Certificate

THE STATE OF MINNESOTA.

I, Steven C. Cross, Revisor of Statutes, certify that I have compared each of the sections printed in this edition, Minnesota Statutes 1978, with the original section in Minnesota Revised Statutes, so far as sections printed herein were derived from those statutes, have compared every other section printed herein with the original section in the enrolled act from which it was derived, have compared every section that has been amended, with all amendments of it and that all sections appear to be correctly printed.

STEVEN C. CROSS,
Revisor.

APPENDICES

APPENDIX 1

ORGANIZATION AND STRUCTURE OF STATE GOVERNMENT

ELECTED OFFICIALS

Official	Term	Citation
Attorney General	4 years	Const. Art 5 §4
Auditor	4 years	Const. Art 5 §4
Governor	4 years	Const. Art 5 §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 §2
Continuing Legal Education		Court Orders
Law Librarian		Const. Art 6 §2 480.09
Professional Responsibility Board	fixed by Rule	Court Orders Rules of Board of Professional Responsibility
Reporter		Const. Art 6 §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 § 4 2.021
Senate (67 members)	4 years	Const. Art 4 §3 2.021
Lieutenant Governor	4 years	Const. Art 5 §2
Secretary of State	4 years	Const. Art 5 §4
Treasurer	4 years	Const. Art 5 §4

DEPARTMENTS

Department	Administrative Heads	Terms	Citation
Administration Department	Commissioner	4 years or Pleasure of Governor	16.01
Agriculture Department	Commissioner	4 years or Pleasure of Governor	17.01
Commerce Department			
Banking Division	Commissioner	4 years or Pleasure of Governor	45.02
Insurance Division	Commissioner	4 years or Pleasure of Governor	45.02, 60A.03
Securities Division	Commissioner	4 years or Pleasure of Governor	45.02
Consumer Services Section	Commissioner	4 years or Pleasure of Governor	45.15
Corrections Department	Commissioner	4 years or Pleasure of Governor	241.01
Economic Development Department	Commissioner	4 years or Pleasure of Governor	362.07, 362.09
Economic Security Department	Commissioner	Pleasure of Governor	268.011
Education Department	Commissioner	4 years or Pleasure of Governor	121.16
Energy Agency	Director	4 years or Pleasure of Governor	116H.03
Finance Department	Commissioner	4 years or Pleasure of Governor	16A.01
Health Department	Commissioner	4 years or Pleasure of Governor	15.01
Health Facilities			
Complaints, Office of	Director		144A.52
Housing Finance Agency	Director	4 years or Pleasure of Governor	462A.04

Human Rights Department	Commissioner	4 years or Pleasure of Governor	363.04
Iron Range Resources and Rehabilitation, Office of Commissioner of	Commissioner	4 years or Pleasure of Governor	298.22
Labor and Industry, Department	Commissioner	4 years or Pleasure of Governor	175.001
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 Legislative Coordinating Commission	6 years	3.97
Legislative Reference Library	Director		3.304
Mediation Services, Bureau of	Director	4 years or Pleasure of Governor	179.02
Military Affairs Department	Adjutant General		190.07
Natural Resources Department	Commissioner	4 years or Pleasure of Governor	84.01
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	Commissioner	4 years or Pleasure of Governor	43.001
Pollution Control Agency	9 members	4 years or Pleasure of Governor	116.02, 116.03
Office of the Director	Director	4 years or Pleasure of Governor	116.02, 116.03
Public Defender, State	Public Defender	4 years	611.22, 611.23
Public Safety Department	Commissioner	4 years or Pleasure of Governor	299A.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	Director	4 years or Pleasure of Governor	216A.06
Legislative Division (Public Service Commission)	5 Commissioners	6 years	216A.03
Public Welfare Department	Commissioner	4 years or Pleasure of Governor	245.03
Alcohol and other Drug Abuse Section	Director		254A.03
Revenue Department	Commissioner	4 years or Pleasure of Governor	270.02
Revisor of Statutes, Office of	Revisor of Statutes	Pleasure of the Legislative Coordinating Commission	3.304
State Planning Agency	Director	Pleasure of Governor	4.10 to 4.17
	State Planning Officer (Governor)	4 years	4.11

Transportation Department	Commissioner	4 years or Pleasure of Governor	174.01, 174.02
Veterans' Affairs Department	Commissioner	4 years or Pleasure of Governor	196.01, 196.02

BOARDS, COMMISSIONS AND OTHER BODIES

Board, Commission or Body	Membership	Term	Citation
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
Airport Zoning Board		3 years	360.063
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 National 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 §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
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 on	9 members	4 years	241.021
Corrections Advisory Board	20 members	2 years	401.02
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 Control Planning Board	19 members	4 years	299A.03
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 and Family Education Programs, Advisory Task Force 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 6/30/81	L76 c377
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
Emergency Shelter Services and Support Services to Battered Women, Advisory	9 members	4 years	241.64

Task Force on			
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 Education Board	6 members and one from each regional council	2 years	116E.02
Environmental Education Councils, Regional	12 in each council	4 years	116E.02
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, State Auditor, State 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	L74 c355 s68
Gillette Hospital Board	9 members	4 years	250.05
Great Lakes Commission	Two state senators, two state representatives, one member appointed by the Governor		1.21
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
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 Advisory Committee	15 members	4 years	363.04, Subd. 4
Human Services Board		3 years	402.02
Human Services Board, Advisory Committees to	25 members	2 years	402.03
Human Services Occupations Advisory Council	11 plus members from various councils	4 years	214.14
In-Service Training in Techniques of Education of Handicapped Pupils, Advisory Council for	12 members	4 years	123.581
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 Interstate Cooperation, Governor, President of the Senate, Speaker of the House		3.29
Investment Advisory Council	Commissioner of	4 years	11.117

	Finance, officers of three public pension systems, 10 appointed members		
Investment, State Board of	Governor, State Auditor, State Treasurer, Secretary of State, Attorney General		Const. Art XI, s8
Iron Range Resources and Rehabilitation Board	Five State senators, five 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, State Auditor		Const. Art 11, s10; 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 representstives		3.97
Legislative Commission on Minnesota Resources	7 senators 7 representatives		86.07
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 Commission to Study Public Broadcasting	5 senators 5 representatives	Expires 1/15/79	L77 c445 s3
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 Psychopathic 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	8 members	4 years	128A.03
Minnesota Life and Health Insurance Guaranty Association	5 to 9 members		61B.04
Minnesota School for the Deaf, Advisory Council	8 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
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
Office of Volunteer Services	21 members	4 years	4.31
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 Standards and Training, Board of	11 members	4 years	626.841
Personnel Board	7 members	4 years	43.03
Pharmacy Task Force on Continuing Education	10 members	2 years	151.13
Physical Therapists Examining Council	5 members	4 years	148.67
Pilot Dental Program, Advisory Task Force	7 members	4 years	256B.58
Plumbing Code and Examinations, Advisory Council	7 members	4 years	326.41
Police Civil Service Commission	3 members	3 years	419.01
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 Board, Public Employees	15 members	4 years	353.03
Retirement, Minnesota	9 members	4 years	352.03
State Retirement System, Board of	retired member	2 years	352.03
Retirement Fund, Teachers	Commissioners of Education, Finance, Insurance, four members of fund 1 retired	4 years 2 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
Small Business Advisory Task Force	11 members	Expires 7/1/79	362.42
Soil and Water Conservation Board, State	12 members	4 years	40.03
Soybean Research and Promotion Council		3 years	21A.03
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 Commission	7 senators 7 representatives	2 years	3.86
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	Board of Education	See Education, Board of	124.53
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 Planning Board	7 members	4 years	105.401
Water Resources Board	5 members	4 years	105.71
Water Supply and Wastewater Treatment Operators Certification Council	6 members	4 years	115.74
Water Well Contractors Advisory Council	9 members	4 years	156A.06
Watershed Districts, Advisory Committees	5 members		112.44
Workers' Compensation, Advisory Council on	13 members	4 years	175.007
Workers' Compensation Court of Appeals	3 members	6 years	175.006
Zoological Board	12 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
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
Cosmetology, 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	144A.19
Optometry, Board of	7 members	4 years	148.52
Pharmacy, Board of	7 members	4 years	151.02
Physical Therapists, Examining Committee	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	A president and 9 other members	3 years	37.01, 37.04
Historical Society, Minnesota	A director and 6 state officers		138.01
Horticultural Society, Minnesota State	An executive board and 10 members	3 years	
Humane Society, Minnesota	7 directors appointed by the Governor, and the Governor, Commissioner of Education, and Attorney General ex officio	4 years	343.01
Sibley House Association of the Minnesota Daughters of the American Revolution	Officers of the Minnesota D.A.R.		
University of Minnesota	12 Regents elected by Legislature in joint convention	6 years	Const. Art 13 s3 Territorial Laws 1851, Chapter 3

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 Sports Facilities Commission	7 members	4 years	473.553
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 River Basin Board	11 members	3 years	114A.03

APPENDIX 2

COURT SYSTEM IN MINNESOTA

Part A. Supreme Court

(1) Judges of Supreme Court, July 1, 1978

		Term Expires
Robert J. Sheran	Chief Justice	1983
James C. Otis	Associate Justice	1981
C. Donald Peterson	Associate Justice	1979
Walter F. Rogosheske	Associate Justice	1983
Fallon Kelly	Associate Justice	1979
John J. Todd	Associate Justice	1981
Lawrence R. Yetka	Associate Justice	1981
George M. Scott	Associate Justice	1981
Rosalie E. Wahl	Associate Justice	1979
Thomas F. Gallagher	Retired Justice	
Martin A. Nelson	Retired Justice	
William P. Murphy	Retired Justice	
Oscar R. Knutson	Retired Justice	

(2) Court Personnel

Judith L. Rehak	Supreme Court Administrator
Laurence C. Harmon	State Court Administrator
Richard J. Leonard	Commissioner of Supreme Court
Cynthia M. Johnson	Assistant Commissioner
John McCarthy	Clerk of Supreme Court
Wayne O. Tschimperle	Deputy Clerk
Ronald Cherry	Law Librarian
Shirley H. David	Assistant Librarian

Part B. District Court

(1) Judges of District Court, July 1, 1978

Dist.	Judge	Chambers	Term Expires
1	Robert J. Breunig	Shakopee	1979
1	John M. Fitzgerald	LeCenter	1983
1	Jerome J. Kluck	Glencoe	1979
1	Lawrence L. Lenertz	Hastings	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
2	Joseph P. Summers	St. Paul	1981
3	Daniel F. Foley	Rochester	1981
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 J. Fitzgerald	Minneapolis	1983
4	Irving C. Iverson	Minneapolis	1981
4	Harold Kalina	Minneapolis	1981
4	Richard J. Kantorowicz	Minneapolis	1981
4	Jonathan G. Lebedoff	Minneapolis	1983
4	David R. Leslie	Minneapolis	1981
4	A. Paul Lommen	Minneapolis	1983
4	Eugene Minenko	Minneapolis	1981
4	Diana E. Murphy	Minneapolis	1979
4	Dana Nicholson	Minneapolis	1979
4	Allen Oleisky	Minneapolis	1983
4	William S. Posten	Minneapolis	1979
4	Susanne Sedgwick	Minneapolis	1983
4	Bruce C. Stone	Minneapolis	1983
4	Crane Winton	Minneapolis	1981
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	David S. Bouschor	Duluth	1979
6	Nicholas S. Chanak	Hibbing	1983
6	Mitchell A. Dubow	Virginia	1981
6	C. Luther Eckman	Duluth	1981
6	Jack J. Litman	Duluth	1979
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	John C. Lindstrom	Montevideo	1979
8	Thomas J. Stahler	Morris	1979
8	DePaul D. Willette	Willmar	1979
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
9	Clinton W. Wyant	Brainerd	1981
10	Robert Bakke	Anoka	1981
10	John F. Dablow	Cambridge	1979
10	Thomas G. Forsberg	Anoka	1981
10	Carroll E. Larson	Buffalo	1981
10	John F. Thoreen	Stillwater	1981
10	Esther M. Tomljanovich	Stillwater	1979

(2) District Court Administrators

Name	District	Office Address
Esther Feldman	1	Dakota County Government Center Hastings, Minnesota 55033
Gerald Hatfield	2	Ramsey County Court House St. Paul, Minnesota 55102
Donald Cullen	3	Mower County Court House Austin, Minnesota 55912
Jack M. Provo	4	Hennepin County Government Center Minneapolis, Minnesota 55487
Ruth Steel Eppeland	5	Watonwan County Court House St. James, Minnesota 56081
Stuart A. Beck	6	St. Louis County Court House Duluth, Minnesota 55802

James P. Slette	7	Clay County Court House Moorhead, Minnesota 56560
A. Milton Johnson	8	Chippewa County Court House Montevideo, Minnesota 56265
Dennis E. Howard	9	Beltrami County Court House Bemidji, Minnesota 56601
F. Dale Kasparek, Jr.	10	Anoka County Court House Anoka, Minnesota 55303

(3) Clerks of Court

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
Ora Mae George	Big Stone	Ortonville
Richard Fasnacht	Blue Earth	Mankato
Lonnie F. Hulsey	Brown	New Ulm
Bruce G. Ahlgren	Carlton	Carlton
Albert A. Vojtisek	Carver	Chaska
Anona Riviere	Cass	Walker
Clifford M. Toov	Chippewa	Montevideo
Ethel Dahl	Chisago	Center City
Dana C. Powers	Clay	Moorhead
Vernon K. Lundin	Clearwater	Bagley
Carol M. Eckel	Cook	Grand Marais
Pansy Purrington	Cottonwood	Windom
Marge Williams	Crow Wing	Brainerd
Nick Vujovich	Dakota	Hastings
Pauline J. Huse	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
Lena R. Greeley	Grant	Elbow Lake
Merle H. Schultz	Houston	Caledonia
Darrel C. Casmey	Hubbard	Park Rapids
Edith E. Arneson	Isanti	Cambridge
Ursula Peterson	Itasca	Grand Rapids
David E. Johnson	Jackson	Jackson
Jeanne E. Seline	Kanabec	Mora
Gregory W. Solien	Kandiyohi	Willmar
Jean Pemberton	Kittson	Hallock
Terrance Carew	Koochiching	International Falls
Obert E. Hanson	Lac qui Parle	Madison
Larry J. Saur	Lake	Two Harbors
Evelyn Slick	Lake of the Woods	Baudette
Edsel J. Janovsky	Le Sueur	Le Center
Lee A. Smith	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
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
R. A. Monsrud	Roseau	Roseau
Joseph M. Lasky (Acting)	St. Louis	Duluth
Bendan 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
Lola Elg	Watonwan	St. James
A. W. Gruenberg	Wilkin	Breckenridge
Frank J. Kinszie, Jr.	Winona	Winona
Carl Nordberg	Wright	Buffalo
Joyce I. Blindt	Yellow Medicine	Granite Falls

Part C. County Courts

County Court Judges, July 1, 1978

County	Chambers	Judge	Term Expires
Aitkin	Aitkin	Robert S. Graff	1981
Anoka	Anoka	Edward E. Coleman	1979
		James T. Knutson	1979
		Spencer J. Sokolowski	1981
		Stanley N. Thorup	1981
		Joseph Wargo	1979
Becker	Detroit Lakes	Sigwel Wood	1981
Beltrami	Bemidji	Marcus A. Reed	1981
Benton	(see Sherburne)		
Big Stone-Traverse	Ortonville	Keith C. Davison	1983
Blue Earth	Mankato	Charles C. Johnson	1979
		James D. Mason	1983
		James C. Harten	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 J. Haas	1979
Chippewa	Montevideo	Marquis L. Ward	1979
Chisago	(see Pine)		
Clay	Moorhead	James E. 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	Charles F. Gegen	1979
	Hastings	Gerald W. Kalina	1979
		Martin J. Mansur	1979
	So. St. Paul	John J. Daly	1979
	West St. Paul	Jack A. Mitchell	1979
Dodge-Olmsted	Mantorville	Lawrence E. Agerter	1979
	Rochester	Harold G. Krieger	1981
		Gerard Ring	1979

Douglas-Grant	Alexandria	Paul L. Ballard	1981
		Richard S. Roberts	1981
Faribault	Blue Earth	J. W. Schindler	1981
Fillmore	Preston	Clement H. Snyder, Jr.	1979
Freeborn	Albert Lea	Thomas R. Butler, Jr.	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
		Allan Buchanan	1979
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
		George A. Marshall	1979
Lyon	(see Lincoln)		
McLeod	Glencoe	LeRoy W. Yost	1981
Mahnomen-Norman	Ada	Milton A. Kludt	1983
	Mahnomen	Jerome L. Kersting	1979
Marshall-Red Lake-Pennington	Thief River Falls	J. A. Harren	1983
	Warren	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	1983
Mower	Austin	Paul Kimball, Jr.	1983
		Roger S. Plunkett	1983
Murray	Slayton	John Holt	1979
Nicollet	St. Peter	Henry N. Benson, Jr.	1981
Nobles	(see Rock)		
Norman	(see Mahnomen)		
Olmsted	(see Dodge)		
Otter Tail	Fergus Falls	Elliot O. Boe	1979
		Harlan L. Nelson	1981
Pennington	(see Marshall)		
Pine-Isanti-Chisago	Cambridge	Linn Slattengren	1979
	Center City	James B. Gunderson	1983
	Pine City	George E. Sausen	1981
Pipestone	Pipestone	Ordner T. Bundlie, Jr.	1979
Polk	Crookston	Phillip D. Nelson	1981
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	William A. Johnson	1979
		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
		Galen C. Wilson	1979
	Hibbing	Gail Murray	1983
	Virginia	Ralph E. Harvey	1983
Scott	Shakopee	Kermit J. Lindmeyer	1979
		Richard J. Menke	1983
Sherburne-Benton-Stearns	Paynesville	Rainer L. Weis	1983
	St. Cloud	Richard J. Ahles	1979
		Paul J. 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	Richard A. Bodger	1981
Todd	(see Wadena)		
Traverse	(see Big Stone)		
Wabasha	Wabasha	Dennis H. Weber	1981
Wadena-Todd	Wadena	Don E. Kennedy	1979
Waseca	Waseca	Lawrence T. Gallagher	1979
Washington	Stillwater	Howard R. Albertson	1979
		John T. McDonough	1981
		Searle R. Sandeen	1981
Watonwan	St. James	David R. Teigum	1979
Wilkin	Breckenridge	Bruce N. Reuther	1981
Winona	Winona	Dennis A. Challeen	1979
		S. A. Sawyer	1983
Wright	Buffalo	Harold J. Dahl	1979
		Glen W. Swenson	1979
Yellow Medicine	Granite Falls	Frederick M. Ostensoe	1981

Part D. County Municipal Courts (Hennepin and Ramsey Counties)

(1) Hennepin County Municipal Court Judges, July 1, 1978

	Term Expires
H. Peter Albrecht	1983
Robert E. Bowen	1981
William B. Christensen	1979
Eugene J. Farrell	1981
Kenneth J. Gill	1981
Daniel R. Hart	1983
James H. Johnston	1981
Roberta K. Levy	1981
Peter Lindberg	1983
Henry W. McCarr	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

(2) Ramsey County Municipal Court Judges, July 1, 1978

	Term Expires
Roland J. Faricy, Jr.	1983
Kenneth J. Fitzpatrick	1983
William J. Fleming	1979
Donald E. Gross	1983
Robert F. Johnson	1981
John J. Kirby	1979
Harriet Lansing	1981
Allan R. Markert	1983
George Petersen	1981
Bertrand Poritsky	1981
Joseph E. Salland	1983

Part E. Hennepin and Ramsey County Probate Courts

(1) Hennepin County Probate Judge, July 1, 1978

	Term Expires
Melvin J. Peterson	1979

(2) Ramsey County Probate Judge, July 1, 1978

	Term Expires
Andrew A. Glenn	1981

Part F. Federal Courts and Law Enforcement Officers

(1) United States Court of Appeals for the Eighth Circuit

Harry Blackmun	Circuit Justice	Associate Justice United States Supreme Court
Floyd R. Gibson	Chief Judge	Kansas City, Missouri
Donald P. Lay	Circuit Judge	Omaha, Nebraska
Gerald W. Heaney	Circuit Judge	Duluth, Minnesota
Myron H. Bright	Circuit Judge	Fargo, North Dakota
Donald R. Ross	Circuit Judge	Omaha, Nebraska
Roy L. Stephenson	Circuit Judge	Des Moines, Iowa
J. Smith Henley	Circuit Judge	Little Rock, Arkansas
Charles J. Vogel	Senior Circuit Judge	Fargo, North Dakota
Martin VanOsterhout	Senior Circuit Judge	Sioux City, Iowa
Marion C. Matthes	Senior Circuit Judge	St. Louis, Missouri
Pat Mehaffy	Senior Circuit Judge	Little Rock, Arkansas
R. Hanson Lawton	Circuit Executive	Kansas City, Missouri
Robert C. Tucker	Clerk of Court	St. Louis, Missouri

(2) United States District Court for the District of Minnesota

Edward J. Devitt	Chief Judge	St. Paul
Miles W. Lord	District Judge	Minneapolis
Donald D. Alsop	District Judge	St. Paul
Harry H. MacLaughlin	District Judge	Minneapolis
Earl R. Larson	Senior Judge	Minneapolis
Harry A. Sieben	Clerk of Court	St. Paul

(3) United States Attorney

Andrew W. Danielson	St. Paul

(4) Federal Bureau of Investigation

David A. Brumble	Special Agent in Charge	Minneapolis

(5) United States Magistrates

Patrick J. McNulty (part-time)	Duluth
Steven Arnold Nelson	International Falls
George G. McPartline	St. Paul
Jay R. Petterson	Bemidji
J. Earl Cudd	Minneapolis
Robert G. Renner	Minneapolis

(6) Bankruptcy Judges

Jacob Dim	St. Paul
Hartley Nordin	Minneapolis
Kenneth G. Owens	Minneapolis
John J. Connelly	St. Paul
Patrick J. McNulty (part-time)	Duluth

APPENDIX 3

RULES OF EVIDENCE

Adopted April 1, 1977
Effective July 1, 1977
Current through July 1, 1978

Part A. Table of Headnotes

Part B. Rules of Evidence

ARTICLE 1. GENERAL PROVISIONS

Rule 101. Scope

These rules govern proceedings in the courts of this state, to the extent and with the exceptions stated in Rule 1101.

Rule 102. Purpose and Construction

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 103. Rulings on Evidence

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) *Objection.* In case the ruling is one admitting evidence a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of offer and ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. He may direct the making of an offer in question and answer form.

(c) Hearing of jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Error. Nothing in this rule precludes taking notice of errors in fundamental law or of plain errors affecting substantial rights although they were not brought to the attention of the judge.

Rule 104. Preliminary Questions

(a) Questions of admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making his determination he is not bound by the rules of evidence except those with respect to privileges.

(b) Relevancy conditioned on fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or in the court's discretion subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearing of jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness, if he so requests.

(d) Testimony by accused. The accused does not, by testifying upon a preliminary matter, subject himself to cross-examination as to other issues in the case.

(e) Weight and credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Rule 105. Limited Admissibility

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

Rule 106. Remainder of or Related Writings or Recorded Statements

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

ARTICLE 2. JUDICIAL NOTICE

Rule 201. Judicial Notice of Adjudicative Facts

(a) Scope of rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. A court may take judicial notice, whether requested or not.

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

ARTICLE 3. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

Rule 301. Presumptions in General in Civil Actions and Proceedings

In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

ARTICLE 4. RELEVANCY AND ITS LIMITS

Rule 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by the United States Constitution, the State Constitution, statute, by these rules, or by other rules applicable in the courts of this state. Evidence which is not relevant is not admissible.

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(a) Character evidence generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) *Character of accused.* Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;

(2) *Character of victim.* Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor.

(3) *Character of witness.* Evidence of the character of a witness, as provided in rules 607, 608, and 609.

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(c) Past conduct of victim of certain sex offenses.

(1) In a prosecution under Minn. Stats. 609.342 to 609.346, evidence of the victim's previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury, except by court order under the procedure provided in rule 404(c). Such evidence can be admissible only if the probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial nature and only in the following circumstances:

(A) When consent of the victim is a defense in the case,

(i) evidence of the victim's previous sexual conduct tending to establish a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue, relevant and material to the issue of consent;

(ii) evidence of the victim's previous sexual conduct with the accused; or

(B) When the prosecution's case includes evidence of semen, pregnancy or disease at the time of the incident or, in the case of pregnancy, between the time of the incident and trial, evidence of specific instances of the victim's previous sexual conduct, to show the source of the semen, pregnancy or disease.

(2) The accused may not offer evidence described in rule 404(c) (1) except pursuant to the following procedure:

(A) A motion shall be made by the accused prior to the trial, unless later for good cause shown, setting out with particularity the offer of proof of the evidence that the accused intends to offer, relative to the previous sexual conduct of the victim.

(B) If the court deems the offer of proof sufficient, the court shall order a hearing out of the presence of the jury, if any, and in such hearing shall allow the accused to make a full presentation of his offer of proof.

(C) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the accused regarding the previous sexual conduct of the victim is admissible under the provisions of rule 404(c) (1) and that its probative value is not substantially outweighed by its inflammatory or prejudicial nature, the court shall make an order stating the extent to which such evidence is admissible. The accused may then offer evidence pursuant to the order of the court.

(D) If new information is discovered after the date of the hearing or during the course of trial, which may make evidence described in rule 404(c) (1) admissible, the accused may make an offer of proof pursuant to rule 404(c) (2), and the court shall hold an in camera hearing to determine whether the proposed evidence is admissible by the standards herein.

Rule 405. Methods of Proving Character

(a) Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

Rule 406. Habit

Evidence of the habit of a person or of the routine practice of an organization, whether

corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Rule 407. Subsequent Remedial Measures

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408. Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409. Payment of Medical and Similar Expenses

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Rule 410. Offer to Plead Guilty; Nolo Contendere, Withdrawn Plea of Guilty

Evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil, criminal, or administrative action, case, or proceeding whether offered for or against the person who made the plea or offer.

Rule 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

ARTICLE 5 PRIVILEGES

Rule 501. General Rule

Nothing in these rules shall be deemed to modify, or supersede existing law relating to the privilege of a witness, person, government, state or political subdivision.

ARTICLE 6. WITNESSES

Rule 601. Competency

Except as provided by these rules, the competency of a witness to give testimony shall be determined in accordance with law.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses.

Rule 603. Oath or Affirmation

Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

Rule 604. Interpreters

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.

Rule 605. Competency of Judge as Witness

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

Rule 606. Competency of Juror as Witness

(a) At the trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

Rule 607. Who May Impeach

The credibility of a witness may be attacked by any party, including the party calling him.

Rule 608. Evidence of Character and Conduct of Witness

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibility.

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) General rule. For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted if elicited from him or established by public record during cross-examination but only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect, or (2) involved dishonesty or false statement, regardless of the punishment.

(b) Time limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of pardon, annulment, vacation or certificate of rehabilitation. Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, vacation or certificate of rehabilitation or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, vacation or other equivalent procedure based on a finding of innocence.

(d) Juvenile adjudications. Evidence of juvenile adjudications is not admissible under this rule pursuant to statute.

(e) Pendency of appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Rule 610. Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature his credibility is impaired or enhanced.

Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination. An accused who testifies in a criminal case may be cross-examined on any matter relevant to any issue in the case, including credibility.

(c) Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

Rule 612. Writing Used to Refresh Memory

Except as otherwise provided in criminal proceedings by the rules of criminal procedure, if a witness uses a writing to refresh his memory for the purpose of testifying, either —

(1) while testifying, or

(2) before testifying, if the court in its discretion determines it is necessary in the interests of justice, —

an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and if otherwise admissible to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires.

Rule 613. Prior Statements of Witnesses

(a) Examining witness concerning prior statement. In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown nor its contents disclosed to him at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded a prior opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d) (2).

Rule 614. Calling and Interrogation of Witnesses by Court

(a) Calling by court. The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by court. The court may interrogate witnesses, whether called by itself or by a party.

(c) Objections. Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

Rule 615. Exclusion of Witnesses

At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion.

Rule 616. Conversation with Deceased or Insane Person

A witness is not precluded from giving evidence of or concerning any conversations with, or admissions of a deceased or insane party or person merely because the witness is a party to the action or a person interested in the event thereof.

ARTICLE 7. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Rule 704. Opinion on Ultimate Issue

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Rule 706. Court Appointed Experts

(a) Appointment. The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act. A witness so appointed shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the court or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.

(b) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation under the fifth amendment. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) Disclosure of appointment. In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(d) Parties' experts of own selection. Nothing in this rule limits the parties in calling expert witnesses of their own selection.

ARTICLE 8. HEARSAY

Rule 801. Definitions

The following definitions apply under this article:

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by him as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. A statement is not hearsay if —

(1) *Prior statement by witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with his

testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving him, if the court is satisfied that the circumstances of the prior identification demonstrate the reliability of the prior identification, or (D) a statement describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter.

(2) *Admission by party-opponent.* The statement is offered against a party and is (A) his own statement, in either his individual or a representative capacity, or (B) a statement of which he has manifested his adoption or belief in its truth, or (C) a statement by a person authorized by him to make a statement concerning the subject, or (D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court or by the Legislature.

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) (Not Used).

(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of regularly conducted business activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knoweldge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of entry in records kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases and petty misdemeanors matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings except petty misdemeanors and against the State in criminal cases and petty misdemeanors, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations unless the sources of information or other circumstances indicate lack of trustworthiness.

(18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation concerning personal or family history. Reputation among members of his family by blood, adoption, or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history.

(20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State or nation in which located.

(21) Reputation as to character. Reputation of a person's character among his associates or in the community.

(22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the state in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgment as to personal, family or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) Other exceptions. A statement not specifically covered by any of the foregoing excep-

tions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name, address, and present whereabouts of the declarant.

Rule 804. Hearsay Exceptions; Declarant Unavailable

(a) Definition of unavailability. "Unavailability as a witness" includes situations in which the declarant —

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or

(2) persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of his statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b) (2), (3), or (4), his attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) *Former testimony.* In a civil proceeding testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or a party with substantially the same interest or motive with respect to the outcome of the litigation, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. In a criminal proceeding involving a retrial of the same defendant for the same or an included offense, testimony given as a witness at the prior trial or in a deposition taken in the course thereof.

(2) *Statement under belief of impending death.* In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concering the cause or circumstances of what he believed to be his impending death.

(3) *Statement against interest.* A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) *Statement of personal or family history.* (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) *Other exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name, address and present whereabouts of the declarant.

Rule 805. Hearsay Within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

Rule 806. Attacking and Supporting Credibility of Declarant

When a hearsay statement, or a statement defined in Rule 801 (d) (2) (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross-examination.

ARTICLE 9. AUTHENTICATION AND IDENTIFICATION

Rule 901. Requirement of Authentication or Identification

(a) General provisions. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) *Testimony of witness with knowledge.* Testimony that a matter is what it is claimed to be.

(2) *Nonexpert opinion on handwriting.* Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) *Comparison by trier or expert witness.* Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) *Distinctive characteristics and the like.* Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) *Voice identification.* Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) *Telephone conversations.* Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) *Public records or reports.* Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) *Ancient documents or data compilation.* Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.

(9) *Process or system.* Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) *Methods provided by statute or rule.* Any method of authentication or identification provided by Legislative Act or by other rules prescribed by the Supreme Court pursuant to statutory authority.

Rule 902. Self-authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic public documents not under seal. A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) **Foreign public documents.** A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or 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 official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) **Certified copies of public records.** A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any Legislative Act or rule prescribed by the Supreme Court pursuant to statutory authority.

(5) **Official publications.** Books, pamphlets, or other publications purporting to be issued by public authority.

(6) **Newspapers and periodicals.** Printed materials purporting to be newspapers or periodicals.

(7) **Trade inscriptions and the like.** Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) **Acknowledged documents.** Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) **Commercial paper and related documents.** Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) **Presumptions under Legislative Acts.** Any signature, document, or other matter declared by Legislative Act to be presumptively or prima facie genuine or authentic.

Rule 903. Subscribing Witness' Testimony Unnecessary

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

ARTICLE 10. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule 1001. Definitions

For purposes of this article the following definitions are applicable:

(1) **Writings and recordings.** "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) **Photographs.** "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

(3) **Original.** An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original".

(4) **Duplicate.** A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

Rule 1002. Requirement of Original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by Legislative Act.

Rule 1003. Admissibility of Duplicates

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Rule 1004. Admissibility of Other Evidence of Contents

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if —

(1) **Originals lost or destroyed.** All originals are lost or have been destroyed, unless the proponent lost or destoryed them in bad faith; or

(2) **Original not obtainable.** No original can be obtained by any available judicial process or procedure; or

(3) **Original in possession of opponent.** At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and he does not produce the original at the hearing; or

(4) **Collateral matters.** The writing, recording, or photograph is not closely related to a controlling issue.

Rule 1005. Public Records

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

Rule 1006. Summaries

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

Rule 1007. Testimony or Written Admission of Party

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the non-production of the original.

Rule 1008. Functions of Court and Jury

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of rule 104. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

ARTICLE 11. MISCELLANEOUS RULES

Rule 1101. Rules Applicable

(a) Except as otherwise provided in subdivision (b), these rules apply to all actions and proceedings in the courts of this state.

(b) **Rules inapplicable.** The rules other than those with respect to privileges do not apply in the following situations:

(1) *Preliminary questions of fact.* The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) *Grand jury.* Proceedings before grand juries.

(3) *Miscellaneous proceedings.* Proceedings for extradition or rendition; probable cause hearings; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.

(4) Contempt proceedings in which the court may act summarily.

Part C. Index to Rules of Evidence

APPENDIX 4
RULES OF CRIMINAL PROCEDURE

Effective July 1, 1975

Governing all criminal actions commenced or arrests made after 12 o'clock midnight June 30, 1975.

As amended through July 1, 1978.

Part A. Table of Headnotes

Part B. Rules of Criminal Procedure

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 committed 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 of 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. 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.

(Amended March 31, 1977, effective July 1, 1977.)

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) and (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 exclusive of the day of 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.

(Amended March 31, 1977, effective July 1, 1977.)

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 of 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 the day of arrest, Sundays, and legal holidays, or as soon thereafter 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. 1.

(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 defendants 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 therefor, 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 and that the defendant committed it. 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.

(Amended March 31, 1977, effective July 1, 1977.)

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 shall 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, judicial officer, or other duly authorized personnel 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) That 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.

The judge, judicial officer, or other duly authorized personnel 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.

(Amended March 31, 1977, effective July 1, 1977.)

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 may appoint an attorney for a defendant financially unable to afford counsel when requested by the defendant or interested counsel or when such appointment appears advisable to the Court in the interests of justice to the parties.

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.

(Amended March 31, 1977, effective July 1, 1977.)

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 be not later than fourteen (14) days after defendant's initial appearance before such judge or judicial officer.

The defendant shall be informed of the time and place of such apperance. The time for appearance may be extended by the district court for good cause.

(Amended March 31, 1977, effective July 1, 1977.)

5.04 Plea in Misdemeanor Cases

Subd. 1. Entry of Plea. 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.

(Amended March 31, 1977, effective July 1, 1977.)

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 15.03.

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.

5.08 First Appearance in District Court

Notwithstanding any rule to the contrary, in felony and gross misdemeanor cases, if it has been mutually agreed between the district court and the county court or if ordered by the Supreme Court, or if a judge or judicial officer of the county court is not available, the first appearance in court of defendants pursuant to Rule 5 may be held before a judge of district court.

(Amended March 31, 1977, effective July 1, 1977.)

Rule 6. Pre-Trial Release

6.01 Release on Citation by Law Enforcement Officer Acting Without 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 nonmonetary 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 a 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 of such evidence and identification procedures. In felony and gross misdemeanor cases notice shall be given in writing on or before the date set for the defendant's initial appearance in the district court as provided by Rule 5.02. In misdemeanor cases, notice shall be given either in writing or orally on the recocd in court 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 written 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.

(Amended March 31, 1977, effective July 1, 1977.)

7.02 Notice of Additional Offenses

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.

(Amended March 31, 1977, effective July 1, 1977.)

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 Rules 9.01, subd. 1 and 2 to be made without the necessity of an order of court.

In misdemeanor cases, without order of the 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

The defendant's initial appearance under this rule shall be held in the district court of the judicial district where the alleged offense was committed. If it has been mutually agreed between the district court and the county court, or if ordered by the Supreme Court, the appearance may be referred to the county court of the county where the alleged offense was committed. Except as otherwise provided by Rule 8.02, the procedures upon an initial appearance in county court shall be the same as in district court. At a defendant's initial appearance before the court following the complaint, the procedure shall be as follows:

(Amended March 31, 1977, effective July 1, 1977.)

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

At an initial appearance in county court, the defendant may not enter a plea of guilty to a felony or gross misdemeanor, but may enter a plea of guilty to a misdemeanor in lieu of the offenses charged in the complaint unless the prosecuting attorney objects. If, at an initial appearance in county court, the defendant requests permission to enter a guilty plea to a felony or gross misdemeanor, the judge or judicial officer shall set a time for the defendant's appearance in district court at the earliest available date, which appearance date, in any event, shall be not later than fourteen (14) days after the initial appearance. If he enters a plea of guilty, the pre-sentencing and sentencing procedures provided by these rules shall be followed.

(Amended March 31, 1977, effective July, 1977.)

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 Rules 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 Rules 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 disclosure.

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 therfor 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 Rules 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 unless the court for good cause shown grants relief from the waiver. The motion shall be served, heard and determined.

(Amended March 31, 1977, effective July 1, 1977.)

10.03 Waiver

The motion shall include 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 and no more than thirty (30) days after the arraignment 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.

(Amended March 31, 1977, effective July 1, 1977.)

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 opposition. 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. Recording. The proceedings shall be on the record.

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.

(Amended March 31, 1977, effective July 1, 1977.)

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 apppearance, 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.

14.03 Time of Plea

At any time during the proceedings, except as provided by Rule 8.01, a defendant may appear before the court to enter a plea of guilty to the offense charged or to some other offense pursuant to a plea agreement reached under Rule 15.04. To schedule such an appearance, the defendant shall file a written request with the clerk of court indicating the offense to which he wishes to plead guilty. Upon receiving such a request, the clerk shall schedule an appearance before the court at the earliest available date, which date, in any event, shall be not later than fourteen days after the filing of the request. The clerk shall then notify the defendant and the prosecuting attorney of the time and place of such court appearance.

(Added March 31, 1977, effective July 1, 1977.)

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 tab charge, 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 midemeanor, 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.

(Amended March 31, 1977, effective July 1, 1977.)

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
COUNTY OF

IN DISTRICT COURT
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) (haver 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. (Perjury means testifying falsely).

d. That I (do) (do not) now request such a pre-trial 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 defendant, 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 or a gross misdemeanor prosecution pursuant to Minn. Stat. § 609.035. Any such prosecutions shall be governed by these rules. In misdemeanor cases prosecuted by indictment, to the extent that Rule 19 conflicts with other rules, Rule 19 shall govern.

(Amended March 31, 1977, effective July 1, 1977.)

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) *Dismissed 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 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. In misdemeanor cases dismissed for failure to file a timely complaint with the thirty (30) day time limit pursuant to Rule 4.02, subd. 5(3), further prosecution shall not be barred unless additionally a judge or judicial officer of the county court has so ordered.

(Amended March 31, 1977, effective July 1, 1977.)

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; Quorum. 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 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.

(Amended March 31, 1977, effective July 1, 1977.)

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 proceeding. 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 during the pending proceedings, 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 the Court in Felony and Gross Misdemeanor Cases. 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.

(Amended March 31, 1977, effective July 1, 1977.)

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, when the defendant in a misdemeanor case pleads not guilty by reason of mental illness or mental 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 or if the defendant in a misdemeanor case relies solely on the plea of not guilty by reason of mental illness or mental deficiency pursuant to Rule 14.01(c), 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, or if the defendant in a misdemeanor case pleads both not guilty and not guilty by reason of mental illness or mental deficiency the defendant 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.

In felony and gross misdemeanor cases, the defendant's election shall be made at the Omnibus Hearing under Rule 11. In misdemeanor cases, the defendant's election shall be made at the pretrial conference under Rule 12 if held and otherwise shall be made immediately prior to trial.

(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.

(Amended March 31, 1977, effective July 1, 1977.)

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 relevant 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 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. Fine Payment. A defendant shall be advised in writing before paying a fine to a violations bureau that such a payment constitutes a plea of guilty to the misdemeanor designated and an admission that he 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.

Subd. 4. Functions of Violations Bureau. 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 Bureau. 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.

(Amended March 31, 1977, effective July 1, 1977.)

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 shall, unless waived, 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.

(Amended March 31, 1977, effective July 1, 1977.)

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 (457.2M) 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. § 210A.34 (1975) 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.

(Amended March 31, 1977, effective July 1, 1977.)

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 count 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 in felony and gross misdemeanor case, shall in addition specifically find the essential facts in writing on the record. In misdemeanor and petty misdemeanor cases, such findings shall be made within 7 days after the filing of the notice of appeal. 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.

(Amended March 31, 1977, effective July 1, 1977.)

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 restraint 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 and gross misdemeanors, on defendant's motion, the court may excuse the defendent from attendance at any proceeding except arraignment, plea, trial, and imposition of sentence; and

3. in prosecutions for misdemeanors, the court shall permit arraignment and plea in the defendant's absence if the court is satisfied that the defendant has knowingly and voluntarily waived his right to be present. The court with the written consent of the defendant, or his

oral consent in open court, may permit 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 reccord.

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 therefor; 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) *Motions 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 tab charge, 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.

(Amended March 31, 1977, effective July 1, 1977.)

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 Rule 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 Sentencing. 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 sentence including a recommendation as to sentence only if requested by the Court. 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.

(Amended March 31, 1977, effective July 1, 1977.)

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 Rule 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. An appeal on the record shall be heard and determined by one or more district court judges 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.

(Amended March 31, 1977, effective July 1, 1977.)

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 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 of 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.

(Amended March 31, 1977, effective July 1, 1977.)

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 the 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 petition, 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 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

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 Defenders' 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 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 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 a 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, appellant shall serve upon opposing counsel his brief and file with the clerk of the Supreme Clerk 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 of 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 Rule 6.02, subd. 1 and subd. 2, and, in the case of misdemeanors, also by Rule 28.05, subd. 5.

(Amended March 31, 1977, effective July 1, 1977.)

Rule 30. Dismissal

30.01 By Prosecuting Attorney

The prosecuting attorney may in writing or on the record, stating the reasons therefore, including the satisfactory completion of a pretrial diversion program, dismiss a complaint or tab charge without leave of court and an indictment with leave of court. In felony and gross misdemeanor cases, if the dismissal is on the record, it shall be transcribed and filed.

(Amended March 31, 1977, effective July 1, 1977.)

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 ex parte, 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

Except as provided by Rules 3.02, subd. 2(3), 4.02, subd. 5(1), and 4.02, subd. 5(3), 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.

(Amended March 31, 1977, effective July 1, 1977.)

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 therefore is made before the expiration of the period originally prescribed or as extended by 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 Rules 29.02, subd. 5(3), 29.02, subd. 6(4), and 28.05, subd. 1, the time for taking an appeal.

(Amended March 31, 1977, effective July 1, 1977.)

34.03 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 rule or order of court. For cause shown such an order may be made on ex parte 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 open 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.

PART C. TABLE OF SUPERSEDED STATUTES

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1.01	487.25, subd. 1, subd. 2
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	488A.27, subd. 1, subd. 2
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6	487.25, subd. 8 to extent inconsistent
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Rule	Statute Superseded
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14.02, subd. 2, subd. 4	487.25, subd. 5
	488A.10, subd. 5
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17.02	628.01
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	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
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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
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17.06, subd. 1	628.19 first sentence
17.06, subd. 4	630.19
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18.01, subd. 1	484.30 to extent inconsistent
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18.03, subd. 1	628.41 to extent inconsistent
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	628.68 last sentence
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20	631.18
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21	611.08
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22	357.32 to extent inconsistent
	388.05 to extent inconsistent
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	597.11 to extent inconsistent
	611.06 to extent inconsistent
23.03	487.28 to extent inconsistent
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	488A.25 to extent inconsistent
24.01	627.01
24.02, subd. 1	627.05
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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
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24.03, subd. 4	627.03
25.02, subd. 3	627.01 clause following semicolon
26.01	631.01
26.01, subd. 1(1)	487.25, subd. 6 to extent inconsistent
	488A.10, subd. 6 to extent inconsistent
	488A.27, subd. 6 to extent inconsistent
	169.89 to extent inconsistent
26.02, subd. 1	593.13 to extent inconsistent
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Rule	Statute Superseded
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26.02, subd. 6	631.27
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	609.155 to extent inconsistent
	242.13 to extent inconsistent
28	487.39 to extent inconsistent
	488A.10, subd. 6 to extent inconsistent
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	488A.01, subd. 11
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30.02	611.04
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	484.08 to extent inconsistent

The provisions of Chapter 633 are superseded to the extent that they are inconsistent with these rules.

PART D. INDEX TO RULES OF CRIMINAL PROCEDURE

APPENDIX 5

GENERAL RULES OF PROCEDURE FOR THE DISTRICT COURT

Part A. Rules of Civil Procedure for the District Court

Adopted November 14, 1974
Effective January 1, 1978
As amended through July 1, 1978

(1) Table of Headnotes

I. SCOPE OF RULES — ONE FORM OF ACTION

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V. DEPOSITIONS AND DISCOVERY

(2) Text of Rules

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 actions."

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. (As amended March 3, 1959, effective July 1, 1959.)

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 designates 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 Publications; 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. (As amended March 3, 1959, effective July 1, 1959; Nov. 10, 1967, effective Feb. 1, 1968.)

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. (As amended March 3, 1959, effective July 1, 1959.)

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. (As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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 court 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 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. (As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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. (As amended March 3, 1959, effective July 1, 1959.)

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. (As amended March 3, 1959, effective July 1, 1959.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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 matter 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

Defendants 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(Added March 3, 1959, effective July 1, 1959.)

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, whichever 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 peladings, 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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 forth 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.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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 nonresident, 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.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

19.04 Exception of Class Actions

This rule is subject to the provisions of Rule 23.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(Added March 3, 1959, effective July 1, 1959, as amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968; as amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968; as amended Nov. 14, 1974, effective Jan. 1, 1975.)

26.06, 26.07 Deleted Nov. 14, 1974, effective Jan. 1, 1975

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.

(Amended Nov. 26, 1969.)

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 letter 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 letter rogatory may be addressed "To the Appropriate 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

28.03 Disqualification for Interest

No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Rule 29. Stipulations 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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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 knoweldge, 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.

(As amended March 3, 1959, effective July 1, 1959; as amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended March 3, 1959, effective July 1, 1959; as amended Nov. 14, 1974, effective Jan. 1, 1974.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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 witness 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 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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

31.03 Notice of Filing

When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

31.04 Deleted Nov. 14, 1974, effective Jan. 1, 1975

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(Added Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(Added Nov. 14, 1974, effective Jan. 1, 1975.)

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 devices 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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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 permissions to enter upon land.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

Rule 35. Physical, Mental and Blood Examination of Persons

(Heading amended March 3, 1959, effective July 1, 1959.)

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.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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 therefor 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 or 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968; as amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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 opportu-

nity 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 reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended March 3, 1959, effective July 1, 1959; Nov. 14, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended March 3, 1959, effective July 1, 1959; Nov. 10, 1967, effective Feb. 1; 1968.)

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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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 to any other party to make such an opening statement.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended March 3, 1959, effective July 1, 1959; Nov. 10, 1967, effective Feb. 1, 1968.)

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 unnecesssary 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, coun-

terclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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 poltical 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.

(As amended March 3, 1959, May 8, 1959, effective July 1, 1959.)

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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

Rule 44. Proof of Official Record

44.01 Authentication

(1) **Domestic.** An official record kept within the United States, or any state, district, com-

monwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by 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 county 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 evidence by an attested summary with or without a final certification.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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 contain no such record or entry.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(As amended Nov. 26, 1969.)

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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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 actions 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 instruction or comment erroneous, misleading or confusing to the jury.

(As amended Jan. 5, 1973.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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 discharged, 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968; as amended Jan. 5, 1973.)

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 clearly 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.

(As amended March 3, 1959, effective July 1, 1959, Nov. 10, 1967, effective Feb. 1, 1968.)

Rule 53. Referees

53.01 Appointment and Compensation

The court in which any action is pending may appoint a refereee 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.

(As amended March 3, 1959, effective July 1, 1959.)

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 virtue 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.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(As amended March 3, 1959, effective July 1, 1959.)

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 there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(As amended March 3, 1959, effective July 1, 1959; Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended March 3, 1959, effective July 1, 1959; Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended March 3, 1959, effective July 1, 1959; Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

59.07 Case; How and When Settled [Deleted effective Feb. 1, 1968]

59.08 Settling Case; When Judge Incapacitated [Deleted effective Feb. 1, 1968]

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.

(As amended Nov. 26, 1969.)

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 4.043, 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(Amended Nov. 26, 1969)

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.
(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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.
(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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.
(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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 M.S.A. 1971, c. 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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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 documents 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.

Rules 72-76. [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.

Rule 78-79 [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.

(As amended March 3, 1959, effective July 1, 1959; Nov. 10, 1967, effective Feb. 1, 1968.)

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. [The Appendix of Forms is not reprinted in this edition.]

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.

(As amended March 3, 1959, effective July 1, 1959; Nov. 10, 1967, effective Feb. 1, 1968.)

APPENDIX A

Special Proceedings Under Rule 81.01

Following is a list of statutes and 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 209	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
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	

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

APPENDIX B(1)

List of Rules Superseding Statutes

Rule	Statute Superseded M.S.A. 1971	
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	superseded to extent inconsistent
	373.07	
	411.07	
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	superseded in part
	544.32	
	544.34	
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

Rule	Statute Superseded M.S.A.	1971
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 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	

Rule	Statute Superseded M.S.A. 1971	
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	
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	

Rule	Statute Superseded M.S.A. 1971	
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	
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	546.14	(Laws 1971, Ch. 715)
49.02	546.20	
50.02	605.06	1st and 2d sentences
51	546.14	(Laws 1971, Ch. 715)
	547.03	
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	585.01-585.04	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

(As amended Nov. 10, 1967, effective Feb. 1, 1968; as amended Jan. 5, 1973.)

APPENDIX B(2)

List of Statutes Superseded by Rules

Statute Superseded M.S.A. 1971		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 summonso 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 reading "in a court of record shall be subscribed by the party or his attorney, and"	11

Statute Superseded M.S.A. 1971		By Rule
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; 51
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 pargraph	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
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(As amended Nov. 10, 1967, effective Feb. 1, 1968; as amended Jan. 5, 1973.)

(3) Index to Rules of Civil Procedure

Part B. Code of Rules for the District Courts of Minnesota

Adopted by the Minnesota
District Judges Association

As Amended through July 1, 1978

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(2) Text of Rules

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 M.S.A. 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 M.S.A. 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 M.S.A. 219.77.

(Adopted June 19, 1952.)

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 petitioner 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.

(Adopted Sept. 20, 1970, effective Dec. 1, 1970. Amended, effective June 15, 1971; June 13, 1973.)

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 to 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 23, 1954; June 1964, effective Oct. 1, 1964.)

Rule 8. Depositions [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 MIINNESOTA
COUNTY OF . . . . . .

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

. . . . . .
Plaintiff,

v.

APPLICATION FOR TEMPORARY ALIMONY, ETC.

. . . . . .
Defendant.

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	Market Value 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 _____

DISTRICT COURT
_____JUDICIAL DISTRICT

_____
Plaintiff,
vs.
_____
Defendant.

File No. _____

Notice of Hearing Application for Temporary Alimony, etc.

TO THE ABOVE NAMED DEFENDANT-PLAINTIFF

Notice is hereby given that the foregoing application 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 court 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 such 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.

(As amended June 24, 1948; June 21, 1949; June 28, 1963, effective Sept. 1, 1963; June 1964, effective Oct. 1, 1964; June 13, 1973; Feb. 17, 1975.)

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. Framing Issues [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 571.61, 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 expense 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 his 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 10 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. Mechanic's Lien — Intervention [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, 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. Notice of Motion [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.

(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 June 1964, effective Oct. 1, 1964; amended in 1965, effective Oct. 1, 1965.)

(c) (d) Eliminated June 23, 1954.

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 each 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 cases only after an order of the court made on a petition showing such circumstances, 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 [Eliminated June 23, 1954]

Rule 26. Stay [Eliminated June 23, 1954]

Rule 27. Trials

(a) Eliminated eff. 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 these 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.

Rule 28. Trustees—Accounting—Petition for Appointment

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) An 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 on 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 interested party. A hearing shall be held on such annual accounts at least once every five years upon notice as set forth in Minn. Stats., Sec. 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.

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 appointment 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. (As amended June 1964, effective Oct. 1, 1964; June 22, 1967; June 4, 1968.)

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.

(Added June 24, 1948, as amended June 23, 1954.)

PART II. 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 incumbrance 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. Petition 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 application, shall be considered at issue without reply by the applicant. But 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 incumbrances 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 or 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 certificate shall be filed with the clerk and show by a receipt of the registrar of titles indorsed thereon that a duplicate of such petition 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.

(3) Index to Code of Rules

Part C. Rules for Uniform Decorum in the District Court of Minnesota

As Amended through July 1, 1978

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 baliff 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 baliff shall require all present to arise and stand, and the baliff 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 baliff 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 baliff 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 baliff 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 unsual 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 transpired. The explanation with proper comments from the court can do much to alleviate the criticism that is frequently made of our jury trial procedure.

APPENDIX 6

SPECIAL RULES OF PROCEDURE FOR THE DISTRICT COURT

Part A. First Judicial District

Rules Adopted February 14, 1967
As Amended through July 1, 1978

(1) Table of Headnotes

(2) Text of Rules

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 proceed-

ings 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 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.

LeCENTER, LeSUEUR 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 preceding 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.

(Amended, effective Sept. 1, 1970.)

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. Settlements; Attorney Fees in Minors' Cases

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 percent 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

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:

a. 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 encumbrance upon real property, subsequent to registration of such interest or encumbrance; 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.

b. In the case of certificates 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.

c. When instruments affecting registered land have been recorded in the office of any register of deeds in this state, a certified copy thereof may be filed for registration and registered with like effect as the original instrument.

d. 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.

e. Practice in relation to the State Tax Deeds. Excepting those cases where a certificate of title is outstanding in favor of the 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.

f. Deeds from Federal Housing Administrator. That 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 of the National Housing Act as amended by act of June 3, 1939 (12 U.S.C.A. 1710) which confers upon any assist-

ant 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 assistant administrator executing instrument.

g. 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.

h. 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.

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 person save the judgment creditor or the assignee of such judgment creditor, the person applying therefor must file with the clerk of this court proper written authority to make such application and to act for and instead of such judgment creditor or assignee, as the case may be.

The execution shall be endorsed in writing by the party thus applying therefor before such execution is delivered to the sheriff.

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.

IT IS HEREBY ORDERED that the foregoing XIV Special Rules are hereby adopted and approved this 14th day of February 1964 as the Special Rules of this court in addition to the rules which are applicable generally to District Courts throughout this state. All Special Rules heretofore made in said district are hereby annulled.

Appellate Rules

Adopted, effective July 1, 1973
As amended through July 1, 1978

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 counties of Scott, Carver, LeSueuer, 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 whom 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 Appellate 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.

Part B. Second Judicial District

Rules Adopted December 14, 1971
As Amended through July 1, 1978

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 pre-trial 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 it 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 or 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 Municipal 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

(1) Table of Headnotes

(2) Text of 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. Placing Matters on Calendar

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 Assessments under M.S. 429.081.

e. In order that a proper calendar can be maintained, appeals from Administrative Agencies under the provisions of the Administrative Procedures Act or specialized appeal statutes will be placed upon the calendar for disposition upon the filing of a Calendar Certificate in form and substance as set out in Form No. 2.

(Amended Sept. 23, 1976.)

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.

(As amended June 11, 1974.)

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 preceding 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 Ramsey County.

b. Jurors shall be selected and sent to the Municipal Court of Ramsey County 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 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, 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.

(As amended June 13, 1972, effective July 1, 1972.)

Rule 17. Special Rules of Family Court

7253 APPENDIX 6. SPECIAL RULES OF PROCEDURE FOR THE DISTRICT 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 proceeding 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 .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 appears 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 pre-trial 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; Writs of Attachment; Continuance

Upon the failure of a party to appear in response to an Order of the Court compelling 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 intitial Order to Show Cause may, if the situation warrants, contain the following language:

IT IS FURTHER ORDERED that pending the aforesaid scheduled hearing, you, _____, shall pay to the [petitioner] [respondent], commencing forthwith ____% of your net earning after the 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 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	25% 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	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 the summons and petition in all actions of dissolution, separate 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 respondent, relief shall be limited to: A decree of either dissolution, 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.]

2.04 Venue

The Petitioner must reside in Ramsey County and there is no right to a change of venue. The Court may change venue for the following reasons:

(a) by consent of the parties;

(b) when it appears that an impartial trial cannot be had, or

(c) the convenience of witnesses and the ends of justice would be served by a change.

Any such request must be by written motion. [M.S.A. 518.09; State v. District Court of Blue Earth County, 110 Minn. 501, 126 N.W. 133]

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 are 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 counterpetition] 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 interests 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 Filing

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 rule.

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 party 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, it 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 an 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 of 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 to 6.09 [Paternity Actions] Superseded by Rule 18

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 is 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.

(Amended Oct. 7, 1975.)

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 of 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 1

SUMMONS

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
FAMILY COURT DIVISION

A. B.,
Plaintiff,
vs.
C.D.,
Defendant.

SUMMONS

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: _____

FORM 2

STATE OF MINNESOTA — DISTRICT COURT
COUNTY OF RAMSEY — SECOND JUDICIAL DISTRICT

_____,
Plaintiff,
vs.
_____,
Defendant.

CALENDAR
CERTIFICATE
FILE NO. _____

Pursuant to Rule 4 of the Special Rules of Practice for the Second Judicial District, the undersigned hereby certifies that:

1. The case is ready for disposition in all respects;

2. Prior to filing this certificate, copies of the same were served on all adverse parties.

Therefore it is respectfully requested that the above captioned matter be placed on the calendar for appropriate proceedings by the court.

_____
Attorney for _____
_____
_____
_____
_____
Phone #
_____

(Added Sept. 23, 1976.)

Part C. Third Judicial District

Rules Adopted and Effective January 2, 1970
As Amended through July 1, 1978

(1) Table of Headnotes

Rule

(2) Text of 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 courtroom 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 default 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 default, unless application is made to the Court to waive this rule for good cause shown.

Rule 4. Domestic Relations — Divorce — Occupancy of Home

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).

Appellate Court 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.

District 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 three sessions per year. The first session shall commence at 1:30 o'clock P.M. on the first Tuesday in September, and 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.

Part D. Fourth Judicial District

Rules Adopted October 13, 1977
Effective January 1, 1978
As Amended through July 1, 1978

(1) Table of Headnotes

Rule

(2) Text of Rules

Rule 1. Time for Filing of Pleadings and Other Papers — Special Filing Fees

(a) All parties shall file all their served pleadings and other papers within ten days after any party has served a Note of Issue. Pleadings and papers subsequently served shall be filed immediately after service. For failure to pay the filing fee within the ten-day period, the Administrator shall collect $10.00 as a special extra filing fee from the delinquent party.

(b) When any foreign judgment is filed pursuant to the provisions of Sections 548.26 through 548.33 of the Minnesota Statutes (as enacted by Chapter 51 of the Laws of 1977), the person filing the foreign judgment shall pay the Administrator a filing fee of $19.00.

(c) The filing fee must be paid by a party to the Administrator and necessary papers must be filed by a party before he is heard on any motion or at any other pre-trial hearing.

Rule 2. Setting of Cases

DEFAULT DISSOLUTION CALENDAR

(a) The Court Administrator shall prepare a calendar, which shall be known as the default dissolution calendar (no children), and shall enter therein: (1) Default dissolution 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 dissolution 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 dissolution 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 administrator shall also, prepare a calendar which shall be known as the default dissolution calendar (children involved), and shall enter therein: (1) default dissolution 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 dissolution 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 dissolution 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, except by order of the Court based upon an affidavit of counsel or of a party showing cause therefor.

DISSOLUTION MOTION CALENDAR

(Children involved)

To place a motion on the Dissolution Motion Calendar (with children involved), the attorney shall first contact the Family Court Clerk and obtain a hearing date. The note of issue shall thereafter be filed at least five (5) days prior to the date of the hearing. A written motion and notice of the hearing thereof shall be served no 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 Court Administrator 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 Administrator 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 alimony, 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. Such motion or application shall be made immediately upon the discovery of such emergency and shall be heard and determined forthwith 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 before the Special Term Referee on Wednesdays at 11:00 a.m. and at 2:00 p.m.

(c) Default Dissolutions. Hearings on default dissolutions not involving minor children are scheduled before the Special Term Referee at 11:00 a.m. on any court day other than Wednesday.

(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 Calendar shall be called 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 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 on cases assigned to a judge 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 non-readiness, 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 that a Note of Issue — Readiness for Trial and a statement of the case have been filed and have not been timely controverted.

(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 alert the office of the assignment clerk, by phone or if time permits by letter, 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) Dissolution 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 dissolution 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 court administrator, shall, upon filing with the administrator 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. Dress Code

Attorneys and court attachés should consider the formal surroundings and effect of court proceedings when choosing their courtroom attire and refrain from wearing articles of clothing suited primarily for sports or leisure time activities for trial appearances.

Either pantsuits or dresses are appropriate for women and coats and ties are appropriate for men if such clothing conforms to the formal surrounding of the court.

Rule 8. Exhibits

(a) All exhibits received in evidence shall be kept in the custody of the Administrator who shall be responsible for their care, production and delivery to the party to whom they belong only for a period of five calendar days following a jury verdict or the mailing of the findings of a judge. If the exhibits have not been picked up within five days, the Administrator may destroy the exhibits after ten days written notice to all counsel. Upon surrendering custody of exhibits, the Administrator shall take a receipt therefor from the party to whom delivered.

(b) Exhibits in criminal cases shall be kept by the administrator until the time for appeal has expired, unless surrender of the same shall be directed by written order of the judge before whom the case was tried.

Rule 9. Findings in Dissolution Cases

(a) In dissolution cases upon signing the document containing the findings of fact, conclusions of law, order for judgment and decree, the judge or referee, so signing shall deliver the same to the Court Administrator.

(b) No money judgment shall be entered ex parte for unpaid alimony, support, attorney's fees, or otherwise. 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 dissolution cases except upon statutory grounds.

Rule 10. No Withdrawal of Files or Papers Filed

No file or paper on file in an action shall be withdrawn from the office of the Administrator except for service requirements. Non-certified copies of any filed papers will be furnished for a nominal fee.

Rule 11. Fees in Condemnation Proceedings

Each commissioner in condemnation proceedings shall be allowed a fee not to exceed the sum of $100.00 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) If an ex parte application is made, any previous applications for a supplemental proceeding order concerning the pending case, shall be disclosed to the court in the form of an affidavit.

(c) Referees in supplementary proceedings and in garnishment disclosures shall be notaries public or attorneys at law other than creditor's attorney, partner of creditor's attorney or an attorney employed by creditor's attorney; and said referees must take and subscribe the appropriate oath.

Rule 13. Appeals to the District Court

All appeals from the Hennepin County Municipal Court to the District Court shall be governed by Sections 484.63 and 487.39 of the Minnesota Statutes, and the rules promulgated by the Supreme Court of the State of Minnesota, except as hereinafter modified:

(a) The senior Judge of the appellate panel shall order the time and date of oral arguments and name the judges who will serve on the panels.

(b) Counsel shall file three copies of all briefs with the Administrator, unless the senior judge of the appellate panel directs otherwise.

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.

Every acceptance and oath filed pursuant to a petition for the appointment of a trustee pursuant to Minnesota Statutes, Section 501.33, shall include an undertaking on the part of the trustee to file annually within 60 days after the end of each accounting year a verified account containing a complete inventory of the trust assets and itemized principal and income accounts as required by Minnesota Statutes, Section 501.34 and in conformity with the requirements of the Code of Rules for the District Courts of Minnesota, Part I, Rule 28. The undertaking shall also provide that a hearing for the approval and allowance of such annual accounts shall be held at least once every 5 years after the inception of the trust.

Every order of the court confirming the appointment of a trustee shall include a provision directing the trustee to file annually within 60 days after the end of each accounting year a verified account containing a complete inventory of the trust assets and itemized principal and income accounts as required by Minnesota Statutes, Section 501.34, and in conformity with the requirements of the Code of Rules for the District Courts of Minnesota, Part I, Rule 28. The order shall further provide that a hearing for the approval and allowance of such annual accounts shall be held at least once every 5 years after the inception of the trust.

There shall be included in every petition for the approval and allowance of annual accounts of trusts in which the order confirming the appointment of the trustee does not include a provision for the annual filing of verified accounts and for a hearing on the approval and allowance of such accounts every 5 years, an undertaking that the petitioner shall file annually within 60 days after the end of each accounting year a verified annual account containing a complete inventory of the trust assets and itemized principal and income accounts as required by Minnesota Statutes, Section 501.34, and in conformity with the requirements of the Code of Rules for the District Courts of Minnesota, Part I, Rule 28, and for a hearing on the approval and allowance of such annual accounts to be held at least once every 5 years thereafter.

(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.

(g) Whenever a trustee is required by order of the court to file a bond conditioned for accounting for all property, money, and proceeds received by such trustee from time to time and for the faithful discharge of the trust, such bond shall include a provision that the bond cannot be permitted to lapse and cannot be cancelled unless written notice of such lapse or cancellation be given to the office of the Court Administrator of this Court not less than 30 days before the effective date thereof.

Rule 15. Audio-Video Recording of Depositions.

Upon duly noticed motion and a showing that any circumstance stated in R.C.P. 32.01(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. 32.01(3) then exists.

Note by the Court: R.C.P. 30.02(4) now permits the Court (upon motion) to order a deposition to be recorded by other than stenographic means. Therefore, the above rule places restrictions of the use of the particular means of audio-video recording but not upon the other stenographic means permitted in R.C.P. 30.02(4).

Rule 16. Case Designation

At the time a civil case is filed, the Administrator shall require counsel to describe in writing:

1. The type of action instituted, and
2. If damages are sought, the amount sought, and
3. The estimated trial time.

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 17. 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 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. 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 assignment clerk of the Family Court in domestic relations cases where minor children are involved.

Rule 20. 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 21. Failure to Observe Rules

Any party or attorney failing to observe any rule contained herein requiring affirmative action shall be subject to sanctions.

Rule 22. Pictures and Voice Recordings — Disturbing Conduct

(a) 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.

(b) Demonstrations, protests and disturbing conduct in the courtroom or in adjacent areas outside the courtroom are forbidden.

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:

(1) 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.

(2) In the case 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, together with an affidavit of exempt homestead or a certification by the commissioner of revenue that the inheritance taxes have been paid, 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.

(3) 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.

(4) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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 states that he is 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 18 years after the date of birth shown by said certificate.

(f) 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.

(g) 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 bylaws 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 — $3.50 each.

(b) For filing two copies of the Floor Plans and entering the memorial thereof — $15.50.

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 × 30 inches or 30 × 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 $3.50 each.

(2) For filing two copies of the Floor Plans and entering a memorial thereof, the sum of $15.50.

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. Application for Paupers Transcript

No application for an order directing that the applicant be provided a transcript of any proceeding for purposes of review thereof at public cost on the grounds of indigency shall be considered unless accompanied by an affidavit of merits. Such affidavit shall be signed by the lawyer of record for the appellant and the appellant, or by the appellant if pro se, and shall enumerate with specificity the bases upon which the appeal is to be predicated including the legal theory upon which the appeal is grounded, and shall state with particularity the parts of the transcript needed and the reasons why these are deemed necessary. No application for a transcript shall be granted unless the accompanying affidavit of merits facially demonstrates the legal sufficiency of the basis for appeal and that a transcript is reasonably necessary for the purposes for which it is sought.

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 Note of Issue — Readiness for Trial 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 nonreadiness for trial within ten (10) days from the date of service of the Note of Issue — Readiness for Trial, such adverse party is deemed to have joined in the Note of Issue — Readiness for Trial. Thereafter no further discovery procedures shall be allowed. The filing of the Note of Issue — Readiness for Trial 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, unless a certificate of non-readiness is timely 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 the Note of Issue — Readiness for Trial shall be as follows:

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

NOTE OF ISSUE
READINESS FOR TRIAL

File No. _____

_____
_____
AGAINST
_____
_____

You will please take notice that the above entitled action will be placed upon the calendar of the above named Court within ten days after service of this Note of Issue upon you, for the trial of the issues _____ of _____
LAW OR FACT
by _____
THE COURT OR JURY
to _____

Attorney ___ for _____
Address _____
_____
_____
_____

Attorney ___ for _____
Address _____
_____
_____
_____

CERTIFICATION THAT CIVIL CASE IS READY FOR TRIAL

I CERTIFY to the Court:

That the above captioned case is now ready to be placed on the Civil Active list; that all essential parties have been served with process or appeared herein; that the case is at issue as to all such parties; that serious settlement negotiations have been conducted; and, that a copy of this Notice that the above mentioned Civil case is at Issue has been served on all counsel having an interest in the case.

_____
Signature of trial counsel

AFFIDAVIT OF SERVICE
STATE OF MINNESOTA

County of _____ _____
being first duly sworn, upon oath deposes and says, that in said County and State, on the _____ day of _____, 19___, he served the within Note of Issue and Readiness for Trial upon _____ by then and there _____
_____

Subscribed and sworn to before me this
_____ day of _____, 19___

_____ _____

Notary Public, _____
My Commission Expires _____

E. The form of the written statement of the case shall be as follows:

Except in dissolution proceedings, at the time of filing the Note of Issue — Readiness for Trial there shall be served and filed a written statement of the case, including to the extent applicable, the following:

a. Name, addresses 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 descsription 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/her written statement of the case within ten days of the filing of a Note of Issue — Readiness for Trial 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:

ORDER SETTING PRE-TRIAL CONFERENCE

_____
Plaintiff

vs.

_____ Case No. _____
Defendant

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 or settlement 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 that 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.

V. 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.

_____

District Court Administrator

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 rquest 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.

_____
Defendant

PRE-TRIAL ORDER
File No. _____

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 or 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.

(Added May 1970.)

N. Deleted.

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. Criminal Cash and Bail Bond Rules

1. Bondsmen Approval Required

No person shall engage in the business of procuring bail bonds, either cash or surety, for persons under detention until an application is approved by the Court. The application form shall be obtained from the Administrator of the Court. The completed application shall then be filed with the Administrator stating the information requested.

2. Corporate Sureties

Any corporate surety on a bond submitted to the Court shall be one approved by the Court and authorized to do business in the State of Minnesota.

3. Surety Insolvency

Whenever a corporate surety becomes insolvent, the local agent shall notify the Court in writing immediately. Within fourteen (14) days after such notice to the Court, the agent shall file with the Administrator a security bond to cover outstanding obligations of the insolvent surety, which may be reduced automatically as the obligations are reduced. In the absence of such surety or security bond, a summons shall be sent to all principals on the bonds of the surety; if no response is made thereto, Bench Warrants shall be issued.

4. Posting Bonds

Before any person can be released on bond, such bond must be approved by a judge of the court after submission to the prosecuting attorney for approval of form and execution and filed with the Administrator of the Court during business hours or thereafter with the custodian of the jail, except that (a) cash bail may be deposited with the jailer as provided in Minnesota Criminal Rules of Procedure (b) in cases where bail has been set by the court and the defendant has provided a bail bond with corporate surety at night or other times when a judge is not available to approve the bond, that the jail be authorized to release the defendant upon deposit by defendant with the jailer of a bond completed except for the approval by a judge.

This last exception shall be subject to the condition that any bail bond agent obtaining release of a defendant under the foregoing procedures file with the Chief Judge a certificate on behalf of the corporate surety issuing any such bond to the effect that the fact that the bond contained no signature of a judge approving such bond at the time the defendant was released will not be used as a defense to any claim of forfeiture of such bond.

5. Forfeiture of Bonds

Whenever a bail bond is forfeited by a judge of this court, the surety and bondsman shall be notified thereof by the Administrator in writing, and be directed to make payment in accordance with the terms of the bond within ninety (90) days from the date of forfeiture. A copy of the order of forfeiture shall be forwarded with the notice.

Any motion for reinstatement of a forfeited bond or cash bail shall be supported by a petition and affidavit and shall be filed with the Administrator. A copy of said petition and affidavit shall be served upon the County of Hennepin in the manner required by Rule 4.03(e) (1) of R.C.P.

A petition for reinstatement filed within ninety (90) days of the date of forefeiture shall be heard and determined by the judge who ordered forfeiture, or his successor. Reinstatement may be ordered on such terms and conditions as the court may require.

A petition for reinstatement filed between ninety (90) days and one hundred eighty (180) days from date of forfeiture shall be heard and determined by the judge who ordered forfeiture, or his successor, and reinstatement may be ordered on such terms and conditions as the court may require, but only with concurrence of the Chief Judge and upon the condition that a minimum penalty of not less than ten percent (10%) of forfeited bail be imposed.

No reinstatement of a forfeited bond or cash bail shall be allowed unless the petition and affidavit are filed within one hundred eighty (180) days from date of forfeiture, and shall be heard within thirty (30) days.

6. Forfeited Bail Deposits

All forfeited bail money shall be deposited in a special interest bearing custodial account in the name of the Office of the District Court Administrator. The Court Administrator shall keep an accurate record of all bonds ordered forfeited, including name of case, file number, pertinent dates and bond amounts involved. The money shall be retained for a period of one (1) year after date of forfeiture, unless previously reinstated pursuant to these rules. In the event a forfeited bond has been reinstated, any money in excess of that portion ordered returned to the defendant or his designee shall be immediately paid and transferred to the Hennepin County Director of Finance and Records for deposit to the Hennepin County General Revenue Fund.

Forfeited bond money which has been on deposit for one (1) year after date of forfeiture without reinstatement, shall immediately be paid and transferred to the Hennepin County Director of Finance and Records for deposit to the Hennepin County General Revenue Fund.

Any interest earned or accrued on deposited funds in the special custodial account shall be paid and transferred annually to the Hennepin County Director of Finance and Records for deposit to the Hennepin County General Revenue Fund.

7. Bonding Privilege Suspension

A failure to make the payment on a forfeited bail within ninety (90) days as above provided shall automatically suspend the surety and its agent from writing further bonds in this Court; and such suspension shall continue until the principal amount of the bond is deposited in cash with the Administrator of this Court.

Rule 33. Modification of Rules

Any judge shall have the right to modify the provisions of any of the foregoing rules to prevent manifest injustice.

Part E. Fifth Judicial District

Rules Adopted July 11, 1978

(1) Table of Headnotes

(2) Text of Rules

Rule 1. Special Terms

In the month of August all special terms shall be by appointment.

Blue Earth County
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)

Brown County
Each Monday from 1:30 p.m. to 4:30 p.m.

Cottonwood County
Second, Fourth and Fifth Mondays 2 p.m. to 4:30 p.m.

Faribault County
Second Monday 2 p.m. to 4:30 p.m.
Fourth Monday 9:30 a.m. to 12 noon.

Jackson County
First and third Mondays 2 p.m. to 4:30 p.m.

Lincoln County
By appointment with Judge Walter H. Mann of Marshall

Lyon County
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.

Martin County
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.

Murray County
Second and fourth Mondays 9:30 a.m. to 12 noon

Nicollet County
Each Monday 9 a.m. to 11:30 a.m.

Nobles County
First and third Mondays 2 p.m. to 4:30 p.m.
Fifth Monday 9:30 a.m. to 12 noon

Pipestone County
Second and fourth Mondays 9:30 a.m. to 12 noon

Redwood County
First and third Mondays 9:30 a.m. to 12 noon

Rock County
First and third Mondays 9:30 a.m. to 12 noon

Watonwan County
Second and fourth Mondays at 1:30 p.m.

It is further ordered that if any designated holiday falls on a Monday, the special term otherwise scheduled for that date shall be held on the Tuesday immediately following such holiday.

It is further ordered that the County Judges and Judicial Officers of the district may, by order filed with the Clerk and with a copy to the special term Judge, require the appearance of a defendant in a criminal matter before this court during any of the special terms provided for herein, so as to comply with the provisions of Rule 5.03 of the Rules of Criminal Procedure effective July 1, 1975; provided, however, that no criminal proceeding shall be set on any special term calendar later than the close of business on the Thursday preceding the special term; however, criminal defendants may initially appear in District Court on shorter notice by consent of the District Judges.

It is further ordered that all hearings required under the Rules of Criminal Procedure shall be held in the county in which the case is venued, unless for good cause shown the special term judge orders the hearing to be held in another county in the district.

It is further ordered that all criminal special term matters be, and they hereby are, exempt from the second, third and last sentences of Rule 1 of the Special Rules of Practice for this judicial district.

It is further ordered that all criminal matters have precedence over civil matters at these special terms, except as provided by law.

It is further ordered that the clerk shall notify the special term judge or his reporter no later than 8 a.m. on the special term day if there are no matters to be heard at that special term.

Rule 2. Placing Actions on Calendar and Trial Schedules

1. Rules of Civil Procedure — District Courts, Rule No. 38.03 shall control the procedure whereby causes of action are placed on the calendar insofar as it provides as follows:

"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, and thereupon the action shall be placed on the calendar for trial and shall remain 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."

2. In addition the note of issue shall provide a statement as to the estimated time of trial.

3. The party or parties serving a note of issue pursuant to the provisions of paragraph No. 1 hereinabove, by service of the same shall thereby be deemed to be ready for trial and subject to a call for trial at any time subsequent to the filing of the note of issue with the clerk as provided hereinabove.

4. Any party upon whom a note of issue has been served who is not at the time of such service ready for trial shall, within ten (10) days of such service file a statement with the clerk stating that said party is not ready for trial and a brief statement as to the reasons therefor, to include an estimate of the time required before such party will be ready for trial. Such notice, when filed, shall cause the trial of the action to be deferred for the estimated period stated. At the expiration of the estimated time stated in such statement, the action shall then be subject to a call for trial. Any party aggrieved by the delay caused by the filing of the statement referred to herein may move the court for relief.

5. The trial of the actions on each calendar shall be the responsibility of the judges assigned to

the specific County District Court, and shall be scheduled for trial in such manner as such judge shall designate.

6. The rules herein are temporary in nature, adopted as an expediency until such time as are complete and permanent rules may be adopted.

Rule 3. Motions

All motions shall be heard on special terms and all motions shall be heard in the order in which they appear.

Default cases shall be heard upon special term days.

Rule 4. Trials, Times of Opening and Closing

Hereafter and until the further order of this Court at all 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 5. 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. This also applies to actions for separate maintenance.

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 6. Minor Settlements

In minor settlements the minor shall be represented by counsel.

Rule 7. 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 8. 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 *a copy* of the minutes of such hearing to the Clerk of the District Court of the County wherein the action is venued for filing therein. The original minutes shall be filed in the Minute book of the county in which hearing was held.

Rule 9. Procedure as to Restitution Funds

Restitution payment required of criminal defendants shall be handled as follows:

1. At sentencing, or at such earlier time as the sentencing Judge directs, the County Attorney shall, in writing, certify to the Court:

(a) the amount of monetary restitution due,

(b) nature of any restitution that should be made in kind,

(c) the names and addresses of parties to whom restitution is due, including insurors with subrogation interest, if any.

2. The Court may incorporate the certification of restitution, or its substance, in the Sentence. Money restitution will be deposited with the Clerk of the District Court of the county in which the criminal action was originally commenced or may be paid to the supervising corrections agent who will forward it to the proper Clerk's office for deposit. Restitution in kind shall be made as ordered.

3. The several Clerks of the District Court shall receive and disburse such restitution as ordered and shall maintain adequate records of moneys received on account thereof.

4. The supervising probation agent or agency shall monitor restitution progress and notify the Court and the County Attorney forthwith of any violation of the Order of Restitution.

Rule 10. Orders

Orders when signed will be delivered by the Court to the Clerk for filing.

Rule 11. Registration of Land Title

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 12. Appellate Rules

From County to District Court, Fifth Judicial District

To effectuate the purposes of Minn. Stats. 1977, par. 484.63, and laws supplemental thereto, the following Rules are hereby promulgated for the Fifth Judicial District to govern appeals from County to District Court.

1. Appellate Divisions. The counties of the Fifth Judicial District are hereby divided into two appellate divisions. Eastern Appellate Division shall include Brown, Blue Earth, Faribault, Martin, Nicollet, and Watonwan Counties. Western Appellate Division shall include Cottonwood, Jackson, Lincoln, Lyon, Murray, Nobles, Pipestone, Redwood and Rock Counties.

2.01. Place of Hearing. Appellate proceedings in the Eastern Appellate Division will normally be held in the District Courtroom, Brown County Courthouse, New Ulm, Minnesota. Appellate proceedings in the Western Appellate Division will normally be held in the District Courtroom, Cottonwood County Courthouse, Windom, Minnesota.

2.02. Change of Place of Hearing.

(A) *Prior to Commencement.* By order filed at least one week prior to commencement of the appellate term, the Chief Judge may change the place of hearing for that term. A copy of said order shall be filed with each Clerk of the District Court in each county within the Appellate Division thus affected. The Fifth District Court Administrator shall forward a copy of said order to all counsel of record in appeals pending.

(B) *During Term.* After an appellate term has commenced, proceedings may be adjourned by Order of the Presiding Judge from time to time and place to place as may be required to dispose of matters submitted to the panel. The place of hearing may be changed to facilitate Court workload, to conserve travel and expense burdens, and to promote the interests of justice.

3. Appeal Panels.

(A) *Composition.* Appeals will be heard by three-judge panels for each division as appointed or assigned by order of the Chief Judge. County Court judges will not be appointed to appeal panels for a division which includes the county in which they normally sit. A County Court judge shall not sit on a panel which hears an appeal from a County Court district in which he resides. Service on appeal panels shall be equitably distributed and rotated.

(B) *Jurisdiction.* Each panel shall hear and determine all matters properly calendared and scheduled for review. The panel shall also hear such further matters as may arise under Minnesota Rules of Criminal Procedure, Para. 28.08 or are duly referred to it during the appellate term. The Appellate Panel shall have jurisdiction over such matters from the date of the appellate term as

specified in the appointing order to the date of the commencement of the next appellate term following. The Appellate Panel's jurisdiction shall continue with respect to any matter submitted until such matter is determined.

4. *Waiver of Three-Judge Panels.* By written stipulation signed by all parties to the record and their counsel, review on appeal by a three-judge panel may be waived. Such written stipulation shall be filed at least fourteen days prior to the commencement of an appellate term at which an appeal is calendared. The original waiver shall be filed with the Clerk of the District Court in the county in which the appeal arose and a copy thereof filed with the Fifth District Court Administrator. Such appeals will then be heard *with his consent* by the special term District Judge for the county in which the appeal arose at such time and place as he directs. In no event shall the matter proceed to hearing until the written waiver has been duly filed. In the event said special term District Judge deems review by less than the full panel inappropriate, he may order the matter to be heard by the full panel. If such order is issued prior to ten days from the date of commencement of the appellate term, said matter shall be heard at that term by the full panel. If such order is issued within ten days or less of the date of commencement of the appellate term, such appeal shall be heard at the following appellate term.

5. *Presiding Judge.* One member of each three-judge appeal panel shall be designated "presiding judge" by the Chief Judge. Writing of opinions shall be rotated among the several panel members as assigned by the presiding judge.

6. *Decisions.* In any matter heard by a three-judge appeal panel, decision of a two-judge majority shall be determinative. Decisions on appeal shall be rendered promptly. Any two judges who agree may issue a decision without awaiting a decision of the third panel member if the matter has been under consideration for 60 days after final submission. The last to sign a decision shall file the same with the District Court Administrator who shall be responsible for filing in the proper county and for distribution to counsel, law clerks and affected courts.

7.01. Pleading, Practice, and Procedure. Pleading, practice, procedure and forms in all appeal proceedings shall be governed by Minn. Stats. 1977, 484.63 and 487.39; Minnesota Rules of Civil Appellate Procedure from County Courts, Minnesota Rules of Criminal Procedure, and by such rules of Criminal Appellate Procedure as may be promulgated hereafter by the Minnesota Supreme Court. All written briefs (or statements of issue(s) in lieu thereof) are to be in an original and three copies in order to complete the record on appeal. The record on appeal is deemed "completed" when: (a) a transcript, or statement in lieu thereof under Minnesota Rules of Civil Appellate Procedure from the County Courts, Par. 110, and briefs (when requested by the parties) are filed, or the time for filing has expired; (b) all motions pending appeal hereinafter mentioned have been decided; and (c) if written briefs were not requested by the parties, a brief written statement of the issue(s) appellant intended to raise on appeal is filed.

7.02. Motions to dismiss for failure to perfect or prosecute an appeal arising under Minnesota Rules of Civil Appellate Procedure from the County Courts 111.04, and all other procedural matters, not going to the merits, and petitions for discretionary review, shall be heard and determined by the assigned special term District Court Judge for the county of trial venue. The Appellate Panel may, on its own motion, dismiss an appeal for failure to prosecute.

7.03. All papers filed in District Court on the appeal shall be headed in the following style:

STATE OF MINNESOTA	EASTERN (WESTERN) APPELLATE DIVISION
FIFTH JUDICIAL DISTRICT	DISTRICT COURT, _____ COUNTY,
	File # _____.

7.04. Continuances may be granted for good cause shown upon Motion, with notice, to all parties. Motions for continuance prior to 14 days before commencement of Appellate Term shall be directed to the assigned special term District Court Judge for the county of trial venue. If continuance is requested 14 days or less prior to the commencement of the Appellate Term, motion therefor shall be directed to the Appeal Panel and will be heard at the regular Appellate Term as the presiding Judge directs.

8. Appellate Terms. Appellate Terms shall be held for disposition of all appeals to District Court every three months during the calendar year. The first Appellate Term shall be held October 7, 1977, commencing at 9:30 a.m. in each Appellate Division, at the same hour on January 6, 1978; April 7, 1978; and July 7, 1978, thereafter, and on Friday of the first full calendar week in each calendar quarter remaining in 1978 and subsequent years. Opening date of the Appellate Term may be altered by order of the Chief Judge filed with the District Court Administrator no later than 14 days in advance of the commencement date of the term. The District Court Administrator shall notify all affected parties, counsel, and members of the panel of the new date of commencement.

9.01. Appeal Calendar. Calendars of cases for appeal hearing in each division at each Appellate Term shall include all matters in which appeal has been perfected and the record completed, between the closing date of the prior Appellate Term and by two weeks prior to the upcoming Appellate Term. Copies thereof, assigning times for oral argument (if requested) shall be sent by the Fifth District Court Administrator, with the approval of the presiding judge, to each counsel of record and all Appellate matters listed, to each member of the Appeal Panel, and to the law clerk for each division at least five days prior to the Appellate Term at which the matters are calendared for hearing. Hearing times shall be assigned by the Administrator in the order in which the several appeals have been perfected. This order may be altered with the consent of the presiding judge. The calendar shall close 14 days prior to the commencement of the Appellate Term. Matters in which the record is thereafter completed shall be placed on the next succeeding Appellate Term Calendar, unless expedited as hereafter provided.

9.02. Expedited Appeals. Appellate matters in which the record has been completed after a calendar closing date but not more than 30 days prior to the next Appellate Term may be heard on an expedited basis if, upon motion to the assigned special term District Judge in the county of trial venue, good cause is shown. If the motion is granted, the appeal shall be referred to the current Appeal Panel for the appropriate Appellate Division and shall be heard by it consistent with its other workload at the time and in the manner as the parties duly request and the presiding judge may direct.

10. Determinative Procedural or Jurisdictional Issues. The several law clerks of the District shall prepare a short summary of the facts and issues involved in each case prior to the hearing date and copies of such summaries shall be supplied to each member of the Appeals Panel concerned. If on such review the law clerk is of the opinion that an appeal presents issues not going to the merits, and which dispose of it, the summary shall report that conclusion and the basis for it. If oral argument of the appeal was not requested, the Appeal Panel may determine the issue without argument or order the issue argued by the parties. In all appeals where oral argument is requested, opportunity for oral argument on the procedural or jurisdictional issue shall be given where the issue is not raised by brief. Questions as to practice and procedure that may arise shall be determined by a majority of the Appeal Panel before which the matter is pending if not otherwise covered in these rules.

11. District Court Administrator. The District Court Administrator or Deputies, shall serve as Clerks of the Appellate Divisions of the District Court in the Fifth Judicial District. Upon filing of a Notice of Appeal, the Clerk of that Court shall forthwith notify the Court Administrator in form to be prescribed. Additionally, within the time provided by the Appellate Rules, the Clerk of Courts shall advise the Court Administrator if leave to file written briefs or make oral argument is requested by any party to the appeal. When the Appeal is perfected and the record on appeal completed, the Clerk of Courts shall transmit the complete file to the Court Administrator who shall make the same available to the several law clerks of the district for analysis and summarization and, thereafter, at hearing or other submission. The District Court Administrator shall be responsible for custody of files on appeal and for their return to the Clerk of Courts in the county of trial venue when the appeal has been decided. The Court Administrator shall supervise and manage appeal files so as to effect efficient flow of cases on appeal through the Appellate Panels. Statutory and rule requirements as to pleading, practice, procedure, and form shall be strictly enforced by the Court Administrator and the several Clerks of Courts of the District.

12. Appointed Counsel. Compensation of counsel duly appointed by the County Court to represent a party before that Court at public expense shall continue on any appeal deemed necessary in the exercise of counsel's professional judgment. His compensation for services rendered on the appeal shall be determined upon itemized statement presented to the Appeal Panel as part of the decision on appeal.

13. Extraordinary Remedies. Application for Writ of Mandamus or Prohibition or for any other extraordinary writ or remedy, shall be by Petition. The Petition shall contain a statement of the facts necessary to present the issue on the application; set forth the relief sought; and state the reasons why extraordinary relief should be granted. The Petition shall be filed with the Clerk of Court of the District Court in the county in which the issue arises, with a proposed Writ or Order. Initially it shall be submitted to the assigned special term District Judge on reasonable notice to all affected parties. The District Judge may, for cause shown and in the exercise of a sound discretion, waive such notice. If warranted, the Judge may summarily deny the Petition, stating his reasons. Otherwise, the Judge may grant (a) temporary relief pending hearing; (b) order parties respondent to serve and file responsive pleadings within a time set by the order; or (c) order parties respondent to show cause why relief should not be granted. The Petition, if not previously served, and the Order, shall be served by Petitioner on all other parties affected and on the trial judge, if applicable. All parties affected, other than the Petitioner, shall be deemed Respondents, and they may respond jointly or severally. If a Respondent does not desire to respond, he may so

advise the District Court by letter, with copies to all other parties, but the Petition is not thereby deemed admitted by him. If briefs are required, the Court shall advise the parties of the dates by which they are due. The issue(s) so framed and submitted shall be referred to the Appeal Panel then sitting for the Appellate Division concerned. The Appeal Panel may determine the matter on the Petition, briefs, Answer, or other papers submitted and, in its discretion, at a time and place ordered by the Presiding Judge, hear argument for that purpose.

14. Construction. Nothing in these rules shall be construed inconsistently with the Rules of Civil Appellate Procedure from the Minnesota County Courts.

Rule 13. Transfer of Cases

No action or proceeding in the District Court shall be transferred from a District Judge who has issued an order on the merits thereof, to another District Judge or to a County Court except in the following cases:

(A) By order of the Supreme Court or any Justice thereof;

(B) By order of the Chief Judge of the District;

(C) By the express consent of such ruling Judge;

(D) By operation of law.

No action or proceeding shall be transferred from the District Court to the County Court except by written order of a District Judge or the Supreme Court or any Justice thereof.

Part F. Sixth Judicial District

Rules As Amended through July 1, 1978

(1) Table of Headnotes

Rule

UNIFORM RULES OF PROCEDURE FOR FAMILY COURT DISSOLUTION MATTERS

(2) Text of Rules

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.

(As amended, effective Feb. 1, 1975; amended June 27, 1975, effective July 1, 1975; amended July 17, 1975, effective Sept. 1, 1975.)

Rule 2. Motions, Petitions, and Applications

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.

Rule 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.

(Added May 17, 1976.)

Rule 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.

(Added May 17, 1976.)

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 Orders and Temporary Injunctions

The Judge, who after a hearing, 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.

(As amended Jan. 8, 1973.)

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 is 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 of 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.

(As amended Feb. 15, 1972.)

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 shall 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 $5,000.00

Unless an adverse party files a motion to stay the placing of the case on the Ready Calendar within ten (10) 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 (15) 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 (48) 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 (60) 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 (48) 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.

(Amended May 27, 1976, effective Sept. 1, 1976.)

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. Calendars; 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 insofar 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.

Order

By order of the District Court Judges of the Sixth Judicial District, dated June 26, 1976, the following direction was given:

"In all criminal cases now and hereafter pending in the District Courts of Lake and Cook Counties all initial appearances and omnibus hearings be and the same are hereby referred to the respective County Court of the county wherein the alleged offense was or shall have been committed, except such as are by such Judge of County Court specifically rejected; and subject to the further order of the Judges of the District Court."

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.

(Adopted Jan. 8, 1973, effective Feb. 1, 1973.)

Order Relating to Appearance of Defendant

Pursuant to the provisions of Rule 5.03 of the Minnesota Rules of Criminal Procedure,

IT IS ORDERED:

That the Judge or Judicial Officer presiding at the First Appearance in the Northeast District of the St. Louis County Court of a defendant charged with a felony or gross misdemeanor shall order the appearance of such defendant before the District Court at the Courthouse in the City of Virginia on the next ensuing Friday at 9:00 A.M. except when such Friday shall be a legal holiday, in which event he shall order such appearance on the first Friday following such legal holiday; unless otherwise ordered by the Judge of the District Court. Said Judge or Judicial Officer of the St. Louis County Court shall direct the clerk of said court to forthwith notify the clerk of District Court at his office in the Courthouse in the City of Virginia of the order made.

This Order shall take effect January 1, 1976, and shall supersede the Order now in effect which is hereby rescinded as of the effective date of this Order.

Dated at the City of Virginia, this 19 day of November, 1975.

BY THE COURT:
Mitchell A. Dubow, Judge
Sixth Judicial District
State of Minnesota

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.)

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.

(Adopted Jan. 8, 1973, effective Feb. 1, 1973.)

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.

(Adopted and effective April 17, 1968.)

Rule 29. Appellate Rules

1. Scope of Rules. Pursuant to Rule 103.01(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.

2. Designation of Court. 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.

3. Composition of Court. 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.

4. Assignment of cases. 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.

5. Appellate records. 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.

6. Panel terms and Sessions. 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 first 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.

7. Calendars and argument. 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 be 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.

8. Effective Date. These rules shall become effective on the date hereof [December 27, 1973] and shall continue in full force and effect until revised, amended, or revoked by the Judges of the District Court of the Sixth Judicial District of the State of Minnesota.

(Adopted and effective Dec. 27, 1973; amended June 3, 1976.)

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.

(Adopted June 21, 1976.)

UNIFORM RULES OF PROCEDURES FOR FAMILY FAMILY COURT DISSOLUTION MATTERS

Adopted by the District Court, Sixth Judicial District, May 31, 1978. See Appendix 7, Part C for text.

Part G. Seventh Judicial District

Rules As Amended through July 1, 1978

(1) Table of Headnotes

(2) Text of Rules

Rule 1. Special Terms

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.

(Amended, effective Aug. 27, 1969; Sept. 1, 1973.)

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.

(Adopted, effective Aug. 27, 1969.)

Former Rule 3, Divorce, Trial, was repealed by order of August 27, 1969.

Rule 3A. Repealed Aug. 27, 1969

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.

(Amended, effective Sept. 1, 1973.)

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.

(Added, effective Aug. 27, 1969.)

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.

(Adopted, effective Sept. 1, 1973.)

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.

(Adopted, effective Sept. 1, 1973.)

Part H. Eighth Judicial District

Rules As Amended through July 1, 1978

(1) Table of Headnotes

Rule

(2) Text of Rules

Rule 1. Special Terms

Such Special Terms shall be held at:

(a) Kandiyohi County, Willmar, Minnesota, each Monday.

(b) Stevens County, Morris, Minnesota, each Monday.

(c) Chippewa County, Montevideo, Minnesota, the first and third Mondays of each Month.

(d) Renville County, Olivia, Minnesota, the second Monday of each Month.

(e) Meeker County, Litchfield, Minnesota, the fourth Monday of each Month.

When Monday falls upon a holiday Special Term dates shall be held on the following Tuesday unless otherwise ordered by the presiding Judge.

All Special Terms shall commence at 9:30 a.m. unless otherwise arranged by the judge presiding. In the event a district judge is not available on the day specified, the Clerk of District Court of the County in which special term is scheduled shall advise all counsel of any rescheduling.
(Amended Aug. 25, 1977.)

Rule 2. Special Term Calendar — Filing of Motion Papers, Etc.

Counsel for the moving parties advise the Clerk of District Court in the County where Special Term is to be held of any matters to be placed upon the Special Term Calendar for hearing, not less than 3 days before such Special Term and that any Motion papers, Pleadings, etc. be presented by moving parties in connection with such Special Term matters to be filed not later than one day preceding such Special Term. The moving parties shall be responsible for having the file in the particular matter before the Court at the time of hearing. Failure to comply with these Rules will result in assessment of penalty or sanctions.
(Amended Aug. 25, 1977.)

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.

Rule 5. Pre-Trial Procedure in Civil Trials

A. To place a case on the trial calendar, a Certificate of Readiness must be served and filed in the form set out in Paragraph E. All existing cases in which only a Note of Issue has previously been filed must have a Certificate of Readiness — Note of Issue served and filed in the above mentioned form to place such existing cases on the trial calendar. In all cases a Certificate of Readiness — Note of Issue is to be filed with the District Court Administrator.

B. The case shall be ready for trial unless an adverse party within ten (10) days of the service of Certificate of Readiness — Note of Issue files a motion of non-readiness. The motion shall state the specific reasons the case is not ready for trial.

C. Upon hearing the motion, the Court shall determine if the case is ready for trial. If the case is not ready for trial, the Court shall establish the time limits within which the necessary trial preparation shall be completed.

D. The filing of the Certificate of Readiness — Note of Issue when a party is not ready for trial or the failure to indicate nonreadiness when it exists shall subject counsel to sanctions.

E. The form of the Certificate of Readiness — Note of Issue shall be as follows: (Attached hereto).

STATE OF MINNESOTA — IN _____ COURT
COUNTY OF _____ — EIGHTH JUDICIAL DISTRICT

* * * * * * * * * * * * * * * *

CERTIFICATE OF READINESS

I CERTIFY to the Court:

That the following captioned case is now ready to be placed on the civil calendar for trial; that all essential parties have been served with process and/or appeared herein; that the case is at issue as to all such parties; that serious settlement negotiations have been conducted; and, that a copy of this Notice that the above mentioned Civil case is at Issue, has been served on all counsel having an interest in the case. All necessary depositions have been taken, and all adverse medicals have been completed. All necessary discovery procedures have been completed and to the best of my knowledge, all discovery procedures have been completed by opposing counsel. All pleadings have been filed with the Clerk of Court.

A pre-trial conference _____ is requested _____ is not requested
Estimated trial time: _____ days

_____
Signature of Counsel who will actually try case.

* * * * * * * * * * * * * * * *

_____
_____
AGAINST
_____
_____

COUNTY COURT FILE NO. _____

DISTRICT COURT FILE NO. _____

NOTE OF ISSUE

* * * * * * * * * * * * * * * *

YOU WILL please take notice that the above entitled action will be placed upon the above named Court within ten (10) days after service of this Note of Issue upon you, for the trial of the issue(s) of _____ by _____.
Law or Fact Court or Jury

TO: _____
Attorney(s) for _____
Address:
Telephone: _____

TO: _____
Attorney(s) for _____
Address:
Telephone: _____

* * * * * * * * * * * * * * * *

The adverse party if not ready for trial, is required to bring a Motion before the Court within ten (10) days from the date of service of this Note of Issue and indicate to the Court his non-readiness. Upon showing just cause for non-readiness the Court shall establish the time limit, within which the matter shall be ready for trial.

Where Note of Issue and Certificate of Readiness is filed, the matter shall be placed on the trial calendar, fifteen (15) days from service thereof; unless a Motion extending the time, is granted by the Court.

STATE OF MINNESOTA
COUNTY OF _____

AFFIDAVIT OF SERVICE

_____ being first duly sworn, upon oath deposes and says that in said County and State on the _____ day of _____, 19___, he served the within Note of Issue and Certificate of Readiness for Trial upon the within named _____
by then and there _____.

Subscribed and Sworn to before me
this _____ day of _____, 19___.

_____

_____
Notary Public, _____ County, MN
My Commission Expires: _____

* * * * * * * * * * * * * * * *

Filed in the Office of the Clerk of Courts: _____
Date

_____
Clerk of Court
by: _____ Deputy

(Adopted Aug. 25, 1977.)

Rule 6. Appeals from County Court

6.01 Applicability of Rule

This rule shall govern appellate practice and procedure in the Eighth Judicial District of all appeals to the District Court from the County Court as is provided for in Minnesota Statutes, Section 487.39, and that all appeals therefrom are to be governed by the Rules of Civil Appellate Procedure from the Minnesota County Courts. Unless these County Court appellate rules are suspended pursuant to County Court Appellate Rule 102, they are to be followed explicitly.

6.02 Record on Appeal

As provided in County Court Appellate Rule 110.01, the original pleadings, exhibits, and transcript in County Court constitute the record on appeal.

(a) Appellant, pursuant to County Court Appellate Rule 111.01, is responsible for transmission of the transcript to the Clerk of District Court at the time of filing his brief, and if no brief is to be filed, the appellant shall, nevertheless, file the transcript with the Clerk of District Court within twenty (20) days after delivery of the same to him.

(b) Pursuant to Rule 111.02 of the County Court Appellate Rules the original County Court file shall be transferred to the District Court thirty (30) days prior to the first quarterly date set for oral argument, and if there is to be no oral argument, thirty (30) days prior to the submission of the appeal. The file shall be returned to the County Court upon disposition of the appeal.

6.03 Compliance with Rule 110.02

Failure on the part of appellant to comply with Rule 110.02 will be deemed sufficient cause for dismissal of the appeal upon motion of respondent or by the District Court Appellate panel on its own motion at the time of submission of the appeal.

6.04 Number of Copies of Transcript and Briefs

While the Rules of Appellate Procedure from the Minnesota County Courts provide for the filing with the Clerk of District Court of one original and one copy of the transcript and briefs, because all appeals will be heard by a three-Judge District Court panel, original and three copies of transcripts and briefs shall be filed with the District Court.

6.05 Suspension of Rule 134.01 and Postponement of Oral Argument Under Same

A request for postponement of hearing of oral argument or suspension of Rule 134.01 must be made by motion in District Court, with such motion being duly served and filed with the District Court no later than twenty (20) days following the filing with the Clerk of District Court of the Certificate evidencing date of delivery of the transcript pursuant to County Court Appellate Rule 110.02(2).

6.06 Administration of Appeals

The District Court Administrator of the Eighth Judicial District, under the direction of the Chief Judge of the Eighth Judicial District, shall have the duty of administering all County Court appeals within the District.

6.07 Notice to Chief Judge and District Court Administrator

The Clerk of District Court of the County in which an appeal from County Court is filed shall give notice to the Chief Judge and the District Court Administrator of each appeal by forwarding a copy of the filed Notice of Appeal within twenty (20) days following receipt thereof, and shall specifically advise therein whether a party has elected to file a brief or to make oral argument, or both, under County Court Appellate Rule 134.01. The said Clerk shall, likewise, advise upon such notice whether a particular party has failed under Rule 134.01 to elect to file a brief or to make oral argument.

6.08 District Court Administrator's Quarterly Report

Fifteen (15) days prior to January 1, April 1, July 1 and October 1, the District Court Administrator shall notify the Chief Judge of the name of each action on appeal where a written decision disposing of the appeal has not been filed. This report is hereinafter called the "The District Court Administrator's Quarterly Report", and shall provide the following:

(a) The date of the filing of the notice of appeal and the names of the attorneys for each party shall be set forth after the name of the appeal.

(b) The District Court Administrator shall further state whether all parties have failed to elect to file briefs or make oral argument. And in such case the appeal is deemed ready for submission at the next appellate session of the District Judge, if the transcript and three copies have been filed with the Clerk of the District Court.

(c) The date of filing the transcript shall be noted by the District Court Administrator in each quarterly report to the Chief Judge.

(d) If a party has elected to file a brief, the date of filing shall be noted in each report, and if not filed within the prescribed time, failure to so file shall be noted.

(e) If oral arguments have been elected by the parties, the District Court Administrator shall note the same in each quarterly report.

(f) Whether or not the transcript and briefs were elected, are filed or overdue, an appeal

shall be deemed ready for submission to the appellate panel at the next appellate session of the District Court.

(g) If the appeal is ready for submission to the appellate panel under this rule, the District Court Administrator shall further certify that he has received the record, including pleadings and exhibits from the County Court.

(h) Any motion for dismissal or for other relief pending appeal under County Court Appellate Rule 111.04 shall be noted by the District Court Administrator in his quarterly report to the Chief Judge.

(i) The original and three copies of the County Court and District Court file in each appeal ready for submission shall accompany each quarterly report.

6.09 Appellate Hearing Procedure

On or before January 1, April 1, July 1 and October 1, the District Court Administrator, under the direction of the Chief Judge, shall set the time and date of appellate hearings, and as is provided for in Minnesota Statutes, Section 484.63, Subdivision 2, (1977) three weeks written notice of every appellate term shall be given to the Clerks of District Court in the Counties in which the appeals arose. The appellate panel shall consist of the Three District Judges of the Eighth Judicial District. The appellate panel will convene for the hearing of County Court Appeals on the last Wednesday, Thursday, and Friday of the last full calendar week of the month of January, April, July and October. The appellate panel will sit from time to time as herein indicated at such locations within the Eighth Judicial District as the caseload and convenience of counsel would in the discretion of the panel and the District Court Administrator be deemed proper. In the case of disqualification, disability, or unavailability of one or more of the District Judges of the Eighth Judicial District, the Chief Judge of the Eighth Judicial District may appoint a retired District Court Judge or a disinterested County Court Judge of the Eighth Judicial District acting as a Judge of District Court pursuant to Chapter 432, Laws of 1977, to sit upon such panel. Dependent upon the number of appeals, pre-hearing and post-hearing meetings of the panel may be set by the Chief Judge.

(a) The Chief Judge, or in the absence of the Chief Judge, a District Judge designated by the Chief Judge, shall preside during panel proceedings.

(b) On or before January 15, April 15, July 15, and October 15, the District Court Administrator shall forward to each of the District Judges on the panel a copy of the filed transcript, a copy of each brief and appendix filed, and copies of the original pleadings. In addition, copies of documentary exhibits shall be forwarded when requested by a judge sitting on the panel. The lower Court Order appealed from and the resulting judgment, if any, must also be sent to each judge on the panel. The Chief Judge may also direct that the District Law Clerk prepare for each Judge sitting on the panel a digest of the fact situation and a short memorandum setting forth the important legal principals involved.

(c) In setting the order and times allowed for oral argument, for each case in which oral arguments have been selected, the appellant shall be entitled to a total of twenty (20) minutes of oral argument, and the respondent shall be entitled to fifteen (15) minutes oral argument, as is provided for in County Court Appellate Rules 134.02 and 134.03. The Order of the Chief Judge setting times and date for the various appeals shall be prepared before January 1, April 1, July 1 and October 1, and shall be sent by the District Court Administrator to all of the Judges of the appellate panel, to the Clerks in the Counties where appeals are ready for submission, and to attorneys having appeals scheduled on the appeal calendar. No time shall be allocated to an appeal where oral argument has not been elected. The abovementioned appeal calendar order shall specify when briefs and oral arguments have been elected or waived.

6.10 Motions for Relief

All motions for interlocutory relief pending appeal may be heard by a District Judge on motion by a party.

(a) The District Court Administrator shall note any pending motions, whether the same have been heard by the District Judge or not, in each of his aforesaid quarterly reports.

(b) All motions noted by a party, which are noted as pending in the District Court Administrator's Quarterly Report shall be determined by such District Judge not less than ten (10) days prior to the next following quarterly report of the District Court Administrator.

(c) All other motions shall be heard a the time of oral argument, if oral argument is permitted.

6.11 Dismissal of Appeal

Notwithstanding the contents of County Court Appellate Rules 134.04 and 134.05, non-appearance of appellant or his attorney after argument has been elected, or failure of appellant to

file a brief after electing to do so, will be deemed sufficient cause for dismissal of the appeal, unless said election has been withdrawn, with due notice to all attorneys and parties not represented by an Attorney, not less than twenty (20) days prior to the date on which the District Court Administrator would list the appeal in his report in accordance with these rules.

6.12 Acceleration of Appeal

The Chief Judge may for good cause accelerate the hearing of any appeal in order to implement Rule 126.02 of County Court Appellate Rules.

(Adopted Aug. 25, 1977.)

Part I. Ninth Judicial District

Rules Adopted June 20, 1977
Effective July 15, 1977
As Amended through July 1, 1978

(1) Table of Headnotes

(2) Text of Rules

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 is divided into six divisions. 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 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) "Chief Judge" means the judge elected as such for the district pursuant to law.

(b) "Clerk" means the Clerk of Courts for the appropriate county.

(c) "District" means the Ninth Judicial District of the state for the District Court.

(d) "Division" means one of the divisions into which the district is deemed to be divided.

(e) "Eastern Area" means the counties of Aitkin, Beltrami, Cass, Clearwater, Crow Wing, Hubbard, Itasca, Koochiching, and Lake of the Woods.

(f) "Fall Session" means a general session of court in a county, the opening day of which occurs between the first and 10th days of September in any year.

(g) "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.

(h) "Session Judge" means the judge assigned to preside at a Fall or Spring Session of court.

(i) "Spring Session" means a general session of court in a county, the opening day of which occurs between the first and tenth days of February in any year.

(j) "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.

(k) "Western Area" means the counties of Kittson, Mahnomen, Marshall, Norman, Pennington, Polk, Red Lake, and Roseau.

Rule 2. Court Terms: Sessions, and Presiding Judges

2.01 General Terms Pursuant to Sec. 10, Chapter 432, Laws 1977 (SF 311)

The general terms of court in the 17 counties comprising the Ninth Judicial District shall be continuous.

2.02 Fall General Sessions — Eastern Area

Unless otherwise designated by the Chief Judge, in the eastern area of the district, the judge of a division shall be deemed to have been designated and assigned to preside at the fall general sessions of court in the counties of his division in which he does not have permanent chambers.

2.03 Fall General Sessions — Western Area

Unless otherwise designated by the Chief Judge, in the western area of the district, the judge of a division shall be deemed to have been designated and assigned to preside at the fall general sessions of court in the counties of his division.

2.04 Spring General Sessions — Eastern Area

Unless otherwise designated by the Chief Judge, the judge of a division shall be deemed to have been designated and assigned to preside at the spring general session of court in the county of his division in which he has permanent chambers, and such other county or counties as are designated by the Chief Judge.

2.05 Spring General Sessions — Western Area

Unless otherwise designated by the Chief Judge, the first division judge shall be deemed to have been designated and assigned to preside at the spring general sessions of court in the counties of the third division, and the third division judge shall be deemed to have been designated and assigned to preside at the spring general sessions of court in the counties of the first division.

2.06 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, and ordinarily special terms will take place at the times designated on each Monday, pursuant to quarterly orders filed in the office of the Clerk of Courts on or before each March 1st, June 1st, September 1st, and December 1st for the quarters beginning April 1st, July 1st, October 1st, and January 1st.

Rule 3. Division of Court Business

3.01 Matters Upon the Calendar

Unless otherwise ordered by the Chief Judge, the session 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 general session of court. He shall handle the business of the court pertaining to the holding of the general session. 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 general session judge in the handling of the business of the court pertaining to the holding of the term.

3.02 Pretrial Matters

All pretrial applications, motions, conferences and proceedings in any action likely to be heard or tried at a current or next ensuing general session of court in any county shall be brought on for hearing and be heard by the trial judge.

3.03 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.

3.04 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.

3.05 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.

3.06 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.

3.07 Matters Extensively Handled by a Judge

Where a judge has handled extensively motions, proceedings 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.

3.08 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.

3.09 Criminal Actions not on Calendar

Arraignments, applications, motions and proceedings in criminal actions not upon the calendar of a general session of court shall be brought on to be heard before the division judge. Defendants shall be directed to appear for trial before the session judge of the current session, unless trial at the next following session, by reason of time or plea of not guilty or by stipulation of the parties, is permissible under the Rules of Criminal Procedure.

3.10 Other Business

Unless ordered by the Chief Judge, 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.

3.11 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 by the session judge, there shall be drawn for the petit jury panel for a general session of court in each of the counties, 45 jurors.

4.02 Notification of Jurors and Questionnaire

The clerk immediately after the petit jurors are drawn for the panel of a general session 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 session judge may pass upon it at 10:00 A.M. on the opening day of the session, 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 session.

4.04 Summoning Petit Jurors

Petit jurors on a panel for a general session shall be summoned to appear when and as ordered by the session judge.

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, unless the parties request that the jurors whose names have been drawn be returned to the jury ballot box at the time the civil case for which they were drawn is commenced, in which case the clerk shall, at the commencement of the trial, draw from the jurors' names in the ballot box a sufficient number to include peremptory challenges and alternates pursuant to Minn. Stat. 546.10.

Rule 5. Calendars and Notes of Issue

5.01 Form of Calendars

The calendars to be provided by the clerk for a fall general session of court in any county shall be prepared between August 15th and August 25th, and the calendars to be provided by the clerk for a spring general session of court shall be prepared between January 15th and January 25th each year.

5.02 Contents of Calendar

The calendar prepared by the clerk shall contain a suitable title page; the names and addresses of the officers of the court; the names and addresses of the attorneys admitted and actively engaged in the practice of law and residing 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 session; a civil cases section; a criminal cases section; and an index of the cases in the civil cases section if they exceed 20 in number. In entering the cases in the sections above mentioned, 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 session and all civil cases appearing in the civil cases section of the calendar of the previous session which were not tried, or otherwise disposed of, 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 session; (2) all civil cases in which a note of issue shall have been filed on or before August 15th for fall sessions, and on or before January 15th for spring sessions, 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 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

The clerk shall enter all criminal cases pending in which there has been a plea of not guilty, enumerating them according to the date of the plea.

5.05 Numbering of Cases in Calendar

The clerk shall give to each case entered in the civil cases section and the criminal cases section a calendar number, numbering the cases consecutively in the order they appear in each of said sections beginning with No. 1. To avoid confusion, the number given a case in the criminal cases section shall be prefixed by the abbreviation "CR."

Rule 6. Calendar Calls — Session Trial Docket

6.01 Preliminary Call

The preliminary call of cases upon a session calendar, unless ordered by the Chief Judge, shall be as follows:

Eastern Area
(Commencing at 10:00 A.M.)

Aitkin county: On the first Wednesday after the first Tuesday in February, and the first Wednesday after the first Tuesday in September.

Beltrami county: On the first Tuesday in February and the first Tuesday in September.

Cass county: On the first Wednesday after the first Tuesday in February, and the first Wednesday after the first Tuesday in September.

Clearwater county: On the first Thursday after the first Tuesday in February, and the first Thursday after the first Tuesday in September.

Crow Wing county: On the first Tuesday in February and the first Tuesday in September.

Hubbard county: On the first Wednesday after the first Tuesday in February, and the first Wednesday after the first Tuesday in September.

Itasca county: On the first Tuesday in February and the first Tuesday in September.

Koochiching county: On the first Tuesday in February and the first Tuesday in September.

Lake of the Woods county: On the first Wednesday after the first Tuesday in February and the first Wednesday after the first Tuesday in September.

Western Area

Kittson county: At 10:00 a.m. on the first Tuesday following the first Monday in February and the first Thursday following the first Monday in September.

Mahnomen county: At 10:00 a.m. on the first Tuesday following the first Monday in February and the first Tuesday following the first Monday in September.

Marshall county: At 2:00 p.m. on the first Tuesday following the first Monday in February and the first Thursday following the first Monday in September.

Norman county: At 2:00 p.m. on the first Tuesday following the first Monday in February and the first Tuesday following the first Monday in September.

Pennington county: At 10:00 a.m. on the first Wednesday following the first Monday in February and the first Wednesday following the first Monday in September.

Polk county: At 10:00 a.m. on the first Thursday following the first Monday in February and the first Thursday following the first Monday in September.

Red Lake county: At 10:00 a.m. on the first Wednesday following the first Monday in February and the first Wednesday following the first Monday in September.

Roseau county: At 10:00 a.m. on the first Thursday following the first Monday in February and the first Tuesday following the first Monday in September.

6.02 Legal Holidays — General Election Day

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.

6.03 Preliminary Call Procedure

The judge presiding, or under his direction, the clerk shall then call each case in the order appearing in the civil cases section, and the 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 session, whether or not there are issues in a case to be tried by 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 pre-trial 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 session 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.

6.04 Late Filing Fees

Attorneys shall explicitly follow Rule 5.04 of the Minnesota Rules of Civil Procedure and any pleadings not filed before the second day of the session at which the action is noticed for trial shall not be accepted for filing by the clerk or by the session judge unless a $5.00 late filing fee is paid by the attorney or party filing the same, said late filing fees to be added to the Law Library Fund in counties where there is a County Law Library Fund.

6.05 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 session 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 6.03 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.

6.06 Session 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 session and thereby constitute the "Session Trial Docket." The session trial docket may consist of two parts, one designated as the "Session Jury Trial Docket" in which will be entered the cases having issues to be tried by jury at the session, and the other designated as the "Session Non-jury Trial Docket" in which will be entered cases having issues to be tried at the session by the court without a jury. The court may fix the order in which the cases upon a session 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 session 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 "Session 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 gross misdemeanor where defendant is in custody; (2) criminal cases charging commission of a felony 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 gross misdemeanor where defendant is not in custody; (5) civil cases not set for trial on a day certain in which there are issues to be tried by jury; (6) 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; (7) 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; (8) 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 (9) 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 session trial docket are bracketed, it shall indicate that such cases are consolidated or will be jointly tried. The session judge may require the clerk to issue weekly notices of case settings, which notices shall be in such form as the session judge shall require, and shall be amended from time to time as ordered by the session judge, and these notices may, at the option of the session judge, constitute the Session Trial Docket.

6.07 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.

6.08 Certain Motions After Preliminary Call

A motion made after the preliminary call to strike a case from the session 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.

6.09 Peremptory Call

The peremptory call, unless otherwise ordered shall begin on the day the petit jurors report to begin service at the session and the cases will be called according to the listing of the cases upon the session trial docket or according to the notices of weekly case settings. Cases will be called for trial, unless otherwise ordered, at 9:30 A.M. on the date designated, however, the attorneys scheduled to try the case shall be present at the Court's chambers no later than 9:00 A.M. on the day designated for trial.

6.10 Anticipating Call of Case, etc.

Each party and each attorney who will represent a party at the trial of any case upon the session docket or weekly case settings shall keep himself informed of the progress of the business of the court and of the disposition of cases set ahead of his case 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. The clerk shall mail a copy of the session 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. In the event that weekly case settings are ordered by the session judge, notices thereof shall be sent to all attorneys having cases a particular week. 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. 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 7. Attorneys — Appearances of Record, Notices to, Filing of Writings By, etc.

7.01 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.

7.02 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.

7.03 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.

7.04 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 8. Dissolution Actions

8.01 Hearing of Default Action

A dissolution 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.

8.02 Hearing of Non-default Action

A dissolution 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 session 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 session 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 session 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 dissolution 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 there against.

8.03 Record of Testimony

A stenographic record shall be made of the testimony and proceedings in the trial of a dissolution 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 9. Minor's Action

9.01 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.

9.02 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 10. Paternity Actions

10.01 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.

10.02 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 next Special 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.

10.03 Appearance

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.

10.04 Placing Action on Calendar

Upon a denial of paternity or upon the service or filing of an answer so denying paternity, the action will be immediately placed upon the pending General Session Calendar, without service of a note of issue, unless both parties agree that the same will be placed upon the next General Session Calendar, or unless the next General Session Calendar call is to take place less than 30 days from the date of denial or service or filing of answer, in which case the action shall be placed upon the next General Session Calendar without service of a note of issue.

10.05 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.

10.06 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.

10.07 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.

10.08 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. COUNTY OF _____	}	IN DISTRICT COURT 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 11. Exhibits; Files and Records of Clerk

11.01 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.

11.02 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.

11.03 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.

11.04 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 photostat of the record or document is admissible and would have as much probative force upon the issues of the case as the original.

11.05 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.

11.06 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 12. Sessions of the Court

12.01 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.

12.02 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 13. Appeals from County Court

Attorneys and court personnel shall familiarize themselves with Sec. 487.39, Minn. Stat., Rule 28 of the Rules of Criminal Procedure and the Rules of Civil Appellate Procedure from the Minnesota County Courts governing all appeals, civil and criminal being appealed to District Court. Unless such Rules are suspended pursuant to Rule 102, they should be followed explicitly. Appeals from decisions of a County Court Judge or decisions presided over by a County Court Judge not learned in the law under Rule 28.01, Subd. 1 of the Rules of Criminal Procedure shall be placed on for trial de novo at the next General Session, the peremptory call for which is more than 20 days following the filing of the appeal. Trial shall be to the court unless the notice of appeal contains a request for a jury trial. No jury trial shall be provided under the circumstances set forth in Sec. 484.63, Minn. Stat.

13.01

As provided by County Court Appellate Rule 110.01, the original pleadings, exhibits, and transcript in County Court constitute the record on appeal.

(a) Appellant, pursuant to County Court Appellate Rule 111.01, is responsible for transmission of the transcript to the Clerk of District Court at the time of filing his brief, and if no brief is to be filed, the appellant shall, nevertheless, file the transcript with the Clerk of District Court within 20 days after delivery of the same to him by the court reporter.

(b) Pursuant to Rule 111.02 of the County Court Appellate Rules, the original County Court file shall be transferred to the District Court 30 days prior to the date set for oral argument, and if there is to be no oral argument, 30 days prior to the submission of the appeal. The file shall be returned to the County Court upon disposition of the appeal.

13.02

Failure on the part of appellant to comply with Rule 110.02 will be deemed sufficient cause for dismissal of the appeal upon motion of respondent or by the District Court on its own motion at the time of submission of the appeal.

13.03

While the Rules of Appellate Procedure from the Minnesota County Courts provide for the filing with the Clerk of District Court of one original and one copy of the transcript and briefs, because all non-de novo appeals will be heard by a three-Judge District Court panel, original and three copies of transcripts and briefs shall be filed with the District Court.

13.04

Rule 134.01 will not be suspended except for good cause or by motion to the Division Judge under County Court Appellate Rule 111.04, duly served and filed with the District Court no later than 20 days following the filing with the Clerk of District Court by the County Court reporter of the certificate evidencing date of delivery of the transcript pursuant to County Court Appellate Rule 110.04(2).

13.05

The Chief Judge shall have the duty of administering all County Court appeals within the District.

13.06

The Clerk of District Court for the county in which an appeal from County Court is filed shall give notice to the Chief Judge of each appeal by forwarding a copy of the filed notice of appeal within 20 days following receipt thereof, and shall specifically advise the Chief Judge whether a party has elected to file a brief or to make oral argument, or both, under County Court Appellate Rule 134.01. The said Clerk shall, likewise, advise the Chief Judge if a particular party has failed under Rule 134.01 to elect to file a brief or to make oral argument.

13.07

On or before the first days of January, April, July and October, the Clerk of District Court shall notify the Chief Judge of the name of each action on appeal where a written decision disposing of the appeal has not been filed.

(This report is hereafter called the "Clerk's Quarterly Report").

(a) The date of the filing of the notice of appeal and the names of the attorneys for each party shall be set forth after the name of the appeal.

(b) The Clerk shall further state whether all parties have failed to elect to file briefs or make oral argument, and in such case the appeal is to be deemed ready for submission at the

next appellate session of the District Judges, if the transcript and three copies have been filed with the Clerk of District Court.

(c) The date of filing the transcript shall be noted by the Clerk of District Court in each quarterly report to the Chief Judge.

(d) If a party has elected to file a brief, the date of filing shall be noted in such report, and if not filed within the prescribed time, failure to so file shall be noted.

(e) If oral argument has been elected by a party, the Clerk shall note the same in each quarterly report.

(f) Whether or not the transcript and briefs, where elected, are filed or overdue, an appeal shall be deemed ready for submission to the appellate District Court at the next appellate session of the District Court.

(g) If the appeal is ready for submission to the appellate court under this Rule, the Clerk shall further certify that he has received the record, including pleadings and exhibits from the County Court.

(h) Any motions for dismissal or for other relief pending appeal under County Court Appellate Rule 111.04 shall be noted by the Clerk of District Court in his quarterly report to the Chief Judge.

(i) The original and three copies of the County Court and District Court files in each appeal ready for submission shall accompany each quarterly report.

13.08

On or before the 10th days of January, April, July and October, the Chief Judge shall set the times and dates of appellate hearings, and shall on a rotation basis designate the three Judges to sit on particular cases in the two Court rooms in the city of Bemidji on the last consecutive Thursday and Friday in January, April, July and October. Dependent upon the number of appeals, pre-hearing and post-hearing meetings of the Judges may be set by the Chief Judge.

(a) The senior Judge present shall preside during appeal proceedings in a particular court room.

(b) On or before the 15th days of January, April, July and October, the Chief Judge shall forward to each of the Judges selected to hear a particular appeal a copy of the file transcript, a copy of each brief and appendix filed, and copies of the original pleadings. In addition, copies of documentary exhibits shall be forwarded when requested by a Judge sitting on a particular case. The lower Court order appealed from and the resulting judgment, if any, must also be sent to each Judge selected to hear a particular appeal. The Chief Judge shall also send to each Judge sitting on a particular appeal a digest of the fact situation and a short memorandum setting forth the important legal principles involved.

(c) In setting the times for appellate hearings, one-half hour shall be allocated for each case in which oral arguments have been selected. The order of the Chief Judge setting times, dates and court rooms for the various appeals, shall be prepared by the 10th days of January, April, July and October, and the Chief Judge, upon signing the order, shall send it to all of the Judges of the District, to the Clerks in counties where appeals are ready for submission, and to attorneys having appeals scheduled on the appeal calendar. No time shall be allocated to appeals where oral arguments have not been elected. The appeal calendar order shall specify when briefs and oral arguments have been elected or waived.

13.09

All motions to dismiss or for other relief pending appeal shall be heard by the Division Judge on motion by a party or on his own motion for non-compliance with these Rules or the Rules of Appellate Procedure from the Minnesota County Courts.

(a) The Clerk of District Court shall note any pending motion, whether the same has been heard by the resident District Judge or not, in each of his aforesaid quarterly reports.

(b) All motions noted by a party or initiated by a Division Judge on his own motion, which are noted as pending in a Clerk's quarterly report, shall be determined by the Division Judge not less than 10 days prior to the next following quarterly report of a Clerk of District Court.

(c) No appeal shall be submitted to the three-Judge District Court panel by oral argument or otherwise, if a motion under Rule 111.04 of the County Court Appellate Rules is pending, but if such a motion is pending for a second time in a Clerk's quarterly report, the Division Judge shall be deemed to have waived his right to determine the same, and the said motion or motions shall be determined by the three-Judge appellate panel at the next appellate hearing session, and the same shall be listed by the Chief Judge for submission, subject to the motion or motions.

(d) Motions to the three-Judge appellate panel may be noted by either party at the time of oral argument (if the same is permitted), but except for continuance for good cause, the same will ordinarily be denied peremptorily by the three-Judge panel at the time of oral arguments.

13.10

Notwithstanding the contents of County Court Appellate Rules 134.04 and 134.05, non-appearance of appellant or his attorney after argument has been elected, or failure of appellant to file a brief after electing to do so, shall be deemed cause for dismissal of the appeal, unless said election has been withdrawn, with due notice to all attorneys and parties not represented by an attorney, not less than 10 days prior to the first day of the quarter on which the Clerk of District Court would list the appeal in accordance with these Rules.

13.11

The Chief Judge may for good cause accelerate the hearing of any appeal in order to implement Rule 126.02 of County Court Appellate Procedure.

Part J. Tenth Judicial District

Rules As Amended through July 1, 1978

(1) Table of Headnotes

(2) Text of Rules

Rule I. 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, Monday through 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 Monday, Tuesday, Wednesday and Friday 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 Isanti, Sherburne, Chisago, Kanabec, Pine 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 II. 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 III. Pre-Trial

A. No case shall have a ready for trial status until a Note of Issue — Readiness for Trial 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 (10) days from the date of service of the Note of Issue — Readiness for Trial, such adverse party is deemed to have joined in the Note of Issue — Readiness for Trial. Thereafter no further discovery procedures shall be allowed. The filing of the Note of Issue — Readiness for Trial 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, unless a certificate of non-readiness is timely filed by an adverse party.

C. A certificate of non-readiness shall not be effective for more than 60 days unless extended by order of court.

D. The form of the Note of Issue — Readiness for Trial shall be as follows:

STATE OF MINNESOTA
COUNTY OF
NOTE OF ISSUE
READINESS FOR TRIAL

DISTRICT COURT
TENTH JUDICIAL DISTRICT

File No. _____

_____

_____

AGAINST

_____

_____

You will please take notice that the above entitled action will be placed upon the calendar of the above named Court within ten days after service of this Note of Issue upon you, for the trial of the issues of _____
Law or Fact

by _____
Court or Jury

to _____ _____

Attorney _____ for _____ Attorney _____ for _____

_____ _____

Address _____ Address _____

CERTIFICATION THAT CIVIL CASE IS READY FOR TRIAL

I CERTIFY TO THE COURT that the above captioned case is now ready to be placed on the civil calendar and that:

1. All essential parties have been served with process and that the case is at issue as to all such parties.

2. All pre-trial discovery is complete.

3. All bills substantiating special damage claims have been submitted.

4. All injuries are healed to the point that they can be evaluated.

5. A copy of this Note of Issue has been served on all counsel having an interest in the case.

_____
Signature of Trial Counsel

AFFIDAVIT OF SERVICE
STATE OF MINNESOTA

County of _____ _____

Being first duly sworn, upon oath deposes and says, that in said County and State, on the _____ day of _____, 19___, he served the within Note of Issue and Readiness for Trial upon _____ by then and there _____

_____

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

_____ _____

Notary Public, _____
My commission expires _____

E. The form of the written statement of the case shall be as follows:

Except in dissolution proceedings, at the time of filing the Note of Issue — Readiness for Trial 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/her written statement of the case within ten days of the filing of a Note of Issue — Readiness for Trial 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:

ORDER SETTING PRE-TRIAL CONFERENCE

_____
Plaintiff

vs.

_____ CASE NO. _____
Defendant

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 furnished 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 or settlement 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 that 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.

V. 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.

_____

District Court Administrator

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

DISTRICT COURT
TENTH JUDICIAL DISTRICT

_____
Plaintiff

vs.

PRE-TRIAL ORDER
File 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, mental or blood condition of himself, or a decedent, or a person under his control.

VI. The effective date of this Rule shall be October 15, 1977.

(Amended Oct. 3, 1977, effective Oct. 15, 1977.)

Rule IV. Divorce Actions

Default divorce actions may be placed on special term calendars for hearing sixty (60) days after the time to answer has expired and upon filing a note of issue with the clerk. Any divorce action may be advanced for trial in hardship and emergency cases upon order of the Court issued upon written application and sufficient proof.

Rule V. 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 VI. 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 VII. Examination of Injured Persons

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 VIII. Questionnaires to Prospective Jurors

The Clerks of the District Court in Anoka and Washington Counties 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 IX. Registration of Land Title Rule

Cases in which the Registrar may act without special order of the Court.

1. In the following cases, a special order of the Court need not be required unless it shall be requested by the Registrar or Examiner:

(a) 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;

(b) 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;

(c) 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;

(d) 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.

2. Practice in relation to Minnesota Condominium Act. When an owner of registered land desires to submit his land to the provisions of Chapter 515, Minnesota Statutes, known as the "Minnesota Condominium Act," he shall deliver his organizing documents to the Registrar of Titles and at the same time file with the Clerk of 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 Minn. Stat. Sec. 515.11, the By-Laws or Amendment or Amendments thereto under Minn. Stat. Sec. 515.18 and Sec. 515.19, and the Floor Plans under Minn. Stat. 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 515 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 enter a recital showing that the land is subject to the provisions of the Minnesota Condominium Act 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.

Rule X. 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 XI. Appeals from County Court

1. Applicability of Rule. This rule shall govern appellate practice and procedure in the Tenth Judicial District of all appeals to the District Court from the County Court as is provided for in Minnesota Statutes, Section 487.39, and that all appeals therefrom are to be governed by THE RULES OF CIVIL APPELLATE PROCEDURE FROM THE MINNESOTA COUNTY COURT. Unless these County Court appellate rules are suspended pursuant to County Court Appellate Rule 102, they are to be followed explicitly.

2. Record on Appeal. As provided in County Court Appellate Rule 110.01, the original pleadings, exhibits, and transcript in County Court constitute the record on appeal.

(a) Appellant, pursuant to County Court Appellate Rule 111.01, is responsible for transmission of the transcript to the Clerk of District Court at the time of filing his brief, and if no brief is to be filed, the appellant shall, nevertheless, file the transcript with the clerk of District Court within twenty (20) days after delivery of the same to him by the Court Reporter.

(b) Pursuant to Rule 111.02 of the County Court Appellate Rule the original County Court file shall be transferred to the District Court thirty (30) days prior to the first quarterly date set for oral argument, and if there is to be no oral argument, thirty (30) days prior to the submission of the appeal, the file shall be returned to the County Court upon disposition of the appeal.

3. Compliance with Rule 110.02. Failure on the part of appellant to comply with Rule 110.02 will be deemed sufficient cause for dismissal of the appeal upon motion of respondent or by the District Court Appellate panel on its own motion at the time of submission of the appeal.

4. Number of Copies of Transcript and Briefs. While the Rules of Appellate Procedure from the Minnesota County Courts provide for the filing with the Clerk of District Court of one original and one copy of the transcript and briefs, because all appeals will be heard by a three-Judge District Court panel, original and three copies of transcripts and briefs shall be filed with the District Court.

5. Suspension of Rule 134.01 and Postponement of Oral Argument Under Same. A request for postponement of hearing of oral argument or suspension of Rule 134.01 must be made by motion in District Court, with such motion being duly served and filed with the District Court no later than twenty (20) days following the filing with the Clerk of District Court by the County Court Reporter of the Certificate evidencing date of delivery of the transcript pursuant to County Court Appellate Rule 110.02(2).

6. Administration of Appeals. The District Court Administrator of the Tenth Judicial District, under the direction of the Chief Judge of the Tenth Judicial District, shall have the duty of administering all County Court appeals within the District.

7. Notice to Chief Judge and District Court Administrator. The Clerk of District Court of the County in which an appeal from County Court is filed shall send to the Court Administrator and the Chief Judge, a copy of the filed Notice of Appeal, a copy of the Affidavit (proof) of Service and shall therein specifically notify the Administrator and the Chief Judge whether a party or parties failed to make such election under County Court Appellate Rule 134.01. The Clerk shall forward said information as soon as it has been received but in no case later than twenty-five days after the Notice of Appeal has been filed with the Clerk.

8. District Court Administrator's Quarterly Report. Fifteen (15) days prior to the first days of January, April, July and October, the District Court Administrator shall notify the Chief Judge of the name of each action on appeal where a written decision disposing of the appeal has not been filed. This report is hereinafter call the "The District Court Administrator's Quarterly Report", and shall provide the following:

(a) The date of the filing of the notice of appeal and the names of the attorneys for each party shall be set forth after the name of the appeal.

(b) The District Court Administrator shall further state whether all parties have failed to elect to file briefs or make oral argument. And in such case the appeal is deemed ready for submission at the next appellate session of the District Judge, if the transcript and three copies have been filed with the Clerk of District Court.

(c) The date of filing the transcript shall be noted by the District Court Administrator in each quarterly report to the Chief Judge.

(d) If a party has elected to file a brief, the date of filing shall be noted in each report, and if not filed within the prescribed time, failure to so file shall be noted.

(e) If oral argument has been elected by the parties, the District Court Administrator shall note the same in each quarterly report.

(f) Whether or not the transcript and briefs were elected, are filed or overdue, an appeal shall be deemed ready for submission to the appellate panel at the next appellate session of the District Court.

(g) If the appeal is ready for submission to the appellate panel under this rule, the District Court Administrator shall further certify that he has received the record, including pleadings and exhibits from the County Court.

(h) Any motion for dismissal or for other relief pending appeal under County Court Appellate Rule 111.04 shall be noted by the District Court Administrator in his quarterly report to the Chief Judge.

(i) The original and three copies of the County Court and District Court file in each appeal ready for submission shall accompany each quarterly report.

9. Appellate Hearing Procedure. On or before the first days of January, April, July and October, the District Court Administrator under the direction of the Chief Judge, shall set the time and date of appellate hearings, and as provided for in Minnesota Statutes, Section 484.63, Subdivision 2, (1977) three weeks written notice of every appellate term shall be given to the Clerks of District Court in the Counties in which the appeals arose. The appellate panel shall consist of the Three District Judges of the Tenth Judicial District. The appellate panel will convene for the hearing of County Court Appeals on the last Wednesday, Thursday, and Friday of the last full calendar week of the months of January, April, July and October. The appellate panel will sit from time to time as herein indicated at such locations within the Tenth Judicial District as the caseload and convenience of counsel would in the discretion of the panel and District Court Administrator be deemed proper. In the case of disqualification, disability, or unavailability of one or more of the District Judges of the Tenth Judicial District, the Chief Judge of the Tenth Judicial District may appoint a retired District Court Judge or a disinterested County Court Judge of the Tenth Judicial District acting as a Judge of District Court pursuant to Chapter 432, Laws of 1977, to sit upon such panel. Dependent upon the number of appeals, pre-hearing and post-hearing meetings of the panel may be set by the Chief Judge.

(a) The Chief Judge, or in the absence of the Chief Judge, a District Judge designated by the Chief Judge, shall preside during panel proceedings.

(b) On or before the 15th day of January, April, July and October, the District Court Administrator shall forward to each of the District Judges on the panel a copy of the filed transcript, a copy of each brief and appendix filed, and copies of the original pleadings. In addition, copies of documentary exhibits shall be forwarded when requested by a judge sitting on the panel. The lower Court Order appealed from and the resulting judgment, if any, must also be sent to each judge on the panel. The Chief Judge may also direct that the District Law Clerk prepare for each Judge sitting on the panel a digest of the fact situation and a short memorandum setting forth the important legal principals involved.

(c) In setting the order and times allowed for oral argument, for each case in which oral arguments have been selected, the appellant shall be entitled to a total of twenty (20) minutes of oral argument, and the respondent shall be entitled to fifteen (15) minutes oral argument, as is provided for in County Court Appellate Rules 134.02 and 134.03. The Order of the Chief Judge setting times and date for the various appeals shall be prepared by the first days of January, April, July and October, and shall be sent by the District Court Administrator to all of the Judges of the District, to the Clerks in the Counties where appeals are ready for submission, and to attorneys having appeals scheduled on the appeal calendar. No time shall be allocated to an appeal where oral argument has not been elected. The abovementioned appeal calendar order shall specify when briefs and oral arguments have been elected or waived.

10. Motions for Relief. All motions to dismiss or for other relief pending appeal shall be heard by a District Judge on motion by a party or upon his own motion for noncompliance with these rules or the Rules of Appellate Procedure from the Minnesota County Courts.

(a) The District Court Administrator shall note any pending motions, whether the same has been heard by the District Judge or not, in each of his aforesaid quarterly reports.

(b) All motions noted by a party or initiated by a District Judge on his own motion, which are noted as pending in the District Court Administrator's Quarterly Report shall be determined by such District Judge not less than ten (10) days prior to the next following quarterly report of the District Court Administrator.

(c) No appeal shall be submitted to the three-Judge District Court panel by oral argument or otherwise, if a motion under Rule 111.04 of the County Court Appellate Rule is pending, but if such motion is pending for a second time in the District Court Administrator's Quarterly report, the individual District Judge shall be deemed to have waived his right to determine the same, and the said motion or motions shall be determined by the three-judge appellate panel at the next appellate hearing session, and the same shall be listed by the Chief Judge for submission subject to the motion or motions.

(d) Motions to the three-judge panel may be noted by either party at the time of oral argument (if the same is permitted), but except for continuance for good cause, the same will ordinarily be denied peremptorily by the three-Judge panel at the time of oral argument.

11. Dismissal of Appeal. Notwithstanding the contents of County Court Appellate Rules 134.04 and 134.05, non-appearance of appellant or his attorney after argument has been elected, or failure of appellant to file a brief after electing to do so, shall be deemed cause for dismissal of the appeal, unless said election has been withdrawn, with due notice to all attorneys and parties not represented by an attorney, not less than twenty (20) days prior to the date on which the District Court Administrator would list the appeal in his report in accordance with these rules.

12. Acceleration of Appeal. The Chief Judge may for good cause accelerate the hearing of any appeal in order to implement Rule 126.02 of County Court Appellate Rules.

(Amended Oct. 5, 1977.)

APPENDIX 7

RULES OF CIVIL PROCEDURE IN THE COUNTY COURTS

Part A. Rules of Civil Procedure for County Courts — Concurrent Jurisdiction with District Courts

WHEREAS the Minnesota Legislature, by Chapter 951, Laws of 1971, created county courts; and

WHEREAS said legislation gave the county court concurrent jurisdiction with the district court in the following:

487.19 CONCURRENT JURISDICTION. Subdivision 1. The county court shall have concurrent jurisdiction in the following cases:

(a) Proceedings for the administration of trust estates or actions relating thereto;

(b) Proceedings for divorce, annulment, and separate maintenance, and actions related thereto, as prescribed by chapter 518;

(c) Proceedings under the reciprocal enforcement of support act, sections 518.41 to 518.53;

(d) Proceedings for adoption and change of name under chapter 259; and

(e) Proceedings to quiet title to real estate and real estate mortgage foreclosures by action.

WHEREAS said legislation provides that pleading, practice, procedure and forms in civil actions are governed by the rules for municipal courts and rules promulgated from time to time by the supreme court or by the statutes governing the district court, insofar as the rules promulgated by the supreme court do not contain any applicable provision; and

WHEREAS the municipal courts do not have jurisdiction in these matters;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Rules of Civil Procedure for District Courts shall govern all civil actions in county court within the concurrent jurisdiction with the district court.

IT IS HEREBY FURTHER ORDERED that the application of the aforementioned amendment shall be retroactive and apply to all actions pending in the county courts.

Dated: April 20, 1973

BY THE COURT
OSCAR R. KNUTSON
Chief Justice of the Minnesota Supreme Court

(See Appendix 5, Part A, for the Rules of Civil Procedure for District Courts.)

Part B. Rules for the Conciliation Courts

As Amended through July 1, 1978

(1) Table of Headnotes

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(2) Text of Rules

Rules for Establishment of Conciliation Court; for Procedure Therein; and Removal of Causes Therefrom

1.01 Establishment

There is hereby established, within the civil and criminal division of _____ County Court, a conciliation court, with jurisdiction and powers hereinafter stated.

1.02 Jurisdiction

Excepting actions involving title to real estate, conciliation court has jurisdiction to hear, conciliate, try and determine civil actions at law where the amount in controversy does not exceed the sum of $500.00 or such other amount as may be prescribed by law from time to time. Territorial jurisdiction of conciliation court is coextensive with the boundaries of the County of _____.

1.03 Powers; Issuance of Process

Conciliation court has all the power of the county court and may issue process as necessary or proper to carry out the purposes of conciliation court.

1.04 Terms of Court

The judge(s) shall hold terms of court as necessary to hear and dispose of all claims promptly after filing.

1.05 Computation of Time

In computing any period of time prescribed herein, the day of the act, event or default, after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included unless it falls on a Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When the period of time prescribed is less than seven days, intervening Sundays and holidays shall be excluded in the computation.

1.06 Judge(s); Clerk; Reporters; Salaries; Quarters and Supplies; Full and Part Time Judicial Officers

1. The judge(s) and full and part time judicial officers of the county court shall serve as judge(s) of conciliation court for such periods and at such times as the judge(s) shall determine. A judge or judicial officer so serving shall be known as a conciliation judge.

2. The Clerk of the County Court shall serve as the Clerk of Conciliation Court, and may delegate a deputy clerk or clerks to assist him in performing his duties herein prescribed. The clerk shall keep records and accounts and perform such duties as may be prescribed by the judge(s). He shall account for, and pay over to the official entitled thereto, all fees received by him in the same fashion required in his capacity as Clerk of the County Court.

3. Each court reporter appointed by a judge of county court shall assist that judge in carrying out his duties as conciliation judge, but unless ordered to do so by that judge, he shall not report trials or proceedings in conciliation court.

4. The judge(s), clerk, deputy clerks, and court reporters shall receive only their salaries payable for serving as officers of county court while serving in conciliation courts. All oaths taken and bonds given by the judge(s), clerk, deputy clerks and court reporters for their respective offices in county court include their acts in conciliation court, whether or not so expressed therein.

5. Quarters for holding sessions of conciliation court shall be any of the regular places of

holding county court sessions as prescribed herein. Sessions of conciliation court shall be held at the following locations, at the times indicated:

_____ on _____ at _____.m.
_____ on _____ at _____.m.

The clerk shall procure and furnish necessary forms, stationery, books and other supplies necessary for use of the court, cost thereof to be part of the budget of the county court.

1.07 Commencement of Action

An action is commenced against a defendant when a complaint is filed with the Clerk of Conciliation Court and a filing fee as established by rule of the County Court pursuant to M.S. 487.31 is paid to the Clerk.

1.08 Complaint; Contents; Verification

The complaint shall contain a brief statement of the amount, date of accrual and nature of the claim, and name and address of the plaintiff and the defendant. The clerk shall prepare the complaint upon request. The complaint shall be verified by the plaintiff.

1.09 Summons; Trial Date

When an action has been properly commenced the clerk shall set a trial date, advising plaintiff thereof. The clerk shall summon the defendant by mail or personal service; the summons shall state the amount and nature of the claim; require the defendant to appear at the hearing in person or if a corporation, by officer or agent and without attorney except by leave of the court; shall specify that if he does not appear judgment by default will be entered against him for the relief demanded, and shall summarize the requirements for filing a counterclaim, unless otherwise ordered by a judge, the hearing date shall be not less than 10 days from the date of mailing or service of the summons.

1.10 Counterclaim

The defendant may interpose a counterclaim within jurisdiction of conciliation court which he has against the plaintiff, whether or not arising out of the transaction or occurrence which is the subject matter of plaintiff's claim. The counterclaim shall be interposed by defendant filing with the clerk a brief statement of the amount, date of accrual and nature of the counterclaim, verified by the defendant, and by payment of defendant of a filing fee as established by rule of the county court pursuant to M.S. 487.31 to the clerk. The clerk shall draw up the counterclaim on request. The clerk shall note the filing of the counterclaim on the original claim, promptly notify plaintiff by mail thereof and set the counterclaim for hearing on the same date as the original claim. No counterclaim shall be filed less than five days of the trial date of plaintiff's claim except by permission of the judge who may in his discretion allow a filing within said five day period. Should a continuance be requested by and granted to plaintiff because of such late filing, the judge may require payment of costs by defendant, absolute or conditional, not to exceed $25.00.

1.11 Counterclaim in Excess of Court's Jurisdiction

If the defendant not less than five days of the date set for trial of plaintiff's complaint, files with the clerk an affidavit stating that:

(1) he has a counterclaim against plaintiff arising out of the same transaction or occurrence as plaintiff's claim, the amount of which is beyond monetary jurisdiction of the conciliation court, and

(2) he has filed or intends to file within 30 days an action against plaintiff in a court of competent jurisdiction based on such claim, the clerk shall strike plaintiff's action from the calendar, advising plaintiff by mail. Said striking shall be subject to reinstatement at any time after thirty days and up to three years, upon the filing by plaintiff of an affidavit showing that he has not been served with a summons by defendant. If the action is reinstated, the clerk shall set the case for trial and summon the defendant as originally whereupon the court shall hear and determine the matter.

1.12 Trial

1. Testimony and Exhibits. The judge shall hear testimony of the parties, their witnesses, and shall consider exhibits offered by the parties.

2. Appearances. Appearances in conciliation court shall be by the parties, without attorneys, except by leave of the court; a removal of the cause to county court, however, as provided in these rules, may be taken through an attorney at law.

3. Evidence. The judge shall normally receive only evidence admissible under the rules of

evidence, but in his discretion, in the interests of justice, he may receive otherwise inadmissible evidence.

4. Conciliation; Judgment. If the parties agree on a settlement the judge shall order judgment in accordance therewith. If no agreement is reached, the judge shall summarily hear, determine the cause, and order judgment.

5. Failure of Defendant to Appear. If the defendant fails to appear at the time set for hearing, after being summoned as herein provided, the judge in his discretion may either hear the plaintiff and order default judgment to be entered or continue the matter to a later date, notice of said subsequent trial date to be given by the clerk to defendant by mail.

6. Failure of Plaintiff to Appear; Defendant Present. Should plaintiff fail to appear at the trial, but defendant appears, the judge may hear the defendant and either order judgment of dismissal on the merits, order a dismissal without prejudice, or continue the trial to a later date; if the matter is continued to a later date, the clerk shall promptly notify the plaintiff thereof by mail.

7. Continuances. On proper showing of good cause, a continuance may be ordered on motion of either party. The court may require payment of costs, absolute or conditional, not to exceed $25.00, as a condition of such an order.

1.13 Absolute or Conditional Costs; Filing of Orders

In any case in which payment of absolute or conditional costs has been ordered as a condition of an order under any provision of these rules, the amount so ordered shall be paid to the clerk before the order becomes effective or is filed. Conditional costs shall be held by the clerk to abide the final order to be entered in the case; absolute costs shall be paid over by the clerk forthwith to the other party as his absolute property.

1.14 Notice of Order for Judgment

The clerk shall promptly mail to each party a notice of the order for judgment entered by the judge, which notice shall state the number of days allowed for obtaining an order to vacate (where there has been a default) or for removing the cause to county court, civil division.

1.15 Entry of Judgment

The clerk shall enter judgment forthwith as ordered by the judge. The judgment shall be dated as of the date notice is sent to the parties unless:

1. payment has been made in full, or
2. removal to county court has been perfected, or
3. an order vacating the prior order for judgment has been filed.

The judgment so entered becomes finally effective ten days after the mailing of notice. Any judgment ordered may provide for satisfaction by payment in installments in amounts and at times as the judge determines. Should any installment not be paid when due, the entire unpaid balance of the judgment ordered, becomes immediately due and payable.

1.16 Costs and Disbursements

There shall be included in the order for judgment the filing fee paid by the prevailing party. Additionally the judge may include therein all or part of disbursements incurred by the prevailing party which would be taxable in county court. The order for judgment also may include or be adjusted by the amount of any conditional costs previously ordered to be paid by either party.

1.17 Payment of Judgment

The non-prevailing party may pay all or any part of the judgment to the clerk for benefit of the prevailing party or may pay the prevailing party directly. The clerk shall enter on his records any payment made to the clerk or the prevailing party directly when satisfied that said direct payments have in fact been made.

1.18 Docketing of Judgment in County Court

When a judgment has become finally effective as defined in Rule 1.15 the judgment creditor may obtain a transcript of the judgment from the clerk of conciliation court on payment of a fee as established by rule of the county court pursuant to M.S. 487.31 and file it with the clerk of county court without additional fee. Once filed therein the judgment becomes and is enforceable as a judgment of county court. No writ of execution or garnishment summons shall be issued out of conciliation court.

1.19 Judgment Payable in Installments

No transcript of a judgment of conciliation court payable in installments shall be issued and filed until 20 days after default in payment of an installment due.

1.20 Vacation of Judgment Order

1. When a default judgment or judgment of dismissal on the merits has been ordered for failure to appear, the judge within ten days after notice was mailed may vacate said judgment order ex parte and grant a new hearing on a proper showing by the defaulting party of lack of notice, mistake, inadvertence or excusable neglect as the cause of his failure to appear. Absolute or conditional costs not to exceed $25.00 to the other party may be ordered as a prerequisite to that relief.

2. A default judgment may be vacated by the judge more than ten days after finally effective upon a proper showing by the defendant that he did not receive a summons before the hearing within sufficient time to permit a defense and that he did not receive notice of the order for default judgment within sufficient time to permit him to apply for relief within ten days after notice. Said vacation, if ordered, shall grant a new trial on the merits and may be conditioned upon payment of absolute or conditional costs not to exceed $25.00. The clerk shall promptly notify the other party, under either of subsections (1) or (2) of the new trial date.

1.21 Removal to County Court; Appeal

1. Trial de novo. Any person aggrieved by an order for judgment entered by a conciliation judge after contested hearing may remove the cause to county court for trial de novo. An "aggrieved person" may be either the judgment debtor or creditor.

2. Removal Procedure. To effect removal, the aggrieved party must perform all the following within ten days after the date the clerk mailed to him notice of the judgment order:

a. Serve on the opposing party, by personal service, a demand for removal of the cause to county court for trial de novo, stating whether trial demanded is to be by court or jury; the demand shall indicate name, address, and telephone number of the aggrieved party's attorney, if any.

b. File with the clerk of conciliation court the original demand for removal with proof of service. If the opposing party cannot be found for personal service of the demand within the ten day period, the aggrieved party may file with the clerk within said ten day period the original and copy of the demand together with and affidavit by himself or his attorney showing that after due and diligent search the opposing party cannot be located. Thereupon the clerk shall mail the copy of the demand to the opposing party at his last known residence address.

c. File with the clerk of conciliation court an affidavit by the aggrieved party or his attorney stating that the removal is made in good faith and not for purposes of delay.

d. Pay to the clerk of conciliation court as the fee for removal the amount prescribed by law for filing a civil action in county court.

3. Limited Removal.

a. When a motion for vacation of an order for judgment, or judgment under Rule 1.20 subds. 1 or 2, is denied, the aggrieved may demand limited removal to the county court for hearing de novo his motion. Procedure for service and filing of the demand for limited removal and notice of hearing de novo and proof of service thereof and procedure in case of inability of the aggrieved party to make personal service on the opposing party shall be in the same manner prescribed in Rule 1.21 subd. 2(a) and (b). The fee payable by the aggrieved party to the clerk of conciliation court for limited removal shall be the same as the filing fee prescribed by law for filing of a civil action in county court, which shall be paid by the clerk of conciliation court to the clerk of county court, together with filing of the removal demand, notice of hearing, and other papers filed in conciliation court in the cause. The clerk of county court shall then place the matter on the special term calendar for the date specified in the notice. At the hearing in county court, either party may be represented by an attorney at law.

b. A county court judge or judicial officer other than the conciliation court judge who denied the motion, shall hear the motion de novo and may (1) deny the motion or (2) grant the motion. In determining the motion the judge shall consider the entire file plus any affidavits submitted by either party or their attorneys.

c. The clerk of county court shall send by mail a copy of the order made in county court after de novo hearing to both parties and return the file to the clerk of conciliation court.

4. Demand for Jury Trial. Where no jury trial is demanded on removal by the aggrieved party, if the opposing party desires a jury trial he shall serve a demand therefor upon the aggrieved party or his attorney and file the demand with proof of service thereon with the clerk of conciliation court within ten days after the demand for removal was served on him.

5. Removal Perfected; Vacating of Judgment. When all removal papers have been filed properly and all requisite fees paid as herein provided the removal is perfected; the conciliation court judge shall prepare and file an order vacating the order for judgment in conciliation court together with a certificate setting out generally proceedings had, issues tried and the order entered in conciliation court.

6. Clerk's Duties upon Removal. Upon filing of the judge's order and certificate (subd. 5) the clerk of conciliation court shall pay to the clerk of the county court the removal fee and shall file in county court the whole contents of the conciliation court file of the cause.

7. Note of Issue not Necessary. No note of issue shall be necessary upon removal to county court. The matter shall be set for trial as if a note of issue had been filed in conciliation court. (Amended June 11, 1975.)

1.22 Issues; Amendments in County Court

Issues for trial in county court shall be those in conciliation court as set out in the judge's certificate; however, amendments to the issues may be granted in county court on motion therein brought in the usual manner for such motions; granting or denial of such motions shall be in the discretion of the judge of county court. Provided, however, that if either party seeks to increase the amount of a claim or counterclaim, the party seeking the increase shall give notice to the opposing party by serving upon him a formal complaint, as provided by the Rules of Civil Procedure for the Municipal Courts.

1.23 Procedure in County Court

Trial in the county court shall, except as otherwise expressly provided in these rules, be as if originally commenced therein, and according to the rules of civil procedure governing trials therein. In county courts having more than one judge, the judge who presided in conciliation court shall not preside in the appeal.

1.24 Costs in County Court

Should the judgment creditor remove the cause to county court, and the final judgment be increased by $10.00 or less, he shall recover no costs in county court. If the judgment debtor removes the cause to county court and the final judgment is decreased by $10.00 or less, he shall be entitled to no costs in county court. Should the removing party effect a change in the final judgment, in his favor, in excess of $10.00 he shall be entitled to costs pursuant to M.S. § 487.23, subd. 5.

1.25 Appeal

The judgment of the county court on removal from conciliation court in any cause may be appealed to the district court in the manner provided by law. (M.S. § 487.39)

1.26 Local Rules

Any court may adopt rules governing its practice not in conflict with these rules.

Part C. Uniform Rules of Procedure for Family Court Dissolution Matters

Adopted by the Minnesota County Court Judges Association, January 11, 1978.

Effective March 1, 1978

(1) Table of Headnotes

(2) Text of Rules

PREAMBLE

These rules are designed to assist the Court and practitioners in the Family Law area by clarifying the procedures and practice of District and County Courts in the area of Family Law. The intent of these rules is 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. These rules may not cover every conceivable situation, and the practitioner must also be guided by pertinent statutes, case law, and the Minnesota Rules of Civil Procedure.

I. GENERAL

1.01 Rules of Civil Procedure

The Minnesota Rules of Civil Procedure for the District and County Courts of Minnesota shall apply to the Family Law practice except where in conflict with applicable statutes.

1.02 Responsibility of Parties Appearing Pro Se

Whenever these rules require that an act be done by counsel or by an attorney, the same duty is required of a party appearing *pro se*.

1.03 Guardian Ad Litem

No relief will be granted in any proceedings involving a minor or incompetent party to the

action until a guardian ad litem has been duly appointed when required by the Court pursuant to M.R.C.P. 17.02. Whenever the Court pursuant to M.S.A. Section 518.165 appoints a guardian ad litem to represent the interest of a child or children, copies of all pleadings and other documents already served in the matter shall be furnished forthwith to the guardian ad litem.

1.04 The Court must be advised by counsel at all hearings in writing if either party is the recipient of public assistance. (See M.S.A. 518.551.) Where a matter is submitted on a stipulation of the parties, and it appears 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 reasonable.

When a party receives or has applied for public assistance, the Petitioner and the Recipient shall file with the Clerk of Court proof of service of 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 child support collection division of the welfare department involved. The Court shall direct that all payments for child support and alimony shall be made to the agency providing the assistance (M.S.A. Section 518.551). Failure to provide notice may result in striking pleadings and/or hearings, at the discretion of the Court.

1.05 Substitution or Withdrawal 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 Court and served upon the opposing counsel of record. No attorney of record shall withdraw without either the consent of the client, order of the Court, properly executed withdrawal, or substitution of attorney.

1.06 Time

a) In computing any period of time prescribed or allowed by these rules, the day of the act, event or default from which the designated period of time begins to run shall not 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 (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

b) When by these rules an act is required or allowed to be done at or within 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 Minnesota Rules of Criminal Procedure for the District Courts, Rules 4.043, 59.03, 59.05 and 60.02, except to the extent and under the conditions stated in them.

c) It should be noted that documents being filed pursuant to these rules must be *received* by the Clerk of Court within the prescribed time period; thus, additional time must be allowed when documents are mailed for filing.

1.07 Jurisdiction and Venue

a. *Service of Summons and Petition*

Service of Summons and Petition in all actions of dissolution, separate 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).

b. *Service Outside of State*

When 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. 518.11.

c. *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 personal jurisdiction over the Respondent, relief shall be limited to: A decree of either dissolution, 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.)

d. *Venue*

Initial pleading must be venued in county of Petitioner's residence. The Court may change venue initially or thereafter for the following reasons:

1. By consent of the parties;
2. When it appears that an impartial trial cannot be had, or
3. The convenience of witnesses and the ends of justice would be served by a change.

Any such request must be by written motion. (M.S.A. 518.09; *State v. District Court of Blue Earth County*, 110 Minn. 501, 126 N.W. 133)

1.08 Motions; Procedure

a. *Custody*

Request for interim custody hearings will be assigned hearing time (check local procedure in the respective district) upon the calendar of the Court. If the matter cannot be adequately heard in the time allotted, the hearing shall be utilized as a pre-hearing conference which will determine the need for additional time.

b. *Other Motions*

All applications for temporary relief and motions, except for custody, 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, based upon good cause shown.

1.09 Attendance at Hearings; Writs of Attachment

Upon the failure of a party to appear in response to an Order of the Court compelling 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 grant the relief requested.

1.10 Corroboration

In a marriage dissolution, annulment, or separate maintenance proceedings, corroborative witness are not required.

1.11 Requirements of Order to Show Cause

In all Orders to Show Cause the following information shall be contained:

a. The statement: It is further ordered that you personally appear before the Honorable _____ on the _____ day of _____, at _____ o'clock in Room _____ (place and address of hearing), to show cause, if any you have, why the Petitioner or Respondent should not have exclusive occupancy of the premises now occupied by both of you. (May be omitted in the event occupancy of the homestead is not an issue.)

b. It is further ordered that all responsive pleadings shall be served and filed not later than two (2) days prior to the scheduled hearing, exclusive of the intervening Saturdays, Sundays, and legal holidays; that the Court may in its discretion disregard any responsive pleadings served and filed less than two (2) days prior to such hearing, and rule on the motion or matter in question.

c. It is further ordered that Petitioner and Respondent are hereby restrained from annoying, molesting or interfering with the other in any manner whatsoever during the pendency of this action, either in or out of the home, either in person, by agent or by telephone.

d. It is further ordered that Petitioner and Respondent are hereby restrained from selling, transferring or encumbering any of the assets owned by the parties herein except in the ordinary course of business.

e. It is further ordered that the Petitioner and Respondent are hereby enjoined from changing any insurance coverage as to amount or beneficiary.

f. It is further ordered that you (name of Respondent), the above-named Respondent, bring to court with you on the date herein above set forth, a verified statement of your earnings for the past six (6) months, or in the alternative, your pay stubs for the past six (6) months.

g. Such other provisions as may be appropriate to the individual case.

II. JURISDICTIONAL MATTERS — FORM OF PLEADINGS

2.01 Title of Proceeding

The title of proceedings under M.S.A. Chapter 518 shall be in the following form:

In Re the Marriage of:

(Name) _____,

Petitioner,

and

(Name) _____,

Respondent.

2.02 Contents of Petition

As required by Minnesota Statutes Chapter 518, the following information shall be included in the Petition for Dissolution of Marriage:

1. The name, address, and county of residence of the Petitioner, and the name and address of the Petitioner's attorney;
2. The place and date of marriage of the parties;
3. The dates of birth of the parties;
4. The name and address, if known, of the Respondent;
5. The name and age of each minor child by date of birth whose welfare may be affected by the controversy;
6. Whether or not a separate proceeding for dissolution of marriage has been commenced by the Respondent and whether such proceeding is pending in any court in this state or elsewhere;
7. An allegation that the Petition is being filed in good faith and for the purposes set forth therein;
8. An allegation that there has been an irretrievable breakdown of the marriage relationship pursuant to Minnesota Statutes Annotated 518.06, as amended;
9. And incorporates by reference the application for temporary relief (shall be omitted if no temporary relief is sought);
10. Any application for permanent alimony or support, child custody, or disposition of property, as well as attorneys' fees and suit money, without enumerating the amounts thereof;
11. A statement that the Petitioner has been for the last year a resident of the state; and
12. Facts concerning public assistance being furnished either party or the children.

A Petition which includes an application for disposition of real property pursuant to subparagraph 10 above shall contain the legal description of the real property involved.

2.03 Optional Pleadings

Additionally, pleading the following will materially assist the Court in achieving a just result:

1. As to property real and personal owned by the parties, or either of them, set forth approximate market values and encumbrances, if any, and whether said property or some portion thereof, is other than property acquired during coverture. (M.S.A. 518.54)
2. The earning capacity and actual earnings, gross and net, of each party to the action and the indebtedness of the parties.
3. Any other allegations or prayers for relief as may be deemed necessary in the particular case.

2.04 Motions to be Supported by Affidavits

All motions and Orders to Show Cause shall be accompanied by appropriate supporting affidavits which shall refer to the numerical format of the Motion or Order to Show Cause and shall be specific and factual.

2.05 Application for Temporary Relief and Responsive Affidavit: Form and Content

The form of Application for Temporary Relief and the responsive affidavit thereto shall be 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 supplemental affidavits providing said narrative affidavits are relevant and material to the temporary hearing.

III. SETTING OF CASES

3.01 Notification of Settlement, Continuance or Cancellation of Scheduled Matters

It shall be counsel's obligation to notify the Clerk of Court and opposing counsel immediately upon settlement, continuance or cancellation of any matter for which time has been allotted in order to allow rescheduling of court time.

3.02 Proceedings by Default

In proceedings in which the default has occurred and in which the Summons and Petition, with proof of service thereof and Note of Issue have been duly filed, the Clerk of Court shall place the matter on the appropriate default calendar. The Note of Issue shall contain the title of the proceedings, the name and address of counsel, and the statement of the foregoing prerequisites.

3.03 Motions; Hearings on Applications for Temporary Relief

Dates for hearings of motions, including hearings on Applications for Temporary Relief, shall be obtained by scheduling a time with a local assignment clerk and filing the proper Note of Issue (if required) with the Clerk of Court.

3.04 Pre-hearing Conference, Contested Proceedings

Upon the filing of a Contested Note of Issue, the Court may place the proceeding upon the pre-hearing calendar. The clerk shall mail notices to counsel of the pre-hearing conference.

3.05 Transfer to Default Calendar upon Stipulation

In the event that a matter is settled and stipulated prior to the time set for a pre-hearing conference or hearing, counsel shall notify the assignment clerk immediately so that the case may be scheduled for hearing on the default calendar. The matter may also be heard as a default at the pretrial conference.

3.06 Final Hearing, Contested Proceeding

Following the pre-hearing conference the clerk shall schedule the proceedings for final hearing. A request for continuance of the final hearing date must be approved by the Court Administrator, Clerk of Court, or other authorized court personnel. The Clerk of Court shall notify counsel of the trial date. It shall be counsel's obligation in the event the matter is settled prior to trial to immediately notify the Clerk of Court that the time allotted for the hearing shall not be needed.

3.07 Bifurcated Hearing on Contested Custody

In the interest of causing the least possible disruption to the lives of the children involved in a marriage dissolution or separate maintenance proceeding, the Court may order a bifurcated permanent custody hearing if it is established in a hearing for temporary relief, pretrial conference, or other preliminary proceedings that the issue of custody is contested. Upon such order, the clerk shall set a time of the bifurcated custody hearing at the first available court date.

3.08 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 ten (10) days after the filing of a Default Note of Issue, of the intention to proceed to judgment. (See Rules 55.01 and 55.02 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 (3) 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 mailed to the Respondent at his last known address.

3.09 Default Involving Stipulation

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 a waiver by said party of his rights under the Soldiers' and Sailors' Civil Relief Act of 1940. 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 parties so appearing:

> I have been advised of my rights to have counsel of my choice, and I hereby expressly waive the right, and have freely and voluntarily signed the foregoing Stipulation.

3.10 Default Not Involving Stipulation

In all default cases where a Stipulation has not been filed, the Court shall be provided with an Affidavit of Default and of Non-Military Status of the defaulting party or a waiver by the party of any rights under the Soldiers' and Sailors' Relief Act of 1940.

3.11 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.

3.12 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 appropriate agency. A copy of the Decree shall be served by mail, by the party submitting the Decree for execution upon the agency involved.

IV. PREHEARING CONFERENCE

4.01 Purpose; Scheduling

The purpose of the prehearing conference is to determine areas of agreement between the parties as to custody, alimony, support or property distribution, to define the contested issues, and to determine time needed for hearing.

4.02 Prehearing Statement

The clerk shall mail to the counsel for the parties a prehearing statement form together with a notice of prehearing conference. Each party shall complete the prehearing statements form and shall serve a copy upon the opposing party and file the statement at least five (5) days prior to the date of the prehearing conference.

4.03 Stipulations; Default Hearings

If a stipulation is reduced to writing before the prehearing conference, the case will be heard as a default at the time scheduled for the conference. In this event, the prehearing statement need not be completed.

4.04 Attendance

Both parties and counsel shall be present at the prehearing conference, except that when a stipulation has been filed, only the party obtaining the Decree and his or her attorney should be present.

4.05 Sanctions

Failure to comply with the above rules relating to prehearing conferences may result in the case being stricken from the contested calendar or the pleadings being stricken and the matter scheduled as a default hearing after three days without further notice to the defaulting party.

V. FINDINGS AND DECREE

5.01 Filing

The Court shall have the Findings and Order for Judgment delivered to the Clerk of Court for filing after they have been signed.

5.02 Money Judgments

Money judgments for unpaid alimony, support, or attorneys' fees, unless based upon a prior temporary order, may be entered only upon Motion and Notice of Motion scheduled for hearing before the Court.

5.03 Default Hearings; Preparation of Findings

The party moving for dissolution or separate maintenance in a default hearing shall provide the court with the original and one copy of the proposed Findings of Fact, Conclusions of Law, and Order for Judgment at or prior to the time of the hearing. One additional copy of these documents shall be provided in the event the welfare department is involved or in the event public assistance is involved pursuant to Rule 1.04 for post-decree supervision.

5.04 Findings; Statement of Grounds

It is not necessary to include in the Findings of Fact the specific evidence or facts which establish the existence of an irretrievable breakdown of the marriage relationship. There need only be included a finding that there exists an irretrievable breakdown.

5.05 Stipulations Entered in Open Court; Preparation of Findings

Proposed Findings of Fact, Conclusions of Law, and Order for Judgment which are drafted by counsel based upon a stipulation entered into in open court shall bear the notation "agreed as to form" followed by the signatures of counsel for both parties before being presented to the court for approval and signature.

5.06 Judgment Providing for Support and/or Alimony

All judgments and decrees which include award of child support (and/or alimony) shall, unless otherwise directed by the Court, 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 through 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 obligation under this proceeding.

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."

VI. REVIEW OF REFEREE'S RECOMMENDED ORDERS AND FINDINGS
(Applies to Hennepin, St. Louis and Ramsey Counties)

6.01 Procedure for Obtaining Review

In addition to fulfilling the requirements of Minnesota Statutes, Section 484.65, Subdivision 9, the party requesting a review of a referee's recommended order or finding shall schedule a date for the review hearing with the assignment clerk. This date shall be included in the notice of review.

6.02 Scope of Review

If the parties had the opportunity to present evidence in a hearing before a referee, the decision of the judge on review shall be based upon the record thereof, except that additional testimony may be allowed upon review, to promote the ends of justice. If the parties did not have the opportunity to present testimony in the hearing before the referee, the court on review shall conduct an evidentiary hearing.

6.03 Transcript of the Record

If review by the judge is to be on a transcript of a hearing before the referee, the moving party shall provide the copy of the transcript to the judge and copy to the opposing counsel at least five days prior to the scheduled date of review.

VII. CONTEMPT PROCEDURE

7.01 Moving Papers; Service; Notice

Contempt proceedings shall be initiated by an Order to Show Cause issued on good cause shown 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 Section 2.04 of these Rules.

7.02 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 is 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 (2) days prior to the scheduled hearing, exclusive of intervening Saturdays and Sundays and holidays.

7.03 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 affidavit 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)

7.04 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 hearings.

APPENDIX 8

RULES OF CIVIL PROCEDURE FOR THE COUNTY MUNICIPAL COURTS

(HENNEPIN AND RAMSEY COUNTIES)

Adopted November 14, 1974
Effective January 1, 1975
As Amended through July 1, 1978

Part A. Table of Headnotes

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Part B. Text of Rules

Rule 1. Scope of Rules

These rules govern the procedure in the municipal 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.

(As amended March 3, 1959, effective July 1, 1959.)

4.02 By Whom Served

When summons or other process is served by a proper officer, fees and mileage shall be allowed therefor. Fur the purpose of these rules, the phrase "proper officer" means any sheriff or any municipal court or police officer authorized, by virtue of his office, to make such service. Any person not a party to the action may make service of a summons.

4.03 Personal Service

Service of summons shall be made within the territorial limits of the municipal court in which the action is brought, 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 designate 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 court's territorial limits, 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 designate 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 within the territorial limits of any municipal court in which the action is brought.

(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 herein 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 or of Territorial Limits of Court

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 territorial limits of the court, 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 plaintiff has acquired a lien upon property or credits within the territorial limits of the court by attachment or garnishment; and

(a) The defendant is a resident individual who has departed from the territorial limits of the court 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.

(2) When the subject of the action is personal property within the territorial limits of the court and in or upon which the defendant has or claims a lien or interest.

(As amended March 3, 1959, effective July 1, 1959; Nov. 10, 1967, effective Feb. 1, 1968.)

4.041 Service of the Complaint

If the defendant shall appear within 10 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 10 days in which to answer the same.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

4.042 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 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.

4.05 Process Other Than Summons; Service of

Process other than summons and subpoena shall be served as directed by the court issuing the same, but only within the territorial limits of the court.

4.06 Return

Service of summons and other process shall be proved by the certificate of the proper officer 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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 of 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 court 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 municipal 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 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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 4.042, 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.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(As amended March 3, 1959, effective July 1, 1959.)

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 caption, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

Rule 8. General Rules

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 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 alternately 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. 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 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 willful 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 4.042. 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

12.03 Motion for Judgment on the Pleadings

After the pleadings are closed by 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 Motions 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 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.
(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.
(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.
(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

13.10 Removal to District Court

If any counterclaim or cross-claim is in an amount in excess of that for which judgment may be given in the municipal court in which the action is pending, or if an equitable defense is interposed, or if it shall appear that title to real estate is involved in any action other than for forcible entry or unlawful detainer, the court shall not proceed to trial therein but the fact shall be recorded and the clerk shall transfer the action to the district court for the district in which the municipal court is located. Thereafter the action shall be proceeded with in the court to which it is transferred as if originally commenced therein, and the costs shall abide the event.

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.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(Added March 3, 1959, effective July 1, 1959.)

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 10 days after service of the amended pleading, unless the court otherwise orders.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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 forth 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.

(As amended March 3, 1959, effective July 1, 1959.)

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) 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

18.02 Joinder of Remedies

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.

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

19.04 *Exception of Class Actions*

This rule is subject to the provisions of Rule 23.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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 Non-Joinder 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(Added March 3, 1959, effective July 1, 1959, as amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968; as amended Nov. 14, 1974, effective Jan. 1, 1975.)

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 concrning 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968; as amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.
(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968; as amended Nov. 14, 1974, effective Jan. 1, 1975.)

26.06. Deleted. Nov. 14, 1974, effective Jan. 1, 1975

Rule 27. Depositions Pending Appeal

If an appeal has been taken to the Supreme Court from a judgment of a municipal court, or before the taking of an appeal if the time therefore has not expired, the municipal court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the municipal court. In such case, the party who desires to perpetuate the testimony may make a motion in the municipal court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in that 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 municipal court.

(As amended Nov. 26, 1969.)

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 letter 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 letter rogatory may be addressed "To the

Appropriate 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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. Stipulations 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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(Amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended March 3, 1959, effective July 1, 1959. Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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 indorsed 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.

(As amended March 3, 1959, effective July 1, 1959; as amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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 parternship or association or governmental agency in accordance with 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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

31.03 Notice of Filing

When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

31.04 Deleted Nov. 14, 1974, effective Jan. 1, 1975

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968; as amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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 therefor 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 or 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968; as amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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 reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended March 3, 1959, effective July 1, 1959; as amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

VI. TRIALS

Rule 38. Jury Trial of Right

38.01 Right Preserved

In actions for the recovery of money only, or of specific personal property, the issues of fact shall be tried by a jury of 6 unless a jury of 12 is demanded or a different number of jurors be agreed upon or a jury trial be waived.

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, whether a jury of 12 is demanded, 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, 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.

(As amended March 3, 1959, effective July 1, 1959; Nov. 10, 1967, effective Feb. 1, 1968.)

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. (Formerly rule 39. Designated as rule 39.01, Nov. 10, 1967, effective Feb. 1, 1968.)

39.02 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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

39.03 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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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 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 day on which the action is first set for trial, if a counterclaim has not been 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.

(As amended March 3, 1959, effective July 1, 1959; Nov. 10, 1967, effective Feb. 1, 1968.)

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 Action Previously Dismissed

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended May 8, 1959, effective July 1, 1959.)

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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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 an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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 contain no such record or entry.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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 a proper officer 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. A subpoena issuing out of any municipal court may be served at any place within the state.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

45.05 Subpoena for a Hearing or Trial

At the request of any party, the clerk of the municipal court shall issue subpoenas for witnesses in all civil cases pending before the court.

45.06 Contempt

Failure to attend as a witness is contempt of court, and, if the subpoena issues out of a municipal court, may be punished by a fine not exceeding $100, or by imprisonment in jail not exceeding 90 days.

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.

(As amended Nov. 26, 1969.)

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 impanelled 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.

(Added Nov. 10, 1967, effective Feb. 1, 1968.)

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 actions 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 instruction or comment erroneous, misleading or confusing to the jury.

(As amended Jan. 5, 1973.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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 discharged, 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968; as amended Jan. 5, 1973.)

Rule 52. Findings by the Court

52.01 Effect

In all actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. 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 municipal court an objection to such findings or has made a motion to amend them or a motion for judgment.

(As amended March 3, 1959, effective July 1, 1959; Nov. 10, 1967, effective Feb. 1, 1968.)

Rule 54. Judgments; Costs

54.01 Definition; Form

Judgment as used in these rules means the final determination of the rights of the parties in an action or proceeding. A judgment shall not contain a recital of pleadings, 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.

(As amended March 3, 1959, effective July 1, 1959.)

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 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, and order judgment accordingly.

(4) When service of the summons has been made by published notice, or by delivery of a copy without the territorial limits of the court, 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 virtue of the judgment in case a defense is thereafter permitted and sustained.

(As amended March 3, 1959, effective July 1, 1959.)

(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 virtue 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 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

56.02 For Defendant Party

A party against whom a claim, counterclaim, or cross-claim is asserted 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.

(As amended March 3, 1959, effective July 1, 1959.)

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 there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(As amended March 3, 1959, effective July 1, 1959.)

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 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.

(As amended March 3, 1959, effective July 1, 1959.)

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.

(As amended March 3, 1959, effective July 1, 1959; Nov. 10, 1967, effective Feb. 1, 1968.)

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, 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 or decision 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 or decision 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.

(As amended March 3, 1959, effective July 1, 1959; Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended March 3, 1959, effective July 1, 1959; Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

59.07 Case; How and When Settled [Deleted Effective Feb. 1, 1968]

59.08 Settling Case; When Judge Incapacitated [Deleted Effective Feb. 1, 1968]

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.

(As amended Nov. 26, 1969.)

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, 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 4.042, 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.

(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

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.

62.03 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.

(As amended Nov. 26, 1969.)

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, except to hear a motion for change of venue, if he be interested in its determination or if he might be excluded for bias from acting therein as a juror.

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 five 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 court 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 court, or if there be only one judge of the court, then to a special municipal judge if there be one.

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 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 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 a municipal 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 M.S.A. 1971, c. 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.

(As amended Nov. 14, 1974, effective Jan. 1, 1975.)

IX. MUNICIPAL COURTS AND CLERKS

Rule 77. Municipal Courts and Clerks

77.01 Municipal Courts Always Open

The municipal 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 within the territorial limits of the court.

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 of 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.

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

81.001 Forcible Entry and Unlawful Detainer

These rules do not govern procedure and practice in actions for forcible entry and unlawful detainer.

81.002 Amendment of Findings and New Trial

The provisions of these rules relating to amendment of findings and new trial apply only to municipal courts from which appeal may be taken direct to the Supreme Court.

81.02 Appeals to Municipal and District Courts

These rules do not supersede the provisions of statutes relating to appeals to the municipal and district courts.

81.03 Rules Incorporated into Statutes

Where any statute heretofore or hereafter enacted 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 municipal courts or the venue of actions therein.

Rule 83. Rules by Municipal Court

Any court may adopt rules governing its practice, and the judges of the municipal courts, pursuant to M.S.A. 1949, § 488.29, may adopt rules not in conflict with these rules.

Rule 84. Forms

Rule 84 of the "Rules of Civil Procedure for District Courts" is applicable to municipal courts to the extent feasible.

Rule 85. Title

These rules may be known and cited as the Municipal Court Rules of Civil Procedure, and a particular rule may be cited as "MC Rule ____."

Rule 86. Effective Date

86.01 Effective Date

These rules will take effect on January 1, 1954. 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.

(Formerly rule 86. Designated as rule 86.01, March 3, 1959, effective July 1, 1959.)

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.

(Added March 3, 1959, effective July 1, 1959, as amended Nov. 10, 1967, effective Feb. 1, 1968.)

PART C. INDEX

APPENDIX 9
JUVENILE COURT PROCEEDINGS

Rules Effective March 1, 1969
As Amended through July 1, 1978

Part A. Table of Headnotes

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Part B. Text of Rules

ARTICLE 1. GENERAL PROVISIONS

Rule 1–1. Title; Purpose and Scope; Effective Date

(1) These rules shall be known as the "Minnesota Juvenile Court Rules," and may be cited by the symbol "Minn. JCR," as in "Minn. JCR 1–1(1)."

(2) The purpose of these rules is to implement provisions of the Minnesota Juvenile Court Act (Minnesota Statutes Annotated, Chapter 260, sections of which are hereinafter cited as MSA § 260.000) in such a manner as to provide for the just determination of all juvenile court causes. To that end procedures in such causes shall be governed by these rules and the Minnesota Juvenile Court Act.

(3) These rules shall take effect on March 1, 1969. They shall govern all proceedings in juvenile court causes commenced after that date and all further proceedings in juvenile court causes pending as of that date.

Rule 1–2. Definitions

As used in these rules, unless the context otherwise requires, the term:

(a) "Adjudicatory hearing" means a hearing for the purpose of determining whether a child is delinquent or neglected or dependent or a traffic offender or whether parental rights should be terminated.

(b) "Cause" or "juvenile court cause" means any action over which the juvenile court has original and exclusive jurisdiction pursuant to MSA § 260.111, except an adoption action and proceedings for judicial consent to marriage.

(c) "Child" means an individual under 18 years of age or an individual under 21 years of age who is alleged to have been delinquent or to have committed a traffic offense prior to having become 18 years of age. A child is the subject of a cause if the petition filed or to be filed in the cause charges or is likely to charge that he is delinquent or neglected or dependent or that he is a traffic offender or that the parental rights of his parents should be terminated.

(d) "Court" or "juvenile court" means each Minnesota county probate court having juvenile court jurisdiction, and includes the judge of such a court and any referee appointed by the judge pursuant to MSA § 260.031.

(e) "Delinquent" means any one or more of the conditions specified in MSA § 260.015(5).

(f) "Dependent" means any one or more of the conditions specified in MSA § 260.015(6).

(g) "Detention" means the temporary placement of a child in a detention facility pending filing of a petition in a juvenile court cause, or pending disposition of a cause commenced by filing of such petition. "Continued detention" means a detention extended beyond its original expiration time by order of the court.

(h) "Detention facility" means a facility authorized by MSA §§ 260.171(2) and .175 for detention purposes.

(i) "Dispositional hearing" means a hearing for the purpose of determining what shall be done with or about a child who has admitted the allegations of a delinquency or traffic offender petition or who has been adjudicated delinquent or neglected or dependent or a traffic offender or whose parents' parental rights have been adjudicated terminated.

(j) "Guardian" means the guardian of the person of a child appointed by order of a court.

(k) "Guardian ad litem" means a person appointed pursuant to Article 9 of these rules to protect the interests of a child in a juvenile court proceeding.

(l) "Hearing" means any proceeding in a juvenile court cause before the court, whether summary in nature or by examination of such witnesses as may be produced.

(m) "Neglected" means any one or more of the conditions specified in MSA § 260.015(10).

(n) "Parent" means the legal and natural parent of a child who is the subject of a juvenile court cause, or his parent by adoption if the child has been legally adopted. If the child has two legal and natural parents or two adoptive parents, as the case may be, the term "parent" means both such parents. If the child has neither a legal and natural parent nor an adoptive parent, the child's guardian shall be deemed his parent for purposes of these rules unless the court shall have appointed a guardian ad litem for the child pursuant to Article 9. Whenever the court appoints a guardian ad litem for the child, the guardian ad litem shall be deemed the child's parent for purposes of these rules.

(o) "Party" means a child who is the subject of a cause, his spouse, if any, his parent, the guardian of the child's person, if such a guardian has been appointed by order of the court, and any other person designated by the court as a party in a given cause.

(p) "Person" means an individual, association, corporation or partnership and the state or any of its political subdivisions, departments or agencies.

(q) "Petition" means the legal document by means of which a juvenile court cause is commenced.

(r) "Representative of the state" means the court, any member of the court's staff, including probation officers, the county attorney, any member of the county attorney's staff, a peace officer and any other employee or agent of the state or any of its political subdivisions, departments or agencies.

Rule 1-3. Recording of Hearings

(1) A verbatim recording of all juvenile court hearings other than those in traffic offender causes shall be made by a stenographic reporter or by an electronic sound recording device. A verbatim recording of hearings in traffic offender causes need not be made unless the child who is the subject of the cause or his parent so requests. If the recording is made by an electronic sound recording device, such device shall be operated, and any required transcripts shall be prepared, by personnel assigned by the court for that purpose.

(2) Transcripts of juvenile court hearings for further use in the same cause or on appeal or in an habeas corpus action or for such other use as the court shall deem proper shall be made available to the parties upon application to the court.

(3) If a party applies to the court for a transcript of all or part of a juvenile court hearing for an authorized use, as hereinabove described, and such party makes a showing that he cannot afford to pay the cost of preparation of such transcript, the court shall direct the preparation and delivery of the transcript to such party at county expense.

(4) An application for a transcript shall be submitted to the court in writing or orally as part of any hearing of which a record is made.

(5) The court may order destruction of the verbatim recording of hearings in a juvenile court cause:

(a) when the cause is dismissed; or

(b) the later of:

(i) 6 months after the entry of an order adjudicating the child delinquent or neglected or dependent or a traffic offender or adjudicating the termination of his parent's parental rights, as the case may be; or

(ii) when the child is no longer in custody pursuant to an order of the court.

Rule 1–4. Appearance of Attorneys

(1) An attorney shall enter his appearance in a juvenile court cause by filing a written notice of appearance with the court, or by appearing personally at a hearing and advising the court that he is representing a party.

(2) An attorney who has entered his appearance shall not be permitted to withdraw from the cause until any appeal has been decided, except by leave of the court after notice of his intended withdrawal is served by him on the party he represents.

Rule 1–5. Waiver of Rights

(1) Any right accorded a party by these rules or the Minnesota Juvenile Court Act may be waived by such party with court permission, except a child's right to counsel at a hearing to determine whether a delinquency cause shall be referred for prosecution, when the cause involves an alleged act by the child which would be a felony if committed by an adult, and except a child's right to non-disclosure of juvenile court records as provided in Article 11 of these rules.

(2) When the party is an adult, the court may permit waiver if the court is satisfied that the party has been fully informed of, and intelligently waives, the right.

(3) When the party is a child, the court may permit waiver, provided that:

(a) if the child is not 14 years of age, the court is satisfied that the child's parent has been fully informed of, and intelligently waives, such right on the child's behalf; or

(b) if the child is 14 years of age or older, the court is satisfied that both the child and his parent have been fully informed of, and intelligently waive, the child's right.

Rule 1–6. Referees; Appointment

One or more referees may be appointed by the judge of the juvenile court in the manner, for the purposes, and with the powers, set forth in MSA § 260.031. The judge shall not appoint as referee any person who has contemporaneous responsibility for working with, or supervising the behavior of, children who are subject to dispositional orders of the appointing court or any other juvenile court.

ARTICLE 2. BASIC RIGHTS

Rule 2–1. Right to Counsel

(1) Each party to a juvenile court cause shall have the right to be represented by counsel at any and all stages of the cause. If the party is a child, his right to counsel shall arise the moment he is taken into custody by a representative of the state and shall include the right of the child to consult with counsel at reasonable times while he is in custody or in detention.

(2) If a party other than a child who is the subject of the cause or his parent cannot afford to retain counsel, such party shall have the right to representation by counsel appointed by the court at county expense.

(3) If the parent of a child who is the subject of the cause cannot afford to retain counsel:

(a) the parent and the child shall be entitled to representation by counsel appointed by the court at county expense; and

(b) if the interests of the parent and the child, considered in the context of the cause, do not appear to the court to conflict, their right to appointed counsel shall be to single counsel to represent both parties. If such interests do appear to the court to conflict, the right of the parent and the child to appointed counsel shall be to separate counsel to represent each party.

(4) If the parent of a child who is the subject of the cause can afford to retain counsel, but the interests of the parent and the child, considered in the context of the cause, appear to the court to conflict, the child shall have a right to separate counsel appointed by the court, and the court may order that service of such counsel shall be at the parent's expense.

(5) For purposes of this rule, the interests of a child and his parent shall be deemed to conflict in a neglect or dependency or termination-of-parental-rights cause.

(6) Whenever these rules require that a party be given notice of his right to counsel and whenever a representative of the state notifies a party of his right to counsel, such notice shall explain to the party his rights as set forth in Rules 2–1(1) and 2–1(2) or 2–1(3)(a), as the case may be.

Rule 2–2. Right to Remain Silent

(1) A child who is the subject of a delinquency or traffic offender cause shall have the right to remain silent at any and all stages of the proceedings prior to the entry of an order adjudicating him delinquent or a traffic offender or noting that he has admitted the allegations of the petition. The child's right to remain silent shall arise the moment he is taken into custody by a representative of the state and shall include any period during which he is held in custody or in detention.

The right to remain silent shall include the right of the child in custody not to be interrogated by a representative of the state except in the presence of at least one of his parents and the right of the child to be informed, in the presence of at least one of his parents:

(a) that the child has a right to remain silent; and

(b) that any statement made by the child might be used in a juvenile court cause against him or his parent; and

(c) of the child's right to counsel as set forth in Rules 2–1(1) and 2–3(1)(a); and

(d) that the child has a right to consult with counsel prior to the making of any statement.

(2) *Out-of-court statements of a child who is the subject of a delinquency or traffic offender* cause obtained by a representative of the state in violation of the child's right to remain silent as set forth in Rule 2–2(1) and any evidentiary fruits of such statements shall not be admissible at the adjudicatory hearing in the cause.

(3) Statements tending to support the allegations of the petition and made by the child who is the subject of the cause in connection with any other juvenile court cause shall not be admissible in evidence at the adjudicatory hearing unless the child shall introduce in evidence statements from the other cause which tend to disprove the allegations of the petition.

(4) Whenever these rules require that notice be given of a child's right to remain silent and whenever a state representative gives notice of a child's right to remain silent, such notice shall explain the right as set forth in Rule 2–2(1).

Rule 2–3. Other Basic Rights

(1) In all juvenile court causes, a party shall have the right:

(a) to introduce evidence and otherwise be heard on his own behalf; and

(b) to cross-examine witnesses testifying against him; and

(c) to inspect any report filed with the court, and if it is admitted in evidence to cross-examine the preparer of such report; and

(d) to obtain a transcript of the record of proceedings; and

(e) to appeal decisions of the juvenile court in accordance with MSA § 260.291; and

(f) to have subpoenas issued by the court requiring the attendance and testimony of witnesses or the production of papers at any juvenile court hearing, at the requesting party's expense, unless such party shall make a satisfactory showing to the court of financial inability to bear the expense, in which case the subpoenas shall be issued at county expense.

(2) Whenever these rules require that a party be given notice of his "other basic rights" and whenever a representative of the state gives notice to a party of his other basic rights, such notice shall explain those rights as set forth in Rule 2–3(1).

ARTICLE 3. PETITION

Rule 3–1. Intake

(1) Every petition filed with the juvenile court, except a certificate transferring a cause from another court pursuant to MSA § 260.115 and a notice to appear filed in connection with a juvenile traffic offense pursuant to MSA § 260.193(2), shall be:

(a) drafted by the county attorney upon a showing to him of reasonable grounds to support the petition, and

(b) filed by the person who has knowledge of the facts alleged and who shall have verified the same pursuant to MSA § 260.131(2).

(2) If the juvenile court orders the filing of a new petition in a cause transferred from another court pursuant to MSA § 260.115, such petition shall be prepared and filed in accordance with these rules and MSA § 260.131.

Rule 3–2. *Contents of Delinquency Petitions*

(1) Every petition filed with the juvenile court in a delinquency cause shall conform to the requirements of MSA § 260.131, shall contain a statement that the child is delinquent, and:

(a) if the charge of delinquency is based on violation of a state or local law or ordinance (pursuant to MSA § 260.015(5)(a)), or violation of a federal law or a law of another state (pursuant to MSA § 260.015(5)(b)), the petition shall contain:

(i) a citation to the subdivision of MSA § 260.015(5) on which the petition is based, together with a recitation of the relevant portion of such subdivision; and

(ii) a citation to, or a recitation of, the law or ordinance allegedly violated; and

(iii) a clear and particularized statement of the facts on which the petitioner relies for the assertion that the child has violated the law or ordinance, including the time and place of alleged violation.

(b) if the charge of delinquency is based on MSA § 260.015(5)(c), (d) or (e), the petition shall contain:

(i) a citation to the subdivision of MSA § 260.015(5) on which the petition is based, together with a recitation of the relevant portion of such subdivision; and

(ii) a clear and particularized statement of the facts on which the petitioner relies for the assertion that the child is delinquent within the meaning of the portion of the subdivision of MSA § 260.015(5) on which the petition is based.

(2) If the child who is the subject of a delinquency petition is held in detention at the time the petition is filed, the petition may contain a statement that the child is held in detention, and if so, it shall recite the location of the detention facility, the time the child was taken into custody and the time he was delivered to the detention facility. If the petitioner believes that the immediate welfare of the child or the protection of the community requires that the child continue to be held in detention, the petition may contain a statement of such belief, the reasons for such belief and a recital of facts supporting such reasons.

(3) If the child who is the subject of a delinquency petition is not held in detention at the time the petition is filed and if the petitioner believes that the immediate welfare of the child or the protection of the community requires that the child be taken into custody, the petition may contain a statement of such belief, the reasons for such belief and a recital of facts supporting such reasons.

Rule 3–3. Contents of Neglect Petitions

(1) Every petition filed with the juvenile court in a neglect cause shall conform to the requirements of MSA § 260.131, shall contain a statement that the child is neglected, and:

(a) if the charge of neglect is based on MSA § 260.015(10) (a), (b), (c), (d), (e) or (g), the petition shall contain:

(i) a citation to the subdivision of MSA § 260.015(10) on which the petition is based, together with a recitation of the relevant portion of such subdivision; and

(ii) a clear and particularized statement of the facts on which the petitioner relies for the assertion that the child is neglected within the meaning of the portion of the subdivision of MSA § 260.015(10) on which the petition is based.

(b) if the charge of neglect is based on MSA § 260.015(10)(f), the petition shall contain:

(i) a citation to MSA § 260.015(10)(f); and

(ii) a statement that the child is living in a facility for foster care which is not licensed as required by law and without court order; and

(iii) the name of the person or persons operating such foster care facility and its address.

(c) if the charge of neglect is based on MSA § 260.015(10)(h), the petition shall contain:

(i) a citation to MSA § 260.015(10)(h); and

(ii) the statements required by the relevant section of Rule 3–2 (Contents of Delinquency Petitions), except for the statement charging that the child is delinquent; and

(iii) a clear and particularized statement of the facts on which the petitioner relies for the assertion that what would otherwise be the child's delinquency results in whole or in part from parental neglect.

(2) The provisions of Rules 3–2(2) and 3–2(3) shall also apply to the contents of a neglect petition.

Rule 3–4. Contents of Dependency Petitions

(1) Every petition filed with the juvenile court in a dependency cause shall conform to the requirements of MSA § 260.131, shall contain a statement that the child is dependent, and:

(a) if the petition charges dependency based on MSA § 260.015(6)(a), the petition shall contain:

(i) a citation to MSA § 260.015(6)(a); and

(ii) a statement that the child is without a parent, guardian or other custodian.

(b) if the petition charges dependency based on MSA § 260.015(6)(b), the petition shall contain:

(i) a citation to MSA § 260.015(6)(b); and

(ii) a statement that the child is in need of special care and treatment required by his physical or mental condition, as the case may be, and that his parent, guardian or other custodian is unable to provide it; and

(iii) a clear and particularized statement of the facts on which the petitioner relies for the assertion that the child is in need of special care and treatment, including the nature of the condition giving rise to such need, and the assertion that the child's parent, guardian or other custodian is unable to provide such care and treatment.

(c) if the petition charges dependency based on MSA § 260.015(6)(c), the petition shall contain:

(i) a citation to MSA § 260.015(6)(c); and

(ii) a statement that the child's parent, guardian or other custodian for good cause desires to be relieved of the child's care and custody; and

(iii) a clear and particularized statement of the facts upon which the parent, guardian or other custodian relies for the assertion of good cause to be relieved of the obligations of care and custody.

(d) if the petition charges dependency based on MSA § 260.015(6)(d), the petition shall contain:

(i) a citation to MSA § 260.015(6)(d); and

(ii) a statement that the child is without proper parental care because of the emotional or mental or physical disability or state of immaturity, as the case may be, of his parent, guardian or other custodian; and

(iii) a clear and particularized statement of the facts upon which the petitioner relies for the assertion that the child is without proper parental care and for the assertion that such lack of care results from the emotional or mental or physical disability or state of immaturity, as the case may be, of his parent, guardian or other custodian.

(2) The provisions of Rules 3–2(2) and 3–2(3) shall also apply to the contents of a dependency petition.

Rule 3–5 Contents of Termination-of-Parental-Rights Petitions

(1) Every petition filed with the juvenile court in a termination-of-parental-rights cause shall conform to the requirements of MSA §§ 260.231(1), .131(2) and .131(3). In addition the petition shall contain:

(a) a statement that parental rights should be terminated; and

(b) a citation to the relevant subdivision of MSA § 260.221 on which the petition is based, together with a recitation of the relevant portion of such subdivision; and

(c) a clear and particularized statement of the facts upon which the parents rely for their assertion that good cause exists for termination of parental rights, if the petition is based on MSA § 260.221(a), or a clear and particularized statement of the facts upon which the petitioner relies for the assertion that one or more of the conditions set forth in MSA § 260.221(b) exists, if the petition is based on a subdivision of MSA § 260.221(b).

(2) The provisions of Rules 3–2(2) and 3–2(3) shall also apply to the contents of a termination-of-parental-rights petition.

Rule 3–6. Amendment of Petition

(1) A delinquency petition or a notice to appear in a traffic offender cause may be amended by order of the court at any time:

(a) prior to the introduction of evidence at the adjudicatory hearing without consent of the parties to the cause; or

(b) subsequent to the introduction of evidence at the adjudicatory hearing with consent of all the parties to the cause.

(2) A neglect or dependency or termination-of-parental-rights petition may be amended by order of the court at any time:

(a) prior to entry of an adjudicatory order, without consent of the parties to the cause; or

(b) subsequent to the entry of an adjudicatory order, with consent of all parties to the cause.

(3) If the court orders amendment of a petition or notice to appear, it shall grant the parties such additional time to prepare for further proceedings in the cause as may be required to insure a full and fair hearing.

ARTICLE 4. SUMMONS AND NOTICE

Rule 4–1. Issuance of Summons and Initial Notice; Recipients

(1) Upon the filing of a delinquency or dependency or neglect petition, the court shall:

(a) dismiss the petition if it fails on its face to disclose a jurisdictional basis for the cause; or

(b) promptly fix a time for an adjudicatory hearing. Unless the court elects to use the notice-in-lieu-of-summons procedure authorized by Rule 4–3, the court shall promptly cause the issuance of a summons and, if applicable, an initial notice, to the persons specified in MSA § 260.135(1) and (2), respectively, except that the summons shall be directed to, and shall be served upon, the child as well as the person who has custody or control of the child at the time of issuance of the summons. The summons and initial notice, if any, shall be served in the manner provided in MSA § 260.141.

(2) Upon the filing of a termination-of-parental-rights petition, the court shall:

(a) dismiss the petition if it fails on its face to disclose a jurisdictional basis for the cause; or

(b) promptly fix a time for an adjudicatory hearing; and

(c) promptly cause an initial notice of hearing to be issued and served on the parents, as provided in MSA § 260.231(3), and on the child.

(3) Upon the filing of a notice to appear in a traffic offender cause, the court shall:

(a) dismiss the notice if it fails on its face to disclose a jurisdictional basis for the cause; or

(b) promptly fix a time for an adjudicatory hearing. Unless the court elects to use the notice-in-lieu-of-summons procedure authorized by Rule 4–3, it shall then cause the issuance and service of a summons and, if applicable, an initial notice, upon the persons and in the manner provided in MSA § 260.193(2), except that the summons shall be directed to, and shall be served upon, the child as well as the person who has custody or control of the child at the time of issuance of the summons.

Rule 4–2. Contents of Summons and Initial Notice

The summons served in a juvenile court cause shall require the persons to whom it is directed to appear at the adjudicatory hearing. The summons and any initial notice shall have a copy of the petition attached thereto. The summons and any initial notice shall contain:

(a) the time and place of the hearing; and

(b) a statement describing the purpose of the adjudicatory hearing and the possible consequences thereof; and

(c) if the court has decided to consider reference of the cause for prosecution, a statement that the court will consider the desirability of referring the cause for prosecution, a recitation of the reasons for consideration of reference, and a statement that in the event the court concludes not to refer the cause it may proceed with the adjudicatory hearing.

(d) a statement of rights, explaining the right to counsel, the right to remain silent and other basic rights, as set forth in Rules 2–1, 2–2 and 2–3, respectively. In addition, the statement of rights shall inform the recipient of the summons or notice that:

(i) if he desires to retain an attorney, he should do so immediately, in order that he may be ready at the hearing date; and

(ii) if he desires to be represented by an attorney but cannot afford the cost, he should immediately notify the court that he wants a court-appointed attorney; and

(e) such other matters as the court may deem appropriate.

Rule 4–3. Notice-in-Lieu-of-Summons

In delinquency or neglect or dependency or traffic offender causes, the court, in its discretion, may cause the issuance of a notice-in-lieu-of-summons to the child and to the person who has custody or control of the child. Such notice-in-lieu-of-summons and any initial notice issued pursuant to Rule 4–1 may be delivered by mail, instead of by personal service, shall meet the requirements of Rule 4–2 and shall contain a statement that:

(a) the recipient is entitled by statute to have the summons (or notice, as the case may be) served upon him personally by personnel of the sheriff's office;

(b) personal service has been dispensed with for the convenience of the recipient;

(c) if the recipient appears in court for the hearing fixed in the notice, he shall be deemed to have waived issuance and personal service of a summons or personal service of a notice, as the case may be; and

(d) if he does not appear, a summons (or notice, as the case may be) will be served upon him personally by personnel of the sheriff's office.

Rule 4–4. Time of Service

A summons or initial notice served pursuant to Rule 4–1 and a notice-in-lieu-of-summons or an initial notice mailed pursuant to Rule 4–3 shall be delivered to the person to whom it is directed sufficiently in advance of the hearing to which it relates to afford such person a reasonable opportunity to prepare for the hearing. The hearing will not be held at the scheduled time if the summons or initial notice or notice-in-lieu-of-summons has not been delivered at least 72 hours before the time fixed for the hearing, or such later time as may be fixed by statute.

Rule 4–5. Notice of Further Proceedings

Notice of the time, date, place and purpose of any juvenile court hearing subsequent to the initial adjudicatory hearing shall be given to all parties, either in court or by mail or in such other manner as the court may direct.

Rule 4–6. Summonses and Notices to Children

Whenever these rules authorize or require a summons or notice to be given to a child and the child is less than 14 years of age, the summons or notice shall be given to his parent on the child's behalf.

Rule 4–7. Copies of Notices to Attorney

If a party to a juvenile court cause is represented by counsel who has entered an appearance pursuant to Rule 1–4(1), copies of all notices given to the party shall also be given to his counsel.

Rule 4–8. Right to Attend Hearings

Any person who is entitled to summons or notice under these rules or who is given summons or notice shall have the right to attend the hearing to which the summons or notice relates, subject to the discretion of the court to exclude a party from all or part of a hearing pursuant to MSA § 260.155 (5).

ARTICLE 5. ADJUDICATORY HEARINGS

Rule 5–1. Beginning Adjudicatory Hearing

(1) All adjudicatory hearings before the juvenile court shall be conducted in accordance with MSA § 260.155. At the beginning of each such hearing, the court shall:

(a) verify the name, age and residence of the child who is the subject of the cause, and ascertain the relationship of the parties, each to the other; and

(b) ascertain whether all necessary parties are present and identify for those present all persons participating in the hearing; and

(c) ascertain whether notice requirements have been complied with, and if not, whether the affected parties intelligently waive compliance; and

(d) explain to the parties the purpose of the hearing and the possible consequences thereof; and

(e) explain to the parties the right to counsel, right to remain silent and other basic rights, as set forth in Rules 2–1, 2–2 and 2–3 respectively; and

(f) ascertain whether the parties before the court are represented by counsel.

(2) If a party before the court is not represented by counsel, the court shall ascertain whether the party understands his right to counsel. If the party wishes to retain counsel, the court shall continue the hearing a reasonable time to allow the party to obtain and consult with counsel of his choosing. If the party wishes counsel and makes a satisfactory showing to the court of financial inability to retain counsel, the court shall appoint counsel to represent such party and shall continue the hearing a reasonable time to allow the party to consult with his appointed counsel.

(3) If in the light of the standards set forth in Article 9 of these rules the court deems it appropriate to appoint a guardian ad litem for the child who is the subject of the cause, it shall do so, in the manner provided in Article 9. Upon appointment, it shall continue the hearing a reasonable time to allow the guardian ad litem to familiarize himself with the matter, consult with counsel (if the guardian is not acting as counsel) and generally prepare himself for participation in the cause.

(4) If in response to an inquiry by the court under Rule 5–2(1) (a) the child does not admit the allegations of the petition in a delinquency or traffic offender cause, or if for any other reason the court deems continuance appropriate, it may continue the adjudicatory hearing a reasonable time to allow for a full and fair preparation of the cause.

Rule 5–2. Presentation of Evidence; Argument

(1) Evidence in support of the petition shall be presented by the county attorney. Neither the court nor any member of the court staff shall participate in presentation of evidence in support of the petition, except that:

(a) the court may inquire of the child in a delinquency or traffic offender cause whether he admits the jurisdictional allegations of the petition, and if he does, the court may proceed directly to the entry of an adjudicatory order;

(b) the court may ask questions of witnesses or counsel when evidence admitted is unclear in some essential respect; and

(c) members of the court staff may appear as witnesses in the cause.

(2) The parties shall have the right to cross-examine witnesses produced by the county attorney, and to introduce evidence contesting the allegations of the petition.

(3) At the conclusion of the introduction of all the evidence, the court shall give the parties an opportunity to present oral argument. The county attorney shall present his argument first and the other parties shall follow in such order as they shall agree, or if they cannot agree, in such order as the court shall direct.

Rule 5–3. Evidence Admissible

(1) In arriving at its adjudicatory decision, the court shall consider only data which has been formally admitted in evidence. All testimony shall be under oath and may be in narrative form. No evidence that would be inadmissible in a civil proceeding shall be admitted. The admissibility of statements of a party to the cause and any evidentiary fruits thereof shall be governed by the provisions of Rule 2–2(2) and 2–2(3). An out-of-court admission by the child which meets the standards of admissibility set forth in Rule 2–2(2), although admissible in evidence, shall be insufficient to support an adjudication that the child is delinquent or a traffic offender unless the admission is corroborated in whole or in part by other competent evidence.

(2) The admissibility of the results of a social study, medical examination, traffic offense study or reference study shall be governed by the provisions of Rules 10–1(3), 10–2(3), 10–3(3) and 10–4(3), respectively.

Rule 5–4. Adjudication of Status, Standard of Proof and Findings in Delinquency Causes

(1) At the conclusion of the adjudicatory hearing in a delinquency cause, the court shall enter an order in accordance with the following provisions:

(a) If the court is not satisfied that the delinquency has been proved beyond a reasonable doubt (by admission of the allegations or otherwise), it shall enter an order dismissing the petition.

(b) If the court is satisfied that the delinquency has been proved beyond a reasonable doubt (by admission of the allegations or otherwise), it shall enter an order either:

(i) adjudicating the child delinquent, fixing a time for a dispositional hearing to be held in accordance with Article 6 of these rules, and, where appropriate, providing for disposition of the child pending the dispositional hearing; or

(ii) noting that the allegations of the petition have been proved (by admission of the allegations or otherwise), fixing a time for a dispositional hearing to be held in accordance with Article 6 of these rules, and, where appropriate, providing for disposition of the child pending the dispositional hearing; and

(aa) if at the conclusion of the dispositional hearing the court decides not to order an interim disposition without adjudication of delinquency, pursuant to MSA § 260.185(3), it shall enter a superseding adjudicatory order adjudicating the child delinquent; or

(bb) if at the conclusion of the dispositional hearing the court decides to order an interim disposition without adjudication of delinquency, pursuant to MSA § 260.185(3), it shall allow its original adjudicatory order to stand pending expiration of the interim disposition period. If at the conclusion of the interim disposition period, or prior thereto, the court decides that further supervision of the child is unnecessary, it shall enter an order dismissing the cause. If at the conclusion of the interim disposition period, or prior thereto, the court decides that further supervision of the child is necessary, it shall enter an order superseding its original adjudicatory order and adjudicating the child delinquent.

(2) The court shall include in its adjudicatory order, or in a separate document, findings of fact upon which it relies for the adjudication embodied in the order.

Rule 5–5. Adjudication of Status, Standard of Proof and Findings in Neglect and Dependency Causes

(1) At the conclusion of the adjudicatory hearing in a neglect or dependency cause, the court shall enter an order in accordance with the following provisions:

(a) If the court is not satisfied that the neglect or dependency has been proved by clear and convincing evidence (by admission of the allegations or otherwise), it shall enter an order dismissing the petition.

(b) If the court is satisfied that the neglect or dependency has been proved by clear and convincing evidence (by admission of the allegations or otherwise), it shall enter an order either:

(i) adjudicating the child neglected or dependent, fixing a time for a dispositional hearing to be held in accordance with Article 6 of these rules, and, where appropriate, providing for disposition of the child pending the dispositional hearing; or

(ii) noting that the allegations of the petition have been proved (by admission of the allegations or otherwise), fixing a time for a dispositional hearing to be held in accordance with Article 6 of these rules, and, where appropriate, providing for disposition of the child pending the dispositional hearing; and

(aa) if at the conclusion of the dispositional hearing the court decides not to order an interim disposition without adjudication of neglect or dependency, pursuant to MSA § 260.191(4), it shall enter a superseding adjudicatory order adjudicating the child neglected or dependent; or

(bb) if at the conclusion of the dispositional hearing the court decides to order an interim disposition without adjudication of neglect or dependency, pursuant to MSA § 260.191(4), it shall allow its original adjudicatory order to stand pending expiration of the interim disposition period. If at the conclusion of the interim disposition period, or prior thereto, the court decides that further supervision of the child is unnecessary, it shall enter an order dismissing the cause. If at the conclusion of the interim disposition period, or prior thereto, the court decides that further supervision of the child is necessary, it shall enter an order superseding its original adjudicatory order and adjudicating the child neglected or dependent.

(2) The court shall include in its adjudicatory order, or in a separate document, findings of fact upon which it relies for the adjudication embodied in the order.

Rule 5–6. Adjudication of Status, Standard of Proof and Findings in Traffic Offender Causes

(1) At the conclusion of the adjudicatory hearing in a traffic offender cause, the court shall enter an order in accordance with the following provisions:

(a) If the court is not satisfied that commission of the traffic offense has been proved beyond a reasonable doubt (by admission of the allegations or otherwise), it shall enter an order dismissing the petition.

(b) If the court is satisfied that the commission of the traffic offense has been proved, beyond a reasonable doubt (by admission of the allegations or otherwise), it shall enter an order adjudicating the child a traffic offender, fixing a time for a dispositional hearing, and, where appropriate, providing for disposition of the child pending the dispositional hearing.

(2) The court shall include in its adjudicatory order, or in a separate document, findings of fact upon which it relies for the adjudication embodied in the order.

Rule 5–7. Adjudication of Status, Standard of Proof and Findings in Termination-of-Parental-Rights Causes

(1) At the conclusion of the adjudicatory hearing in a termination-of-parental-rights cause, the court shall enter an order in accordance with the following provisions:

(a) If the court is not satisfied that it has been proved by clear and convincing evidence (by admission of the allegations or otherwise) that there is a sufficient basis for termination of parental rights or that the child is neglected or dependent, it shall enter an order dismissing the petition.

(b) If the court is not satisfied that a sufficient basis for termination of parental rights has been proved by clear and convincing evidence (by admission of the allegations or otherwise), or if it considers termination of parental rights to be inappropriate, and if the court is satisfied that it has been proved by clear and convincing evidence that the child is neglected or dependent, it may enter an order pursuant to Rule 5–5(b).

(c) If the court is satisfied that a sufficient basis for termination of parental rights has been proved by clear and convincing evidence (by admission of the allegations or otherwise), and the court considers termination to be appropriate, it shall enter an order terminating parental rights. If the court terminates the parental rights of both parents, or of the mother if the child is illegitimate, or of the only living parent, the court shall include in its adjudicatory order an order transferring guardianship and legal custody of the child pursuant to MSA § 260.241.

(2) If the court terminates parental rights, it shall set forth in a document separate from the adjudicatory order findings of fact upon which it relies for the adjudication embodied in the order. If the court does not terminate parental rights, but does enter an adjudicatory order based on neglect or dependency, pursuant to Rule 5–5(b), it shall include in its adjudicatory order, or in a separate document, findings of fact upon which it relies for the adjudication embodied in the order.

ARTICLE 6. DISPOSITIONAL HEARINGS

Rule 6–1. Separate from Adjudicatory Hearing

A dispositional hearing shall be separate and distinct from the adjudicatory hearing to which it relates. It may be held, however, immediately following the adjudicatory hearing if the court concludes that under the circumstances a continuance to allow the parties to prepare for their participation in the proceeding is unnecessary.

Rule 6–2. Social History; Medical Examination

(1) Prior to the holding of a dispositional hearing:

(a) the court shall order a social study pursuant to Rule 10–1, unless for special reasons in a particular case the court concludes that such a study is unnecessary; and

(b) the court may order medical examinations pursuant to Rule 10–2.

(2) Upon receipt of the social study report and any medical reports, the court shall notify each unrepresented party and counsel for each represented party and make the reports available for inspection, in accordance with the provisions of Rule 10–5(1).

Rule 6–3. Beginning Dispositional Hearing

All dispositional hearings before the juvenile court shall be conducted in accordance with MSA § 260.155. At the beginning of each such hearing, the court shall comply with the provisions of Rule 5–1, unless the dispositional hearing is held immediately following the adjudicatory hearing.

Rule 6–4. Presentation of Evidence; Argument

(1) Presentation of evidence at a dispositional hearing shall be made initially by a probation officer or the county attorney or such other person as the court shall designate. The court may ask questions of the witnesses. The parties shall have the right to cross-examine witnesses produced by the court's designee, and to introduce their own evidence.

(2) At the conclusion of the introduction of all the evidence, the court shall give the parties an opportunity to present argument as to the most appropriate disposition of the cause. The court's designee who has made the initial presentation of evidence shall argue first, and the parties shall follow in such order as they shall agree, or if they cannot agree, in such order as the court shall direct.

Rule 6–5. Evidence Admissible

In arriving at its dispositional decision, the court shall consider only data which has been formally admitted in evidence. All testimony shall be under oath and may be in narrative form. The court may admit any evidence that is material and relevant to disposition of the cause, including hearsay and opinion evidence. The parties shall have the right to examine any person who has prepared any report admitted in evidence.

Rule 6–6. Dispositional Order; Entry

At the conclusion of the dispositional hearing, or at such subsequent date that the court shall fix for the purpose, the court shall enter a dispositional order in accordance with the provisions of MSA §§ 260.185 (delinquent child) or .191 (neglected or dependent child) or .193 (traffic offender) or .241 (termination of rights), as the case may be. The court shall include in such order, or in a separate document, findings which set forth the reasons why the court decided on the particular disposition embodied in its order, and the facts upon which such reasons were based.

Rule 6–7. Dispositional Orders; Review

(1) All dispositional orders which place a child under court-directed supervision pursuant to MSA §§ 260.185(1)(b) or .185(1)(c) (delinquent child) or §§ 260.191(1)(a) or .191(1)(b) (neglected or dependent child) shall be reviewed periodically by the court in accordance with the provisions of this rule.

(2) In delinquency causes:

(a) if the original disposition places the child on probation, pursuant to MSA § 260.185(1)(b), the court shall review the order at least once prior to its expiration date if it is for a fixed period of less than one year or at least annually prior to the anniversary date of the original disposition order if that order was for an indeterminate period or for a fixed period longer than one year; and

(b) if the original disposition order transfers custody of the child to a person specified in MSA § 260.185(1)(c), the court shall review the order at least once prior to its expiration date if it is for a period less than one year, or at least annually prior to the anniversary date of the disposition order if it is for a period more than one year.

(3) In neglect or dependency causes if the original disposition order places the child under protective supervision pursuant to MSA § 260.191(1)(a) or transfers legal custody pursuant to MSA § 260.191(1) (b) the court shall review the order at least once prior to its expiration date.

(4) After reviewing a dispositional order pursuant to this Rule 6–7, the court may order any disposition which it considers appropriate under the circumstances and which it could have ordered under the Minnesota Juvenile Court Act and these rules at the original dispositional hearing; provided, however, that the court may not increase the severity of the disposition, as, for example, changing from probation to a transfer of custody of the child, or requiring harsher conditions of probation, except pursuant to a hearing held in accordance with Article 5 of these rules. Such hearing shall be held pursuant to summons and, if applicable, notice, which complies with Article 4 of these rules. The review proceeding shall be initiated by the filing of a petition which complies with Article 3 of these rules, except that if the basis for review is an alleged violation of the court's original dispositional order, the petition shall include a statement of the conditions of the order, the alleged violation and the facts which the petitioner relies upon for the assertion that the conditions of the order have been violated.

ARTICLE 7. DETENTION

Rule 7–1. Placing the Child in Detention

(1) If a person takes a child into custody pursuant to MSA § 260.165, he shall immediately notify the child's parent that the child is in custody. Except where the immediate welfare of the child or the protection of the community requires that the child be placed in detention, the person

who has taken custody of the child shall release the child, in accordance with the provisions of MSA § 260.171(1), to the custody of his parent or other suitable person on the promise of such person to bring the child to court, if necessary, at such time as the court may direct.

(2) If the person who has taken a child into custody concludes that the immediate welfare of the child or the protection of the community requires that the child be placed in detention, he shall advise the child and the child's parent, if available:

(a) of the reasons why the child has been taken into custody and why he is being placed in detention; and

(b) of the location of the detention facility; and

(c) of the child's right to counsel as set forth in Rule 2–1 and his right to remain silent as set forth in Rule 2–2; and

(d) that the parent and an attorney may make an initial visit to the detention facility at any time and subsequent visits on a reasonable basis during visiting hours; and

(e) that the child may telephone his parent and an attorney from the detention facility immediately after being admitted to detention and thereafter on a reasonable basis; and

(f) that the child or his parent has the right to apply to the court during the first 48 hours of detention (excluding Saturdays, Sundays and holidays) for the child's immediate release; and

(g) that the child may not be held at the detention facility longer than 24 hours (excluding Saturdays, Sundays and holidays) unless a detention order is signed by the court; and

(h) that the child may not be held at the detention facility longer than 48 hours (excluding Saturdays, Sundays and holidays) unless a petition has been filed within that time and the court orders that the child continue to be held in detention pending the holding of a detention hearing.

(3) The person who has taken the child into custody and who has concluded, as aforesaid, that the child should be placed in detention, shall promptly take the child to a detention facility, delivering to the court and the supervisor of the detention facility a signed report, setting forth:

(a) the time the child was taken into custody; and

(b) the time the child was delivered to the detention facility; and

(c) the reasons why the child was taken into custody; and

(d) the reasons why the child has been placed in detention; and

(e) a statement that the child and his parent have received the notifications required by Rule 7–1(2) or the reasons why they have not been so notified.

(4) When a child has been delivered to a detention facility, the supervisor of the detention facility shall deliver to the court a signed report acknowledging receipt of the child. The supervisor of the detention facility shall ascertain from the report of the person who has taken the child into custody whether the child and his parent have received the notifications required by Rule 7–1(2). If the child or his parent or both have not been so notified, the supervisor of the facility shall immediately make the notifications, and shall include in his report to the court a statement that the child and his parent have received the notifications or the reasons why they have not been so notified.

Rule 7–2. Release from Detention During First 48 Hours

(1) A child who has been placed in detention or his parent shall have the right to apply to the court at any time during the first 48 hours of the detention, excluding Saturdays, Sundays and holidays for the child's immediate release. Such application may be made by telephone. If such an application is made, the court shall hold a summary detention hearing on notice to the child, the parent, the supervisor of the detention facility and the person who took the child into custody. At the conclusion of the summary detention hearing the court shall enter an order directing the supervisor of the detention facility:

(a) to release the child immediately to the custody of his parent or other suitable person; or

(b) to so release the child 48 hours, excluding Saturdays, Sundays and holidays, after the time he was placed in detention, unless within such period the supervisor shall receive a court order noting that a petition has been filed and directing further detention pending a formal detention hearing; or

(c) if a petition has already been filed in the cause and the court has decided not to order the immediate release of the child pursuant to Rule 7–2(1)(a), to continue holding the child in detention pending a formal detention hearing.

Copies of the aforesaid order shall be delivered to the child, his parent and the supervisor of the detention facility.

(2) If neither the child nor his parent requests the court for a detention hearing during the first 24 hours of the child's detention, excluding Saturdays, Sundays and holidays, the person who took the child into custody or the supervisor of the detention facility may apply to the court during such period for the continued detention of the child. Such application may be made by telephone. The court need not hold a hearing on such application. After receiving such an application, the court

shall enter an order in compliance with Rule 7–2(1)(a) or (b) or (c), and cause copies thereof to be delivered to the child, his parent and the supervisor of the detention facility.

(3) If during the first 24 hours of the child's detention, excluding Saturdays, Sundays and holidays, the supervisor of the detention facility does not receive a continued detention order entered by the court pursuant to Rule 7–2(1)(b) or (c) or Rule 7–2(2), he shall release the child at the end of such period to the custody of his parent or other suitable person.

Rule 7–3. Release from Detention After First 48 Hours

(1) If a petition is filed with the court within 48 hours, excluding Saturdays, Sundays and holidays, after a child has been placed in detention and if the child is in detention at the time of filing of the petition and if the petition or a separately filed affidavit requests continued detention, the court shall immediately:

(a) notify the supervisor of the detention facility by order that a petition has been filed and that the child is to remain in custody pending a formal detention hearing. Such order may be communicated to the supervisor by telephone, provided a conformatory written order is subsequently delivered; and

(b) schedule the detention hearing and give notice thereof to the child, his parent, the person who took the child into custody, the supervisor of the detention facility and the county attorney. Such notice shall state the time, place and purpose of the detention hearing and the reasons why the child has been placed in detention. The detention hearing shall be held not later than 48 hours after filing of the petition or the court day next succeeding the date of filing, whichever shall be later.

(2) If a child is placed in detention after the filing of a petition and is not released during the first 48 hours of detention, the court shall schedule and give notice of a detention hearing as provided in Rule 7–3(1)(b), except that the hearing shall be held not later than 72 hours, excluding Saturdays, Sundays and holidays, after the child was placed in detention or the court day next succeeding the day the child was placed in detention, whichever shall be later.

(3) The detention hearing shall be conducted in accordance with MSA § 260.155. In addition:

(a) At the beginning of the hearing, the court shall comply with the provisions of Rule 5–1.

(b) Presentation of evidence shall be made initially by the county attorney, and the parties shall have the right to cross-examine witnesses produced by others and to present evidence.

(c) In arriving at its detention decision, the court shall consider only data which has been formally admitted in evidence. All testimony shall be under oath and may be in narrative form. The court may admit any evidence material and relevant to the necessity for detaining the child, including hearsay and opinion evidence. The parties shall have the right to examine any person who prepared any report admitted into evidence.

(d) At the conclusion of the introduction of all the evidence, the court shall give the parties an opportunity to present oral argument. The county attorney shall present his argument first and the other parties shall follow in such order as they shall agree, or if they cannot agree, in such order as the court shall direct.

(e) At the conclusion of the hearing, the court shall enter an order directing either the release of the child to the custody of his parent or other suitable person or his continued detention for a fixed period not to exceed 7 days from and including the date of the order. If the court orders continued detention, it shall include in its order the reasons for continued detention and findings of fact which support such reasons. Copies of the court's order shall be delivered to the parties, including the supervisor of the detention facility, who shall release the child or continue to hold him in detention, as the case may be, in accordance with the court's order.

Rule 7–4. Additional Detention Hearings

If a child held in detention under a court order entered pursuant to Rule 7–3(3)(e) has not been released prior to the expiration of the order, an additional hearing shall automatically be scheduled and held on the next court day following the expiration of the order. The child, his parent, the supervisor of the detention facility and the county attorney shall be notified of this hearing no less than 24 hours prior to the scheduled hearing. The conduct of the hearing shall be governed by, and shall be held in compliance with, the provisions of Rule 7–3(3).

Rule 7–5. Telephoning and Visitation

(1) A child may telephone his parent and attorney immediately after being admitted to a detention facility, and thereafter on a reasonable basis.

(2) Upon being admitted to a detention facility a child may be visited in private by his attorney and by his parent. After the initial visit, the child may be visited by his attorney and his parent on a reasonable basis during visiting hours.

Rule 7–6. Release Report

Whenever a child is released from detention, the supervisor of the detention facility shall file with the court a signed report containing the location of the detention facility, the name of the child, the date and time of release, the name and address of the person to whom the child was released and the reason for the release.

ARTICLE 8. REFERENCE FOR PROSECUTION

Rule 8–1. Initiation of Reference Proceedings

(1) Proceedings to refer a delinquency cause for prosecution pursuant to MSA § 260.125 or to refer a traffic offender cause for prosecution pursuant to MSA § 260.193(4) may be initiated by application of the county attorney or by application of the child who is the subject of the cause or upon the court's own motion.

(2) The county attorney shall make his application for reference prior to commencement of the adjudicatory hearing, and shall either include his application in the petition or submit it by separate written motion. The child shall submit his application for a reference by written motion subsequent to filing of the petition and prior to the introduction of evidence at the adjudicatory hearing. The county attorney or the child, as the case may be, shall include in his application an express request that the cause be referred for prosecution together with a statement setting forth reasons for the request. The county attorney shall also include in his application a statement of the facts supporting the reasons for his request.

(3) If there is reason to believe from the application for reference, or from whatever sources the court considers when it initiates reference proceedings on its own motion, that retention of jurisdiction by the juvenile court would be contrary to the best interests of the child or the public safety, the court shall enter an order fixing a time for a hearing on the matter, stating that reference of the proceedings for prosecution will be considered, and setting forth reasons for consideration of reference.

Rule 8–2. Notice of Reference Hearing

(1) If the summons and notice in connection with the adjudicatory hearing have not yet been issued and served, such summons and notice, the contents of which comply with the provisions of Rule 4–2, shall be issued and served as provided in Rule 4–1(1).

(2) If a summons and notice in connection with the adjudicatory hearing has already been issued and served, the court shall cause a copy of its order scheduling the reference hearing to be served on the same parties served with the summons and notice.

Rule 8–3. Reference Investigation

(1) Prior to the holding of a reference hearing, the court shall order a reference study pursuant to Rule 10–4, unless for special reasons in a particular case the court concludes that such a report is unnecessary.

(2) Upon receipt of the reference study report, the court shall notify each unrepresented party and counsel for each represented party and make the report available for inspection in accordance with the provisions of Rule 10–5(1).

Rule 8–4. Beginning of Reference Hearing

All reference hearings before the juvenile court shall be conducted in accordance with MSA § 260.155. At the beginning of each such hearing, the court shall comply with the provisions of Rule 5–1.

Rule 8–5. Presentation of Evidence; Argument

Presentation of evidence at the reference hearing and argument shall be made in accordance with the provisions of Rule 5–2.

Rule 8–6. Evidence Admissible

In arriving at its reference decision, the court shall consider only data which has been formally admitted in evidence. All testimony shall be under oath and may be in narrative form. The court may admit any evidence that is material and relevant to the decision whether to refer the cause for prosecution, including hearsay and opinion evidence. The parties shall have the right to examine any person who has prepared any report admitted in evidence.

Rule 8–7. Reference Order

(1) At the conclusion of the reference hearing, or at such subsequent date that the court shall fix for the purpose, the court shall enter an order in which it either directs:

(a) retention of jurisdiction by the juvenile court and proceeding with the adjudicatory hearing; or

(b) reference of the cause for prosecution as provided by MSA § 260.125 or § 260.193(4), as the case may be. If the court refers the cause for prosecution, it shall, by separate document, make findings which set forth the reasons why it decided to refer and the facts supporting those reasons.

(2) The court shall not refer a delinquency cause for prosecution pursuant to MSA § 260.125 unless it shall have concluded, from clear and convincing evidence introduced at the reference hearing, that the child is not suitable to treatment or that the public safety would not be served under the provisions of laws relating to juvenile courts. Criteria relevant to such conclusions include such matters as:

(a) the type of offense, including whether it demonstrated viciousness, or involved force or violence; and

(b) whether the offense is part of a repetitive pattern of offenses which indicates that the child may be beyond rehabilitation under the regular statutory juvenile procedures; and

(c) the record of the child; and

(d) the relative suitability of programs and facilities available to the juvenile and criminal courts.

(3) The court shall not refer a traffic offender cause for prosecution pursuant to MSA § 260.193(4) unless it shall have concluded, from clear and convincing evidence introduced at the reference hearing, that the welfare of the child or the public safety would be better served under the laws controlling adult traffic violators.

Rule 8–8. Future Proceedings

(1) If following a reference hearing the court concludes not to refer the cause for prosecution, it may immediately proceed to hold the adjudicatory hearing or may order the holding of such hearing at such subsequent date as it shall deem appropriate under the circumstances.

(2) If the cause is not referred for prosecution and the reference hearing was not held on motion of the child, the judge who conducted the reference hearing shall not preside at the adjudicatory hearing, if the child or his parent so requests. The judge shall advise the child and his parent at the conclusion of the reference hearing that they may request his non-participation in the adjudicatory hearing, and that if they do, arrangements will be made for another judge to preside at the adjudicatory hearing.

ARTICLE 9. GUARDIANS AD LITEM

Rule 9–1. Occasions for Appointment

At any stage in the proceedings of a juvenile court cause — including any period during which a child is held in detention pending the filing of a petition — the court, on its own motion or upon application of a party, shall appoint a guardian ad litem for the child:

(a) if the child has no parent or guardian of his person, or if the parent or guardian of the person cannot be located or cannot be brought before the court; or

(b) if the parent or guardian of the person is excused from participation in all or any part of a juvenile court hearing, pursuant to MSA § 260.155(5); or

(c) if the parent is a minor or an incompetent; or

(d) if the parent is indifferent to the interests of the child or if the interests of the child and the parent, considered in the context of the cause, appear to conflict. For these purposes, the interests of a child and his parent shall be deemed to conflict in a neglect or dependency or termination-of-parental-rights cause and during any detention period prior to filing of a petition where it appears that the petition to be filed will assert a neglect or dependency or termination-of-parental-rights cause; or

(e) in any other instance where the court deems appointment of a guardian ad litem to be in the best interests of the child.

Rule 9–2. Method of Appointment

The court shall make the appointment of a guardian ad litem by order and in such order shall:

(a) designate the nature and extent of the proceedings with respect to which the guardianship shall be effective; and

(b) designate the guardian ad litem a party to the cause.

Rule 9–3. Duties and Rights

A guardian ad litem shall have the duty to protect the interests of the child for whom he has been appointed guardian, and shall be deemed a parent within the meaning of these rules as to those proceedings with respect to which his guardianship extends.

Rule 9–4. Qualifications

Except in causes where there are special reasons why a particular layman would be the most appropriate guardian ad litem for the child, the court shall appoint an attorney as guardian ad litem. A guardian ad litem who is an attorney shall act as his own counsel and as counsel for the child, unless there are special reasons in a particular cause why the guardian or the child or both should have counsel in addition to the guardian. In such causes and in causes where the guardian ad litem appointed by the court is not an attorney, the guardian ad litem shall have the right to counsel, as set forth in Rule 2–1, except that the guardian shall be entitled to appointed counsel without regard to his financial ability to retain counsel. Whether such appointed counsel shall be provided at the cost of the county shall depend on the financial ability of the child's parent.

Rule 9–5. Continuance of Pending Proceedings

Upon appointment of a guardian ad litem, the court shall continue any pending proceeding a reasonable time to allow the guardian to familiarize himself with the matter, consult with counsel and prepare his participation in the cause.

ARTICLE 10. INVESTIGATIONS AND REPORTS

Rule 10–1. Social Studies

(1) A "social study," as used in these rules, is an investigation of the personal and family history and the environment of a child who is the subject of the cause. It may include a reference study, as defined in Rule 10–4(1), and a traffic offense study, as defined in Rule 10–3(1).

(2) The court may order a social study in any juvenile court cause at any time subsequent to the time that the party who is the subject of the cause admits the allegations of the petition, or if he does not admit, at any time subsequent to the time the court finds the allegations of the petition have been proved. For purposes of this rule, the child shall be deemed the subject of a delinquency or traffic offender cause and the parent shall be deemed the subject of a neglect, dependency or termination-of-parental-rights cause.

(3) The report of a social study shall not be admissible in evidence, nor shall it be considered by the court, at the adjudicatory hearing in any juvenile court cause. It shall be admissible in evidence at the dispositional hearing in any juvenile court cause.

Rule 10–2. Medical Examinations

(1) A "medical examination," as used in these rules, is an examination of a child who is the subject of a juvenile court cause or of his parent by a physician or psychiatrist or a psychologist.

(2) The court may order a medical examination in any juvenile court cause at any time subsequent to the time that the party who is the subject of the cause admits the allegations of the petition, or if he does not admit, at any time subsequent to the time the court finds the allegations of the petition have been proved. For purposes of this rule, the child shall be deemed the subject of a delinquency or traffic offender cause and the parent shall be deemed the subject of a neglect, dependency or termination-of-parental-rights cause. Whenever possible, a medical examination shall be conducted on an outpatient basis. A child held in detention shall be deemed an outpatient. A medical examination of a parent of the child who is the subject of the cause shall not be ordered unless the physical or mental ability of the parent to care for the child is a relevant issue in the particular cause and the parent to be examined consents to the examination.

(3) The report of a medical examination shall not be admissible in evidence, nor shall it be considered by the court, at the adjudicatory hearing in any juvenile court cause. It shall be admissible in evidence at the dispositional hearing in any juvenile court cause.

Rule 10–3. Traffic Offense Study

(1) A "traffic offense study," as used in these rules, is an investigation of the traffic offense record of the child who is the subject of a juvenile court cause.

(2) The court shall order a traffic offense study subsequent to the filing of the notice to appear in a traffic offender cause.

(3) The report of a traffic offense study shall not be admissible in evidence, nor shall it be considered by the court, at the adjudicatory hearing in a traffic offender cause. It shall be admissible in evidence at the dispositional hearing in a traffic offender cause. The admissibility in evidence of a traffic offense study which is part of a social study shall be governed by the provisions of Rule 10–1(3).

Rule 10–4. Reference Study

(1) A "reference study," as used in these rules, is an investigation of the juvenile court record

of the child who is the subject of a delinquency cause and of the circumstances connected with any law violation which is the basis of the delinquency charge.

(2) The court may order a reference study at any time after filing of the petition in a delinquency cause.

(3) The report of a reference study shall not be admissible in evidence, nor shall it be considered by the court, at the adjudicatory hearing in a delinquency or a traffic offender cause. It shall be admissible in evidence at a hearing to consider reference for prosecution in a delinquency or traffic offender cause and at the adjudicatory hearing in neglect or dependency or termination-of-parental-rights causes and at the dispositional hearing in any juvenile court cause. The admissibility in evidence of a reference study which is part of a social study shall be governed by the provisions of Rule 10–1(3).

Rule 10–5. Right of Parties to Inspect

(1) The parties to a juvenile court cause shall have the right to inspection by their counsel of any report provided for by Article 10 of these rules which is filed with the court. If a party is not represented by counsel, he shall have the right to inspect the report himself. If the unrepresented party is a child or his parent and if the court deems it not in the best interests of the child for the child or the parent to see all or any part of a report, the court shall appoint counsel to represent the party and shall make the report available for inspection by such counsel.

(2) The parties to a juvenile court cause shall have the right at any hearing in which a report provided for by Article 10 of these rules is admitted in evidence:

(a) to confront and examine the person who has prepared the report; and

(b) to introduce evidence contesting or clarifying the data contained in the report.

ARTICLE 11. JUVENILE RECORDS

Rule 11–1. Applicability; Juvenile Records Defined

(1) The disclosure of juvenile records shall be governed by the provisions of MSA § 260.161 and Article 11 of these rules.

(2) For purposes of these rules, juvenile records means:

(a) all documents filed with the court in a juvenile court cause; and

(b) all documents, except traffic offense records, maintained by any representative of the state or state agency, except the Youth Conservation Commission, insofar as they relate to the apprehension, detention, adjudication or disposition of a child who is the subject of a juvenile court cause.

Rule 11–2. Disclosure

(1) Juvenile records sealed pursuant to Rule 11–3 shall not be disclosed for any purpose to any person by the person maintaining them, including the juvenile court.

(2) Juvenile records not sealed pursuant to Rule 11–3 shall not be disclosed except pursuant to an order of the juvenile court specifying the person or persons to whom the records may be disclosed, the extent of the records which may be disclosed and the purpose of the disclosure. Such court orders for disclosure shall be limited to those instances where the court concludes that disclosure is required for the best interests of the child, the public safety or the functioning of the juvenile court system, and then only to the following persons:

(a) a judge of the juvenile court and members of a juvenile court staff;

(b) the parties to a juvenile court cause;

(c) representatives of a state or private agency providing supervision or having custody of the child under order of the court; and

(d) any other person having a legitimate interest in the operation of the juvenile court or in the child who is the subject of the records, but

this shall not include any present or prospective employer of the child or the military services. Persons having a legitimate interest in the operation of the juvenile court shall include responsible representatives of public information media and persons conducting research relating to the juvenile court, provided that such persons agree not to publicize the identity of the child who is the subject of the cause or the identity of the child's parents.

(3) The provisions of Rules 11–2(1) and 11–2(2) shall be deemed rights of the child who is the subject of the juvenile records and shall be rights which cannot be waived pursuant to Rule 1–5.

Rule 11–3. Sealing Juvenile Records

(1) The court may, upon its own motion or upon application of a party to a juvenile court cause, order the sealing of the juvenile records pertaining to a delinquency cause, provided that the child

who was the subject of the cause is no longer subject to an outstanding dispositional order of the court and is not subject to supervision of the Youth Conservation Commission.

(2) The court shall order the sealing of juvenile court records pertaining to a delinquency cause:

(a) if the child who was the subject of the cause has attained 21 years of age; or

(b) if the court dismisses the cause for lack of jurisdiction or failure of proof; or

(c) if the court expunges an adjudication of delinquency in the cause.

(3) Whenever the court considers the sealing of juvenile court records pursuant to Rule 11–3(1), it may hold a hearing to determine whether there are proper grounds for the sealing of the records. Such hearing shall be held on notice to the parties to the cause, the county attorney and any persons maintaining juvenile records relating to the child. If the court decides that the records shall be sealed pursuant to Rule 11–3(1) or 11–3(2), it shall enter an order directing each of the persons maintaining such records to remove such records from their files, seal them, and store them in a place separately maintained for sealed juvenile records. The court order shall note that sealed juvenile records may not be used for any purpose, and shall require the persons to whom it is directed to file with the court a written statement acknowledging compliance with the court order. Copies of the court order shall be delivered to all persons maintaining juvenile records pertaining to the child.

(4) When juvenile court records are ordered sealed pursuant to this Rule 11–3, the court shall inform the parties to the cause which was the subject of the records that the proceedings are deemed never to have occurred and that the child who was the subject of the cause and any party to the cause may reply accordingly to any inquiry about the cause or the child who was the subject thereof. The court and any person who maintained juvenile records ordered sealed pursuant to this Rule 11–3 shall answer all subsequent inquiries about the cause or the child who was the subject thereof, from whatever source, with: "We have no record on the named individual," or some similar response.

Rule 11–4. Physical Destruction of Juvenile Records

The court, in its discretion, may order the destruction of any juvenile records sealed pursuant to Rule 11–3. Such an order shall be directed to all persons maintaining the records, shall order their physical destruction and shall require the persons to whom it is directed to file with the court a written statement acknowledging compliance with the court order.

Part C. Index

APPENDIX 10

RULES OF APPELLATE PROCEDURE

Part A. Rules of Civil Appellate Procedure (From the District Court to the Supreme Court)

Adopted December 7, 1967
Effective February 1, 1968
As Amended through July 1, 1978

(1) Table of Headnotes

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

V. EXTRAORDINARY WRITS

VII. GENERAL PROVISIONS

(2) Text of Rules

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.

(As amended Feb. 14, 1975.)

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 Oct. 23, 1969; Feb. 14, 1975.)

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.

(Amended Jan. 5, 1976.)

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.

(Amended Oct. 29, 1968; Jan. 5, 1976.)

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 109. (reserved for future use)

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 × 8½ inches or 10½ × 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.

(As amended Aug. 8, 1973; Feb. 14, 1975.)

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

(Order of the Supreme Court of February 14, 1975, struck down Rule 111.01 and renumbered Rules 111.02, 111.03, 111.04 and 111.05 accordingly.)

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.

(Renumbered from Rule 111.02 and amended Feb. 14, 1975.)

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.

(Renumbered from Rule 111.03 Feb. 14, 1975.)

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.

(Renumbered from 111.04 Feb. 14, 1975.)

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.

(Renumbered from 111.05 Feb. 14, 1975.)

Rules 112–114. (reserved for future use)

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; Feb. 14, 1975.)

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.

(As amended March 29, 1972.)

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.

Rules 116–119. (reserved for future use)

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.

(As amended Feb. 14, 1975.)

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 $20 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.

Rules 121–124. (reserved for future use)

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.

(As amended Feb. 14, 1975.)

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.

(As amended Oct. 29, 1968; June 6, 1972.)

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.

(Added March 29, 1971; as amended Feb. 14, 1975.)

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.

(As amended Sept. 28, 1973.)

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 double-spaced. 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.

(Added March 29, 1972; amended Jan. 5, 1976.)

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.

(Added March 29, 1972; amended Jan. 5, 1976.)

Prehearing Conference Procedures

By order of the Supreme Court of the State of Minnesota dated September 10, 1976, the following procedures and prehearing conference statement were specified.

IT IS ORDERED that, pursuant to Appellate Rule 133.02, the following Prehearing Conference Procedures in all non-criminal matters are hereby established to remain in effect until further order of the Court:

A. Prehearing Conference Statement. With the service of the notice of appeal pursuant to Appellate Rule 103.01(1), or the filing of the writ pursuant to Appellate Rule 115.03(3), the appellant or relator shall serve on all other parties separately represented, and transmit (with proof of service) to the prehearing judge a completed prehearing conference statement in the form attached hereto.

Within ten days after service of appellant's statement, the respondent shall serve on all other parties separately represented, and bring (with proof of service) to the Prehearing Conference, a Prehearing Conference Statement supplementing that of appellant in the particulars respondent deems to be of assistance to the Court.

B. Notice of Prehearing Conference — Duties of Parties. Following receipt of appellant's statement, the Court shall schedule a Prehearing Conference pursuant to Appellate Rule 133.02 unless it notifies the parties to the contrary. The attorneys for the parties shall be notified of the time and place of the conference, which will be held promptly, before the record is transcribed and briefs prepared. Attendance at the conference by the attorneys shall be obligatory. They shall have full authority to reach settlements, limit issues, and deal with such other matters as may aid in the disposition of the appeal. Upon receipt of the notice of Prehearing Conference, the attorneys shall make arrangements for their clients or their clients' insurers or indemnitors to be available at the time of the conference by telephone communication to approve matters requiring client approval. In divorce, custody, alimony and support cases, the clients may in some instances be required to accompany their attorneys to the hearing.

C. Transcript. In all cases subject to Rule 133.02, the 60-day period permitted the reporter for furnishing a transcript pursuant to Rule 110.02(2) shall not commence to run until entry of the Prehearing Conference Order, or receipt of notice from the Court that a conference will not be held. The appellant shall notify the reporter of such order or notice.

D. Prehearing Conference. The Prehearing Conference shall be conducted by a justice of the Court or a hearing officer designated by the Court. The justice who conducts the conference shall not participate in any subsequent decisional process. No court personnel, attorney, party or any other person taking part in the conference shall make public or communicate to, or discuss with, anyone engaged in the decisional process any matters considered or divulged at the conference which do not subsequently appear in the Prehearing Conference Order.

E. Prehearing Conference Order. An order shall be entered following the conference and shall reflect only the procedure or disposition to which the parties have agreed, as follows:

(1) Dismissal of the appeal
(2) Limitation of the issues
(3) Continuation of the appeal unaffected by Rule 133.02
(4) Adoption of any other procedures appropriate to the purposes of Rule 133.02.

F. Sanctions. Failure of a party or his attorney to obey the foregoing provisions of this Order shall result in such sanctions as the Court may deem appropriate.

G. Exceptions. The provisions of this Order are not applicable to extraordinary writ proceedings pursuant to Appellate Rule 120.

S. Ct. File No. _____

STATE OF MINNESOTA
IN SUPREME COURT
CIVIL APPEAL PREHEARING
CONFERENCE STATEMENT

Please Complete and Return to: "Prehearing Judge", 230 State Capitol, St. Paul, 55155 no later than _____

_____ _____

1. Title of Case:

2. Names and Addresses and Telephone of Attorneys

For Appellant or Relator:

For Respondent:

For Other Parties:

3. Court or Agency as to Which Review is Sought:

   Name of Judge or Hearing Officer:

4. Type of Litigation (e.g., automobile negligence, products liability, malpractice, real estate, zoning, taxation, UCC, domestic matters, insurance, etc.):

5. Brief Description of Claims, Defenses, Issues Litigated, and Result Below (Do not detail evidence):

6. Nature of Judgement or Order as to Which Review is Sought (Appellant: Attach copy of judgment or order, as well as a copy of any memorandum, findings of facts, or conclusions of law of the court or agency below.)

7. Issues Proposed to be Raised on Appeal (Attach any trial briefs which are relevant to these issues and which were submitted to the court or agency below. DO NOT PREPARE OR SUBMIT AN APPELLATE BRIEF OR TRIAL TRANSCRIPT FOR THE PREHEARING CONFERENCE):

8. This prehearing conference is designed to encourage the parties to reach a voluntary settlement before incurring the expense of securing a transcript and preparing and printing briefs, or if that is not possible, to limit the issues. Please set forth succinctly any additional information which will assist the Court and the parties in reaching an agreement to accomplish these ends. Information concerning settlement negotiations will be kept strictly confidential.

_____ _____

Signed Date

TO BE EXECUTED BY THE ATTORNEY FOR APPELLANT OR RESPONDENT WHO IS HANDLING THE APPEAL

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.

(Added March 29, 1972; amended Jan. 5, 1976.)

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.

(As amended Nov. 20, 1970, effective Jan. 11, 1971.)

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) 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 non-oral argument calendar.

(3) 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.

(As amended Oct. 19, 1972; Dec. 20, 1973; amended Oct. 12, 1976, effective Jan. 1, 1977.)

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 members of the division. If all members of the division do not concur in the decision, the case may 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, may 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.

(As amended Oct. 24, 1969; Nov. 20, 1970; March 29, 1972.)

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)."

(Amended Jan. 5, 1976.)

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 Supreme 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. The prevailing party will not be allowed to tax as a disbursement the cost of preparing facsimile briefs.

(Amended Oct. 12, 1976, effective Jan. 1, 1977.)

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.

(As amended Sept. 28, 1973.)

Rule 141. (reserved for future use)

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. (The Appendix of Forms is not reprinted in this edition.)

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.

(3) Table of Superseded Statutes

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.

(4) INDEX

Part B. Rules of Civil Appellate Procedure from the County Courts

Rules Adopted and Effective April 20, 1972

As Amended through July 1, 1978

(1) Table of Headnotes

I. APPLICABILITY OF RULES

II. APPEALS FROM JUDGMENTS AND ORDERS

VII. GENERAL PROVISIONS

(2) Text of Rules

TITLE I. APPLICABILITY OF RULES

Rule 101. Scope of Rules

These rules govern procedure in civil appeals to the District Court from the Minnesota County Court. The term "trial court" as used in these rules shall refer to the County Court whose decision is sought to be reviewed. They shall also govern procedure in criminal appeals until separate Rules of Criminal Appellate Procedure are officially promulgated.

Rule 102. Suspension of Rules

In the interest of expediting decision upon any matter before it, or for other good cause shown, the District 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 may order the proceeding 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 as provided in Minn. Stat. § 487.39 subd. 1. The appellant shall file the notice of appeal and the cost bond required by Rule 107 with the clerk of the county court of the county in which the action is venued in the lower court, together with a deposit of (a) $23 where the matter appealed from arises under Minn. Stat. § 487.14 and (b) $25 in all other cases. 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 District Court may grant relief on such terms as may be just.

(3) Upon compliance with subdivision 1 of this rule, the clerk of the county court shall immediately notify the clerk of the district court in writing thereof and shall retain $5 of the deposit made under subsection (1) hereof and shall transmit the balance to the clerk of the district court. The clerk of the district court shall then notify a district judge of the judicial district of which his county is a part, of the appeal according to rules to be promulgated by the district judges of each judicial district.

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 District 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 District 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 District 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 on Notice of Appeal

104.01 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.

Rule 105. Discretionary Review

105.01 Petition for Permission to Appeal; Time

The District 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 District Court, but the District 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 District Court shall notify the clerk of the county 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 fifteen days after service of the notice of appeal on that respondent and thereafter shall be filed with the clerk of the District Court.

Rule 107. Bond or Deposit for Costs

A bond shall be executed by the appellant, conditioned that the appellant shall pay all costs and charges which may be awarded against him on appeal, not exceeding the penalty of the bond, which shall be at least $250; or that sum shall be deposited with the clerk with whom the judgment or order was entered, to abide the judgment of the District Court. Such bond or deposit may be waived by the written consent of the respondent.

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 executes 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 District 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 District 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.

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 District 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 District 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 District Court.

Rule 109 (Reserved for future Use)

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 ten days after service of the notice of appeal appellant shall 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

ten 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 ten 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 costs 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 District Court and all counsel of record. In so doing he shall state the date not to exceed a period of thirty days, by which the transcript will be furnished. Upon deliverv of the transcript to the appellant, the reporter shall file with the clerk of the District 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 District Court under Rule 127 showing good cause why said period of time is excessive or insufficient. The district judge of the judicial district applicable shall act as a referee in hearing said motion 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 × 8½ inches or 10½ × 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.

(Amended Aug. 8, 1973.)

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 fifteen 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 amendment thereto within fifteen 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 District Court, or the District 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 District Court.

Rule 111. Transmission of the Record

111.01 Transmission of Transcript; Time

The original and copy of the transcript, if any, shall be transmitted by the appellant to the clerk of the District Court at the time of filing the appellant's brief and appendix.

111.02 Transmission of Remainder of Record; Time

The remainder of the record shall be transmitted to the clerk of the District Court by the clerk of the trial court thirty days prior to the date set for oral argument or submission of the appeal unless the time is shortened or extended by an order of the District 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 District Court. Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the District Court.

111.03 Exhibits

All exhibits sent to the clerk of the District 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.

111.04 Record for Preliminary Hearing in the District 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 a 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 District Court such parts of the original record as the party shall designate.

111.05 Disposition of Record After Appeal

Upon the termination of the appeal, the clerk of District Court shall transmit the original transcript to the clerk of the county court and a copy of said transcript may be retained by the District Court judge hearing the appeal.

Rules 112 to 114 (Reserved for Future Use)

Rules 116 to 119 (Reserved for Future Use)

Rules 121 to 124 (Reserved for Future Use)

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 District Court within the time fixed for filing.

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 District 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 District Court may not extend or shorten the time for service of a notice of appeal.

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 eight days after service, and shall state with particularity the grounds therefore, 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 five days after service of the motion. Any reply shall be served within two days thereafter. Motion and all papers relating thereto may be typewritten. An original and one copy of all papers shall be filed. Oral argument will not be permitted except by order of the District 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.

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 District 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 District 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 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 District 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 110.04), 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 The Time for Filing and Service

The appellant shall serve and file his brief and appendix within twenty days of 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 twenty days after service of the notice of appeal on the adverse party. The respondent shall serve and file his brief and appendix, if any, within ten days after service of brief of appellant. The appellant may serve and file a reply brief within five 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.

131.02 Number of Copies to be Filed and Served

The original and one copy of each brief, appendix, and supplemental record, if any, shall be filed with the clerk of the District Court, and one copy 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 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) All papers shall be typewritten or otherwise duplicated on unglazed opaque paper, 10½ × 8½ inches in size double spaced, and in type size no smaller than elite type. All copies must be legible.

(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.

Rule 133 (Reserved for Future Use)

Rule 134. Oral Argument

134.01 Notice of Hearing; Postponement

No party shall file a brief or make oral argument unless a party shall file in writing his election to do either or both and serve the same upon all opposing parties within fifteen days of receipt of notice of filing of an appeal. Service of such election and proof thereof shall be filed with the clerk of court as required by Rule 125. 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. The time and place at which oral argument will be heard shall be provided for by rules to be promulgated by the district judges of each judicial district.

134.02 Time Allowed for Argument

The appellant shall be entitled to a total of twenty minutes oral argument. The respondent shall be entitled to fifteen minutes 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 arguments.

(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.

Rule 136. Notice of Decision; Judgment; Remittitur

136.01 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.

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 District 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 District Court signed by the clerk.

136.04 Objection to Remittitur

Unless otherwise ordered by the District 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 District 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 District 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 District 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 sixty days from the receipt thereof by the officer. On the return of an execution satisfied in due form of law the clerk shall make 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 District Court may award just damages and single or double costs to the respondent and reasonable attorney's fees.

Rule 139. Costs and Disbursements

139.01 Costs

Unless otherwise ordered by the District 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 District 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 two 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 fifteen 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 District Court from the clerk's taxation by serving and filing a notice of appeal within six days from the date of taxation by the clerk.

139.05 Disallowance of Costs and Disbursements

The clerk, in the first instance, and the District 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 District Court within the ten-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 District Court has overlooked, failed to consider, misapplied, or misconceived. The petition shall be served upon the opposing party who may answer within five days thereafter. Oral argument in support of the petition will not be permitted. An original and one copy 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 141 (Reserved for Future Use)

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 of 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 twenty days and respondent has not made a motion under this rule, the District Court shall order the appeal dismissed without notice, subject to reinstatement upon motion to the District 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 District Court, the surviving party or the legal representative or successor in interest of the deceased party, shall file with the clerk of the District 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 District 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 District 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 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 of Other Causes

If substitution of a party in the District 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 District 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 District 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 the Rules of Civil and Criminal Appellate Procedure from the Minnesota County Courts to the District Courts until such time as separate criminal appellate rules are promulgated.

Rule 147. Effective Date; Statutes Superseded

147.01 Effective Date and Application to Pending Proceedings

These rules will take effect on April 20, 1972. They govern all civil and criminal appeals and proceedings after they take effect and also all further proceedings then pending except to the extent that in the opinion of the District Court their application in any particular proceeding pending when the rules take effect, the rules 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, any statutory provisions inconsistent with these rules with respect to practice and procedure in appealing civil and criminal matters from the Minnesota County Court to the District Court are superseded.

(3) INDEX

APPENDIX 11
RULES GOVERNING THE CONDUCT OF ATTORNEYS

Part A. Admission to the Bar

As Amended through July 1, 1978

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 Application

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:

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

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. An applicant who has failed three examinations shall not be permitted to take a further examination except that a fourth and final examination may be authorized by the Board of Law Examiners upon proof of adequate additional preparation therefor.

Rule IV Educational Qualification

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, who have known the applicant for at least one year, setting forth the duration of time, 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 for more than one year preceding the first day of the examination for which application is made 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 $125.00, the National Conference charge for conducting the investigation.

The Board in its discretion may require any applicant to furnish at the applicant's expense a Character Investigation Report of the National Conference of Bar Examiners.

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 application, an additional late filing fee of $25.00 shall be paid. No application shall be accepted thereafter, except upon order of the Supreme Court and any application filed pursuant to such order shall be accompanied by an additional late filing fee in the sum of $100.00.

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 Examination — 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), (3) and (4).

2. That he is duly admitted to practice in another state, territory or the District of Columbia;

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 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.

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

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

E. 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 and pay fees 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.

F. 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), (3) and (4).

2. That he is duly admitted to practice in another state, territory or the District of Columbia;

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 shall employ the National Conference of Bar Examiners to make investigation and report upon said application, and 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 upon the ground that the applicant has not established his good moral character as required by Rule II, 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 denies an 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 Lawyers Professional Responsibility Board. 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 Director of Lawyers Professional Responsibility 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.

E. Effective November 30, 1977, no person shall be admitted to practice law pursuant to the provisions of paragraph A. hereof, and effective 2½ years after November 30, 1977, Rule XIII is rescinded in its entirety.

Part B. Practice by Certified Law Students

Rule I 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.

Part C. 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.

Part D. Continuing Legal Education

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 90 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.

Any attorney in the first class established by order of this court on April 3, 1975, who has completed his first full three-year participation in the program and is required to report his compliance within 60 days of June 30, 1979, but has not accumulated 45 hours of approved educational courses, may carry over credits in excess of 15 hours accumulated during the period of July 1, 1974, to June 30, 1976. This amendment shall have no further effect after July 1, 1979.

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.

PART E. CODE OF PROFESSIONAL RESPONSIBILITY

Adopted August 4, 1970
Effective January 1, 1970
As Amended through July 1, 1978

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PREAMBLE AND PRELIMINARY STATEMENT

Preamble

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

In fulfilling his professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which he may encounter can be foreseen, but fundamental ethical principles are always present to guide him. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society.

The Code of Professional Responsibility points the way to the aspiring and provides standards by which to judge the transgressor. Each lawyer must find within his own conscience the

touchstone against which to test the extent to which his actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of his profession and of the society which he serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

Preliminary Statement

In furtherance of the principles stated in the Preamble, the American Bar Association has promulgated this Code of Professional Responsibility, consisting of three separate but interrelated parts: Canons, Ethical Considerations, and Disciplinary Rules. The Code is designed to be adopted by appropriate agencies both as an inspirational guide to the members of the profession and as a basis for disciplinary action when the conduct of a lawyer falls below the required minimum standards stated in the Disciplinary Rules.

Obviously the Canons, Ethical Considerations, and Disciplinary Rules cannot apply to non-lawyers; however, they do define the type of ethical conduct that the public has a right to expect not only of lawyers but also of their non-professional employees and associates in all matters pertaining to professional employment. A lawyer should ultimately be responsible for the conduct of his employees and associates in the course of the professional representation of the client.

The Canons are statements of axiomatic norms, expressing in general terms the standards of professional conduct expected of lawyers in their relationships with the public, with the legal system, and with the legal profession. They embody the general concepts from which the Ethical Considerations and the Disciplinary Rules are derived.

The Ethical Considerations are aspirational in character and represent the objectives toward which every member of the profession should strive. They constitute a body of principles upon which the lawyer can rely for guidance in many specific situations.

The Disciplinary Rules, unlike the Ethical Considerations, are mandatory in character. The Disciplinary Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Within the framework of fair trial, the Disciplinary Rules should be uniformly applied to all lawyers, regardless of the nature of their professional activities. The Code makes no attempt to prescribe either disciplinary procedures or penalties for violation of a Disciplinary Rule, nor does it undertake to define standards for civil liability of lawyers for professional conduct. The severity of judgment against one found guilty of violating a Disciplinary Rule should be determined by the character of the offense and the attendant circumstances. An enforcing agency, in applying the Disciplinary Rules, may find interpretive guidance in the basic principles embodied in the Canons and in the objectives reflected in the Ethical Considerations.

(2) Text

Canon 1. A Lawyer Should Assist in Maintaining the Integrity and Competence of the Legal Profession

ETHICAL CONSIDERATIONS

EC 1-1. A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence. Maintaining the integrity and improving the competence of the bar to meet the highest standards is the ethical responsibility of every lawyer.

EC 1-2. The public should be protected from those who are not qualified to be lawyers by reason of a deficiency in education or moral standards or of other relevant factors but who nevertheless seek to practice law. To assure the maintenance of high moral and educational standards of the legal profession, lawyers should affirmatively assist courts and other appropriate bodies in promulgating, enforcing, and improving requirements for admission to the bar. In like manner, the bar has a positive obligation to aid in the continued improvement of all phases of pre-admission and post-admission legal education.

EC 1-3. Before recommending an applicant for admission, a lawyer should satisfy himself that the applicant is of good moral character. Although a lawyer should not become a self-appointed investigator or judge of applicants for admission, he should report to proper officials all unfavorable information he possesses relating to the character or other qualifications of an applicant.

EC 1-4. The integrity of the profession can be maintained only if conduct of lawyers in violation of the Disciplinary Rules is brought to the attention of the proper officials. A lawyer should reveal voluntarily to those officials all unprivileged knowledge of conduct of lawyers which he believes clearly to be in violation of the Disciplinary Rules. A lawyer should, upon request serve on and assist committees and boards having responsibility for the administration of the Disciplinary Rules.

EC 1–5. A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified, and he should refrain from all illegal and morally reprehensible conduct. Because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude.

EC 1–6. An applicant for admission to the bar or a lawyer may be unqualified, temporarily or permanently, for other than moral and educational reasons, such as mental or emotional instability. Lawyers should be diligent in taking steps to see that during a period of disqualification such person is not granted a license or, if licensed, is not permitted to practice. In like manner, when the disqualification has terminated, members of the bar should assist such person in being licensed, or, if licensed, in being restored to his full right to practice.

DISCIPLINARY RULES

DR 1–101. Maintaining Integrity and Competence of the Legal Profession

(A) A lawyer is subject to discipline if he has made a materially false statement in, or if he has deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar.

(B) A lawyer shall not further the application for admission to the bar of another person known by him to be unqualified in respect to character, education, or other relevant attribute.

DR 1–102. Misconduct

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.

(3) Engage in illegal conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on his fitness to practice law.

DR 1–103. Disclosure of Information to Authorities

(A) A lawyer possessing unprivileged knowledge of a violation of DR 1–102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(B) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

Canon 2. A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available

ETHICAL CONSIDERATIONS

EC 2–1. The need of members of the public for legal services is met only if they recognize their legal problems, appreciate the importance of seeking assistance, and are able to obtain the services of acceptable legal counsel. Hence, important functions of the legal profession are to educate laymen to recognize their problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.

Recognition of Legal Problems

EC 2–2. The legal profession should assist laymen to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers acting under proper auspices should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise. Such educational programs should be motivated by a desire to benefit the public rather than to obtain publicity or employment for particular lawyers. Examples of permissible activities include preparation of institutional advertisements and professional articles for lay publications and participation in seminars, lectures, and civic programs. But a lawyer who participates in such activities should shun personal publicity.

EC 2–3. Whether a lawyer acts properly in volunteering advice to a layman to seek legal services depends upon the circumstances. The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist laymen in recognizing legal problems. The advice is proper only if motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations. Hence, the advice is improper if motivated by a desire to obtain personal benefit, secure personal publicity, or

cause litigation to be brought merely to harass or injure another. Obviously, a lawyer should not contact a non-client, directly or indirectly, for the purpose of being retained to represent him for compensation.

EC 2-4. Since motivation is subjective and often difficult to judge, the motives of a lawyer who volunteers advice likely to produce legal controversy may well be suspect if he receives professional employment or other benefits as a result. A lawyer who volunteers advice that one should obtain the services of a lawyer generally should not himself accept employment, compensation, or other benefit in connection with that matter. However, it is not improper for a lawyer to volunteer such advice and render resulting legal services to close friends, relatives, former clients (in regard to matters germane to former employment), and regular clients.

EC 2-5. A lawyer who writes or speaks for the purpose of educating members of the public to recognize their legal problems should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems, since slight changes in fact situations may require a material variance in the applicable advice; otherwise, the public may be misled and misadvised. Talks and writings by lawyers for laymen should caution them not to attempt to solve individual problems upon the basis of the information contained therein.

Selection of a Lawyer: Generally

EC 2-6. Formerly a potential client usually knew the reputations of local lawyers for competency and integrity and therefore could select a practitioner in whom he had confidence. This traditional selection process worked well because it was initiated by the client and the choice was an informed one.

EC 2-7. Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently known to enable laymen to make intelligent choices. The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and many laymen have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers.

EC 2-8. Selection of a lawyer by a layman often is the result of the advice and recommendation of third parties — relatives, friends, acquaintances, business associates, or other lawyers. A layman is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend his employment. A lawyer should not compensate another person for recommending him, for influencing a prospective client to employ him, or to encourage future recommendations.

Selection of a Lawyer: Professional Notices and Listings

EC 2-9. The traditional ban against advertising by lawyers, which is subject to certain limited exceptions, is rooted in the public interest. Competitive advertising would encourage extravagant, artful, self-laudatory brashness in seeking business and thus could mislead the layman. Furthermore, it would inevitably produce unrealistic expectations in particular cases and bring about distrust of the law and lawyers. Thus, public confidence in our legal system would be impaired by such advertisements of professional services. The attorney-client relationship is personal and unique and should not be established as the result of pressures and deceptions. History has demonstrated that public confidence in the legal system is best preserved by strict, self-imposed controls over, rather than by unlimited, advertising.

EC 2-10. Methods of advertising that are subject to the objections stated above should be and are prohibited. However, the Disciplinary Rules recognize the value of giving assistance in the selection process through forms of advertising that furnish identification of a lawyer while avoiding such objections. For example, a lawyer may be identified in the classified section of the telephone directory, in the office building directory, and on his letterhead and professional card. But at all times the permitted notices should be dignified and accurate.

EC 2-11. The name under which a lawyer conducts his practice may be a factor in the selection process. The use of a trade name or an assumed name could mislead laymen concerning the identity, responsibility, and status of those practicing thereunder. Accordingly, a lawyer in private practice should practice only under his own name, the name of a lawyer employing him, a partnership name composed of the name of one or more of the lawyers practicing in a partnership, or, if permitted by law, in the name of a professional legal corporation, which should be clearly designated as such. For many years some law firms have used a firm name retaining one or more names of deceased or retired partners and such practice is not improper if the firm is a bona fide successor of a firm in which the deceased or retired person was a member, if the use of the name is authorized by law or by contract, and if the public is not misled thereby. However, the name of a

partner who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public.

EC 2–12. A lawyer occupying a judicial, legislative, or public executive or administrative position who has the right to practice law concurrently may allow his name to remain in the name of the firm if he actively continues to practice law as a member thereof. Otherwise, his name should be removed from the firm name, and he should not be identified as a past or present member of the firm; and he should not hold himself out as being a practicing lawyer.

EC 2–13. In order to avoid the possibility of misleading persons with whom he deals, a lawyer should be scrupulous in the representation of his professional status. He should not hold himself out as being a partner or associate of a law firm if he is not one in fact, and thus should not hold himself out as a partner or associate if he only shares offices with another lawyer.

EC 2–14. In some instances a lawyer confines his practice to a particular field of law. In the absence of state controls to insure the existence of special competence, a lawyer should not be permitted to hold himself out as a specialist or as having special training or ability, other than in the historically excepted fields of admiralty, trademark, and patent law.

EC 2–15. The legal profession has developed lawyer referral systems designed to aid individuals who are able to pay fees but need assistance in locating lawyers competent to handle their particular problems. Use of a lawyer referral system enables a layman to avoid an uninformed selection of a lawyer because such a system makes possible the employment of competent lawyers who have indicated an interest in the subject matter involved. Lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel.

EC 2–16. The legal profession cannot remain a viable force in fulfilling its role in our society unless its members receive adequate compensation for services rendered, and reasonable fees should be charged in appropriate cases to clients able to pay them. Nevertheless, persons unable to pay all or a portion of a reasonable fee should be able to obtain necessary legal services, and lawyers should support and participate in ethical activities designed to achieve that objective.

Financial Ability to Employ Counsel: Persons Able to Pay Reasonable Fees

EC 2–17. The determination of a proper fee requires consideration of the interests of both client and lawyer. A lawyer should not charge more than a reasonable fee, for excessive cost of legal service would deter laymen from utilizing the legal system in protection of their rights. Furthermore, an excessive charge abuses the professional relationship between lawyer and client. On the other hand, adequate compensation is necessary in order to enable the lawyer to serve his client effectively and to preserve the integrity and independence of the profession.

EC 2–18. The determination of the reasonableness of a fee requires consideration of all relevant circumstances, including those stated in the Disciplinary Rules. The fees of a lawyer will vary according to many factors, including the time required, his experience, ability, and reputation, the nature of the employment, the responsibility involved, and the results obtained. It is a commendable and long-standing tradition of the bar that special consideration is given in the fixing of a fee for services rendered another lawyer or a member of his immediate family.

(Amended and effective Oct. 15, 1976.)

EC 2–19. As soon as feasible after a lawyer has been employed, it is desirable that he reach a clear agreement with his client as to the basis of the fee charges to be made. Such a course will not only prevent later misunderstanding but will also work for good relations between the lawyer and the client. It is usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. A lawyer should be mindful that many persons who desire to employ him may have had little or no experience with fee charges of lawyers, and for this reason he should explain fully to such persons the reasons for the particular fee arrangement he proposes.

EC 2–20. Contingent fee arrangements in civil cases have long been commonly accepted in the United States in proceedings to enforce claims. The historical bases of their acceptance are that (1) they often, and in a variety of circumstances, provide the only practical means by which one having a claim against another can economically afford, finance, and obtain the services of a competent lawyer to prosecute his claim, and (2) a successful prosecution of the claim produces a *res* out of which the fee can be paid. Although a lawyer generally should decline to accept employment on a contingent fee basis by one who is able to pay a reasonable fixed fee, it is not necessarily improper for a lawyer, where justified by the particular circumstances of a case, to enter into a contingent fee contract in a civil case with any client who, after being fully informed of all relevant factors, desires that arrangement. Because of the human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relation cases are rarely justified. In administrative agency proceedings contingent fee contracts should be governed by the

same consideration as in other civil cases. Public policy properly condemns contingent fee arrangements in criminal cases, largely on the ground that legal services in criminal cases do not produce a *res* with which to pay the fee.

EC 2–21. A lawyer should not accept compensation or any thing of value incident to his employment or services from one other than his client without the knowledge and consent of his client after full disclosure.

EC 2–22. Without the consent of his client, a lawyer should not associate in a particular matter another lawyer outside his firm. A fee may properly be divided between lawyers properly associated if the division is in proportion to the services performed and the responsibility assumed by each lawyer and if the total fee is reasonable.

EC 2–23. A lawyer should be zealous in his efforts to avoid controversies over fees with clients and should attempt to resolve amicably any differences on the subject. He should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client.

Financial Ability to Employ Counsel: Persons Unable to Pay Reasonable Fees

EC 2–24. A layman whose financial ability is not sufficient to permit payment of any fee cannot obtain legal services, other than in cases where a contingent fee is appropriate, unless the services are provided for him. Even a person of moderate means may be unable to pay a reasonable fee which is large because of the complexity, novelty, or difficulty of the problem or similar factors.

EC 2–25. Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. Thus it has been necessary for the profession to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs have been developed, and others will be developed, by the profession. Every lawyer should support all proper efforts to meet this need for legal services.

Acceptance and Retention of Employment

EC 2–26. A lawyer is under no obligation to act as adviser or advocate for every person who may wish to become his client; but in furtherance of the objective of the bar to make legal services fully available, a lawyer should not lightly decline proffered employment. The fulfillment of this objective requires acceptance by a lawyer of his share of tendered employment which may be unattractive both to him and the bar generally.

EC 2–27. History is replete with instances of distinguished and sacrificial services by lawyers who have represented unpopular clients and causes. Regardless of his personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is adverse.

EC 2–28. The personal preference of a lawyer to avoid adversary alignment against judges, other lawyers, public officials, or influential members of the community does not justify his rejection of tendered employment.

EC 2–29. When a lawyer is appointed by a court or requested by a bar association to undertake representation of a person unable to obtain counsel, whether for financial or other reasons, he should not seek to be excused from undertaking the representation except for compelling reasons. Compelling reasons do not include such factors as the repugnance of the subject matter of the proceeding, the identity or position of a person involved in the case, the belief of the lawyer that the defendant in a criminal proceeding is guilty, or the belief of the lawyer regarding the merits of the civil case.

EC 2–30. Employment should not be accepted by a lawyer when he is unable to render competent service or when he knows or it is obvious that the person seeking to employ him desires to institute or maintain an action merely for the purpose of harassing or maliciously injuring another. Likewise, a lawyer should decline employment if the intensity of his personal feeling, as distinguished from a community attitude, may impair his effective representation of a prospective client. If a lawyer knows a client has previously obtained counsel, he should not accept employment in the matter unless the other counsel approves or withdraws, or the client terminates the prior employment.

EC 2–31. Full availability of legal counsel requires both that persons be able to obtain counsel and that lawyers who undertake representation complete the work involved. Trial counsel

for a convicted defendant should continue to represent his client by advising whether to take an appeal and, if the appeal is prosecuted, by representing him through the appeal unless new counsel is substituted or withdrawal is permitted by the appropriate court.

EC 2–32. A decision by a lawyer to withdraw should be made only on the basis of compelling circumstances, and in a matter pending before a tribunal he must comply with the rules of the tribunal regarding withdrawal. A lawyer should not withdraw without considering carefully and endeavoring to minimize the possible adverse effect on the rights of his client and the possibility of prejudice to his client as a result of his withdrawal. Even when he justifiably withdraws, a lawyer should protect the welfare of his client by giving due notice of his withdrawal, suggesting employment of other counsel, delivering to the client all papers and property to which the client is entitled, cooperating with counsel subsequently employed, and otherwise endeavoring to minimize the possibility of harm. Further, he should refund to the client any compensation not earned during the employment.

EC 2–33. As a part of the legal profession's commitment to the principle that high quality legal services should be available to all, attorneys are encouraged to cooperate with qualified legal assistance organizations providing prepaid legal services. Such participation should at all times be in accordance with the basic tenets of the profession: independence, integrity, competence and devotion to the interests of individual clients. An attorney so participating should make certain that his relationship with a qualified legal assistance organization in no way interferes with his independent, professional representation of the interests of the individual client. An attorney should avoid situations in which officials of the organization who are not lawyers attempt to direct attorneys concerning the manner in which legal services are performed for individual members, and should also avoid situations in which considerations of economy are given undue weight in determining the attorneys employed by an organization or the legal services to be performed for the member or beneficiary rather than competence and quality of service. An attorney interested in maintaining the historic traditions of the profession and preserving the function of a lawyer as a trusted and independent advisor to individual members of society should carefully assess such factors when accepting employment by, or otherwise participating in, a particular qualified legal assistance organization, and while so participating should adhere to the highest professional standards of effort and competence.

(Added, effective Sept. 29, 1975.)

DISCIPLINARY RULES

DR 2–101. Publicity

(A) A lawyer shall not, on behalf of himself, his partner, associate or any other lawyer affiliated with him or his firm, use or participate in the use of any form of public communication containing a false, fraudulent, misleading or deceptive statement or claim.

(B) A false, fraudulent, misleading or deceptive statement or claim includes a statement or claim which:

(1) Contains a misrepresentation of fact;

(2) Is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts;

(3) Is intended or is likely to create false or unjustified expectations of favorable results;

(4) Conveys the impression that the lawyer is in a position to influence improperly any court, tribunal, or other public body or official;

(5) Is intended or likely to result in a legal action or legal position being taken or asserted merely to harass or maliciously injure another; or

(6) Contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived.

(Amended effective Sept. 29, 1975; as amended April 14, 1978.)

DR 2–102. Professional Notices, Letterheads, Offices, and Law Lists

(A) A lawyer or law firm shall not use professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices, except that the following may be used if they are in dignified form:

(1) A professional card of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, and any information permitted under DR 2–105. A professional card of a law firm may also give the names of members and associates. Such cards may be used for identification but may not be published in periodicals, magazines, newspapers, or other media.

(2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional office of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, personal friends,

and relatives. It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in his association, but it may state the immediate past position of the lawyer. It may give the names and dates of predecessor firms in a continuing line of succession. It shall not state the nature of the practice except as permitted under DR 2–105.

(3) A sign on or near the door of the office and in the building directory identifying the law office. The sign shall not state the nature of the practice, except as permitted under DR 2–105.

(4) A letterhead of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, associates and any information permitted under DR 2–105. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer may be designated "Of Counsel" on a letterhead if he has a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if he or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

(5) A listing of the office of a lawyer or law firm in the alphabetical and classified sections of the telephone directory or directories for the geographical area or areas in which the lawyer resides or maintains offices or in which a significant part of his clientele resides and in the city directory of the city in which his or the firm's office is located; but the listing may give only the name of the lawyer or law firm, the fact he is a lawyer, addresses, and telephone numbers. The listing shall not be in distinctive form or type. A law firm may have a listing in the firm name separate from that of its members and associates. The listing in the classified section shall not be under a heading or classification other than "Attorneys" or "Lawyers," except that additional headings or classifications descriptive of the types of practice referred to in DR 2–105 are permitted.

(6) A listing in a reputable law list or legal directory giving brief biographical and other informative data. A law list or directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession. A law list is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards. The published data may include only the following: name, including name of law firm and names of professional associates; addresses and telephone numbers; one or more fields of law in which the lawyer or law firm concentrates; a statement that practice is limited to one or more fields of law; a statement that the lawyer or law firm specializes in a particular field of law or law practice but only if authorized under DR 2–105(A)(4); date and place of birth; date and place of admission to the bar of state and federal courts; schools attended, with dates of graduation, degrees, and other scholastic distinctions; public or quasi-public offices; military service; posts of honor; legal authorships; legal teaching positions; memberships, offices, committee assignments, and section memberships in bar associations; memberships and offices in legal fraternities and legal societies; technical and professional licenses; memberships in scientific, technical and professional associations and societies; foreign language ability; names and addresses of references, and, with their consent, names of clients regularly represented.

(B) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation or professional association may contain "P.C." or "P.A." or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. A lawyer who assumes a judicial, legislative, or public executive or administrative post or office shall not permit his name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm, and during such period other members of the firm shall not use his name in the firm name or in professional notices of the firm.

(C) A lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners.

(D) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

(E) A lawyer who is engaged both in the practice of law and another profession or business

shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business.

(F) Nothing contained herein shall prohibit a lawyer from using or permitting the use of, in connection with his name, an earned degree or title derived therefrom indicating his training in the law.

DR 2-103. Recommendation of Professional Employment; Suggestion of Need of Legal Services

(A) A lawyer shall not recommend employment, as a private practitioner, of himself or anyone associated with him to a non-lawyer who has not sought his advice regarding employment of a lawyer.

(B) A lawyer shall not compensate or give anything of value to any person to recommend or secure, or as a reward for having recommended or secured, employment by a client of himself or any lawyer associated with him.

(C) A lawyer shall not request any person to recommend employment, as a private practitioner, of himself or anyone associated with him.

(D) A lawyer shall not knowingly assist any person to promote the use of his services or those of any lawyer associated with him.

(E) A lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct prohibited under this Disciplinary Rule.

(F) A lawyer shall not accept employment if he knows or it is obvious that it results from unsolicited advice by him or any lawyer associated with him to a layman that he should obtain counsel or take legal action, except:

(1) If the advice was to a close friend, relative, former client (if the advice is germane to the former employment), or one reasonably believed to be a client.

(2) Without affecting the right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he does not emphasize his own professional experience or reputation and does not undertake to give individual advice.

(3) If success in asserting rights or defenses of his client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.

(Amended, effective Sept. 29, 1975.)

DR 2-104. Participation with Organizations' Legal Service Activities

(A) A lawyer may render legal services to a beneficiary of one of the following which employs, pays for, or recommends him or anyone associated with him to render the services, if he does not permit interference with the exercise of independent professional judgment in behalf of the beneficiary:

(1) A legal aid office or public defender office operated or sponsored by a duly accredited law school, by a bona fide non-profit community organization, by a governmental agency, or by a bar association.

(2) A military legal assistance office.

(3) A lawyer referral service operated or sponsored by a bar association.

(B) A lawyer may knowingly render legal services to a member or beneficiary of any other organization that employs, pays for, or recommends him or anyone associated with him to render the services only if the following conditions are satisfied:

(1) He does not permit interference with the exercise of independent professional judgment in behalf of the member or beneficiary.

(2) He recognizes the member or beneficiary for whom the legal services are rendered, and not the organization, as his client.

(3) He has not, and he does not know and it is not obvious that anyone associated with him has, except with respect to a legal service arrangement initiated, sponsored, or operated by a bar association:

(a) Requested or compensated any person to recommend or secure, or compensated any person for having recommended or secured, the initiation of the organization or its legal service arrangement;

(b) Participated in the initiation of the organization or its legal service arrangement, other than by rendering, at the unsolicited request of those wishing to form it, legal services incident to its formation;

(c) Recommended, or requested another to recommend or secure, the organization's employment, payment, or recommendation of himself or any lawyer associated with him, when the organization had not sought advice regarding its employment, payment, or rec-

ommendation of a lawyer, unless the recommendation was for employment by the organization on a full-time salaried basis; or

(d) Compensated any person to recommend or secure or for having recommended or secured the organization's employment, payment, or recommendation of himself or any lawyer associated with him.

(4) He does not know and it is not obvious that the organization is in violation of any applicable filing or other requirement imposed by court rule, statute or regulation that governs, or is engaged in conduct that involves dishonesty, fraud, deceit, or misrepresentation regarding, its legal service operations.

(5) Any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, if such member or beneficiary so desires, select counsel other than that furnished, selected or approved by the organization for the particular matter involved; and the legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected or approved would be unethical, improper or inadequate under the circumstances of the matter involved and the plan provides an appropriate procedure for seeking such relief.

(C) A lawyer shall not render legal services under DR 2–104(B) if he knows or it is obvious that the organization is organized for profit or, irrespective of its legal structure, is in fact operated for profit, and that the employment, payment, or recommendation is pursuant to a regular practice of providing for legal services to others, unless the services are provided for:

(1) As an employment fringe benefit, directly or through insurance;

(2) Through insurance used in connection with an employee organization's arrangement to provide for legal services to its members or their beneficiaries;

(3) Incident to a liability insurance policy; or

(4) Through an insurance policy under which the insurer does not employ or recommend the lawyer but only pays for the rendering of legal services by any lawyer the member or beneficiary may select.

(D) A sole proprietor providing for legal services as an employment fringe benefit is deemed an "organization" for purposes of this Rule.

(E) A lawyer who renders legal services under DR 2–104(B) shall furnish the Board of Professional Responsibility information as it may reasonably require relating to his compliance with this Code in rendering the services.

(F) A lawyer selected by an organization to render legal services to a member or beneficiary thereof shall not accept employment from the member or beneficiary to render legal services other than those for which the organization selected him if he knows or it is obvious that it results from unsolicited advice by him or any lawyer associated with him that the member or beneficiary should obtain counsel or take legal action.

(G) Notwithstanding any Disciplinary Rule, a lawyer who renders legal services, or who has been requested by an organization to be available to render legal services, under DR 2–104(A) or (B) may, without affecting the right to accept employment:

(1) Authorize, permit, or assist the organization to use a public communication or commercial publicity, which does not identify any lawyer by name, to describe the availability or nature of its legal service activities.

(2) Participate in activities conducted or sponsored by the organization and designed to educate laymen to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services, so long as he does not emphasize his own professional experience and does not undertake to give individual advice.

(3) Except as to an organization under DR 2–104(C)(4), authorize, permit or assist limited and dignified identification of himself as a lawyer and by name, along with the biographical information permitted under DR 2–102(A)(6), in communications by the organization directed to its members or beneficiaries.

(H) Notwithstanding any Disciplinary Rule, a lawyer may request referrals from a lawyer referral service operated or sponsored by a bar association, and may pay its fees incident thereto.

(Amended, effective Sept. 29, 1975.)

DR 2–105. Limitation of Practice

(A) A lawyer shall not hold himself out publicly as a specialist or as limiting his practice, except as permitted under DR 2–102(A)(6) or as follows:

(1) A lawyer admitted to practice before the United States Patent Office may use the designation "Patents," "Patent Attorney," or "Patent Lawyer," or any combination of those terms, on his letterhead and office sign. A lawyer engaged in the trademark practice may use the designation "Trademarks," "Trademark Attorney," or "Trademark Lawyer," or any combination of those terms, on his letterhead and office sign, and a lawyer engaged in the admi-

ralty practice may use the designation "Admiralty," "Proctor in Admiralty," or "Admiralty Lawyer," or any combination of those terms, on his letterhead and office sign.

(2) A lawyer may permit his name to be listed in lawyer referral service offices according to the fields of law in which he will accept referrals.

(3) A lawyer available to act as a consultant to or as an associate of other lawyers in a particular branch of law or legal service may distribute to other lawyers and publish in legal journals a dignified announcement of such availability, but the announcement shall not contain a representation of special competence or experience. The announcement shall not be distributed to lawyers more frequently than once in a calendar year, but it may be published periodically in legal journals.

(4) A lawyer who is certified as a specialist in a particular field of law or law practice by the authority having jurisdiction under state law over the subject of specialization by lawyers may hold himself out as such specialist but only in accordance with the rules prescribed by that authority.

(Amended and effective Oct. 15, 1976.)

DR 2–106. Fees for Legal Services

(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) Whether the fee is fixed or contingent.

(C) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.

DR 2–107. Division of Fees Among Lawyers

(A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:

(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

(2) The division is made in proportion of the services performed and responsibility assumed by each.

(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.

(B) This Disciplinary Rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

DR 2–108. Agreements Restricting the Practice of a Lawyer

(A) A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.

(B) In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts his right to practice law.

(Amended and effective Oct. 15, 1976.)

DR 2–109. Acceptance of Employment

(A) A lawyer shall not accept employment on behalf of a person if he knows or it is obvious that such person wishes to:

(1) Bring a legal action, conduct a defense, or assert a position in litigation, or otherwise have steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

(2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law.

DR 2–110. Withdrawal from Employment

(A) In general.

(1) If persmission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) Mandatory withdrawal.

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) He knows or it is obvious that his client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

(2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.

(3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.

(4) He is discharged by his client.

(C) Permissive withdrawal.

If DR 2–110(B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) His client:

(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

(b) Personally seeks to pursue an illegal course of conduct.

(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules.

(d) By other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively.

(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.

(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

(2) His continued employment is likely to result in a violation of a Disciplinary Rule.

(3) His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

(4) His mental or physical condition renders it difficult for him to carry out the employment effectively.

(5) His client knowingly and freely assents to termination of his employment.

(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

Canon 3. A Lawyer Should Assist in Preventing the Unauthorized Practice of Law

ETHICAL CONSIDERATIONS

EC 3–1. The prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence of those who undertake to render legal services. Because of the fiduciary and personal character of the lawyer-client relationship and the inherently complex nature of our legal system, the public can better be assured of the requisite responsibility and competence if the practice of law is confined to those who are subject to the requirements and regulations imposed upon members of the legal profession.

EC 3–2. The sensitive variations in the considerations that bear on legal determinations often make it difficult even for a lawyer to exercise appropriate professional judgment, and it is therefore essential that the personal nature of the relationship of client and lawyer be preserved.

Competent professional judgment is the product of a trained familiarity with law and legal processes, a disciplined, analytical approach to legal problems, and a firm ethical commitment.

EC 3-3. A non-lawyer who undertakes to handle legal matters is not governed as to integrity or legal competence by the same rules that govern the conduct of a lawyer. A lawyer is not only subject to that regulation but also is committed to high standards of ethical conduct. The public interest is best served in legal matters by a regulated profession committed to such standards. The Disciplinary Rules protect the public in that they prohibit a lawyer from seeking employment by improper overtures, from acting in cases of divided loyalties, and from submitting to the control of others in the exercise of his judgment. Moreover, a person who entrusts legal matters to a lawyer is protected by the attorney-client privilege and by the duty of the lawyer to hold inviolate the confidences and secrets of his client.

EC 3-4. A layman who seeks legal services often is not in a position to judge whether he will receive proper professional attention. The entrustment of a legal matter may well involve the confidences, the reputation, the property, the freedom, or even the life of the client. Proper protection of members of the public demands that no person be permitted to act in the confidential and demanding capacity of a lawyer unless he is subject to the regulations of the legal profession.

EC 3-5. It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law. Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment. Where this professional judgment is not involved, non-lawyers, such as court clerks, police officers, abstracters, and many governmental employees, may engage in occupations that require a special knowledge of law in certain areas. But the services of a lawyer are essential in the public interest whenever the exercise of professional legal judgment is required.

EC 3-6. A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal service more economically and efficiently.

EC 3-7. The prohibition against a non-lawyer practicing law does not prevent a layman from representing himself, for then he is ordinarily exposing only himself to possible injury. The purpose of the legal profession is to make educated legal representation available to the public; but anyone who does not wish to avail himself of such representation is not required to do so. Even so, the legal profession should help members of the public to recognize legal problems and to understand why it may be unwise for them to act for themselves in matters having legal consequences.

EC 3-8. Since a lawyer should not aid or encourage a layman to practice law, he should not practice law in association with a layman or otherwise share legal fees with a layman. This does not mean, however, that the pecuniary value of the interest of a deceased lawyer in his firm or practice may not be paid to his estate or specified persons such as his widow or heirs. In like manner, profit-sharing retirement plans of a lawyer or law firm which include non-lawyer office employees are not improper. These limited exceptions to the rule against sharing legal fees with laymen are permissible since they do not aid or encourage laymen to practice law.

EC 3-9. Regulation of the practice of law is accomplished principally by the respective states. Authority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where he is not permitted by law or by court order to do so. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by the states. In furtherance of the public interest, the legal profession should discourage regulation that unreasonably imposes territorial limitations upon the right of a lawyer to handle the legal affairs of his client or upon the opportunity of a client to obtain the services of a lawyer of his choice in all matters including the presentation of a contested matter in a tribunal before which the lawyer is not permanently admitted to practice.

DISCIPLINARY RULES

DR 3-101. Aiding Unauthorized Practice of Law

(A) A lawyer shall not aid a non-lawyer in the unauthorized practice of law.

(B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

DR 3–102. Dividing Legal Fees with a Non-Lawyer

(A) A lawyer or law firm shall not share legal fees with a non-lawyer, except that:

(1) An agreement by a lawyer with his firm, partner, or associate may provide for the payment of money, over a reasonable period of time after his death, to his estate or to one or more specified persons.

(2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.

(3) A lawyer or law firm may include non-lawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

DR 3–103. Forming a Partnership with a Non-Lawyer

(A) A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.

Canon 4. A Lawyer Should Preserve the Confidences and Secrets of a Client

ETHICAL CONSIDERATIONS

EC 4–1. Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him. A client must feel free to discuss whatever he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client. A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance.

EC 4–2. The obligation to protect confidences and secrets obviously does not preclude a lawyer from revealing information when his client consents after full disclosure, when necessary to perform his professional employment, when permitted by a Disciplinary Rule, or when required by law. Unless the client otherwise directs, a lawyer may disclose the affairs of his client to partners or associates of his firm. It is a matter of common knowledge that the normal operation of a law office exposes confidential professional information to non-lawyer employees of the office, particularly secretaries and those having access to the files; and this obligates a lawyer to exercise care in selecting and training his employees so that the sanctity of all confidences and secrets of his clients may be preserved. If the obligation extends to two or more clients as to the same information, a lawyer should obtain the permission of all before revealing the information. A lawyer must always be sensitive to the rights and wishes of his client and act scrupulously in the making of decisions which may involve the disclosure of information obtained in his professional relationship. Thus, in the absence of consent of his client after full disclosure, a lawyer should not associate another lawyer in the handling of a matter; nor should he, in the absence of consent, seek counsel from another lawyer if there is a reasonable possibility that the identity of the client or his confidences or secrets would be revealed to such lawyer. Both social amenities and professional duty should cause a lawyer to shun indiscreet conversations concerning his clients.

EC 4–3. Unless the client otherwise directs, it is not improper for a lawyer to give limited information from his files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, banking, printing, or other legitimate purposes, provided he exercises due care in the selection of the agency and warns the agency that the information must be kept confidential.

EC 4–4. The attorney-client privilege is more limited than the ethical obligation of a lawyer to guard the confidences and secrets of his client. This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of information or the fact that others share the knowledge. A lawyer should endeavor to act in a manner which preserves the evidentiary privilege; for example, he should avoid professional discussions in the presence of persons to whom the privilege does not extend. A lawyer owes an obligation to advise the client of the attorney-client privilege and timely to assert the privilege unless it is waived by the client.

EC 4–5. A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of his client after full disclosure, such information for his own purposes. Likewise, a lawyer should be diligent in his efforts to prevent the misuse of such information by his employees and associates.

Care should be exercised by a lawyer to prevent the disclosure of the confidences and secrets of one client to another, and no employment should be accepted that might require such disclosure.

EC 4–6. The obligation of a lawyer to preserve the confidences and secrets of his client continues after the termination of his employment. Thus a lawyer should not attempt to sell a law practice as a going business because, among other reasons, to do so would involve the disclosure of confidences and secrets. A lawyer should also provide for the protection of the confidences and secrets of his client following the termination of the practice of the lawyer, whether termination is due to death, disability, or retirement. For example, a lawyer might provide for the personal papers of the client to be returned to him and for the papers of the lawyer to be delivered to another lawyer or to be destroyed. In determining the method of disposition, the instructions and wishes of the client should be a dominant consideration.

DISCIPLINARY RULES

DR 4–101. Preservation of Confidences and Secrets of a Client

(A) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested to be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(B) Except when permitted under DR 4–101(C), a lawyer shall not knowingly:

(1) Reveal a confidence or secret of his client.

(2) Use a confidence or secret of his client to the disadvantage of the client.

(3) Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.

(C) A lawyer may reveal:

(1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.

(2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.

(3) The intention of his client to commit a crime and the information necessary to prevent the crime.

(4) Confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

(D) A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4–101(C) through an employee.

Canon 5. A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client

ETHICAL CONSIDERATIONS

EC 5–1. The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.

Interests of a Lawyer That May Affect His Judgment

EC 5–2. A lawyer should not accept proffered employment if his personal interests or desires will, or there is a reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client. After accepting employment, a lawyer carefully should refrain from acquiring a property right or assuming a position that would tend to make his judgment less protective of the interests of his client.

EC 5–3. The self-interest of a lawyer resulting from his ownership of property in which his client also has an interest or which may affect property of his client may interfere with the exercise of free judgment on behalf of his client. If such interference would occur with respect to a prospective client, a lawyer should decline employment proffered by him. After accepting employment, a lawyer should not acquire property rights that would adversely affect his professional judgment in the representation of his client. Even if the property interests of a lawyer do not presently interfere with the exercise of his independent judgment, but the likelihood of interference can reasonably be foreseen by him, a lawyer should explain the situation to his client and should decline employment or withdraw unless the client consents to the continuance of the relationship after full disclosure. A lawyer should not seek to persuade his client to permit him to invest in an undertaking of his client nor make improper use of his professional relationship to influence his client to invest in an enterprise in which the lawyer is interested.

EC 5–4. If, in the course of his representation of a client, a lawyer is permitted to receive from his client a beneficial ownership in publication rights relating to the subject matter of the employment, he may be tempted to subordinate the interests of his client to his own anticipated pecuniary gain. For example, a lawyer in a criminal case who obtains from his client television, radio, motion picture, newspaper, magazine, book, or other publication rights with respect to the case may be influenced, consciously or unconsciously, to a course of conduct that will enhance the value of his publication rights to the prejudice of his client. To prevent these potentially differing interests, such arrangements should be scrupulously avoided prior to the termination of all aspects of the matter giving rise to the employment, even though his employment has previously ended.

EC 5–5. A lawyer should not suggest to his client that a gift be made to himself or for his benefit. If a lawyer accepts a gift from his client, he is peculiarly susceptible to the charge that he unduly influenced or over-reached the client. If a client voluntarily offers to make a gift to his lawyer, the lawyer may accept the gift, but before doing so, he should urge that his client secure disinterested advice from an independent, competent person who is cognizant of all the circumstances. Other than in exceptional circumstances, a lawyer should insist that an instrument in which his client desires to name him beneficially be prepared by another lawyer selected by the client.

EC 5–6. A lawyer should not consciously influence a client to name him as executor, trustee, or lawyer in an instrument. In those cases where a client wishes to name his lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety.

EC 5–7. The possibility of an adverse effect upon the exercise of free judgment by a lawyer on behalf of his client during litigation generally makes it undesirable for the lawyer to acquire a proprietary interest in the cause of his client or otherwise to become financially interested in the outcome of the litigation. However, it is not improper for a lawyer to protect his right to collect a fee for his services by the assertion of legally permissible liens, even though by doing so he may acquire an interest in the outcome of litigation. Although a contingent fee arrangement gives a lawyer a financial interest in the outcome of litigation, a reasonable contingent fee is permissible in civil cases because it may be the only means by which a layman can obtain the services of a lawyer of his choice. But a lawyer, because he is in a better position to evaluate a cause of action, should enter into a contingent fee arrangement only in those instances where the arrangement will be beneficial to the client.

EC 5–8. A financial interest in the outcome of litigation also results if monetary advances are made by the lawyer to his client. Although this assistance generally is not encouraged, there are instances when it is not improper to make loans to a client. For example, the advancing or guaranteeing of payment of the costs and expenses of litigation by a lawyer may be the only way a client can enforce his cause of action, but the ultimate liability for such costs and expenses must be that of the client.

EC 5–9. Occasionally a lawyer is called upon to decide in a particular case whether he will be a witness or an advocate. If a lawyer is both counsel and witness, he becomes more easily impeachable for interest and thus may be a less effective witness. Conversely, the opposing counsel may be handicapped in challenging the credibility of the lawyer when the lawyer also appears as an advocate in the case. An advocate who becomes a witness is in the unseemly and ineffective position of arguing his own credibility. The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively.

EC 5–10. Problems incident to the lawyer-witness relationship arise at different stages; they relate either to whether a lawyer should accept employment or should withdraw from employment. Regardless of when the problem arises, his decision is to be governed by the same basic considerations. It is not objectionable for a lawyer who is a potential witness to be an advocate if it is unlikely that he will be called as a witness because his testimony would be merely cumulative or if his testimony will relate only to an uncontested issue. In the exceptional situation where it will be manifestly unfair to the client for the lawyer to refuse employment or to withdraw when he will likely be a witness on a contested issue, he may serve as advocate even though he may be a witness. In making such decision, he should determine the personal or financial sacrifice of the client that may result from his refusal of employment or withdrawal therefrom, the materiality of his testimony, and the effectiveness of his representation in view of his personal involvement. In weighing these factors, it should be clear that refusal or withdrawal will impose an unreasonable hardship upon the client before the lawyer accepts or continues the employment. Where the question arises, doubts should be resolved in favor of the lawyer testifying and against his becoming or continuing as an advocate.

EC 5–11. A lawyer should not permit his personal interests to influence his advice relative to a suggestion by his client that additional counsel be employed. In like manner, his personal interests should not deter him from suggesting that additional counsel be employed; on the con-

trary, he should be alert to the desirability of recommending additional counsel when, in his judgment, the proper representation of his client requires it. However, a lawyer should advise his client not to employ additional counsel suggested by the client if the lawyer believes that such employment would be a disservice to the client, and he should disclose the reasons for his belief.

EC 5–12. Inability of co-counsel to agree on a matter vital to the representation of their client requires that their disagreement be submitted by them jointly to their client for his resolution, and the decision of the client shall control the action to be taken.

EC 5–13. A lawyer should not maintain membership in or be influenced by any organization of employees that undertakes to prescribe, direct, or suggest when or how he should fulfill his professional obligations to a person or organization that employs him as a lawyer. Although it is not necessarily improper for a lawyer employed by a corporation or similar entity to be a member of an organization of employees, he should be vigilant to safeguard his fidelity as a lawyer to his employer, free from outside influences.

Interests of Multiple Clients

EC 5–14. Maintaining the independence of professional judgment required of a lawyer precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client. This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant.

EC 5–15. If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interests, he must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or continues the employment. He should resolve all doubts against the propriety of the representation. A lawyer should never represent in litigation multiple clients with differing interests; and there are few situations in which he would be justified in representing in litigation multiple clients with potentially differing interests. If a lawyer accepted such employment and the interests did become actually differing, he would have to withdraw from employment with likelihood of resulting hardship on the clients; and for this reason it is preferable that he refuse the employment initially. On the other hand, there are many instances in which a lawyer may properly serve multiple clients having potentially differing interests in matters not involving litigation. If the interests vary only slightly, it is generally likely that the lawyer will not be subjected to an adverse influence and that he can retain his independent judgment on behalf of each client; and if the interests become differing, withdrawal is less likely to have a disruptive effect upon the causes of his clients.

EC 5–16. In those instances in which a lawyer is justified in representing two or more clients having differing interests, it is nevertheless essential that each client be given the opportunity to evaluate his need for representation free of any potential conflict and to obtain other counsel if he so desires. Thus before a lawyer may represent multiple clients, he should explain fully to each client the implications of the common representation and should accept or continue employment only if the clients consent. If there are present other circumstances that might cause any of the multiple clients to question the undivided loyalty of the lawyer, he should also advise all of the clients of those circumstances.

EC 5–17. Typically recurring situations involving potentially differing interests are those in which a lawyer is asked to represent co-defendants in a criminal case, co-plaintiffs in a personal injury case, an insured and his insurer, and beneficiaries of the estate of a decedent. Whether a lawyer can fairly and adequately protect the interests of multiple clients in these and similar situations depends upon an analysis of each case. In certain circumstances, there may exist little chance of the judgment of the lawyer being adversely affected by the slight possibility that the interests will become actually differing; in other circumstances, the chance of adverse effect upon his judgment is not unlikely.

EC 5–18. A lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interests and his professional judgment should not be influenced by the personal desires of any person or organization. Occasionally a lawyer for an entity is requested by a stockholder, director, officer, employee, representative, or other person connected with the entity to represent him in an individual capacity; in such case the lawyer may serve the individual only if the lawyer is convinced that differing interests are not present.

EC 5–19. A lawyer may represent several clients whose interests are not actually or potentially differing. Nevertheless, he should explain any circumstances that might cause a client to question his undivided loyalty. Regardless of the belief of a lawyer that he may properly represent multiple clients, he must defer to a client who holds the contrary belief and withdraw from representation of that client.

EC 5–20. A lawyer is often asked to serve as an impartial arbitrator or mediator in matters which involve present or former clients. He may serve in either capacity if he first discloses such present or former relationships. After a lawyer has undertaken to act as an impartial arbitrator or mediator, he should not thereafter represent in the dispute any of the parties involved.

Desires of Third Persons

EC 5–21. The obligation of a lawyer to exercise professional judgment solely on behalf of his client requires that he disregard the desires of others that might impair his free judgment. The desires of a third person will seldom adversely affect a lawyer unless that person is in a position to exert strong economic, political, or social pressures upon the lawyer. These influences are often subtle, and a lawyer must be alert to their existence. A lawyer subjected to outside pressures should make full disclosure of them to his client; and if he or his client believes that the effectiveness of his representation has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of his client.

EC 5–22. Economic, political, or social pressures by third persons are less likely to impinge upon the independent judgment of a lawyer in a matter in which he is compensated directly by his client and his professional work is exclusively with his client. On the other hand, if a lawyer is compensated from a source other than his client, he may feel a sense of responsibility to someone other than his client.

EC 5–23. A person or organization that pays or furnishes lawyers to represent others possesses a potential power to exert strong pressures against the independent judgment of those lawyers. Some employers may be interested in furthering their own economic, political, or social goals without regard to the professional responsibility of the lawyer to his individual client. Others may be far more concerned with establishment or extension of legal principles than in the immediate protection of the rights of the lawyer's individual client. On some occasions, decisions on priority of work may be made by the employer rather than the lawyer with the result that prosecution of work already undertaken for clients is postponed to their detriment. Similarly, an employer may seek, consciously or unconsciously, to further its own economic interests through the actions of the lawyers employed by it. Since a lawyer must always be free to exercise his professional judgment without regard to the interests or motives of a third person, the lawyer who is employed by one to represent another must constantly guard against erosion of his professional freedom.

EC 5–24. To assist a lawyer in preserving his professional independence, a number of courses are available to him. For example, a lawyer should not practice with or in the form of a professional legal corporation, even though the corporate form is permitted by law, if any director, officer, or stockholder of it is a non-lawyer. Although a lawyer may be employed by a business corporation with non-lawyers serving as directors or officers, and they necessarily have the right to make decisions of business policy, a lawyer must decline to accept direction of his professional judgment from any layman. Various types of legal aid offices are administered by boards of directors composed of lawyers and laymen. A lawyer should not accept employment from such an organization unless the board sets only broad policies and there is no interference in the relationship of the lawyer and the individual client he serves. Where a lawyer is employed by an organization, a written agreement that defines the relationship between him and the organization and provides for his independence is desirable since it may serve to prevent misunderstanding as to their respective roles. Although other innovations in the means of supplying legal counsel may develop, the responsibility of the lawyer to maintain his professional independence remains constant, and the legal profession must insure that changing circumstances do not result in loss of the professional independence of the lawyer.

DISCIPLINARY RULES

DR 5–101. Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment

(A) Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

(B) A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness, except that he may undertake the employment and he or a lawyer in his firm may testify:

(1) If the testimony will relate solely to an uncontested matter.

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client.

(4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as counsel in the particular case.

DR 5–102. Withdrawal as Counsel When the Lawyer Becomes a Witness

(A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5–101(B)(1) through (4).

(B) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm may be called as a witness other than on behalf of his client, he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client.

DR 5–103. Avoiding Acquisition of Interest in Litigation

(A) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation he is conducting for a client, except that he may:

(1) Acquire a lien granted by law to secure his fee or expenses.

(2) Contract with a client for a reasonable contingent fee in a civil case.

(B) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

DR 5–104. Limiting Business Relations with a Client

(A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

(B) Prior to conclusion of all aspects of the matter giving rise to his employment, a lawyer shall not enter into any arrangement or understanding with a client or a prospective client by which he acquires an interest in publication rights with respect to the subject matter of his employment or proposed employment.

DR 5–105. Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer

(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5–105(C).

(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5–105(C).

(C) In the situations covered by DR 5–105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

(D) If a lawyer is required to decline employment or to withdraw from employment under a Disciplinary Rule, no partner, or associate, or any other lawyer affiliated with him or his firm, may accept or continue such employment.

(Amended and effective Oct. 15, 1976.)

DR 5–106. Settling Similar Claims of Clients

(A) A lawyer who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against his clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement, and of the participation of each person in the settlement.

DR 5–107. Avoiding Influence by Others Than the Client

(A) Except with the consent of his client after full disclosure, a lawyer shall not:

(1) Accept compensation for his legal services from one other than his client.

(2) Accept from one other than his client any thing of value related to his representation of or his employment by his client.

(B) A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services.

(C) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) A non-lawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) A non-lawyer is a corporate director or officer thereof; or

(3) A non-lawyer has the right to direct or control the professional judgment of a lawyer.

Canon 6. A Lawyer Should Represent a Client Competently

ETHICAL CONSIDERATIONS

EC 6–1. Because of his vital role in the legal process, a lawyer should act with competence and proper care in representing clients. He should strive to become and remain proficient in his practice and should accept employment only in matters which he is or intends to become competent to handle.

EC 6–2. A lawyer is aided in attaining and maintaining his competence by keeping abreast of current legal literature and developments, participating in continuing legal education programs, concentrating in particular areas of the law, and by utilizing other available means. He has the additional ethical obligation to assist in improving the legal profession, and he may do so by participating in bar activities intended to advance the quality and standards of members of the profession. Of particular importance is the careful training of his younger associates and the giving of sound guidance to all lawyers who consult him. In short, a lawyer should strive at all levels to aid the legal profession in advancing the highest possible standards of integrity and competence and to meet those standards himself.

EC 6–3. While the licensing of a lawyer is evidence that he has met the standards then prevailing for admission to the bar, a lawyer generally should not accept employment in any area of the law in which he is not qualified. However, he may accept such employment if in good faith he expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to his client. Proper preparation and representation may require the association by the lawyer of professionals in other disciplines. A lawyer offered employment in a matter in which he is not and does not expect to become so qualified should either decline the employment or, with the consent of his client, accept the employment and associate a lawyer who is competent in the matter.

EC 6–4. Having undertaken representation, a lawyer should use proper care to safeguard the interests of his client. If a lawyer has accepted employment in a matter beyond his competence but in which he expected to become competent, he should diligently undertake the work and study necessary to qualify himself. In addition to being qualified to handle a particular matter, his obligation to his client requires him to prepare adequately for and give appropriate attention to his legal work.

EC 6–5. A lawyer should have pride in his professional endeavors. His obligation to act competently calls for higher motivation than that arising from fear of civil liability or disciplinary penalty.

EC 6–6. A lawyer should not seek, by contract or other means, to limit his individual liability to his client for his malpractice. A lawyer who handles the affairs of his client properly has no need to attempt to limit his liability for his professional activities and one who does not handle the affairs of his client properly should not be permitted to do so. A lawyer who is a stockholder in or is associated with a professional legal corporation may, however, limit his liability for malpractice of his associates in the corporation, but only to the extent permitted by law.

DISCIPLINARY RULES

DR 6–101. Failing to Act Competently

(A) A lawyer shall not:

(1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

(2) Handle a legal matter without preparation adequate in the circumstances.

(3) Neglect a legal matter entrusted to him.

DR 6–102. Limiting Liability to Client

(A) A lawyer shall not attempt to exonerate himself from or limit his liability to his client for his personal malpractice.

Canon 7. A Lawyer Should Represent a Client Zealously Within the Bounds of the Law

ETHICAL CONSIDERATIONS

EC 7–1. The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously within the bounds of the law, which includes Disciplinary Rules and enforceable professional regulations. The professional responsibility of a lawyer derives from his membership in a profession which has the duty of assisting members of the public to secure and protect available legal rights and benefits. In our government of laws and not of men, each member of our society is entitled to have his conduct judged and regulated in accordance with the law; to seek any lawful objective through legally permissible means; and to present for adjudication any lawful claim, issue, or defense.

EC 7–2. The bounds of the law in a given case are often difficult to ascertain. The language of legislative enactments and judicial opinions may be uncertain as applied to varying factual situations. The limits and specific meaning of apparently relevant law may be made doubtful by changing or developing constitutional interpretations, inadequately expressed statutes or judicial opinions, and changing public and judicial attitudes. Certainty of law ranges from well-settled rules through areas of conflicting authority to areas without precedent.

EC 7–3. Where the bounds of law are uncertain, the action of a lawyer may depend on whether he is serving as advocate or adviser. A lawyer may serve simultaneously as both advocate and adviser, but the two roles are essentially different. In asserting a position on behalf of his client, an advocate for the most part deals with past conduct and must take the facts as he finds them. By contrast, a lawyer serving as adviser primarily assists his client in determining the course of future conduct and relationships. While serving as advocate, a lawyer should resolve in favor of his client doubts as to the bounds of the law. In serving a client as adviser, a lawyer in appropriate circumstances should give his professional opinion as to what the ultimate decisions of the courts would likely be as to the applicable law.

Duty of the Lawyer to a Client

EC 7–4. The advocate may urge any permissible construction of the law favorable to his client, without regard to his professional opinion as to the likelihood that the construction will ultimately prevail. His conduct is within the bounds of the law, and therefore permissible, if the position taken is supported by the law or is supportable by a good faith argument for an extension, modification, or reversal of the law. However, a lawyer is not justified in asserting a position in litigation that is frivolous.

EC 7–5. A lawyer as adviser furthers the interest of his client by giving his professional opinion as to what he believes would likely be the ultimate decision of the courts on the matter at hand and by informing his client of the practical effect of such decision. He may continue in the representation of his client even though his client has elected to pursue a course of conduct contrary to the advice of the lawyer so long as he does not thereby knowingly assist the client to engage in illegal conduct or to take a frivolous legal position. A lawyer should never encourage or aid his client to commit criminal acts or counsel his client on how to violate the law and avoid punishment therefor.

EC 7–6. Whether the proposed action of a lawyer is within the bounds of the law may be a perplexing question when his client is contemplating a course of conduct having legal consequences that vary according to the client's intent, motive, or desires at the time of the action. Often a lawyer is asked to assist his client in developing evidence relevant to the state of mind of the client at a particular time. He may properly assist his client in the development and preservation of evidence of existing motive, intent, or desire; obviously, he may not do anything furthering the creation or preservation of false evidence. In many cases a lawyer may not be certain as to the state of mind of his client, and in those situations he should resolve reasonable doubts in favor of his client.

EC 7–7. In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own. But otherwise the authority to make decisions is exclusively that of the client and, if made within the framework of the law, such decisions are binding on his lawyer. As typical examples in civil cases, it is for the client to decide whether he will accept a settlement offer or whether he will waive his right to plead an affirmative defense. A defense lawyer in a criminal case has the duty to advise his client fully on whether a particular plea to a charge appears to be desirable and as to the

prospects of success on appeal, but it is for the client to decide what plea should be entered and whether an appeal should be taken.

EC 7–8. A lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decision-making process if the client does not do so. Advice of a lawyer to his client need not be confined to purely legal considerations. A lawyer should advise his client of the possible effect of each legal alternative. A lawyer should bring to bear upon this decision-making process the fullness of his experience as well as his objective viewpoint. In assisting his client to reach a proper decision, it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible. He may emphasize the possibility of harsh consequences that might result from assertion of legally permissible positions. In the final analysis, however, the lawyer should always remember that the decision whether to forego legally available objectives or methods because of non-legal factors is ultimately for the client and not for himself. In the event that the client in a non-adjudicatory matter insists upon a course of conduct that is contrary to the judgment and advice of the lawyer but not prohibited by Disciplinary Rules, the lawyer may withdraw from the employment.

EC 7–9. In the exercise of his professional judgment on those decisions which are for his determination in the handling of a legal matter, a lawyer should always act in a manner consistent with the best interests of his client. However, when an action in the best interest of his client seems to him to be unjust, he may ask his client for permission to forego such action.

EC 7–10. The duty of a lawyer to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm.

EC 7–11. The responsibilities of a lawyer may vary according to the intelligence, experience, mental condition or age of a client, the obligation of a public officer, or the nature of a particular proceeding. Examples include the representation of an illiterate or an incompetent, service as a public prosecutor or other government lawyer, and appearances before administrative and legislative bodies.

EC 7–12. Any mental or physical condition of a client that renders him incapable of making a considered judgment on his own behalf casts additional responsibilities upon his lawyer. Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make. If a client under disability has no legal representative, his lawyer may be compelled in court proceedings to make decisions on behalf of the client. If the client is capable of understanding the matter in question or of contributing to the advancement of his interests, regardless of whether he is legally disqualified from performing certain acts, the lawyer should obtain from him all possible aid. If the disability of a client and the lack of a legal representative compel the lawyer to make decisions for his client, the lawyer should consider all circumstances then prevailing and act with care to safeguard and advance the interests of his client. But obviously a lawyer cannot perform any act or make any decision which the law requires his client to perform or make, either acting for himself if competent, or by a duly constituted representative if legally incompetent.

EC 7–13. The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice; the prosecutor should make timely disclosure to the defense of available evidence, known to him, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. Further, a prosecutor should not intentionally avoid pursuit of evidence merely because he believes it will damage the prosecutor's case or aid the accused.

EC 7–14. A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair. A government lawyer not having such discretionary power who believes there is lack of merit in a controversy submitted to him should so advise his superiors and recommend the avoidance of unfair litigation. A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.

EC 7–15. The nature and purpose of proceedings before administrative agencies vary widely. The proceedings may be legislative or quasi-judicial, or a combination of both. They may be *ex*

parte in character, in which event they may originate either at the instance of the agency or upon motion of an interested party. The scope of an inquiry may be purely investigative or it may be truly adversary looking toward the adjudication of specific rights of a party or of classes of parties. The foregoing are but examples of some of the types of proceedings conducted by administrative agencies. A lawyer appearing before an administrative agency, regardless of the nature of the proceeding it is conducting, has the continuing duty to advance the cause of his client within the bounds of the law. Where the applicable rules of the agency impose specific obligations upon a lawyer, it is his duty to comply therewith, unless the lawyer has a legitimate basis for challenging the validity thereof. In all appearances before administrative agencies, a lawyer should identify himself, his client if identity of his client is not privileged, and the representative nature of his appearance. It is not improper, however, for a lawyer to seek from an agency information available to the public without identifying his client.

EC 7-16. The primary business of a legislative body is to enact laws rather than to adjudicate controversies, although on occasion the activities of a legislative body may take on the characteristics of an adversary proceeding, particularly in investigative and impeachment matters. The role of a lawyer supporting or opposing proposed legislation normally is quite different from his role in representing a person under investigation or on trial by a legislative body. When a lawyer appears in connection with proposed legislation, he seeks to affect the lawmaking process, but when he appears on behalf of a client in investigatory or impeachment proceedings, he is concerned with the protection of the rights of his client. In either event, he should identify himself and his client, if identity of his client is not privileged, and should comply with applicable laws and legislative rules.

EC 7-17. The obligation of loyalty to his client applies only to a lawyer in the discharge of his professional duties and implies no obligation to adopt a personal viewpoint favorable to the interests or desires of his client. While a lawyer must act always with circumspection in order that his conduct will not adversely affect the rights of a client in a matter he is then handling, he may take positions on public issues and espouse legal reforms he favors without regard to the individual views of any client.

EC 7-18. The legal system in its broadest sense functions best when persons in need of legal advice or assistance are represented by their own counsel. For this reason a lawyer should not communicate on the subject matter of the representation of his client with a person he knows to be represented in the matter by a lawyer, unless pursuant to law or rule of court or unless he has the consent of the lawyer for that person. If one is not represented by counsel, a lawyer representing another may have to deal directly with the unrepresented person; in such an instance, a lawyer should not undertake to give advice to the person who is attempting to represent himself, except that he may advise him to obtain a lawyer.

Duty of the Lawyer to the Adversary System of Justice

EC 7-19. Our legal system provides for the adjudication of disputes governed by the rules of substantive, evidentiary, and procedural law. An adversary presentation counters the natural human tendency to judge too swiftly in terms of the familiar that which is not yet fully known; the advocate, by his zealous preparation and presentation of facts and law, enables the tribunal to come to the hearing with an open and neutral mind and to render impartial judgments. The duty of a lawyer to his client and his duty to the legal system are the same: to represent his client zealously within the bounds of the law.

EC 7-20. In order to function properly, our adjudicative process requires an informed, impartial tribunal capable of administering justice promptly and efficiently according to procedures that command public confidence and respect. Not only must there be competent, adverse presentation of evidence and issues, but a tribunal must be aided by rules appropriate to an effective and dignified process. The procedures under which tribunals operate in our adversary system have been prescribed largely by legislative enactments, court rules and decisions, and administrative rules. Through the years certain concepts of proper professional conduct have become rules of law applicable to the adversary adjudicative process. Many of these concepts are the bases for standards of professional conduct set forth in the Disciplinary Rules.

EC 7-21. The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce adjustment of private civil claims or controversies is a subversion of that process; further, the person against whom the criminal process is so misused may be deterred from asserting his legal rights and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

EC 7-22. Respect for judicial rulings is essential to the proper administration of justice;

however, a litigant or his lawyer may, in good faith and within the framework of the law, take steps to test the correctness of a ruling of a tribunal.

EC 7-23. The complexity of law often makes it difficult for a tribunal to be fully informed unless the pertinent law is presented by the lawyers in the cause. A tribunal that is fully informed on the applicable law is better able to make a fair and accurate determination of the matter before it. The adversary system contemplates that each lawyer will present and argue the existing law in the light most favorable to his client. Where a lawyer knows of legal authority in the controlling jurisdiction directly adverse to the position of his client, he should inform the tribunal of its existence unless his adversary has done so; but having made such disclosure, he may challenge its soundness in whole or in part.

EC 7-24. In order to bring about just and informed decisions, evidentiary and procedural rules have been established by tribunals to permit the inclusion of relevant evidence and argument and the exclusion of all other considerations. The expression by a lawyer of his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact. It is improper as to factual matters because admissible evidence possessed by a lawyer should be presented only as sworn testimony. It is improper as to all other matters because, were the rule otherwise, the silence of a lawyer on a given occasion could be construed unfavorably to his client. However, a lawyer may argue, on his analysis of the evidence, for any position or conclusion with respect to any of the foregoing matters.

EC 7-25. Rules of evidence and procedure are designed to lead to just decisions and are part of the framework of the law. Thus while a lawyer may take steps in good faith and within the framework of the law to test the validity of rules, he is not justified in consciously violating such rules and he should be diligent in his efforts to guard against his unintentional violation of them. As examples, a lawyer should subscribe to or verify only those pleadings that he believes are in compliance with applicable law and rules; a lawyer should not make any prefatory statement before a tribunal in regard to the purported facts of the case on trial unless he believes that his statement will be supported by admissible evidence; a lawyer should not ask a witness a question solely for the purpose of harassing or embarrassing him; a lawyer should not by subterfuge put before a jury matters which it cannot properly consider.

EC 7-26. The law and Disciplinary Rules prohibit the use of fraudulent, false, or perjured testimony or evidence. A lawyer who knowingly participates in introduction of such testimony or evidence is subject to discipline. A lawyer should, however, present any admissible evidence his client desires to have presented unless he knows, or from facts within his knowledge should know, that such testimony or evidence is false, fraudulent, or perjured.

EC 7-27. Because it interferes with the proper administration of justice, a lawyer should not suppress evidence that he or his client has a legal obligation to reveal or produce. In like manner, a lawyer should not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.

EC 7-28. Witnesses should always testify truthfully and should be free from any financial inducements that might tempt them to do otherwise. A lawyer should not pay or agree to pay a non-expert witness an amount in excess of reimbursement for expenses and financial loss incident to his being a witness; however, a lawyer may pay or agree to pay an expert witness a reasonable fee for his services as an expert. But in no event should a lawyer pay or agree to pay a contingent fee to any witness. A lawyer should exercise reasonable diligence to see that his client and lay associates conform to these standards.

EC 7-29. To safeguard the impartiality that is essential to the judicial process, veniremen and jurors should be protected against extraneous influences. When impartiality is present, public confidence in the judicial system is enhanced. There should be no extrajudicial communication with veniremen prior to trial or with jurors during trial by or on behalf of a lawyer connected with the case. Furthermore, a lawyer who is not connected with the case should not communicate with or cause another to communicate with a venireman or a juror about the case. After the trial, communication by a lawyer with jurors is permitted so long as he refrains from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases. Were a lawyer to be prohibited from communicating after trial with a juror, he could not ascertain if the verdict might be subject to legal challenge, in which event the invalidity of a verdict might go undetected. When an extrajudicial communication by a lawyer with a juror is permitted by law, it should be made considerately and with deference to the personal feelings of the juror.

EC 7-30. Vexatious or harassing investigations of veniremen or jurors seriously impair the effectiveness of our jury system. For this reason, a lawyer or anyone on his behalf who conducts an investigation of veniremen or jurors should act with circumspection and restraint.

EC 7–31. Communications with or investigations of members of families of veniremen or jurors by a lawyer or by anyone on his behalf are subject to the restrictions imposed upon the lawyer with respect to his communications with or investigations of veniremen and jurors.

EC 7–32. Because of his duty to aid in preserving the integrity of the jury system, a lawyer who learns of improper conduct by or towards a venireman, a juror, or a member of the family of either should make a prompt report to the court regarding such conduct.

EC 7–33. A goal of our legal system is that each party shall have his case, criminal or civil, adjudicated by an impartial tribunal. The attainment of this goal may be defeated by dissemination of news or comments which tend to influence judge or jury. Such news or comments may prevent prospective jurors from being impartial at the outset of the trial and may also interfere with the obligation of jurors to base their verdict solely upon the evidence admitted in the trial. The release by a lawyer of out-of-court statements regarding an anticipated or pending trial may improperly affect the impartiality of the tribunal. For these reasons, standards for permissible and prohibited conduct of a lawyer with respect to trial publicity have been established.

EC 7–34. The impartiality of a public servant in our legal system may be impaired by the receipt of gifts or loans. A lawyer, therefore, is never justified in making a gift or a loan to a judge, a hearing officer, or an official or employee of a tribunal except as permitted by Section C(4) of Canon 5 of the Code of Judicial Conduct, but a lawyer may make a contribution to the campaign fund of a candidate for judicial office in conformity with Section B(2) under Canon 7 of the Code of Judicial Conduct.

(Amended and effective Oct. 15, 1976.)

EC 7–35. All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party. For example, a lawyer should not communicate with a tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or to the adverse party if he is not represented by a lawyer. Ordinarily an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel, or, if there is none, to the opposing party. A lawyer should not condone or lend himself to private importunities by another with a judge or hearing officer on behalf of himself or his client.

EC 7–36. Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent his client zealously, he should not engage in any conduct that offends the dignity and decorum of proceedings. While maintaining his independence, a lawyer should be respectful, courteous, and aboveboard in his relations with a judge or hearing officer before whom he appears. He should avoid undue solicitude for the comfort or convenience of judge or jury and should avoid any other conduct calculated to gain special consideration.

EC 7–37. In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer in his conduct, attitude, and demeanor towards opposing lawyers. A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

EC 7–38. A lawyer should be courteous to opposing counsel and should accede to reasonable requests regarding court proceedings, settings, continuances, waiver of procedural formalities, and similar matters which do not prejudice the rights of his client. He should follow local customs of courtesy or practice, unless he gives timely notice to opposing counsel of his intention not to do so. A lawyer should be punctual in fulfilling all professional commitments.

EC 7–39. In the final analysis, proper functioning of the adversary system depends upon cooperation between lawyers and tribunals in utilizing procedures which will preserve the impartiality of tribunals and make their decisional processes prompt and just, without impinging upon the obligation of lawyers to represent their clients zealously within the framework of the law.

DISCIPLINARY RULES

DR 7–101. Representing a Client Zealously

(A) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7–101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2–110, DR 5–102, and DR 5–105.

(3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 7–102(B).

(B) In his representation of a client, a lawyer may:

(1) Where permissible, exercise his professional judgment to waive or fail to assert a right or position of his client.

(2) Refuse to aid or participate in conduct that he believes to be unlawful, even though there is some support for an argument that the conduct is legal.

DR 7–102. Representing a Client Within the Bounds of the Law

(A) In his representation of a client, a lawyer shall not:

(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

(7) Counsel or assist his client in conduct that the layer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal, except when the information is protected as a privileged communication.

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

(Amended and effective Oct. 15, 1976.)

DR 7–103. Performing the Duty of Public Prosecutor or Other Government Lawyer

(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

(B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

DR 7–104. Communicating With One of Adverse Interest

(A) During the course of his representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other pacty or is authorized by law to do so.

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client.

DR 7–105. Threatening Criminal Prosecution

(A) A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

DR 7–106. Trial Conduct

(A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling.

(B) In presenting a matter to a tribunal, a lawyer shall disclose:

(1) Legal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing counsel.

(2) Unless privileged or irrelevant, the identities of the clients he represents and of the persons who employed him.

(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(2) Ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply.

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Intentionally or habitually violate any established rule of procedure or of evidence.

DR 7-107. Trial Publicity

(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

(1) Information contained in a public record.

(2) That the investigation is in progress.

(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

(5) A warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(3) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.

(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(5) The identity, testimony, or credibility of a prospective witness.

(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR 7-107(B) does not preclude a lawyer during such period from announcing:

(1) The name, age, residence, occupation, and family status of the accused.

(2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.

(3) A request for assistance in obtaining evidence.

(4) The identity of the victim of the crime.

(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.

(6) The identity of investigating and arresting officers or agencies and the length of the investigation.

(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

(8) The nature, substance, or text of the charge.

(9) Quotations from or references to public records of the court in the case.

(10) The scheduling or result of any step in the judicial proceedings.

(11) That the accused denies the charges made against him.

(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by

means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

(F) The foregoing provisions of DR 7–107 also apply to professional disciplinary proceedings and juvenile disciplinary proceedings when pertinent and consistent with other law applicable to such proceedings.

(G) A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

(5) Any other matter reasonably likely to interfere with a fair trial of the action.

(H) During the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) Physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims, defenses, or positions of an interested person.

(5) Any other matter reasonably likely to interfere with a fair hearing.

(I) The foregoing provisions of DR 7–107 do not preclude a lawyer from replying to charges of misconduct publicly made against him or from participating in the proceedings of legislative, administrative, or other investigative bodies.

(J) A lawyer shall exercise reasonable care to prevent his employees and associates from making an extra-judicial statement that he would be prohibited from making under DR 7–107.

DR 7–108. Communication with or Investigation of Jurors

(A) Before the trial of a case a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected for the trial of the case.

(B) During the trial of a case:

(1) A lawyer connected therewith shall not communicate with or cause another to communicate with any member of the jury.

(2) A lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.

(C) DR 7–108(A) and (B) do not prohibit a lawyer from communicating with veniremen or jurors in the course of official proceedings.

(D) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.

(E) A lawyer shall not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireman or a juror.

(F) All restrictions imposed by DR 7–108 upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.

(G) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.

DR 7-109. Contact with Witnesses

(A) A lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce.

(B) A lawyer shall not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.

(C) A lawyer shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:

(1) Expenses reasonably incurred by a witness in attending or testifying.

(2) Reasonable compensation to a witness for his loss of time in attending or testifying.

(3) A reasonable fee for the professional services of an expert witness.

DR 7-110. Contact with Officials

(A) A lawyer shall not give or lend any thing of value to a judge, official, or employee of a tribunal except as permitted by Section C(4) of Canon 5 of the Code of Judicial Conduct, but a lawyer may make a contribution to the campaign fund of a candidate for judicial office in conformity with Section B(2) under Canon 7 of the Code of Judicial Conduct.

(B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

(1) In the course of official proceedings in the cause.

(2) In writing if he promptly delivers a copy of the writing to opposing counsel or to the adverse party if he is not represented by a lawyer.

(3) Orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.

(4) As otherwise authorized by law, or by Section A(4) under Canon 3 of the Code of Judicial Conduct.

(As amended and effective Oct. 15, 1976.)

Canon 8. A Lawyer Should Assist in Improving the Legal System

ETHICAL CONSIDERATIONS

EC 8-1. Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system. This system should function in a manner that commands public respect and fosters the use of legal remedies to achieve redress of grievances. By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients.

EC 8-2. Rules of law are deficient if they are not just, understandable, and responsive to the needs of society. If a lawyer believes that the existence or absence of a rule of law, substantive or procedural, causes or contributes to an unjust result, he should endeavor by lawful means to obtain appropriate changes in the law. He should encourage the simplification of laws and the repeal or amendment of laws that are outmoded. Likewise, legal procedures should be improved whenever experience indicates a change is needed.

EC 8-3. The fair administration of justice requires the availability of competent lawyers. Members of the public should be educated to recognize the existence of legal problems and the resultant need for legal services, and should be provided methods for intelligent selection of counsel. Those persons unable to pay for legal services should be provided needed services. Clients and lawyers should not be penalized by undue geographical restraints upon representation in legal matters, and the bar should address itself to improvements in licensing, reciprocity, and admission procedures consistent with the needs of modern commerce.

EC 8-4. Whenever a lawyer seeks legislative or administrative changes, he should identify the capacity in which he appears, whether on behalf of himself, a client, or the public. A lawyer may advocate such changes on behalf of a client even though he does not agree with them. But when a lawyer purports to act on behalf of the public, he should espouse only those changes which he conscientiously believes to be in the public interest.

EC 8-5. Fraudulent, deceptive, or otherwise illegal conduct by a participant in a proceeding before a tribunal or legislative body is inconsistent with fair administration of justice, and it should never be participated in or condoned by lawyers. Unless constrained by his obligation to preserve the confidences and secrets of his client, a lawyer should reveal to appropriate authorities any knowledge he may have of such improper conduct.

EC 8–6. Judges and administrative officials having adjudicatory powers ought to be persons of integrity, competence, and suitable temperament. Generally, lawyers are qualified, by personal observation or investigation, to evaluate the qualifications of persons seeking or being considered for such public offices, and for this reason they have a special responsibility to aid in the selection of only those who are qualified. It is the duty of lawyers to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. Lawyers should protest earnestly against the appointment or election of those who are unsuited for the bench and should strive to have elected or appointed thereto only those who are willing to forego pursuits, whether of a business, political, or other nature, that may interfere with the free and fair consideration of questions presented for adjudication. Adjudicatory officials, not being wholly free to defend themselves, are entitled to receive the support of the bar against unjust criticism. While a lawyer as a citizen has a right to criticize such officials publicly, he should be certain of the merit of his complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system. Criticisms motivated by reasons other than a desire to improve the legal system are not justified.

EC 8–7. Since lawyers are a vital part of the legal system, they should be persons of integrity, of professional skill, and of dedication to the improvement of the system. Thus a lawyer should aid in establishing, as well as enforcing, standards of conduct adequate to protect the public by insuring that those who practice law are qualified to do so.

EC 8–8. Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties.

EC 8–9. The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, a lawyer should encourage, and should aid in making, needed changes and improvements.

DISCIPLINARY RULES

DR 8–101. Action as a Public Official

(A) A lawyer who holds public office shall not:

(1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest.

(2) Use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client.

(3) Accept any thing of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official.

DR 8–102. Statements Concerning Judges and Other Adjudicatory Officers

(A) A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office.

(B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

DR 8–103. Lawyer Candidate for Judicial Office

(A) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of Canon 7 of the Code of Judicial Conduct.

(Added and effective Oct. 15, 1976.)

Canon 9. A Lawyer Should Avoid Even the Appearance of Professional Impropriety

ETHICAL CONSIDERATIONS

EC 9–1. Continuation of the American concept that we are to be governed by rules of law requires that the people have faith that justice can be obtained through our legal system. A lawyer should promote public confidence in our system and in the legal profession.

EC 9–2. Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer. On occasion, ethical conduct of a lawyer may appear to laymen to be unethical. In order to avoid misunderstandings and hence to maintain confidence, a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client. While a lawyer should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession, his duty to clients or to the public

should never be subordinate merely because the full discharge of his obligation may be misunderstood or may tend to subject him or the legal profession to criticism. When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.

EC 9–3. After a lawyer leaves judicial office or other public employment, he should not accept employment in connection with any matter in which he had substantial responsibility prior to his leaving, since to accept employment would give the appearance of impropriety even if none exists.

EC 9–4. Because the very essence of the legal system is to provide procedures by which matters can be presented in an impartial manner so that they may be decided solely upon the merits, any statement or suggestion by a lawyer that he can or would attempt to circumvent those procedures is detrimental to the legal system and tends to undermine public confidence in it.

EC 9–5. Separation of the funds of a client from those of his lawyer not only serves to protect the client but also avoids even the appearance of impropriety, and therefore commingling of such funds should be avoided.

EC 9–6. Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety.

DISCIPLINARY RULES

DR 9–101. Avoiding Even the Appearance of Impropriety

(A) A lawyer shall not accept private employment in a matter upon the merits of which he has acted in a judicial capacity.

(B) A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee.

(C) A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

DR 9–102. Preserving Identity of Funds and Property of a Client

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

DR 9–103. Required Books and Records; Required Certificate

(A) Every lawyer engaged in private practice of law shall maintain or cause to be maintained on a current basis books and records sufficient to demonstrate income derived from, and expenses related to, his private practice of law, and to establish compliance with DR 9–102. The books and records shall be preserved for at least six years following the end of the taxable year to which they relate or, as to books and records relating to funds or property of clients, for at least six years after completion of the employment to which they relate.

(B) Every lawyer subject to DR 9–103(A) shall certify, in connection with the annual renewal of his registration and in such form as the Clerk of the Supreme Court may prescribe that he or his law firm maintains books and records as required by DR 9–103(A).

(Adopted and effective Oct. 15, 1976.)

Definitions

As used in the Disciplinary Rules of the Code of Professional Responsibility:

(1) "Differing interests" include every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

(2) "Law firm" includes a professional legal corporation.

(3) "Person" includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.

(4) "Professional legal corporation" means a corporation, or an association treated as a corporation, authorized by law to practice law for profit.

(5) "State" includes the District of Columbia, Puerto Rico, and other federal territories and possessions.

(6) "Tribunal" includes all courts and all other adjudicatory bodies.

(7) "Bar association" means a bar association representative of the general bar of the geographical area in which the association exists.

(8) "A bar association representative of the general bar" includes a bar association of specialists as referred to in DR 2–105(A)(1) or (4).

(Note: "Confidence" and "secret" are defined in DR 4–101(A).)

(Amended, effective Sept. 29, 1975.)

Part F. Rules on Lawyers Professional Responsibility

Adopted November 1, 1976
Effective January 1, 1977
As Amended through July 1, 1978

(1) Table of Headnotes

Rule

(2) Text of Rules

Rule 1. Definitions

As used in these Rules:
(1) "Board" means the Lawyers Professional Responsibility Board.
(2) "Chairman" means the Chairman of the Board.

(3) "Director" means the Director of Lawyers Professional Responsibility.

(4) "District Bar Association" includes the Range Bar Association.

(5) "District Chairman" means the Chairman of a District Bar Association's Ethics Committee.

(6) "District Committee" means a District Bar Association's Ethics Committee.

(7) "Notify" means to give personal notice or to mail to the person at his last known address or the address maintained on this Court's attorney registration records.

(8) "Panel" means a panel of the Board.

Rule 2. Purpose

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

Rule 3. District Ethics Committee

(a) Composition. Each District Committee shall consist of:

(1) A Chairman appointed by this Court for such time as it designates and serving at the pleasure of this Court but not more than six years as Chairman; and

(2) Four or more persons whom the District Bar Association (or, upon failure thereof, this Court) may appoint to three-year terms except that shorter terms shall be used where necessary to assure that approximately one-third of all terms expire annually. No person may serve more than two three-year terms, in addition to any additional shorter term for which he was originally appointed and any period served as District Chairman.

At least 20 percent of each District Committee's members shall be nonlawyers.

(b) Duties. The District Commitee shall investigate complaints of lawyers' alleged unprofessional conduct and make reports and recommendations thereon as provided in these Rules. It shall meet at least annually and from time to time as required. The District Chairman shall prepare and submit an annual report and such other reports as the Director may require.

Rule 4. Lawyers Professional Responsibility Board

(a) Composition. The Board shall consist of:

(1) A Chairman appointed by this Court for such time as it designates and serving at the pleasure of this Court but not more than six years as Chairman; and

(2) Effective not later than February 1, 1981, twelve lawyers having their principal office in this state, six of whom the Minnestoa State Bar Association may nominate, and eight nonlawyers resident in this State, all appointed by this Court to three-year terms except that shorter terms shall be used where necessary to assure that as nearly as may be one-third of all terms expire each February 1. No person may serve more than two three-year terms, in addition to any additional shorter term for which he was originally appointed and any period served as Chairman.

(3) Unless any lawyer members nominated by the Minnesota State Bar Association shall leave the Board for any reason or decline reappointment to the Board, the number of lawyer members nominated by the Minnesota State Bar Association shall be as follows within the periods indicated:

Period	Total Number	Association Nominees
From the date hereof through January 31, 1979	15	9
February 1, 1979 through January 31, 1981	14	8

(b) Compensation. The Chairman and other members shall serve without compensation but shall be paid their reasonable and necessary expenses incurred in the performance of their duties.

(c) Duties. The Board shall have general supervisory authority over the administration of these Rules, shall advise and assist the Director in the performance of his duties, and may, from time to time, issue opinions on questions of professional conduct. The Board may elect a Vice-Chairman and specify his duties, and may elect an Executive Committee and authorize it to perform specified duties of the Board between Board meetings.

(d) Panels. The Chairman shall divide the Board into four Panels, each consisting of not less than three lawyer members and two nonlawyer members.The Chairman or the Vice-Chairman, if any, is a Panel member at any Panel proceeding he attends. Four Panel members, at least one of whom is a nonlawyer, shall constitute a quorum. If a quorum cannot be obtained the Chairman or, if he is unavailable, the Vice-Chairman may assign other Board members for the particular matter. A Panel may refer any matter before it to the full Board.

(e) **Assignment to Panels.** The Director shall assign matters to Panels in rotation.

(f) **Approval of petitions.** Except as ordered by this Court, no petition for disciplinary action shall be filed with this Court without the approval of a Panel or the Board.

(Amended effective May 11, 1978.)

Rule 5. Director

(a) **Appointment.** The Director shall be appointed by and serve at the pleasure of this Court, and shall be paid such salary as this Court shall fix.

(b) **Duties.** The Director shall be responsible and accountable to this Court and, unless this Court otherwise directs, to the Board, for the proper administration of these Rules.

(c) **Employees.** The Director when authorized by this Court and on this Court's behalf may employ persons at such compensation as this Court may approve.

Rule 6. Complaints

(a) **Investigation.** All complaints of lawyers' alleged unprofessional conduct shall be investigated pursuant to these Rules.

(b) **Notification; referral.** If a complaint of a lawyer's alleged unprofessional conduct is submitted to a District Committee, the District Chairman promptly shall notify the Director of its pendency. If a complaint is submitted to the Director, he shall refer it for investigation to the District Committee of the district where the lawyer has his principal office unless he determines to investigate it without referral.

(c) **Attorney General.** The Director shall notify the Attorney General of each complaint made to him or reported to him by a District Chairman. The Director shall inform each complainant that if he is not satisfied with the disposition made by the Director, he may take his complaint to the Attorney General. Unless otherwise directed by this Court, the Director may allow the Attorney General access to files, records, and proceedings of the District Committees, the Board, and the Director, subject to the Attorney General's agreement to keep them confidential as provided in Rule 20(a). Upon petition by the Attorney General, a Panel may make any disposition specified in Rule 9(e). Upon appeal by the Attorney General, this Court may direct the Panel to make any disposition specified in Rule 9(e) or may take any other action as the interests of justice may require.

Rule 7. District Committee Investigation

(a) **Assignment; assistance.** The District Chairman may investigate or assign investigation of the complaint to any of the Committee's members, and may request the Director's assistance in making the investigation. The District Chairman may request some or all Committee members to consider the matter.

(b) **Report.** The District Chairman or his designee shall report the results of the investigation to the Director. The report shall include a recommendation that the Director:

(1) Determine that discipline is not warranted;

(2) Issue a private warning;

(3) Refer the matter to a Panel, either with or without a recommendation as to the matter's ultimate disposition; or

(4) Investigate the matter further.

(c) **Time.** The investigation shall be completed and the report made promptly and, in any event, within 45 days after the District Committee received the complaint, unless good cause exists. If the report is not made within 45 days, the District Chairman or his designee within that time shall notify the Director of the reasons for the delay.

(d) **Removal.** The Director may at any time and for any reason remove a complaint from a District Committee's consideration by notifying the District Chairman of the removal.

Rule 8. Notice to Complainant; Investigation; Disposition

(a) **Notice to complainant.** The Director shall keep the complainant advised of the progress of the proceedings and shall appropriately notify him of each stage of the proceedings, including:

(1) Receipt of the complaint by a District Committee or the Director;

(2) Notification of reasons for delay under Rule 7(c);

(3) Removal of a complaint under Rule 7(d); and

(4) Receipt of a report under Rule 7(b).

(b) **Initiating investigation.** At any time, with or without a complaint or a District Committee's report, the Director may make such investigation as he deems appropriate as to the conduct of any lawyer or lawyers.

(c) **Disposition.**

(1) **Determination discipline not warranted.** If, in a matter where there has been a complaint, the Director concludes that discipline is not warranted he shall so notify the lawyer involved, the complainant, and the Chairman of the District Committee, if any, that has considered the complaint. The notification may set forth an explanation of the Director's conclusion. The notification to the lawyer shall set forth the complainant's identity and the complaint's substance.

(2) **Warning.** If in any matter, with or without a complaint, the Director concludes that a lawyer's conduct does not warrant discipline but warrants a warning, he shall notify the lawyer of the warning and that:

(i) The warning is in lieu of the Director's presenting charges of unprofessional conduct to a Panel,

(ii) The lawyer may within a specified reasonable time demand that the Director so present the charges, and

(iii) Unless the lawyer so demands the Director after that time will notify the complainant, if any, and the Chairman of the District Committee, if any, that has considered the complaint, that the Director has issued the warning.

(3) **Submission to Panel.** If in any matter, with or without a complaint, the Director concludes that discipline is warranted, or if the lawyer makes a demand under Rule 8(c)(2)(ii), the Director shall submit the matter to a Panel under Rule 9.

Rule 9. Panel Proceedings

(a) **Charges; setting hearing.** If the matter is to be submitted to a Panel, the Director shall prepare charges of unprofessional conduct, set a time and place for a hearing by a Panel on the charges, and notify the lawyer of the charges and hearing and of the lawyer's right to be heard at the hearing. The Director shall also notify the complainant, if any, of the hearing's time and place.

(b) **Subpoenas.** At the instance of the Director or the lawyer, attendance of witnesses and production of documentary or tangible evidence shall be compelled as provided in Rule 45, Rules of Civil Procedure. The District Court of the District where the hearing will be held shall have jurisdiction over issuance of subpoenas, motions respecting subpoenas, motions to compel witnesses to testify or give evidence, and determinations of claims of privilege.

(c) **Admission of charges.** The Director shall, if possible, contact the lawyer to determine whether he desires to admit any charges. The lawyer may:

(1) Admit some or all charges, or

(2) Tender an admission of some or all charges conditioned upon a stated disposition.

(d) **Conditional stay.** The Panel may, if the Director and the lawyer agree, consent to hold the proceedings in abeyance for a specified period and thereafter discontinue them, provided the lawyer throughout the period complies with specified reasonable conditions.

(e) **Disposition.** After hearing, the Panel shall either:

(1) Determine that discipline is not warranted;

(2) Instruct the Director to give a warning;

(3) Make a finding of unprofessional conduct and issue a reprimand; or

(4) Instruct the Director to file in this Court a petition for disciplinary action, either with or without a recommendation as to the matter's ultimate disposition.

(f) **Notification.** The Director shall notify the lawyer, the complainant, if any, and the District Committee, if any, that has considered the complaint, of the Panel's action under subdivision (d) or (e).

Rule 10. Procedure Upon Admission of Charges

If the Panel so instructs, the Director shall file a petition for disciplinary action together with the lawyer's admission of charges or tender of conditional admission. This Court may act thereon with or without any of the procedures under Rules 12, 13, or 14. If this Court rejects a tender of conditional admission, the matter may be remanded to the same or a different Panel.

Rule 11. Resignation

This Court may at any time, with or without a hearing and with any conditions it may deem appropriate, grant or deny a lawyer's request to resign from the bar.

Rule 12. Petition for Disciplinary Action

(a) **Petition.** When so directed by a Panel or by this Court the Director shall file with this Court a petition for disciplinary action. The petition shall set forth the unprofessional conduct charged.

(b) Service. The Director shall cause the petition to be served upon the respondent in the same manner as a summons in a civil action. If the respondent has a duly appointed resident guardian or conservator service shall be made thereupon in like manner.

(c) Respondent not found.

(1) *Suspension.* If the respondent cannot be found in the state, the Director shall mail a copy of the petition to the respondent's last known address and file an affidavit of mailing with this Court. Thereafter the Director may apply to this Court for an order suspending the respondent from the practice of law. A copy of the order, when made and filed, shall be mailed to each district court judge of this state. Within one year after the order is filed, the respondent may move this Court for a vacation of the order of suspension and for leave to answer the petition for disciplinary action.

(2) *Order to show cause.* If the respondent does not so move, the Director shall petition this Court for an order directing the respondent to show cause to this Court why appropriate disciplinary action should not be taken. The order to show cause shall be returnable not sooner than 20 days after service. The order may be served on the respondent by publishing it once each week for three weeks in the regular issue of a qualified newspaper published in the county in this state in which the respondent was last known to practice or reside. The service shall be deemed complete 21 days after the first publication. Personal service of the order without the state, proved by the affidavit of the person making the service, sworn to before a person authorized to administer an oath, shall have the same effect as service by publication. Proof of service shall be filed with this Court. If the respondent fails to respond to the order to show cause, this Court may proceed under Rule 15.

Rule 13. Answer to Petition for Disciplinary Action

(a) Filing. Within 20 days after service of the petition, the respondent shall file in duplicate in this Court an answer. The answer may deny or admit any accusations or state any defense, privilege, or matter in mitigation.

(b) Conditional admission. The answer may tender an admission of some or all accusations conditioned upon a stated disposition.

(c) Failure to file. If the respondent fails to file an answer within the time provided or any extension of time this Court may grant, the petition's allegations shall be deemed admitted and this Court may proceed under Rule 15.

Rule 14. Hearing on Petition for Disciplinary Action

(a) Referee. This Court may appoint a referee with directions to hear and report the evidence submitted for or against the petition for disciplinary action.

(b) Conduct of hearing before referee. Unless this Court otherwise directs, the hearing shall be conducted in accordance with the rules of civil procedure applicable to district courts and the referee shall have all the powers of a district court judge.

(c) Record. The referee shall appoint a court reporter to make a record of the proceedings as in civil cases.

(d) Referee's findings, conclusions, and recommendations. The referee shall make findings of fact, conclusions, and recommendations, file them with this Court, and notify the respondent and Director of them. Unless the respondent or Director within five days orders a transcript and so notifies this Court, the findings of fact and conclusions shall be conclusive. One ordering a transcript shall make satisfactory arrangements with the reporter for his payment. The reporter shall complete the transcript within 30 days.

(e) Hearing before Court. This Court within ten days of the referee's findings, conclusions, and recommendations, shall set a time for hearing before this Court. The order shall specify times for briefs and oral arguments. The matter shall be heard upon the record, briefs, and arguments.

Rule 15. Disposition; Protection of Clients

(a) Disposition. Upon conclusion of the proceedings, this Court may:

(1) Disbar the lawyer;

(2) Suspend him indefinitely or for a stated period of time;

(3) Place him on a probationary status for a stated period, or until further order of this Court, with such conditions as this Court may specify and to be supervised by the Director;

(4) Reprimand him;

(5) Make such other disposition as this Court deems appropriate; or

(6) Dismiss the petition for disciplinary action.

(b) Protection of clients. When a lawyer is disciplined or permitted to resign, this Court may issue orders as may be appropriate for the protection of clients or other persons.

Rule 16. Temporary Suspension Pending Disciplinary Proceedings

(a) Petition for temporary suspension. Whenever it appears that a continuation of a lawyer's authority to practice law pending final determination of disciplinary proceedings may result in risk of injury to the public, the Director, on direction of a Panel, shall file with this Court a petition for suspension of the lawyer pending final determination of disciplinary proceedings. The petition shall set forth facts as may constitute grounds for the suspension and may be supported by a transcript of any evidence taken by the Panel, court records, documents or affidavits.

(b) Service. The Director shall cause the petition to be served upon the lawyer in the same manner as a petition for disciplinary action.

(c) Answer. Within 20 days after service of the petition or such shorter time as this Court may order, the lawyer shall file in duplicate in this Court an answer to the petition for temporary suspension. If he fails to do so within that time or any extension of time this Court may grant, the petition's allegations shall be deemed admitted and this Court may enter an order suspending the lawyer pending final determination of disciplinary proceedings. The answer may be supported by a transcript of any evidence taken by the Panel, court records, documents, or affidavits.

(d) Hearing; disposition. If this Court after hearing finds a continuation of the lawyer's authority to practice law may result in risk of injury to the public, it may enter an order suspending the lawyer pending final determination of disciplinary proceedings.

Rule 17. Felony Conviction

(a) Non-final conviction. Whenever a lawyer is convicted, other than upon his plea of guilty or nolo contendere, of a felony under Minnesota statute or of a crime under the laws of the United States, any state or territory thereof, or any foreign country, punishable by incarceration for more than one year, the Director shall investigate and determine whether a continuation of the lawyer's authority to practice law pending final determination of disciplinary proceedings may result in risk of injury to the public. If he determines in the affirmative, he shall proceed under Rule 16. If he determines in the negative, he shall so notify the Board.

(b) Final conviction. Whenever a lawyer is convicted, upon his plea of guilty or nolo contendere or upon a judgment not subject to direct appellate review, of an offense specified in Rule 17(a), the Director shall investigate and submit the matter to a Panel under Rule 9. If appropriate, he shall also proceed under Rule 16.

(c) Other cases. Nothing in this Rule precludes disciplinary proceedings, where appropriate, in case of conviction of an offense not punishable by incarceration for more than one year or in case of unprofessional conduct for which there has been no criminal conviction or for which a criminal conviction is subject to appellate review.

Rule 18. Reinstatement

(a) Petition for reinstatement. A suspended, disbarred, or resigned lawyer's petition for reinstatement to practice law shall be served upon the Director and the president of the State Bar Association. The original petition, with proof of service, and one copy, shall then be filed with this Court.

(b) Investigation; report. The Director shall investigate and report his conclusions to a Panel.

(c) Recommendation. The Panel may conduct a hearing and shall make its recommendation. The recommendation shall be served upon the petitioner and filed with this Court.

(d) Hearing before Court. There shall be a hearing before this Court on the petition unless otherwise ordered by this Court. This Court may appoint a referee. If a referee is appointed, the same procedure shall be followed as under Rule 14.

Rule 19. Effect of Previous Proceedings

(a) Criminal conviction. A lawyer's criminal conviction in any jurisdiction, even if upon a plea of nolo contendere or subject to appellate review, is, in proceedings under these Rules, conclusive evidence that he committed the conduct for which he was convicted.

(b) Disciplinary proceedings.

(1) *Conduct previously considered.* Proceedings under these Rules may be based upon conduct considered in previous lawyer disciplinary proceedings of any jurisdiction, even if it was determined in the previous proceedings that discipline was not warranted or that the proceedings should be discontinued after the lawyer's compliance with conditions.

(2) *Previous finding.* A finding by a Panel or equivalent or by a court in the previous proceedings that a lawyer committed conduct warranting reprimand, probation, suspension, disbarment, or equivalent is, in proceedings under these Rules, prima facie evidence that he committed the conduct.

(3) *Previous discipline.* The fact that the lawyer received reprimand, probation, suspension, disbarment, or equivalent in the previous proceedings is admissible in evidence in proceedings under these Rules.

(c) Stipulation. Unless the referee or this Court otherwise directs or the stipulation otherwise provides, a stipulation before a Panel remains in effect at subsequent proceedings regarding the same matter before the referee or this Court.

Rule 20. Confidentiality

(a) General rule. The files, records, and proceedings of the District Committees, the Board, and the Director, as they may relate to or arise out of any complaint or charge of unprofessional conduct against or investigation of a lawyer, shall be deemed confidential and shall not be disclosed, except:

(1) As between the Committees, Board, and Director in furtherance of their duties;

(2) In proceedings before a referee or this Court under Rules 10 through 18;

(3) As between the Director and a lawyer admission or disciplinary authority of another jurisdiction in which the lawyer affected is admitted to practice or seeks to practice;

(4) Upon request of the lawyer affected;

(5) Where permitted by this Court; or

(6) Where required or permitted by these Rules.

(b) Special matters. The following may be disclosed by the Director:

(1) The fact that a matter is or is not being investigated or considered by the Committee, Director, or Panel;

(2) The fact that the Director has determined that discipline is not warranted, including the fact, if applicable, that a warning was given under Rule 8(c)(2);

(3) The Panel's disposition under Rule 9(d) or (e);

(4) The Director's determination under Rule 17(a); or

(5) The Panel's disposition upon a matter submitted to it under Rule 17(b).

(c) Referee or Court proceedings. Except as ordered by the referee or this Court, the files, records, and proceedings before a referee or this Court under Rules 10 through 18 are not confidential.

Rule 21. Privilege

A complaint or charge, or statement relating to a complaint or charge, of a lawyer's alleged unprofessional conduct, to the extent that it is made in proceedings under these Rules, including proceedings under Rule 6(c), or to the Director or a person employed thereby or to a District Committee, the Board or this Court, or any member thereof, is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person who made the complaint, charge, or statement.

Rule 22. Payment of Expenses

Payment of necessary expenses of the Director and the Board 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 Director and persons employed by him under 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 23. Supplemental Rules

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

APPENDIX 12
RULES GOVERNING THE CONDUCT OF JUDGES

Part A. Code of Judicial Conduct

Adopted by the Supreme Court February 20, 1974
As Amended through July 1, 1978

(1) Table of Headnotes

(2) Text of Canons

CANON 1 A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2 A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

CANON 3 A Judge Should Perform the Duties of His Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not aprove compensation of appointees beyond the fair value of services rendered.

C. Disqualification.

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system;

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

D. Remittal of Disqualification. A judge disqualified by the terms of Canon 3C(1) (c) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

Canon 4 A Judge May Engage in Activities to Improve the Law, the Legal System, Judicial Administration, and the Administration of Justice

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, judicial administration, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, judicial administration, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice or judicial administration.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, judicial administration, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, judicial administration, and the administration of justice.

Canon 5 A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

(3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, manager, advisor, or employee of any business.

(3) A judge should manage his investments and other financial interest to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, judicial administration, or the administration of justice;

(b) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds $100, the judge reports it in the same manner as he reports compensation in Canon 6C.

(5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family' 'includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jursidiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

E. Arbitration. A judge should not act as an arbitrator or mediator.

F. Practice of Law. A judge should not practice law.

G. Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, judicial administration, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Canon 6 A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

C. Public Reports. A judge should report the date, place, and nature of any activity for which he received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. His report should be made annually, on or before the first day in May of each year, and should be filed as a public document in the office of the State Court Administrator. Canon 6C shall become effective on May 1, 1975.

Canon 7 A Judge Should Refrain from Political Activity Inappropriate to His Judicial Office

A. Political Conduct in General.

(1) A judge or a candidate for election to judicial office should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2).

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may accept invitations to attend and speak on his own behalf at other than partisan political gatherings during the year in which he is a candidate for election or reelection.

(3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, judicial administration, or the administration of justice.

B. Campaign Conduct.

(1) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2), or B(3), he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

(2) A candidate, including an incumbent judge, for a judicial official that is filled by public election between competing candidates should not himself solicit or accept campaign funds, or solicit publicly stated support, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. A candidate should not use or permit the use of campaign contributions for the private benefit of himself or members of his family.

(3) An incumbent judge who is a candidate for retention in or re-election to office without a competing candidate, and whose candidacy as drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in subsection B(2).

Compliance with the Code of Judicial Conduct

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. Part-time Judge. A part-time judge is a judge who serves on a continuing or periodic

basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) is not required to comply with Canon 5C(2), D, E, F, and G, and Canon 6C;

(2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

B. Retired Judge. A retired judge who receives the same compensation as a full-time judge on the court from which he retired and is eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5G, but he should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. All other retired judges eligible for recall to judicial service should comply with the provisions of this Code governing part-time judges.

Effective Date of Compliance

A person to whom this Code becomes applicable should arrange his affairs as soon as reasonably possible to comply with it. If, however, the demands on his time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may:

(a) continue to act as an officer, director, or non-legal advisor of a family business;

(b) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his family.

Part B. Rules of Board on Judicial Standards

As Amended through July 1, 1978

(1) Table of Headnotes

(2) Text of Rules

Rule 1. Organization of Board.

(a) Appointment of Members. The Board on Judicial Standards shall consist of one judge of district court, one judge of municipal court, one judge of county court, two lawyers who have practiced law in the state for ten years, and four citizens who are not judges, retired judges, or lawyers. Effective July 1, 1980, the executive secretary shall be appointed by the board. All members and alternates shall be appointed by the governor with the advice and consent of the senate. (Source: L.1978, c. 713, § 1.)

(b) Alternate Members. Alternate members, to take the place of those disqualified or absent, shall be selected at the time and in the manner prescribed for initial appointments in each representative class, and shall serve at the call of the board chairperson. (Source: ABA Std. 2.5)

(c) Term of Office.

(1) The term of each member and alternate shall be four years.

(2) No member shall serve more than two full four-year terms or their equivalent. 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. (Source: former rule A[2].)

(d) Vacancy.

(1) A vacancy on the board shall be deemed to occur:

(i) When a member retires from the board; or

(ii) When a judge, who is a member of the board ceases to hold the judicial office which he held at the time of his selection; or

(iii) When a lawyer ceases to be admitted to practice in the courts of this state or is appointed to a judicial office; or

(iv) When a lay member becomes a lawyer.

(2) Vacancies shall be filled by selection of a successor in the same manner as required for the selection of his predecessor in office. A member selected to fill a vacancy shall hold office for the unexpired term of his predecessor. All vacancies on the board shall be filled within 90 days after the vacancy occurs.

(3) Members of the board may retire therefrom by submitting their resignation to the board, which shall certify the vacancy to the governor and the supreme court. (Source: former rule A[3].)

(e) Duties and Responsibilities of Executive Secretary.

The executive secretary shall have duties and responsibilities prescribed by the board, including the authority to:

(1) Receive information, allegations, and complaints;

(2) Make preliminary evaluations;

(3) Screen complaints;

(4) Conduct investigations;

(5) Recommend dispositions;

(6) Maintain the board's records;

(7) Maintain statistics concerning the operation of the board and make them available to the board, and to the supreme court;

(8) Prepare the board's budget for approval by the board, and administer its funds;

(9) Employ and supervise other members of the board's staff;

(10) Prepare an annual report of the board's activities for presentation to the board, to the supreme court, and to the public;

(11) Employ, with the approval of the board, special counsel, private investigators, or other experts as necessary to investigate and process matters before the board and before the supreme court. The use of the attorney general's staff prosecutors or law enforcement officers for this purpose shall not be allowed. (Source: ABA Std. 2.8.)

(f) Quorum and Chairperson.

(1) A quorum for the transaction of business by the board shall be five members of the board.

(2) The board shall elect from its members a chairperson and a vice-chairperson, each of whom shall serve a term of two years. The vice-chairperson shall act as chairperson in the absence of the chairperson. (Source: former rule A[5].)

(g) Meetings of the Board. Meetings of the board shall be held at the call of the chariperson; the vice-chairperson; the executive secretary; or the written request of three members of the board. (Source: former rule A[6].)

(h) Annual Report. At least once a year the board 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 board. (Source: former rule A[7].)

(i) Expenses of the Board and Staff.

(1) The expenses of the board shall be paid from appropriations of funds to the Board on Judicial Standards.

(2) Members of the board shall be compensated for their services as provided by law.

(3) In addition to the executive secretary, the board may appoint other employees to perform such duties as it shall direct, subject to the availability of funds under its budget. (Source: former rule A[4].)

Rule 2. Jurisdiction and Powers of Board.

(a) Powers in General. The board shall have the power to receive information, investigate, conduct hearings, and make recommendations to the supreme court concerning:

(1) Allegations of judicial misconduct;

(2) Allegations of physical or mental disability of judges; and

(3) Matters of voluntary retirement for disability. (Source: ABA Std. 1.5–1.7)

(4) Review of a judge's compliance with Minn.St. 546.27.

(b) Persons Subject to Discipline. At any level of government, anyone exercising judicial powers and performing judicial functions, including judges assigned to administrative duties

within the judicial branch, shall be subject to judicial discipline and disability retirement under these rules. (Source: ABA Std. 1.2)

(c) Jurisdiction Over Sitting Judges. The board shall have exclusive jurisdiction over the conduct of all persons subject to discipline under section (b), including all sitting full and part-time judges. This jurisdiction shall include conduct that occurred prior to a judge assuming judicial office. (Source: ABA Std. 3.1)

(d) Jurisdiction Over Former Judge. The Lawyers Professional Responsibility Board shall have jurisdiction over a lawyer who is no longer a judge with reference to allegedly unethical conduct that occurred during or prior to the time when the lawyer held judicial office, provided such conduct has not been the subject of judicial disciplinary proceedings as to which a final determination has been made by the supreme court. (Source: ABA Std. 3.2)

(e) Subpoena and Discovery.

(1) At all stages of a proceeding under these rules, both the board and any judge being investigated shall be entitled to compel by subpoena the attendance and testimony of witnesses, including the judge as witness, and to provide for the inspection of documents, books, accounts, and other records.

(2) The power to enforce process may be delegated by the supreme court. (Source: ABA Std. 4.18–4.19)

(f) Rules of Procedure and Forms. The board shall have the authority to submit rules of procedure for the approval of the supreme court, and to develop appropriate forms for its proceedings. (Source: ABA Std. 2.6)

(g) Impeachment. Nothing in these rules shall affect the impeachment of judges under the Minnesota Constitution, Art. 8. (Source: ABA Std. 1.8)

Rule 3. Immunity.

Members of the board, referees, board counsel, and staff shall be absolutely immune from suit for all conduct in the course of their official duties. (Source: ABA Std. 2.9)

Rule 4. Grounds for Discipline.

(a) Grounds for a discipline shall include:

(1) Conviction of a felony;

(2) Willful misconduct in office;

(3) Willful misconduct which, although not related to judicial duties, brings the judicial office into disrepute;

(4) Conduct prejudicial to the administration of justice or conduct unbecoming a judicial officer, whether conduct in office or outside of judicial duties, that brings the judicial office into disrepute;

(5) Any conduct that constitutes a violation of the code of judicial conduct or professional responsibility. (Source: ABA Std. 3.3)

(b) Proceedings Not Substitute for Appeal. In the absence of fraud, corrupt motive, or bad faith, the board shall not take action against a judge for making findings of fact, reaching a legal conclusion, or applying the law as he understands it. Claims of error shall be left to the appellate process. (Source: ABA Std. 3.4)

Rule 5. Confidentiality.

(a) Before Probable Cause Found.

(1) All proceedings shall be confidential until there has been a determination of probable cause and formal charges have been filed pursuant to Rule 8(c).

(2) The board shall establish a procedure for enforcing the confidentiality provided by this rule.

(3) A judge under investigation may waive his right to confidentiality prior to a filing of formal charges. (Source: ABA Std. 4.6–4.8)

(b) Public Statements by Board. In any case in which the subject matter becomes public through independent sources or through a waiver of confidentiality by the judge, the board may issue statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge to a fair hearing without prejudgment, and to state that the judge denies the allegations. The statement shall be first submitted to the judge involved for his comments and criticisms prior to its release, but the board in its discretion may release the statement as originally prepared. (Source: ABA Std. 4.9)

(c) Disclosure for Judicial Selection, Appointment, or Assignment. If in connection with the selection or appointment of judges, any state or federal agency seeks information or written

materials from the board concerning a judge, information may be divulged in accordance with procedures prescribed by the supreme court, including reasonable notice to the judge affected, unless the judge signs a waiver. If in connection with the assignment of a retired judge to judicial duties any appropriate authority seeks information or written materials from the board about that judge, information may be divulged in accordance with procedures prescribed by the supreme court, including reasonable notice to the judge affected, unless the judge signs a waiver. (Source: ABA Std. 4.10)

Rule 6. Procedure Prior to Probable Cause Determination.

(a) Initiation of Procedure.

(1) An inquiry relating to conduct of a judge may be initiated upon any reasonable basis, including oral or written complaints made by judges, lawyers, court personnel, or members of the general public.

(2) The board may on its own motion make inquiry with respect to whether a judge is guilty of misconduct in office or is physically or mentally disabled.

(3) Upon request of the chief justice of the supreme court, the board shall make an investigation under this rule of the conduct or physical or mental condition of a judge. (Source: ABA Std. 4.1, former rule D[1].)

(b) Absolute Privilege. A complaint submitted to the board or its staff or testimony related to the complaint shall be absolutely privileged, and no civil action predicated on the complaint may be instituted against any complainant or witness, or their counsel. (Source: ABA Std. 4.2)

(c) Screening, Preliminary Investigation, and Evaluation.

(1) Upon receipt of a complaint, report, or other information as to conduct that might constitute grounds for discipline, the executive secretary shall conduct a prompt, discreet, and confidential investigation and evaluation.

(2) Under guidelines prepared by the board, the executive secretary shall, based on his investigation and evaluation, determine whether there exists sufficient cause to proceed against the judge. The executive secretary shall have the authority to dismiss unfounded complaints, but the results of all investigations shall be routinely submitted to the board. (Source: ABA Std. 4.4, 4.14)

(d) Discretionary Notice.

(1) Notice that a complaint has been made may be given to the judge named in the complaint. (Source: ABA Std. 4.5)

2) No action shall be taken on any complaint in which the judge is not notified within 90 days after the receipt of such complaint, and if not notified the complaint cannot be used against the judge.

(e) Probable Cause Determination.

(1) The board shall promptly consider the results of an investigation and evaluation conducted by the executive secretary. If the board determines that there is probable cause to proceed, it shall comply with Rule 8.

(2) A finding of probable cause shall require the concurrence of a majority of the full board. (Source: ABA Std. 4.23)

(f) Insufficient Cause to Proceed.

(1) Upon determination that there is insufficient cause to proceed, the complainant, if any, shall be notified. If the judge has been informed of the proceeding, he shall also be notified of its termination, and the file shall be closed.

(2) A closed file may be referred to by the board in subsequent proceedings.

(3) If the inquiry was initiated as a result of notoriety or because of conduct that is a matter of public record, information concerning the lack of cause to proceed shall be released by the board. (Source: ABA Std. 4.11–4.13)

(g) Dispositions in Lieu of Further Proceedings. Even though the board does not find probable cause to proceed with a formal hearing, it may make any of the following dispositions:

(1) The board may issue a private reprimand.

(2) The board may by informal adjustment dispose of a complaint by:

(i) Informing or admonishing the judge that his conduct is or may be cause for discipline;

(ii) Directing professional counseling or assistance for the judge; or

(iii) Imposing conditions on a judge's conduct. (Source: ABA Std. 6.6)

Rule 7. Interim Sanctions.

(a) Suspension for Felony. A judge shall be suspended with pay immediately by the supreme court without necessity of board action, upon the filing of an indictment or information charging

him with a felony under state or federal law. Such suspension shall not preclude action by the board with respect to the conduct which was the basis for the felony charge, before or after a conviction, acquittal, or other disposition of the felony charge. (Source: ABA Std. 6.1)

(b) Suspension of Misdemeanor. Conduct resulting in the filing of misdemeanor charges against a judge, if it adversely affects his ability to perform the duties of his office, may be grounds for immediate suspension with pay by the supreme court, without necessity of board action. A conviction, acquittal, or other disposition on a misdemeanor charge, shall not preclude action by the board with reference to the conduct upon which the charge was based. (Source: ABA Std. 6.2)

(c) Misdemeanor Suspension Review. Any judge suspended under section (b) of this rule shall be given a prompt hearing and determination by the supreme court upon his application for review of the interim suspension order. (Source: ABA Std. 6.3)

(d) Other Interim Suspension.

(1) Interim suspension with pay, pending final decision as to ultimate discipline, may be ordered by the supreme court in any proceeding under these rules.

(2) Upon a determination by the board of a judge's incompetence, there shall be an immediate interim suspension, with pay, pending a final dispositon by the supreme court. (Source: ABA Std. 6.4, 7.12)

(e) Disability Suspension. A judge who claims that a physical or mental disability prevents his assisting in the preparation of his defense in a proceeding under these rules shall be placed on interim suspension, with pay. Once an interim suspension has been imposed, there shall be a determination of whether in fact there is such a disability. If there is such a disability, the judge shall be retired. If there is a finding of no disability, the disciplinary proceeding shall continue. (Source: ABA Std. 6.5)

Rule 8. Procedure Where Probable Cause Found.

(a) Sworn Complaint or Statement.

(1) After a finding of sufficient cause to proceed, the board shall ask the complainant to file a detailed sworn complaint against the judge. When a sworn complaint is not obtained, a clear statement of the allegations against the judge and the alleged facts forming their basis shall be prepared by the executive secretary. Where more than one act of misconduct is alleged, each shall be clearly set forth.

(2) The judge shall be served promptly with a copy of the sworn complaint or statement of allegations. Service shall be accomplished in accordance with the Rules of Civil Procedure.

(3) The documents served under section (2) shall require the judge to respond to the complaint or statement in writing within 20 days. A personal appearance before the factfinder shall be permitted in lieu of or in addition to a written response. In the event that the judge elects to appear personally, his statement shall be recorded. (Source: ABA Std. 4.15, 4.16, 4.20, former rule E[2]-[3].)

(b) Termination after Response. The board may terminate the proceeding and dismiss the complaint following the response by the judge, or at any time thereafter, and shall in that event give notice to each complainant and to the judge that it has found insufficient cause to proceed. (Source: ABA Std. 4.21)

(c) Formal Statement of Charges.

(1) If termination under section (b) is not appropriate, the board shall file a formal statement of charges with the executive secretary. Confidentiality ceases upon this filing.

(2) The judge shall be served promptly with a copy of the formal statement of charges and shall respond as provided in section (a) (2) and (3) of this rule. (Source: ABA Std. 5.1–5.3)

(d) Notice of Hearing.

(1) Upon the filing of formal charges, the board shall schedule a public hearing. The date shall be selected to afford the judge ample time to prepare for the hearing, but shall not be later than 30 days following the receipt of the judge's response under section (c) (2) of this rule. The judge and all counsel shall be notified of the time and place of the hearing.

(2) In extraordinary circumstances, the board shall have the authority to extend the hearing date as it deems proper.

(3) The judge and the board shall be entitled to discovery to the extent available in civil or criminal proceedings, whichever is broader. (Source: ABA Std. 5.4–5.7)

Rule 9. Formal Hearing.

(a) Factfinder.

(1) The formal hearing shall be public and conducted before a factfinder, which may be the entire board, three-member hearing panels appointed by the chairperson, or a referee appointed by the supreme court.

(2) If the board directs that the hearing be held before a referee to be appointed by the supreme court, the board 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 person designated to preside at a hearing shall be either a judge or a lawyer who is familiar with ruling on motions and admission of evidence. (Source: ABA Std. 5.9, 5.10, former rule G[2].)

(b) Rules of Evidence and Due Process. In the hearing, all testimony shall be under oath, the Minnesota Rules of Evidence shall apply, and the judge shall be accorded due process of law.

(c) Presentation: Burden of Proof; Cross-examination; Recording.

(1) An attorney or attorneys of the board's staff, or special counsel retained for the purpose, shall present the matter to the factfinder.

(2) The board has the burden of proving by clear and convincing evidence the facts justifying action.

(3) The judge shall be permitted to adduce evidence and produce and cross-examine witnesses, subject to the Minnesota Rules of Evidence.

(4) Every formal hearing conducted under these rules shall be recorded verbatim. (Source: ABA Std. 5.12–5.14, 5.18)

(d) Amending Allegations. By leave of the board or by consent of the judge, the statement of charges may be amended after commencement of the hearing only if the amendment is technical in nature and the judge and his counsel are given adequate time to prepare a response. (Source: ABA Std. 5.16)

Rule 10. Procedure Following Formal Hearing.

(a) Submission by Factfinder. The factfinder shall submit its findings and recommendations, along with the record and transcript of testimony, to the board for review. The same materials shall also be provided to the judge under investigation. (Source: ABA Std. 5.19)

(b) Objections to Findings. Counsel for the judge and board may submit written objections to the findings and recommendations. (Source: ABA Std. 5.20)

(c) Review by the Board. The findings and conclusions and the hearing record shall be promptly reviewed by the board. The board may substitute its judgment for that of the factfinder. (Source: ABA Std. 5.21, 5.22)

(d) Disciplinary Sanctions. The board's decision shall include a recommendation to the supreme court of any of the following sanctions:

(1) Removal;
(2) Retirement;
(3) Imposing discipline as an attorney;
(4) Imposing limitations or conditions on the performance of judicial duties;
(5) Reprimand or censure;
(6) Imposing a fine;
(7) Assessment of costs and expenses;
(8) Any combination of the above sanctions. (Source: ABA Std. 6.7)

(e) Recommended Discipline.

(1) A recommendation for discipline shall be reported to the court only if concurred in by a majority of all members of the board.

(2) If a majority of the members of the board fail to concur in a recommendation for discipline, the matter shall be dismissed.

(3) Any dissenting opinion shall be transmitted to the supreme court with the majority decision. (Source: ABA Std. 5.23–5.25)

Rule 11. Costs.

(a) Witness Fees.

(1) All witnesses shall receive fees and expenses to the same extent allowable in an ordinary civil action.

(2) Expenses of witnesses shall be borne by the party calling them, unless:

(i) Physical or mental disability of the judge is in issue, in which case the board shall reimburse the judge for the reasonable expenses of the witnesses whose testimony related to the disability; or

(ii) The judge is exonerated of the charges against him, in which case the supreme court may determine that the imposition of costs and expert witness fees would work a financial hardship or injustice upon him and order that those fees be reimbursed. (Source: ABA Std. 5.26–5.27)

(b) Transcript Cost. A transcript of all proceedings shall be provided to the judge without cost. (Source: ABA Std. 5.28)

(c) Other Costs. All other costs of these proceedings shall be at public expense. (Source: ABA Std. 5.29)

Rule 12. Supreme Court Review.

(a) Filing and Service. The board shall, at the time it files its record, findings, and recommendations with the court, serve copies upon the respondent judge. Proof of service shall also be filed. (Source: ABA Std. 7.1)

(b) Prompt Consideration. Upon the filing of a recommendation for discipline or disability retirement, the court shall promptly docket the matter for expedited consideration. (Source: ABA Std. 7.3)

(c) Briefs. The board and the judge shall file briefs with the court in accordance with the requirements of Rule 128 of the Rules of Appellate Procedure. (Source: ABA Std. 7.2)

(d) Additional Findings and Filings; Supplemental Record.

(1) If the court desires an expansion of the record or additional findings with respect either to the recommendation for discipline or to the sanction to be imposed, it shall remand the matter to the board with appropriate directions, retaining jurisdiction, and shall hold the matter pending receipt of the board's filing of the additional record.

(2) The court may order additional filings or oral argument as to specified issues or the entire matter.

(3) The court without remand and prior to the imposition of discipline may accept or solicit supplementary filings with respect to medical or other information, provided that the parties have notice and an opportunity to be heard. (Source: ABA Std. 7.4–7.6)

(e) Delay for Further Proceedings. The court, on receipt of notice of an additional proceeding before the board involving the same judge, may delay decision and hold the matter pending the board's termination of this additional proceeding. In the event that additional recommendations for discipline of the judge are filed, the court may impose a single sanction covering all recommendations. (Source: ABA Std. 7.7)

(f) Decision. The court shall review the record of the proceedings on the law and the facts and shall file a written opinion and judgment directing such disciplinary action as it finds just and proper, accepting, rejecting, or modifying in whole or in part, the recommendations of the board. (Source: ABA Std. 7.8, 7.9, 7.11, former rule V.)

(g) Consideration of Lawyer Discipline. The court, when considering removal of a judge, shall determine whether discipline as a lawyer also is warranted. If removal of a judge is deemed appropriate by the court, it shall notify the judge and the Lawyers Professional Responsibility Board and give them an opportunity to be heard on the issue of the lawyer, discipline, if any, to be imposed. (Source: ABA Std. 7.13)

(h) Charge Against Supreme Court Justice. Any charge filed against a member of the supreme court shall be heard and submitted to the court in the same manner as charges concerning other judges, except that other members of the court shall disqualify themselves under Minn.St. 2.724, subd. 2, as they deem necesssary. (Source: ABA Std. 7.14)

(i) 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. (Source: present rule W)

Rule 13. Special Provisions for Cases Involving Mental or Physical Disability

(a) Procedure. In carrying out its responsibilities regarding physical or mental disabilities, the board shall follow the same procedures that it employs with respect to discipline for misconduct. (Source: ABA Std. 8.2)

(b) Representation by Counsel. If the judge in a matter relating to physical or mental disability is not represented by counsel, the board shall appoint an attorney to represent him at public expense. (Source: ABA Std. 8.3)

(c) Medical Privilege.

(1) If the complaint involves the physical or mental condition of the judge, a denial of the alleged condition shall constitute a waiver of medical privilege, and the judge shall be required to produce his medical records.

(2) If medical privilege is waived, the judge is deemed to have consented to a physical or mental examination by a qualified medical practitioner designated by the board. The report of the medical practitioner shall be furnished to the board and the judge. (Source: ABA Std. 8.4–8.5)

Rule 14. Involuntary Retirement.

(a) Procedure. A judge who refuses to retire voluntarily may be involuntarily retired by the supreme court. If attempts to convince a judge to retire voluntarily fail, then the board shall proceed to file a formal complaint, hold a public hearing, make findings of fact, and present recommmendations to the supreme court. (Source: ABA Std. 8.6, 8.7)

(b) Effect of Involuntary Retirement. A judge who is involuntarily retired shall be ineligible to perform judicial duties pending further order of the court and may, upon order of the court, be transferred to inactive status or indefinitely suspended from practicing law in the jurisdiction. (Source: ABA Std. 8.8)

Rule 15. Amendment of Rules.

As procedural and other experience may require or suggest, the board may petition the supreme court for further rules of implementation or for necessary amendments to these rules. (Source: former rule Y)