

# Minnesota Rules of Civil Procedure

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## 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 and administered to secure the just, speedy, and inexpensive determination of every action.

(Amended effective January 1, 1997.)

*Advisory Committee Comments—1996 Amendments*

*This change conforms the rule to its federal counterpart. The amendment is intended to make clear that the goals of just, speedy, and inexpensive resolution of litigation are just as important—if not more important—in questions that do not involve interpretation of the rules. These goals should guide all aspects of judicial administration, and this amendment expressly so states.*

*[For text of 2., see M.S. 1996, Volume 15]*

II. COMMENCEMENT OF THE ACTION; SERVICE OF PROCESS,  
PLEADINGS, MOTIONS AND ORDERS

*[For text of 3., see M.S. 1996, Volume 15]*

**Rule 4. Service**

*[For text of 4.01 to 4.03, see M.S. 1996, Volume 15]*

**4.04 Service by Publications; Personal Service Out of State**

**(a) Service by Publications.** Service by publication shall be sufficient to confer jurisdiction:

(1) When the defendant is a resident individual domiciliary having departed from the state with intent to defraud creditors, or to avoid service, or remains concealed therein with the 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 the action thereby submits personally to the jurisdiction of the court. An appearance solely to contest the validity of quasi in rem jurisdiction is not such a submission.

(3) When the action is for marriage dissolution or separate maintenance and the court has ordered service 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 the defendant from any such interest or lien;

(5) When the action is to foreclose a mortgage or to enforce a lien on real estate within the state.

The summons may be served by three weeks' published notice in any of the cases enumerated herein when the complaint and an affidavit of the plaintiff or the plaintiff's attorney have been filed with the court. The affidavit shall state the existence of one of the enumerated cases, and that the affiant believes the defendant is not a resident of the state or cannot be found therein, and either that the affiant has mailed a copy of the summons to the defendant at the defendant's place of residence or that such residence is not known to the affiant. The service of the summons shall be deemed complete 21 days after the first publication.

**(b) Personal Service Outside State.** Personal service of such summons outside 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 provided for herein.

**(c) Service Outside United States.** Unless otherwise provided by law, service upon an individual, other than an infant or an incompetent person, may be effected in a place not within the state:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice;

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the court administrator to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

(Amended effective January 1, 1997.)

### **Advisory Committee Comments—1996 Amendments**

*Rule 4.04 is amended to conform the rule to its federal counterpart, in part. The new provision adopts verbatim the provisions for service of process outside the United States contained in the federal rules. This modification is appropriate because this subject is handled well by the federal rule and because it is advantageous to have the two rules similar. This is particularly valuable given the dearth of state-court authority on foreign service of process. Existing portions of the rule are renumbered for clarity.*

*[For text of 4.041 to 4.07, see M.S. 1996, Volume 15]*

## **Rule 5. Service and Filing of Pleadings and Other Papers**

*[For text of 5.01, see M.S. 1996, Volume 15]*

### **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 is ordered by the court. Written admission of service by the party or the party's attorney shall be sufficient proof of service. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party; transmitting a copy by facsimile machine to the attorney or party's office; or by mailing a copy to the attorney or party at the attorney's or party's last known address or, if no address is known, by leaving it with the court administrator. Delivery of a copy within this rule means: Handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a 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 the attorney's or party's 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. Service by facsimile is complete upon completion of the facsimile transmission.

(Amended effective January 1, 1997.)

*[For text of 5.03, see M.S. 1996, Volume 15]*

### **5.04 Filing; Certificate of Service**

All papers after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the court within a reasonable time after service, except expert disclosures and reports, depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless upon order of the court or for use in the proceeding.

The administrator shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.

(Amended effective March 1, 1994; amended effective January 1, 1997.)

*[For text of Comment, see M.S. 1996, Volume 15]*

### **5.05 Filing; Facsimile Transmission**

Any paper may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time that the facsimile transmission is received by the court and the filed facsimile shall have the same force and effect as the original. Only facsimile transmission equipment that satisfies the published criteria of the Supreme Court shall be used for filing in accordance with this rule.

Within five days after the court has received the transmission, the party filing the document shall forward the following to the court:

- (a) a \$5 transmission fee; and
- (b) the original signed document; and
- (c) the applicable filing fee, if any.

Upon failure to comply with the requirements of this rule, the court in which the action is pending may make such orders as are just, including but not limited to, an order striking pleadings or parts thereof, staying further proceedings until compliance is complete, or dismissing the action, proceeding, or any part thereof.

(Amended effective January 1, 1997.)

**NOTE:** Supreme Court Orders regarding the use of facsimile transmission and criteria for facsimile equipment are contained in this publication under the heading "Facsimile Transmission." (See the thumbcut division entitled Miscellaneous for page reference.)

### **Advisory Committee Comments—1996 Amendments**

*Most of Rule 5.02 is new and for the first time provides for service by facsimile. Service by this method has become widespread, generally handled either by express agreement of counsel or acquiescence in a service method not explicitly authorized by rule.*

*The committee considered a suggestion that the provision for leaving a document with the court administrator be changed, deleted, or clarified. Although it is not clear from the rule what the administrator should do in the rare event that a document is filed with the administrator rather than delivered or mailed to the attorney, the committee believes the rule should be retained as it provides notice to the court that although service may comply with the rule, effective notice has not been received by the party entitled to notice. This will facilitate the court's consideration of the sufficiency of service under all of the circumstances.*

*The amendment to Rule 5.02 provides an express mechanism for service by facsimile. Service by facsimile has become widely accepted and is used in Minnesota either by agreement or presumption that it is acceptable under the rules or at least has not been objected to by the parties. The committee believes an express authorization for service by facsimile is appropriate and preferable to the existing silence on the subject. The committee's recommendation is modeled on similar provisions in the Wisconsin and Florida rules. See Wis. Stat. sections 801.14(2) & .15(5)(b); Fla. R. Civ. P. 1.080(b)(5). Service by facsimile is allowed in other jurisdictions as well. See, e.g., Ill. S. Ct. R. 11(b)(4); S. Dak. R. 15-6-5(b); Cal. R. Civ. P. 2008.*

*In addition providing for service by facsimile, Rule 6.05 is amended to create a specific deadline for timely service. This rule adds an additional day for response to any paper served by any means other than mail (where 3 extra days are allowed under existing Rule 6.05, which is retained) and where service is not effected until after 5:00 p.m., local time. This rule is intended to discourage, or at least make unrewarding, the inappropriate practice of serving papers after the close of a normal business day. Service after 5:00 p.m. is still timely as of the day of service if the deadline for service is that day, but if a response is permitted, the party served has an additional day to respond. This structure parallels directly the mechanism for dealing with service by mail under the existing rule.*

*Rule 5.05 is amended to add a provision relating to filing that was adopted as part of Fed. R. Civ. P. 5(e) in 1991. It is important that Rule 5 specifically provide that the court administrator must accept for filing documents tendered for that purpose regardless of any technical deficiencies they may contain. The court may, of course, direct that those deficiencies be remedied or give substantive importance to the deficiencies of the documents. The sanction of closing the courthouse to the filing should not be imposed or if imposed, should be imposed by a judge only after reviewing the document and the circumstances surrounding its filing. The rejection of documents for filing may have dire consequences for litigants and is not authorized by statute or rule.*

## **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, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the court administrator inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), "legal holiday" includes any holiday defined or designated by statute.

(Amended effective January 1, 1997.)

*[For text of 6.02 and 6.03, see M.S. 1996, Volume 15]*

#### **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 no 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. When a motion is supported by affidavit, the affidavit 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.

(Amended effective January 1, 1997.)

#### **6.05 Additional Time After Service by Mail or Service Late in Day**

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party, and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period. If service is made by any means other than mail and accomplished after 5:00 p.m. local time on the day of service, one additional day shall be added to the prescribed period.

(Amended effective January 1, 1997.)

#### ***Advisory Committee Comments—1996 Amendments***

*The amendment to Rule 6.01 conforms the rule to its federal counterpart. The committee believes it is desirable to define explicitly what constitutes a "legal holiday." Given the nature of Minnesota's weather, the committee believes specific provision for dealing with inclement weather should be made in the rules. The federal rule enumerates specific holidays. That drafting approach is not feasible in Minnesota because Minnesota Statutes, section 645.44, subdivision 5, defines legal holidays, but allows the judiciary to pick either Columbus Day or the Friday after Thanksgiving as a holiday. Whichever is selected is defined to be a holiday under the rule.*

*The amendment to Rule 6.05 conforms the rule to the federal rule except for the last sentence which is new and has no federal counterpart. This provision is intended to discourage the unseemly practices of sliding a "service" under the door of opposing counsel or sending a facsimile transmission after the close of business and asserting timely service. Such service will be timely under the rules, but will add a day to the time to respond. If the paper is due to be served a fixed number of days before an event, that number should be increased by one as well, making it necessary to serve late in the day before the deadline.*

### **III. PLEADINGS AND MOTIONS**

*[For text of 7. to 15., see M.S. 1996, Volume 15]*

#### **Rule 16. Pretrial Conferences; Scheduling; Management**

*[For text of 16.01 and 16.02, see M.S. 1996, Volume 15]*

### 16.03 Subjects for Consideration

At any conference under this rule consideration may be given, and the court may take appropriate action, with respect to:

- (a) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;
- (b) the necessity or desirability of amendments to the pleadings;
- (c) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;
- (d) the avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Rule 702 of the Minnesota Rules of Evidence;
- (e) the appropriateness and timing of summary adjudication under Rule 56;
- (f) the control and scheduling of discovery, including orders affecting discovery pursuant to Rule 26 and Rules 29 through 37;
- (g) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;
- (h) the advisability of referring matters pursuant to Rule 53;
- (i) settlement and the use of special procedures to assist in resolving the dispute when authorized by statute or rule;
- (j) the form and substance of the pretrial order;
- (k) the disposition of pending motions;
- (l) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;
- (m) an order for a separate trial pursuant to Rule 42.02 with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;
- (n) an order directing a party or parties to present evidence early in the trial with respect to a manageable issue that could, on the evidence, be the basis for a directed verdict under Rule 50.01 or an involuntary dismissal under Rule 41.02(b);
- (o) an order establishing a reasonable limit on the time allowed for presenting evidence; and
- (p) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. If appropriate, the court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.

(Amended effective January 1, 1997.)

#### *Advisory Committee Comments—1996 Amendments*

*This change conforms Rule 16.03 to its federal counterpart. The rule is expanded to enumerate many of the functions with which pretrial conferences must deal. Although the courts have inherent power to deal with these matters even in the absence of a rule, it is desirable to have the appropriate subjects for consideration at pretrial conferences expressly provided for by rule. The federal changes expressly provide for discussion of settlement, in part, to remove any confusion over the power of the court to order participation in court-related settlement efforts. See, e.g., G. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648 (7th cir. 1989); Strandell v. Jackson County, Ill. (In re Tobin), 838 F.2d 884 (7th Cir. 1988); Klothe*

*v. Smith*, 771 F.2d 667 (2d Cir. 1985); *Buss v. Western Airlines, Inc.*, 738 F.2d 1053 (9th Cir. 1984).

[For text of 16.04 to 25.04, see M.S. 1996, Volume 15]

## V. DEPOSITIONS AND DISCOVERY

[For text of 26. and 27., see M.S. 1996, Volume 15]

### Rule 28. Persons Before Whom Depositions May be Taken

[For text of 28.01, see M.S. 1996, Volume 15]

#### 28.02 In Foreign Countries

Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States, or (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request 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 of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request 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 of request may be addressed "To the Appropriate Authority in [here name the country]." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

(Amended effective January 1, 1997.)

#### *Advisory Committee Comments—1996 Amendments*

*This change conforms the rule to its federal counterpart. The committee believes it is especially desirable to have this rule identical to the federal rule because of its subject matter. In addition to the usual factors favoring uniformity, this is a provision governed largely by federal law and which may need to be understood and applied by court reporters, consular or embassy officials, and other non-lawyers. Conformity to the federal rule increases the prospects that the rule will be followed and will not impose significant additional burdens on the litigants.*

[For text of 28.03, see M.S. 1996, Volume 15]

### Rule 29. Stipulations Regarding Discovery Procedure

Unless otherwise directed by the court 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 other procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

(Amended effective January 1, 1997.)

### ***Advisory Committee Comments—1996 Amendments***

*This change conforms the rule to its federal counterpart. The committee believes it is desirable to permit stipulations regarding discovery whenever those stipulations do not impact the court's handling of the action. Particularly in state court practice, it is often necessary to extend discovery deadlines—without affecting other case management deadlines—and the parties should be encouraged to do so. Counsel agreeing to discovery after a deadline should not expect court assistance in enforcing discovery obligations nor should non-completion affect any other motions, hearings, or other case management procedures.*

#### **Rule 30. Depositions Upon Oral Examination**

*[For text of 30.01, see M.S. 1996, Volume 15]*

#### **30.02 Notice of Examination: General Requirements; Special Notice; Non-Stenographic Method of Recording; Production of Documents and Things; Deposition of Organization; Depositions by Telephone**

(a) 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 name 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 the person or the particular class or group to which the person 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.

(b) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, the the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by non-stenographic means.

(c) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders.

Any deposition pursuant to these rules may be taken by means of simultaneous audio and visual electronic recording without leave of court or stipulation of the parties if the deposition is taken in accordance with the provisions of this rule.

In addition to the specific provisions of this rule, the taking of video depositions is governed by all other rules governing the taking of depositions unless the nature of the video deposition makes compliance impossible or unnecessary.

(d) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(e) The notice to a party deponent may 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.

(f) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership, 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 the person 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 provision does not preclude taking a deposition by any other procedure authorized in these rules.

(g) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and Rules 28.01, 37.01(a), 37.02(a) and 45.04, a deposition taken by such means is taken in the district and at the place where the deponent is to answer questions.

(Amended effective March 1, 1994; amended effective January 1, 1997.)

*[For text of Comment, see M.S. 1996, Volume 15]*

### **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 the Minnesota Rules of Evidence except Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with Rule 30.02(d). 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, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. 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 the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(Amended effective January 1, 1997.)

### **30.04 Schedule and Duration; Motion to Terminate or Limit Examination**

(a) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under paragraph (c).

(b) By order the court may limit the time permitted for the conduct of a deposition, but shall allow additional time consistent with Rule 26.02(a) if needed for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. If the court finds such an impediment, delay, or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(c) At any time during a 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(d) apply to the award of expenses incurred in relation to the motion.

(Amended effective January 1, 1997.)

### 30.05 Review by Witness; Changes; Signing

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by Rule 30.06(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(Amended effective January 1, 1997.)

### 30.06 Certification and Filing by Officer; Exhibits; Copies; Notices of Filing

(a) The officer shall certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness, and shall certify that the deposition has been transcribed, that the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies. This certificate shall be in writing and accompany the record of the deposition. Unless otherwise ordered by the court or agreed to by the parties the officer shall securely seal the deposition in an envelope or package endorsed with the title of the action and marked "Deposition of (herein insert the name of witness)," and shall promptly send it to the attorney or party who arranged for the transcript or recording, who shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

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 the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them, the person may (1) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (2) offer the originals to be marked for identification after giving each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition pending final disposition of the case.

(b) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(c) The party taking the deposition shall give prompt notice of its receipt from the officer to all other parties.

(Amended effective January 1, 1997.)

#### *Advisory Committee Comments—1996 Amendments*

*These amendments substantially conform the rule to its federal counterpart. The committee believes it is particularly desirable to have the rules governing the mechanics of taking depositions conform to the federal rules because many depositions are taken for use in parallel state and federal proceedings or in distant locations before reporters who can be expected to know the federal procedures but may not know idiosyncratic Minnesota rules.*

*Rule 30.04 is largely new and includes important provisions governing the conduct of depositions. Most important is Rule 30.04(a), which is intended to constrain the conduct of attorneys at depositions. The rule limits deposition objections to concise statements that are directed to the record and not so suggesting a possible answer to the deponent. This rule is intended to set a high standard for conduct of depositions. The problem of deposition misconduct, though probably not as severe as has been noted in some reported cases, is still a frequent and unfortunate part of Minnesota practice. See, e.g., *Hall v. Clifton Precision*, 150 F.R.D. 525 (E.D. Pa. 1993); *Paramount Communications, Inc. v. QVC Network, Inc.*, 637 A.2d 34, 51–57 (Del. 1994); *Kelvey v. Coughlin*, 625 A.2d 775 (R.I. 1993).*

*Rule 30.06 is amended to follow its federal counterpart, retaining the existing mechanism for delivering transcripts of depositions to the lawyer or party noticing the deposition rather than filing them with the court. This difference is necessary because Minn. R. Civ. P. 5.04 does not permit filing discovery in the absence of an order.*

*[For text of 30.07, see M.S. 1996, Volume 15]*

## **Rule 31. Depositions of Witnesses Upon Written Questions**

### **31.01 Serving Questions; Notice**

(a) A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45.

(b) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26.02(a), if the person to be examined is confined in prison or if, without the written stipulation of the parties, the person to be examined has already been deposed in the case.

(c) A party desiring to take a 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 the person or the particular class or group to which the person 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(f).

(d) Within 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 7 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 7 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.

(Amended effective January 1, 1997.)

### **31.02 Officer 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 the officer.

(Amended effective January 1, 1997.)

### ***Advisory Committee Comments—1996 Amendments***

*This change conforms the rule to its federal counterpart. The federal rule was amended in 1993 to create a more usable mechanism for exchanging questions and submitting them to the witness. One goal of this change is to make depositions on written questions a more useful discovery device, recognizing that if it can be used effectively it has good potential for reducing the cost of litigation.*

*The amendment of this rule also serves the goal of facilitating the handling of these depositions by court reporters and others not regularly exposed to Minnesota practice.*

*[For text of 31.03, see M.S. 1996, Volume 15]*

## **Rule 32. Use of Depositions in Court Proceedings**

*[For text of 32.01 and 32.02, see M.S. 1996, Volume 15]*

### 32.03 Form of Presentation

Except as otherwise directed by the court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in nonstenographic form, if available, unless the court for good cause orders otherwise.

(Amended effective January 1, 1997.)

#### *Advisory Committee Comments—1996 Amendments*

*This change conforms the rule to its federal counterpart. As is true for the amendments to Rules 30 and 31, the committee believes it is advantageous to have great uniformity in practice in the area of deposition practice because of the likelihood that some of the players in many depositions are totally unfamiliar with Minnesota Procedure.*

*[For text of 32.04 and 32.05, see M.S. 1996, Volume 15]*

## Rule 33. Interrogatories to Parties

### 33.01 Availability

(a) Any party may serve written interrogatories upon any other party. Interrogatories may, without leave of court, be served upon any party after service of the summons and complaint. 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.

(b) 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.

(c) Objections shall state with particularity the grounds for the objection and may be served either as a part of the document containing the answers or separately. The party submitting the interrogatories may move for an order under Rule 37.01 with respect to any objection to or other failure to answer an interrogatory. Answers to interrogatories to which objection has been made shall be deferred until the objections are determined.

(d) 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, a corporation, 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 answer to that interrogatory.

Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 50 in number including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26.02(a).

(Amended effective January 1, 1997.)

#### *Advisory Committee Comments—1996 Amendments*

*This change retains the existing rule on interrogatories, and does not adopt the 1993 amendment to its federal counterpart. The federal courts adopted in 1993 an express*

*numerical limitation on the number of interrogatories, limiting them to 25. Minnesota took this action to limit discovery in the 1975 amendments to the rules, limiting interrogatories to 50, and this limit has worked well in practice. The committee believes that the other changes in the federal rules are not significant enough in substance to warrant adoption in Minnesota.*

*The rule, however, is amended in one important way. The existing provision requiring a party receiving objections to interrogatories to move within 15 days to have the objections determined by the court and the waiver of a right to answers if such a motion is not made within the required time has not worked well. There is no reason to require such prompt action, and much to commend more orderly consideration of the objections. The absolute waiver of the old rule gives way to an explicit right to have the matter resolved by the court, and permits that to be done at any time. This permits the party receiving objections to determine their validity, attempt to resolve any dispute, consider the eventual importance of the information, and possibly to take the matter up with the court in conjunction with other matters. All of these reasons favor a more flexible rule.*

*[For text of 33.02 to 36., see M.S. 1996, Volume 15]*

## **Rule 37. Failure to Make Discovery or Cooperate in Discovery: Sanctions**

### **37.01 Motion for Order Compelling Discovery**

**(a) Appropriate Court.** An application for an order to a party shall be made to the court in which the action is pending. An application for an order to a person who is not a party shall be made to the court in the county where the discovery is being, or is to be, taken.

**(b) Motion.** If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30.02(f) or 31.01(c), 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. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

**(c) Evasive or Incomplete Answer, or Response.** For purposes of this subdivision an evasive or incomplete answer, or response is to be treated as a failure to disclose, answer, or respond.

**(d) Expenses and Sanctions.**

(1) If the motion is granted, or if the requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, 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 making the motion, including attorney fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified or that other circumstances make an award of expenses unjust.

(2) If the motion is denied, the court may enter any protective order authorized under Rule 26.03 and shall, after affording an opportunity to be heard, require the moving party or the attorney filing 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 fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(3) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26.03 and may, after affording an opportunity to be

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

(Amended effective January 1, 1997.)

***Advisory Committee Comments—1996 Amendments***

*This change conforms the rule to its federal counterpart, consistent with the ongoing differences between the two rules.*

*[For text of 37.02 to 37.04, see M.S. 1996, Volume 15]*

**VI. TRIALS**

*[For text of 38. to 42., see M.S. 1996, Volume 15]*

**Rule 43. Taking of Testimony**

**43.01 Form**

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute or by these rules, the Minnesota Rules of Evidence, or other rules adopted by the Supreme Court.

(Amended effective January 1, 1997.)

**43.02 Examination of Hostile Witnesses and Adverse Parties**

**[ABROGATED]**

(Abrogated November 22, 1996, effective January 1, 1997.)

**43.03 Record of Excluded Evidence**

**[ABROGATED]**

(Abrogated November 22, 1996, effective January 1, 1997.)

*[For text of 43.04 and 43.05, see M.S. 1996, Volume 15]*

**43.06 Res Ipsa Loquitur**

**[ABROGATED]**

(Abrogated November 22, 1996, effective January 1, 1997.)

*[For text of 43.07, see M.S. 1996, Volume 15]*

***Advisory Committee Comments—1996 Amendments***

*The changes to this rule conforms it to its federal counterpart. The existing rule predates the adoption of the Minnesota Rules of Evidence, and creates conflicts with those rules in practice. It is appropriate to have all provisions relating to evidence contained in a single location, and to have the rules of civil procedure only refer to those rules where necessary.*

**Rule 44. Proof of Official Record**

**44.01 Authentication**

**(a) Domestic.** An official record kept within the United States, or any state, district, commonwealth, or within a territory subject to the administrative or judicial jurisdic-

tion of the United States, 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 the officer's 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 the officer's office.

**(b) 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, 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. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(Amended effective January 1, 1997.)

*[For text of 44.02 and 44.03, see M.S. 1996, Volume 15]*

#### **44.04 Determination of Foreign Law**

**[ABROGATED]**

(Abrogated November 22, 1996, effective January 1, 1997.)

#### ***Advisory Committee Comments—1996 Amendments***

*These changes conform the rule to its federal counterpart. These amendments reflect the view that questions of evidence should be determined under the Minnesota Rules of Evidence and the decisional law arising under those rules. The existing rule is not helpful to courts or litigants.*

*[For text of 45. to 71., see M.S. 1996, Volume 15]*

### **VIII. DISTRICT COURTS AND COURT ADMINISTRATORS**

*[For text of 77. to 80., see M.S. 1996, Volume 15]*

#### **Rule 81. Applicability; in General**

##### **81.01 Statutory and Other Procedures**

**(a) 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.

**(b) Procedures Abolished.** [Abrogated]

**(c) Statutes Superseded.** Subject to provision (a) 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.

(Amended effective January 1, 1997.)

**Advisory Committee Comments—1996 Amendments**

*Rule 81.01(b) should be abrogated to reflect the decision of the Minnesota Supreme Court in Rice v. Connolly, 488 N.W.2d 241, 244 (Minn. 1992), in which the court held: “[W]e have determined that quo warranto jurisdiction as it once existed in the district court must be reinstated and that petitions for the writ of quo warranto and information in the nature of quo warranto shall be filed in the first instance in the district court. The court recognized its retention of original jurisdiction under Minnesota Statutes, section 480.04 (1990), and also indicated its “future intention to exercise that discretion in only the most exigent of circumstances. We comment further that the reinstatement of quo warranto jurisdiction in the district court is intended to exist side by side with the appropriate alternative forms of remedy heretofore available....” 488 N.W.2d at 244. The continued existence of a rule purporting to recognize a procedural remedy now expressly held to exist can only prove misleading or confusing in future litigation. Abrogation of the rule is appropriate to obviate any lack of clarity.*

*Although Rule 81.01(a) is not amended, the committee recommends that the list of special proceedings exempted from the rules by this rule be updated. An updated Appendix A is included in these proposed amendments.*

*[For text of 81.02 to 86., see M.S. 1996, Volume 15]*

## 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:

Minn. Stat. (1996) 64B.30	Quo warranto against fraternal benefit association
67A.241	Quo warranto against town mutual fire insurance company
Chapters 103A–110A	Drainage
Chapter 117	Eminent domain proceedings (see also Gen. R. Prac. 141)
Chapter 209	Election contests
Chapter 253B	Civil commitment
Chapter 259	Adoption; change of name
Chapter 271.06(7)	Proceedings in tax court
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
Chapter 299F.10–.17	Actions on orders of state fire marshal
501.33 to 501.38	Proceedings relating to trusts
Chapter 503	Townsite lands
Chapter 508	Registration of title to lands (see also Gen. R. Prac. 201–216)
514.01 to 514.17	Mechanics liens
Chapter 518	Dissolution of marriage
540.08	Insofar as it provides for action by parent for injury to minor child (see also Gen. R. Prac. 145)
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 (see also Gen. R. Prac. 142–144)
Chapter 579	Actions against boats and vessels
Writ of certiorari	
Writ of habeas corpus	
Writ of ne exeat	
Writ of mandamus	

(As amended November 10, 1967, effective February 1, 1968; amended effective January 1, 1997.)

\*Revisor's Note: Certain sections and chapters listed in this Appendix may have been repealed or renumbered. The user should check the appropriate sections and chapters for their current status.

*[For text of Appendix B(1), B(2), and Appendix of Forms, see M.S. 1996, Volume 15]*