

MINNESOTA CIVIL TRIALBOOK

Adopted at the Annual Conference of Judges
June 18, 1980

This trialbook is a declaration of practical policies and procedures to be followed in the civil trials in all the trial courts of Minnesota. It has been written to standardize practices and procedures throughout the state with the hope, and expectation, that trial time and expense will be reduced and that justice to the litigants and and public acceptance of trial procedures will be increased.

It is recommended that the policies and procedures be generally and uniformly used. However, it is recognized that situations will arise where their use would violate the purposes for which they were drafted. In such circumstances, the policies and procedures should be disregarded so that justice, not form, may prevail.

The preparation of this trialbook has been a pilot project and those involved in its preparation recognize that the product here is a mere beginning. It is hoped that judges, lawyers, and others involved in civil trials will submit suggestions, from time to time, for the modification of, or additions to, the policies and procedures here set forth. Suggestions should be sent to the President of the Minnesota District Judges Association or of the Minnesota County Judges Association.

Drafted by the

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Part B. Minnesota Civil Trialbook**—SECTION ONE—****DEFINITIONS**

When used in this Trialbook the words listed below have meanings as follows:

1. **Counsel.** The word "counsel" refers to an attorney at law in the singular or attorneys at law in the plural.

2. **Party.** The word "party" means a litigant in an action and may include counsel for such party.

3. **Adversaries.** The word "adversaries" means a party's opposing parties in the action and may include counsel for such opposing parties.

4. **Trial Judge.** The words "trial judge" means the judge to whom the action is assigned for trial.

5. **Court.** The word "court" means a forum for adjudicating disputes, presided over by one or more judges vested by law and the Constitution of the State of Minnesota with judicial power, and thus a "court" may include a jury or a referee or a hearing officer.

—SECTION TWO—**SETTLEMENT PROCEDURES****6. Settlement Procedures**

Settlement conferences are encouraged and recommended for case disposition. However, because of the diversity of approaches to be used, specific procedures are not set forth.

Attorneys will be notified of the procedures to be followed in any district where settlement conferences are mandatory.

The settlement of wrongful death, minor settlement, or settlement of incompetents matters shall be in accord with Rules 2 and 3 of the Code of Rules, MSA Sections 540.08 and 573.02, and any applicable special/local rule of practice of the District Courts.

Upon reaching settlement of a case, each party seeking any affirmative relief shall immediately notify the court of the settlement.

—SECTION THREE—**PRE-TRIAL PROCEDURES****7. Procedures to be Followed**

In those courts where a formal pre-trial conference is held prior to assignment for trial, a trial date shall be set and the conference shall cover those matters set forth

in sections 9 and 10. The judge shall prepare and file a pre-trial order in substantially the following form:

STATE OF MINNESOTA

IN THE _____ JUDICIAL DISTRICT

PRE-TRIAL ORDER

PRE-TRIAL DATE: _____ FILE NO: _____ CAL NO: _____

COUNTY: _____

CASE: _____ V: _____

ATTORNEYS: _____, For Plaintiff

_____, For Defendant

- 1. PLEADINGS:
- 2. MOTIONS: (Pending or to be filed)
 - A. General:
 - B. Discovery:
 - C. Depositions:
- 3. INDEPENDENT MEDICAL:
- 4. ISSUES:
- 5. STIPULATIONS RE: Medical bills, records, ownership, etc.:
- 6. STATUTES OR ORDINANCES:
- 7. PLAINTIFF'S EXHIBITS:
- 8. DEFENDANT'S EXHIBITS:
- 9. PLAINTIFF'S WITNESSES:
- 10. DEFENDANT'S WITNESSES:
- 11. PLAINTIFF(S) DEMAND: _____ DEFENDANT(S) OFFER: _____
- 12. SET FOR () NON-JURY () JURY
- 13. TRIAL DATE AND TIME: _____
- 14. ESTIMATED TRIAL HOURS: _____

NOTE: THIS ORDER WILL CONTROL AT TRIAL.

DATED: _____ JUDGE: _____

If a formal pre-trial conference is not held prior to time of assignment for trial, the procedures set forth in sections 9 and 10 shall be followed.
Manual Cross References: §§ 9 and 10.

8. Settlement discussions with trial judge

The trial judge may request counsel to explore settlement between themselves further, and, in his or her discretion, or if requested by all parties, may engage in settlement discussions.

Library Reference: Minn. Rules Civ. P. 16

Manual Cross-Reference: §§9 and 70

9. Pre-trial chambers conferences

At an informal chambers conference before trial and before a panel of prospective jurors is summoned, the trial judge shall:

- (1) determine whether settlement possibilities have been exhausted;
- (2) determine whether all pleadings have been filed;
- (3) ascertain the relevance to each party of each cause of action and, with a view to ascertaining and reducing the issues to be tried, shall inquire;

(a) whether the issues in the case may be narrowed or modified by stipulations or motions;

(b) whether dismissal of any of the causes of actions or parties will be requested;

(c) whether stipulations may be reached as to those facts about which there is no substantial controversy;

(d) whether stipulations may be reached for waiver of foundation and other objections regarding exhibits, tests, or experiments;

(e) whether there are any requests for producing evidence out of order;

(f) whether motions *in limine* to exclude specified evidence or reference thereto will be requested; and

(g) whether there are any unusual or critical legal or evidentiary issues anticipated.

(4) ask the parties to disclose the number and names of witnesses they anticipate calling, and to make good faith estimates as to the length of testimony and arguments;

(5) inquire whether the number of experts or other witnesses may be reduced;

(6) ascertain whether there may be time problems in presentation of the case, *e.g.* because of other commitments of counsel, witnesses, or the court and advise counsel of the hours and days for trial; and

(7) ascertain whether counsel have graphic devices they want to use during opening statements; and

(8) ascertain whether a jury, if previously demanded, will be waived. If a jury is requested, the judge shall make inquiries with a view to determining:

(a) the areas of proposed voir dire interrogation to be directed to prospective jurors, and whether there is any contention that the case is one of "unusual circumstances";

(b) the substance of a brief statement to be made by the trial judge to the prospective jurors outlining the case, the contentions of the parties, and the anticipated issues to be tried;

(c) the number of alternate jurors (it is suggested that the identity of the alternates not be disclosed to the jury); and

(d) in multiple party cases, whether there are issues as to the number of "sides" and allocation of peremptory challenges.

Library Reference: Minn. Rules Civ. P. 16, 36.01, 38.02, 39.03, 47.01, 48.63. Minn. Stat. §§ 546.13 and 547.17.

Manual Cross-Reference: §§ 7, 8, 10, 12, 17, 38, 54, and 57.

10. Formal conference

After conclusion of the informal chambers conference and any review of the court file and preliminary research the trial judge finds advisable, a reported formal conference shall be held for:

(1) arguments and rulings upon motions, bifurcation, and order of proof;

(2) statement of stipulations, including whether graphic devices can be used during opening statement; and

(3) in a jury trial, specification of:

(a) the brief statement the trial judge proposes to make to prospective jurors outlining the case, contentions of the parties, and anticipated issues to be tried;

(b) the areas of proposed voir dire interrogation to be directed to the prospective jurors;

(c) whether any of the defendants have adverse interests to warrant individual peremptory challenges and number of them;

(d) the number of alternate jurors, if any, and the method by which the alternates shall be determined.

Library Reference: Minn. Rules Civ. P. 38.02, 39.03, 47.01, 47.02, 48
Minn. Stat. 546.10, 546.17
Manual Cross-Reference: §§ 7-9, 12, 29, 38

—SECTION FOUR—

JURY PROCEDURES

11. Swearing jurors to answer

The entire panel shall be sworn by the clerk to truthfully answer the voir dire questions put to them.

Then the clerk should draw the names of the necessary persons who shall take their appropriate seats in the jury box.

Library Reference: Minn. Rules Civ. P. 47.01
Uniform Decorum Rules 6, 10

12. Statement of the case to and examination of prospective jurors

The trial judge shall make a brief statement to the prospective jurors introducing the counsel and parties and outlining the case, contentions of the parties, and anticipated issues to be tried and may then permit the parties or their attorneys to conduct voir dire or may itself do so. In the latter event, the Court shall permit the parties or their attorneys to supplement the voir dire by such further nonrepetitive inquiry as it deems proper.

Library Reference: Minn. Rules Civ. P. 39.03, 47.01
Manual Cross-Reference: §§ 9, 10

13. Challenges for cause

Upon completion of voir dire examination as to all prospective jurors in the jury box or as to a prospective juror individually, a party shall state whether he or she "passes for cause".

Library Reference: Minn. Stat. § 546.10
Manual Cross-Reference: §§ 9, 10
Library Reference: Minn. Stat. § 546.10
Manual Cross-Reference: §§ 9, 10

14. Peremptory challenges

Each adverse party shall be entitled to two peremptory challenges, which shall be made alternately beginning with the defendant. The parties to the action shall be deemed two, plaintiffs being one party, defendants the other. If the court finds that two or more defendants have adverse interests, the court shall allow each adverse defendant additional peremptory challenges. When there are multiple adverse parties, the court shall determine the order of exercising peremptory challenges.

Library Reference: Minn. Stat. § 546.10
Manual Cross-Reference: §§ 9, 10

15. Voir dire-of replacements

When a prospective juror is excused, the replacement shall be asked by the trial judge:

- (1) whether he or she heard and understood the brief statement of the case previously made by the judge;
- (2) whether he or she heard and understood the questions;
- (3) whether, other than to personal matters such as prior jury service, area of residence, employment, and family, the replacement's answers would be different from the previous answers in any substantial respect.

If the replacement answers in the affirmative to (3) above, the trial judge shall inquire further as to those differing answers and counsel may make such supplemental examination as the court deems proper.

Manual Cross-Reference: § 29

16. Instructions to jurors

After the jury is sworn by the clerk to try the cause but before opening statements, the trial judge shall instruct the jurors generally as follows:

(1) to refrain from communicating in writing or by other means about the case, to use the jury room rather than remaining in the courtroom or hallway, and to avoid approaching, or conversations with counsel, litigants, or witnesses, and that they must not discuss the case, or any aspect of it among themselves or with other persons;

(2) that if a juror has a question or communication for the trial judge (*e.g.*, as regards time scheduling), it should be taken up with, or transmitted through, the bailiff;

(3) that the bailiff is in charge of the jurors as to their physical facilities and supplies;

(4) that the jurors will be supplied with note pads and pencils, on request, and that they may only take notes on the subject of the case for their personal use, though they may bring such notes with them into the jury room once they commence deliberations in the case (The taking of notes by the jurors shall be discouraged but is permitted. The jury should receive a cautionary instruction that they are to rely primarily on their collective recollection of what they saw and heard in the courtroom and that extensive note taking may distract them from properly fulfilling this function.);

(5) as to law which the trial judge determines to be appropriate; and

(6) that, as with other statements of counsel, the opening statement is not evidence but only an outline of what counsel expect to prove.

Upon submission of the case to the jury, the trial judge shall instruct the jury that they shall converse among themselves about the case only in the jury room and only after the entire jury has assembled.

Library Reference: Minn. Rule Civ. P. 47.03

Manual Cross-Reference: §§ 12, 29, 36

17. Use of graphic devices

During opening statement counsel may use a blackboard or paper for illustration only, there shall be no display to the jury of, nor reference to, any chart, graph, map, picture, model or any other graphic device unless, outside the presence of the jurors:

(1) it has been admitted into evidence; or

(2) such display or reference has been the subject of, and permitted by, stipulation; and

(3) leave of court for such reference or display has been obtained.

Library Reference: Minn. Rules Civ. P. 34.01, 39.04

Manual Cross-Reference: §§ 9, 10, 44, 45, 59

18. Matters to be out of jury's hearing

The following matters shall be held outside the hearing of jurors. Counsel wishing to argue such matters shall request leave from the court. The first time this request is granted in a trial, the judge shall advise the jurors that matters of law are for the court rather than the jury and that discussions as to law outside the jurors' hearing are necessary and proper for counsel to request. It is recommended that arguments held outside the jurors hearing be held in open court with the jurors excused.

(1) Arguments: Evidentiary objections and succinct statements of grounds may be offered within the jurors' hearing, but arguments shall be outside the hearing of the jurors. The arguments should be reported;

(2) Offers of Proof and Related Arguments;

(3) Offers to Stipulate: Counsel shall not confer about stipulations within possible jury hearing, nor without first receiving leave of the court under circumstances that impede trial progress;

(4) Requests for Objects: Other than requests to a witness during testimony, requests by a party to adverse counsel for objects or information purportedly in the possession of the opposing counsel or party shall be made outside the hearing of jurors;

(5) Motions: Motions for judgments on the pleadings, to exclude evidence, directed verdict, and mistrial shall be made and argued outside the hearing of the jurors. If the ruling affects the issues to be tried by the jury, the trial judge, after consulting with counsel, shall advise the jurors. Immediately upon granting a motion to strike any evidence or arguments to the jury, the trial judge shall instruct the jury to disregard the matter stricken; and

(6) Sensitive Areas of Inquiry: Areas of inquiry reasonably anticipated to be inflammatory, highly prejudicial, or inadmissible, shall be brought to the attention of opposing counsel and the trial judge outside the hearing of jurors before inquiry. A question of a witness shall be framed to avoid the suggestion of any inadmissible matter.

Library Reference: Minn. Rules of Evidence 104, 403, 608-610; Minn. Rules Civ. P. 43.03, 43.05; Code of Prof. Responsibility DR 7-106(c) (1), (2)

Manual Cross-Reference: 49, 50, 73

19. When exhibits to be given to jurors

Exhibits admitted into evidence, subject to cursory examination, such as photographs and some other demonstrative evidence, shall be handed to jurors only after leave is obtained from the trial judge.

Other exhibits admitted into evidence, not subject to cursory examination, such as writings, shall not be handed to jurors until they retire to the jury room upon the cause being submitted to them. If a party contends that an exhibit not subject to cursory examination is critical and should be handed to jurors in the jury box during the course of the trial, counsel shall request leave from the trial judge. Such party shall be prepared to furnish sufficient copies of the exhibit, if reasonably practicable, for all jurors in the event such leave is granted; and upon concluding their examination, the jurors should return the copies to the bailiff. In lieu of, and if reasonably practicable, enlargements or projections of such exhibits shall be utilized. The court may permit counsel to read short exhibits or portions of exhibits to the jury.

Library Reference: Minn. Stat. § 546.15

Manual Cross-Reference: § 37

20. Exhibits admitted in part

If an exhibit admitted into evidence contains some inadmissible matter, *e.g.*, a reference to insurance, excluded hearsay, opinion or other evidence lacking foundation, the trial judge, outside the hearing of the jury, shall specify the excluded matter and withhold delivery of such exhibit to the jurors unless and until the inadmissible matter is physically expurgated.

Such expurgation may be accomplished by photocopying or other copying which deletes the inadmissible portions, and in such event, the proponent of such exhibit shall prepare and furnish a copy.

If expurgation by such copying is not accomplished, the parties shall seek to reach a stipulation as to other means; and failing so to do, the admissible matter may be read into evidence with leave of the trial judge.

Library Reference: Minn. Rules of Evidence 402, 403
Minn. Rules Civ. P. 43.03

21. Evidence admitted for a limited purpose

When evidence is received for a limited purpose or against less than all other parties, the trial judge shall so instruct the jury at the time of admission and, if requested by counsel, during final instructions.

Library Reference: Minn. Rules of Evidence 105, 403

State v. DeZeler,
230 Minn. 39, 41 N.W. 2d 313 (1950)

22. Use of depositions and interrogatories

Except during impeachment, counsel wishing to read into evidence from depositions or interrogatories shall request the court for leave. Such procedure shall be in conformity with the Minnesota Rules of Civil Procedure for District Courts. If leave is granted, a party, before reading into evidence from depositions or interrogatories, shall cite page and line numbers to be read, and pause briefly for review by opposing counsel and the court and for any objections.

Library Reference: Minn. Rules Civ. P. 32

23. Advice to jury as to court expert

If the court appoints an expert to testify as a witness, the trial judge shall so advise the jury.

Library Reference: Minn. Rules of Evidence 706(c)

24. When jury instructions to be submitted

Jury instructions shall be submitted in accordance with Minnesota Rules of Civil Procedure, Rule 51. Written requests for instructions shall list authorities.

Library Reference: Minn. Rules Civ. P. 49.01, 51

Manual Cross-Reference: § 25

25. Conference re instructions and verdicts

Before final argument and after submission to the trial judge of all proposed jury instructions and verdict forms, a conference shall be held outside the presence of jurors.

A reporter is not required at the beginning of the conference while the trial judge reviews with counsel any proposed instructions or verdict forms and discusses:

(1) whether any proposed instructions or verdict forms are inappropriate and will be voluntarily withdrawn;

(2) whether there is any omission of instructions or verdict forms which are appropriate and shall be offered and given without objection; and

(3) whether there is any other modification of instructions or verdict forms to which the parties will stipulate.

Thereafter, the conference shall be reported and the trial judge shall:

(1) specify those instructions and verdict forms the court proposes to give, refuse, or modify, whether at the request of party or on his own motion;

(2) hear formal argument, and rule, upon any objections to, and offers of, the proposed instruction and verdict forms.

Library Reference: Minn. Rules Civ. P. 49, 51

Forsythe v. City of Thief River Falls
208 N.W. 2d 756 (Minn. 1973)

Manual Cross-Reference: §§ 24, 26, 27

26. Specifying dispositions of instructions

Upon determining the instructions to be given, refused, or modified, the trial judge shall indicate the disposition and sign or initial them.

If counsel withdraw any proposed instructions they shall so indicate by writing "withdrawn" and signing or initialing such instructions.

27. Stipulations regarding further procedure

At a conference prior to the submission of the case to the jury, the trial judge shall request that the parties consider stipulating:

(1) that in the absence of any counsel the court may, upon request of the jury, read to the jury any and all instructions previously given;

(2) that in the absence of the trial judge after the original submission of the case to the jury, any judge of the court may act in the trial judge's place and stand up to and including the time of dismissal of the jury;

(3) that a stay of entry of judgment for an agreed upon number of days shall be granted after a verdict;

(4) that a sealed verdict may be returned; and

(5) that the presence of the clerk and reporter, the right to poll the jury, and the right to have the verdict immediately recorded and filed in open court are waived.

Library Reference: Minn. Rules Civ. P. 47.03, 59.03

28. Changing jury instructions

If, after the chambers conference and at any time before giving the instructions and verdict form to the jurors, the trial judge determines to make any substantive change the court shall so advise all parties outside the hearing of jurors. If the court determines to make a substantive change after final argument, the court shall permit additional final argument. The court shall also make a statement on the record regarding any changes.

29. Familiarity with jurors to be avoided

Counsel shall not address or refer to jurors individually or by name or occupation, except during voir dire, and shall never use the first name when addressing a juror in voir dire examination.

Library Reference: Uniform Decorum Rules 16, See Canons 7-29, 30, 31, 32, 36, Code of Professional Responsibility

30. Final arguments

Final arguments to the jury shall not misstate the evidence and shall be as concise as the cause permits. Final arguments shall be reported only if requested.

31. Objections to final argument

Any objection to a final argument shall be argued outside the jurors' hearing.

If the trial judge is uncertain whether there has been a misstatement of the evidence in final argument the jurors shall be instructed to rely on their own recollections.

Library Reference: Code of Rules 27(f)

Manual Cross-Reference: §§ 49, 73

32. Use of jury instructions in jury room

Jury instructions may be sent to the jury room for use by the jurors if counsel stipulate and the trial judge so directs. The number, title, citation of authority, and history shall be removed from each instruction. Stricken portions shall be totally obliterated and any additions shall be completely legible.

Library Reference: Minn. Stat. § 546.15

33. Special verdict forms

A party requesting a special verdict form should prepare the proposed form and submit it to the trial judge and serve it upon the other counsel prior to the chambers conference referred to in § 25.

Library Reference: Minn. Rules Civ. P. 49

Minn. Stat. § 546.19

Manual Cross-Reference: § 25

34. Questions by jurors

If the jury has a question regarding the case during deliberations, the trial judge shall instruct the foreperson to reduce it to writing and submit it through the bailiff.

Upon receipt of such a written question, the trial judge shall review the propriety of an answer with counsel, unless waived, outside the hearing of the jurors in a reported conference. Such writing shall be made a part of the record and the answer given in open court, absent a stipulation to the contrary.

35. Polling the jury

Upon the return of a general or special verdict and at the request of a party the jury shall be polled.

Polling shall be conducted by the trial judge or by the clerk at the trial judge's direction by asking each juror: "Is the verdict as read your verdict?"

Library Reference: Minn. Rules Civ. P. 49.01

Minn. Stat. §§ 546.16, 546.24

36. Discharge of the jury

In discharging the jury, the judge shall:

- (1) thank the jury for their service;
- (2) abstain from commenting on the propriety of any verdict or failure to reach same;
- (3) advise the jurors that they may, but need not speak with anyone about the case; and
- (4) specify where and when any jurors are to return for further service.

Library Reference: Uniform Decorum Rules 26, 35

—SECTION FIVE—

EXHIBITS

37. Pre-trial exchange of lists of exhibits

Each party shall prepare a list of exhibits to be offered in evidence, and exchange copies of such lists with other counsel prior to the pre-trial conference. Such lists shall briefly describe each exhibit anticipated to be offered in evidence. Prior to the commencement of trial, copies of all documents on the list of exhibits shall be made available by the proponent for examination and copying by any other party.

Library Reference: Minn. Rules Civ. P. 26.02(3)

Manual Cross-Reference: §§ 9-10, 19, 38

38. Counsel to organize numerous exhibits

If it can reasonably be anticipated that numerous exhibits will be offered in a trial, all counsel shall meet with the official court reporter shortly prior to or during a recess of the trial for the purpose of organizing and marking the exhibits.

All exhibits shall be marked for identification before any reference by counsel or by a witness.

Manual Cross-Reference: §§ 22-37, 39-41

39. Marking of exhibits first disclosed during trial

When an exhibit is first disclosed during the course of trial, the proponent shall have it marked for identification before referring to it or showing it to his adversaries.

Manual Cross-Reference: § 42

40. Uniform method of marking exhibits

Exhibits proposed by either party shall be marked in sequence with Arabic numerals, with a designation before the numeral of the party introducing the same as, Pl or Df.

If there are multiple parties, exhibits should be marked with the name or initials of the party following the designation of Pl or Df, *e.g.*, exhibits proposed by cross-defendant Ronald Jones should be marked as "Df. Jones-1."

Manual Cross-Reference: § 41

41. Collections of similar and related or integrated documents

Each collection of similar and related or integrated documents shall be marked with a single designation. If reference is made to a specific document or page in such collection, it shall be marked with a subnumber following the general designation assigned to the collection, e.g., "Pl. 1-A," "Pl. 1-B," "Df. 2-A," "Df. 2-B," "Df. Jones-3-A," etc.

Manual Cross-Reference: § 40

42. Oral identification of exhibits at first reference

Upon first reference to an exhibit the proponent shall briefly refer to its general nature, without describing the contents.

Manual Cross-Reference: § 39

43. Return of exhibits to clerk

Immediately after conclusion of the examination of a witness regarding an exhibit shown to a witness, counsel shall return it to the clerk.

44. Graphic device used in argument

A graphic device, such as a chart, summary or model, which is to be used for illustration only in argument shall be prepared and shown to opposing counsel before commencement of the argument.

Upon request by opposing counsel, it shall remain available for reference and be marked for identification.

Library Reference: Minn. Rules Civ. P. 26.02(3)

Manual Cross-Reference: §§ 17, 40, 41

45. Maps, plans, and diagrams

Any map, plan, or diagram offered in evidence shall clearly indicate whether it is to scale.

Manual Cross-Reference: § 17

46. Official records

Proponents of writings in the custody of a public entity shall furnish copies pursuant to Rule 1005-Minnesota Rules of Evidence.

Library Reference: Minn. Rules Civ. P. 44, Minn. Rules of Evidence 803, 1005

Manual Cross-Reference: §§ 39-41

47. Sealing and handling of confidential exhibits

Briefs, depositions, and other documents or an exhibit such as a trade secret, formula or model shall be treated as confidential if all parties stipulate to that effect or if good cause is shown for such treatment.

If size permits, such an exhibit shall be placed in a sealed envelope clearly labeled as follows:

"This envelope contains Exhibits _____ which are confidential and sealed by order of the Court. This envelope shall not be opened, nor the contents hereof revealed, except by prior order of the Court."

Such an envelope and other confidential exhibits shall be kept in a locked container such as file cabinet or some other secure location under the supervision of the clerk until released by order of the Court.

If testimony is taken which would reveal the substance of confidential exhibits, the courtroom shall be cleared of all persons other than parties, their attorneys, and court personnel. Those present, including jurors, shall be enjoined by the court from disclosing the substance of the confidential exhibits.

The pertinent portions of the reporter's notes or transcript shall be kept in a locked container after being placed in a sealed envelope clearly labeled as follows:

"This envelope contains confidential references sealed by order of the Court. This envelope shall not be opened, nor the contents hereof revealed, except by prior order of the Court."

Briefs and other papers submitted in or after trial ordinarily should not describe the substance of confidential exhibits but should refer to them only by number or letter designation pursuant to the uniform method of marking exhibits.

Library Reference: Minn. Rules Civ. P. 26.03

—SECTION SIX—

WITNESSES AND TESTIMONY

48. Examination from counsel table

The lawyers shall be seated or stand at the counsel table while examining witnesses, except when identifying or examining exhibits, or when other circumstances require a modification of the procedure. If the court permits, counsel may use a standing or table top podium.

Library Reference: Uniform Decorum Rules 14, 15

49. Objections to be succinctly stated

Unless invited by the court to argue, counsel offering an objection shall state succinctly only the specific legal grounds for the objection.

Such objections and mere succinct statements of specific legal grounds need not be made outside the hearing of the jury.

Library Reference: Minn. Rules Civ. P. 43.01, 43.03, 46

Minn. Rules of Evidence 103

Uniform Decorum Rules 18

50. Response to objections and arguments thereon

Arguments in opposition to, or in support of, objections shall be brief. In a jury trial, such arguments shall be reported but held outside the hearing of jurors.

Library Reference: Minn. Rules Civ. P. 43.03, 46

Minn. Rules of Evidence 103

Manual Cross-Reference: §§ 18, 74

51. Admonition of witnesses

Before taking the stand, a witness called by counsel shall be admonished by such counsel to be responsive to the questions and to wait in answering until a question is completed and a ruling made on any objection.

Counsel shall not admonish a witness while on the stand as to the manner of answering questions but may request the court to admonish the witness.

Library Reference: Uniform Decorum Rules 3, 11, 21

Manual Cross-Reference: § 67

52. Questions not to be interrupted

An incomplete question shall not be interrupted by objection unless then patently objectionable.

Library Reference: Uniform Decorum Rules 20, 21

53. Effect of asking another question

An examiner shall not repeat the witness' answer to the prior question before asking another question.

An examiner shall wait until the witness has completed answering before asking another question.

If a question is asked before the preceding question of the same examiner is

answered or any objection is ruled upon, it shall be deemed a withdrawal of the earlier question even without an express withdrawal by the examiner.

54. Exchange of information as to future scheduling

In order to facilitate efficient scheduling of future witnesses and court time, all parties shall communicate with one another and exchange good faith estimates as to the length of witness examinations together with any other information pertinent to trial scheduling.

Library Reference: Minn. Rules of Civ. P. 16
Minn. Rules of Evidence 611(a)
Manual Cross-Reference: §§ 9, 10

55. "On-call" witnesses

It is the responsibility of an "on-call" witness proponent to have the witness present in court when needed.

56. Completion of witness' testimony

Except with the court's approval, a witness' testimony shall be pursued to its conclusion and not interrupted by the taking of other evidence.

Upon a witness concluding his testimony the trial judge should inquire of all counsel whether the witness may be excused from further attendance and if affirmative responses are given, the trial judge may then excuse the witness.

Library Reference: Uniform Decorum Rules 23, 25

57. Excluding witnesses

Upon request or by its own motion, the court may order witnesses excluded so that they cannot hear the testimony of other witnesses. Exclusion shall be done in accordance with Rule 615, Minnesota Rules of Evidence.

Library Reference: Minn. Rules of Evidence 615

58. Familiarity to be avoided

During trial, counsel shall not exhibit familiarity with the judge, jurors, witnesses, parties or other counsel, nor address them by use of first names (except for children).

Library Reference: Uniform Decorum Rules 16

59. Counsel's use of blackboard and paper

Counsel may use a blackboard or paper to diagram, calculate, or outline chronology from witnesses' testimony.

Manual Cross-Reference: §§ 17, 44

60. Use of interpreters

The party calling a witness for whom an interpreter is required shall advise the court in advance of the need for an interpreter. The interpreter shall be selected and compensated according to law.

Parties shall not use a relative or friend as an interpreter in a contested proceeding, except as approved by the court.

Library Reference: Minn. Rules Civ. P. 43.07
Minn. Rules of Evidence 604
Minn. Stat. §§ 546.42, 546.43, 546.44

61. Issuance of warrants

A warrant for arrest or body attachment for failure of a witness to attend shall not be released for service unless it is shown by the applicant party, in a hearing outside the presence of jurors, that (1) service of the process compelling attendance was made at a time providing the witness with reasonable notice and opportunity to respond, and (2) no reasonable excuse exists for the failure to attend or, if the reason

for the failure to attend is unknown to the applicant party, due diligence was used in attempting to communicate with such witness to ascertain the reason for the failure to attend.

Library Reference: Minn. Stat. §§ 484.03, 588.01(8), 588.20(4)

—SECTION SEVEN—

ROLE OF THE COURT

62. Questioning by judge

The trial judge shall not examine a witness until the parties have completed their questions of such witness and then only for the purpose of clarifying the evidence.

When the judge finishes questioning, all parties shall have the opportunity to examine the matters touched upon by the judge. If an attorney wants to object to a question posed by the court, he or she shall make an objection of a record outside the presence of the jury. The attorney shall make a "motion to strike" and ask for a curative instruction.

Library Reference: Minn. Rules of Evidence 614

State v. Rasmussen

268 Minn. 42 128 N.W. 2d 289 (1964)

63. Advice of court as to self-incrimination

Whenever there is a likelihood of self-incrimination by a witness, the court shall advise the witness outside the hearing of the jurors, of the privilege against self-incrimination.

Library Reference: Art. 1 § 6 Minnesota State Constitution

64. Policy against indication as to testimony

Persons in the courtroom shall not indicate — by facial expression, shaking of the head, gesturing, shouts or other conduct—disagreement or approval of testimony or other evidence being given, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them.

Library Reference: Uniform Decorum Rules 22

Manual Cross-Reference: §§ 51, 65-67

65. Policy on approaching the bench

Except with approval of the court, persons in the courtroom shall not traverse the area between the bench and counsel table, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them.

Library Reference: Uniform Decorum Rules 14

Manual Cross-Reference: §§ 51, 64, 66, 67

66. Policy against talking, smoking, gum chewing, and eating

Persons in the courtroom shall not converse, read newspapers, smoke, chew gum, or eat food while court is in session, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them.

Library Reference: Uniform Decorum Rules 2

Manual Cross-Reference: §§ 51, 64, 65, 67

67. Policy against bizarre dress

Persons in the courtroom shall not dress in a bizarre manner such as to be distracting to others of usual sensibilities, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them.

Library Reference: Uniform Decorum Rules 2, 11, 17

Manual Cross-Reference: §§ 51, 64, 65, 66

68. Dress of attorneys and court personnel

Attorneys and court personnel shall be dressed in accordance with the Rules of Decorum and current customs as to their business or work attire.

Library Reference: Uniform Decorum Rules 17

69. Requests to the reporter addressed to court

Any request for the court reporter to read or mark the record or to go "off-the-record" shall be addressed to the court, not the reporter.

70. "Off-the-record" conferences

Conferences touching upon any subject of pending litigation shall be held "on-the-record" if a reporter is requested by any party.

Conferences concerning settlement are not reported.

Manual Cross-Reference: §§ 6-9

71. Address to court by represented party or witness

Parties or witnesses represented by counsel seeking to address the court directly, shall be instructed by the court to confer with their attorneys who should convey to the court, outside the hearing of jurors, the subject matter of the communication including any request to discharge the attorney.

72. Communication to court by party, witness or other person

Any communication to the court by a party, witness or other person or by the court to a party, witness, or other persons, touching upon any subject of the pending litigation shall be made on-the-record and counsel shall so instruct parties they represent and witnesses they call. If such a communication is not on-the-record as by telephone, telegram or letter, it shall be disclosed by the court to all parties and made a part of the record.

73. Argument addressed to court

Argument, objections and requests during trial shall be addressed to the court rather than directly to adversaries.

Manual Cross-Reference: §§ 31, 49, 50