledged his guilt and shown a willingness to assume responsibility for his conduct;

(c) That the concessions will make possible the application of alternative correctional measures which are better adapted to achieving rehabilitative, protective, deterrent or other purposes of correctional treatment, or will prevent undue harm to the defendant;

(d) That the defendant has made trial unnecessary when there are good reasons for not having a trial;

(e) That the defendant has given or offered cooperation which has resulted or may result in the successful prosecution of other offenders engaged in serious criminal conduct;

(f) That the defendant by his plea has aided in avoiding delay in the disposition of other cases and thereby has contributed to the efficient administration of criminal justice.

15.05 Plea Withdrawal.

Subd. 1 **To Correct Manifest Injustice.** The court shall allow a defendant to withdraw his plea of guilty upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice. Such a motion is not barred solely because it is made after sentence. If a defendant is allowed to withdraw his plea after sentence, the court shall set aside the judgment and the plea.

Subd. 2 **Before Sentence.** In its discretion the court may also allow the defendant to withdraw his plea at any time before sentence if it is fair and just to do so, giving due consideration to the reasons advanced by the defendant in support of his motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea.

Subd. 3 **Withdrawal of Guilty Plea Without Asserting Innocence.** The defendant may move to withdraw his plea of guilty without asserting that he is not guilty of the charge to which the plea was entered.

15.06 Plea Discussions and Agreements Not Admissible.

If the defendant enters a plea of guilty which is not accepted or which is withdrawn, neither the plea discussions, nor the plea agreement, nor the plea shall be received in evidence against or in favor of the defendant in any criminal, civil, or administrative proceeding.

15.07 Plea to Lesser Offenses.

With the consent of the prosecuting attorney and the approval of the court, the defendant shall be permitted to enter a plea of guilty to a lesser included offense or to an offense of lesser degree. Upon motion of the defendant the court may accept a plea of guilty to a lesser included offense or to an offense of lesser degree. In either event, the plea may be entered without amendment of the indictment, complaint or tab charge.

15.08 Plea To Different Offense.

With the consent of the prosecuting attorney and the defendant, the defendant may enter a plea of guilty to a different offense than that charged in the original indictment or complaint. If the different offense is a felony or gross misdemeanor, a new complaint shall be signed by the prosecuting attorney and filed in the district court. The complaint shall be in the form prescribed by Rule 2.01 except that it need not be made upon oath and the facts establishing probable cause to believe the defendant committed the offense charged need not be provided. If the different offense is a misdemeanor, the defendant may be charged by complaint or tab charge as provided in Rule 4.02, subd. 5 (3) with the new offense and the original charge shall be dismissed.

15.09 Record of Proceedings.

Upon a guilty plea to an offense punishable by incarceration, either a verbatim record of the proceedings shall be made, or, in the case of misdemeanors, a petition to enter a plea of guilty, as provided in the Appendix B to Rule 15, shall be filed with the court. Recording equipment may be used, but upon the request of any party, the court in its discretion may require the proceedings to be recorded by a court reporter. In felony and gross misdemeanor cases, any verbatim record made in accordance with this rule shall be transcribed. In misdemeanor cases, any such record need not be transcribed unless requested by the court, the defendant or the prosecuting attorney.

APPENDIX A TO RULE 15

STATE OF MINNESOTA — IN DISTRICT COURT
COUNTY OF — JUDICIAL DISTRICT

State of Minnesota,
vs.

PETITION TO ENTER PLEA OF GUILTY

TO: THE ABOVE NAMED COURT

I, _____, defendant in the above entitled action do respectfully represent and state as follows:

1. My full name is _____. I am _____ years old, my date of birth is _____. The last grade that I went through in school is _____.

2. I have received, read and discussed a copy of the (Indictment) (Complaint).

3. I understand the charge made against me in this case.

4. Specifically, I understand that I have been charged with the crime of _____ committed on or about (Month) (Day) (Year) in _____ County, Minnesota, (and that the crime I am talking about is _____ which is a lesser degree or lesser included offense of the crime charged).

5. I am represented by an attorney whose name is _____ and:

a. I feel that I have had sufficient time to discuss my case with my attorney.

b. I am satisfied that my attorney is fully informed as to facts of this case.

c. My attorney has discussed possible defenses to the crime that I might have.

d. I am satisfied that my attorney has represented my interests and has fully advised me.

6. I (have) (have never) been a patient in a mental hospital.

7. I (have) (have not) talked with or been treated by a psychiatrist or other person for a nervous or mental condition.

8. I (have) (have not) been ill recently.

9. I (have) (have not) recently been taking pills or other medicines.

10. I (do) (do not) make the claim that I was so drunk or so under the influence of drugs or medicine that I did not know what I was doing at the time of the crime.

11. I (do) (do not) make the claim that I was acting in self-defense or merely protecting myself or others at the time of the crime.

12. I (do) (do not) make the claim that the fact that I have been held in jail since my arrest and could not post bail caused me to decide to plead guilty in order to get the thing over with rather than waiting for my turn at trial.

13. I (was) (was not) represented by an attorney when I (had a probable cause hearing). (If I have not had a probable cause hearing)

a. I know that I could now move that the complaint against me be dismissed for lack of probable cause and I know that if I do not make such a motion and go ahead with entering my plea of guilty, I waive all right to successfully object to the absence of a probable cause hearing.

b. I also know that I waive all right to successfully object to any errors in the probable cause hearing when I enter my plea of guilty.

14. My attorney has told me and I understand:

a. That the prosecutor for his case against me, has:

i. physical evidence obtained as a result of searching for and seizing the evidence;

ii. evidence in the form of statements, oral or written that I made to police or others regarding this crime;

iii. evidence discovered as a result of my statements or as a result of the evidence seized in a search;

iv. identification evidence from a line-up or photographic identification;

v. evidence the prosecution believes indicates that I committed one or more other crimes.

b. That I have a right to a pre-trial hearing before a judge to determine whether or not the evidence the prosecution has could be used against me if I went to trial in this case.

c. That if I requested such a pre-trial hearing I could testify at the hearing if I wanted to, but my testimony could not be used as substantive evidence against me if I went to trial and could only be used against me if I was charged with the crime of perjury. (Pre-jury means testifying falsely).

d. That I (do) (do not) now request such a pre-trail hearing and I specifically (do) (do not) now waive my right to have such a pre-trial hearing.

e. That whether or not I have had such a hearing I will not be able to object tomorrow or any other time to the evidence that the prosecutor has.

15. I have been told by my attorney and I understand:

a. That if I wished to plead not guilty I am entitled to a trial by a jury of 12 persons and all 12 persons would have to agree I was guilty before the jury could find me guilty.

b. That if I plead guilty I will not have a trial by either a jury or by a judge without a jury.

c. That with knowledge of my right to a trial I now waive my right to a trial.

16. I have been told by my attorney and I understand that if I wish to plead not guilty and have a trial by jury or trial by a judge I would be presumed innocent until my guilt is proved beyond a reasonable doubt.

17. I have been told by my attorney and understand:

a. That if I wish to plead not guilty and have a trial the prosecutor would be required to have the witnesses testify against me in open court in my presence and that I would have the right, through my attorney, to question these witnesses.

b. That with knowledge of my right to have the prosecution's witnesses testify in open court in my presence and questioned by my attorney, I now waive this right.

18. I have been told by my attorney and I understand:

a. That if I wish to plead not guilty and have a trial I would be entitled to require any witnesses that I think are favorable to me to appear and testify at trial.

b. That with knowledge of my right to require favorable witnesses to appear and testify at trial I now waive this right.

19. I have been told by my attorney and I understand:

a. That a person who has prior convictions or a prior conviction can be given a longer prison term because of this.

b. That the maximum penalty that the court could impose for this crime (taking into consideration any prior conviction or convictions) is imprisonment for_____ years.

c. That a person who participates in a crime by intentionally aiding, advising, counseling and conspiring with another person or persons to commit a crime is just as guilty of that crime as the person or persons who are present and participating in the crime when it is actually committed.

d. That my present probation or parole could be revoked because of the plea of guilty to this crime.

20. I have been told by my attorney and understand:

a. That he discussed this case with one of the prosecuting attorneys and that my attorney and the prosecuting attorney agreed that if I entered a plea of guilty, the prosecutor will do the following:

(Give the substance of the agreement)

b. That if the court does not approve this agreement:

i. I have an absolute right to then withdraw my plea of guilty and have a trial.

ii. Any testimony that I have given concerning the guilty plea could not be used against me unless I am charged with the crime of perjury based on this testimony.

21. That except for the agreement between my attorney and the prosecuting attorney:

a. No one — including my attorney, any policeman, prosecutor, judge, or any other person — has made any promises to me, to any member of my family, to any of my friends or other persons, in order to obtain a plea of guilty from me.

b. No one — including my attorney, any policeman, prosecutor or judge, or any other person — has threatened me or any member of my family or my friends or other persons, in order to obtain a plea of guilty from me.

22. My attorney has told me and I understand that if my plea of guilty is for any reason not accepted by the court, or if I withdraw the plea, with the court's approval, or if the plea is withdrawn by court order on appeal or other review:

a. I would then stand trial on the original charge (charges) against me, namely _____(which would include any charges that were dismissed as a result of the plea agreement entered into by my attorney and the prosecuting attorney).

b. The prosecution could proceed against me just as if there had been no plea of guilty and no plea agreement.

23. My attorney has told me and I understand that if my plea of guilty is accepted by the judge I have the right to appeal, but that any appeal or other court action I may take claiming error in the proceedings probably would be useless and a waste of my time and the court's.

24. My attorney has told me and I understand that a judge will not accept a plea of guilty for anyone who claims to be innocent.

25. I now make no claim that I am innocent.

26. I have been told by my attorney and I understand that if I wish to plead not guilty and have a jury trial:

a. That I could testify at trial if I wanted to but I could not be forced to testify.

b. That if I decided not to testify neither the prosecutor nor the judge could comment on my failure to testify.

c. That with knowledge of my right not to testify and that neither the judge nor the prosecutor could comment on my failure to testify at trial I now waive this right and I will tell the judge about the facts of the crime.

27. That in view of all above facts and considerations I wish to enter a plea of guilty.

Dated this_____day of_____, 19_____

_____

DEFENDANT

APPENDIX B TO RULE 15

STATE OF MINNESOTA
COUNTY OF _____

IN COUNTY COURT
CIVIL AND CRIMINAL DIVISION

FILE NO._____

State of Minnesota,
City of _____,

Plaintiff,

vs.

_____,

Defendant.

PETITION TO ENTER PLEA OF GUILTY

TO: THE ABOVE NAMED COURT

_____, defendant in the above entitled action respectfully represents and states as follows:

1. That he is charged with (name of offense) in violation of (statute or ordinance) ;

2. That he hereby pleads guilty to the offense of (name of offense) in violation of (statute or ordinance) ;

3. That he is pleading guilty because he committed the following acts: (state sufficient facts to establish a factual basis for the plea);

4. That he understands that the maximum possible sentence for the offense he is pleading guilty to is a fine of $300 or 90 days in jail or both;

5. That he has fully discussed the charge(s), his constitutional rights, and this petition with his attorney, (name of attorney);

[OR]

5a. That he understands that he has the right to be represented by an attorney which will be appointed without cost to him if he cannot afford to pay for an attorney and that he hereby waives that right;

6. That he understands he has the following constitutional rights which he hereby knowingly and intelligently waives;

a. the right to a trial to the court or to a jury of six (6) members in which he is presumed innocent until proven guilty beyond a reasonable doubt;

b. the right to confront and cross-examine all witnesses against him;

c. the right to remain silent or to testify for himself.

7. That he is entering his plea freely and voluntarily and without any promises except as indicated in number 8 below.

8. That he is entering his plea of guilty based on the following plea agreement with the prosecutor: (if none so state) _____

_____,

9. That he understands that if the court does not approve this agreement he has the absolute right to withdraw his plea of guilty and have a trial.

Dated this_____day of _____, 19_____.

_____

Defendant

(where petition is to be filed in lieu of a personal appearance by defend-

ant, add the following declaration:)

_____ states that he is the attorney for the defendant in the above entitled criminal action; that he personally explained the contents of the above petition to the defendant; that to the best of his knowledge the defendant's constitutional rights have not been violated and no meritorious defense exists to the charge(s) to which defendant is pleading guilty; that he personally observed the defendant date and sign the above petition; and that he concurs in the entry of defendant's plea of guilty.

Dated this_____day of _____, 19_____.

_____

Attorney for Defendant.

RULE 16

DISTRICT COURT MISDEMEANOR JURISDICTION

The district court shall try any misdemeanor offense prosecuted by indictment or which is joined with a felony prosecution pursuant to Minn. Stat. § 609.035. Any such prosecutions shall be governed by these rules.

RULE 17

INDICTMENT, COMPLAINT AND TAB CHARGE

17.01 Prosecution by Indictment, Complaint or Tab Charge.

An offense which may be punished by life imprisonment shall be prosecuted by indictment. Any other offense defined by state law may be prosecuted by indictment or by a complaint as provided in Rule 2. Misdemeanors may also be prosecuted by tab charge.

The arrest of a person under a warrant of arrest issued upon a complaint under Rule 3 or the filing of a complaint under Rule 4.02, subd. 5 (2) against a person arrested without a warrant shall not preclude an indictment for the offense charged in the complaint or for an offense arising from the conduct upon which the charge in the complaint was based.

17.02 Nature and Contents.

Subd. 1 **Complaint.** A complaint shall be substantially in the form prescribed by Rule 2.

Subd. 2 **Indictment.** An indictment shall contain a written statement of the essential facts constituting the offense charged. It shall be signed by the foreman of the grand jury.

Subd. 3 **Indictment and Complaint.** The indictment or complaint shall state for each count the citation of the statute, rule, regulation or other provision of law which the defendant is alleged to have violated. Error in the citation or its omission shall not be ground for dismissal or for reversal of a conviction if the error or omission did not prejudice the defendant. Each count may charge only one offense. Allegations made in one count may be incorporated by reference in another count. An indictment or complaint may, but need not, contain counts for the different degrees of the same offense, or for any of such degrees, or counts for lesser or other included offenses, or for any of such offenses. The same indictment or complaint may contain counts for murder, and also for manslaughter, or different degrees of manslaughter. When the offense may have been committed by the use of different means, the indictment or complaint may allege in one count the means of committing the offense in the alternative or that the means by which the defendant committed the offense are unknown.

Subd. 4 **Bill of Particulars.** The bill of particulars is abolished.

17.03 Joinder of Offenses and of Defendants.

Subd. 1 **Joinder of Offenses.** When the defendant's conduct constitutes more than one offense, each such offense may be charged in the same indictment or complaint in a separate count.

Subd. 2 **Joinder of Defendants.**

(1) **Felony and Gross Misdemeanor Cases.**

When two or more defendants shall be jointly charged with a felony, they shall be tried separately provided, however, upon written motion, the court in the interests of justice and not solely related to economy of time or expense may order a joint trial for any two or more said defendants. In cases other than felonies, defendants jointly charged may be tried jointly or separately, in the discretion of the court. In all cases any one or more of said defendants may be convicted or acquitted.

(2) **Misdemeanor Cases.**

Defendants jointly charged may be tried jointly or separately, in the discretion of the court. In all cases, any one or more of said defendants may be convicted or acquitted.

Subd. 3 **Severance of Offenses or Defendants.** Misjoinder of offenses or charges or defendants shall not be grounds for dismissal, but on motion, offenses or defendants improperly joined shall be severed for trial.

Subd. 4 **Consolidation of Indictments, Complaints or Tab Charges for Trial.** The court on motion of the prosecution or on its own motion may order two or more indictments, complaints, tab charges or any combination thereof to be tried together if the offenses and the defendants, if there is more than one, could have been joined in a single indictment, complaint or tab charge. On motion of the defendant, the court may order two or more indictments, complaints, tab charges, or any combination thereof to be tried together even if the offenses and the defendants, if there be more than one, could not have been joined in a single indictment, complaint or tab charge. The procedure shall be the same as if the prosecution were under such single indictment, complaint or tab charge.

17.04 Surplusage.

The court on motion may strike surplusage from the indictment, complaint, or tab charge.

17.05 Amendment of Indictment or Complaint.

The court may permit an indictment or complaint to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

17.06 Motions Attacking Indictment, Complaint or Tab Charge.

Subd. 1 **Defects in Form.** No indictment, complaint or tab charge shall be dismissed nor shall the trial, judgment or other proceedings thereon be affected by reason of a defect or imperfection in matters of form which does not tend to prejudice the substantial rights of the defendant.

Subd. 2 **Motion to Dismiss or For Appropriate Relief.** All objections to an indictment, complaint or tab charge shall be made by motion as provided by Rule 10.01 and may be based on the following grounds without limitation:

(1) **Indictment.**

(a) The evidence admissible before the grand jury was not sufficient as required by these rules to establish the offense charged or any lesser or other included offense or any offense of a lesser degree;

(b) The grand jury was illegally constituted;

(c) The grand jury proceeding was conducted before fewer than 16 grand jurors;

(d) Fewer than 12 grand jurors concurred in the finding of the indictment;

(e) The indictment was not found or returned as required by law;

(f) An unauthorized person was in the grand jury room during the presentation of evidence upon the charge contained in the indictment or during the deliberations or voting of the grand jury upon the charge.

(2) **Indictment, Complaint or Tab Charge.**

In the case of an indictment, complaint or tab charge:

(a) The indictment, complaint or tab charge does not substantially comply with the requirements prescribed by law to the prejudice of the substantial rights of the defendant;

(b) The court lacks jurisdiction of the offense charged;

(c) The law defining the offense charged is unconstitutional or otherwise invalid;

(d) In the case of an indictment or complaint, that the facts stated do not constitute an offense;

(e) The prosecution is barred by the statute of limitations;

(f) The defendant has been denied a speedy trial;

(g) There exists some other jurisdictional or legal impediment to prosecution or conviction of the defendant for the offense charged, except as provided by Rule 10.02;

(h) Double jeopardy, collateral estoppel, or that prosecution is barred by Minn. Stat. § 609.035.

Subd. 3 **Time for Motion.** A motion to dismiss the indictment, complaint or tab charge shall be made within the time prescribed by Rule 10.04, subd. 1 except that an objection to the jurisdiction of the court over the offense or that the indictment, complaint or tab charge fails to charge an offense may be made at any time during the pendency of the proceeding.

Subd. 4 **Effect of Determination of Motion to Dismiss.**

(1) **Motion Denied.**

If a motion to dismiss the indictment, complaint or tab charge is determined adversely to the defendant, he shall be permitted to plead if he has not previously pleaded. A plea previously entered shall stand. The defendant in a misdemeanor case may continue to raise the issues on appeal if he is convicted following a trial.

(2) **Grounds for Dismissal.**

When a motion to dismiss an indictment, complaint or tab charge is granted for a defect in the institution of prosecution or in the indictment, complaint or tab charge, the court shall specify the grounds upon which the motion is granted.

(3) **Dismissal for Curable Defect.**

If the dismissal is for failure to file a timely complaint as required by Rule 4.02, subd. 5 (3), or for a defect that could be cured or avoided by an amended or new indictment, or complaint, further prosecution for the same offense shall not be barred, and the court shall on motion of the prosecuting attorney, made within seven (7) days after the notice of the entry of the order granting the motion to dismiss, order that defendant's bail or the other conditions of his release be continued or modified for a specified reasonable time pending an amended or new indictment or complaint.

In misdemeanor cases, if the defendant is unable to post any bail that might be required under Rule 6.02, subd. 1, then he must be released subject to such non-monetary conditions as the court deems appropriate under that rule. The specified time for such amended or new indictment or complaint shall not exceed sixty (60) days for filing a new indictment or seven (7) days for amending an indictment or complaint or for filing a

new complaint. During the seven-day period for making the motion and during the time specified by the order, if such motion is made, dismissal of the indictment or complaint shall be stayed. If the prosecution does not make the motion within the seven-day period or if the indictment or complaint is not amended or if a new indictment or complaint is not filed within the time specified by the order, the defendant shall be discharged and further prosecution for the same offense shall be barred unless the prosecution has appealed as provided by law, or unless the defendant is charged with murder and the court has granted a motion to dismiss on the ground of the insufficiency of the evidence before the grand jury.

RULE 18

GRAND JURY

18.01 Summoning Grand Juries.

Subd. 1 **When Summoned.** The district court, without regard to the beginning or ending of a term of court, shall order that one or more grand juries be drawn at least annually. The grand jury shall be summoned and convened whenever required by the public interest or whenever requested by the county attorney. Upon being drawn, each juror shall be notified of his selection. The court shall prescribe by order or rule the time and manner of summoning grand jurors. Vacancies in the grand jury panel shall be filled in the same manner as provided by this rule.

Subd. 2 **How Selected and Drawn.** Except as otherwise provided by this rule with respect to St. Louis County, the grand jury list shall be composed of the names of persons selected at random from a fair cross-section of the residents of the county who are qualified by law to serve as jurors and shall otherwise be selected as provided by law. The grand jury shall be drawn from the grand jury list as prescribed by law.

In St. Louis County a grand jury list shall be selected at random from a fair cross-section of the residents of each of the 3 districts of the St. Louis County Court district as defined by Minn. Stat. § 487.01, Subd. 5 (1) who are qualified by law to serve as jurors. The grand jury list shall otherwise be selected and the grand jurors shall be drawn from the list as provided by law. Each grand jury so drawn shall serve only in that district of the St. Louis County Court district from which the members of the jury are drawn.

18.02 Objections to Grand Jury and Grand Jurors.

Subd. 1 **Challenges Abolished.** Challenges to the grand jury panel and to individual grand jurors are abolished. Objections to the grand jury panel and to individual grand jurors shall be made by motion to dismiss the indictment as hereafter provided.

Subd. 2 **Motion to Dismiss Indictment.** A motion to dismiss an indictment may be based upon any of the following grounds: that the grand jury was not selected, drawn or summoned in accordance with law; or that an individual juror is not legally qualified or that his state of mind prevented him from acting impartially. An indictment shall not be dismissed on the ground that one or more of the grand jurors was not legally qualified if it appears from the jury's records that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

18.03 Organization of Grand Jury.

Subd. 1 **Members; Quarum.** A grand jury shall consist of not more than 23, nor less than 16, persons, and shall not proceed to any business unless at least 16 members are present.

Subd. 2 **Organization and Proceedings.** The grand jury shall be organized and its proceedings shall be conducted as provided by law except as otherwise provided by these rules.

Subd. 3 **Charge.** After the grand jury is sworn, the court shall instruct it respecting its duties.

18.04 Who May Be Present.

Attorneys for the State, the witness under examination, interpreters when needed, and for the purpose of recording the evidence, a reporter or operator of a recording instrument may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting. Upon order of court and a showing of necessity for the purpose of security, a designated peace officer may be present while a specified witness is testifying. If a witness before the grand jury so requests and has effectively waived his immunity from self-incrimination, his attorney may be present while the witness is testifying, provided the attorney is then and there available for that purpose or his presence can be secured without unreasonable delay in the grand jury proceedings. The attorney shall not be permitted to participate in the grand jury proceedings except to advise and consult with the witness while he is testifying.

18.05 Record of Proceedings.

Subd. 1 **Verbatim Record.** A verbatim record shall be made by a reporter or recording instrument of the evidence taken before the grand jury and of all statements made and events occurring while a witness is before the grand jury. The record shall not be disclosed except to the court or prosecuting attorney or unless the court, upon motion by the defendant for good cause shown, or upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury, orders disclosure of the record or designated portions thereof to the defendant or his attorneys.

Subd. 2 **Transcript.** Upon motion of the defendant with notice to the prosecuting attorney, the district court at any time before trial or a county or municipal court at the Omnibus Hearing provided by Rule 11 shall, subject to such protective order as may be granted under Rule 9.03, subd. 5, order that defense counsel may obtain a transcript or copy of: (1) any recorded testimony of the defendant before the grand jury in the case against the defendant; (2) the recorded testimony of any persons before the grand jury whom the prosecution intends to call as witnesses at the defendant's trial; or (3) the recorded testimony of any witness before the grand jury in the case against the defendant, provided that at the hearing on the motion, defense counsel makes an offer of proof showing that he expects to call the witness at the trial and that he will give relevant testimony favorable to the defendant.

18.06 Kind and Character of Evidence.

Subd. 1 **Admissibility of Evidence.** An indictment shall be based on substantial evidence that would be admissible at trial, with the following exceptions:

(1) Hearsay evidence offered only to lay the foundation for the admissibility of otherwise admissible evidence shall be admissible provided admissible foundation evidence is available and will be offered at the trial.

(2) A report or a copy of a report made by a person who is a physician, chemist, firearms identification expert, examiner of questioned documents, fingerprint technician, or an expert or technician in some comparable scientific or professional field, concerning the results of an examination, comparison, or test performed by him in connection with the investigation of the case against the defendant may, when certified by such person as a report made by him or as a true copy thereof, be received as evidence of the facts stated therein.

(3) Unauthenticated copies of official records shall be admissible provided the copies were made from the original records and properly authenticated copies will be available at the trial.

(4) Written sworn statements of the persons who claim to have title or an interest in property shall be admitted to prove ownership or that the property was obtained without the owner's consent, and written sworn statements of such persons or of experts shall be admitted to prove the value of the property, provided that admissible evidence to prove ownership, value, or nonconsent is available and will be presented at the trial.

(5) Written sworn statements of witnesses who for reasons of ill health or for other valid reasons are unable to testify in person shall be admitted, provided that such witnesses or otherwise admissible evidence will be available at the trial to prove the facts stated in the statements.

(6) Oral or written summaries made by investigating officers or other persons, who are called as witnesses, of the contents of books, records, papers and other documents which they have examined but which are not produced at the hearing or previously submitted to defense counsel for examination, provided the documents and summaries would otherwise be admissible. It shall be permissible for a police officer in charge of the investigation to give an oral summary.

Subd. 2 **Evidence Warranting Finding of Indictment.** The grand jury may find an indictment when upon all of the evidence there is probable cause to believe that an offense has been committed and that the defendant committed it. Reception of inadmissible evidence shall not be grounds for dismissal of an indictment if there is sufficient admissible evidence to support the indictment.

Subd. 3 **Presentments Abolished.** The grand jury may not find or return a presentment.

18.07 Finding and Return of Indictment.

An indictment may be found only upon the concurrence of 12 or more jurors. When so found, it shall be signed by the foreman, whether he be one of the 12 concurring or not, and delivered to a judge in open court. If 12 jurors shall not concur in finding an indictment, the foreman shall so report in writing to the court forthwith, and any charges filed against the defendant for the offenses considered and upon which no indictment was returned shall be dismissed. The failure to find an indictment or the dismissal of the charge shall not prevent the case from again being submitted to a grand jury as often as the court shall direct.

18.08 Secrecy of Proceedings.

Every grand juror shall keep secret whatever he or any other juror has said during its deliberations and how he or any other juror has voted. Disclosure of matters occurring before the grand jury, other than its deliberations and the vote of any juror, may be made to the prosecuting attorney for use in the performance of his duties, and to the defendant or his attorneys pursuant to Rule 18.05 of this rule governing the record of the grand jury proceedings. Otherwise, no juror, attorney, interpreter, stenographer, reporter, operator of a recording device, typist who transcribes recorded testimony, clerk of court, law enforcement officer, or court attache may disclose matters occurring before the grand jury except when directed by the court preliminarily to or in connection with a judicial proceedings. Unless the court directs otherwise, no person shall

disclose the finding of an indictment until the defendant is in custody or appears before the court except when necessary for the issuance and execution of a summons or warrant, provided, however, disclosure may be made by the prosecuting attorney by notice to the defendant or his attorney of the indictment and the time of defendant's appearance in the district court, if in the discretion of the prosecuting attorney such notice is sufficient to insure defendant's appearance.

18.09 Tenure and Excuse.

A grand jury shall be drawn to serve for a specified period of time, not to exceed 12 months, designated by order of court. It shall not be discharged and its powers shall continue: (a) until the specified period of its service is completed or; (b) until its successor is drawn or; (c) until it has completed an investigation, already begun, of a particular offense, whichever is the later.

The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court.

At any time for cause shown the court may excuse a juror either temporarily or permanently, and in either event the court may impanel another person in place of the juror excused.

RULE 19
WARRANT OR SUMMONS UPON INDICTMENT; APPEARANCE BEFORE DISTRICT COURT

19.01 Issuance.

When an indictment is filed, a warrant for the arrest of each defendant named in the indictment shall be issued by the court upon the request of the prosecuting attorney, except that a summons instead of a warrant shall be issued upon the request of the prosecuting attorney or by direction of the court or if the defendant is a corporation.

If the defendant is in custody, the court may order the officer having the defendant in custody to bring him before the court at a specified time and date.

More than one warrant or summons may be issued for the same defendant. If a defendant other than a corporation for whom a summons has been issued fails to appear in response to a summons, a warrant shall be issued.

19.02 Form.

Subd. 1 **Warrant.** The warrant shall be signed by the judge; shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty; shall describe the offense charged in the indictment; and shall command that the defendant be arrested and brought before the court. The amount of bail and other conditions of release may be set by the court and endorsed on the warrant.

Subd. 2 **Summons.** The summons shall be signed by the judge and shall summon the defendant to appear before the court at a specified time and place to answer to the indictment. A copy of the indictment shall be attached to the summons.

19.03 Execution or Service; Certification of Execution or Service.

Subd. 1 **By Whom.** The warrant may be executed by any officer authorized by law. The summons may be served by any officer authorized to execute a warrant, and if served by mail, it may be served by the clerk.

Subd. 2 **Territorial Limits.** The warrant may be executed or the summons may be served at any place within the state except where prohibited by law.

Subd. 3. **Manner.** The warrant shall be executed or summons served in the manner provided by Rule 3.03, subd. 3.

Subd. 4 **Certification.** The execution of a warrant or the service of a summons shall be certified as provided by Rule 3.03, subd. 4.

Subd. 5 **Unexecuted Warrants.** At the request of the prosecuting attorney made at any time while the indictment is pending, a warrant returned unexecuted or a summons returned unserved or a duplicate thereof may be delivered to any authorized officer or person for execution or service.

19.04 Appearance of Defendant Before Court.

Subd. 1 **Appearance.** The defendant shall be taken promptly before the district court which issued the warrant.

Subd. 2 **Statement to Defendant.** When the defendant initially appears before the district court under a warrant of arrest or in response to a summons, he shall be advised of the charges against him. If he has not received a copy of the indictment, he shall be provided with a copy.

The court shall also advise the defendant substantially as required by Rule 5.01.

Subd. 3 **Appointment of Counsel.** If the defendant is not represented by counsel and is financially unable to afford counsel, the court shall appoint counsel for him.

Subd. 4 **Date for Arraignment.** Upon defendant's initial appearance before the district court, a date shall be fixed for his arraignment upon the indictment not more than seven (7) days from the date of such initial appearance. The time for appearance may be extended by the district court for good cause.

Subd. 5 **Omnibus Hearing Date and Procedure.** If upon arraignment, the defendant does not plead guilty, a date shall be fixed, not more than seven (7) days from the date of the arraignment, unless the court for good cause shown extends the time, when an Omnibus Hearing shall be held in accordance with Rule 11. The hearing shall not include the issue of probable cause provided by Rule 11.03.

Subd. 6 **Notice by Prosecuting Attorney.**

(1) **Notice of Evidence and Identification Procedures.**

When the prosecution has (1) any evidence against the defendant obtained as a result of a search, search and seizure, wiretapping, or any form of electronic or mechanical eavesdropping, (2) any confessions, admissions or statements in the nature of confessions made by the defendant, (3) any evidence against the defendant discovered as the result of confessions, admissions or statements in the nature of confessions made by the defendant, or (4) when in the investigation of the case against the defendant, any identification procedures were followed, including but not limited to lineups or other observations of the defendant and the exhibition of photographs of the defendant or of any other persons, the prosecuting attorney, on or before the date set for defendant's arraignment, shall notify the defendant or his counsel in writing of such evidence and identification procedures.

(2) **Notice of Additional Offenses.**

The prosecuting attorneys shall notify the defendant or his counsel in writing of any additional offenses the evidence of which may be offered at the trial under any exceptions to the general exclusionary rule. The notice shall be given at the Omnibus Hearing under Rule 11 or as soon thereafter as the offense becomes known to the prosecuting attorney. Such additional offenses shall be described with sufficient particularity to enable the defendant to prepare for trial. The notice need not include offenses for which the defendant has been previously prosecuted, or those that may be offered in rebuttal of the defendant's character witnesses or as a part of the occurrence or episode out of which the offense charged in the indictment arose.

Subd. 7 **Discovery.** Before the date set for the Omnibus Hearing the prosecution and defendant shall complete the discovery that is required by Rules 9.01, subd. 1 and 9.02, subd. 1 to be made without the necessity of an order of court.

19.05 Bail or Conditions of Release.

Upon the defendant's initial appearance before the district court following an indictment, the court may, in accordance with Rule 6 set bail or other conditions of release or may continue or modify bail or conditions of release previously ordered.

19.06 Record.

A verbatim record shall be made of the proceedings before the court upon defendant's initial appearance and arraignment and of the Omnibus Hearing.

RULE 20
PROCEEDINGS FOR MENTALLY ILL OR MENTALLY DEFICIENT

20.01 Competency to Proceed.

Subd. 1 **Competency to Proceed Defined.** No person shall be tried or sentenced for any offense while mentally ill or mentally deficient so as to be incapable of understanding the proceedings or participating in his defense.

Subd. 2 **Proceedings.** If at any time before sentence is imposed the court in which a criminal case is pending determines upon motion of the prosecuting attorney, defense counsel, or on its own motion that there is reason to doubt the defendant's competency as defined by this rule, the court shall suspend the criminal proceedings and shall proceed as follows:

(1) **Court.**

If the case is pending before a municipal or county court and the charge is a felony or gross misdemeanor, the case shall be transferred to the district court of the county where the offense occurred for further proceedings in conformity with this rule. If the charge is a misdemeanor, the court having trial jurisdiction shall either proceed according to this rule, or cause civil commitment proceedings to be instituted against the defendant, or unless contrary to the public interest, dismiss the case.

(2) **Probable Cause—Felony or Gross Misdemeanor.**

In the case of a felony or gross misdemeanor, unless the issue of probable cause has previously been determined, the district court, upon motion, before proceeding further shall determine whether there is sufficient probable cause stated on the face of the complaint. If the court determines that the complaint does not state sufficient probable cause to believe the defendant committed the offense charged, the charges against the defendant shall be dismissed.

(3) **Medical Examination.**

The court shall appoint at least one qualified psychiatrist or clinical psychologist or physician experienced in the field of mental illness to examine the defendant and to report to the court on his mental condition. The court may order the defendant confined in a state mental hospital or other suitable hospital or facility for the purpose of such examination for a specified period not to exceed 60 days. If the defendant or prosecution has retained a qualified psychiatrist or clinical psychologist or physician experienced in the field of mental illness, the court on request of the defendant or prosecuting attorney shall direct that such psychiatrist or

psychologist or physician be permitted to observe the examination and to conduct his own examination of the defendant.

(4) **Report of Examination.**

At the conclusion of the examination, a written report of the examination shall be forwarded to the judge who ordered the examination, and he shall cause copies of the report to be delivered forthwith to the prosecuting attorney and to defense counsel. The contents of the report shall not be otherwise disclosed until the hearing on the defendant's competency. The report of the examination shall contain:

(1) A diagnosis of the mental condition of the defendant.

(2) If the defendant is mentally ill or mentally deficient, an opinion as to: (a) his capacity to understand the proceedings against him and to participate in his defense; (b) the extent of his homicidal tendencies, if any, and the degree of likelihood that he will engage in seriously harmful conduct; (c) the extent to which he can be treated without being committed to an institution; and (d) whether there is a substantial probability that with treatment or otherwise he will ever attain the competency to proceed, and if so, in approximately what period of time.

(3) A statement of the factual basis upon which the diagnosis and opinion are based.

(4) If the examination could not be conducted by reason of the defendant's unwillingness to participate therein, a statement to that effect with an opinion, if possible, as to whether the defendant's unwillingness was the result of mental illness or deficiency.

Subd. 3 **Determination of Competency.** If either party files written objections to the report within ten (10) days after the receipt of a copy thereof, the court, upon notice to the parties, shall hold a hearing on the issue of the defendant's competency to proceed. At the hearing, evidence as to the defendant's mental condition may be admitted, including the report of the person who examined the defendant at the direction of the court. If neither the prosecution nor the defense files written objections to the report within the ten-day period, the court without a hearing may determine the defendant's competency to proceed upon the basis of the report.

Subd. 4 **Effect of Finding on Issue of Competency to Proceed.**

(1) **Finding of Competency.**

If the court determines that the defendant is competent to proceed, the criminal proceedings against him shall be resumed.

(2) **Finding of Incompetency.**

If the charge against the defendant is a misdemeanor and the court determines that he is incompetent to proceed, the charge shall be dismissed. If the charge against the defendant is a gross misdemeanor or felony and the court determines that the defendant is incompetent to proceed, the criminal proceedings against him shall be further suspended except as provided by Rule 20.01, subd. 6.

(a) **Finding of Mental Illness.** If the court determines that the defendant is mentally ill so as to be incapable of understanding the proceedings against him or participating in his defense, and the defendant is under civil commitment as mentally ill, the court shall order that the commitment be continued, and if not under commitment, the court shall cause civil commitment proceedings to be instituted against him. The commitment or continuing commitment shall be subject to the supervision of the trial court as provided by Rule 20.01, subd. 5.

(b) **Finding of Mental Deficiency.** If the court finds the defendant to be mentally deficient so as to be incapable of understanding the proceedings against him or participating in his defense, and the defendant is under commitment as mentally deficient to the guardianship of the commissioner of public welfare, the court shall order him remanded to the care and custody of the commissioner, and if not under commitment, the court shall cause civil commitment proceedings to be instituted against him. The commitment or continuing commitment shall be subject to the supervision of the trial court as provided by Rule 20.01, subd. 5.

(c) **Appeal.** Either party shall have the right of appeal to the district court from a determination of the county or probate court upon the civil commitment proceedings. The appeal shall be on the record only. In all other respects the appeal shall be governed by the provisions of the County Court Act, Minn. Stat., Ch. 487 (1971), or amendments thereto, applicable to appeals from a county court to the district court. In all civil commitment proceedings instituted under this rule, a verbatim record of the proceedings shall be made.

Subd. 5 **Continuing Supervision by Court.** The head of the institution to which the defendant is committed under civil commitment proceedings, or if the defendant is not committed to an institution, the officer or other person charged with his supervision or to whom he has been committed, shall report periodically to the trial court, at such times as the court shall provide, on the defendant's mental condition with an opinion as to his competency to proceed. The reports shall be made not less than once every six months unless otherwise ordered. Copies of the reports shall be furnished to the prosecuting attorney and to defense counsel.

When the court on application of the prosecuting attorney, defense counsel, the defendant, or the person having supervision over the defendant, or on the court's own motion, determines, after a hearing with notice to the parties, that the defendant is competent to proceed, the criminal proceedings against the defendant shall be resumed. Unless the criminal charges against the defendant have been dismissed as provided by Rule 20.01, subd. 6, the trial court shall be notified of any proposed termination of the civil commitment, and the court, after notice to the parties, shall hold a hearing thereon. If the court determines that the defendant is mentally ill or deficient and dangerous to the public, the defendant shall not be discharged from civil commitment. Otherwise, the civil commitment proceedings shall be terminated and the defendant discharged therefrom.

Subd. 6 **Dismissal of Criminal Proceedings.** Except when the defendant is charged with murder, the criminal proceedings against him shall be dismissed upon the expiration of three years from the date of the finding of his incompetency to proceed unless the prosecuting attorney, before the expiration of the three-year period, files a written notice of his intention to prosecute the defendant when he has been restored to competency.

Subd. 7 **Determination of Legal Issues Not Requiring Defendant's Participation.** The fact that the defendant is incompetent to proceed shall not preclude his counsel from making any legal objection or defense which is susceptible of fair determination before trial without the personal participation of the defendant.

Subd. 8. **Admissibility of Defendant's Statements.** When a defendant is examined under this rule, any statement made by him for the purpose of the examination and any evidence derived from the examination shall be admissible in evidence at the proceedings to determine whether he is competent to proceed.

Subd. 9 **Credit for Time Spent in Confinement.** If the court orders criminal proceedings resumed on a finding that defendant is competent to proceed, and the defendant is convicted of the charge, the time he has spent confined to a hospital or other facility under this rule shall be credited upon any jail or prison sentence imposed upon him.

20.02 Medical Examination of Defendant Upon Defense of Mental Deficiency or Mental Illness.

Subd. 1 **Authority of Court to Order Examination.** The court having trial jurisdiction over the offense charged may order a mental examination of the defendant when the defense has notified the prosecuting attorney pursuant to Rule 9.02, subd. 1(3)(a) of an intention to assert a defense of mental illness or deficiency, or when at the trial of the case, the defendant offers evidence of such mental condition.

Subd. 2. **Examination of the Defendant.** If the court orders a mental examination of the defendant, it shall appoint at least one qualified psychiatrist, or clinical psychologist, or physician experienced in the field of mental illness to examine the defendant and report upon his mental condition. For the purpose of the examination, the court, upon a special showing of need therefor, may order the defendant to be confined to a hospital or other suitable facility for a specified period not to exceed 60 days. If the defendant or prosecution has retained a qualified psychiatrist or clinical psychologist or physician experienced in the field of mental illness, the court on request of the defendant or prosecuting attorney shall direct that such psychiatrist or psychologist or physician be permitted to observe the mental examination and to conduct his own mental examination of the defendant.

Subd. 3 **Refusal of Defendant to be Examined.** If the defendant does not participate in the examination so that the examiner is unable to make an adequate report to the court, the court may prohibit the defendant from introducing evidence of his mental condition, may strike any such evidence previously introduced, may permit any other party to introduce evidence of defendant's refusal to cooperate and to comment thereon to the trier of the facts, and may make any such other ruling as it deems just.

Subd. 4 **Report of Examination.** At the conclusion of the examination, a written report of the examination shall be forwarded to the judge who ordered the examination, and he shall cause copies of the report to be delivered forthwith to the prosecuting attorney, and to defense counsel. The contents of the report shall not otherwise be disclosed except as hereafter provided by this rule. The report of the examination shall contain:

(1) A diagnosis of the defendant's mental condition as requested by the court;

(2) If so directed by the court an opinion as to whether, because of mental illness or deficiency, the defendant at the time of the commission of the offense charged was laboring under such a defect of reason as not to know the nature of the act constituting the offense with which defendant is charged or that it was wrong;

(3) Any opinion requested by the court that is based on the examiner's diagnosis;

(4) A statement of the factual basis upon which the diagnosis and any opinion are based.

If the examination cannot be conducted by reason of the defendant's unwillingness to participate, the report shall so state and shall include, if

possible, an opinion as to whether the unwillingness of the defendant was the result of mental illness or deficiency.

Subd. 5 **Admissibility of Evidence at Trial.** No evidence derived from the examination shall be received against the defendant unless the defendant has previously made his mental condition an issue in the case. If his mental condition is an issue, any party may call the person who examined the defendant at the direction of the court to testify as a witness at the trial and he shall be subject to cross-examination by any other party. The report or portions thereof may be received in evidence to impeach the testimony of the person making it.

Subd. 6 **Admissibility of Defendant's Statements.** When a defendant is examined under Rule 20.01 or Rule 20.02, or both, the admissibility at trial of any statements made by him for the purposes of the examination and any evidence obtained as a result of such statements shall be determined by the following rules:

(1) **Notice by Defendant of Sole Defense of Mental Condition.**

If a defendant notifies the prosecuting attorney under Rule 9.02, subd. 1(3)(a) of his intention to rely solely on the defense of mental illness or deficiency, statements made by the defendant for the purpose of the mental examination and evidence obtained as a result of the statements shall be admissible at the trial upon that issue.

(2) **Defendant's Election.**

If a defendant notifies the prosecuting attorney under Rule 9.02, subd. 1(3)(a) of his intention to rely on the defense of mental illness or mental deficiency together with a defense of not guilty, the defendant at the Omnibus Hearing under Rule 11 shall elect:

(1) Whether there shall be a separation of the two defenses with a sequential order of proof before the court or jury in a continuous trial in which the defense of not guilty shall be heard and determined first, and then the defense of the defendant's mental illness or deficiency; or

(2) Whether the two defenses shall be tried and submitted together to the court or jury.

(3) **Effect of Election.**

If the defendant elects that the two defenses shall be separated, the statements made by him for the purpose of the mental examination and any evidence obtained as a result of such statements shall be admissible against him only at that stage of the trial relating to the defense of mental illness or mental deficiency. If the defendant elects that the two defenses shall be tried and submitted together, such statements and evidence shall be admissible against him on all issues.

(4) **Notice by Prosecuting Attorney.**

The defendant shall not be required to make the election provided for by this rule and there shall be no separation of defenses for trial if the prosecuting attorney gives written notice to defense counsel that any statements made by the defendant for the purpose of the mental examination and evidence obtained as a result of the statements will not be offered in evidence against him at trial.

(5) **Procedure Upon Separated Trial of Defenses.**

(a) **Instructions to Jury.** When the two defenses are separated for trial pursuant to the defendant's election under this rule, the jury shall be informed at the commencement of the trial that the two defenses have been interposed; that the defense of not guilty will be tried first and then the defense of mental illness or mental deficiency; that if the jury finds that the elements of the offense charged have not been proved, the defendant will be acquitted; that if the jury finds the elements of the offense have been proved, the defense of mental illness or deficiency will then be tried and determined by the jury.

(b) **Proof of Elements of Offense—Effect.** Upon the trial of the defense of not guilty the jury, or the court, if a jury is waived, shall determine whether the elements of the offense charged have been proved beyond a reasonable doubt.

If the court or jury determines that the elements of the offense have not been proved beyond a reasonable doubt, a judgment of acquittal shall be entered.

If the court or jury determines that the elements of the offense have been proved beyond a reasonable doubt, the defense of mental illness or mental deficiency shall then be tried and determined by the jury, or by the court, if a jury is waived, and based upon that determination the jury or court shall render a verdict or make a finding: (1) of not guilty by reason of mental illness; or (2) of not guilty by reason of mental deficiency; or (3) of guilty. The court shall enter judgment accordingly. The defendant shall have the burden of proving the defense of mental illness or mental deficiency by a preponderance of the evidence.

Subd. 7 **Simultaneous Examinations.** The court may order that the examination for competency to proceed under Rule 20.01 and the examination authorized by Rule 20.02 be conducted simultaneously.

Subd. 8 **Legal Effect of Finding of Not Guilty by Reason of Mental Illness or Deficiency.**

(1) **Mental Illness.**

When a defendant is found not guilty by reason of mental illness, and the defendant is under civil commitment as mentally ill, the court shall order that the commitment be continued, and if not under commitment, the court shall cause civil commitment proceedings to be instituted against him and that the defendant be detained in a state hospital or other facility pending completion of the proceedings. The commitment or continuing commitment in felony and gross misdemeanor cases shall be subject to the supervision of the trial court as provided by Rule 20.02, subd. 8(4).

(2) **Mental Deficiency.**

When a defendant is found not guilty by reason of mental deficiency and the defendant is under commitment to the guardianship of the commissioner of public welfare, the court shall order him remanded to the care and custody of the commissioner, and if not under such commitment, the court shall cause civil commitment proceedings to be instituted against him. The commitment or continuing commitment in felony and gross misdemeanor cases shall be subject to the supervision of the trial court as provided by Rule 20.02, subd. 8(4).

(3) **Appeal.**

Either party shall have the right of appeal to the district court from a determination of the county or probate court upon the civil commitment proceedings. The appeal shall be taken on the record only. In all other respects the appeal shall be governed by the provisions of the County Court Act, Minn. Stat., Ch. 487 (1971) or amendments thereto, applicable to appeals from a county court to the district court. In all commitment proceedings instituted under this rule, a verbatim record of the proceedings shall be made.

(4) **Continuing Supervision.**

In felony and gross misdemeanor cases only, the trial court shall be notified of any proposed termination of the civil commitment, and the court, after notice to the parties, shall hold a hearing thereon. If the court determines that the defendant is mentally ill or deficient and dangerous to the public, the defendant shall not be discharged from civil commitment. Otherwise, the civil commitment shall be terminated and the defendant discharged therefrom.

20.03 Disclosure of Reports and Records of Defendant's Mental Examinations.

Subd. 1 **Order for Disclosure.** If a defendant notifies the prosecuting attorney under Rule 9.02, subd. 1(3)(a) of his intention to rely on the defense of mental illness or mental deficiency, the trial court, on motion of the prosecuting attorney and notice to defense counsel may order the defendant to furnish either to the court or to the prosecuting attorney copies of all medical reports and hospital and medical records previously or thereafter made concerning the mental condition of the defendant and revelant to the issue of the defense of his mental illness or mental deficiency. If the copies of the reports and records are furnished to the court, the court shall inspect them to determine their relevancy. If the court determines they are relevant, they shall be delivered to the prosecuting attorney. Otherwise, they shall be returned to the defendant.

If the defendant is unable to comply with the court order, a subpoena duces tecum may be issued under Rule 22.

Subd. 2 **Use of Reports and Records.** If an order for disclosure of reports and records under Rule 20.03 subd. 1 is entered and copies thereof are furnished to the prosecuting attorney, the reports and records and any evidence obtained therefrom may be admitted in evidence only upon the issue of the defense of mental illness or mental deficiency when that issue is the sole defense or when it is tried as provided by Rule 20.02, subd. 6(5).

RULE 21
DEPOSITIONS

21.01 When Taken.

Whenever there is a reasonable probability that the testimony of a prospective witness will be used at hearing or at trial under any of the conditions specified in Rule 21.06, subd. 1, the court before whom the proceedings are pending may, at any time after the filing of a complaint or indictment, upon motion and notice to the parties, order that the testimony of such witness be taken by oral deposition before any designated person authorized to administer oaths and that any designated book, paper, document, record, recording or other material, not privileged, be produced at the same time and place. The order shall also direct the defendant to be present at the taking of the deposition.

21.02 Notice of Taking.

The party or person at whose instance a deposition is to be taken shall give to every other party reasonable notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. Unless otherwise ordered by the court the notice to the defendant shall be served personally on all the defendants. The notice shall inform them that they are required by order of court to personally attend the taking of the deposition, and a copy of the court order shall be attached to the notice. An officer having custody of any of the defendants shall be notified of the time and place set for the deposition and shall produce them at the examination and keep them in the presence of the witness during the examination.

On motion of a party upon whom notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition.

21.03 Expenses of Defendant and Counsel; Failure to Appear.

Subd. 1 **Expenses, Defendant and Counsel.** If a defendant is unable to bear the expenses of travel and subsistence of himself and his attorney for attendance at the examination, the court shall direct that such expenses be paid at public expense.

Subd. 2 **Failure to Appear.** If a defendant who is not confined fails to appear at the examination without reasonable excuse after having received notice thereof, the deposition may be taken and used to the same extent as though he had been present.

21.04 How Taken.

Subd. 1 **Oral Deposition.** Depositions shall be taken upon oral examination.

Subd. 2 **Oath and Record of Examination.** The witness shall be put on oath and a verbatim record of his testimony shall be made.

The testimony shall be taken stenographically and transcribed unless the court orders otherwise.

In the event the court orders that the testimony at a deposition be recorded by other than stenographic means, the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense.

Subd. 3 **Scope and Manner of Examination—Objections—Motion to Terminate.**

(a) In no event shall the deposition of a party defendant be taken without his consent.

(b) The scope and manner of examination and cross-examination shall be the same as that allowed at trial. Each party having possession of a statement of the witness being deposed shall make the statement available to the other party for examination and use at the taking of a deposition if such other party would be entitled to the statement at the trial.

(c) All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be recorded by the person before whom the deposition is taken. Evidence objected to shall be taken subject to the objections.

(d) At any time during the taking of the deposition, on motion of a party or of the deponent, and upon a showing that the examination is being conducted in bad faith, or in such manner as to annoy, embarrass, or oppress the deponent or party or to elicit privileged testimony, the court which ordered the deposition taken may order the person conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of taking the deposition by ordering as follows: (1) that certain matters not be inquired into, or that the scope of examination be limited to certain matters; (2) that the examination be conducted with no one present except persons designated by the court.

Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to move for the order.

21.05 Transcription, Certification and Filing.

When the testimony is fully transcribed, the person before whom the deposition was taken shall certify on the deposition that the witness was duly sworn and that the deposition is a verbatim record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the case and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the case is pending or send it by registered or certified mail to the clerk thereof for filing.

Upon the request of a party, documents and other things produced during the examination of a witness, or copies thereof, shall be marked for identification and annexed as exhibits to the deposition, and may be inspected and copied by any party. If the person producing the exhibits requests their return, the person taking the deposition shall mark them, and, after giving each party an opportunity to inspect and copy them, return the exhibits to the parties producing them. The exhibits may then be used in the same manner as if annexed to the deposition.

21.06 Use of Deposition.

Subd. 1 **Unavailability of Witness.** At the trial, or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if it appears: (a) that the witness is dead or unable to be present or to testify at the trial or hearing because of then existing physical or mental illness or infirmity; or (b) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena, order of court, or other reasonable means.

Subd. 2 **Inconsistent Testimony.** A deposition may be used as substantive evidence, so far as otherwise admissible under the rules of evidence, if the witness gives testimony at the trial or hearing inconsistent with his deposition or if he persists at the hearing or trial in refusing to testify despite an order of the court to do so.

Subd. 3 **Impeachment.** Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

A deposition may not be used if it appears that the absence of the witness was procured or caused by the party offering the deposition, unless part of the deposition has previously been offered by another party.

21.07 Effect of Errors and Irregularities in Depositions.

Subd. 1 **As to Notice.** All errors and irregularities in the order or notice for taking a deposition are waived unless written objection is served promptly upon the party giving the notice.

Subd. 2 **As to Disqualification of Officer.** Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the grounds for disqualification become known or could be discovered with reasonable diligence.

Subd. 3 **As to Taking of Deposition.** Objections to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition unless the ground of the objection is one which might have been obviated or removed if presented at that time.

Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

Subd. 4 **As to Completion and Return of Deposition.** Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, recorded, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the person taking the deposition under these rules are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

21.08 Deposition by Stipulation.

The parties may by written stipulation provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner, and when so taken may be used like other depositions. These rules to the extent not inconsistent with the stipulation shall otherwise govern the taking of the deposition.

RULE 22
SUBPOENA

22.01 For Attendance of Witnesses; Form; Issuance.

Subd. 1 **When Issued.** A subpoena may be issued in a criminal proceeding only for the attendance of a witness before a grand jury, or at a hearing or trial before the court in which the proceeding is pending, or for attendance at the taking of a deposition.

Subd. 2 **By Whom Issued.** A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title of the proceeding if the subpoena be for a hearing or trial before the court; but if the subpoena be for a grand jury, it shall be headed "In the matter of the investigation of the grand jury of the (particular) county conducting the proceeding." The subpoena shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence or tangible things, signed and sealed but otherwise in blank to the party requesting it, who shall fill in the blanks before it is served.

Subd. 3 **Unrepresented Defendant.** A subpoena shall not be issued at the request of a defendant not represented by counsel without an order of court authorizing its issuance. The defendant's request to the court may be oral and the court's order may be either oral, if noted in the court's record, or written.

22.02 For Production of Documentary Evidence and of Objects.

A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena, including medical reports and medical and hospital records ordered to be disclosed under Rule 20.03, subd. 1, be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit them to be inspected by the parties or their attorneys.

22.03 Service.

A subpoena may be served by the sheriff, by his deputy, or any other person at least 18 years of age who is not a party. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person or by leaving a copy at his usual place of abode with some person of suitable age and discretion then residing therein. Fees and mileage need not be tendered in advance.

22.04 Place of Service.

A subpoena requiring the attendance of a witness may be served at any place within the state.

22.05 Contempt.

Failure to obey a subpoena without adequate excuse is a contempt of court.

22.06 Witness Outside the State.

The attendance of a witness who is outside the state may be secured as provided by law.

RULE 23

PETTY MISDEMEANORS AND VIOLATIONS BUREAUS

23.01 Definition of Petty Misdemeanor.

As used in these rules, petty misdemeanor means a misdemeanor offense punishable only by fine of not more than $100.

23.02 Designation as Petty Misdemeanor by Sentence Imposed.

A conviction is deemed to be for a petty misdemeanor as defined by Rule 23.01 if the sentence imposed is within the limits provided by that rule for a petty misdemeanor.

23.03 Violations Bureaus.

Subd. 1 **Establishment.** The County Court may establish misdemeanor violations bureaus at the places it determines.

Subd. 2 **Fine Schedules.**

(1) **Uniform Fine Schedule.**

The County Court Judges of the state shall adopt and as necessary revise a uniform fine schedule setting forth fines to be paid to violations bureaus for all statutory petty misdemeanors and for such other statutory misdemeanors as the judges may select.

(2) **County Fine Schedules.**

Upon establishment of a violations bureau, the County Court shall establish by court rule a fine for any misdemeanor which may be paid to the violations bureau in lieu of a court appearance by the defendant. When an offense is the same or substantially the same as an offense included on the uniform fine schedule, the fine established by the County Court shall be the same as the fine prescribed in the uniform fine schedule.

Subd. 3 **Written Plea of Guilty.** Any fine payment to a violations bureau shall be accompanied by a written plea of guilty by the defendant providing in substance the following:

1. That the defendant is entering a plea of guilty to the misdemeanor designated;

2. That the defendant understands that he has the rights which he voluntarily waives:

a. to a trial to the Court or to a jury;

b. to be represented by counsel;

c. to be presumed innocent until proven guilty beyond a reasonable doubt;

d. to confront and cross-examine all witnesses against him; and

e. to either remain silent or to testify in his own behalf.

3. That the defendant understands the maximum possible sentence for the offense charged is $100.

Subd. 4 **Functions of Violations Bureaus.** The violations bureau shall process all citations for misdemeanors included on the county fine schedule, accept all fines payable on such citations at the bureau, set dates for arraignment on such citation charges to be heard in court, accept bail, keep proper records and accounts and perform such other duties as the court prescribes.

Subd. 5 **Procedures of the Violations Bureaus.** The County Court shall supervise and the clerk shall operate the misdemeanor violations bureaus. The County Court shall, consistent with these rules, issue rules governing the duties and operation of the bureaus. The clerk shall assign one or more deputy clerks to discharge and perform the duties of the bureaus.

23.04 Designation as a Petty Misdemeanor in a Particular Case.

If at or before the time of arraignment or trial on an alleged misdemeanor violation, the prosecuting attorney certifies to the Court that in his opinion it is in the interests of justice that the defendant not be incarcerated if convicted, the alleged offense shall be treated as a petty misdemeanor if the defendant consents and the court approves.

23.05 Procedure in Petty Misdemeanor Cases.

Subd. 1 **No Right to Jury Trial.** There shall be no right to a jury trial upon a misdemeanor charge which by operation of Rule 23.04 is to be treated as a petty misdemeanor.

Subd. 2 **Right to Appointed Counsel.** If a defendant is financially unable to afford counsel the court may appoint counsel to represent him if he is charged with a misdemeanor which by operation of Rule 23.04 is to be treated as a petty misdemeanor and which also involves moral turpitude.

Subd. 3 **General Procedure.** A defendant charged with a petty misdemeanor violation is presumed innocent until proven guilty beyond a reasonable doubt and except as otherwise provided in Rule 23 the procedure in petty misdemeanor cases shall be the same as for misdemeanors punishable by incarceration.

23.06 Effect of Conviction.

A petty misdemeanor shall not be considered a crime.

23.07 Trial De Novo.

If a trial de novo is permitted in District Court pursuant to Rule 28.01, subd. 1, the offense charged may be designated a petty misdemeanor under Rule 23.04 even if not so designated in the County Court. If a misdemeanor was designated a petty misdemeanor in County Court, it shall continue to be so designated on any appeal to District Court and no trial de novo shall be allowed.

RULE 24

VENUE

24.01 Place of Trial.

The case shall be tried in the county where the offense was committed except as otherwise provided by these rules.

24.02 Venue in Special Cases.

Subd. 1 **Offense Committed on Public or Private Conveyance.** When any offense is committed within the state on a public or private conveyance, and it is doubtful in which county the offense occurred, the case may be prosecuted and tried in any county through which the conveyance traveled in the course of the trip during which the offense was committed, or in the county where such trip began or terminated.

Subd. 2 **Offenses Committed on County Lines.** Offenses committed on or within 1,500 feet (457.2 M) of the boundary line between two counties may be alleged in the complaint or indictment to have been committed in either of them and may be prosecuted and tried in either county.

Subd. 3 **Injury or Death in One County from an Act Committed in Another County.** If an act is committed in one county resulting in injury or death in another county, the offense may be prosecuted and tried in either county. If it is doubtful in which one of two or more counties the act was committed or injury or death occurred, the offense may be prosecuted and tried in any one of such counties.

Subd. 4 **Prosecution in County Where Injury or Death Occurs.** If an act is committed either within or without the limits of the state and injury or death results, the offense may be prosecuted and tried in the county of this state where the injury or death occurs, or the body of the deceased is found.

Subd. 5 **Prosecution When Death Occurs Outside State.** If an assault is committed in this state resulting in death outside the state, the homicide may be prosecuted and tried in the county where the assault was committed.

Subd. 6 **Kidnapping.** The offense of kidnapping may be prosecuted and tried either in the county where the offense was committed or in any county through or in which the person kidnapped was taken or kept while under confinement or restraint.

Subd. 7 **Libel.** The offense of publication of a libel contained in a newspaper published in the state may be prosecuted and tried in any county where the paper was published or circulated; but a person shall not be prosecuted for publication of the same libel against the same person in more than one county.

Subd. 8 **Bringing Stolen Goods Into State.** Whoever brings stolen property into the state in violation of Minn. Stat. § 609.525 (1971) may be prosecuted and tried in any county, but not more than one county, into or through which the property was brought.

Subd. 9 **Obscene or Harassing Telephone Calls.** Violations of Minn. Stat. § 609.79 (1971) may be prosecuted and tried either at the place where the telephone call is made or where it is received.

Subd. 10 **Fair Campaign Practices.** Violations of Minn. Stat. § 211.27 (1971) prohibiting corporate contributions to political campaigns may be prosecuted and tried in the county where such payment or contribution is made or services rendered or in any county wherein such money has been paid or distributed.

Subd. 11 **Series of Offenses Aggregated.** When a series of offenses are aggregated pursuant to Minn. Stat. § 609.52, Subd. 3(5) (1971) and the offenses have been committed in more than one county, the case may be presented and tried in any one of the counties in which one or more of the offenses was committed.

Subd. 12 **Non-Support of Wife or Child.** Violations of Minn. Stat. § 609.375 (1971) for non-support of wife or child may be prosecuted and tried in the county where the wife or child or both reside.

24.03 Change of Venue.

Subd. 1 **Grounds.** The case may be transferred to another county:

a. If the court is satisfied that a fair and impartial trial cannot be had in the county in which the case is pending;

b. For the convenience of parties and witnesses;

c. In the interests of justice;

d. As provided by Rule 25.02 governing prejudicial publicity.

Subd. 2 **County to which Transferred.** For the purposes of change of venue under this rule the district referred to in Minn. Const. Art. I § 6 shall be all that area within the geographical boundaries of the State of Minnesota.

Subd. 3 **Time for Motion for Change of Venue.** A motion for change of venue, except as permitted by Rule 25.02, shall be made at the time prescribed by Rule 10 for making pretrial motions.

Subd. 4 **Proceedings on Transfer.** If the case is transferred under these rules, all records in the case or certified copies thereof shall be transmitted to the court to which the case is transferred. If the defendant is in custody, the court may order that he be transported to the sheriff of

the county to which the case is transferred. Unless the Supreme Court orders otherwise, the case shall be tried before the judge who ordered the change of venue. If the defendant has been released upon conditions of release under these rules those conditions shall be continued upon the further condition that the defendant shall appear as ordered by the court for trial and other proceedings in the county to which the case has been transferred.

RULE 25
SPECIAL RULES GOVERNING
PREJUDICIAL PUBLICITY

The following rules shall govern when any question of potentially prejudicial publicity is raised:

25.01 Pretrial Hearings—Motion to Exclude Public.

All pretrial hearings shall be open to the public. However, the defendant may move that all or part of such hearing be held in chambers or otherwise closed to the public on the ground that dissemination of evidence or argument adduced at the hearing may disclose matters that may be inadmissible in evidence at the trial and likely to interfere with his right to a fair trial by an impartial jury. The motion shall not be granted unless the court determines that there is a substantial likelihood of such interference. With the consent of the defendant, the court may make such an exclusion order on its own motion or at the suggestion of the prosecution. No exclusion order shall issue without the court setting forth the reasons therefor. Any person aggrieved may petition the supreme court for immediate review of the order granting or denying exclusion. Whenever under this rule all or part of any pretrial hearing is held in chambers or otherwise closed to the public, a complete record of the proceedings shall be made and upon request shall be transcribed and filed and shall be available to the public following the completion of the trial or disposition of the case without trial. For the protection of innocent persons, the court may order that names be deleted or substitutions made therefor in the record.

25.02 Continuance or Change of Venue.

A motion for continuance or change of venue because of prejudicial publicity shall be governed by the following rules:

Subd. 1 **At Whose Instance.** A continuance or change of venue may be granted on motion of either the prosecution or the defense or on the court's own motion.

Subd. 2 **Methods of Proof.** In addition to the testimony or affidavits of individuals in the community, which shall not be required as a condition of the granting of a motion for continuance or change of venue, qualified public opinion surveys shall be admissible as well as other materials having probative value.

Subd. 3 **Standards for Granting the Motion.** A motion for continuance or change of venue shall be granted whenever it is determined that the dissemination of potentially prejudicial material creates a reasonable likelihood that in the absence of such relief, a fair trial cannot be had. A showing of actual prejudice shall not be required.

Subd. 4 **Time of Disposition.** If a motion for continuance or change of venue is made before the jury is sworn, the motion shall be determined before the jury is sworn. If a motion is made or if reconsideration of a prior denial is sought, it may be granted notwithstanding the fact that a jury has been sworn to try the case.

Subd. 5 **Limitations; Waiver.** It shall not be ground for denial of a change of venue that one such change has already been granted. The waiver of the right to trial by jury or the failure to exercise all available peremptory challenges shall not constitute a waiver of the right to a continuance or change of venue if a motion has been timely made.

RULE 26
TRIAL

26.01 Trial by Jury or by the Court.

Subd. 1 **Trial by Jury.**

(1) **Right to Jury Trial.**

(a) **Offenses Punishable by Incarceration.** A defendant shall be entitled to a jury trial in any prosecution for an offense punishable by incarceration. Except as otherwise provided by these rules, trials for misdemeanors shall be in the county court. Trials for felonies and gross misdemeanors shall be in the district court.

(b) **Misdemeanors Not Punishable by Incarceration.** In any prosecution for the violation of a misdemeanor not punishable by incarceration, trial shall be to the court.

(c) **Trial De Novo in District Court in Misdemeanor Cases.** If following final judgment in county court, a trial de novo is permitted in district court pursuant to Rule 28.01, the defendant shall be entitled to a jury trial in district court.

(2) **Waiver of Trial by Jury.**

(a) **Waiver Generally.** The defendant, with the approval of the court may waive jury trial provided he does so personally in writing or orally upon the record in open court, after being advised by the court of his right to trial by jury and after having had an opportunity to consult with counsel.

(b) **Waiver When Prejudicial Publicity.** The defendant shall be permitted to waive jury trial whenever it is determined that (a) the waiver has been knowingly and voluntarily made, and (b) there is reason to believe that, as the result of the dissemination of potentially prejudicial material, the waiver is required to assure the likelihood of a fair trial.

(3) **Withdrawal of Waiver of Jury Trial.**

Waiver of jury trial may be withdrawn by the defendant at any time before the commencement of trial.

(4) **Waiver of Number of Jurors Required by Law.**

At any time before-verdict, the parties, with the approval of the court, may stipulate that the jury shall consist of a lesser number than that provided by law. The court shall not approve such a stipulation unless the defendant, after being advised by the court of his right to trial by a jury consisting of the number of jurors provided by law, personally in writing or orally on the record in open court agrees to trial by such reduced jury.

(5) **Number Required for Verdict.**

A unanimous verdict shall be required in all cases.

(6) **Waiver of Unanimous Verdict.**

At any time before verdict, the parties, with the approval of the court, may stipulate that the jury may render a verdict on the concurrence of a specified number of jurors less than that required by law or these rules. The court shall not approve such a stipulation unless the defendant, after being advised by the court of his right to a verdict on the concurrence of the number of jurors specified by law, personally in writing or orally on the record waives his right to such a verdict.

Subd. 2 **Trial Without a Jury.** In a case tried without a jury, the court, within 7 days after the completion of the trial, shall make a general finding of guilty, not guilty, or if such pleas have been made, a general finding of not guilty by reason of mental illness or mental deficiency, double jeopardy, or that prosecution is barred by Minn. Stat. § 609.035 (1971), if appropriate. The court, within 7 days after the general finding, shall in addition specifically find the essential facts in writing or on the record. If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact appear therein. If the court omits a finding on any issue of fact essential to sustain the general finding, it shall be deemed to have made a finding consistent with the general finding.

26.02 Selection of Jury.

Subd. 1 **Selection and Qualifications.** The jury list shall be composed of the names of persons selected at random from a fair cross-section of the residents of the county who are qualified by law to serve as jurors and shall otherwise be selected as provided by law. The jury shall be drawn from the jury list and summoned, as prescribed by law.

The same jury list and panel may be used for both the district and county court.

Subd. 2 **List of Prospective Jurors.** Upon request the clerk of court shall furnish the parties with a list of the names and addresses of the persons on the jury panel. The parties shall also have access to such other information as the clerk has obtained from prospective jurors.

Subd. 3 **Challenge to Panel.** Either party may challenge the jury panel on the ground that there has been a material departure from the requirements of law governing the selection, drawing or summoning of the jurors. The challenge shall be in writing, specifying the facts constituting the grounds of the challenge, and shall be made before a jury is sworn. If the opposing party objects to either the sufficiency of the challenge or the facts on which it is based, the court shall hear and determine the challenge.

Subd. 4 **Voir Dire Examination.**

(1) **Purpose—By Whom Made.**

A voir dire examination shall be conducted for the purpose of discovering bases for challenge for cause and for the purpose of gaining knowledge to enable an informed exercise of peremptory challenges. The judge shall initiate the voir dire examination by identifying the parties and their respective counsel and by briefly outlining the nature of the case. The judge shall then put to the prospective juror or jurors any questions which he thinks necessary touching their qualifications to serve as jurors in the case on trial and may give such preliminary instructions as are set forth in Rule 26.03, subd. 4. Before exercising challenges, either party may make a reasonable inquiry of a prospective juror or jurors in reference to their qualifications to sit as jurors in the case. A verbatim record of the voir dire examination shall be made at the request of either party.

(2) **Sequestration of Jurors.**

(a) **Court's Discretion.** In the discretion of the court the examination of each juror may take place outside of the presence of other chosen and prospective jurors.

(b) **Prejudicial Publicity.** Whenever there is a significant possibility that individual jurors will be ineligible to serve because of exposure to prejudicial material, the examination of each juror with respect to his exposure shall take place outside the presence of other chosen and prospective jurors.

(3) **Order of Drawing, Examination and Challenge.**

(a) **Uniform Rule.** Except as provided by Rule 26.02, subd. 4(3)(c)(8) with respect to cases of first degree murder, unless the

court orders that the jurors shall be drawn, examined and challenged as provided either by Rule 26.02, subd. 4(3)(b) or (c), they shall be drawn, examined and challenged as follows:

1. The court shall first direct that such a number of the members of the jury panel be drawn and called as will equal the number of which the jury shall be composed for trial of the case plus the number of peremptory challenges available to all the parties and the number of any alternate jurors.

2. The prospective jurors so drawn and called shall take their place in the jury box and be sworn to answer truthfully questions asked them relative to their qualifications to serve as jurors in the case.

3. The prospective jurors shall be examined as to their qualifications, first by the court, then by the parties, commencing with the defendant.

4. A challenge for cause may be made at any time during voir dire by any party. At the close of voir dire any additional challenges for cause shall be made, first by the defense and then by the prosecution.

5. If any prospective juror is challenged and excused for cause another shall be drawn from the jury panel so that the number in the jury box will remain equal to the number initially called.

6. After both parties have had an opportunity to challenge for cause, each, commencing with the defendant, may exercise alternately the peremptory challenges permitted by these rules.

7. When the peremptory challenges have been exercised, the jury shall be selected from the remaining prospective jurors in the order in which they were called until the number selected equals the number of which the jury shall be composed for trial of the case plus the alternate jurors, if any.

(b) **By Order of Court.** The court may order that the jurors be drawn, examined and challenged as provided by Rule 26.02, subd. 4(3)(b) or (c) as follows:

1. The court shall first direct that such a number of the members of the jury panel be drawn and called as will equal the number of which the jury shall be composed for trial of the case plus the number of any alternate jurors.

2. The prospective jurors so drawn and called shall take their place in the jury box and be sworn to answer truthfully questions asked them relative to their qualifications to serve as jurors in the case.

3. The prospective jurors shall be examined as to their qualifications, first by the court, then by the parties, commencing with the defendant.

4. Upon completion of defendant's examination of a prospective juror, the defendant shall be permitted to exercise a challenge for cause or a peremptory challenge as permitted by these rules as to that juror. If the juror is excused, he shall be replaced by another member of the panel. The replacement juror shall be examined and challenged after all previously drawn jurors have been examined and challenged.

5. Upon completion of the examination and any challenge of each prospective juror by the defendant, the state may examine such prospective juror and may challenge the juror for cause or peremptorily. If the juror is excused, he shall be replaced by another member of the panel who shall be subject to examination and challenge in accordance with this rule.

6. This process of jury selection shall continue until the number of persons of which the jury shall be composed for trial of the case plus any alternate jurors is selected and sworn as the trial jury.

(c) **By Order of Court.**

1. The court shall direct that one prospective juror at a time be drawn from the jury panel for examination.

2. The prospective juror so drawn shall be sworn to answer truthfully questions asked him relative to his qualifications to serve as a juror in the case.

3. The prospective juror shall be examined by the court and then by the parties, commencing with the defendant.

4. Upon completion of defendant's examination, the defendant may challenge the juror for cause or peremptorily as permitted by these rules.

5. If the juror is excused, another prospective juror shall be drawn from the panel and shall be examined and subject to challenge in the same manner.

6. If a prospective juror is not excused after examination by the defendant, he may be examined by the state and may be challenged for cause or peremptorily by the state.

7. This process of selection shall continue until the number of persons of which the jury shall be composed for trial of the case is selected and sworn as the trial jury plus the number of any alternate jurors.

8. In cases of first degree murder, the method provided by Rule 26.02, subd. 4(3)(c) shall be preferred unless otherwise ordered by the court.

Subd. 5 **Challenge for Cause.**

(1) **Grounds.**

A juror may be challenged for cause by either party upon the following grounds:

1. The existence of a state of mind on the part of the juror, in reference to the case or to either party, which satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the party challenging.

2. A felony conviction unless his civil rights have been restored.

3. The lack of any of the qualifications prescribed by law to render a person a competent juror.

4. A physical or mental defect which renders him incapable of performing the duties of a juror.

5. The consanguinity or affinity, within the ninth degree, to the person alleged to be injured by the offense charged, or to the person on whose complaint the prosecution was instituted, or to the defendant, or to any of the attorneys in the case.

6. Standing in relation of guardian and ward, attorney and client, employer and employee, landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense, or on whose complaint the prosecution was instituted.

7. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him, in a criminal prosecution.

8. Having served on the grand jury which found the indictment, or an indictment on a related offense.

9. Having served on a trial jury which has tried another person for the same or a related offense to that charged in the indictment, complaint or tab charge.

10. Having been a member of a jury formerly sworn to try the same indictment, complaint, tab charge or a related indictment, complaint or tab charge.

11. Having served as a juror in any case involving the defendant.

(2) **How and When Exercised.**

A challenge for cause may be oral and shall state the grounds on which it is based. The challenge shall be made before the juror is sworn to try the case, but the court for good cause shown may permit it to be made after he is sworn but before all the jurors constituting the jury are sworn. If a challenge for cause is made and the court sustains the challenge, the juror shall be excused.

(3) **By Whom Tried.**

If the opposing party objects to the sufficiency of a challenge for cause or the facts on which it is based, all issues of law or fact arising upon the challenge shall be tried and determined by the court.

Subd. 6 **Peremptory Challenges.** If the offense charged is punishable by life imprisonment the defendant shall be entitled to 15 and the state to 9 peremptory challenges. For any other offense, the defendant shall be entitled to 5 and the state to 3 peremptory challenges. If there is more than one defendant, the court may allow the defendant's additional peremptory challenges and permit them to be exercised separately or jointly, and in that event the state's peremptory challenges shall be correspondingly increased.

Subd. 7. **Order of Challenges to the Panel and to Individual Jurors.** Challenges to the panel and to individual jurors shall be made in the following order:

a. To the panel.

b. To an individual juror for cause.

c. Peremptory challenge to an individual juror.

Subd. 8 **Alternate Jurors.** A trial judge may impanel alternate or additional jurors whenever in his discretion, he believes it advisable to have such jurors available to replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. An alternate juror who does not replace a principal juror shall be discharged after the jury retires to consider its verdict. Alternate jurors, in the order in which they are called, shall replace jurors who prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, have the same qualifications, and be subject to the same examination and challenges for cause as the regular jurors. No additional peremptory challenges shall be allowed for alternate jurors except that unused peremptory challenges for the regular jury may be exercised against alternate jurors. If a juror becomes unable or disqualified to perform his duties after the jury has retired to consider its verdict, a mistrial shall be declared unless the parties agree pursuant to Rule 26.01, subd. 1(4) that the jury shall consist of a lesser number than that selected for the trial.

26.03 Procedures During Trial.

Subd. 1 **Presence of Defendant.**

(1) **Presence Required.**

The defendant shall be present at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules.

(2) **Continued Presence Not Required.**

The further progress of a trial to and including the return of the verdict shall not be prevented and the defendant shall be considered to waive his right to be present whenever:

1. a defendant voluntarily and without justification absents himself after trial has commenced; or

2. a defendant after warning engages in conduct which is such as to justify his being excluded from the courtroom because it tends to interrupt the orderly procedure of the court and the due course of the trial. As an alternative to exclusion, the court may use all such methods of re-

straint as will ensure the orderly procedure of the court and the due course of the trial.

(3) **Presence Not Required.**

A defendant need not be present in the following situations:

1. a corporation may appear by counsel for all purposes;

2. in the case of felonies or gross misdemeanors, on defendant's motion, the court may excuse the defendant from attendance at any proceeding except arraignment, plea, trial, and imposition of sentence; and

3. in prosecutions for misdemeanors, the court with the written consent of the defendant, or his oral consent in open court, may permit arraignment, plea, trial, and imposition of sentence in the defendant's absence.

Subd. 2 **Custody and Restraint of Defendants and Witnesses.**

a. During the trial the defendant shall be seated where he can effectively consult with his counsel and can see and hear the proceedings.

b. An incarcerated defendant or witness shall not appear in court in the distinctive attire of a prisoner.

c. Defendants and witnesses shall not be subjected to physical restraint while in court unless the trial judge has found such restraint reasonably necessary to maintain order or security. If the trial judge orders such restraint, he shall state his reasons on the record outside the presence of the jury. Whenever physical restraint of a defendant or witness occurs in the presence of jurors trying the case, the judge shall on request of the defendant instruct those jurors that such restraint is not to be considered in assessing the proof and determining guilt.

Subd. 3 **Use of Courtroom.** Whenever appropriate in view of the notoriety of the case or the number or conduct of news media representatives present at any judicial proceeding, the court shall ensure the preservation of decorum by instructing those representatives and others as to the permissible use of the courtroom and other facilities of the court, the assignment of seats to news media representatives on an equitable basis, and other matters that may affect the conduct of the proceeding.

Subd. 4 **Preliminary Instructions.** After the jury has been impaneled and sworn, and before the opening statements of counsel, the court may instruct the jury as to the respective claims of the parties and as to such other matters as will aid the jury in comprehending the trial procedure and sequence to be followed. Preliminary instructions may also include such matters as burden of proof, presumption of innocence, the necessity of proof of guilt beyond reasonable doubt, the elements which the jury may consider in weighing testimony or determining credibility of witnesses, rules applicable to opinion, evidence, and such other rules of law, including the essential elements of the offense, as the court may deem essential to the proper understanding of the evidence. Such preliminary instructions shall be disclosed to the parties before they are given and either party may object to any specific instruction or propose instructions of his own to be given prior to trial.

Subd. 5 **Sequestration of the Jury.**

(1) **In the Discretion of the Court.**

During the period from the time the jurors are sworn until they retire for deliberation upon their verdict, the court, in its discretion, may either permit them and any alternate jurors to separate during recesses and adjournments or direct that they be continuously kept together during such period under the supervision of proper officers. The officers shall not speak to or communicate with any juror concerning any subject connected with the trial nor permit any other person to do so, and shall return the jury to the courtroom at the next designated trial session.

(2) **On Motion.**

Either party may move for sequestration of the jury at the beginning of trial or at any time during the course of the trial. Sequestration shall be ordered if it is determined that the case is of such notoriety or the issues are of such a nature that, in the absence of sequestration, highly prejudicial matters are likely to come to the attention of the jurors. Whenever sequestration is ordered, the court in advising the jury of the decision shall not disclose which party requested sequestration.

Subd. 6 **Exclusion of the Public From Hearings or Arguments Outside the Presence of the Jury.** If the jury is not sequestered, the defendant may move that the public be excluded from any portion of the trial that takes place outside the presence of the jury on the ground that dissemination of evidence or argument adduced at the hearing is likely to interfere with the defendant's right to a fair trial by an impartial jury. The motion shall not be granted unless it is determined that there is a substantial likelihood of such interference. With the consent of the defendant, the court may take such action on its own motion or at the suggestion of the prosecution. No exclusion order shall issue without the court setting forth the reasons therefor. Any person aggrieved may petition the supreme court for immediate review of the order granting or denying exclusion. Whenever under this rule part of the proceedings are held in chambers or otherwise closed to the public, a complete record of the proceedings shall be made and shall be available to the public following the completion of the trial. For the protection of innocent persons, the court may order that names be deleted or substitutions therefor be made in the record.

Subd. 7 **Cautioning Parties, Witnesses, Jurors and Judicial Employees; Insulating Witnesses.** Whenever appropriate, the court shall order attorneys, parties, witnesses, jurors, and employees and officers of the court not to make extra-judicial statements relating to the case or the issues in the case for dissemination by any means of public communication during the course of the trial.

Witnesses may be sequestered or excluded from the courtroom, prior to their appearance, in the discretion of the court.

Subd. 8 **Admonitions to Jurors.** Appropriate admonitions shall be given to the jury during the trial not to read, listen to, or watch reports about the case appearing in the news media.

Subd. 9 **Questioning Jurors About Exposure to Potentially Prejudicial Material in the Course of a Trial.** If it is determined that material disseminated outside the trial proceedings raises serious questions of possible prejudice, the court may on its own motion and shall on motion of either party question each juror, out of the presence of the others, about his exposure to that material. The examination shall take place in the presence of counsel, and a verbatim record of the examination shall be kept.

Subd. 10 **View by Jury.**

a. When the court is of the opinion that a viewing by the jury of the place where the offense being tried was committed, or any other place involved in the case, will be helpful to the jury in determining any material factual issue, it may in its discretion, at any time before the closing arguments, order that the jury be conducted to such place.

b. The jury must be kept together during the viewing under the supervision of a proper officer appointed by the court. The judge and a court reporter must be present, and with the judge's permission any other person may be present. The prosecuting attorney, the defendant and defense counsel may as a matter of right be present, but the right may be waived.

c. The purpose of the viewing shall be solely to permit visual observation by the jury of the place in question, and neither the parties, counsel, nor the jurors while viewing the place may engage in discussion concerning the significance or implications of anything under observation or concerning any issue in the case.

Subd. 11 **Order of Jury Trial.** The order of a jury trial shall be substantially as follows:

a. The jury shall be selected and sworn.

b. The court may deliver preliminary instructions to the jury.

c. The prosecuting attorney may make an opening statement to the jury, confining the statement to the facts he expects to prove.

d. The defendant may make an opening statement to the jury, or he may make it immediately before he offers evidence in his defense. The statement shall be confined to a statement of the defense and the facts he expects to prove in support thereof.

e. The prosecution shall offer evidence in support of the indictment, complaint or tab charge.

f. The defendant may offer evidence in his defense.

g. The prosecution may offer evidence in rebuttal of the defense evidence, and the defendant may then offer evidence in rebuttal of the prosecution's rebuttal evidence. In the interests of justice, the court may permit either party to offer evidence upon his original case.

h. At the conclusion of the evidence, the prosecution may make a closing argument to the jury.

i. The defendant may then make a closing argument to the jury.

j. The court shall charge the jury.

k. The jury shall retire for deliberation and, if possible, render a verdict.

Subd. 12 **Note Taking.** Jurors may take notes of the evidence presented at the trial and may keep these notes with them when they retire for deliberation.

Subd. 13 **Substitution of Judge.**

(1) **Before or During Trial.**

If by reason of death, sickness or other disability of the judge before whom pretrial proceedings or a jury trial has commenced is unable to proceed, any other judge sitting in or assigned to the court, upon certification that he has familiarized himself with the record of the proceedings or trial, may proceed with and finish the proceedings or trial.

(2) **After Verdict or Finding of Guilt.**

If by reason of absence, death, sickness or other disability, the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial, he may in his discretion grant a new trial.

Subd. 14 **Exceptions.**

(1) **Exceptions Abolished.**

Exceptions to rulings or orders of the court or to the actions of a party

are abolished. It is sufficient that a party, at the time the ruling or order of court is made or sought or the action of a party taken, makes known to the court the action which he desires the court to take or his objections to the action of the court or of a party and his grounds therefore; and, if a party has no opportunity to object to a ruling or order or action at the time it is made or taken the absence of an objection does not thereafter prejudice him.

(2) **Bills of Exception and Settled Cases Abolished.**

The bill of exceptions and settled case shall not be required. The record of the case for the purposes for which a bill of exceptions or settled case was heretofore required shall consist of the papers filed in the trial court, the offered exhibits, and the minutes of the court, and the transcript of the proceedings, if any.

Subd. 15 **Evidence.** In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules. All evidence shall be admitted which is admissible under the statutes of this state, or under the rules of evidence applied in the trials of criminal offenses in the courts of this state. In any case, the statute or rule which favors the reception of the evidence governs, and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.

Subd. 16 **Interpreters.** The court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law.

Subd. 17 **Motion for Judgment of Acquittal.**

(1) **Motion Before Submission to Jury.**

Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. After the evidence on either side is closed, the court on motion of a defendant or on its own motion shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment or complaint if the evidence is insufficient to sustain a conviction of such offense or offenses.

(2) **Reservation of Decision on Motion.**

If the defendant's motion is made at the close of the evidence offered by the prosecution, the court may not reserve decision on the motion. If the defendant's motion is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict or is discharged without having returned a verdict.

(3) **Motion After Discharge of Jury.**

If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 15 days after the jury is discharged or within such further time as the court may fix during the 15-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned, the court may enter judgment of acquittal. Such a motion is not barred by defendant's failure to make a similar motion prior to the submission of the case to the jury.

Subd. 18 **Instructions.**

(1) **Requests for Instructions.**

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to all parties. The court shall inform counsel of its proposed action upon the requests prior to the arguments to the jury, and such action shall be made a part of the record.

(2) **Proposed Instructions.**

The court may, and upon request of any party shall, before the arguments to the jury, inform counsel what instructions will be given and all such instructions may be stated to the jury by either party as a part of his argument.

(3) **Objections to Instructions.**

No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict. The matter to which objection is made and the grounds of the objection shall be specifically stated. Opportunity shall be given to make the objection out of the hearing of the jury and, on request of any party, out of the presence of the jury. All objections to instructions and the rulings thereon shall be included in the record. All instructions, whether given or refused, shall be made a part of the record. An error in the instructions with respect to fundamental law or controlling principle may be assigned in a motion for a new trial though it was not otherwise called to the attention of the court.

(4) **Giving of Instructions.**

The court in its discretion shall instruct the jury either before or after the arguments are completed except, at the discretion of the court, preliminary instructions need not be repeated. The instructions may be in writing and in the discretion of the court a copy may be taken to the jury room when the jury retires for deliberation.

(5) **Contents of Instructions.**

In charging the jury the court shall state all matters of law which are necessary for the jury's information in rendering a verdict and shall inform the jury that it is the exclusive judge of all questions of fact. The court shall not comment on the evidence or the credibility of the witnesses, but may state the respective claims of the parties.

Subd. 19 **Jury Deliberations and Verdict.**

(1) **Materials to Jury Room.**

The court shall permit the jury, upon retiring for deliberation, to take to the jury room exhibits which have been received in evidence, or copies thereof, except depositions and may permit a copy of the instructions to be taken to the jury room.

(2) **Jury Requests to Review Evidence.**

1. If the jury, after retiring for deliberation, requests a review of certain testimony or other evidence, the jurors shall be conducted to the courtroom. The court, after notice to the prosecutor and defense counsel, may have the requested parts of the testimony read to the jury and permit the jury to re-examine the requested materials admitted into evidence.

2. The court need not submit evidence to the jury for review beyond that specifically requested by the jury, but in its discretion the court may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

(3) **Additional Instructions After Jury Retires.**

1. If the jury, after retiring for deliberation, desires to be informed on any point of law, the jurors, after notice to the prosecutor and defense counsel, shall be conducted to the courtroom. The court shall give appropriate additional instructions in response to the jury's request unless: (a) the jury may be adequately informed by directing their attention to some portion of the original instructions; (b) the request concerns matters not in evidence or questions which do not pertain to the law of the case; or (c) the request would call upon the judge to express an opinion upon factual matters that the jury should determine.

2. The court need not give additional instructions beyond those specifically requested by the jury, but in its discretion the court may also give or repeat other instructions to avoid giving undue prominence to the requested instructions.

3. The court after notice to the prosecutor and defense counsel may recall the jury after it has retired and give any additional instructions as the court deems appropriate.

(4) **Deadlocked Jury.**

The jury may be discharged without having agreed upon a verdict if it appears that there is no reasonable probability of agreement.

(5) **Polling the Jury.**

When a verdict is rendered and before the jury has been discharged, the jury shall be polled at the request of any party or upon the court's own motion. The poll shall be conducted by the court or clerk of court who shall ask each juror individually whether the verdict announced is his verdict. If the poll does not conform to the verdict, the jury may be directed to retire for further deliberation or may be discharged.

(6) **Impeachment of Verdict.**

Affidavits of jurors shall not be received in evidence to impeach their verdict. If the defendant has reason to believe that the verdict is subject to impeachment, he shall move the court for a summary hearing. If the motion is granted the jurors shall be interrogated under oath and their testimony recorded.

26.04 Post-Verdict Motions.

Subd. 1 **New Trial.**

(1) **Grounds.**

The court on written motion of the defendant may grant a new trial on any of the following grounds:

1. If required in the interests of justice;

2. Irregularity in the proceedings of the court, jury, or on the part of the prosecution, or any order or abuse of discretion, whereby the defendant was deprived of a fair trial;

3. Misconduct of the jury or prosecution;

4. Accident or surprise which could not have been prevented by ordinary prudence;

5. Material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;

6. Errors of law occurring at the trial, and objected to at the time or, if no objection is required by these rules, assigned in the motion;

7. The verdict or finding of guilty is not justified by the evidence, or is contrary to law.

(2) **Basis of Motion.**

A motion for new trial shall be made and heard on the files, exhibits and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit except as otherwise provided by these rules. A full or partial transcript of the court reporter's notes of the testimony taken at the trial or other verbatim recording thereof may be used on the hearing of the motion.

(3) **Time for Motion.**

Notice of a motion for a new trial shall be served within 15 days after verdict or finding of guilty. The motion shall be heard within 30 days

after the verdict or finding of guilty, unless the time for hearing be extended by the court within the 30-day period for good cause shown.

(4) Time for Serving Affidavits.

When a motion for new trial is based on affidavits, they shall be served with the notice of motion. The opposing party shall have 10 days after such service in which to serve opposing affidavits, which period may be extended by the court upon an order extending the time for hearing under this rule. The court may permit reply affidavits.

Subd. 2 **Motion to Vacate Judgment.** The court on motion of a defendant shall vacate judgment, if entered, and dismiss the case if the indictment, complaint or tab charge does not charge an offense or if the court was without jurisdiction of the offense charged. The motion shall be made within 15 days after verdict or finding of guilty or after plea of guilty, or within such time as the court may fix during the 15-day period.

Subd. 3 **Joinder of Motions.** Any motions for judgment of acquittal or to vacate judgment shall be joined with a motion for a new trial.

Subd. 4 **New Trial on Court's Own Motion.** The court, within 15 days after verdict or finding of guilty, with the consent of the defendant, may order a new trial upon any of the grounds specified in Rule 26.04, subd. 1(1).

RULE 27

SENTENCE AND JUDGMENT

27.01 Conditions of Release.

When a defendant has been convicted and is awaiting sentence, the court may continue or alter the conditions for defendant's release, or may order confinement of the defendant, taking into account the conditions of release and the factors determining the conditions of release as provided by Rules 6.02, subd. 1 and subd. 2 and whether there is reason to believe that the defendant will flee or pose a danger to any person or to the community. The burden of establishing that the defendant will not flee or will not be a danger to any other person or to the community rests with the defendant.

27.02 Presentence Investigation.

Subd. 1 **When Made.** When a defendant has been convicted of a felony, gross misdemeanor, or misdemeanor, and a sentence of life imprisonment is not required by law, the court may, before sentence is imposed, order a presentence investigation and report as provided by law and shall do so when required by law.

Subd. 2 **Scope of Investigation and Report.** The presentence investigation and report shall include the information permitted and required by law. In misdemeanor cases, the report may be oral if so directed by the court.

Subd. 3 **Disclosure of Report.** Subject to the limitations of Minn. Stat. § 609.115, subd. 4, a copy of the presentence report, if written, shall be provided to counsel for all parties before sentence. Otherwise, the presentence report shall be subject to disclosure only as provided by law. If the presentence report is given orally, the defendant or his attorney shall be permitted to hear the report.

Subd. 4 **Mental or Physical Examination.** Upon motion of the defendant or the prosecutor or on its own motion, the court may order the defendant to submit to a mental or physical examination which would be relevant to the sentencing decision. Copies of the report of such examination or any other examination to be considered for the purpose of sentencing shall be disclosed to counsel for the parties. Any evidence derived from the examination may not be used against the defendant in any subsequent proceedings or on retrial except for the review of the sentence.

27.03 Sentencing Proceedings.

Subd. 1 **Hearings.** Summary hearings upon the presentence report and upon the sentence to be imposed upon the defendant shall be held as provided by law. Before the sentencing proceeding, each party shall notify the opposing party and the court of any part of a written presentence report which he intends to controvert by the production of evidence. Both the prosecutor and the defendant or his attorney shall have an opportunity to controvert any part of an oral presentence report and for such purpose the court may continue the sentencing.

Subd. 2 **Defendant's Presence at Sentencing.** Defendant must be personally present at the time sentence is pronounced except when excused pursuant to Rule 26.03, subd. 1(3). Sentence may be pronounced against a corporation in the absence of counsel if counsel fails to appear on the date of sentence after reasonable notice thereof.

Subd. 3 **Statements at Time of Sentence.** Before pronouncing sentence, the court shall give the prosecutor and defense counsel an opportunity to make a statement with respect to any matter relevant to the question of the sentence. The court shall also address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information before sentence. The court shall not accept any communication relative to sentencing that is not on the record without disclosing the contents to the defense and to the prosecution.

Subd. 4 **Imposition of Sentence.** When sentence is imposed the court:

a. Shall state the precise terms of the sentence.

b. Shall assure that the record accurately reflects all time spent in custody in connection with the offense or behavioral incident for which sentence is imposed, which time shall be automatically deducted from the sentence.

Subd. 5 **Notice of Right to Appeal.** After imposition of sentence or granting of probation in a case which has gone to trial the court shall inform the defendant of his right to appeal and the right of a person who is unable to pay the cost of appeal to apply for leave to appeal at state expense.

Subd. 6 **Record.** A verbatim record of the sentencing proceedings shall be made. In felony and gross misdemeanor cases any verbatim record made in accordance with this rule shall be transcribed. In misdemeanor cases any such record need not be transcribed unless requested by the court, the defendant or the prosecuting attorney.

Subd. 7 **Judgment.** The clerk's record of a judgment of conviction shall contain the plea, the verdict of findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The sentence or stay of imposition of sentence is an adjudication of guilt.

Subd. 8 **Clerical Mistakes.** Clerical mistakes in judgments, orders, or other parts of the record or errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

Subd. 9 **Correction or Reduction of Sentence.** The court at any time may correct a sentence not authorized by law. The court may at any time modify a sentence during either a stay of imposition or stay of execution of sentence except that the court may not increase the period of confinement.

RULE 28

TRIAL DE NOVO AND APPEALS TO DISTRICT COURT

28.01 Appeal as of Right.

Subd. 1 **Rights to Trial De Novo.** Any person finally adjudged guilty in county court of a misdemeanor punishable by incarceration shall be entitled to a trial de novo in district court if the lower court judge or judicial officer who presided over the case was not learned in the law.

Subd. 2 **Right to Appeal on the Record.** In any misdemeanor case, a defendant as of right may appeal on the record to the district court any final judgment of conviction or an order refusing or imposing conditions of release.

Subd. 3 **Final Judgment.** A judgment shall be considered final within the meaning of these rules when there is a judgment of conviction upon the verdict of a jury or the finding of the court and sentence is imposed or the imposition of sentence is stayed.

28.02 De Novo Review of Conditions of Release.

In any misdemeanor case in which a defendant has a right to a trial de novo in district court a defendant may appeal to district court as of right for a de novo review of an order refusing or imposing conditions of release.

28.03 Discretionary Appeal.

The district court in the interests of justice and upon petition of the defendant may allow an appeal from an order not otherwise appealable, except an order made during trial, in the manner provided by the Minnesota Rules of Civil Procedure for County and Municipal Courts. The petition shall be served and filed in the same manner and within the same time as provided for a notice of appeal in Rule 28.05, subd. 1.

28.04 Certification of Proceedings.

If, upon the trial of any person convicted in any county court, or if, upon any motion to dismiss a complaint or tab charge, or upon any motion relating to the complaint or tab charge, any question of law shall arise which in the opinion of the judge is so important or doubtful as to require a decision of the district court, he shall, if the defendant shall request or consent thereto, report the case, so far as may be necessary to present the question of law, and certify the report to the district court, whereupon all proceedings in the case shall be stayed until the decision of the district court. Other criminal cases in such county court involving or depending upon the same question may, if the defendants so request, or consent thereto, be stayed in the same manner until the decision of the case so certified.

28.05 Common Procedure for Appeals and for Trials De Novo.

Subd. 1 **Service and Filing.** To appeal on the record to district court or to obtain a trial de novo a defendant shall file written notice thereof with the clerk of the county court where the action was heard. The written notice shall be filed within ten (10) days after the entry of the adverse final judgment or order appealed from.

However, if a timely motion to vacate the judgment or for judgment of acquittal or for a new trial has been made, the notice of appeal from the final judgment may be filed within ten (10) days after the entry of the order denying the motion and the order denying the motion may be reviewed upon the appeal from the judgment.

A judgment or order is entered within the meaning of these appellate rules when it is entered upon the record of the clerk of the county court.

For good cause the county court or a judge of the district court may, before or after the time for filing a notice of appeal has expired with or without motion and notice, extend the time for filing a notice of appeal

for a period not to exceed thirty (30) days from the expiration of the time otherwise prescribed herein for appeal.

A notice of appeal filed after the announcement of a decision, sentence or order but before the entry of judgment or order shall be treated as filed after such entry and on the day thereof.

The notice of appeal shall be served upon the prosecuting attorney not more than five (5) days after the filing. Proof of such service shall be filed with the clerk of the county court where the action was heard not more than three days after such service. No bond shall be required of a defendant as a condition for exercising his right to a trial de novo or to appeal on the record.

Subd. 2 **Contents of Notice of Appeal.** The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment or order from which the appeal is taken; shall state that the appeal is to the district court; and shall state whether the appeal is taken on the record or for a trial de novo.

Subd. 3 **Costs of Appeal.** All fees, other than for furnishing copies of documents, including appeal fees, hearing fees or filing fees, ordinarily charged by the clerks of district court, county court, or by justices of the peace shall automatically be waived in cases in which a public defender or appointed counsel represents the defendant taking the appeal. Such fees shall also be waived by the court upon a sufficient showing by the defendant that he is unable to pay the fees required.

Subd. 4 **Stay of Sentence.** The execution of judgment and sentence of the county court is stayed when an appeal for a trial de novo has been properly perfected and may be stayed by the trial court pending perfection of such an appeal. The county court pending an appeal upon the record from county court to district court or the district court upon perfection of such an appeal may stay execution of judgment or sentence if the defendant establishes to the satisfaction of the court that he will appear to answer the judgment following the conclusion of the appellate proceedings, that the defendant is not likely to commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice, and that the appeal is not frivolous or taken for delay.

Subd. 5 **Release of Defendant.**

(1) **Conditions of Release.**

Upon appeal, if execution of sentence is stayed under Rule 28.05, subd. 4 or if no sentence of incarceration is imposed, the conditions for defendants' release and the factors determining the conditions of release shall be governed by Rules 6.02, subd. 1 and subd. 2. The court shall also take into consideration that the defendant may be compelled to serve the sentence imposed upon him before the district court has had an opportunity to consider the case.

(2) **Application for Release Pending Appeal.**

Application for release pending an appeal shall be made to the county court. If the county court refuses release pending appeal, or imposes conditions of release, the court shall state on the record the reasons for the action taken. Thereafter, if an appeal is pending a motion for release, or for modification of the conditions of release pending review, may be made to the district court. When a trial de novo is to be held the district court shall review any conditions of release at the defendant's first appearance in that court. In either case the motion may be made orally upon such portions of the record, affidavits, and with leave of court other evidence as the parties shall present after reasonable notice to the adverse party and shall be determined promptly.

(3) **Credit for Time Spent in Custody.**

All time the defendant is in custody pending an appeal shall be automatically deducted from the sentence imposed by the court.

28.06 Procedure for Trial De Novo.

Subd. 1 **General Procedure.** Upon a trial de novo in district court all proceedings including those prior to trial shall be as if the action had been initially commenced in that court.

Subd. 2 **Sentencing.** Following a trial de novo a more severe sentence may not be imposed by the district court than was imposed in the lower court unless the more severe sentence is justified by identifiable conduct by the defendant not known to the county court. The factual basis for any increased sentence shall be made a part of the record.

Subd. 3 **Appearance by Defendant.** If the defendant fails to appear as ordered by the court upon trial de novo, the district court may dismiss the appeal and remand the case to the county court for execution of judgment including sentence.

28.07 Procedure for Appeal on the Record.

Subd. 1 **Record on Appeal and Scope of Review.** The record on appeal to the district court and the scope of review by the district court shall be the same as provided by Rule 29.02, subd. 10 and subd. 12 governing misdemeanor appeals from the district court to the Supreme Court.

Subd. 2 **Transcript of Proceedings and Transmission of the Transcript and Record.** The Rules of Civil Appellate Procedure from the Minnesota County Courts to the district courts to the extent applicable shall govern the transcript of the proceedings, the transmission of the transcript and record to the district court, and the form and filing of briefs and appendices except that the appellant's brief shall also contain a statement of the procedural history.

Subd. 3 **District Court Panel.** The chief judge of the district court may order that an appeal on the record be heard and determined by a panel of three or more district court judges. The selection and number of Judges for the panel shall be as determined by the chief judge of the district court or by court rule.

Subd. 4 **Action of District Appellate Court.** The district court upon an appeal on the record may reverse, affirm or modify the judgment or order appealed from, or take any other action as the interest of justice may require. If the district court affirms the judgment, it shall either direct that the sentence pronounced by the county court be executed or impose a lesser sentence. If the court reverses the judgment it shall either direct a new trial, or that the defendant be absolutely discharged or that the conviction be reduced to a lesser included offense. If the conviction is reduced, the district court shall either impose or stay imposition of a sentence or return the case to the county court for resentencing.

Subd. 5 **Written Decision.** The decision of the district court shall be in writing and shall include a recitation of the essential facts of the case and the conclusions of law on which the decision was based. The decision shall be filed with the clerk of the district court.

28.08 Appeal by Prosecuting Authority.

Subd. 1 **Prosecuting Authority.** As used in this rule prosecuting authority means that governmental unit authorized by law to prosecute the misdemeanor case giving rise to the appeal.

Subd. 2 **Appealable Orders.** The prosecuting authority may appeal to the district court from any pretrial order of the county court, except an order dismissing a complaint for lack of probable cause to believe the defendant has committed an offense or an order dismissing a complaint pursuant to Minn. Stat. § 631.21. The prosecuting authority may not appeal under the rule until after the evidentiary hearing and pretrial conference, if any, have been held under Rule 12, and all issues raised therein have been determined by the county court. No appeal by the prosecuting authority shall be taken after jeopardy has attached.

Subd. 3 **Procedure.** The procedure upon appeal by the prosecuting authority shall be as follows:

(1) **Stay.**

Upon oral notice that the prosecuting authority intends to appeal to the district court, the county court shall order a further stay of proceedings of five days to allow time to perfect the appeal.

(2) **Notice of Appeal.**

Within five (5) days after entry of the order staying the proceedings pursuant to subd. 3 (1) of this rule, the prosecuting authority shall file a written notice of appeal with the clerk of the county court where the action was heard. Within five days after filing the notice of appeal that notice shall be served upon the defendant or his attorney and proof of such service must be filed with the clerk of the county court not more than three days after such service. The prosecuting authority shall also in writing request the court reporter for such transcript of the proceedings as appellant deems necessary and shall file a copy of such written request with the clerk of the county court not more than three days after serving the notice of appeal upon the defendant or his attorney. Failure to request the transcript or to file a copy of such request or to file proof of service does not deprive the district court of jurisdiction over the prosecuting authority's appeal, but it is ground only for such action as the district court deems appropriate, including dismissal of the appeal.

(3) **Transcript.**

The court reporter shall file with the clerk of court the original transcript and affidavits of delivery of same to counsel for the prosecuting authority and counsel for the defendant. The clerk of said court shall forthwith transmit to the district court any original papers, files, and exhibits.

(4) **Applicability of Rules of Civil Procedure.**

Except as otherwise provided in these rules, the Minnesota Rules of Civil Appellate Procedure from the Minnesota County Court to the District Courts shall govern the procedure in an appeal by the prosecuting authority to the district court.

(5) **Attorneys' Fees.**

Reasonable attorneys' fees incurred shall be allowed to the defendant on such appeal which shall be paid by the county in which the prosecution was commenced.

(6) **Joinder.**

The prosecuting authority may appeal from one or several of the orders under this rule joined in a single appeal.

(7) **Effect on Case in County Court.**

An appeal by the prosecuting authority under this rule bars any further appeal by the prosecuting authority from any existing orders not included in this appeal.

An appeal under this rule does not deprive the county court or jurisdiction over pending matters not included in the appeal.

Subd. 4 **Cross-Appeal by Defendant.** Upon appeal by the prosecuting authority, the defendant may obtain review of any pre-trial order, which will adversely affect him, by filing a notice of cross-appeal with the clerk of the district court within 10 days after service of notice of the appeal by the prosecuting authority under Rule 28.08, subd. 3 (2). Within 5 days after the notice of cross-appeal is filed, notice thereof shall

be mailed to, or served upon the prosecuting authority by the defendant. Failure to mail or serve the notice does not deprive the district court of jurisdiction over defendant's cross-appeal, but is ground only for such action as the district court deems appropriate, including a dismissal of the cross-appeal.

Subd. 5 **Conditions of Release.** Upon appeal by the prosecuting authority, the conditions for defendant's release pending the appeal shall be governed by Rule 28.05, subd. 5.

28.09 No Direct Appeals to Supreme Court.

All appeals from county courts in misdemeanor cases whether on the record or for a trial de novo shall be to the district court only. Thereafter, appeals in such cases from the district court to the Supreme Court shall be as provided in Rule 29.

RULE 29
APPEAL TO SUPREME COURT

29.01 Scope of Rules Governing Appeal.

Subd. 1 **Appeals from District Court.** These rules govern the procedure for appeals in criminal cases from the district courts to the Minnesota Supreme Court.

Subd. 2 **Applicability of Rules of Civil Procedure.** Except as otherwise provided in these rules, the Minnesota Rules of Civil Appellate Procedure to the extent applicable shall govern appellate procedures in such cases.

Subd. 3 **Suspension of Rules.** In the interest of expediting decision, or for other good cause shown, the Supreme Court may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction, but the Supreme Court may not extend or shorten the time for filing notice of appeal except as provided by these rules.

29.02 Appeal by Defendant.

Subd. 1 **Review by Appeal.** Except as provided by law for the issuance of the extraordinary writs and for the Post-Conviction Remedy, a defendant may obtain review of orders and rulings of the county and district courts by the Supreme Court only by appeal as provided by these rules. Writs of error are abolished.

Subd. 2 **Appeal as of Right.**

(1) **Final Judgment.**

A defendant may appeal as of right from any final judgment adverse to him, except that in misdemeanor cases, he may appeal only with leave of the Supreme Court. A judgment shall be considered final within the meaning of these rules when there is a judgment of conviction upon the verdict of a jury or the finding of the court and sentence is imposed or the imposition of sentence is stayed.

(2) **Orders in Felony and Gross Misdemeanor Cases.**

A defendant may not appeal until final judgment adverse to him has been entered by the district court except that in felony and gross misdemeanor cases a defendant may appeal from:

1. An order granting a new trial when the defendant claims that the trial court should have entered a final judgment in his favor; or

2. An order, not on his motion, finding him incompetent to stand trial; or

3. An order refusing or imposing conditions of release.

Subd. 3 **Discretionary Appeal.** The Supreme Court in the interests of justice and upon petition of the defendant may allow an appeal from an order not otherwise appealable, except an order made during trial, in the manner provided by the Minnesota Rules of Civil Appellate Procedure, provided that the petition shall be served and filed within thirty (30) days after entry of the order appealed.

Subd. 4 **Certification of Proceedings in Felony and Gross Misdemeanor Cases.** If, upon the trial of any person convicted in any district court, or if, upon any motion to dismiss a complaint or indictment, or upon any motion relating to the indictment or complaint, any question of law shall arise which in the opinion of the judge is so important or doubtful as to require a decision of the Supreme Court, he shall, if the defendant shall request or consent thereto, report the case, so far as may be necessary to present the question of law, and certify the report to the Supreme Court, whereupon all proceedings in the case shall be stayed until the decision of the Supreme Court. The county attorney shall, upon the certification of the report, forthwith furnish a copy to the attorney general at the expense of the county. Other criminal cases in such district court involving or depending upon the same question may, if the defendants so request, or consent thereto, be stayed in like manner until the decision of the case so certified.

Subd. 5 **How Appeal Is Taken in Felony and Gross Misdemeanor Cases.**

(1) **Notice of Appeal.**

An appeal from a judgment or order shall be taken by the defendant by filing a notice of appeal with the clerk of the district court. Failure of the defendant to take any other step than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Supreme Court deems appropriate, including a dismissal of the appeal. Within 5 days from the filing of the notice of appeal, a copy of the notice shall be served on or mailed to the attorney general and the prosecuting attorney. Upon the filing of the notice of appeal, the clerk shall promptly transmit a certified copy of the notice to the clerk of the Supreme Court.

(2) **Contents of Notice of Appeal.**

The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment or order from which the appeal is taken; and shall state that the appeal is to the Supreme Court.

(3) **Time for Taking an Appeal.**

The notice of appeal by a defendant shall be filed in the district court within 90 days after the entry of the judgment or order appealed from. A notice of appeal filed after the announcement of a decision, sentence, or order but before the entry of judgment or order shall be treated as filed after such entry and on the day thereof. If a timely motion to vacate the judgment or for judgment of acquittal, or for a new trial on any ground other than newly discovered evidence has been made, an appeal from a final judgment may be taken within 90 days after the entry of an order denying the motion, and the order denying the motion may be reviewed upon the appeal from the judgment.

A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within 90 days after entry of judgment.

A judgment or order is entered within the meaning of these appellate rules when it is entered upon the record of the clerk of the district court.

For good cause the district court or a justice of the Supreme Court may, before or after the time for appeal has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed herein for appeal.

Subd. 6 **Obtaining Permission to Appeal in Misdemeanor Cases.**

(1) **Petition for Permission to Appeal in Misdemeanor Cases.**

A defendant wishing to appeal shall file with the Clerk of the District Court a petition for permission to appeal to the Supreme Court. Within five (5) days from the filing of the petition, a copy of the petition shall be served on or mailed to the attorney general and the prosecuting authority. Proof of such service shall be filed with the clerk of the district court where the action was heard not more than three (3) days after such service. Upon the filing of the peition, the clerk shall promptly transmit a certified copy of the petition to the clerk of the Supreme Court.

(2) **Contents of Petition; Time for Filing Petition.**

The petition shall designate the judgment or order from which the appeal is taken; shall state that the appeal is to the Supreme Court; and shall indicate briefly the reasons why the Supreme Court should exercise its discretion to review the case. The petition shall also include or have annexed thereto a copy of any recitation of the essential facts of the case, conclusions of law and memorandum relating thereto. The petition shall be filed with the district court within ten (10) days after service of notice on the defendant or his attorney that the judgment, order or decision has been filed with the clerk of the district court. Upon a trial de novo in district court, if a timely motion to vacate the judgment or for judgment of acquittal or for a new trial has been made, the petition for permission to appeal from the final judgment may be filed within ten (10) days after service of notice on the defendant or his attorney that the order denying such motion has been filed with the clerk of the district court. The order denying any such motion may be reviewed upon the appeal from the judgment.

(3) **Early Filing.**

A petition of a defendant filed after announcement of a decision, sentence or order but before the judgment or order is entered upon the record of the clerk of district court or before the decision is filed with the clerk shall be treated as filed after such entry or filing of the decision and on the day thereof.

(4) **Extension of Time.**

For good cause the district court or a justice of the Supreme Court may, before or after the time for petitioning for permission to appeal has expired, with or without motion and notice, extend the time for filing a petition for a period not to exceed thirty (30) days from the expiration of the time otherwise prescribed herein for filing a petition.

(5) **Reasons for Review.**

The Supreme Court in deciding whether to exercise its discretion to permit an appeal will consider among other factors the following:

1. Whether the question of law presented is so important or doubtful as to require a decision by the Supreme Court;

2. Whether there is a conflict among the District or County Court judges in deciding the question of law involved;

3. Whether the appeal presents a public policy question of statewide significance;

4. Whether the appeal involves a constitutional issue; and

5. Any extraordinary circumstances which would require review in the interests of justice.

(6) **Reply to Petition.**

When a petition for permission to appeal has been filed, the opposing party may file a response with the Clerk of District Court within ten days

after service of the petition. Failure to respond to the petition shall not be considered as agreement with the petition. The Clerk of the District Court shall promptly transmit a certified copy of any response to the Clerk of the Supreme Court.

(7) **Grant of Permission.**

If permission to appeal is granted, the Clerk of the Supreme Court shall notify the Clerk of the District Court and the parties to the action. The Appellant shall then pay any appeal fee required and shall thereafter proceed as though the appeal had been noticed by service of a written notice of an appeal.

(8) **Time for Transmitting Record and Filing Briefs.**

The time fixed for transmitting the record and for filing the briefs and appendix shall run from the date of the entry of the order granting permission to appeal.

Subd. 7 **Proceedings in Forma Pauperis.** Proceedings on appeal in forma pauperis shall be as follows:

1. An indigent defendant wishing the service of an attorney in an appeal or post conviction case shall make application therefor to the office of the Public Defender, addressed as follows:

Minnesota State Public Defender
The Law School, University of Minnesota
Minneapolis, Minnesota 55455.

2. The office of the State Public Defender shall promptly send to such applicant a financial inquiry form and a preliminary questionnaire form.

3. The applicant shall, if he wishes to pursue his application, completely fill out both of these forms, sign each of these forms, and have his signature notarized on each of these forms.

4. The applicant shall then return these two completed documents to the office of the State Public Defender for further processing.

5. If the pauper status of the applicant appears to the State Public Defender's office to be established, the State Public Defender's office shall in felony and gross misdemeanor cases and may in misdemeanor cases then request, by letter to the Minnesota Supreme Court, the appointment of the State Public Defender's office to represent the applicant. Otherwise the State Public Defender's office shall notify the applicant of any problem relative to his qualifications to obtain the services of the State Public Defender's office.

Any applicant who contests a decision of the State Public Defender's office that the pauper status has not been established may apply to a justice of the Minnesota Supreme Court for relief.

6. All requests for transcripts or efforts to have cases reviewed in which the defendant is not represented by an attorney shall be referred by the court receiving the same to the office of the State Public Defender for processing. Any applicant who then wishes to proceed without an attorney representing him shall advise the court and the State Public Defender's office in writing that he waives any right he may have to the services of the State Public Defender's office.

7. All clerks of district court, all clerks of municipal and county courts and all justices of peace shall furnish the office of the State Public Defender, copies of any documents in their possession, without the prior payment of the fees therefor and shall bill the office of the State Public Defender for these copies after they have been furnished to the State Public Defender's office.

8. All fees, other than for furnishing copies of documents, including appeal fees, hearing fees or filing fees, ordinarily charged by the clerks of district court, municipal court or by justices of peace, shall automatically be waived in cases in which the State Public Defender's office, or a District Public Defender's office, represents the client in question.

9. Unless otherwise specifically provided by court order, the State Public Defender's office shall be appointed to represent all eligible indigent defendants in all appeal or post-conviction cases, regardless of which county in the state is the county in which the defendant was accused.

10. In post-conviction cases, the cost of transcripts and other necessary expenses shall be borne by the State of Minnesota from funds available to the State Public Defender's office, regardless of which county in the state is the county in which the defendant was accused.

11. The cost of transcripts and other necessary expenses in all indigent appeal cases shall likewise be paid from funds available to the State Public Defender's office when the county in which the defendant was accused is within a judicial district which has a District Public Defender, including Ramsey and Hennepin Counties.

12. In all indigent appeal cases arising from judicial districts which do not have a District Public Defender system, the costs of transcripts and other necessary expenses shall be borne by the county therein in which the defendant was accused, and the State Public Defender's appointment to represent the accused in these cases, whether felonies, gross misdemeanors or misdemeanors, shall be pursuant to the procedures set forth in Minn. Stat. § 611.071, subd. 4 (a) (1971).

Subd. 8 **Stay.** When an appeal is taken by the defendant, the execution of judgment or sentence shall not be stayed unless a stay is granted by the district court judge who handled the case or a justice of the Supreme Court.

Subd. 9 **Release of Defendant.**

(1) **Conditions of Release.**

Upon appeal, if the court grants a stay under subd. 8 of this rule, the conditions for defendant's release and the factors determining the conditions of release shall be governed by Rule 6.02, subd. 1 and subd. 2, except as hereinafter provided by this rule.

(2) **Burden of Proof.**

Release pending appeal from a judgment of conviction shall not be granted unless the defendant establishes to the satisfaction of the court that there is no substantial risk the defendant will not appear to answer the judgment following the conclusion of the appellate proceedings, that the defendant is not likely to commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice, and that the appeal is not frivolous or taken for delay.

(3) **Application for Release Pending Appeal.**

Application for release pending appeal shall be made in the first instance to the district court. If the district court refuses release pending appeal, or imposes conditions of release, the court shall state on the record the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review, may be made to the Supreme Court or a justice thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the adverse party. The Supreme Court or a justice thereof may order the release of the defendant pending disposition of the motion.

Subd. 10 **Record on Appeal.** The record on appeal shall consist of the papers filed in the trial court, the offered exhibits, and the transcript of the proceedings, if any. Bills of exception and settled cases are abolished.

In lieu of the record as defined by this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement is accurate, it, together with such additions as the trial court may consider necessary to present the issues raised by the appeal, shall be approved by the trial court and shall be on the record on appeal. Any recitation of the essential facts of the case, conclusions of law, and memorandum relating thereto of the trial court shall be included with the record.

Subd. 11 **Transcript of Proceedings and Transmission of the Transcript and Record.** The Minnesota Rules of Civil Procedure to the extent applicable shall govern the transcript of the proceedings, the transmission of the transcript and record to the Supreme Court, and the form and filing of briefs and appendices, except that the appellant's brief shall also contain a statement of the procedural history.

Subd. 12 **Scope of Review.** On appeal from a judgment, the court may review any pretrial or trial order or ruling, whether or not a motion for new trial has been made, and may review the denial of a motion for new trial to vacate judgment or for judgment of acquittal, whether ruled upon before or after judgment. The court may review any other matter as the interests of justice may require.

Subd. 13 **Action of Appellate Court.** On appeal from a judgment, if the court affirms the judgment, it shall direct the sentence pronounced be executed. If it reverses the judgment, it shall either direct a new trial, or that the defendant be absolutely discharged or that the conviction be reduced to a lesser included offense or to an offense of lesser degree, as the case may require. If the conviction is reduced, the case shall be returned to the court which imposed the sentence for resentencing.

29.03 Appeal by Prosecuting Authority.

Subd. 1 **Appealable Orders.** The prosecuting authority may appeal to the Supreme Court:

1. in any felony or gross misdemeanor case, as of right, from any pretrial order of the district court, and

2. in any misdemeanor case, only with permission of the Supreme Court, any adverse decision of the district court acting pursuant to Rule 28.07, subd. 4, or any pretrial order of the district court upon a trial de novo.

except an order dismissing a complaint for lack of probable cause to believe the defendant has committed an offense or an order dismissing a complaint pursuant to Minn. Stat. § 631.21.

Subd. 2 **Procedure.** The procedure upon appeal by the prosecuting authority shall be as follows:

(1) **Stay.**

Upon oral notice that the prosecuting authority intends to appeal as of right or petition for permission to appeal, the trial court shall order a stay of proceedings of five (5) days in felony and gross misdemeanor cases to allow time to perfect the appeal, and of ten (10) days in misdemeanor cases to allow time to file the petition. In misdemeanor cases, upon timely filing of the petition, proceedings shall be stayed until the appeal is decided or the petition denied by the Supreme Court.

(2) **Obtaining Permission to Appeal in Misdemeanor Cases.**

(a) **Petition for Permission to Appeal.**

A prosecuting authority wishing to appeal shall file with the clerk of district court a petition for permission to appeal to the Supreme Court. Within five (5) days from the filing of the

petition, a copy of the petition shall be served on or mailed to the opposing party and to the attorney general of the State of Minnesota. Proof of such service shall be filed with the clerk of the district court where the action was heard not more than three (3) days after such service. Upon the filing of the petition, the clerk shall promptly transmit a certified copy of the petition to the clerk of the Supreme Court.

(b) **Contents of Petition; Time for Filing Petition.**
The petition shall specify that the prosecuting authority is seeking the appeal; shall designate the pretrial order or orders from which the appeal is taken; shall state that the appeal is to the Supreme Court, and shall indicate briefly the reasons why the Supreme Court should exercise its discretion to review the case. *The petition shall also include or have annexed thereto a copy of* any recitation of the essential facts of the case, conclusions of law and memoranda relating thereto. The petition shall be filed with the district court:

(i) following the district court's decision of an appeal from a pretrial order of the county court on the record, within ten (10) days after service of notice upon the prosecuting authority that the decision of the district court has been filed as required by Rule 28.07, subd. 5;

(ii) following an appealable pretrial order of the district court, upon a trial de novo, within ten (10) days after that order is made by the court.

(c) **Procedure.**
Rule 29.02, subd. 6 (4) to (8) shall apply to a prosecuting authority seeking permission to appeal to the Supreme Court in a misdemeanor case.

(3) **Notice of Appeal in Felony and Gross Misdemeanor Cases.**
Within five (5) days of entry of the order staying proceedings, the prosecuting authority shall file with the clerk of the court a notice of appeal, together with an affidavit of service of said notice upon opposing counsel, and upon the attorney general of the State of Minnesota, and a copy of the written request to the court reporter for such transcript of the proceedings as appellant deems necessary.

(4) **Transcript.**
In felony and gross misdemeanor cases the court reporter shall file with the clerk of court the original transcript and affidavits of delivery of same to counsel for the prosecuting authority and counsel for the defendant.

In misdemeanor cases within five (5) days after service of notice of permission to appeal a pretrial order of the district court upon a trial de novo, the prosecuting authority shall in writing, request the court reporter for such transcript of the proceedings as it deems necessary, and shall file with the clerk of the district court a copy of such written request within eight (8) days after service of notice of permission to appeal. In all cases the clerk of the district court shall forthwith transmit to the Supreme Court any original papers, files and exhibits, including in misdemeanor case, any part of the record received from the county court.

(5) **Briefs.**
Within fifteen (15) days of delivery of the transcript or in a misdemeanor case, where service of notice of permission to appeal occurs after delivery of the transcript, within fifteen (15) days of such service, the appellant shall serve upon opposing counsel his brief and file with the clerk of the Supreme Court 15 copies thereof and within 8 days of such service upon him the respondent shall serve his brief and file with said clerk 15 copies thereof. Typewritten copies of the transcript and briefs may be submitted in lieu of printed transcripts and briefs.

(6) **Dismissal by Attorney General.**
In appeals by the prosecuting authority the attorney general may, in his discretion, within 20 days after entry of the order staying proceedings, dismiss the appeal and shall within 3 days thereafter give notice thereof to the judge of the lower court and file with the clerk of said court notice of such dismissal. The lower court shall then proceed as if no appeal had been taken.

(7) **Hearing.**
The appeal may be heard before the Supreme Court when it is in session upon application of either party to such court or a justice thereof. The date of hearing shall not be more than 6 months after entry of the order staying proceedings. The Supreme Court shall not hear any such appeal after 6 months after entry of the order staying proceedings and in such cases the lower court shall then proceed as if no appeal had been taken.

(8) **Attorney's Fees.**
Reasonable attorneys' fees incurred shall be allowed to the defendant on such appeal which shall be paid by the county in which the prosecution was commenced.

(9) **Joinder.**
The prosecuting authority may appeal from one or several of the orders under this rule joined in a single appeal.

(10) **Time for Appeal.** The prosecuting authority may not appeal *under this rule until* after the Omnibus Hearing has been held under Rule 11, or the evidentiary hearing and pretrial conference, if any, have been held under Rule 12, and all issues raised therein have been determined by the district court. An appeal by the prosecuting authority under this rule bars any further appeal by the prosecuting authority from any existing orders not included in the appeal.

An appeal under this rule does not deprive the district court of jurisdiction over pending matters not included in the appeal.

Subd. 3 **Cross-Appeal by Defendant.** Upon appeal by the prosecuting authority, the defendant may obtain review of any pretrial order, which will adversely affect him, by filing a notice or cross-appeal with the clerk of the Supreme Court within ten (10) days after service of notice of the appeal by the prosecuting authority under Rule 29.03, subd. 2 (3) or within ten (10) days after service of notice that permission has been granted to appeal under Rule 29.03, subd. 2 (2). Within five (5) *days after the notice of cross-appeal is filed notice thereof shall be* mailed to, or served upon the attorney general and the prosecuting authority by the defendant. Failure to mail or serve the notice does not deprive the Supreme Court of jurisdiction over defendant's cross-appeal, but is ground only for such action as the Supreme Court deems appropriate, including a dismissal of the cross-appeal.

Subd. 4 **Conditions of Release.** Upon appeal by the prosecuting authority, the conditions for defendant's release pending the appeal shall be governed by Rules 6.02, subd. 1 and subd. 2, and, in the case of misdemeanors, also by Rule 28.05, subd. 5.

RULE 30
DISMISSAL

30.01 By Prosecuting Attorney.
The prosecuting attorney may in writing or on the record, stating the reasons therefor, dismiss a complaint or tab charge without leave of court and an indictment with leave of court. If the dismissal is on the record, it shall be transcribed and filed.

30.02 By Court.
If there is unnecessary delay by the prosecution in bringing a defendant to trial, the court may dismiss the complaint, indictment or tab charge.

RULE 31
HARMLESS ERROR AND PLAIN ERROR

31.01 Harmless Error.
Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

31.02 Plain Error.
Plain errors or defects affecting substantial rights may be considered by the court upon motions for new trial, post-trial motions, and on appeal although they were not brought to the attention of the trial court.

RULE 32
MOTIONS

An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court or these rules permit it to be made orally. The motion shall state the grounds upon which it is made and shall set forth the relief or order sought and may be supported by affidavit.

RULE 33
SERVICE AND FILING OF PAPERS

33.01 Service: Where Required.
Written motions other than those which are heard exparte, written notices, and other similar papers shall be served upon each of the parties.

33.02 Service: How Made.
Whenever under these rules or by an order of court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions or as ordered by the court or as required by these rules.

33.03 Notice of Orders.
Immediately upon the entry of an order made on a written motion subsequent to arraignment the clerk shall mail to each party a copy thereof and shall make a record of the mailing. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by these rules.

33.04 Filing.
Papers required to be served shall be filed with the court. Papers shall be filed in the manner provided in civil actions.

RULE 34
TIME

34.01 Computation.
Time shall be computed as follows:

The day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is seven days or less, intermediate Saturdays, *Sundays and legal holidays shall be excluded in the computation.* As used in these rules, "legal holiday" includes New Year's Day,

Washington's Birthday (Presidents' Birthday), Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States or by the State.

34.02 Enlargement.

When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Rules 26.03, subd. 17 (3); 26.04, subd. 1 (3); or 26.04, subd. 2 or except as provided by Rule 29.02, subd. 5 (3), the time for taking an appeal.

34.03 For Motions; Affidavits.

A written motion, other than one which may be heard exparte, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing unless a different period is fixed by rule or order of court. For cause shown such an order may be made on exparte application. When a motion is supported by affidavit, the affidavit shall be served not less than one day before the hearing unless the court permits them to be served at a later time.

34.04 Additional Time After Service by Mail.

Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon him and the notice or other paper is served upon him by mail, three days shall be added to the prescribed period.

34.05 Unaffected by Expiration.

The continued existence or the expiration of a term of court does not affect or limit the period of time provided for the doing of any act or the taking of any proceeding, or affect the power of the court to do any act or take any proceeding in any action which has been pending before it.

RULE 35

COURTS AND CLERKS

The district and county courts shall be deemed open at all times for the purpose of filing any proper paper, of issuing and returning or certifying process and of making motions and orders. Unless the court orders otherwise, the court shall be deemed opened at all times, except legal holidays, for the transaction of any other business that may be presented. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, or particular legal holidays.

EFFECT OF MINNESOTA RULES OF CRIMINAL PROCEDURE UPON STATUTES

Minn. St. 480.059, subd. 7, provides:

"Subd. 7. EFFECT UPON STATUTES. Present statutes relating to the pleadings, practice, procedure, and the forms thereof in criminal actions shall be effective until modified or superseded by court rule. If a rule is promulgated pursuant to this section which is in conflict with a statute, the statute shall thereafter be of no force and effect. Notwithstanding any rule, however, the following statutes remain in full force and effect:

(a) Statutes which relate to substantive criminal law, found in Minnesota Statutes, Chapters 609, 617, and 624, except for sections 609.115, 609.116, and 609.145;

(b) Statutes which relate to the rights of the accused, found in Minnesota Statutes, Sections 611.01 to 611.033, 611.11 to 611.12, and 611.30 to 611.34 and Laws 1973, Chapter 317;

(c) Statutes which relate to the prevention of crime, found in Minnesota Statutes, Chapter 625;

(d) Statutes which relate to training, investigation, apprehension, and reports, found in Minnesota Statutes, Chapter 626;

(e) Statutes which relate to privacy of communications, found in Minnesota Statutes, Chapter 626A;

(f) Statutes which relate to extradition, detainers, and arrest, found in Minnesota Statutes, Sections 629.01 to 629.404;

(g) Statutes which relate to judgment and sentence, found in Minnesota Statutes, Sections 631.20 to 631.21 and 631.40 to 631.51;

(h) Statutes which relate to special rules, evidence, privileges, and witnesses, found in Minnesota Statutes, Sections 595.02 to 595.025 and Chapter 634 and

(i) The Supreme Court shall not have the power to adopt or promulgate any rule requiring less than unanimous verdicts in criminal cases.

(j) Statutes which relate to the writ of habeas corpus, including but not limited to, Minnesota Statutes, Sections 589.01 through 589.30 and 484.03.

Whenever, pursuant to this section, the court adopts a rule which conflicts, modifies, or supersedes a statute not enumerated above it shall indicate the statute in the order adopting the rule."

Pursuant to the mandates of the above enabling legislation, this court has published a list of statutes which have been modified or superseded by the Criminal Rules of Procedure, which includes the following:

RULES OF CRIMINAL PROCEDURE SUPERSEDING MINNESOTA STATUTES

RULE	STATUTE SUPERSEDED (MINNESOTA STATUTES 1974)
1.01	487.25, subd. 1, subd. 2
	488A.10, subd. 1, subd. 2
	488A.27, subd. 1, subd. 2
2	487.25, subd. 3
	488A.10, subd. 3
	488A.27, subd. 3
	628.29
	628.30
	628.31
	628.32
	628.33
	629.42
3	629.42
	630.15
	633.03
3.02	629.46
3.03, subd. 2	629.43
4.02, subd. 5(3)	487.25, subd. 4
	488A.10, subd. 4
	488A.27, subd. 4
5	629.50
	629.51
	629.52
	629.57
6	487.25, subd. 8 to extent inconsistent
	488A.10, subd. 9 to extent inconsistent
	488A.27, subd. 9 to extent inconsistent
	629.47 to extent inconsistent
	629.48 to extent inconsistent
	629.49 to extent inconsistent
6.02, subd. 1	629.64 to extent inconsistent
6.02, subd. 2	629.64 to extent inconsistent
6.03	629.64 to extent inconsistent
6.03, subd. 1	629.58 to extent inconsistent
	629.61
6.03, subd. 2	629.58 to extent inconsistent
9.01, subd. 1(1)(c)	628.08
9.02, subd. 1(3)(a)	630.14
10	630.18
	630.19
	630.22
	630.23
	630.24
	630.25
	630.26
	630.27
	630.28
11	628.31
	629.50
	629.51
	629.52
13	630.01
	630.10
	630.11
	630.13
	630.16
14	630.16
	630.28
	630.29
	630.34
14.02, subd. 2, subd. 4	487.25, subd. 5
	488A.10, subd. 5
	488A.27, subd. 5
15	630.29
	630.30
17.02	628.01
	628.10 to extent inconsistent
	628.11 to extent inconsistent
	628.12 to extent inconsistent
	628.13 to extent inconsistent
	628.15 to extent inconsistent
	628.16 to extent inconsistent
	628.17 to extent inconsistent
	628.18 to extent inconsistent
	628.20 to extent inconsistent
	628.21 to extent inconsistent
	628.22 to extent inconsistent
	628.23 to extent inconsistent
	628.24 to extent inconsistent
	628.27 to extent inconsistent

17.02, subd. 3 ..... 628.14
628.19 to extent inconsistent
17.03, subd. 2(1) 631.03
17.03, subd. 3 ..... 630.23(3)
17.05 ..... 628.19 second sentence
17.06 ..... 630.18 to extent inconsistent
630.23 to extent inconsistent
630.27 to extent inconsistent
632.22
17.06, subd. 1 ..... 628.19 first sentence
17.06, subd. 4 ..... 630.19
630.20
630.21
630.25
630.26
18.01, subd. 1 ..... 484.30 to extent inconsistent
628.42 to extent inconsistent
628.46 to extent inconsistent
18.01, subd. 2 ..... 593.13 to extent inconsistent
593.14 to extent inconsistent
628.45 to extent inconsistent
18.02, subd. 1 ..... 628.52
18.02,subd. 2 ..... 628.53
628.54
628.55
630.18 to extent inconsistent
630.22
630.23 to extent inconsistent
630.27 to extent inconsistent
18.03, subd. 1 ..... 628.41 to extent inconsistent
18.04 ..... 628.63 to extent inconsistent
630.18(3) to extent inconsistent
18.05, subd. 1 ..... 628.57 to extent inconsistent
18.06, subd. 1 ..... 628.59
18.06, subd. 2 ..... 628.02
628.03
18.06, subd. 3 ..... 628.01
628.04
628.05
628.06
628.07
18.07 ..... 628.08
18.08 ..... 628.64
628.68 last sentence
18.09 ..... 628.49 to extent inconsistent
628.58
19 ..... 630.01 to extent inconsistent
630.02
630.03
630.05
630.06
630.07
630.08
630.09
630.10
630.15
20 ..... 631.18
631.19
21 ..... 611.08
ch. 597 to extent inconsistent
22 ..... 357.32 to extent inconsistent
388.05 to extent inconsistent
ch. 596 to extent inconsistent
597.11 to extent inconsistent
611.06 to extent inconsistent
23.03 ..... 487.28 to extent inconsistent
488A.08 to extent inconsistent
488A.25 to extent inconsistent
24.01 ..... 627.01
24.02, subd. 1 ..... 627.05
627.06
24.02, subd. 2 ..... 627.07
24.02, subd. 3 ..... 627.08
24.02, subd. 4 ..... 627.09
24.02, subd. 5 ..... 627.10
24.02, subd. 6 ..... 627.13
24.02, subd. 7 ..... 627.14
24.02, subd. 10 ..... 211.31
24.03 ..... 487.40 to extent inconsistent
24.03, subd. 1 ..... 627.01
627.04
24.03, subd. 4 ..... 627.03
25.02, subd. 3 ..... 627.01 clause following semicolon
26.01 ..... 631.01
26.01, subd. 1(1) ..... 169.89 to extent inconsistent
487.25, subd. 6 to extent inconsistent
488A.10, subd. 6 to extent inconsistent
488A.27, subd. 6 to extent inconsistent
26.02, subd. 1 ..... 593.13 to extent inconsistent
593.14 to extent inconsistent
26.02, subd. 3 ..... 631.23
631.24
631.25
26.02, subd. 4(1) 631.26
26.02, subd. 5 ..... 631.26
631.28
631.29
631.30
631.31
631.32
631.34
631.35
631.37
631.38
26.02, subd. 6 ..... 631.27
26.02, subd. 7 ..... 631.39
26.02, subd. 8 ..... 546.095 to extent inconsistent
26.03, subd 1(2) 631.015
26.03, subd. 10 ..... 546.12
631.05 last sentence
26.03, subd. 11 ..... 546.11
631.07
26.03, subd. 12 ..... 631.10 to extent inconsistent
26.03, subd. 13 ..... 484.29
26.03, subd. 14(1) 547.03
26.03, subd. 14(2) 632.05
26.03, subd. 18 ..... 546.14
26.03, subd. 18(5) 631.08
26.03, subd. 19(1) 631.10
26.03, subd. 19(2) 631.11
26.03, subd. 19(3) 631.11
26.03, subd. 19(5) 631.16
27.02 ..... 242.13 to extent inconsistent
609.115 to extent inconsistent
609.116 to extent inconsistent
609.155 to extent inconsistent
28 ..... 484.63
487.39 to extent inconsistent
488A.10, subd. 6 to extent inconsistent
488A.01, subd. 11
488A.18, subd. 12
29 ..... 632.01
632.02
632.03
632.04
632.05
632.06
632.07
632.08
632.09
632.10
632.11
632.12
632.13
30.02 ..... 611.04
35 ..... 484.07 to extent inconsistent
484.08 to extent inconsistent

The provisions of Chapter 633 are superseded to the extent that they are inconsistent with these rules.

APPENDIX 10

RULES OF COMMISSION ON JUDICIAL STANDARDS

RULES OF COMMISSION ON JUDICIAL STANDARDS

A. Organization of Commission

1. Appointment of Commissioners

As provided by Minn. St. 490.15 to 490.17 (L.1971, c.909), the Commission on Judicial Standards shall consist of nine members. Notice of appointment of the commissioners shall be given by the appointing agency to the chief justice of the supreme court immediately after the selection is made. The district court judge member shall be selected by the Minnesota District Judges Association. The probate court member shall be selected by the Minnesota Probate Judges Association. The municipal court member shall be selected by the Minnesota Municipal Judges Association. The two lawyer members shall be selected by the board of governors of the Minnesota State Bar Association. The four citizen members shall be selected by the governor with the advice and consent of the senate.

2. Terms of Office

(a) The term of each member shall be four years, except that to achieve staggered terms the initial appointment shall be as follows:

(i) The members first chosen by the district, municipal, and probate judges shall be appointed to four-year terms.

(ii) One of the first lawyer members shall be designated to serve a two-year term and the other shall be designated to serve a four-year term.

(iii) Two of the first citizen members shall be designated to serve two-year terms and the other two shall be designated to serve four-year terms.

(b) No member shall serve more than two full four-year terms or their equivalent. The first two-year terms served by the lawyer member and the two citizen members shall be deemed equivalent to a full four-year term for purposes of this section. A member selected to serve the remainder of an unexpired term shall not be considered to have served the equivalent of a full four-year term for purposes of this section.

3. Vacancy

(a) A vacancy in the office of a commissioner shall occur upon any of the following events:

(i) When a commissioner ceases to be a member of the commission.

(ii) When a judge who is a member of the commission ceases to hold the office which he held at the time of his selection.

(iii) When a lawyer selected by the members of the state bar ceases to be admitted to practice in the courts of this state or is appointed to a judicial office.

(iv) When an appointee of the governor becomes a lawyer or accepts a judicial position.

(b) Vacancies shall be filled by selection of a successor in the same manner as required for the selection of his predecessor in office. A commissioner selected to fill a vacancy shall hold office for the unexpired term of his predecessor. All vacancies in the office of commissioner shall be filled within 90 days after the vacancy occurs.

(c) Members of the commission may retire therefrom submitting their resignations to the commission, which shall certify the vacancy to the selecting authority.

4. Expenses of Commission and Staff

(a) The expenses of the commission shall be paid from appropriations of funds to the Commission on Judicial Standards.

(b) Members serve without compensation for their services, but shall be reimbursed for necessary expenses incurred in the performance of their duties.

(c) The commission may employ or appoint an executive secretary and other employees to perform such duties as it shall direct, subject to the availability of funds under its budget.

5. Quorum and Chairman

(a) A quorum for the transaction of business by the commission shall be five members of the commission.

(b) The commission shall elect from its members a chairman and a vice-chairman, each of whom shall serve a term of two years. The vice-chairman shall act as chairman in the absence of the chairman. In the absence of both the chairman and the vice-chairman, the members present may select one among them to act as temporary chairman.

6. Meetings of Commission

Meetings of the commission shall be held at the call of the chairman, the vice-chairman, the executive secretary or the written request of three members of the commission.

7. Annual Report

At least once a year the commission shall prepare a report summarizing its activities during the preceding year. One copy of this report shall be filed with the chief justice of the supreme court and other copies may be made available to the public by a majority vote of the full commission.

B. Scope of Commission Powers

The commission shall have all of the powers provided by Minn. St. 490.15 through 490.17 (L. 1971, c. 909), these rules, and such administrative rules of the commission as may be approved by the supreme court.

C. Definitions

In these rules, unless the context or subject matter otherwise requires—

1. "Commission" means the Commission on Judicial Standards.
2. "Judge" means a justice of peace or judge of any appellate or trial court or magistrate or referee of any court appointed or selected pursuant to any laws of this state.
3. "Respondent" is a judge against whom a complaint has been filed.
4. "Chairman" is the chairman of the commission and includes the acting chairman.
5. "Referee" means one or more judges,

active or retired, appointed by the supreme court upon request of the commission, or one or more members of the commission designated by the commission, to hold hearings on a complaint against a judge filed by the commission.

6. "Counsel" means one or more attorneys appointed by the commission to gather and present evidence for the commission in proceedings before the supreme court, before a referee or the commission.
7. "Grievance" is a verified statement requesting an investigation of a particular judge.
8. "Complaint" is a written document filed by order of the commission for disciplinary action under this rule against a judge, pursuant to M. S. Section 490.16.

D. Preliminary Investigation and Complaints.

1. The commission, upon receiving a verified statement of grievance found upon examination and inquiry to be neither unfounded nor frivolous, alleging facts that a judge may be subject to censure, removal or retirement pursuant to the provision of M. S. Section 490.16, shall make a preliminary investigation to determine whether a complaint shall be filed and a hearing held. The commission may on its own motion and without receiving a verified statement make inquiry and a preliminary investigation with respect to whether a judge is guilty of misconduct in office or is physically or mentally disabled. Upon request of the chief justice of the supreme court, the commission shall make a preliminary investigation of the conduct or physical or mental condition of a judge.
2. Before filing a complaint or recommending an order of private censure, the commission shall give written notice to the judge of the nature of the charges being made against him and he shall be afforded a reasonable opportunity to present personally, in writing or orally, such matters as he may choose for consideration by the commission explaining, refuting, or admitting the alleged misconduct or disability.
3. If the preliminary investigation does not disclose sufficient cause to warrant filing a complaint, the commission may terminate its investigation, or, if warranted, privately censure or recommend to the supreme court private censure stating the reasons therefor. If notice has been given to the judge pursuant to the preceding paragraph, he shall be notified of the termination of the investigation, or, as the case may be, of the recommendation of private censure. An order of private censure shall be kept secret and confidential. The judge so censured may request the supreme court for a hearing thereon by the commission. In such case, the supreme court may remand the matter to the commission for hearing as upon formal complaint.

E. Commission Filing of Complaint

1. After the preliminary investigation has been completed, if the commission concludes that formal proceedings should be instituted, the commission shall without delay serve a written complaint to the judge advising him of the institution of formal proceedings to inquire into the charges against him. Such proceedings shall be entitled:

   Before the Commission on Judicial Standards Inquiry Concerning a Judge, No. _____.
2. The complaint shall be in a form similar to a complaint filed in a civil action in a district court. It shall state in ordinary and concise language the charges against the judge and the alleged facts upon which the charges are based, and shall advise the judge of his right to file a written answer to the charges within 20 days after service of the complaint upon him.
3. Whenever provision is made under this rule for serving notice, complaint, or other document upon a judge, such service shall be made according to the rules of civil procedure for district courts except that documents shall be filed with the secretary of the commission rather than the clerk of court.

F. Answer

Within 20 days after service of the complaint, the respondent may file with the commission an answer in a form similar to that of an answer in a civil action in a district court.

G. Setting for Hearing and Appointment of a Referee

1. Upon the filing of an answer or upon expiration of the time for its filing, the commission shall set a time and place of hearing before itself or before a referee and shall give notice of such hearing to the respondent at least 20 days prior to the date set.
2. If the commission directs that the hearing be held before a referee to be appointed by the supreme court, the commission shall file an ex parte written request to the supreme court to appoint a referee for such purpose accompanied by a copy of the complaint. The supreme court shall, within 10 days from receipt of such request, appoint a referee to conduct such hearing.
3. The commission shall, upon demand, furnish not less than 10 days prior to any hearing, the names and addresses of all witnesses whose testimony the commission intends to offer at the hearing together with copies of all written statements and transcripts of testimony of such witnesses in the possession of the commission which are relevant to the subject matter of the hearing.

H. Hearing

1. At the time and place set for hearing, the commission, or the referee when the hearing is before a referee, shall proceed with a hearing which as nearly as may be possible shall conform to the rules of procedure and evidence governing the trial of civil actions in the district courts, whether or not the respondent has filed an answer or appears at the hearing. Counsel shall present the evidence in support of the charges set forth in the complaint.
2. The failure of the respondent to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for commission action. The failure of the respondent to answer or to testify in his own behalf may be considered as an evidentiary fact, unless it appears that such failure was due to circumstances unrelated to the facts in issue at the hearing.
3. In any proceeding for involuntary retirement for disability, the commission may direct the respondent to submit to physical and mental examination as ordered.
4. The proceedings at the hearing shall be reported by a voice recorder or by a stenographer designated by the commission or referee.
5. When the hearing is before the commission, not less than five members shall be present while the hearing is in active progress. Procedural and other interlocutory rulings shall be made by the chairman and shall be taken as consented to by the other members of the commission unless one or more calls for a vote, in which case such rulings shall be made by a majority of those present.

I. Procedural Rights of Judge

1. In proceedings involving his censure, removal, or retirement, a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. He shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matter.
2. When a transcript of the testimony has been prepared at the expense of the commission, a copy thereof shall, upon request, be available for use by the judge and his counsel in connection with the proceedings, or the judge may arrange to

procure a copy or copies at his expense. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at his expense.

3. If the judge is adjudged insane or incompetent, or if it appears to the commission at any time during the proceedings that he is not competent to act for himself, the commission shall appoint a guardian ad litem unless the judge has a guardian who will represent him. In the appointment of such guardian ad litem, preference shall be given, whenever possible, to members of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, such notice or matter shall be served, given, or sent to the guardian or guardian ad litem.

J. Issuance, Service, and Return of Subpoenas

At the request of the commission, the referee, counsel or the respondent, before or after the issuance of a complaint, subpoenas for the attendance of witnesses and the production of documents before the commission or referee, shall be issued out of the district court in the county in which the hearing is to be held in like manner and with like effect as in civil proceedings.

K. Amendments to Complaint or Answer.

The referee, at any time prior to the conclusion of the hearing, or the commission at any time prior to its determination, may allow or require amendments to the complaint or answer. The complaint may be amended to conform to the proofs or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the respondent shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby.

L. Report of Referee

1. After the conclusion of the hearing before the referee, he shall promptly prepare and transmit to the commission a report which shall contain a brief statement of the proceedings had and his findings of fact with respect to the issues presented by the complaint and the answer thereto, or if there be no answer, his findings of fact with respect to the allegations in the complaint. The report shall be accompanied by an original and at least two copies of a transcript of the proceedings before the referee.
2. Upon receiving the report of the referee, the commission shall promptly mail a copy to the judge together with a transcript of the proceedings.

M. Objections to Report of Referee

1. Within 30 days after mailing to respondent a copy of the referee's report, counsel or respondent may file with the commission an original and nine copies of a statement setting forth objections to the report of the referee along with supporting brief.
2. A copy of any such statement and brief shall be served on the opposing party.

N. Appearance before Commission

If no statement of objections to the report of the referee is filed within the time provided, or if the consent of counsel and respondent is filed in writing, the findings of the referee may be deemed as agreed to and the commission may adopt them without a hearing and recommend to the supreme court such order for disciplinary action, removal, retirement, or suspension as may be appropriate thereunder. If a statement of objections is filed, or if the commission in the absence of such statement proposes to modify or reject the findings of the referee, the commission shall give the respondent and counsel an opportunity to be heard on oral arguments before the commission on the record before the referee along with briefs of the parties. Written notice of the time and place of such hearing shall be sent to the parties at least 10 days prior to the date of hearing.

O. Extension of Time

The chairman of the commission may extend for periods not to exceed 30 days the time for filing an answer, for the commencement of a hearing before the commission, and for filing a statement of objections to the report of the referee, and the presiding referee may similarly extend the time for the commencement of a hearing before referee.

P. Hearing Additional Evidence

1. The commission may order a hearing for the taking of additional evidence at any time while the complaint is pending before it. The order shall set the time and place of hearing and shall indicate the matters as to which evidence is to be taken. A copy of such order shall be sent to the respondent at least 10 days prior to the date of hearing.
2. The hearing of additional evidence may be before the commission itself or the referee, as the commission shall direct.
3. The same procedure shall be observed at the hearing of additional evidence as in the regular hearing.

Q. Interim Suspension

Upon notice to the respondent, the commission shall petition the supreme court for an order suspending a judge from acting as a judge, without loss of salary, while there is pending an indictment or any information charging him with a crime punishable as a felony under Minnesota or federal law, or a recommendation to the supreme court by the commission for his removal or retirement.

R. Commission Decision

1. The affirmative vote of five members of the commission who have considered the report of the referee and objections thereto, or who were present at any oral hearing before a referee, or, if the hearing was before the commission without a referee, the affirmative vote of five members of the commission who have considered the record, and at least three of whom were present when the evidence was taken, is required for a recommendation of discipline, removal, retirement, or suspension of a judge. In the absence of such votes, an order of dismissal of the complaint shall be entered by the commission. Any commissioner may file a written dissent.
2. The commission shall make written findings of fact and conclusions of law along with its recommendations for action thereon with respect to the issues of fact and law in the proceedings, or may adopt the findings of the referee, in whole or in part, by reference thereto.
3. Upon consent of the respondent, an order of discipline, suspension, retirement, or removal may be entered by the supreme court at any stage of proceedings under these rules.

S. Confidentiality and Privilege of Proceedings

1. All papers and pleadings filed with and the proceedings before the commission or the referee shall be confidential until a record recommending discipline, retirement, or removal is filed by the commission in the supreme court. A record filed by the commission in the supreme court recommending private censure shall remain confidential.
2. Every witness in every proceedings under these rules shall be sworn to tell the truth and not to disclose the existence of the proceeding or the identity of the judge until the proceeding is no longer confidential under these rules. Violation of the oath shall be an act of contempt of the commission.
3. If a judge is publicly charged with involvement in proceedings before the commission resulting in substantial unfairness to him, the commission may, at the request of the judge involved, issue a short statement of clarification and correction.

If a judge is publicly associated with

having engaged in serious reprehensible conduct or having committed a major offense, and after a preliminary investigation or a formal hearing it is determined there is no basis for further proceedings or recommendation of discipline, the commission may issue a short explanatory statement.

When a formal hearing has been ordered in a proceeding in which the subject matter is generally known to the public and in which there is broad public interest, and in which confidence in the administration of justice is threatened due to lack of information concerning the status of the proceeding and requirements of due process, the commission may issue one or more short announcements confirming the hearing, clarifying the procedural aspects, and defending the right of a judge to a fair hearing.

T. Certification to Supreme Court

Upon making a determination recommending the censure, removal, or retirement of a judge, the commission shall promptly file a copy of the recommendation certified by the chairman or executive secretary of the commission, together with the transcript and the findings and conclusions, with the clerk of the supreme court and shall forthwith mail the judge notice of such filing, together with a copy of such recommendation, findings, and conclusions.

U. Review by Supreme Court

1. A petition to the supreme court to modify or reject the recommendation of the commission for censure, removal, or retirement of a judge may be filed within 30 days after the filing with the clerk of the supreme court of a certified copy of the recommendation complained of. The petition shall be verified, shall be based on the record, shall specify the grounds relied on, and shall be accompanied by petitioner's brief and proof of service of three copies of the petition and of the brief on the commission. At least 20 days before the return day the commission shall serve and file a respondent's brief. Within 15 days after service of such brief the petitioner may file a reply brief, of which three copies shall be served on the commission.

2. Upon failure to file such petition for review within the time provided the supreme court shall consider the recommendation upon the record filed by the commission, and such further briefs or arguments as the court may require.

3. The form and contents of a brief in the supreme court shall be similar to briefs in appeals to the supreme court.

V. Decision by Supreme Court

The supreme court shall review the record of the proceedings on the law and the facts and shall file a written opinion and judgment directing censure, removal, retirement, suspension, or other disciplinary action as it finds just and proper, or reject or modify, in whole or in part, the recommendations of the commission.

W. Motion for Rehearing

In its decision, the supreme court may direct that no motion for rehearing will be entertained, in which event its decision shall be final upon filing. If the court does not so direct and the respondent wishes to file a motion for rehearing, he may present a motion for rehearing within 15 days after filing of the decision.

X. Interested Party

A judge who is a member of the commission or of the supreme court may not participate as such in any proceedings involving his own censure, removal, or retirement.

Y. Amendment of Rules

As procedural and other experience may require or suggest, the commission may petition the supreme court for further rules of implementation or for needed amendments of these rules.

APPENDIX 11

ANALYSIS OF THE STATE GOVERNMENTAL STRUCTURE

ELECTED OFFICIALS

Official	Term	Citation
Attorney General	4 years	Const. Art 5 s 4
Auditor	4 years	Const. Art 5 s 4
Governor	4 years	Const. Art 5 s 2
Judicial		
District Court		Const. Art 6
10 Judicial districts		
72 Judges	6 years	2.722
Supreme Court		
Chief Justice and 8 Associate Justices	6 years	Const. Art 6 480.01
Appoints:		
Administrator		480.13
Board of Law Examiners (7 members)	3 years	481.01
Clerk		Const. Art 6 s 2
Law Librarian		Const. Art 6 s 2 480.09
Professional Responsibility Board		Court Orders
Reporter		Const. Art 6 s 2
Judicial Council (16 members)	4 years	483.01, 483.02
State Public Defender	4 years	611.22, 611.23
Legislature		
House of Representatives (134 members)	2 years	Const. Art 4 s 4, 2.021
Senate (67 members)	4 years	Const. Art 4 s 3, 2.021
Legislature in joint convention elects 12 members of the Board of Regents, University of Minnesota	6 years	Const. Art 13 s 3 Territorial Laws 1851, Chapter 3
Lieutenant Governor	4 years	Const. Art 5 s 2
Secretary of State	4 years	Const. Art 5 s 4
Treasurer	4 years	Const. Art 5 s 4

DEPARTMENTS AND AGENCIES

Department or Agency	Administrative Heads	Terms	Citation
Administration, Department of	Commissioner	4 years	16.01, 15.01
Agriculture, Department of	Commissioner	4 years	17.01, 15.01 15.01
Commerce, Department of			
Banking Division	Commissioner	6 years	45.02, 15.01
Insurance Division	Commissioner	6 years	45.02, 60A.03
Securities Division	Commissioner	6 years	45.02
Consumer Services Section	Director	4 years	45.15
Corrections, Department of	Commissioner	4 years	241.01, 15.01
Economic Development, Department of	Commissioner	4 years	362.07, 15.01 362.09
Education, Department of	Commissioner	4 years	121.16, 15.01
Employment Services, Department of	Commissioner	4 years	268.12, 15.01
Energy Agency	Director	4 years	116H.03
Finance, Department of	Commissioner	Pleasure of governor	16A.01, 15.01
Health, Department of	Commissioner	4 years	15.01, 144.01, 144.03
Health Facilities Complaints, Office of	Director		144A.52
Housing Finance Agency	7 members	4 years	462A.04
Human Rights, Department of	Commissioner	4 years	363.04, 15.01
Iron Range Resources and Rehabilitation, Office of Commissioner of	Commissioner	4 years	298.22
Labor and Industry, Department of	Commissioner	4 years	175.001, 15.01
Mediation Services, Bureau of	Director	4 years	179.02
Workers' Compensation Court of Appeals	3 Judges	6 years	175.006
Boiler Inspection Division			175.16
Labor Standards Division			177.26
Occupational Safety & Health Division			175.16
Statistics Division			175.16
Steamfitting Standards Division			175.16
Voluntary Apprenticeship Division			178.03
Workers' Compensation Division			175.16, 175.006
Legislative Auditor	Appointed by Commission	6 years	3.97

Department or Agency	Administration Heads	Term	Citation
Legislative Reference Library	Director		3.304
Military Affairs, Department of	Adjutant General		190.07, 15.01
Natural Resources, Department of	Commissioner	4 years	84.01, 15.01
Enforcement and Field Service	Director	Pleasure of Commissioner	84.081
Game and Fish Division	Director	Pleasure of Commissioner	84.081
Lands and Forestry Division	Director	Pleasure of Commissioner	84.081
Parks and Recreation Division	Director	Pleasure of Commissioner	84.081
Water, Soils, and Minerals	Director	Pleasure of Commissioner	84.081
Personnel, Department of	Commissioner	4 years	43.001, 15.01
Pollution Control Agency	9 members	4 years	116.02, 116.03
Public Defender, State	Public Defender	4 years	611.22, 611.23
Public Safety, Department of	Commissioner	4 years	299A.01, 15.01
Capitol Complex Security, Division of	Director	Pleasure of Commissioner	299E.01
Criminal Apprehension, Division of the Bureau of	Superintendent	Pleasure of Commissioner	299C.01
Driver's License, Division of	Director	Pleasure of Commissioner	171.015
Emergency Services, Division of	Director	Pleasure of Commissioner	12.04
Fire Marshal, Division of	State fire Marshal	Pleasure of Commissioner	299F.01
Highway Patrol, Division of	Chief supervisor	Pleasure of Commissioner	299D.01
Motor Vehicles, Division of	Director	Pleasure of Commissioner	168.325
Public Service, Department of			
Administrative Division	Director	4 years	216A.06, 15.01
Legislative Division (Public Service Commission)	5 Commissioners	6 years	216A.03
Public Welfare, Department of	Commissioner	4 years	245.03, 15.01
Alcohol and other Drug Abuse Section	Director		254A.03
Revenue, Department of	Commissioner	4 years	270.02, 15.01
Revisor of Statutes	Revisor		3.304
State Planning Agency	Director	Pleasure of governor	4.10 to 4.17
	State Planning Officer (Governor)	4 years	4.11
Transportation, Department of	Commissioner	4 years	174.01, 174.02
Veterans' Affairs, Department of	Commissioner	4 years	196.01, 196.02, 15.01
Vocational Rehabilitation, Department of	Commissioner	4 years	129A.02
BOARDS, COMMISSIONS AND OTHER BODIES			
Aging, Minnesota Board on	25 members	4 years	256.975
Agricultural Commodity Advisory Boards		3 years	17.54
Agricultural Employment Advisory Council		4 years	268.12, Subd. 6
Alcohol and other Drug Abuse Advisory Council	11 members	4 years	254A.04
Apprenticeship Advisory Council	3 members	4 years	178.02
Armory Building Commission, Minnesota State	Corporation with adjutant general, general officers of the nation guard		193.142
Arts Board, State	11 members	4 years	139.08
Assessors, State Board of	9 members	4 years	270.41
Boxing, Board of	7 members	4 years	341.01, 341.02
Building Code Standards Committee	9 members	4 years	16.853
Cable Communications Board	7 members	4 years	238.04
Canvassing Board	Secretary of State, two supreme court justices, two district court judges		Const. Art. 7 s 8, 204A.53
Capitol Area Architectural and Planning Board	7 members	4 years	15.50
Child Care Services Advisory Committee	35 members	4 years	245.84
Community Colleges, State Board for	7 members	4 years	136.60, 136.603, 136.61

Board, Commission or Body	Membership	Term	Citation
Community Health Services Advisory Committee		2 years	145.919
Community School Advisory Council, State	25 members	4 years	121.87
Comprehensive Health Association Board of Directors	7 members		62E.10
Controlled Substances, Advisory Council on	13 members	2 years	152.02
Correctional Facilities, Citizens Advisory Task Force of	9 members	4 years	241.021
Corrections Board	5 members	6 years	241.045
County Attorneys Council	87 members & Attorney General		388.19
Credit Union Advisory Council	5 members	4 years	52.061
Crime Prevention and Control, Governor's Committee on	35 members	Pleasure of Governor	Ex Order 28, Dec. 13, 1968, P.L. 90-351
Crime Victims Reparations Board	3 members	4 years	299B.05
Dairy Research and Promotion Council	22 members	2 years	32B.03, 32B.04
Designer Selection Board, State	7 members	4 years	16.823
Early Childhood Identification and Education Programs, Advisory Committee on			3.9272
Economic Development Advisory Committee	21 members	4 years	362.09, Subd. 3
Economic Status of Women, Advisory Council on	18 members	Expires 6/30/78	L76C337S1
Education Board, Environmental	13 members and one from each regional council	2 years	116E.02
Education, Board of	9 members	4 years	121.02
Education Commission	Governor, one state senator, one state representative, four members appointed by the governor		121.81, 121.82
Education Council	Members of education commission and 16 members appointed by the governor	4 years	121.83
Education, Council on Quality	17 members	4 years	3.924
Employees Suggestion Board, State	7 members	2 years	16.71
Employment Agency Advisory Council	9 members	4 years	184.23
Employment Services, State Advisory Council		4 years	268.12, Subd. 6
Environmental Quality Board	12 members	8 department heads; 4 for 4 years	116C.03
Environmental Quality Board, Citizens Advisory Committee	11 members	4 years	116C.05
Equalization Aid Review Committee	Commissioners of education, revenue and administration		124.212, Subd. 10
Equalization, State Board of	Commissioner of revenue		270.12
Ethical Practices Board	6 members	4 years	10A.02
Evidence, Advisory Committee on Rules of	11 members		480.0591, Subd. 2
Executive Council	Governor, lieutenant governor, attorney general, auditor, treasurer, secretary of state		9.011
Family Farm Advisory Council	7 members	4 years	41.54
Fluctuating School Enrollments, Advisory Council on	14 members	3 years	L74C355S68
Future, Commission on Minnesota's	40 members	Expires 6/30/77	L73C741S7
Gillette Hospital Board	7 directors	4 years	250.05
Great Lakes Commission	Two state senators, two state representatives, one member appointed by the governor		1.22
Handicapped, Council for the	30 members	4 years	256.482
Health Facility Complaints, Office of, Advisory Task Force	15 members	4 years	144A.55
Health, State Board of (Department of Health)	15 members	4 years	15.01, 144.01
Higher Education Advisory Council	5 members		136A.02, Subd. 6.
Higher Education Coordinating Board	11 citizen members appointed by the governor	4 years	136A.02
Higher Education Facilities Authority, Minnesota	7 members	4 years	136A.26
Hospital Administrators Registration Advisory Council	6 members		144.63, Subd. 2
Hospital Licensing Advisory Council	9 members		144.571
Human Rights, Board of	24 members	4 years	363.04, Subd. 4
Human Services Occupations Advisory Council	11 plus members from various councils	4 years	214.14

Board, Commission or Body	Membership	Term	Citation
Indian Affairs Intertribal Board	31 members	Expires 6/30/83	3.922
Indian Education Advisory Committee, Minnesota	15 to 25 members		124.215, Subd. 6
Information Systems Advisory Council, State		4 years	16.91
Intergovernmental Information Systems Advisory Council	25 members	4 years	16.911
Interstate Cooperation, Minnesota Commission on	Senate, house and governor's committees on interestate cooperation, governor, president of the senate, speaker of the house		3.29
Interstate Port Authority Commission	5 members	Expires 6/30/77	L76C270S3
Investment, State Board of	Governor, State auditor, state treasurer, secretary of state, attorney general		Const. art XI, S 8
Iron Range Resources and Rehabilitation Board	Three state senators, three state representatives, commissioner of natural resources	2 years	298.22, Subd. 2
Judicial Standards, Board on	9 members	4 years	490.15
Land Exchange Board	Governor, attorney general, auditor		Const. Art 11 S 10; 94.341
Legislative Advisory Commission	Chairman of senate committee on taxes and tax laws, senate committee on finance, house committee on taxes, house committee on appropriations		3.30
Legislative Audit Commission	8 senators 8 representatives		3.97
Legislative Commission to Review Administrative Rules	5 senators 5 representatives		3.965
Legislative Commission on Pensions and Retirement	5 senators 5 representatives	2 years	3.85
Legislative Coordinating Commission	6 senators 6 representatives		3.303
Levy Limitations Review Board	3 members	2 permanent 1 for 4 years	275.551
Livestock Sanitary Board	5 members	4 years	35.02
Meat Advisory Council	10 members	4 years	31.60, Subd. 2
Medical Examiners Board, Examiners, Committee of	5 members	4 years	148.67
Medical malpractice insurance joint underwriting association	11 members	Expires 4/14/78	62F.02
Medical Policy Directional Committee on Mental Health	7 members	3 years	246.017
Mentally Ill and Dangerous and Psycopathic Personalities, Special Review Board for	3 members		253A.16, Subd. 5
Mentally Retarded and Physically Handicapped, Advisory Council for	11 members	4 years	252.31
Minnesota Braille and Sight-Saving School, Advisory Council	7 members	4 years	128A.03
Minnesota School for the Deaf, Advisory Council	7 members	4 years	128A.03
Minnesota-Wisconsin Boundary Area Commission	5 members	4 years	1.31, 1.33
Minnesota-Wisconsin Boundary Area Commission, Legislative Advisory Committee	5 senators 5 representatives		1.34
Minnesota-Wisconsin Boundary Area Commission, Technical Advisory Committee	10 members		1.35
Mississippi River Parkway Commission	10 members		161.1419
Mortuary Sciences, Committee of Examiners	4 members	4 years	149.02
Municipal Board, Minnesota	3 members	6 years	414.01
Nonpublic Schools, Advisory Task Force on	5 members	Expires 5/15/77	L76C27158
Nursing Education, Advisory Task Force on	11 members	2 years	148.191
Nursing Home Advisory Council	15 members	4 years	144A.17
Nursing Registration, Advisory Task Force on	15 members	2 years	148.231, Subd. 2
Occupational Safety and Health Advisory Council	12 members	4 years	182.656
Occupational Safety and Health Review Board	3 members	4 years	182.664
Outdoor Recreation Advisory Council	one member from each regional development commission, one from metropolitan council	4 years	86A.10
Pardons, Board of	Governor, chief justice of the supreme court, attorney general		Const. Art. 5 s7, 638.01
Peace Officers Training Board	17 members	4 years	626.841
Personnel Board	7 members	4 years	43.03

Board, Commission or Body	Membership	Term	Citation
Pharmacy Task Force on continuing education	10 members	2 years	151.13
Physical Therapist Examining Council	5 members	4 years	148.67
Pilot Dental Program, Advisory Task Force	7 members	Expires 6/30/77	L76, C305, S3
Plumbing Code and Examinations, Advisory Council	7 members	4 years	326.41
Port Authorities Commission	3 commissioners	1 for 6 years 1 for 2 years 1 for 4 years	458.09, 458.10
Private Trade, Business and Correspondence Schools, Advisory Council on	16 members	4 years	141.24
Public Employment-Relations Board	5 members	4 years	179.72
Public Service Commission	5 members	6 years	216A.03
Real Estate Advisory Council	7 members	4 years	82.30
Residential and Daycare facilities and services for mentally retarded children and adults, Advisory Board on			252.28, Subd. 2
Resources, Legislative Commission on Minnesota	7 senators 7 representatives		86.07
Retirement Association, Highway Patrolmen's	State Highway Patrol Chief, State Treasurer and Highway Patrolman (officers)	2 years	352B.02, 352B.03
Retirement Board, Public Employees	14 members	4 years	353.03
Retirement, State Retirement System, Board of	Three members appointed by the governor, four state employees covered by system	4 years	352.03
Retirement Fund, Teachers	Commissioners of education, finance, insurance, four members of fund	4 years	354.06
Scenic Area Board	5 members		173.04, Subd. 17
Seed Potato Certification Advisory Committee	6 members	3 years	21.112, Subd. 2
Soil and Water Conservation Board, State	11 members	4 years	40.03
Soybean Research and Promotion Council		3 years	21A.03
Special Education of Mildly Learning Disabled Pupils and Mildly Retarded Pupils, Advisory Council for	12 members	4 years	123.581
Steamfitting Examinations, Advisory Council for	7 members	4 years	326.49
Tax Court of Appeals	3 judges of tax court of appeals	6 years	271.01
Tax Study Committee	15 members	Expires 6/30/77	Ex. Sess. Laws 1971, c31, Art. 13, as amended
Turkey Research and Promotion Council	15 members	3 years	29.14, 29.15
Uniform Conveyancing Forms, Advisory Committee on			507.09
Uniform Financial Accounting and Reporting Standards, Advisory Council on	13 members	4 years	121.901
Uniform State Laws, Commission on	4 commissioners	2 years	3.251
University Board, State	9 directors and commissioner of education	8 for 4 years; 1 for 2 years	136.02, 136.12
Urban Indians, Advisory Council on	5 members	4 years	3.922, Subd. 8
Veterans Advisory Committee	11 members		198.055
Vietnam Bonus Board of Review	3 members	Pleasure of Governor	197.978
Vocational Education, State Board for	9 members	6 years	121.11
Vocational Rehabilitation, Consumer Advisory Council on	9 members	4 years	129A.02
Voyageurs National Park, Citizen Committee on	12 members 2 senators 2 representatives	4 years	84B.11
Water Conditioning Advisory Board	9 members		326.66
Water Resources Board	5 members	4 years	105.71
Water and Wastewater Treatment Facilities Operators Certification, State Board	6 members	4 years	115.74
Water Well Contractors Advisory Council	9 members	4 years	156A.06
Workers' Compensation, Advisory Council on	13 members	4 years	175.007
Workers' Compensation Court of Appeals	3 members	6 years	175.006
Zoological Board	11 members	4 years	85A.01

EXAMINING AND LICENSING BOARDS

Board	Membership	Terms	Citation
Abstracters' Board of	7 members	4 years	386.63
Accountancy, Board of	7 members	4 years	326.17

Board, Commission or Body	Membership	Term	Citation
Architecture, Engineering, Land Surveying and Landscape Architecture, Board of	16 members	4 years	326.04
Barber Examiners, Board of	4 members	4 years	154.22
Chiropractic Examiners, Board of	7 members	4 years	148.02
Cosmotology, Board of	4 members	4 years	155.04, 155.05
Dentistry, Board of	9 members	4 years	150A.02
Electricity, Board of	9 members	4 years	326.241
Law Examiners, State Board of	7 members	3 years	481.01
Medical Examiners, Board of	11 members	4 years	147.01
Nursing, Board of	11 members	4 years	148.181
Nursing Home Administrators, Board of Examiners for	11 members	4 years	144.952, 144A.19
Optometry, Board of	7 members	4 years	148.52
Pharmacy, Board of	7 members	4 years	151.02
Physical Therapists, Examining Council	5 members	3 years	148.67
Podiatry, Board of	7 members	4 years	153.02
Private Detective and Protective Agent Services, Board of	5 members	4 years	326.33
Psychology, Board of	11 members	4 years	148.90
Teaching, Board of	17 members	4 years	125.183
Veterinary Medicine, Board of	7 members	4 years	156.01
Watchmaking, Board of Examiners in	7 members	4 years	326.541

INDEPENDENT STATE AGENCIES

Agency	Membership	Terms	Citation
Agriculture Society, Minnesota State	Managed by a board of managers consisting of a president and nine other members	3 years	37.01, 37.04
Historical Society, Minnesota	Managed by a director and six state officers		138.01
Horticultural Society, Minnesota State	Managed by an executive board and officers, 10 members	3 years	
Prevention of Cruelty, Society for the	Governor, commissioner of education, and the attorney general are ex officio members of the board of directors		343.04, 343.05
Sibley House Association of the Minnesota Daughters of the American Revolution	Managed by officers of the Minnesota D.A.R.		

MISCELLANEOUS REGIONAL AGENCIES

Agency	Membership	Terms	Citation
Metropolitan Airports Commission			473.603, 473.604
Metropolitan Council	17 members	4 years	473.123
Metropolitan Land Use, Advisory Committee on	16 members		473.853
Metropolitan Mosquito Control Commission	12 members	1 year	473.701, 473.703
Metropolitan Parks and Open Space Commission	9 members	4 years	473.303
Metropolitan Transit Commission	9 members	4 years	473.141, 473.404
Metropolitan Waste Control Commission	9 members	4 years	473.141, 473.503
Minnesota Area Potato Council	8 members	3 years	30.465
Regional Development Commissions			462.387, 462.388
Southern Minnesota Rivers Basin Board	11 members	3 years	114A.03