

CIVIL PROCEDURE

Minnesota Rules of Civil Procedure

	PAGE
Table of Headnotes	393
Text of Rules	402
Appendix A - Special Proceedings under Rule 81.01	475
Appendix B(1) - List of Rules Superseding Statutes	476
Appendix B(2) - List of Statutes Superseded by Rules	481
Appendix of Forms	484
Index	495



Minnesota Rules of Civil Procedure

Revised Effective January 1, 1989
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TABLE OF HEADNOTES

I. SCOPE OF RULES - ONE FORM OF ACTION

Rule 1. Scope of Rules

Rule 2. One Form of Action

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

Rule 3. Commencement of the Action; Service of the Complaint

- 3.01 Commencement of the Action
- 3.02 Service of Complaint

Rule 4. Service

- 4.01 Summons; Form
- 4.02 By Whom Served
- 4.03 Personal Service
- 4.04 Service by Publications; Personal Service Out of State
- 4.041 Additional Information to be Published
- 4.042 Service of the Complaint
- 4.043 Service by Publication; Defendant May Defend;
Restitution
- 4.044 Nonresident Owner of Land Appointing an Agent
- 4.05 Service by Mail
- 4.06 Return
- 4.07 Amendments

Rule 5. Service and Filing of Pleadings and Other Papers

- 5.01 Service; When Required; Appearance
- 5.02 Service; How Made
- 5.03 Service; Numerous Defendants
- 5.04 Filing; Certificate of Service
- 5.05 Filing; Facsimile Transmission

Rule 6. Time

- 6.01 Computation
- 6.02 Enlargement
- 6.03 Unaffected by Expiration of Term
- 6.04 For Motions; Affidavits
- 6.05 Additional Time After Service by Mail or Service
Late in Day

III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Form of Motions

- 7.01 Pleadings
- 7.02 Motion and Other Papers

Rule 8. General Rules of Pleading

- 8.01 Claims for Relief
- 8.02 Defenses; Form of Denials
- 8.03 Affirmative Defenses
- 8.04 Effect of Failure to Deny
- 8.05 Pleading to be Concise and Direct; Consistency
- 8.06 Construction of Pleadings

Rule 9. Pleading Special Matters

- 9.01 Capacity
- 9.02 Fraud, Mistake, Condition of Mind
- 9.03 Conditions Precedent
- 9.04 Official Document or Act
- 9.05 Judgment
- 9.06 Time and Place
- 9.07 Special Damages
- 9.08 Unknown Party; How Designated

Rule 10. Form of Pleadings

- 10.01 Caption; Names of Parties
- 10.02 Paragraph; Separate Statements
- 10.03 Adoption by Reference; Exhibits
- 10.04 Failure to Comply

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

- 11.01 Signature
- 11.02 Representations to Court
- 11.03 Sanctions
- 11.04 Inapplicability to Discovery

Rule 12. Defenses and Objections; When and How Presented; By Pleading or Motion; Motion for Judgment on Pleadings

- 12.01 When Presented
- 12.02 How Presented
- 12.03 Motion for Judgment on the Pleadings
- 12.04 Preliminary Hearing
- 12.05 Motion for More Definite Statement, for Paragraphing and for Separate Statement
- 12.06 Motion to Strike
- 12.07 Consolidation of Defenses in Motion
- 12.08 Waiver or Preservation of Certain Defenses

Rule 13. Counterclaim and Cross-Claim

- 13.01 Compulsory Counterclaims
- 13.02 Permissive Counterclaims
- 13.03 Counterclaim Exceeding Opposing Claim

- 13.04 Counterclaim Against the State of Minnesota
- 13.05 Counterclaim Maturing or Acquired After Pleading
- 13.06 Omitted Counterclaim
- 13.07 Cross-Claim against Co-Party
- 13.08 Joinder of Additional Parties
- 13.09 Separate Trials; Separate Judgment

Rule 14. Third-Party Practice

- 14.01 When Defendant May Bring in Third Party
- 14.02 When Plaintiff May Bring in Third Party
- 14.03 Orders for Protection of Parties and Prevention of Delay

Rule 15. Amended and Supplemental Pleadings

- 15.01 Amendments
- 15.02 Amendments to Conform to the Evidence
- 15.03 Relation Back of Amendments
- 15.04 Supplemental Pleadings

Rule 16. Pretrial Conferences; Scheduling; Management

- 16.01 Pretrial Conferences; Objectives
- 16.02 Scheduling and Planning
- 16.03 Subjects to be Discussed at Pretrial Conferences
- 16.04 Final Pretrial Conference
- 16.05 Pretrial Orders
- 16.06 Sanctions

IV. PARTIES

Rule 17. Parties Plaintiff and Defendant; Capacity

- 17.01 Real Party in Interest
- 17.02 Infants or Incompetent Persons

Rule 18. Joinder of Claims and Remedies

- 18.01 Joinder of Claims
- 18.02 Joinder of Remedies; Fraudulent Conveyances

Rule 19. Joinder of Persons Needed for Just Adjudication

- 19.01 Persons to be Joined if Feasible
- 19.02 Determination by Court Whenever Joinder not Feasible
- 19.03 Pleading Reasons for Nonjoinder
- 19.04 Exception of Class Actions

Rule 20. Permissive Joinder of Parties

- 20.01 Permissive Joinder
- 20.02 Separate Trials

Rule 21. Misjoinder and Nonjoinder of Parties

Rule 22. Interpleader

Rule 23. Class Actions

- 23.01 Prerequisites to a Class Action
- 23.02 Class Actions Maintainable
- 23.03 Determination by Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions
- 23.04 Orders in Conduct of Actions
- 23.05 Dismissal or Compromise
- 23.06 Derivative Actions by Shareholders or Members
- 23.07 Actions Relating to Unincorporated Associations

Rule 24. Intervention

- 24.01 Intervention of Right
- 24.02 Permissive Intervention
- 24.03 Procedure
- 24.04 Notice to Attorney General

Rule 25. Substitution of Parties

- 25.01 Death
- 25.02 Incompetency
- 25.03 Transfer of Interest
- 25.04 Public Officers; Death or Separation from Office

V. DEPOSITIONS AND DISCOVERY**Rule 26. General Provisions Governing Discovery**

- 26.01 Discovery Methods
- 26.02 Discovery, Scope and Limits
- 26.03 Protective Orders
- 26.04 Sequence and Timing of Discovery
- 26.05 Supplementation of Responses
- 26.06 Discovery Conference
- 26.07 Signing of Discovery Requests, Responses and Objections

Rule 27. Deposition before Action or Pending Appeal

- 27.01 Before Action
- 27.02 Pending Appeal
- 27.03 Perpetuation by Action

Rule 28. Persons Before Whom Depositions May Be Taken

- 28.01 Within the United States
- 28.02 In Foreign Countries
- 28.03 Disqualification for Interest

Rule 29. Stipulations Regarding Discovery Procedure**Rule 30. Depositions Upon Oral Examination**

- 30.01 When Depositions May Be Taken
- 30.02 Notice of Examination: General Requirements; Special Notice; Nonstenographic Recording;

- Production of Documents and Things; Deposition of Organization; Telephone Depositions
- 30.03 Examination and Cross-Examination; Record of Examination; Oath; Objections
- 30.04 Schedule and Duration; Motion to Terminate or Limit Examination
- 30.05 Review by Witness; Changes; Signing
- 30.06 Certification and Filing by Officer; Exhibits; Copies; Notices of Filing
- 30.07 Failure to Attend or to Serve Subpoena; Expenses

Rule 31. Depositions of Witnesses Upon Written Questions

- 31.01 Serving Questions; Notice
- 31.02 Officers to Take Responses and Prepare Record
- 31.03 Notice of Filing

Rule 32. Use of Depositions in Court Proceedings

- 32.01 Use of Depositions
- 32.02 Objections to Admissibility
- 32.03 Form of Presentation
- 32.04 Effect of Errors and Irregularities in Depositions
- 32.05 Use of Videotape Depositions

Rule 33. Interrogatories to Parties

- 33.01 Availability
- 33.02 Scope; Use at Trial
- 33.03 Option to Produce Business Records

Rule 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

- 34.01 Scope
- 34.02 Procedure
- 34.03 Persons Not Parties

Rule 35. Physical, Mental and Blood Examination of Persons

- 35.01 Order of Examinations
- 35.02 Report of Findings
- 35.03 Waiver of Medical Privilege
- 35.04 Medical Disclosures and Depositions of Medical Experts

Rule 36. Requests for Admission

- 36.01 Request for Admission
- 36.02 Effect of Admission

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

- 37.01 Motion for Order Compelling Discovery
- 37.02 Failure to Comply with Order
- 37.03 Expenses on Failure to Admit
- 37.04 Failure of a Party to Attend at Own Deposition or Serve Answers

VI. TRIALS

Rule 38. Jury Trial of Right

- 38.01 Right Preserved
- 38.02 Waiver
- 38.03 Placing Action on Calendar

Rule 39. Trial by Jury or by the Court

- 39.01 By Court
- 39.02 Advisory Jury and Trial by Consent
- 39.03 Preliminary Instructions in Jury Trials
- 39.04 Opening Statements by Counsel

Rule 40. Assignment of Cases for Trial**Rule 41. Dismissal of Actions**

- 41.01 Voluntary Dismissal; Effect Thereof
- 41.02 Involuntary Dismissal; Effect Thereof
- 41.03 Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim
- 41.04 Costs of Previously Dismissed Action

Rule 42. Separate Trials

- 42.01 Consolidation
- 42.02 Separate Trials

Rule 43. Taking of Testimony

- 43.01 Form
- 43.02 Examination of Hostile Witnesses and Adverse Parties [Abrogated]
- 43.03 Record of Excluded Evidence [Abrogated]
- 43.04 Affirmation in Lieu of Oath
- 43.05 Evidence and Motions
- 43.06 Res Ipsa Loquitur [Abrogated]
- 43.07 Interpreters

Rule 44. Proof of Official Record

- 44.01 Authentication
- 44.02 Lack of Record
- 44.03 Other Proof
- 44.04 Determination of Foreign Law [Abrogated]

Rule 45. Subpoena

- 45.01 For Attendance of Witnesses; Form; Issuance
- 45.02 For Production of Documentary Evidence
- 45.03 Service
- 45.04 Subpoena for Taking Depositions; Place of Examination

- 45.05 Subpoena for a Hearing or Trial
- 45.06 Expenses of Nonparties
- 45.07 Contempt

Rule 46. Exceptions Unnecessary

Rule 47. Jurors

- 47.01 Examination of Jurors
- 47.02 Alternate Jurors [Abrogated]
- 47.03 Separation of Jury
- 47.04 Excuse

Rule 48. Number of Jurors; Participation in Verdict

Rule 49. Special Verdicts and Interrogatories

- 49.01 Special Verdicts
- 49.02 General Verdict Accompanied by Answer to Interrogatories

Rule 50. Motion for a Directed Verdict; Judgment Notwithstanding Verdict; Alternative Motion

- 50.01 Directed Verdict; When Made; Effect
- 50.02 Judgment Notwithstanding Verdict

Rule 51. Instructions to the Jury; Objections

Rule 52. Findings by the Court

- 52.01 Effect
- 52.02 Amendment

Rule 53. Referees

- 53.01 Appointment and Compensation
- 53.02 Reference
- 53.03 Powers
- 53.04 Proceedings
- 53.05 Report

Rule 54. Judgments; Costs

- 54.01 Definition; Form
- 54.02 Judgment upon Multiple Claims
- 54.03 Demand for Judgment
- 54.04 Costs

Rule 55. Default

- 55.01 Judgment
- 55.02 Plaintiffs; Counterclaimants; Cross-Claimants

Rule 56. Summary Judgment

- 56.01 For Claimant

- 56.02 For Defending Party
- 56.03 Motion and Proceedings Thereon
- 56.04 Case not Fully Adjudicated on Motion
- 56.05 Form of Affidavits; Further Testimony; Defense Required
- 56.06 When Affidavits are Unavailable
- 56.07 Affidavits Made in Bad Faith

Rule 57. Declaratory Judgments**Rule 58. Entry of Judgment; Stay**

- 58.01 Entry
- 58.02 Stay

Rule 59. New Trials

- 59.01 Grounds
- 59.02 Basis of Motion
- 59.03 Time for Motion
- 59.04 Time for Serving Affidavits
- 59.05 On Initiative of Court
- 59.06 Stay of Entry of Judgment

Rule 60. Relief from Judgment or Order

- 60.01 Clerical Mistakes
- 60.02 Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.

Rule 61. Harmless Error**Rule 62. Stay of Proceedings to Enforce a Judgment**

- 62.01 Stay on Motions
- 62.02 Injunction Pending Appeal
- 62.03 Stay upon Appeal
- 62.04 Stay in Favor of the State or Agency Thereof
- 62.05 Power of Appellate Court Not Limited
- 62.06 Stay of Judgment Upon Multiple Claims

Rule 63. Disability or Disqualification of Judge; Notice to Remove; Assignment of a Judge

- 63.01 Disability of Judge
- 63.02 Interest or Bias
- 63.03 Notice to Remove
- 63.04 Assignment of Judge

VII. PROVISIONAL AND FINAL REMEDIES
AND SPECIAL PROCEEDINGS

Rule 64. Seizure of Person or Property**Rule 65. Injunctions**

- 65.01 Temporary Restraining Order; Notice; Hearing; Duration
- 65.02 Temporary Injunction
- 65.03 Security
- 65.04 Form and Scope of Injunction or Restraining Order

Rule 66. Receivers**Rule 67. Deposit in Court**

- 67.01 In an Action
- 67.02 When No Action is Brought
- 67.03 Court May Order Deposit or Seizure of Property
- 67.04 Money Paid into Court

Rule 68. Offer of Judgment or Settlement**Rule 69. Execution****Rule 70. Judgment for Specific Acts; Vesting Title****Rule 71. Process in Behalf of and Against Persons Not Parties****Rules 72 to 76. (Reserved for Future Use.)****VIII. DISTRICT COURTS AND COURT ADMINISTRATORS****Rule 77. District Courts and Court Administrators**

- 77.01 District Courts Always Open
- 77.02 Trials and Hearings; Orders in Chambers
- 77.03 Court Administrator's Office and Orders by Court Administrator
- 77.04 Notice of Orders or Judgments

Rules 78 and 79. (Reserved for Future Use.)**Rule 80. Stenographic Report or Transcript as Evidence****Rule 81. Applicability; in General**

- 81.01 Statutory and Other Procedures
- 81.02 Appeals to District Courts
- 81.03 Rules Incorporated into Statutes

Rule 82. Jurisdiction and Venue**Rule 83. Rules by District Courts****Rule 84. Appendix of Forms****Rule 85. Title****Rule 86. Effective Date**

- 86.01 Effective Date and Application to Pending Proceedings

APPENDICES

Appendix A - Special Proceedings Under Rule 81.01

Appendix B(1) - List of Rules Superseding Statutes

Appendix B(2) - List of Statutes Superseded by Rules

APPENDIX OF FORMS

Introductory Statement

Form 1 - Summons

- Form 2 - Complaint on a Promissory Note
- Form 3 - Complaint on an Account
- Form 4 - Complaint for Goods Sold and Delivered
- Form 5 - Complaint for Money Lent
- Form 6 - Complaint for Money Paid by Mistake
- Form 7 - Complaint for Money Had and Received
- Form 8 - Complaint for Negligence
- Form 9 - Complaint for Negligence Where Plaintiff is Unable to Determine Definitely Whether the Person Responsible is C. D. or E. F. or Whether Both are Responsible and Where His Evidence May Justify a Finding of Wilfulness or of Recklessness or of Negligence
- Form 10 - Complaint for Conversion
- Form 11 - Complaint for Specific Performance of Contract to Convey Land
- Form 12 - Complaint on Claim for Debt and to Set Aside Fraudulent Conveyance Under Rule 18.02
- Form 13 - Complaint for Interpleader and Declaratory Relief
- Form 14 - Motion to Dismiss, Presenting Defenses of Failure to State a Claim, of Lack of Service of Process, and of Lack of Jurisdiction Under Rule 12.02
- Form 15 - Answer Presenting Defenses Under Rule 12.02
- Form 16 - Answer to Complaint Set Forth in Form 7, With Counterclaim for Interpleader
- Form 17 - Summons and Complaint Against Third-Party Defendant
- Form 18 - Motion to Intervene as a Defendant Under Rule 24
- Form 19 - Request for Production of Documents, etc., Under Rule 34
- Form 20 - Request for Admission Under Rule 36
- Form 21 - Allegation of Reason for Omitting Party
- Form 22 - Notice and Acknowledgement of Service by Mail
- Form 23 - Subject Matter Index for Civil Cases

INDEX

Revisor's Note: Supreme Court Order, dated September 5, 1991, promulgating amendments to the Rules of Civil Procedure, provides in part:

"The inclusion of Task Force notes, if any, is made for convenience and does not reflect court approval of the comments made therein."

Supreme Court Order, dated December 20, 1993, promulgating amendments to the Rules of Civil Procedure, provides in part:

"The comments of the Advisory Committee are those of the committee and their inclusion with the amendments does not imply either agreement or adoption by this Court of the statements contained therein."

TEXT OF RULES

I. SCOPE OF RULES — ONE FORM OF ACTION

Rule 1. Scope of Rules

These rules govern the procedure in the district courts of the State of Minnesota in all suits of a civil nature, with the exceptions stated in Rule 81. They shall be construed 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.

Rule 2. One Form of Action

There shall be one form of action to be known as “civil action.”

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

Rule 3. Commencement of the Action; Service of the Complaint

3.01 Commencement of the Action

A civil action is commenced against each defendant:

- (a) when the summons is served upon that defendant, or
- (b) at the date of acknowledgement of service if service is made by mail, or
- (c) when the summons is delivered to the sheriff in the county where the defendant resides for service; but such delivery shall be ineffectual unless within 60 days thereafter the summons is actually served on that defendant or the first publication thereof is made.

3.02 Service of Complaint

A copy of the complaint shall be served with the summons, except when the service is by publication as provided in Rule 4.04.

Rule 4. Service

4.01 Summons; Form

The summons shall state the name of the court and the names of the parties, be subscribed by the plaintiff or by the plaintiff's attorney, give an address within the state where the subscriber may be served in person and by mail, state the time within which these rules require the defendant to serve an answer, and notify the defendant that if the defendant fails to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

4.02 By Whom Served

Unless otherwise ordered by the court, the sheriff or any other person not less than 18 years of age and not a party to the action, may make service of a summons or other process.

4.03 Personal Service

Service of summons within the state shall be as follows:

(a) **Upon an Individual.** Upon an individual by delivering a copy to the individual personally or by leaving a copy at the individual's usual place of abode with some person of suitable age and discretion then residing therein.

If the individual has, pursuant to statute, consented to any other method of service or appointed an agent to receive service of summons, or if a statute designates a state official to receive service of summons, service may be made in the manner provided by such statute.

If the individual is confined to a state institution, by serving also the chief executive officer at the institution.

If the individual is an infant under the age of 14 years, by serving also the individual's father or mother, and if neither is within the state, then a resident guardian if the infant has one known to the plaintiff, and if the infant has none, then the person having control of such defendant, or with whom the infant resides, or by whom the infant is employed.

(b) Upon Partnerships and Associations. Upon a partnership or association which is subject to suit under a common name, by delivering a copy to a member or the managing agent of the partnership or association. If the partnership or association has, pursuant to statute, consented to any other method of service or appointed an agent to receive service of summons, or if a statute designates a state official to receive service of summons, service may be made in the manner provided by such statute.

(c) Upon a Corporation. Upon a domestic or foreign corporation, by delivering a copy to an officer or managing agent, or to any other agent authorized expressly or impliedly or designated by statute to receive service of summons, and if the agent is one authorized or designated under statute to receive service any statutory provision for the manner of such service shall be complied with. In the case of a transportation or express corporation, the summons may be served by delivering a copy to any ticket, freight, or soliciting agent found in the county in which the action is brought, and if such corporation is a foreign corporation and has no such agent in the county in which the plaintiff elects to bring the action, then upon any such agent of the corporation within the state.

(d) Upon the State. Upon the state by delivering a copy to the attorney general, a deputy attorney general or an assistant attorney general.

(e) Upon Public Corporation. Upon a municipal or other public corporation by delivering a copy

(1) To the chair of the county board or to the county auditor of a defendant county;

(2) To the chief executive officer or to the clerk of a defendant city, village or borough;

(3) To the chair of the town board or to the clerk of a defendant town;

(4) To any member of the board or other governing body of a defendant school district; or

(5) To any member of the board or other governing body of a defendant public board or public body not hereinabove enumerated.

If service cannot be made as provided in this Rule 4.03(e), the court may direct the manner of such service.

4.04 Service by Publications; Personal Service Out of State

(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.

4.041 Additional Information to be Published

In all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon, real property is involved or affected or is brought in question, the publication shall also contain a description of the real property involved,

affected or brought in question thereby, and a statement of the object of the action. No other notice of the pendency of the action need be published.

4.042 Service of the Complaint

If the defendant shall appear within ten days after the completion of service by publication, the plaintiff, within five days after such appearance, shall serve the complaint, by copy, on the defendant or the defendant's attorney. The defendant shall then have at least ten days in which to answer the same.

4.043 Service by Publication; Defendant May Defend; Restitution

If the summons is served by publication, and the defendant receives no actual notification of the action, the defendant shall be permitted to defend upon application to the court before judgment and for sufficient cause; and, except in an action for marriage dissolution, the defendant, in like manner, may be permitted to defend at any time within one year after judgment, on such terms as may be just. If the defense is sustained, and any part of the judgment has been enforced, such restitution shall be made as the court may direct.

4.044 Nonresident Owner of Land Appointing an Agent

If a nonresident person or corporation owning or claiming any interest or lien in or upon lands in the state appoints an agent pursuant to Minnesota Statutes, section 557.01, service of summons in an action involving such real estate shall be made upon the agent or the principal in accordance with Rule 4.03, and service by publication shall not be made upon the principal.

4.05 Service by Mail

In any action service may be made by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 22 and a return envelope, postage prepaid, addressed to the sender. If acknowledgment of service under this rule is not received by the sender within the time defendant is required by these rules to serve an answer, service shall be ineffectual.

Unless good cause is shown for not doing so, the court shall order the payment of the costs of personal service by the person served if such person does not complete and return the notice and acknowledgment of receipt of summons within the time allowed by these rules.

4.06 Return

Service of summons and other process shall be proved by the certificate of the sheriff or other peace officer making it, by the affidavit of any other person making it, by the written admission or acknowledgment of the party served, or if served by publication, by the affidavit of the printer or the printer's designee. The proof of service in all cases other than by published notice shall state the time, place, and manner of service. Failure to make proof of service shall not affect the validity of the service.

(Amended effective August 1, 2000.)

4.07 Amendments

The court in its discretion and on such terms as it deems just may at any time allow any summons or other process or proof of service thereof to be amended, unless it clearly appears that substantial rights of the person against whom the process issued would be prejudiced thereby.

Rule 5. Service and Filing of Pleadings and Other Papers**5.01 Service; When Required; Appearance**

Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4. A party appears when that party serves or files any paper in the proceeding.

5.02 Service; How Made

Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party 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.)

5.03 Service: Numerous Defendants

If the defendants are numerous, the court, upon motion or upon its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading with the court and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

5.04 Filing; 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 any court rule or practice.

(Amended effective March 1, 1994; amended effective January 1, 1997; amended effective March 1, 2001.)

Advisory Committee Comment—1993 Amendments

The amendment to Rule 5.04 makes it unnecessary to file notice of taking depositions in the vast majority of cases. Filing may be required as a condition precedent to issuance of a deposition subpoena pursuant to Minn. R. Civ. P. 45.04(a), though that rule only requires proof of service to be shown, not filed, and does not require filing of the notice itself in either event. The notice need not be filed because court administrators should issue subpoenas without the filing of the notice. In practice, courts have little use for deposition notices in court files, and in those rare circumstances where reference to them is necessary, they can be attached as exhibits to an affidavit, filed by leave of court, or offered in evidence just as any other discovery request or response.

Advisory Committee Comment - 2000 Amendments

The last sentence of Rule 5.04 is changed to broaden the direction to court administrators not to reject documents for filing for noncompliance with the form requirements of the rules. The rule as amended makes it clear that those form requirements, regardless of which set of rules contains them, should not be the basis for a refusal to file the document. Any deficiency as to form should be dealt with by appropriate court order, including in most cases an opportunity to cure the defect.

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.)

6.02 Enlargement

When by statute, by these rules, by a notice given thereunder, or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion, (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 4.043, 59.03, 59.05, and 60.02 except to the extent and under the conditions stated in them.

6.03 Unaffected by Expiration of Term

The continued existence or the expiration of a term of court does not affect or limit the period of time provided for the taking of any action or proceeding, or affect

the power of the court to act or take any proceeding in any action which has been pending before it.

6.04 For Motions; Affidavits

A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served 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

Rule 7. Pleadings Allowed; Form of Motions

7.01 Pleadings

There shall be a complaint and an answer (including such pleadings in a third-party proceeding when a third-party claim is asserted); a reply to a counterclaim denominated as such; and an answer to a cross-claim if the answer contains a cross-claim. No other pleading shall be allowed except that the court may order a reply to an answer. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

7.02 Motions and Other Papers

(a) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be in writing, shall state with particularity the grounds

therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. Motions provided in these rules are motions requiring a written notice to the party and a hearing before the order can be issued unless the particular rule under which the motion is made specifically provides that the motion may be made ex parte. The parties may agree to written submission to the court for decision without oral argument unless the court directs otherwise. Upon the request of a party or upon its own initiative, the court may hear any motion by telephone conference.

(b) The rules applicable for captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(c) All motions will be signed in accordance with Rule 11.

Rule 8. General Rules of Pleading

8.01 Claims for Relief

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought; if a recovery of money is demanded, the amount shall be stated. Relief in the alternative or of several different types may be demanded. If a recovery of money for unliquidated damages is demanded in an amount less than \$50,000, the amount shall be stated. If a recovery of money for unliquidated damages in an amount greater than \$50,000 is demanded, the pleading shall state merely that recovery of reasonable damages in an amount greater than \$50,000 is sought.

8.02 Defenses; Form of Denials

A party shall state in short and plain terms any defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. A pleader who intends in good faith to deny only a part or to qualify an averment shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits. However, a pleader who intends to controvert all its averments may do so by general denial subject to the obligations set forth in Rule 11.

8.03 Affirmative Defenses

In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, on such terms as justice may require, shall treat the pleading as if there had been a proper designation.

8.04 Effect of Failure to Deny

Averments in a pleading to which a responsive pleading is required, other than those as to amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

8.05 Pleading to be Concise and Direct; Consistency

(a) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(b) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds or both. All statements shall be made subject to the obligations set forth in Rule 11.

8.06 Construction of Pleadings

All pleadings shall be so construed as to do substantial justice.

Rule 9. Pleading Special Matters**9.01 Capacity**

It is not necessary to aver the capacity of a party to sue or be sued, the authority of a party to sue or be sued in a representative capacity, or the legal existence of a partnership or an organized association of persons that is made a party. A party who desires to raise an issue as to the legal existence of any party, the capacity of any party to sue or be sued, or the authority of a party to sue or be sued in a representative capacity shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

9.02 Fraud, Mistake, Condition of Mind

In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

9.03 Conditions Precedent

In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

9.04 Official Document or Act

In pleading an official document or official act, it is sufficient to aver that the document was issued or the act was done in compliance with law; and in pleading any ordinance of a city, village, or borough or any special or local statute or any right derived from either, it is sufficient to refer to the ordinance or statute by its title and the date of its approval.

9.05 Judgment

In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

9.06 Time and Place

For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

9.07 Special Damages

When items of special damage are claimed, they shall be specifically stated.

9.08 Unknown Party; How Designated

When a party is ignorant of the name of an opposing party and so alleges in the party's pleading, the opposing party may be designated by any name and when that opposing party's true name is discovered the process and all pleadings and proceedings in the action may be amended by substituting the true name.

Rule 10. Form of Pleadings**10.01 Caption; Names of Parties**

Every pleading shall have a caption setting forth the name of the court and the county in which the action is brought, the title of the action, the court file number if one has been assigned, and a designation as in Rule 7, and, in the upper right hand corner, the appropriate case type indicator as set forth in the subject matter index included in the appendix as Form 23. If a case is assigned to a particular judge for all subsequent proceedings, the name of that judge shall be included in the caption and adjacent to the file number. In the complaint, the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the first party on each side with an appropriate indication of other parties.

(Amended effective March 1, 1994; amended effective March 1, 2001.)

Advisory Committee Comment—1993 Amendments

The only change made to this rule is to correct a typographical or grammatical error in the existing rule. No change in meaning or interpretation is intended.

Advisory Committee Comments - 2000 Amendments

Rule 10.01 is amended to facilitate case management and document management in cases where a judge has been assigned to the case. By placing the judge's name on the caption, it is often possible to expedite the delivery of filed documents to that judge. This provision is commonly required in federal court cases where all matters are assigned to a judge, including in the United States District Court for the District of Minnesota. See LR 5.1 (D. Minn.). The rule is also amended to require the inclusion of a court file number if one has been assigned.

10.02 Paragraph; Separate Statements

All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

10.03 Adoption by Reference; Exhibits

Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part of the statement of claim or defense set forth in the pleading.

10.04 Failure to Comply

If a pleading, motion or other paper fails to indicate the case type as required by Rule 10.01, it may be stricken by the court unless the appropriate case type indicator is communicated to the court administrator promptly after the omission is called to the attention of the pleader or movant.

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions**11.01 Signature**

Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any, and attorney registration number if signed by an attorney. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(Amended effective January 1, 1992; amended effective July 1, 2000; amended effective August 1, 2000.)

11.02 Representations to Court

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

(a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(Amended effective January 1, 1992; amended effective July 1, 2000; amended effective August 1, 2000.)

11.03 Sanctions

If, after notice and a reasonable opportunity to respond, the court determines that Rule 11.02 has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated Rule 11.02 or are responsible for the violation.

(a) How Initiated.

(1) **By Motion.** A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate Rule 11.02. It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(2) **On Court's Initiative.** On its own initiative, the court may enter an order describing the specific conduct that appears to violate Rule 11.02 and directing an attorney, law firm, or party to show cause why it has not violated Rule 11.02 with respect thereto.

(b) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in Rules 11.03(a)(1) and (2), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation.

(1) Monetary sanctions may not be awarded against a represented party for a violation of Rule 11.02(b).

(2) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(c) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(Amended effective January 1, 1992; amended effective July 1, 2000; amended effective August 1, 2000.)

11.04 Inapplicability to Discovery

Rules 11.01-.03 do not apply to discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

(Amended effective January 1, 1992; amended effective July 1, 2000; amended effective August 1, 2000.)

Task Force Comment—1991 Adoption

This rule amendment is patterned after 4th Dist. R. 1.01(c) & (e).

The Task Force believes that the simple additional requirement for signing pleadings, widely followed in practice, should best be made part of this rule governing signing of pleadings, motions and other papers.

Advisory Committee Comments—2000 Amendments

Rule 11 is amended to conform completely to the federal rule. While Rule 11 has worked fairly well in its current form under the Supreme Court's guidance in Uselman v. Uselman, 464 N.W.2d 130 (Minn. 1990), the federal rules have been amended and create both procedural and substantive differences between state and federal court practices. Additionally, the Minnesota Legislature has created a statutory mechanism that follows the federal procedure, resulting in a confusing array of practice requirements and remedies. See Minnesota Statutes, section 549.211. On balance, the Committee believes that the amendment of the Rule to conform to its federal counterpart makes the most sense, given this Committee's long-standing preference for minimizing the differences between state and federal practice unless compelling local interests or long-entrenched reliance on the state procedure makes changing a rule inappropriate.

It is the intention of the Committee that the revised Rule would modify the procedure for seeking sanctions, but would not significantly change the availability of sanctions or the conduct justifying the imposition of sanctions. Courts and practitioners should be guided by the Uselman decision, cited above, and should continue to reserve the seeking of sanctions and their imposition for substantial departures from acceptable litigation conduct.

Rule 12. Defenses and Objections; When and How Presented; By Pleading or Motion; Motion for Judgment on Pleadings

12.01 When Presented

Defendant shall serve an answer within 20 days after service of the summons upon that defendant unless the court directs otherwise pursuant to Rule 4.043. A party

served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows unless a different time is fixed by order of the court: (1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after service of notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within ten days after the service of the more definite statement.

12.02 How Presented

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (a) lack of jurisdiction over the subject matter;
- (b) lack of jurisdiction over the person;
- (c) insufficiency of process;
- (d) insufficiency of service of process;
- (e) failure to state a claim upon which relief can be granted; and
- (f) failure to join a party pursuant to Rule 19.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense that the pleading fails to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

12.03 Motion for Judgment on the Pleadings

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on such motion, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided for in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(Amended effective March 1, 1994.)

Advisory Committee Comment—1993 Amendments

The only change made to this rule is to correct a typographical or grammatical error in the existing rule. No change in meaning or interpretation is intended.

12.04 Preliminary Hearing

The defenses and relief enumerated in Rules 12.02 and 12.03, whether made in a pleading or by motion, shall be heard and determined before trial on application of any party unless the court orders that the hearing and determination thereof be deferred until the trial.

12.05 Motion for More Definite Statement, for Paragraphing and for Separate Statement

If a pleading to which a responsive pleading is permitted violates the provisions of Rule 10.02, or is so vague and ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a compliance with Rule 10.02 or for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ten days after service of notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

12.06 Motion to Strike

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party, or upon its own initiative at any time, the court may order any pleading not in compliance with Rule 11 stricken as sham and false, or may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

12.07 Consolidation of Defenses in Motion

A party who makes a motion pursuant to this rule may join with it other motions then available to the party. If a party makes a motion under this rule but omits therefrom any then available defense or objection which this rule permits to be raised by motion, that party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in Rule 12.08(b) hereof on any of the grounds there stated.

12.08 Waiver or Preservation of Certain Defenses

(a) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived (1) if omitted from a motion in the circumstances described in Rule 12.07, or (2) if it is neither made by motion pursuant to this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15.01 to be made as a matter of course.

(b) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered pursuant to Rule 7.01, or by motion for judgment on the pleadings, or at the trial on the merits.

(c) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Rule 13. Counterclaim and Cross-Claim**13.01 Compulsory Counterclaims**

A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, except that such a claim need not be so stated if, at the time the action was commenced, the claim was the subject of another pending action.

13.02 Permissive Counterclaims

A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction that is the subject matter of the opposing party's claim.

13.03 Counterclaim Exceeding Opposing Claim

A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

13.04 Counterclaim Against the State of Minnesota

These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the State of Minnesota or an officer or agency thereof.

13.05 Counterclaim Maturing or Acquired After Pleading

A claim which either matured or was acquired by the pleader after serving a pleading may, by leave of court, be presented as a counterclaim by supplemental pleading.

13.06 Omitted Counterclaim

When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may, by leave of court, set up the counterclaim by amendment.

13.07 Cross-Claim Against Co-Party

A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

13.08 Joinder of Additional Parties

Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

13.09 Separate Trials; Separate Judgment

If the court orders separate trials as provided in Rule 42.02, judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54.02 even if the claims of the opposing party have been dismissed or disposed of otherwise.

Rule 14. Third-Party Practice**14.01 When Defendant May Bring in Third Party**

Within 90 days after service of the summons upon a defendant, and thereafter either by written consent of all parties to the action or by leave of court granted on motion upon notice to all parties to the action, a defendant as a third-party plaintiff may serve a summons and complaint, together with a copy of plaintiff's complaint upon a person, whether or not the person is a party to the action, who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff and after such service shall forthwith serve notice thereof upon all other parties to the action. Copies of third-party pleadings shall be furnished by the pleader to any other party to the action within five days after request therefor. The person so served, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also

assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. A third-party defendant may proceed in accordance with this rule against any person who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

14.02 When Plaintiff May Bring in Third Party

When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which, pursuant to Rule 14.01, would entitle defendant to do so.

14.03 Orders for Protection of Parties and Prevention of Delay

The court may make such orders to prevent a party from being embarrassed or put to undue expense, or to prevent delay of the trial or other proceeding by the assertion of a third-party claim, and may dismiss the third-party claim, order separate trials, or make other orders to prevent delay or prejudice. Unless otherwise specified in the order, a dismissal pursuant to this rule is without prejudice.

Rule 15. Amended and Supplemental Pleadings

15.01 Amendments

A party may amend a pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

15.02 Amendments to Conform to the Evidence

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of a trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues raised by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that admission of such evidence would prejudice maintenance of the action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

15.03 Relation Back of Amendments

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party, the party to be brought in by amendment (1) has received

such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against that party.

15.04 Supplemental Pleadings

Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions, occurrences, or events which have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a claim for relief or of a defense. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

Rule 16. Pretrial Conferences; Scheduling; Management

16.01 Pretrial Conferences; Objectives

In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as

- (a) expediting the disposition of the action;
- (b) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (c) discouraging wasteful pretrial activities;
- (d) improving the quality of the trial through more thorough preparation; and
- (e) facilitating the settlement of the case.

16.02 Scheduling and Planning

The court may, and upon written request of any party with notice to all parties, shall, after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

- (a) to join other parties and to amend the pleadings;
- (b) to file and hear motions; and
- (c) to complete discovery.

The scheduling order also may include

- (d) the date or dates for conferences before trial, a final pretrial conference, and trial; and
- (e) any other matters appropriate in the circumstances of the case.

A schedule shall not be modified except by leave of court upon a showing of good cause.

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

16.04 Final Pretrial Conference

Any final pretrial conference may be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

16.05 Pretrial Orders

After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action and shall be modified only to prevent manifest injustice.

16.06 Sanctions

If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the court, upon motion or upon its own initiative, may make such orders with regard thereto as are just, including any of the orders provided in Rule 37.02(b)(2), (3), (4). In lieu of or in addition to any other sanction, the court shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney fees, unless the court finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

IV. PARTIES

Rule 17. Parties Plaintiff and Defendant; Capacity

17.01 Real Party in Interest

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

17.02 Infants or Incompetent Persons

Whenever a party to an action is an infant or is incompetent and has a representative duly appointed under the laws of this state or the laws of a foreign state or country, the representative may sue or defend on behalf of such party. A party who is an infant or is incompetent and is not so represented shall be represented by a guardian ad litem appointed by the court in which the action is pending or is to be brought. The guardian ad litem shall be a resident of this state, shall file a consent and oath with the court administrator, and shall give such bond as the court may require.

Any person, including an infant party over the age of 14 years and under no other legal disability, may apply under oath for the appointment of a guardian ad litem. The application of the party or the party's spouse or parents or testamentary or other guardian shall have priority over other applications. If no such appointment is made on behalf of a defendant party before answer or default, the adverse party or a party's attorney may apply for such appointment, and in such case the court shall allow the guardian ad litem a reasonable time to respond to the complaint.

The application for appointment shall show (1) the name, age and address of the party, (2) if the party is a minor, the names and addresses of the parents, and, in the event of their death or the abandonment of the minor, the name and address of the party's custodian or testamentary or other guardian, if any, (3) the name and address of the party's spouse, if any, and (4) the name, age, address, and occupation of the person whose appointment is sought.

If the appointment is applied for by the party or by a spouse, parent, custodian or testamentary or other guardian of the party, the court may hear the application with or without notice. In all other cases written notice of the hearing on the application shall be given at such time as the court shall prescribe, and shall be served upon the party, the party's spouse, parent, custodian and testamentary or other guardian, if any, and if the party is an inmate of a public institution, the chief executive officer thereof. If the

party is a nonresident or, after diligent search, cannot be found within the state, notice shall be given to such persons and in such manner as the court may direct.

Rule 18. Joinder of Claims and Remedies

18.01 Joinder of Claims

A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal, or equitable, as the party has against an opposing party.

18.02 Joinder of Remedies; Fraudulent Conveyances

Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.

Rule 19. Joinder of Persons Needed for Just Adjudication

19.01 Persons to be Joined if Feasible

A person who is subject to service of process shall be joined as a party in the action if (a) in the person's absence complete relief cannot be accorded among those already parties, or (b) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (1) as a practical matter impair or impede the person's ability to protect that interest or (2) leave any one already a party subject to a substantial risk or incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

19.02 Determination by Court Whenever Joinder Not Feasible

If a person as described in Rule 19.01 cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include:

(a) to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties;

(b) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;

(c) whether a judgment rendered in the person's absence will be adequate; and

(d) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

19.03 Pleading Reasons for Nonjoinder

A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in Rule 19.01 who are not joined, and the reasons why they are not joined.

19.04 Exception of Class Actions

This rule is subject to the provisions of Rule 23.

Rule 20. Permissive Joinder of Parties**20.01 Permissive Joinder**

All persons may join in one action as plaintiffs if they assert any right to relief, jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of fact or law common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

20.02 Separate Trials

The court may make such order as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

Rule 21. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or upon the court's own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Rule 22. Interpleader

Persons having claims against the plaintiff may be joined as defendants and required to interplead, in an action brought for that purpose, when their claims are such that the plaintiff is or may be exposed to multiple liability. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. If such a defendant admits being subject to liability, that defendant may, upon paying the amount claimed or delivering the property claimed or its value into court or to such person as the court may direct, move for an order to substitute the claimants other than the plaintiff as defendants in the movant's stead. On compliance with the terms of such order, the defendant shall be discharged and the action shall proceed against the substituted defendants. It is not ground for objection to such joinder or to such motion that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical with but are adverse to and independent of one another, or that the plaintiff denies liability in whole or in part to any or all of the claimants. The provisions of this rule do not restrict the joinder of parties permitted in Rule 20.

Rule 23. Class Actions**23.01 Prerequisites to a Class Action**

One or more members of a class may sue or be sued as representative parties on behalf of all only if

- (a) the class is so numerous that joinder of all members is impracticable;
- (b) there are questions of law or fact common to the class;
- (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (d) the representative parties will fairly and adequately protect the interests of the class.

23.02 Class Actions Maintainable

An action may be maintained as a class action if the prerequisites of Rule 23.01 are satisfied, and in addition:

(a) the prosecution of separate actions by or against individual members of the class would create a risk of

(1) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(2) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(b) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(c) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action.

23.03 Determination by Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions

(a) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order hereunder may be conditional, and may be altered or amended before the decision on the merits.

(b) In any class action maintained pursuant to Rule 23.02(c), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (1) the court will exclude from the class any person who so requests by a specified date; (2) the judgment, whether favorable or not, will include all members who do not request exclusion; and (3) any member who does not request exclusion may, but need not, enter an appearance through counsel.

(c) The judgment in an action maintained as a class action pursuant to Rule 23.02(a) or (b), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action pursuant to Rule 23.02(c), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in Rule 23.03(b) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(d) When appropriate (1) an action may be brought or maintained as a class action with respect to particular issues, or (2) a class may be divided into subclasses and each subclass treated as a class; the provisions of this rule shall then be construed and applied accordingly.

23.04 Orders in Conduct of Action

In the conduct of actions to which this rule applies, the court may make appropriate orders:

(a) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(b) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to enter the action;

(c) imposing conditions on the representative parties or intervenors;

(d) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; or

(e) dealing with similar procedural matters.

The orders may be combined with an order pursuant to Rule 16, and may be altered or amended whenever necessary.

23.05 Dismissal or Compromise

A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

23.06 Derivative Actions by Shareholders or Members

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interest of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

23.07 Actions Relating to Unincorporated Associations

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23.04 and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23.05.

Rule 24. Intervention

24.01 Intervention of Right

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

24.02 Permissive Intervention

Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a common question of law or fact. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

24.03 Procedure

A person desiring to intervene shall serve on all parties to the action and file a notice of intervention which shall state that in the absence of objection by an existing party to the action within 30 days after service thereof upon the party, such intervention shall be deemed to have been accomplished. The notice of intervention shall be accompanied by a pleading setting forth the nature and extent of every claim or defense as to which intervention is sought and the reasons for the claim of entitlement to intervention. Within 30 days after service upon the party seeking to intervene of a notice of objection to intervention, the party shall serve a motion to intervene upon all parties as provided in Rule 5.

Upon written consent of all parties to the action, anyone interested may intervene under this rule without notice.

(Amended effective March 1, 1994.)

Advisory Committee Comment—1993 Amendments

The only change made to this rule is to correct a typographical or grammatical error in the existing rule. No change in meaning or interpretation is intended.

24.04 Notice to Attorney General

When the constitutionality of an act of the legislature is drawn in question in any action to which the state or an officer, agency or employee of the state is not a party, the party asserting the unconstitutionality of the act shall notify the attorney general thereof within such time as to afford the attorney general an opportunity to intervene.

Rule 25. Substitution of Parties

25.01 Death

(a) If a party dies and the claim is not extinguished or barred, the court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of process.

(b) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be indicated upon the record and the action shall proceed in favor of or against the surviving parties.

25.02 Incompetency

If a party becomes incompetent, the action shall not abate because of the disability, and the court upon motion served as provided in Rule 25.01 may allow it to be continued by or against the party's representative.

25.03 Transfer of Interest

In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of this motion shall be made as provided in Rule 25.01.

25.04 Public Officers; Death or Separation from Office

When any public officer is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against the officer's successor if it is satisfactorily shown to the court that there is a substantial need for so continuing and maintaining it. Substitution pursuant to this rule may be made when it is shown by supplemental pleading that the successor of any officer adopts or continues or threatens to adopt or continue the action of the officer's predecessor. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to object.

V. DEPOSITIONS AND DISCOVERY

Rule 26. General Provisions Governing Discovery

26.01 Discovery Methods

Parties may obtain discovery by one or more of the following methods: depositions by oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property; for inspection and other purposes; physical (including blood) and mental examinations; and requests for admission.

26.02 Discovery, Scope and Limits

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(a) **In General.** Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The court may establish or alter the limits on the number of depositions and interrogatories and may also limit the length of depositions under Rule 30 and the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

(b) **Insurance Agreements.** In any action in which there is an insurance policy which may afford coverage, any party may require any other party to disclose the coverage and limits of such insurance and the amounts paid and payable thereunder and, pursuant to Rule 34, may obtain production of the insurance policy; provided,

however, that this provision will not permit such disclosed information to be introduced into evidence unless admissible on other grounds.

(c) Trial Preparation: Materials. Subject to the provisions of Rule 26.02(d) a party may obtain discovery of documents and tangible things otherwise discoverable pursuant to Rule 26.02(a) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a party or other person may obtain without the required showing a statement concerning the action or its subject matter previously made by that person who is not a party. If the request is refused, the person may move for a court order. The provisions of Rule 37.01(d) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(d) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable pursuant to Rule 26.02(a) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(1)(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (B) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to Rule 26.02(d)(3), concerning fees and expenses, as the court may deem appropriate.

(2) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35.02 or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) Unless manifest injustice would result, (A) the court shall require the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery pursuant to Rules 26.02(d)(1)(B) and 26.02(d)(2); and (B) with respect to discovery obtained pursuant to Rule 26.02(d)(1)(B), the court may require, and with respect to discovery obtained pursuant to Rule 26.02(d)(2) the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(e) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(Amended effective July 1, 2000.)

26.03 Protective Orders

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (a) that the discovery not be had;
- (b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (e) that discovery be conducted with no one present except persons designated by the court;
- (f) that a deposition, after being sealed, be opened only by order of the court;
- (g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or
- (h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. Rule 37.01(d) applies to the award of expenses incurred in connection with the motion.

26.04 Sequence and Timing of Discovery

Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

26.05 Supplementation of Responses

A party who has responded to a request for discovery is under a duty to supplement or correct the response to include information thereafter acquired if ordered by the court or in the following circumstances:

A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert, the duty extends to information contained in interrogatory responses, in any report of the expert, and to information provided through a deposition of the expert.

(Amended effective July 1, 2000.)

26.06 Discovery Conference

At any time after service of the summons, the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

- (a) A statement of the issues as they then appear;
- (b) A proposed plan and schedule of discovery;
- (c) Any limitations proposed to be placed on discovery;
- (d) Any other proposed orders with respect to discovery; and

(e) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matter set forth in the motion. All parties and attorneys are under a duty to participate in good faith in the framing of any proposed discovery plan.

Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than ten days after the service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any, and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

26.07 Signing of Discovery Requests, Responses and Objections

In addition to the requirements of Rule 33.01(d), every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's address. The signature constitutes a certification that the attorney or party has read the request, response, or objection, and that to the best of the signer's knowledge, information and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable attorney fees.

Advisory Committee Comments—2000 Amendments

The changes made to Rule 26 include some of the recent amendments to the federal rule made in 1993. The changes made to the Minnesota rule have been modified to reflect the fact that Minnesota practice does not include the automatic disclosure mechanisms that have been adopted in some federal courts; the resulting differences in the rules are minor, and the authorities construing the federal rule should be given full weight to the extent applicable.

The changes in Rule 26.02(a) adopt similar amendments made to FED. R. CIV. P. 26(b) in 1993. The new rule is intended to facilitate greater judicial control over the extent of discovery. The rule does not limit or curtail any form of discovery or establish numeric limits on its use, but does clarify the broad discretion courts have to limit discovery.

Rule 26.02(e) is a new rule adopted directly from its federal counterpart. The requirement of a privilege log is necessary to permit consideration, by opposing counsel and ultimately by the courts, of the validity of privilege claims. Privilege logs have been in use

for years and are routinely required when a dispute arises. See generally *Nevada Power Co. v. Monsanto Co.*, 151 F.R.D. 118, 122 & n.6 (D. Nev. 1993) (enumerating deficiencies in log); *Allendale Mutual Ins. Co. v. Bull Data Sys., Inc.*, 145 F.R.D. 84 (N.D. Ill. 1992) (ordering privilege log and specifying requirements); *Grossman v. Schwarz*, 125 F.R.D. 376, 386-87 (S.D.N.Y. 1989) (holding failure to provide privilege log deemed "presumptive evidence" claim of privilege not meritorious). The requirement of the log should not, however, be an invitation to require detailed identification of every privileged document within an obviously privileged category. Courts should not require a log in all circumstances, especially where a request seeks broad categories of non-discoverable information. See, e.g., *Durkin v. Shields (In re Imperial Corp. of Am.)*, 174 F.R.D. 475 (S.D. Cal. 1997) (recognizing document-by-document log would be unduly burdensome). It is the intention of the rule, however, to require the production of logs routinely to encourage the earlier resolution of privilege disputes and to discourage baseless assertions of privilege.

FED. R. CIV. P. 45(d)(2) expressly requires production of a privilege log by a non-party seeking to assert a privilege in response to a subpoena. Although the Committee does not recommend adoption of the extensive changes that have been made in federal Rule 45, this recommendation is made to minimize disruption in existing Minnesota subpoena practice. The difference in rules should not prevent a court from ordering production of a privilege log by a non-party in appropriate cases. The cost of producing a privilege log may be properly shifted to the party serving the subpoena under Rule 45.06.

Rule 26.05 is amended to adopt in Minnesota the same supplementation requirement as exists in federal court. It is a more stringent and more explicit standard, and reflects a sounder analysis of when supplementation is necessary. It states affirmatively the duty to disclose. The Committee believes it is particularly desirable to have state supplementation practice conform to federal practice in order that compliance with the requirements is more common and sanctions can more readily be imposed for failure to supplement. The rule relaxes the supplementation requirement to obviate supplementation where the information has been disclosed either in discovery (i.e., in other discovery responses or by deposition testimony) or in writing. The writing need not be a discovery response, and could be a letter to all counsel identifying a witness or correcting a prior response.

Rule 27. Deposition Before Action or Pending Appeal

27.01 Before Action

(a) **Petition.** A person who desires to perpetuate testimony regarding any matter may file a verified petition in the district court of the county of the residence of an expected adverse party. The petition shall be entitled in the name of the petitioner and shall show

- (1) that the petitioner expects to be a party to an action but is presently unable to bring it or cause it to be brought;
- (2) the subject matter of the expected action and the petitioner's interest therein;
- (3) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it;
- (4) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known; and
- (5) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each.

The petition shall ask for an order authorizing the petitioner to take the deposition of those persons to be examined as named in the petition, for the purpose of perpetuating their testimony.

(b) **Notice and Service.** The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of

hearing, the notice shall be served either within or outside the state in the manner provided in Rule 4.03 for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4.03, an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent, the provisions of Rule 17.02 apply.

(c) Order and Examination. If the court is satisfied that the perpetuation of testimony may prevent a failure or delay of justice, it shall make an order designating and describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The deposition may then be taken in accordance with these rules and the court may make orders authorized by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(d) Use of Deposition. If a deposition to perpetuate testimony is taken pursuant to these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in this state, in accordance with the provisions of Rule 32.01.

27.02 Pending Appeal

If an appeal has been taken from a judgment or order, or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment or order was rendered may allow the taking of the deposition of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case, the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show the names, addresses, the substance of the testimony expected to be elicited from each person to be examined, and the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders authorized by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.

27.03 Perpetuation by Action

This rule does not limit the power of the court to entertain an action to perpetuate testimony.

Rule 28. Persons Before Whom Depositions May be Taken

28.01 Within the United States

Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. The term "officer" as used in Rules 28, 30, 31, and 32 includes a person appointed by the court or designated by the parties pursuant to Rule 29. A person so appointed has power to administer oaths and take testimony.

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.

28.03 Disqualification for Interest

No deposition shall be taken before or reported by any person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action, or who has a contract with the party, attorney, or person with an interest in the action that affects or has a substantial tendency to affect impartiality.

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**30.01 When Depositions May Be Taken**

After service of the summons, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made pursuant to Rule 4.04, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in Rule 30.02(b). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

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.)

Advisory Committee Comment—1993 Amendments

Rule 30.02(d)(1) is amended to change slightly the arrangements for handling the videotape record of a deposition taken by that means. At the present time the rule requires the videotape operator to retain possession of the videotape, a circumstance which sometimes makes it difficult to procure the videotape for use at a trial which takes place long after the deposition was taken. The amendment directs the lawyer for the party taking the deposition to retain custody of the video recording after it has been sealed and marked for identification purposes. This procedure is consistent with the procedure for handling original typewritten deposition transcripts pursuant to Minn. R. Civ. P. 30.06(a).

When the Advisory Committee recommended the addition of Rule 30.02(h) in 1988, the members of the committee hoped that it would be a useful device for curbing discovery abuses, but it appears that the rule is almost never used. The deletion of this portion of the rule should not be taken as any support for expanded discovery. The authority to control discovery is amply set forth in other rules, see, e.g., Minn. Gen. R. Prac. 111 & 112, and the committee encourages the continued vigorous exercise of this authority for the protection of all litigants and to carry out the mandate of Minn. R. Civ. P. 1, which provides that the Rules of Civil Procedure "shall be construed to secure the just, speedy, and inexpensive determination of every action."

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.

30.07 Failure to Attend or to Serve Subpoena; Expenses

(a) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the other party and the other party's attorney in so attending, including reasonable attorney fees.

(b) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon that witness, and the witness because of such failure does not attend, and if another party attends in person or by attorney on the expectation that the deposition of that witness is to be taken, the court may order the party giving notice to pay to such other party the amount of the reasonable expenses incurred by those individuals in so attending, including reasonable attorney fees.

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.

31.03 Notice of Filing

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

Rule 32. Use of Depositions in Court Proceedings

32.01 Use of Depositions

At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Minnesota Rules of Evidence applied as though the witness were then present and testifying, and subject to the provisions of Rule 32.02, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof in accordance with any one of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness or for any purpose permitted by the Minnesota Rules of Evidence.

(b) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, employee, or managing agent or a person designated pursuant to Rules 30.02(f) or 31.01 to testify on behalf of a public or private corporation, partnership, association, or governmental agency which is a party may be used by an adverse party for any purpose.

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

- (1) that the witness is dead; or
- (2) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or
- (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or
- (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
- (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witness orally in open court, to allow the deposition to be used.

(d) If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which ought in fairness to be considered with the part introduced and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or any state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Minnesota Rules of Evidence.

32.02 Objections to Admissibility

Subject to the provisions of Rules 28.02 and 32.04(c), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of evidence if the witness were then present and testifying.

32.03 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.

32.04 Effect of Errors and Irregularities in Depositions

(a) **As to Notice.** All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) **As to Disqualification of Officer.** Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) As to Taking of Deposition.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written questions submitted pursuant to Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

(d) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed, preserved or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer pursuant to Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

32.05 Use of Videotape Depositions

Video depositions may be used in court proceedings to the same extent as stenographically recorded depositions.

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.

33.02 Scope; Use at Trial

Interrogatories may relate to any matters which can be inquired into pursuant to Rule 26.02, and the answers may be used to the extent permitted by the Minnesota Rules of Evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because its answer involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed, a pretrial conference has been held, or at another later time.

33.03 Option to Produce Business Records

Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail as to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

Rule 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

34.01 Scope

Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requesting party's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data, compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26.02 and which are in the possession, custody or control of the party upon whom the request is served, or (2) to

permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26.02.

34.02 Procedure

The request may, without leave of court, be served upon any party with or after service of the summons and complaint. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, that part shall be specified. The party submitting the request may move for an order pursuant to Rule 37 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A party who produces documents for inspection shall produce them as they are kept in the usual course of business at the time of the request or, at the option of the producing party, shall organize them to correspond with the categories in the request.

34.03 Persons Not Parties

This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

Rule 35. Physical, Mental, and Blood Examination of Persons

35.01 Order of Examinations

In an action in which the physical or mental condition or the blood relationship of a party, or of an agent of a party, or of a person under control of a party, is in controversy, the court in which the action is pending may order the party to submit to, or produce such agent or person for a physical, mental, or blood examination by a suitably licensed or certified examiner. The order may be made only on motion for good cause shown and upon notice to the party or person to be examined and to all other parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is made.

(Amended effective March 1, 1994.)

35.02 Report of Findings

(a) If requested by the party against whom an order is made pursuant to Rule 35.01 or by the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of a detailed written report of the examination setting out the examiner's findings and conclusions, together with like reports of all earlier examinations of the same condition. After such request and delivery, the party causing the examination to be made shall be entitled, upon request, to receive from the party or person examined a like report of any examination, previously or thereafter made, of the same physical, mental, or blood condition. If the party or person examined refuses to deliver such report, the court, on motion and notice, may make an order requiring delivery on such terms as are just, and, if an examiner fails or refuses to make such a report, the court may exclude the examiner's testimony if offered at the trial.

(b) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the adverse party waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party or the person under the party's control with respect to the same physical, mental, or blood condition.

(Amended effective March 1, 1994.)

35.03 Waiver of Medical Privilege

If at any stage of an action a party voluntarily places in controversy the physical, mental, or blood condition of that party, a decedent, or a person under that party's control, such party thereby waives any privilege that party may have in that action regarding the testimony of every person who has examined or may thereafter examine that party or the person under that party's control with respect to the same physical, mental, or blood condition.

35.04 Medical Disclosures and Depositions of Medical Experts

When a party has waived medical privilege pursuant to Rule 35.03, such party within ten days of a written request by any other party,

(a) shall furnish to the requesting party copies of all medical reports previously or thereafter made by any treating or examining medical expert, and

(b) shall provide written authority signed by the party of whom request is made to permit the inspection of all hospital and other medical records, concerning the physical, mental, or blood condition of such party as to which privilege has been waived.

Disclosures pursuant to this rule shall include the conclusions of such treating or examining medical expert.

Depositions of treating or examining medical experts shall not be taken except upon order of the court for good cause shown upon motion and notice to the parties and upon such terms as the court may provide.

Advisory Committee Comment—1993 Amendments

The amendments to Rule 35 are intended to expand the power of the courts to order examinations by professionals other than physicians. This amendment is generally consistent with amendments made to Fed. R. Civ. P. 35 in 1991, though the state and federal rules have always been somewhat different.

This amendment recognizes that examination may be appropriate by, for example, a licensed psychologist, dentist, audiologist, or physical or occupational therapist. These licensed professionals are not physicians but may, and often do, provide valuable information or testimony. See Fed. R. Civ. P. 35, Notes of Advisory Committee—1991 Amendment, reprinted in Federal Civil Judicial Procedure & Rules 126 (West pamph. 1993).

Rule 36. Requests for Admission

36.01 Request for Admission

A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26.02 set forth in the request that relate to statements, opinions of fact, or the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request, unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served after service of the summons and complaint.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless within 30 days after service of the request, or within such

shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney; but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon that defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and, when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that a reasonable inquiry has been made and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37.03, deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request is to be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37.01(d) apply to the award of expenses incurred in connection with the motion.

36.02 Effect of Admission

Any matter admitted pursuant to this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party hereunder is for the purpose of the pending action only and is not an admission by that party for any other purpose nor may it be used against that party in any other proceeding.

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.

37.02 Failure to Comply with Order

(a) **Sanctions by Court in County Where Deposition is Taken.** If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

(b) **Sanctions by Court in Which Action is Pending.** If a party or an officer, director, employee, or managing agent of a party or a person designated in Rule 30.02(f) or 31.01 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made pursuant to Rule 35 or 37.01, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(3) An order striking pleadings or parts thereof, staying further proceedings until the order is obeyed, dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(5) Where a party has failed to comply with an order pursuant to Rule 35.01 requiring that party to produce another for examination, such orders as are listed herein in paragraphs (1), (2), and (3), unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

37.03 Expenses on Failure to Admit

If a party fails to admit the genuineness of any documents or the truth of any matter as requested pursuant to Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of any such matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36.01, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (4) there was other good reason for the failure to admit.

37.04 Failure of a Party to Attend at Own Deposition or Serve Answers

If a party or an officer, director, employee, or managing agent of a party or a person designated in Rule 30.02(f) or 31.01 to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted pursuant to Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted pursuant to Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, including any action authorized in Rule 37.02(b)(1), (2), and (3). In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described herein may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26.03.

VI. TRIALS

Rule 38. Jury Trial of Right

38.01 Right Preserved

In actions for the recovery of money only, or of specific real or personal property, the issues of fact shall be tried by a jury, unless a jury trial is waived or a reference is ordered.

38.02 Waiver

In actions arising on contract, and by permission of the court in other actions, any party thereto may waive a jury trial by:

- (a) failing to appear at the trial;
- (b) written consent, by the party or the party's attorney, filed with the court administrator; or
- (c) oral consent in open court, entered in the minutes.

Neither the failure to file any document requesting a jury trial nor the failure to pay a jury fee shall be deemed a waiver of the right to a jury trial.

(Amended effective March 1, 1994.)

Advisory Committee Comment—1993 Amendments

The committee is of the opinion that waiver of the right to a jury trial should not be found from inaction or failure to pay a jury fee. The amendment, coupled with the abolition of the note of issue, should obviate any confusion or inadvertent waiver of the constitutionality protected right to a jury trial. See Schweich v. Ziegler, Inc., 463 N.W.2d 722 (Minn. 1991).

38.03 Placing Action on Calendar

Rule 38.03 is repealed, effective January 1, 1992.

Task Force Comment—1991 Adoption

This amendment to repeal this rule is appropriate because the use of notes of issue filed by the parties will be replaced by the court-initiated scheduling. See proposed Minn. Gen. R. Prac. 111.

Rule 39. Trial by Jury or by the Court

39.01 By Court

Issues of fact not submitted to a jury as provided in Rule 38 shall be tried by the court.

39.02 Advisory Jury and Trial by Consent

In all actions not triable of right by a jury, the court, upon motion or upon its own initiative, may try an issue with an advisory jury, or the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

39.03 Preliminary Instructions in Jury Trials

After the jury has been impaneled and sworn, and before opening statements of counsel, the court may instruct the jury as to the respective claims of the parties and as to such other matters as will aid the jury in comprehending the trial procedure and sequence to be followed. Preliminary instructions may also embrace such matters as burden of proof and preponderance of evidence, the elements which the jury may consider in weighing testimony or determining credibility of witnesses, rules applicable to opinion evidence, and such other rules of law as the court may deem essential to the proper understanding of the evidence.

39.04 Opening Statements by Counsel

Before any evidence is introduced, plaintiff may make an opening statement, whereupon any other party may make an opening statement or may reserve the same until that party's case in chief is opened. Opening statements may be waived by any party to the action without affecting the right of any other party to make such an opening statement.

Rule 40. Assignment of Cases for Trial

The judges of the court may, by order or by rule of court, provide for the setting of cases for trial upon the calendar, the order in which they shall be heard, and the resetting thereof.

Rule 41. Dismissal of Actions**41.01 Voluntary Dismissal; Effect Thereof**

(a) **By Plaintiff by Stipulation.** Subject to the provisions of Rules 23.05, 23.06 and 66, an action may be dismissed by the plaintiff without order of court (1) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (2) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(b) **By Order of Court.** Except as provided in clause (a) of this rule, an action shall not be dismissed at the plaintiff's instance except upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim may remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal herein is without prejudice.

(Amended effective March 1, 1994.)

Advisory Committee Comment—1993 Amendments

The amendment to this rule is made to conform the rule to its counterpart in the Federal Rules of Civil Procedure, Fed. R. Civ. P. 41(a)(1). The existing rule in Minnesota seems to the committee archaic, establishing time requirements on the commencement of terms of court. Since 1977, Minnesota trial courts have had continuous terms. Minnesota Statutes, section 484.08 (1992).

The former rule has permitted parties to dismiss claims without prejudice even after extensive discovery or other pretrial proceedings have taken place. Dismissal without prejudice has also been possible after the trial court has issued orders on preliminary matters. The right to dismiss on the eve of trial has prejudiced defendants or has required courts to consider motions to deny a plaintiff the right to dismiss without prejudice. The committee is of the opinion that the right to dismiss without prejudice ought to be limited to a fairly short period after commencement of the action when prejudice to opponents is likely to be minimal.

The Advisory Committee considered recommending a change to Rule 53 to make express provision for the use of referees in alternative dispute resolution and settlement proceedings, but has concluded that amendment of the rule is not necessary inasmuch as the rule now permits use of referees for this purpose in limited appropriate circumstances.

The Advisory Committee is also mindful that the Minnesota Supreme Court Alternative Dispute Resolution Implementation Committee has recently submitted its Final Report dated August 25, 1993. The Advisory Committee is of the opinion that that Report can be considered independently of the recommendations of this committee. The committee also believes that if more specific and comprehensive rules on the use of referees in alternative dispute resolution are advisable, such rules might better be incorporated in Rules for Alternative Dispute Resolution.

41.02 Involuntary Dismissal; Effect Thereof

(a) The court may upon its own initiative, or upon motion of a party, and upon such notice as it may prescribe, dismiss an action or claim for failure to prosecute or to comply with these rules or any order of the court.

(b) After the plaintiff has completed the presentation of evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law, the plaintiff has shown no right to relief. In an action tried by the court without a jury, the court as trier

of the fact may then determine the facts and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52.01.

(c) Unless the court specifies otherwise in its order, a dismissal pursuant to this rule and any dismissal not provided for in this rule or in Rule 41.01, other than a dismissal for lack of jurisdiction, for forum non conveniens, or for failure to join a party indispensable pursuant to Rule 19, operates as an adjudication upon the merits.

41.03 Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim

The provisions of Rules 41.01 and 41.02 apply to the dismissal of any counterclaim, cross-claim, or third-party claim.

41.04 Costs of Previously Dismissed Action

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

Rule 42. Separate Trials

42.01 Consolidation

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

42.02 Separate Trials

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of one or any number of claims, cross-claims, counterclaims, or third-party claims, or of any separate issues.

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.)

43.04 Affirmation in Lieu of Oath

Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

43.05 Evidence and Motions

Whenever a motion is based on facts not appearing of record, the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

43.06 Res Ipsa Loquitur

[ABROGATED]

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

43.07 Interpreters

The court may appoint an interpreter of its own selection and may fix reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as a cost, in the discretion of the court.

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 jurisdiction 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.)

44.02 Lack of Record

A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in Rule 44.01(a) in the case of a domestic record, or complying with the requirements of Rule 44.01(b) for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

44.03 Other Proof

This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

44.04 Determination of Foreign Law

[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.

Rule 45. Subpoena**45.01 For Attendance of Witnesses; Form; Issuance**

(a) Every subpoena shall be issued by the court administrator under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The court administrator shall issue a subpoena, or a subpoena for the production of documentary evidence or tangible things, signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) Subpoenas shall be issued only in connection with a duly noted deposition as set forth in Rule 45.04 or in connection with a hearing or trial as set forth in Rule 45.05. Violation of this provision constitutes an abuse of process, and shall subject the attorney or party to appropriate sanctions or damages.

(c) Every subpoena shall contain a notice to the person to whom it is directed advising that person of the right to reimbursement for certain expenses pursuant to Rule 45.06, and the right to have the amount of those expenses determined prior to compliance with the subpoena.

45.02 For Production of Documentary Evidence

A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable or oppressive, or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

45.03 Service

A subpoena may be served by the sheriff, a deputy sheriff, or any other person who is not a party. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person or by leaving a copy at the person's usual place of abode with some person of suitable age and discretion then residing therein

and by tendering to the person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the state of Minnesota or an officer or agency thereof, fees and mileage need not be tendered.

45.04 Subpoena for Taking Depositions; Place of Examination

(a) Proof of service of notice to take a deposition, as provided in Rules 30.02 and 31.01 or in the rules of a state where the action is pending, constitutes a sufficient authorization for the issuance of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26.02, but in that event the subpoena will be subject to the provisions of Rules 26.03 and 45.04(b).

(b) The person to whom the subpoena is directed may, within ten days after service thereof or on or before the time specified in the subpoena for compliance if such time is less than ten days after service, serve upon the attorney designated in the subpoena written objection to the production, inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to the production of, nor the right to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(c) A resident of this state may be required to attend an examination only in the county wherein the resident resides or is employed or transacts business in person, or at such other convenient place as is fixed by order of the court. A nonresident of the state may be required to attend in any county of the state.

45.05 Subpoena for a Hearing or Trial

At the request of any party, the court administrator of the district court shall issue subpoenas for witnesses in all civil cases pending before the court, or before any magistrate, arbitrator, board, committee, or other person authorized to examine witnesses. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.

45.06 Expenses of Nonparties

Subject to the provisions of Rules 26.02 and 26.03, a witness who is not a party to the action or an employee of a party (except a person appointed pursuant to Rule 30.02(f)) and who is required to give testimony or produce documents relating to a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of activities in such profession, business, or trade, is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents.

The party serving the subpoena shall make arrangements for such reasonable compensation prior to the time of the taking of such testimony. If such reasonable arrangements are not made, the person subpoenaed may proceed under Rule 45.02 or 45.04(b). The party serving the subpoena may, if objection has been made, move upon notice to the deponent and all parties for an order directing the amount of such compensation at any time before the taking of the deposition. Any amounts paid shall be subject to the provisions of Rule 54.04.

45.07 Contempt

Failure to obey a subpoena without adequate excuse is a contempt of court.

Rule 46. Exceptions Unnecessary

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been taken it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or any objection to the action of the court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party. A minute of the objection to the ruling or order shall be made by the judge or reporter.

Rule 47. Jurors**47.01 Examination of Jurors**

The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper.

47.02 Alternate Jurors

[ABROGATED]

(Abrogated effective January 1, 1999.)

47.03 Separation of Jury

After the jury has retired for its deliberations, the court, in its discretion, may permit the jury to separate overnight and return to its deliberations the following morning.

Rule 47.04 Excuse

The court may for good cause excuse a juror from service during trial or deliberation.

(Added effective January 1, 1999.)

Advisory Committee Comment - 1998 Amendments

Rule 47.02 is abrogated. Under this amendment, alternate jurors are no longer part of the jury trial process. Rather than seat "alternate" jurors who will, or may, then participate in the deliberations, the rule simply does not provide for two classes of jurors. Jurors who begin the case by being sworn in as jurors continue to the discharge of the jury, unless they are excused for cause as provided for by Rule 47.04. This amendment parallels the abandonment of using alternates in federal court in 1991, and is intended to resolve an ongoing source of dissatisfaction with jury service by jurors. See Fed.R.Civ.P. 47(b), Notes of Advisory Comm. - 1991 Amends., reprinted in Federal Civil Judicial Procedure and Rules 205 (West 1998).

Rule 47.04 is new and is identical to Fed.R.Civ.P. 47(c). Although courts presently have the inherent power to excuse jurors even in the absence of a rule, there is no reason to have the federal rule be different from the state rule on this issue. Other than obviating confusion over whether there might be some substantive difference in intent, this amendment is not intended to change the existing practice. See Minnesota Statutes, section 546.13 (1996) (codifying authority to excuse juror).

Rule 48. Number of Jurors; Participation in Verdict

The court shall seat a jury of not fewer than six and not more than twelve members and all jurors shall participate in the verdict unless excused from service by

the court pursuant to Rule 47.04. Unless otherwise provided by law or the parties otherwise stipulate, (1) the verdict shall be unanimous and (2) no verdict shall be taken from a jury reduced in size to fewer than six members.

(Amended effective January 1, 1999.)

Advisory Committee Comment - 1998 Amendments

This rule requires the court to permit all jurors to participate in deliberations. Rule 47.02 is abrogated to abolish alternate jurors, and Rule 48 expressly provides that all jurors participate in the deliberations. The rule prohibits a verdict from a jury of fewer than six jurors, unless the parties agree to a lesser number.

*The rule does not provide any constraints on what size jury is appropriate in any particular case. Practical considerations of cost, courtroom design, and imposition on potential jurors as well as those seated may militate toward a jury of six. Where the trial is likely to be long, or where other considerations make it likely that jurors will need to be excused from service, more than six jurors should be seated. The rule also permits a twelve-person jury as was historically used in civil trials. Juries of twelve significantly reduce the likelihood of unusual or aberrant jury verdicts, and should be considered where the issues are unusually complex or important, or present difficult fact-finding challenges to the jury. See generally *Developments in the Law - The Civil Jury*, 110 Harv.L.Rev. 1408, 1468-80 (1997).*

*This rule expressly mandates seating a jury of from six to twelve jurors. Seating a larger jury is not provided for, and should be considered only in very unusual circumstances where more than six jurors are likely to be excused, making it inevitable that fewer than six will remain. Rather than risk a mistrial in that situation, the court should seek a stipulation of the parties that a verdict may be taken from a jury smaller than six. See generally *Manual for Complex Litigation* section 22.41 and n.408 (3rd ed. 1995). It may be permissible to seat a jury of larger than twelve, so long as twelve or fewer remain for deliberations, but there is no clear authority or precedent for this. If the parties stipulate to a larger jury, it should certainly not be error to seat one.*

The last sentence of the rule requires a verdict to be unanimous unless there is an agreement to a less-than-unanimous verdict or it is otherwise provided by law. Both the Minnesota Constitution and statutory law allow verdicts in civil cases, even without stipulation of the parties, to be returned by 5/6ths of the jurors after six hours of deliberations. See Minn. Const. art. I, section 4 and Minnesota Statutes section 546.17 (1996). Where jury of more than six, but fewer than twelve, jurors deliberates, a 6/7ths, 7/8ths, 8/9ths, 9/10ths or 10/11ths verdict is permitted. For a twelve-person jury, ten of the twelve jurors (the equivalent of 5/6ths) can return a verdict.

Rule 49. Special Verdicts and Interrogatories

49.01 Special Verdicts

(a) The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and require written findings thereon as it deems most appropriate. The court shall give to the jury such explanations and instructions concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special

verdict. Except as provided in Rule 49.01(b), neither the court nor counsel shall inform the jury of the effect of its answers on the outcome of the case.

(b) In actions involving Minnesota Statutes, chapter 604 the court shall inform the jury of the effect of its answers to the comparative fault question and shall permit counsel to comment thereon, unless the court is of the opinion that doubtful or unresolved questions of law or complex issues of law or fact are involved which may render such instruction or comment erroneous, misleading, or confusing to the jury.

49.02 General Verdict Accompanied by Answer to Interrogatories

The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other, but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict, or may return the jury for further consideration of its answers and verdict, or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment, but may return the jury for further consideration of its answers and verdict, or may order a new trial.

Rule 50. Motion for a Directed Verdict; Judgment Notwithstanding Verdict; Alternative Motion

50.01 Directed Verdict; When Made; Effect

A motion for a directed verdict may be made at the close of the evidence offered by an opponent or at the close of all the evidence. A party who moves for a directed verdict at the close of the evidence offered by an opponent shall, after denial of the motion, have the right to offer evidence as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. If the evidence is sufficient to sustain a verdict for the opponent, the motion shall not be granted. The order of the court granting the motion for a directed verdict is effective without any assent of the jury.

50.02 Judgment Notwithstanding Verdict

(a) A party may move that judgment be entered notwithstanding the verdict or notwithstanding the jury has disagreed and been discharged, whether or not the party has moved for a directed verdict, and the court shall grant the motion if the moving party would have been entitled to a directed verdict at the close of the evidence.

(b) A motion for judgment notwithstanding the verdict may include in the alternative a motion for a new trial.

(c) A motion for judgment notwithstanding the verdict or notwithstanding the jury has disagreed and been discharged shall be served and heard within the times specified in Rule 59 for the service and hearing of a motion for a new trial and may be made on the files, exhibits, and minutes of the court. On a motion for judgment notwithstanding the jury has disagreed and been discharged, the date of discharge shall be the equivalent of the date of rendition of a verdict within the meaning of that rule, but such motion must in any event be served and heard before a retrial of the action is begun.

(d) If the motion for judgment notwithstanding the verdict is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be

granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the respondent on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(e) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Rule 59 except that the times for serving and hearing said motion shall be determined from the date of notice of the trial court's order granting judgment notwithstanding rather than the date the verdict is returned.

(f) If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as respondent, assert grounds entitling that party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the respondent is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

(Amended effective March 1, 2001.)

Advisory Committee Comment - 2000 Amendments

Although the text of this Rule 50.02 is not changed substantively by these amendments, it is worth noting that Rule 59.03, governing the time for filing a motion for a new trial is changed to expand the time from 15 days to 30 days for filing the motion and from 30 days to 60 days for having the motion heard. This amendment has the practical effect of extending the time for filing a motion under Rule 50 because Rule 50.02(c) incorporates the filing and hearing time limits of Rule 59.

Rule 51. Instructions to the Jury; Objections

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, and such action shall be made a part of the record. The court shall instruct the jury before or after closing arguments of counsel except, in the discretion of the court, preliminary instructions need not be repeated. The instructions may be in writing and, in the discretion of the court, one or more complete copies may be taken to the jury room when the jury retires to deliberate. No party may assign as error unintentional misstatements and verbal errors or omissions in the charge, unless that party objects thereto before the jury retires to consider its verdict, stating specifically the matter to which that party objects and the ground of the objections. An error in the instructions with respect to fundamental law or controlling principle may be assigned in a motion for a new trial although it was not otherwise called to the attention of the court.

(Amended effective January 1, 1999.)

Advisory Committee Comment - 1998 Amendments

The Committee does not believe a mandatory rule requiring use of written instructions in all cases is appropriate, but notes the widespread use of written instructions and the near-unanimous support for written instructions among judges, lawyers, and commentators. See, e.g., American Bar Association, Section of Litigation, Civil Trial Practice Standards,

section 5(f), at 16 (1998) (“Final instructions should be provided for the jurors’ use during deliberation.”). If written instructions are given, the Committee believes that the court should have the discretion to decide that more than one complete copy of the instructions be taken to the jury room when the jury retires to deliberate.

Rule 52. Findings by the Court

52.01 Effect

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds for its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court or in an accompanying memorandum. Findings of fact and conclusions of law are unnecessary on decisions on motions pursuant to Rule 12 or 56 or any other motion except as provided in Rule 41.02.

52.02 Amendment

Upon motion of a party served and heard not later than the times allowed for a motion for new trial pursuant to Rule 59.03, the court may amend its findings or make additional findings, and may amend the judgment accordingly if judgment has been entered. The motion may be made with a motion for a new trial and may be made on the files, exhibits, and minutes of the court. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

(Amended effective March 1, 2001.)

Advisory Committee Comment - 2000 Amendments

Although the text of this Rule 52.02 is not changed substantively by these amendments, it is worth noting that Rule 59.03, governing the time for filing a motion for a new trial is changed to expand the time from 15 days to 30 days for filing the motion and from 30 days to 60 days for having the motion heard. This amendment has the practical effect of extending the time for filing a motion for amended findings under Rule 52 because Rule 52.02 incorporates the filing and hearing time limits of Rule 59.

Rule 53. Referees

53.01 Appointment and Compensation

The court in which any action is pending may appoint a referee therein. When the court shall state in its order of appointment that the reference is made necessary by press of business, the fees of the referee, as taxed and allowed by the court, shall be paid out by the county treasury, as the salaries of county officers are paid. In other cases the compensation to be allowed to a referee shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action which is in the custody and control of the court as the court may direct. The referee’s report shall not be retained as security for the referee’s compensation; but when the party ordered to pay the compensation allowed by the court does not pay it

after notice and within the time prescribed by the court, the referee is entitled to a writ of execution against the delinquent party.

53.02 Reference

A reference to a referee shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.

53.03 Powers

The order of reference to the referee may specify or limit the referee's powers and may direct the referee to report only upon particular issues, or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the referee's report. Subject to the specifications and limitations stated in the order, the referee has and shall exercise the power to regulate all proceedings in every hearing before it and to do all acts and take all measures necessary or proper for the efficient performance of the referee's duties specified in the order. The referee may require the production of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. Unless otherwise directed by the order of reference, the referee may rule upon the admissibility of evidence, may put witnesses on oath and examine them, and may call the parties to the action and examine them upon oath. When a party so requests, the referee shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 43.03 for a court sitting without a jury.

53.04 Proceedings

(a) **Meetings.** When a reference is made, the court administrator shall forthwith furnish the referee with a copy of the order of reference. Upon receipt thereof, unless the order of reference otherwise provides, the referee shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the referee to proceed with all reasonable diligence. Either party, on notice to the parties and referee, may apply to the court for an order requiring the referee to speed the proceedings and make the report. If a party fails to appear at the time and place appointed, the referee may proceed ex parte or, in the referee's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(b) **Witnesses.** The parties may procure the attendance of witnesses before the referee by the issuance and service of subpoenas pursuant to Rule 45. If, without adequate excuse, a witness fails to appear or give evidence, the witness may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(c) **Statement of Accounts.** When matters of accounting are in issue, the referee may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the referee may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the referee directs.

53.05 Report

(a) **Contents and Filing.** The referee shall prepare a report upon the matters submitted by the order of reference and, if required to make findings of fact and conclusions of law, shall set them forth in the report. The referee shall file the report

with the court administrator and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and the evidence and the original exhibits. The court administrator shall forthwith mail notice of the filing to all parties.

(b) In Nonjury Actions. In an action to be tried without a jury, the court shall accept the referee's findings of fact unless clearly erroneous. Within ten days after being served with notice of the filing of the report, any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6.04. After a hearing, the court may adopt the report, modify it, reject it in whole or in part, receive further evidence, or recommit it with instructions.

(c) In Jury Actions. In an action to be tried by a jury, the referee shall not be directed to report the evidence. The referee's findings upon the issues submitted are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(d) Stipulation as to Findings. The effect of a referee's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a referee's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(e) Draft Report. Before filing the report, a referee may submit a draft thereof to attorneys for all parties for the purpose of receiving their suggestions.

Rule 54. Judgments; Costs

54.01 Definition; Form

Judgment as used in these rules includes a decree and means the final determination of the rights of the parties in an action or proceeding. A judgment shall not contain a recital of pleadings, the report of a referee, or the record of prior proceedings.

54.02 Judgment upon Multiple Claims

When multiple claims for relief or multiple parties are involved in an action, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

54.03 Demand for Judgment

A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every other judgment shall grant the relief to which the party in whose favor it is rendered is entitled.

54.04 Costs

Costs and disbursements shall be allowed as provided by statute. Costs and disbursements may be taxed by the court administrator on two days' notice, and inserted in the judgment. The disbursements shall be stated in detail and verified by affidavit, which shall be filed, and a copy of such statement and affidavit shall be served with the notice. The party objecting to any item shall specify in writing the ground thereof; a party aggrieved by the action of the court administrator may file a notice of appeal with the court administrator who shall forthwith certify the matter to the court.

The appeal shall be heard upon eight days' notice and determined upon the objections so certified.

Rule 55. Default

55.01 Judgment

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed therefor by these rules or by statute, and that fact is made to appear by affidavit, judgment by default shall be entered against that party as follows:

(a) When the plaintiff's claim against a defendant is upon a contract for the payment of money only, or for the payment of taxes and penalties and interest thereon owing to the state, the court administrator, upon request of the plaintiff and upon affidavit of the amount due, which may not exceed the amount demanded in the complaint or in a written notice served on the defendant in accordance with Rule 4 if the complaint seeks an unspecified amount pursuant to Rule 8.01, shall enter judgment for the amount due and costs against the defendant.

(b) In all other cases, the party entitled to a judgment by default shall apply to the court therefor. If a party against whom judgment is sought has appeared in the action, that party shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If the action is one for the recovery of money only, the court shall ascertain, by a reference or otherwise, the amount to which the plaintiff is entitled, and order judgment therefor.

(c) If relief other than the recovery of money is demanded and the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment, it may take or hear the same or order a reference for that purpose, and order judgment accordingly.

(d) When service of the summons has been made by published notice, or by delivery of a copy outside the state, no judgment shall be entered on default until the plaintiff shall have filed a bond, approved by the court, conditioned to abide such order as the court may make concerning restitution of any property collected or obtained by virtue of the judgment in case a defense is thereafter permitted and sustained; provided, that in actions involving the title to real estate or to foreclose mortgages thereon such bond shall not be required.

(e) When judgment is entered in an action upon a promissory note, draft or bill of exchange under the provisions of this rule, such promissory note, draft or bill of exchange shall be filed with the court administrator and made a part of the files of the action.

(Amended effective January 1, 1992.)

Task Force Comment—1991 Adoption

Rule 55.01(e) is derived from Rule 12(c) of the Code of Rules for the District Courts.

The change in subsection (a) is intended to deal with the situation of notice of the amount of judgment sought in those cases where the complaint seeks only an unspecified amount in excess of \$50,000 pursuant to Minn. R. Civ. P. 8.01 (rule limits ad damnum clauses for unliquidated damages) and Minnesota Statutes, section 544.36 (1990) (statute providing same limitation).

55.02 Plaintiffs; Counterclaimants; Cross-Claimants

This rule is applicable whether the party entitled to judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases, a judgment by default is subject to the limitations of Rule 54.03.

Rule 56. Summary Judgment**56.01 For Claimant**

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the service of the summons, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(Amended effective March 1, 1994.)

Advisory Committee Comment—1993 Amendments

The amendment to Rule 56.01 is intended to correct a typographical or grammatical error in the existing rule. No change in meaning or interpretation is intended.

56.02 For Defending Party

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

56.03 Motion and Proceedings Thereon

Service and filing of the motion shall comply with the requirements of Rule 115.03 of the General Rules of Practice for the District Courts, provided that in no event shall the motion be served less than ten days before the time fixed for the hearing. Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(Amended effective March 1, 1994.)

Advisory Committee Comment—1993 Amendments

*The amendment to Rule 56.03 is intended to make clear the relationship between this rule and Minn. Gen. R. Prac. 115. Rule 56.03 includes a strict ten-day notice requirement before a summary judgment motion may be heard. This minimum notice period is mandatory unless waived by the parties. See *McAllister v. Independent School District No. 306*, 276 Minn. 549, 149 N.W.2d 81 (1967). The rule is intended to provide protection before claims or defenses are summarily determined by requiring a minimum of ten days' notice.*

56.04 Case not Fully Adjudicated on Motion

If, on motion pursuant to this rule, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing on the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

56.05 Form of Affidavits; Further Testimony; Defense Required

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that

the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. When a motion for summary judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere averments or denials of the adverse party's pleading but must present specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

56.06 When Affidavits are Unavailable

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present, by affidavit, facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

56.07 Affidavits Made in Bad Faith

Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party submitting them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits causes the other party to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.

Rule 57. Declaratory Judgments

The procedure for obtaining a declaratory judgment pursuant to Minnesota Statutes, chapter 555, shall be in accordance with these rules, and the right to trial by jury is retained under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Rule 58. Entry of Judgment; Stay

58.01 Entry

Unless the court otherwise directs, and subject to the provisions of Rule 54.02, judgment upon the verdict of a jury, or upon an order of the court for the recovery of money only or for costs or that all relief be denied, shall be entered forthwith by the court administrator; but the court shall direct the appropriate judgment to be entered upon a special verdict or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49 or upon an order of the court for relief other than money or costs. Entry of judgment shall not be delayed for the taxation of costs, and the omission of costs shall not affect the finality of the judgment. The judgment in all cases shall be entered and signed by the court administrator in the judgment roll; this entry constitutes the entry of the judgment; and the judgment is not effective before such entry.

58.02 Stay

The court may order a stay of entry of judgment upon a verdict or decision for a period not exceeding the time required for the hearing and determination of a motion for new trial or for judgment notwithstanding the verdict or to set the verdict aside or to dismiss the action or for amended findings, and after such determination may order a stay of entry of judgment for not more than 30 days. In granting a stay of entry of judgment pursuant to this rule for any period exceeding 30 days after verdict or decision, the court, in its discretion, may impose such conditions for the security of the adverse party as may be deemed proper.

Rule 59. New Trials**59.01 Grounds**

A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes:

(a) Irregularity in the proceedings of the court, referee, jury, or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair trial;

(b) Misconduct of the jury or prevailing party;

(c) Accident or surprise which could not have been prevented by ordinary prudence;

(d) Material evidence newly discovered, which with reasonable diligence could not have been found and produced at the trial;

(e) Excessive or insufficient damages, appearing to have been given under the influence of passion or prejudice;

(f) Errors of law occurring at the trial, and objected to at the time or, if no objection need have been made pursuant to Rules 46 and 51, plainly assigned in the notice of motion;

(g) The verdict, decision, or report is not justified by the evidence, or is contrary to law; but, unless it be so expressly stated in the order granting a new trial, it shall not be presumed, on appeal, to have been made on the ground that the verdict, decision, or report was not justified by the evidence.

On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct entry of a new judgment.

59.02 Basis of Motion

A motion made pursuant to Rule 59.01 shall be made and heard on the files, exhibits, and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit. A full or partial transcript of the court reporter's notes may be used on the hearing of the motion.

59.03 Time for Motion

A notice of motion for a new trial shall be served within 30 days after a general verdict or service of notice by a party of the filing of the decision or order; and the motion shall be heard within 60 days after such general verdict or notice of filing, unless the time for hearing be extended by the court within the 60-day period for good cause shown.

(Amended effective March 1, 2001.)

Revisor's Note: Minnesota Supreme Court Order C6-84-2134, dated December 19, 2000, provides in part "[t]he amendments to Rule 59 shall apply to all actions or proceedings commenced on or after the effective date and all actions or proceedings pending on or decided before the effective date in which the time periods stated in the former Rule 59 have not expired."

Advisory Committee Comment - 2000 Amendments

The single purpose of the amendment of this Rule 59.03 in 2000 is to create a longer and more reasonable period in which to hear post-trial motions. At the time this rule was adopted, post-trial motions were often heard in a somewhat perfunctory manner and court assignment practices permitted the scheduling of cases in this manner.

This amendment will also reduce, although not eliminate, the potential consequences of failing to have a post-trial motion heard in a timely manner.

The change in Rule 59 will serve to extend the deadline for other post-trial motions as well, because the current rules specifically tie the deadlines for those motions to Rule 59.

See MINN. R. CIV. P. 50.02(c) (judgment notwithstanding the verdict); 52.02 (motion for amended findings). It will also have an indirect impact on Rule 60.02(b), which allows for relief from an order or judgment on the grounds of newly discovered evidence which could not have been discovered in time to move for a new trial. This latter impact will be negligible.

59.04 Time for Serving Affidavits

When a motion for a new trial is based upon affidavits, they shall be served with the notice of motion. The opposing party shall have ten days after such service in which to serve opposing affidavits, which period may be extended by the court pursuant to Rule 59.03. The court may permit reply affidavits.

59.05 On Initiative of Court

Not later than 15 days after a general verdict or the filing of the decision or order, the court upon its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

59.06 Stay of Entry of Judgment

A stay of entry of judgment pursuant to Rule 58 shall not be construed to extend the time within which a party may serve a motion hereunder.

Rule 60. Relief From Judgment or Order

60.01 Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time upon its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the appellate court.

60.02 Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.

On motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final judgment (other than a marriage dissolution decree), order, or proceeding and may order a new trial or grant such other relief as may be just for the following reasons:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial pursuant to Rule 59.03;
- (c) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (d) The judgment is void;
- (e) The judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (f) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken. A Rule 60.02 motion does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Rule 4.043, or to set aside a

judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(Amended effective March 1, 1994.)

Advisory Committee Comment—1993 Amendments

The only change made to this rule is to correct the reference to marriage dissolution as that is the current name for the proceeding. This amendment is intended to be consistent with similar amendments to the rules made in 1988.

Rule 61. Harmless Error

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 62. Stay of Proceedings to Enforce a Judgment

62.01 Stay on Motions

In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment notwithstanding the verdict made pursuant to Rule 50.02, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52.02.

62.02 Injunction Pending Appeal

When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

62.03 Stay Upon Appeal

When an appeal is taken, the appellant may obtain a stay only when authorized and in the manner provided in Rules 107 and 108, Rules of Civil Appellate Procedure.

62.04 Stay in Favor of the State or Agency Thereof

When an appeal is taken by the state or an officer, agency, or governmental subdivision thereof, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

62.05 Power of Appellate Court Not Limited

The provisions of Rule 62 do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

62.06 Stay of Judgment Upon Multiple Claims

When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 54.02, the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefits thereof to the party in whose favor the judgment is entered.

Rule 63. Disability or Disqualification of Judge; Notice to Remove; Assignment of a Judge

63.01 Disability of Judge

If by reason of death, sickness, or other disability a judge before whom an action has been tried is unable to perform judicial duties after a verdict is returned or findings of fact and conclusions of law are filed, any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that the duties cannot be performed because that judge did not preside at the trial or for any other reason, that judge may exercise discretion to grant a new trial.

63.02 Interest or Bias

No judge shall sit in any case if that judge is interested in its determination or if that judge might be excluded for bias from acting therein as a juror. If there is no other judge of the district who is qualified, or if there is only one judge of the district, such judge shall forthwith notify the chief justice of the supreme court of that judge's disqualification.

63.03 Notice to Remove

Any party or attorney may make and serve on the opposing party and file with the administrator a notice to remove. The notice shall be served and filed within ten days after the party receives notice of which judge or judicial officer is to preside at the trial or hearing, but not later than the commencement of the trial or hearing.

No such notice may be filed by a party or party's attorney against a judge or judicial officer who has presided at a motion or any other proceeding of which the party had notice, or who is assigned by the Chief Justice of the Minnesota Supreme Court. A judge or judicial officer who has presided at a motion or other proceeding or who is assigned by the Chief Justice of the Minnesota Supreme Court may not be removed except upon an affirmative showing of prejudice on the part of the judge or judicial officer.

After a party has once disqualified a presiding judge or judicial officer as a matter of right, that party may disqualify the substitute judge or judicial officer, but only by making an affirmative showing of prejudice. A showing that the judge or judicial officer might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice.

Upon the filing of a notice to remove or if a litigant makes an affirmative showing of prejudice against a substitute judge or judicial officer, the chief judge of the judicial district shall assign any other judge of any court within the district, or a judicial officer in the case of a substitute judicial officer, to hear the cause.

(Amended effective January 1, 1992; amended effective March 1, 2001.)

Task Force Comment—1991 Adoption

This amendment to Minn. R. Civ. P. 63.03 is intended to provide a uniform mechanism for removing any judicial officer, whether a judge or referee. This rule would replace various inconsistent provisions of the existing rules. 4th Dist. R. 16.01 requires objections to any referee to be filed one court day before the hearing. 2d Dist. R. 23 requires

objection within 10 days after notice of assignment and not later than commencement, consistent with the statute and rule governing judges.

Advisory Committee Comments - 2000 Amendments

Rule 63.03 is amended to make clear the fact that a judge specially assigned by the Chief Justice to hear cases originally pending in more than one district cannot be removed by mere filing of a notice to remove. This amendment is a companion to the amendment of Rule 113.03 of the Minnesota General Rules of Practice in 2000, effective March 1, 2001, to provide a formal mechanism for requesting the Chief Justice to make such an assignment. This rule codifies the existing practice in special cases such as special assignment of a judge by the Chief Justice. The rule makes it clear that even a judge assigned by the Chief Justice may be removed for cause.

63.04 Assignment of Judge

Upon receiving notice as provided in Rules 63.02 and 63.03, the chief justice shall assign a judge of another district, accepting such assignment, to preside at the trial or hearing, and the trial or hearing shall be postponed until the judge so assigned can be present.

VII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PLEADINGS

Rule 64. Seizure of Person or Property

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the state.

Rule 65. Injunctions

65.01 Temporary Restraining Order; Notice; Hearing; Duration

A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney states to the court in writing the efforts, if any, which have been made to give notice or the reasons supporting the claim that notice should not be required. In the event that a temporary restraining order is based upon any affidavit, a copy of such affidavit must be served with the temporary restraining order. In case a temporary restraining order is granted without notice, the motion for a temporary injunction shall be set down for hearing at the earliest practicable time and shall take precedence over all matters except older matters of the same character; and when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction, and, if the party does not do so, the court shall dissolve the temporary restraining order. On written or oral notice to the party who obtained the ex parte temporary restraining order, the adverse party may appear and move its dissolution or modification, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

65.02 Temporary Injunction

(a) No temporary injunction shall be granted without notice of motion or an order to show cause to the adverse party.

(b) A temporary injunction may be granted if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefor.

(c) Before or after the commencement of the hearing on a motion for a temporary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing on the motion. Even when this consolidation is not ordered, any evidence received upon a motion for a temporary injunction which would be admissible at the trial on the merits becomes part of the trial record and need not be repeated at trial. This provision shall be so construed and applied as to preserve any rights the parties may have to trial by jury.

65.03 Security

(a) No temporary restraining order or temporary injunction shall be granted except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

(b) Whenever security is given in the form of a bond or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the court administrator as the surety's agent upon whom any papers affecting liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the court administrator, who shall forthwith mail copies to the sureties if their addresses are known.

65.04 Form and Scope of Injunction or Restraining Order

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(Added effective March 1, 2001.)

Advisory Committee Comments - 2000 Amendments

This rule is entirely new in the Minnesota rules; it is drawn directly from FED. R. CIV. P. 65(d). There is no comparable provision currently in the Minnesota rules and questions do arise about what is necessary to make sure that a party is subject to a court's injunctive order. The amended rule is intended to resolve those questions.

Rule 66. Receivers

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. A foreign receiver shall have capacity to sue in any district court, but the receiver's rights are subordinate to those of local creditors. The practice in the administration of estates by the court shall be in accordance with Minnesota Statutes, chapter 576 and with the practice heretofore followed in the courts of this state or as provided in rules promulgated by the district courts. In all other respects, the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

Rule 67. Deposit in Court

67.01 In an Action

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such money or thing.

67.02 When No Action is Brought

When money or other personal property in the possession of any person, as bailee or otherwise, is claimed adversely by two or more other persons, and the right thereto as between such claimants is in doubt, the person in possession, though no action is commenced against that person by any of the claimants, may place the property in the custody of the court. The person in possession shall apply to the court of the county in which the property is situated, setting forth by petition the facts which bring the case within the provisions of this rule, and the names and places of residence of all known claimants of such property. If satisfied of the truth of such showing, the court, by order, shall accept custody of the money or other property, and direct that, upon delivery and upon giving notice thereof to all persons interested, personally or by registered mail as prescribed in such order, the petitioner is relieved from further liability on account thereof. This rule shall apply to cases where property held under like conditions is garnished in the hands of the possessor; but in such cases the application shall be made to the court in which the garnishment proceedings are pending.

67.03 Court May Order Deposit or Seizure of Property

When it is admitted by the pleading or examination of a party that the party has possession or control of any money or other thing capable of delivery which, being the subject of the litigation, is held by that party as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court or delivered to such other party, with or without security, subject to further direction. If such order is disobeyed, the court may punish the disobedience as a contempt, and may also require the sheriff or other proper officer to take the money or property and deposit or deliver it in accordance with the direction given.

67.04 Money Paid into Court

Where money is paid into the court pending the result of any legal proceedings, the judge may order it deposited in a designated state or national bank or savings bank. In the absence of such order, the court administrator is the official custodian of all moneys, and the judge, on application of any person paying such money into court, may require the court administrator to give an additional bond, conditioned as the bond authorized in Minnesota Statutes, section 485.01 in such amount as the judge shall order.

Rule 68. Offer of Judgment or Settlement

At any time prior to ten days before the trial begins, any party may serve upon an adverse party an offer to allow judgment to be entered to the effect specified in the offer or to pay or accept a specified sum of money, with costs and disbursements then accrued, either as to the claim of the offering party against the adverse party or as to the claim of the adverse party against the offering party. Acceptance of the offer shall be made by service of written notice of acceptance within ten days after service of the offer. If the offer is not accepted within the ten-day period, it is deemed withdrawn. During the ten-day period the offer is irrevocable. If the offer is accepted, either party may file the offer and the notice of acceptance, together with the proof of service thereof, and thereupon the court administrator shall enter judgment. An offer not accepted is not admissible, except in a proceeding to determine costs and disbursements. If the judgment finally entered is not more favorable to the offeree than the offer, the offeree must pay the offeror's costs and disbursements. The fact that an offer is made but not accepted does not preclude a subsequent offer.

Rule 69. Execution

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with Minnesota Statutes, chapter 550. In aid of the

judgment or execution, the judgment creditor, or successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided by these rules.

Rule 70. Judgment for Specific Acts; Vesting Title

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court, and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the court administrator shall issue a writ of attachment against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court, in lieu of directing a conveyance thereof, may enter a judgment divesting the title of any party and vesting it in others; and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution upon application to the court administrator.

Rule 71. Process in Behalf of and Against Persons not Parties

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if that person were a party.

Rule 72. (Reserved for Future Use.)

Rule 73. (Reserved for Future Use.)

Rule 74. (Reserved for Future Use.)

Rule 75. (Reserved for Future Use.)

Rule 76. (Reserved for Future Use.)

VIII. DISTRICT COURTS AND COURT ADMINISTRATORS

Rule 77. District Courts and Court Administrators

77.01 District Courts Always Open

The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

77.02 Trials and Hearings; Orders in Chambers

All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the court administrator or other court officials and at any place either within or outside the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

77.03 Court Administrator's Office and Orders by Court Administrator

All motions and applications in the court administrator's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the court administrator; but the court

administrator's action may be suspended, altered, or rescinded by the court upon cause shown.

77.04 Notice of Orders or Judgments

Immediately upon the filing of an order or decision or entry of a judgment, the court administrator shall serve a notice of the filing or entry by mail upon every party affected thereby or upon such party's attorney of record, whether or not such party has appeared in the action, at the party or attorney's last known address, and shall make a notice in the court records of the mailing, but such notice shall not limit the time for taking an appeal or other proceeding on such order, decision, or judgment.

Rule 78. (Reserved for Future Use.)

Rule 79. (Reserved for Future Use.)

Rule 80. Stenographic Report or Transcript as Evidence

Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by a reading of the transcript thereof duly certified by the person who reported the testimony. Such evidence is rebuttable and not conclusive.

Rule 81. Applicability; in General

81.01 Statutory and Other Procedures

(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.

81.02 Appeals to District Courts

These rules do not supersede the provisions of statutes relating to appeals to the district courts.

81.03 Rules Incorporated into Statutes

Where any statute heretofore or hereafter enacted, whether or not listed in Appendix A, provides that any act in a civil proceeding shall be done in the manner provided by law, such act shall be done in accordance with these rules.

Rule 82. Jurisdiction and Venue

These rules shall not be construed to extend or limit the jurisdiction of the district courts of Minnesota or the venue of actions therein.

Rule 83. Rules by District Courts

Any court may recommend rules governing its practice not in conflict with these rules or with the General Rules of Practice for the District Courts, and those rules shall become effective as ordered by the Supreme Court.

(Amended effective January 1, 1992.)

Task Force Comment—1991 Adoption

This rule replaces existing Minn. R. Civ. P. 83.

The purpose of this rule is to insure a mechanism to maintain uniformity in the local rules. The Task Force believes it is imperative that some method be enforced to provide for uniformity of rules that may be adopted in the future. This rule will allow either local rules, or statewide rules based on proposed local rules, and will permit the Supreme Court to review and coordinate the adoption of those rules. In the absence of this provision, uniformity would be achieved on the day these rules are adopted, but would disappear as soon as one court adopted a rule to supplement or vary the new Code of Rules.

The American Bar Association Standards Relating to Court Administration also favor the promulgation of uniform rules of practice issued by a central court. Standard 1.11(c) provides:

(c) Uniform standards of justice. The procedures by which the court system administers justice should be based on principles applicable throughout the system, and, so far as practicable, should be uniform in their particulars. The court system should have:

(i) Uniform rules of procedure, promulgated by a common authority;

(ii) Rules of court administration that are uniform so far as possible and have local variations only as approved by an appropriate central authority in the court system;

... ABA Standards Relating to Court Administration, Standard 1.11(c)(i) & (ii) (1990).

Rule 84. Appendix of Forms

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

Rule 85. Title

These rules are known and cited as Rules of Civil Procedure.

Rule 86. Effective Date

86.01 Effective Date and Application to Pending Proceedings

(a) These rules as originally adopted took effect on January 1, 1952. They govern all proceedings and actions brought after that effective date, and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the action was brought applies.

(b) Unless otherwise specified by the court, all amendments will take effect on either January 1 or July 1 in the year of or the year following their adoption. They govern all proceedings in actions brought after they take effect, and also all further proceedings in actions then pending, except as to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible, or would work injustice, in which event the former procedure applies.

Appendix 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.

Appendix B(1)*

List of Rules Superseding Statutes

Rule	Statute Superseded M.S.A. 1971
2.01	540.01
3.01	541.12
	543.01
3.02	543.04 1st sentence
4.01	543.02
4.02	543.03
4.03	
(a)	543.05
(b)	540.15 the clause "and the summons may be served on one or more of them"
	540.151 the clause "and the summons may be served on one or more of them"
(c) 1st sentence:	543.08 1st paragraph, 1st sentence of 3d paragraph, and 4th paragraph
(c) 2d sentence:	543.08 2d clause of 1st sentence of 3d paragraph
	543.09
	543.10
(d)	543.07
(e)	543.06
	365.40 superseded to extent inconsistent
	373.07 superseded to extent inconsistent
	411.07 superseded to extent inconsistent
4.04	543.11
	543.12
	543.15 last clause of 1st sentence
4.042	543.04 2d and 3d sentences
4.043	543.13
4.044	557.01 3d sentence through "but" following semicolon
4.05	None 484.03, 586.05 and 587.02 contain same provision
4.06	543.14
4.07	544.30 superseded in part
	544.32 superseded in part
	544.34 superseded in part
5.01	543.16
5.02	543.09 last sentence
	543.10 last sentence
	543.17
	543.18
	557.01 clause following semicolon in 3d sentence
	Dist. Ct. Rule 25
5.04	544.35
6.02	544.32 superseded in part
	544.34 superseded in part
6.03	544.32 superseded in part
6.04	545.01
6.05	543.18

Rule	Statute Superseded M.S.A. 1971
7.01	544.01
	544.03
	544.06 3d sentence
	544.08
	544.09
	546.02 1st sentence
	Dist. Ct. Rule 7 and Rule 22(c)
7.02	545.01 1st sentence
	Dist. Ct. Rule 20
8.01	544.02 (2) and (3)
	544.04 (2)
8.02	544.04 (1), (2), and (3)
8.04	544.18
8.05	544.05
	544.06 1st sentence
	544.27
8.06	544.16
9 Generally	544.24
	544.25
	544.26
9.03	544.23
9.04	544.20
9.05	544.19
9.08	544.28
10.01	544.02 (1)
10.02	544.06 2d sentence
	544.27
	Dist. Ct. Rule 22(d)
	to extent inconsistent
11	544.15 last paragraph and that part of
	1st sentence as follows: "in a
	court of record shall be
	subscribed by the party or his
	attorney, and"
12.01	543.02 1st sentence
	544.29 2d sentence
	546.29
12.02	544.03
	Dist. Ct. Rule 7 and Rule 22(c)
	543.15 2d sentence
	544.04
	544.06
	544.08
	544.18
12.05	544.10
12.06	544.17
12.08	544.03 subd. 3
13.01	544.05
13.02	544.05
13.05	544.05
13.08	540.16
14.01	540.16
14.02	540.16
15.01	544.29 1st sentence
	544.30
15.02	544.30
	544.31

Rule	Statute Superseded M.S.A. 1971
15.04	544.11
17.01	540.02
	540.04
17.02	540.06
18.01	544.27
19.02	540.16
20.01	540.10
	544.05
	544.27
	548.02 (548.20 covers 2d sentence of 548.02)
22	50.12 to extent inconsistent
	227.17
	228.20
	544.12
23.01	540.02
24.01	50.12 to extent inconsistent
	544.13
24.03	544.13
25.01	540.12 to extent inconsistent
25.03	540.12 to extent inconsistent
26.01	597.01
	597.04
	597.05
26.04	597.12
	597.15
	597.16
26.05	597.12
26.07	597.01
27.01	598.01
	598.02
	598.03
	598.05 to 598.11, inclusive
28.01	597.01
	597.04
28.02	597.01
	597.04
29	597.06
30.01	597.01
	597.02
30.03	597.07
	597.10
30.05	597.07
	597.08
30.06	597.08
	597.09
30.07	597.14
31.01	597.04
	597.05
31.02	597.07
	597.08
	597.09
	597.10
32.01	597.13
32.02	597.13
32.03	597.12
	597.13

Rule	Statute Superseded M.S.A. 1971	
32.04	597.13	
34	603.01	
37.02	597.11	
	603.01	
38.01	546.03	2d sentence
38.02	546.26	
38.03	546.05	1st four sentences
39.01	546.03	1st clause of 3d sentence
39.02	546.03	last clause of 3d sentence
40	546.05	5th sentence
41.01	546.39	
41.02	546.38	
	546.39	
42.01	546.04	1st sentence
42.02	546.04	2d sentence
43.02	595.03	
43.04	595.05	
45.04	597.11	
46	547.03	
47.01	Dist. Ct. Rule 27(a)	
47.02	546.095	
49.01	546.14	(Laws 1971, Ch. 715)
49.02	546.20	
50.02	605.06	1st and 2d sentences
51	546.14	(Laws 1971, Ch. 715)
	547.03	
52.01	546.27	1st sentence
53.01	546.33	1st paragraph
	546.34	
53.03	546.36	
53.04	546.36	
53.05	546.36	
54.03	548.01	
54.04	549.10	
55.01	544.07	
58.01	548.03	
58.02	546.25	2d sentence
	547.023	
	Dist. Ct. Rule 26	
59.01	547.01	
59.02	547.02	
59.03	547.02	
59.07	547.04	
	547.05	
59.08	547.06	
60.01	544.32	
	544.34	
60.02	544.32	
	544.34	
61	544.33	
63.02	542.13	
63.03	542.16	
63.04	542.13	
	542.16	
65	585.01-585.04	to extent inconsistent
67.02	544.14	
67.03	576.02	

Rule	Statute	Superseded M.S.A. 1971
67.04	485.02	1st sentence
68.01	546.40	
68.02	546.41	
70	557.04	
77.01	546.30	1st sentence
77.04	546.30	3d sentence

(As amended November 10, 1967, effective February 1, 1968; as amended January 5, 1973.)

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

APPENDIX B(2)*

List of Statutes Superseded by Rules

Statute Superseded M.S.A. 1971	By Rule
50.12 to extent inconsistent	22; 24.01
227.17 to extent inconsistent	22
228.20 to extent inconsistent	22
365.40 to extent inconsistent	4.03(e)
373.07 to extent inconsistent	4.03(e)
411.07 to extent inconsistent	4.03(e)
485.02 1st sentence	67.04
540.01	2.01
540.02	17.01; 23.01
540.04	17.01
540.06	17.02
540.10	20.01
540.12 to extent inconsistent	25.01; 25.03
540.15 the clause "and the summons may be served on one or more of them"	4.03(b)
540.151 the clause "and the summons may be served on one or more of them"	4.03(b)
540.16	13.08; 14.01; 14.02; 19.02
541.12	3.01
542.13	63.02; 63.04
542.16	63.03; 63.04
543.01	3.01
543.02	4.01; 12.01
543.03	4.02
543.04	3.02; 4.042
543.05	4.03(a)
543.06	4.03(e)
543.07	4.03(d)
543.08 all except 2d paragraph and 2d sentence of 3d paragraph	4.03(c)
543.09	4.03(c); 5.02
543.10	4.03(c); 5.02
543.11	4.04
543.12	4.04
543.13	4.043
543.14	4.06
543.15	4.04; 12.01; and generally
543.16	5.01
543.17	5.02
543.18	5.02; 6.05
544.01	7.01
544.02	8.01; 10.01
544.03	7.01; 12.02; 12.08
544.04	8.01; 8.02; 12.02
544.05	8.05; 13.01; 13.02; 13.05; 20.01
544.06	7.01; 8.05; 10.02; 12.02
544.07	55.01
544.08	7.01; 12.02
544.09	7.01
544.10	12.06

Statute Superseded M.S.A. 1971

544.11
 544.12
 544.13
 544.14
 544.15 last paragraph and part of
 1st sentence reading "in a
 court of record shall be
 subscribed by the party or
 his attorney, and"
 544.16
 544.17
 544.18
 544.19
 544.20
 544.23
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 544.30
 544.31
 544.32
 544.33
 544.34
 544.35
 545.01
 546.02 1st sentence
 546.03 2d and 3d sentences
 546.04
 546.05 all except last 3 sentences
 546.095
 546.14 (Laws 1971, Ch. 715)
 546.20
 546.25 beginning with "or,
 in its discretion * * * *"
 546.26
 546.27 1st sentence
 546.29
 546.30 1st and 3d sentences
 546.33 1st paragraph
 546.34
 546.36
 546.38
 546.39
 546.40
 546.41
 547.01
 547.02
 547.023
 547.03
 547.04
 547.05
 547.06
 548.01

By Rule

15.04
 22
 24.01; 24.03
 67.02
 11
 8.06
 12.05; 12.06
 8.04; 12.02
 9.05
 9.04
 9.03
 Generally
 Generally
 Generally
 8.05; 10.02; 18.01; 20.01
 9.08
 12.01; 15.01
 4.07; 6.02; 15.01; 15.02
 15.02
 4.07; 6.02, 6.03;
 60.01; 60.02; 61
 61
 4.07; 6.02; 60.01; 60.02
 5.04
 6.04; 7.02
 7.01
 38.01; 39.01; 39.02
 42.01; 42.02
 38.03; 40
 47.02
 49.01; 51
 49.01; 51
 58.02
 38.02
 52.01
 12.01
 77.01; 77.04
 53.01
 53.01
 53.03; 53.04; 53.05
 41.02
 41.01; 41.02
 68.01
 68.02
 59.01
 59.02; 59.03
 58.02
 46; 51
 59.07
 59.07
 59.08
 54.03

Statute Superseded M.S.A. 1971

	By Rule
548.02	20.01
548.03	58.01
549.10	54.04
557.01 3d sentence	4.044; 5.02
557.04	70
576.02	67.03
585.01-585.04 to extent inconsistent	65
595.03	43.02
595.05	43.04
597.01	26.01; 26.07; 28.01; 28.02; 30.01
597.02	30.01
597.04	26.01; 28.01; 28.02; 31.01
597.05	26.01; 31.01
597.06	29
597.07	30.03; 30.05; 31.02
597.08	30.05; 30.06; 31.02
597.09	30.06; 31.02
597.10	30.03; 31.02
597.11	37.02; 45.04
597.12	26.04; 26.05; 32.03
597.13	32.01; 32.02; 32.03; 32.04
597.14	30.07
597.15	26.04
597.16	26.04
598.01	27.01
598.02	27.01
598.03	27.01
598.05	27.01
598.06	27.01
598.07	27.01
598.08	27.01
598.09	27.01
598.10	27.01
598.11	27.01
603.01	34; 37.02
605.06 1st and 2d sentences	50.02

District Court Rules Superseded**Dist. Rule**

	By Rule
7	7.01; 12.02
20 to extent inconsistent	7.02
22 (c) and (d) to extent inconsistent	7.01; 10.02; 12.02
25	5.02
26	58.02

(As amended November 10, 1967, effective February 1, 1968; amended January 5, 1973.)

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

APPENDIX OF FORMS
(See Rule 84)

INTRODUCTORY STATEMENT

1. The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a manual of forms.

2. Except where otherwise indicated, each pleading, motion, and other paper should have a caption similar to that of the summons, with the designation of the particular paper substituted for the word "SUMMONS." In the caption of the summons and in the caption of the complaint all parties must be named, but in other pleadings and papers it is sufficient to state the name of the first party on either side, with an appropriate indication of other parties. See Rules 4.01, 7.02(2), 10.01.

3. Each pleading, motion, and other paper is to be signed in his individual name by at least one attorney of record (Rule 11). The attorney's name is to be followed by his address as indicated in Form 2. In forms following Form 2 the signature and address are not indicated.

4. If a party is not represented by an attorney, the signature and address of the party are required in place of those of the attorney.

FORM 1 - SUMMONS

STATE OF MINNESOTA,
COUNTY OF _____

District Court
_____ Judicial District

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

The State of Minnesota to the Above-Named Defendant:

You are hereby summoned and required to serve upon plaintiff's attorney an answer to the complaint (which is herewith served upon you) (which is on file in the office of the clerk of the above-named court) within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so judgment by default will be taken against you for the relief demanded in the complaint.

(This action involves, affects, or brings in question real property situated in the County of _____, State of Minnesota, described as follows:

The object of this action is _____)

Signed: _____
Attorney for Plaintiff.

Address: _____

N. B. Use language in first bracket when complaint is served with summons, language in second bracket when complaint is filed, and language in second and third brackets when action involves real property and summons is served by publication. Where one defendant is served personally and another is served by publication both forms of summons may be used.

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

FORM 2 - COMPLAINT ON A PROMISSORY NOTE

1. Defendant on or about June 1, 1948, executed and delivered to the plaintiff a promissory note (*in the following words and figures: (here set out the note verbatim)*); (*a copy of which is hereto annexed as Exhibit A*); (*whereby defendant promised to pay to plaintiff or order on June 1, 1949 the sum of one thousand dollars with interest thereon at the rate of six percent per annum*).

2. Defendant owes to plaintiff the amount of said note and interest.

Wherefore plaintiff demands judgment against defendant for the sum of one thousand dollars, interest, costs, and disbursements.

Signed: _____,
Attorney for Plaintiff.

Address: _____

FORM 3 - COMPLAINT ON AN ACCOUNT

1. Defendant owes plaintiff one thousand dollars according to the account hereto annexed as Exhibit A.

Wherefore (*etc., as in Form 2*).

FORM 4 - COMPLAINT FOR GOODS SOLD AND DELIVERED

1. Defendant owes plaintiff one thousand dollars for goods sold and delivered by plaintiff to defendant between June 1, 1948 and December 1, 1948.

Wherefore (*etc., as in Form 2*).

FORM 5 - COMPLAINT FOR MONEY LENT

1. Defendant owes plaintiff one thousand dollars for money lent by plaintiff to defendant on June 1, 1948.

Wherefore (*etc., as in Form 2*).

FORM 6 - COMPLAINT FOR MONEY PAID BY MISTAKE

1. Defendant owes plaintiff one thousand dollars for money paid by plaintiff to defendant by mistake on June 1, 1948, under the following circumstances: (*here state the circumstances with particularity — see Rule 9.02*).

Wherefore (*etc., as in Form 2*).

FORM 7 - COMPLAINT FOR MONEY HAD AND RECEIVED

1. Defendant owes plaintiff one thousand dollars for money had and received from one G. H. on June 1, 1948, to be paid by defendant to plaintiff.

Wherefore (*etc., as in Form 2*).

FORM 8 - COMPLAINT FOR NEGLIGENCE

1. On June 1, 1948, in a public highway called University Avenue, in St. Paul, Minnesota, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in the sum of ten thousand dollars and costs.

**FORM 9 - COMPLAINT FOR NEGLIGENCE
WHERE PLAINTIFF IS UNABLE TO
DETERMINE DEFINITELY WHETHER THE PERSON RESPONSIBLE
IS C. D. OR E. F. OR WHETHER BOTH ARE RESPONSIBLE AND
WHERE HIS EVIDENCE MAY JUSTIFY A FINDING OF
WILFULNESS OR OF RECKLESSNESS OR OF NEGLIGENCE**

A. B.,		)	
	Plaintiff	)	
vs.		)	COMPLAINT
C. D. and E. F.,		)	
	Defendants	)	

1. On June 1, 1948, in a public highway called University Avenue in St. Paul, Minnesota, defendant C. D. or defendant E. F., or both defendants C. D. and E. F. willfully or recklessly or negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing said highway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against C. D. or against E. F. or against both in the sum of ten thousand dollars and costs and disbursements.

FORM 10 - COMPLAINT FOR CONVERSION

1. On or about December 1, 1948, defendant converted to his own use ten bonds of the _____ Company (*here insert brief identification as by number and issue*) of the value of one thousand dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of one thousand dollars, interest, costs, and disbursements.

**FORM 11 - COMPLAINT FOR SPECIFIC PERFORMANCE OF
CONTRACT TO CONVEY LAND**

1. On or about December 1, 1948, plaintiff and defendant entered into an agreement in writing, a copy of which is hereto annexed as Exhibit A.

2. In accordance with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

3. Plaintiff now offers to pay the purchase price.

Wherefore plaintiff demands (1) that defendant be required specifically to perform said agreement, (2) damages in the sum of one thousand dollars, and (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of ten thousand dollars.

**FORM 12 - COMPLAINT ON CLAIM FOR DEBT AND TO SET
ASIDE FRAUDULENT CONVEYANCE UNDER RULE 18.02**

A. B.,		)	
	Plaintiff	)	
vs.		)	COMPLAINT
C. D., and E. F.,		)	
	Defendants	)	

1. Defendant C. D. on or about _____ executed and delivered to plaintiff a promissory note (*in the following words and figures: (here set out the note verbatim): (a copy of which is hereto annexed as Exhibit A): (whereby defendant C. D. promised to pay to plaintiff or order on _____ the sum of five thousand dollars with interest thereon at the rate of _____ percent per annum).*

2. Defendant C. D. owes to plaintiff the amount of said note and interest.

3. Defendant C. D. on or about _____ conveyed all his property, real and personal (or specify and describe) to defendant E. F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore plaintiff demands:

(1) That plaintiff have judgment against defendant C. D. for five thousand dollars and interest; (2) that the aforesaid conveyance to defendant E. F. be declared void and the judgment herein be declared a lien on said property; (3) that plaintiff have judgment against the defendants for cost and disbursements.

FORM 13 - COMPLAINT FOR INTERPLEADER AND DECLARATORY RELIEF

1. On or about June 1, 1948, plaintiff issued to G. H. a policy of life insurance whereby plaintiff promised to pay to K. L. as beneficiary the sum of ten thousand dollars upon the death of G. H. The policy required the payment by G. H. of a stipulated premium on June 1, 1948, and annually thereafter as a condition precedent to its continuance in force.

2. No part of the premium due June 1, 1948 was ever paid and the policy ceased to have any force or effect on July 1, 1948.

3. Thereafter, on September 1, 1948, G. H. and K. L. died as the result of a collision between a locomotive and the automobile in which G. H. and K. L. were riding.

4. Defendant C. D. is the duly appointed and acting executor of the will of G. H.; defendant E. F. is the duly appointed and acting executor of the will of K. L.; defendant X. Y. claims to have been duly designated as beneficiary of said policy in place of K. L.

5. Each of defendants, C. D., E. F., and X. Y., is claiming that the above-mentioned policy was in full force and effect at the time of the death of G. H.; each of them is claiming to be the only person entitled to receive payment of the amount of the policy and has made demand for payment thereof.

6. By reason of these conflicting claims of the defendants, plaintiff is in great doubt as to which defendant is entitled to be paid the amount of the policy, if it was in force at the death of G. H.

Wherefore plaintiff demands that the court adjudge:

(1) That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.

(2) That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.

(3) That, if the court shall determine that said policy was in force at the death of G. H., the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all

liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.

(4) That plaintiff recover its costs and disbursements.

**FORM 14 - MOTION TO DISMISS, PRESENTING DEFENSES OF FAILURE
TO STATE A CLAIM, OF LACK OF SERVICE OF PROCESS, AND OF
LACK OF JURISDICTION UNDER RULE 12.02**

The defendant moves the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

2. To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds: (Here state reasons, such as, (a) that the defendant is a corporation organized under the laws of Delaware and was not and is not subject to service of process within the State of Minnesota; (b) that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M. N. and X. Y. hereto annexed as Exhibit A and Exhibit B respectively).

3. To dismiss the action on the ground that the court lacks jurisdiction because (no justiciable controversy is presented, or as the case may be).

Signed: _____
Attorney for Defendant.

Address: _____

Notice of Motion

To: _____
Attorney for Plaintiff.

Please take notice, that the undersigned will bring the above motion on for hearing before the court at a special term thereof, to be held at the court house in the City of _____ on the _____ day of _____, 19____, at _____ o'clock in the (forenoon) (afternoon) or as soon thereafter as counsel can be heard.

Signed: _____
Attorney for Defendant.

Address: _____

FORM 15 - ANSWER PRESENTING DEFENSES UNDER RULE 12.02

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

If defendant is indebted to plaintiffs for the goods mentioned in the complaint, he is indebted to them jointly with G. H. G. H. is alive; is a citizen and resident of this state; is subject to the jurisdiction of this court, as to both service of process and venue; can be made a party, but has not been made one.

Third Defense

Defendant admits the allegation contained in paragraphs 1 and 4 of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.

Fourth Defense

The right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

Counterclaim

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint.)

Cross-Claim Against Defendant M. N.

(Here set forth the claim constituting a cross-claim against defendant M. N. in the manner in which a claim is pleaded in a complaint.)

FORM 16 - ANSWER TO COMPLAINT SET FORTH IN FORM 7, WITH COUNTERCLAIM FOR INTERPLEADER

Defense

Defendant denies the allegations stated to the extent set forth in the counterclaim herein.

Counterclaim for Interpleader

1. Defendant received the sum of one thousand dollars as a deposit from E. F.
2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of it which he claims to have received from E. F.
3. E. F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

Wherefore defendant demands:

- (1) That the court order E. F. to be made a party defendant to respond to the complaint and to this counterclaim.*
- (2) That the court order the plaintiff and E. F. to interplead their respective claims.
- (3) That the court adjudge whether the plaintiff or E. F. be entitled to the sum of money.
- (4) That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.
- (5) That the court award to the defendant its costs and attorney's fees.

* Rule 13.08 provides for the court ordering parties to a counterclaim, but who are not parties to the original action, to be brought in as defendants.

FORM 17 - SUMMONS AND COMPLAINT AGAINST THIRD-PARTY DEFENDANT

STATE OF MINNESOTA,
COUNTY OF _____

_____ District Court
_____ Judicial District

A. B.,		)	
	Plaintiff	)	
vs.		)	
C. D.,		)	
	Defendant and	)	SUMMONS
	Third-Party Plaintiff	)	
vs.		)	
E. F.,		)	
	Third-Party Defendant	)	

State of Minnesota to the Above-Named Third-Party Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney whose address is _____, and upon _____, who is attorney for C. D., defendant and third-party plaintiff, and whose address is _____, an answer to the third-party complaint which is herewith served upon you within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint.

There is also served upon you herewith a copy of the complaint of the plaintiff which you may answer.

Signed: _____
Attorney for Defendant
and Third-Party Plaintiff.

Address: _____

A. B.,		)	
	Plaintiff	)	
vs.		)	
C. D.,		)	THIRD-PARTY
	Defendant and	)	COMPLAINT
	Third-Party Plaintiff	)	
vs.		)	
E. F.,		)	
	Third-Party Defendant	)	

1. Plaintiff A. B. has served upon C. D. a complaint, a copy of which is hereto attached as Exhibit _____.

2. (Here state the grounds upon which C. D. is entitled to recover from E. F. all or part of what A. B. may recover from C. D. The statement should be framed as in an original complaint.)

Wherefore C. D. demands judgment against third-party defendant E. F. for all sums that may be adjudged against defendant C. D. in favor of plaintiff A. B.

Signed: _____
Attorney for C. D.,
Third-Party Plaintiff.

Address: _____

**FORM 18 - MOTION TO INTERVENE AS A
DEFENDANT UNDER RULE 24**

STATE OF MINNESOTA,
COUNTY OF _____

District Court
Judicial District

A. B.,
vs.
C. D.,
E. F.,
Applicant for Intervention

Plaintiff
Defendant

MOTION TO
INTERVENE AS
A DEFENDANT

E. F. moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in his proposed answer, of which a copy is hereto attached, on the grounds *(here state them)* and as such has a defense to plaintiff's claim presenting *(both questions of law and of fact)* which are common to the main action.

Signed: _____
Attorney for E. F.,
Applicant for Intervention:
Address: _____

Notice of Motion

(Contents the same as in Form 14)

STATE OF MINNESOTA,
COUNTY OF _____

District Court
Judicial District

A. B.,
vs.
C. D.,
E. F.,
Intervener

Plaintiff
Defendant
Intervener

INTERVENER'S
ANSWER

First Defense

Intervener admits the allegations stated in paragraphs _____ and _____ of the complaint; denies the allegations in paragraphs _____ and _____

Second Defense

(Set forth any defenses.)

Signed: _____
Attorney for E. F.,
Intervener.
Address: _____

FORM 19 - REQUEST FOR PRODUCTION OF DOCUMENTS, ETC., UNDER RULE 34

Plaintiff A. B. requests defendant C. D. to respond within _____ days to the following requests:

(1) That defendant produce and permit plaintiff to inspect and to copy each of the following documents:

(Here list the documents either individually or by category and describe each of them.)

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

(2) That defendant produce and permit plaintiff to inspect and to copy, test, or sample each of the following objects:

(Here list the objects either individually or by category and describe each of them.)

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

(3) That defendant permit plaintiff to enter *(here describe property to be entered)* and to inspect and to photograph, test or sample *(here describe the portion of the real property and the objects to be inspected)*.

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

Signed: _____
Attorney for Plaintiff.

Address: _____

(Amended November 14, 1974, effective January 1, 1975.)

FORM 20 - REQUEST FOR ADMISSION UNDER RULE 36

Plaintiff A. B. requests defendant C. D. within _____ days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this request, is genuine.

(Here list the documents and describe each document.)

2. That each of the following statements is true.

(Here list the statements.)

Signed: _____
Attorney for Plaintiff.

Address: _____

FORM 21 - ALLEGATION OF REASON FOR OMITTING PARTY

When it is necessary, under Rule 19.03, for the pleader to set forth in his pleading the names of persons who ought to be made parties, but who are not so made, there should be an allegation such as the one set out below:

John Doe named in this complaint is not made a party to this action *(because he is not subject to the jurisdiction of this court)* or *(for reasons stated)*.

FORM 22 - NOTICE AND ACKNOWLEDGMENT OF SERVICE BY MAIL**NOTICE**

TO: (insert the name and address of the person to be served.)

The enclosed summons and complaint are served pursuant to Rule 4.05 of the Minnesota Rules of Civil Procedure.

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days.

Signing this Acknowledgment of Receipt is only an admission that you have received the summons and complaint, and does not waive any other defenses.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within 20 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint was mailed on (insert date).

Signature

Date of Signature

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above-captioned matter at (insert address).

Signature

Relationship to Entity/Authority to
Receive Service of Process

Date of Signature

(Added March 21, 1985, effective July 1, 1985.)

FORM 23 - SUBJECT MATTER INDEX FOR CIVIL CASES

1. Appeal from Conciliation Court
(All cases in which there has been an
appeal from conciliation court decision)

2. Condemnation
3. Contract
4. Dissolution With Children
5. Dissolution Without Children
6. Drivers License Revocation (Implied Consent)
7. Employment
8. Harassment (except for employment-related cases)
9. Medical Malpractice
10. Property Damage
11. Personal Injury
12. Unlawful Detainer
13. Wrongful Death
14. Other Civil
 - (All other civil cases not covered by
items 1 through 13 above, including but
not limited to the following:
 - Appeals from Administrative Agencies
 - Attorney Malpractice
 - Change of Name
 - Corporate Dissolution
 - Declaratory Judgment
 - Discrimination
 - Minor Settlement
 - Mortgage Foreclosure
 - Quiet Title
 - Real Estate Tax Petitions
 - Receivership
 - Torrens
 - Writs of Attachment, Certiorari,
Habeas Corpus, Mandamus
and Prohibition)

(Added effective July 1, 1986; amended effective August 1, 1992.)

INDEX - CIVIL PROCEDURE

ACKNOWLEDGMENTS

- Service by mail
 - Proof of service, 4.06
 - Return within time limit
 - Failure of sender to receive, effect, 4.05
- Service of process
 - Commencement of action, 3.01

AFFIDAVITS

- Costs and disbursements (courts)
 - Affidavits of disbursement, 54.04
- Default judgments
 - Supporting affidavits
 - When required, 55.01
- Evidence
 - Motions based on facts not appearing of record, 43.05
- New trials, motions for
 - Supporting affidavits
 - Contents, 59.02
 - Service of process, time limits, 59.04
- Pleadings
 - Supporting affidavits, not required, generally, 11.01
- Proof of service
 - Affidavit of person making service, contents, requirements, 4.06
- Service by publication
 - Plaintiff's affidavit, contents, 4.04
 - Printer's affidavit
 - Contents, 4.04
 - Proof of service, 4.06
- Service of process
 - Opposing affidavits, time limits, see Motions under TIME
- Summary judgment
 - Bad faith affidavits, effect, 56.07
 - Form, requirements, generally, 56.05
 - Good faith, requirement, generally, 56.04
 - Opposing affidavits
 - Affidavits, depositions, or discovery unavailable, 56.06
 - Form, requirements, generally, 56.05
 - Supplementary affidavits, 56.05
 - Supporting affidavits
 - When required, 56.01, 56.02
- Supporting affidavits
 - Default judgments, 55.01
 - New trials, motions for, 59.02
 - Pleadings, not required for, generally, 11.01
 - Service with motions, requirements, 6.04
 - Summary judgments, 56.01, 56.02
 - Temporary restraining orders, 65.01
- Temporary restraining orders
 - Supporting affidavits, 65.01

AFFIRMATIONS

- Depositions
 - Officers before whom depositions are taken, administering, duties, 30.03
- Oaths
 - In lieu of, 43.04

ANSWERS

- Certificates of service
 - Filing requirements, exception, 5.04
- Cross-claims, see Answers under CROSS-CLAIMS
- Discovery
 - Incomplete or evasive answers, sanctions, 37.01
- Forms (documents), see Answers under FORMS (DOCUMENTS)
- Interrogatories, see Answers under INTERROGATORIES
- Pleadings allowed, 7.01
- Requests for admission, see Answers under REQUESTS FOR ADMISSION
- Service by publication
 - Time for answering complaint, limitations, 4.042
- Time for serving
 - Twenty days after service of pleadings, 12.01

APPEARANCE

- Class actions
 - Appearance through counsel, 23.03
- Defined, 5.01
- Failure to appear
 - Actions referred to referees (court), effect, 53.03
 - Default judgment, generally, see DEFAULT JUDGMENT
 - Jury trials, right to, waiver, 38.02

ATTORNEY FEES

- Depositions
 - Party giving notice of
 - Failure to attend, 30.07, 37.04
 - Failure to serve subpoena on witness, 30.07
 - Requests, responses, and objections signed in violation of rule, 26.07
- Interrogatories
 - Failure to answer, 37.04
 - Failure to comply with court order compelling, 37.02
 - Failure to make discovery, 37.01
- Pleadings
 - Signed in violation of rule, Rule 11
- Pretrial conferences
 - Failure of party or attorney to attend or obey orders, 16.06
- Requests for production of documents or things
 - Failure to respond, 37.04
- Summary judgment
 - Affidavits made in bad faith or solely for purpose of delay, 56.07

ATTORNEY GENERAL

- Civil actions
 - Agent for service of process, 4.03
 - Constitutionality of acts of legislature, intervention, 24.04
- Notice received
 - Actions involving questions of constitutionality, 24.04

ATTORNEYS

- Depositions
 - Conduct during, 30.04
 - Copies of transcripts or recordings
 - Storage, requirements, 30.06
- Juries
 - Examination of jurors, see Examination of jurors under JURIES
- Notice given
 - Removal of judge, 63.03
- Notice received
 - Meeting of attorneys
 - Actions referred to referees (court), 53.04
- Pretrial conferences
 - Authority to enter into stipulation, 16.03
 - Final pretrial conference, attendance, requirement, 16.04
- Sanctions
 - Pretrial orders, failure to obey, 16.06
 - Scheduling conferences, failure to attend or obey orders, 16.06
- Scheduling conferences
 - Generally, 16.02
- Registration number
 - Pleadings, requirements, 11.01
- Service of process on
 - Method of filing, 5.02
 - Notice of filing
 - Court orders or entry of judgment, 77.04
- Signatures, requirements
 - Discovery requests, responses, and objections, 26.07
 - Pleadings, 11.01
- Subpoenas
 - Sanctions for abuse of process, 45.01
- Work product
 - Discovery, limitations, 26.02

BAILMENTS

- Bailee in possession
 - Money or personal property
 - Deposit with court, 67.02
 - Garnishment proceedings, application of rules, 67.02
 - Relief from liability, 67.02

BANKRUPTCY

- Discharge in bankruptcy
- Affirmative defenses, 8.03

BILLS OF REVIEW

- Abolished
- Relief from judgment or order, 60.02

BONDS (OFFICERS AND FIDUCIARIES)

- Court administrators
- Money deposited with court pending proceedings, requirements, 67.04
- Guardians ad litem, 17.02

BURDEN OF PROOF

- Juries
- Preliminary instructions regarding, 39.03

CHILDREN

- Parties to suits, 17.02
- Service of process on, 4.03

CITIES

- Service of process on, 4.03

CLASS ACTIONS

- Actions relating to unincorporated associations
- Maintaining as class actions, restrictions, 23.07
- Class actions maintainable
- Additional requirements to maintain class action, 23.02
- Determination by court, 23.03
- Prerequisites satisfied, requirement, 23.02
- Shareholder derivative actions, criteria, 23.06
- Subclasses treated as classes, 23.03
- Unincorporated associations, restrictions, 23.07
- Joinder of parties
- Exception, 19.04
- Judgments
- Contents, requirements, 23.03
- Members of class
- Notice received
- Proposed dismissal or compromise of action, 23.05, 23.06
- Requirements, generally, 23.03
- One or more may sue representing all, 23.01
- Orders, see Orders under DISTRICT COURT
- Prerequisites
- Claims or defenses common to class, 23.01
- Fair and adequate protection of class interests, 23.01
- Joinder of all members impracticable, 23.01
- Questions of law or fact common to class, 23.01
- Questions of law or fact common to class
- Predominate over questions affecting individual members, 23.02
- Prerequisite to class action, 23.01
- Shareholder derivative actions
- Complaints, contents, 23.06
- Generally, 23.06

COMPLAINTS

- Class actions
- Shareholder derivative actions, 23.06
- Form of, see Complaints under FORMS (DOCUMENTS)
- Pleadings allowed, 7.01
- Service by mail
- Inclusion with summons, requirement, 4.05
- Service by publication
- Time for serving complaint, limitations, 4.042
- Service with summons
- Exception, 3.02
- Generally, 3.02
- Verified complaints
- Temporary restraining orders, 65.01

COMPROMISE AND SETTLEMENT

- Class actions
- Actions relating to unincorporated associations, 23.07
- Requirements, generally, 23.05
- Shareholder derivative actions, 23.06

COMPROMISE AND SETTLEMENT (Cont'd)

- Offerors
- Nonacceptance
- Exception, Rule 68
- Not admissible generally
- Offer deemed withdrawn, Rule 68
- Payment of costs and disbursements by offeree, Rule 68
- Offers
- Acceptance
- Service requirements, Rule 68
- Time limit, Rule 68
- Contents, generally, Rule 68
- Irrevocable during ten-day period, Rule 68
- Subsequent offers, Rule 68
- Pretrial conferences
- Subjects for consideration, 16.03

CONTEMPTS

- Deposit of money or personal property with court pending proceedings
- Disobedience of court order, 67.03
- Discovery
- Failure to comply after court order compelling, 37.02
- Disobedience of court order
- Deposit of money or personal property with court pending proceedings, 67.03
- Judgments for specific acts or performance, Rule 70
- Subpoenas
- Witnesses
- Failure to appear, actions referred to referees (court), 53.04
- Failure to obey defined as, 45.07
- Summary judgment
- Affidavits made in bad faith, 56.07

CONVEYANCES

- Judgments for specific acts or performance
- Enforcement, generally, Rule 70

CORPORATIONS

- Service of process on, 4.03

COSTS AND DISBURSEMENTS (COURTS)

- Depositions
- Party giving notice of
- Failure to attend, 30.07, 37.04
- Failure to serve subpoena on witness, 30.07
- Discovery
- Failure to comply with court order compelling, 37.02
- Failure to make, 37.01
- Requests, responses, and objections signed in violation of rule, 26.07
- Enforcement of judgment for specific acts or performance, Rule 70
- Interpreters, compensation, 43.07
- Interrogatories
- Failure to answer, 37.04
- Pleadings
- Signed in violation of rule, 11.03
- Pretrial conferences
- Failure of party or attorney to attend or obey orders, 16.06
- Previously dismissed actions, 41.04
- Proceedings to determine
- Settlement offers, non-acceptance, effect, Rule 68
- Requests for production of documents or things
- Failure to respond, 37.04
- Settlement offers
- Payment by offeree, Rule 68
- Summary judgment
- Affidavits made in bad faith or solely for purpose of delay, 56.07
- Taxation of
- Affidavits, requirements, 54.04
- Objections to, procedure, 54.04
- Requirements, generally, 54.04

COUNTERCLAIMS

- Claims acquired or maturing after pleading
- Presented as counterclaim, when permitted, 13.05

COUNTERCLAIMS (Cont'd)

- Claims for relief
 - Defeat or diminution of recovery sought by opposing party, 13.03
 - Exceeding opposing claim, 13.03
 - Compulsory counterclaims
 - Exception, 13.01
 - Requirements, 13.01
 - Default judgment
 - Application of rules, 55.02
 - Defendants' counterclaim
 - Served before plaintiff's motion for voluntary dismissal of action, effect, 41.01
 - Dismissal of action, 41.03
 - Forms (documents) see Counterclaims under **FORMS (DOCUMENTS)**
 - Joinder of claims
 - Permitted, 18.01
 - Mistakenly designated as defenses
 - Treatment by court, 8.03
 - Omitted counterclaims
 - Presented as amendment, when permitted, 13.06
 - Parties to suits
 - Joinder of additional parties, 13.08
 - Permissive counterclaims
 - Generally, 13.02
 - Replies to
 - Pleadings allowed, 7.01
 - Time for serving, 12.01
 - Separate trials
 - Judgment, 13.09
 - State officers
 - Limitation of right to assert counterclaim against, 13.04
 - State of Minnesota
 - Limitation of right to assert counterclaim against, 13.04
 - Summary judgment
 - Generally, 56.01, 56.02
 - Third-party claims, see **THIRD-PARTY CLAIMS**
- COUNTIES**
- Service of process on, 4.03
- COURT ADMINISTRATORS**
- Agents
 - Sureties, duties, 65.03
 - Applications to
 - Judgment for delivery of possession
 - Writs of execution to enforce, Rule 70
 - Judgment for specific acts
 - Writs of attachment, Rule 70
 - Certificates and certification
 - Appeals to district court
 - Objections to taxation of costs and disbursements, 54.04
 - Costs and disbursements (courts)
 - Duties, generally, 54.04
 - Filing with
 - Consent and oath
 - Guardians ad litem, 17.02
 - Notice of acceptance of settlement offer, Rule 68
 - Notice to remove judge
 - Time limit, 63.03
 - Petitions
 - Depositions before action to perpetuate testimony, 27.01
 - Pleadings
 - Certificates of service, generally, 5.04
 - Facsimile transmissions, 5.05
 - Refusal to accept papers presented, restrictions, 5.04
 - Promissory notes, drafts, or bills of exchange
 - Default judgments, 55.01
 - Referees (court) reports, 53.05
 - Judgment roll
 - Entry of judgments in, 58.01
 - Judgments
 - Entry, duties, 58.01
 - Notice received
 - Motion for enforcement of liability of surety, 65.03
 - Offices
 - Inaccessibility due to weather or other conditions
 - Effect on computation of time for filing documents, 6.01

COURT ADMINISTRATORS (Cont'd)

- Official custodians
 - Money deposited with court pending proceedings
 - Bonds (officers and fiduciaries), requirements, 67.04
 - Duties, generally, 67.04
- Orders by
 - Generally, 77.03
 - Suspension, alteration, or rescission by court, 77.03
- Orders of reference of action to referees (court)
 - Duties, generally, 73.04
- Service of process by
 - Notice of filing
 - Court orders, 77.04
 - Entry of judgment, 77.04
 - Manner of service, 77.04
- Service of process on
 - Sureties, enforcement of liability, 65.03
- Subpoenas
 - Compelling attendance of witnesses, duties, 45.01
- Witnesses
 - Compelling attendance, duties, 45.01
 - Hearings, issuance, duties, 45.05
 - Trials, issuance, duties, 45.05

COURT OF APPEALS

- Approvals by
 - Correction of clerical mistakes or errors
 - Judgments, 60.01
 - Orders, 60.01
- Injunctions
 - Pending appeal, 62.05
- Orders
 - New trials after judgment notwithstanding the verdict, 50.02
 - Stay of proceedings to enforce judgment, 62.05

COURTS

- Orders
 - Protective orders, compelling discovery, 37.01

CROSS-CLAIMS

- Answers to
 - Pleadings allowed, 7.01
 - Time for serving, 12.01
- Claims against co-party
 - Permitted claims, 13.07
 - Subject matter requirements, 13.07
- Default judgment
 - Application of rules, 55.02
- Dismissal of action, 41.03
- Forms (documents), see Cross-claims under **FORMS (DOCUMENTS)**
- Joinder of additional parties, 13.08
- Joinder of claims, 18.01
- Separate trials
 - Judgment, 13.09
- Summary judgment
 - Generally, 56.01, 56.02
- Third-party claims, see Third-party claims under **THIRD-PARTY PRACTICE**

CROSS-EXAMINATION

- Depositions
 - Witnesses, generally, 30.03

DAMAGES

- Unliquidated damages
 - Pleadings, 8.01

DECLARATORY JUDGMENT

- Party seeking
 - Summary judgment, motion for, 56.01, 56.02
- When granted
 - Generally, Rule 57
 - Jury trial, right retained, Rule 57

DEEDS

- Delivery of
 - Judgment for specific acts or performance, enforcement, generally, Rule 70

DEFAULT JUDGMENT

- Application of rules, 55.02

DEFAULT JUDGMENT (Cont'd)

- Entry
 - Specific actions, 55.01
- Limitations
 - Generally, 54.03
- Relief other than recovery of money, 55.01
- Surety bonds
 - When required, 55.01

DEFENDANTS

- Appearance by
 - Quasi in rem jurisdiction, contesting, 4.04
- Death
 - Substitution of parties, 25.01
- Joinder of parties
 - Permissive joinder, 20.01
- Leaving state to defraud creditors
 - Service of process on, 4.04
- Substituted defendants
 - Interpleaders, Rule 22
- Summary judgment, see SUMMARY JUDGMENT
- Third-party practice, see THIRD-PARTY PRACTICE

DEFENSES

- Affirmative defenses
 - Accord and satisfaction, 8.03
 - Arbitration and award, 8.03
 - Assumption of risk, 8.03
 - Contributory negligence, 8.03
 - Discharge in bankruptcy, 8.03
 - Duress, 8.03
 - Estoppel, 8.03
 - Failure of consideration, 8.03
 - Fraud, 8.03
 - Illegality, 8.03
 - Injury by fellow servant, 8.03
 - Laches, 8.03
 - License, 8.03
 - Payment, 8.03
 - Release, 8.03
 - Res judicata, 8.03
 - Statute of frauds, 8.03
 - Statute of limitations, 8.03
 - Waiver, 8.03
- Assertion
 - By motion, see Defenses presented by motion under MOTIONS
- Responsive pleadings, requirements, 12.02
- Consolidation
 - When permitted, 12.07
- Mistakenly designated as counterclaims
 - Treatment by court, 8.03
- Preservation of defenses
 - Generally, 12.08
- Service by publication
 - No actual notification of action
 - Defense asserted after judgment, 4.043
 - Restitution to defendant after enforcement of judgment, 4.043
- Service of process
 - Time requirements, generally, 12.01
- Waiver of defenses
 - Generally, 12.08

DEFINITIONS

- Abuse of process
 - Subpoenas, 45.01
- Appearance
 - Pleadings, service of, 5.01
- Bias
 - Removal of judges, 63.02
- Contempt of court
 - Discovery, failure to comply with court order, 37.02
 - Subpoenas, failure to obey, 45.07
- Delivery
 - Pleadings, service of, 5.02
- Entry of judgment, 58.01
- Evasive or incomplete answer
 - Discovery, failure to make, 37.01
- Judgment, 54.01

DEFINITIONS (Cont'd)

- Judicial prejudice
 - Removal of judges, 63.03
- Legal holidays
 - Time, computation, 6.01
- Officer authorized to administer oaths
 - Depositions, 28.01
- DEPOSITIONS**
 - Before action to perpetuate testimony
 - Examination of persons, 27.01
 - Petitions
 - Contents, requirements, 27.01
 - Service of process, requirements, 27.01
 - Use of deposition, 27.01
 - Certificates of service
 - Filing requirements, exception, 5.04
 - Changes to
 - Requirements, generally, 30.05
 - Conduct of parties and attorneys during
 - Standard of conduct, requirements, 30.04
 - Copies
 - Who may obtain, 30.06
 - Costs
 - Payment, requirements, 30.02
 - District court orders, see Orders under DISTRICT COURT
 - Documents produced during examination
 - Inspection and copying, 30.06
 - Marking for identification, 30.06
 - Errors and irregularities
 - Effect, generally, 32.04
 - Evidence
 - Admissibility, objections to, 32.02
 - Generally, 32.01
 - Motions based on facts not appearing of record, 43.05
 - Rebuttal, 32.03
 - Examination of witnesses during
 - Bad faith, 30.04
 - Cross-examination, 30.03
 - Generally, 30.03
 - Motions to terminate or limit, 30.04
 - Oral examination
 - Errors and irregularities, objections, requirements; 32.04
 - Permission of court, when required, 30.01
 - When deposition may be taken, 30.01
 - Who may be deposed, 30.01
 - Written questions
 - Errors and irregularities
 - Objections to, requirements, 32.04
 - In lieu of oral examination, when permitted, 30.03
 - Requirements, 31.01
- Foreign countries
 - Letters of request, form, requirements, 28.01
 - Letters rogatory, see LETTERS ROGATORY
 - Persons before whom depositions may be taken, 28.02
- Medical experts
 - Limitations, 35.04
- Motions, see Depositions under MOTIONS
- Notice of taking
 - Errors and irregularities
 - Objections to, requirements, 32.04
 - Filing with court
 - Exception, 5.04
 - Petitions before action to perpetuate testimony, 27.01
 - Requirement, issuance of deposition subpoena, 5.04
- Oral examination
 - Contents, requirements, 30.02
 - Requests for production of documents, 30.02
 - Subpoenas duces tecum, 30.02
 - Subpoenas, nonparty organizations, 30.02
- Written questions
 - Persons already deposed, 31.01
 - Prisoners, 31.01
 - Requirements, generally, 31.01
- Partial depositions
 - Offering party, requirement to introduce other parts, 32.01
- Parties to suits
 - Associations
 - Designation of person to testify on behalf of, 30.02

DEPOSITIONS (Cont'd)

- Parties to suits (Cont'd)
 - Conduct during, 30.04
 - Copies, obtaining, 30.06
 - Government agencies
 - Designation of person to testify on behalf of, 30.02
 - Partnerships
 - Designation of person to testify on behalf of, 30.02
 - Party giving notice of taking deposition
 - Failure to attend, sanctions, 30.07
 - Failure to serve subpoena on witness, sanctions, 30.07
 - Party taking deposition
 - Receipt from officer, notice requirements, 30.06, 31.03
 - Public or private corporations
 - Designation of person to testify on behalf of, 30.02
 - Who may be deposed, generally, 30.01
 - Written questions
 - Cross questions, time for service and answer, 31.01
- Pending appeal to perpetuate testimony
 - Examination of witnesses, 27.02
 - Motion for, requirement, 27.02
 - Service of process, requirements, 27.02
- Persons before whom depositions may be taken
 - Affirmations, administration, duties, 30.03
 - Certificates and certification
 - Requirements, 30.06
 - Completion and return of deposition
 - Errors and irregularities, objection to, 32.04
 - Depositions by written questions
 - Duties, generally, 30.02, 31.02
 - Disqualification
 - For interest, 28.03
 - Objection to taking deposition because of, time for making, 32.04
 - Documents and things produced during examination, duties, 30.06
 - Duties, generally, 31.02
 - Foreign countries, 28.02
 - Oaths, administration, duties, 30.03
 - Objections made during examination, duties, 30.03
 - Stipulation with regard to, see Discovery under STIPULATION
 - Within the United States, 28.01
- Record of
 - Stenographic recordings, generally, 30.02
 - Transcripts, 30.03
 - Video depositions, 30.02
- Sanctions for noncompliance with rules
 - Parties to suits
 - Failure to attend deposition, 30.07
 - Failure to serve subpoena on witness, 30.07
- Subpoenas for taking, see Depositions under SUBPOENAS
- Suspension
 - Demand for, 30.04
- Telephone depositions
 - Interpretation of rules, 30.02
 - Permitted, 30.02
- Testimony, see Depositions under TESTIMONY
- Trials
 - Testimony, offers of, format, requirements, 32.03
- Waivers
 - Errors and irregularities, 32.04
- Witnesses, see Depositions under WITNESSES

DISCOVERY

- Conferences
 - Motions for
 - Contents, requirements, 26.06
 - Objections, 26.06
 - Pretrial conferences, combining with, 26.06
- Depositions, see DEPOSITIONS
- Failure to make
 - Evasive or incomplete answer
 - Defined as failure to answer, 37.01
 - Expenses, award of, 37.01
- Motions to compel
 - Appropriate court, requirements, 37.01
 - Contents, requirements, 37.01
 - Denial, protective orders, 37.01
 - Notice requirements, 37.01

DISCOVERY (Cont'd)

- Interrogatories, see INTERROGATORIES
- Limitations
 - Attorney work product, 26.02
 - Generally, 26.02
 - Privileged information, not discoverable, 26.02
- Methods permitted, 26.01
- Orders
 - Failure to comply with, sanctions, 37.02
- Procedure
 - Modification, Rule 29
 - Stipulations concerning, Rule 29
- Requests for admission, see REQUESTS FOR ADMISSION
- Requests for entry upon land, see REQUESTS FOR ENTRY UPON LAND
- Requests for production of documents or things, see REQUESTS FOR PRODUCTION OF DOCUMENTS OR THINGS
- Requests, responses, and objections
 - Signatures
 - Attorneys, requirements, 26.07
 - Omission, request, response, or objection stricken, 26.07
 - Parties not represented by attorney, requirements, 26.07
- Responses to
 - Amendment of responses, 26.05
 - Supplemental responses, requirements, 26.05
- Sanctions
 - Failure to comply with court order compelling discovery, 37.02
- Signatures
 - Discovery requests, responses, and objections, 26.07
- Scope
 - Experts
 - Facts or opinions held by, 26.02
 - Generally, 26.02
 - Insurance agreements, disclosure, requirements, 26.02
 - Relevancy, requirements, 26.02
 - Trial preparation materials, 26.02
- Sequence and timing
 - Generally, 26.04
- Who may obtain
 - Judgment creditors, Rule 69

DISMISSAL

- Actions previously dismissed
 - Payment of costs, 41.04
- Class actions
 - Actions against unincorporated associations, 23.07
 - Requirements, generally, 23.05
 - Shareholder derivative actions, 23.06
- Involuntary dismissal
 - Grounds for, 41.02
 - Interpretation of rules, 41.02
- Joinder of parties
 - Misjoinder of parties, not grounds for, Rule 21
 - Nonjoinder, dismissal of action for, 41.02
- Lack of jurisdiction
 - Dismissal of action for, effect, 41.02
 - Over subject matter
 - Grounds for, 12.08
- Receivers
 - Appointment, effect, Rule 66
- Stipulations
 - Procedure, 41.01
- Third-party claims, see THIRD-PARTY CLAIMS
- Voluntary dismissal
 - By plaintiff by stipulation, procedure, 41.01
 - Counterclaim by defendant, effect, 41.01
 - Without prejudice, 41.01

DISSOLUTION OF MARRIAGE

- Final judgment
 - Relief from, exception, 60.02
- Service by publication
 - Defense after judgment, exception, 4.043
 - Requirements, generally, 4.04

DISTRICT COURT

Actions referred to referees (court), see Reference of action to referees (court) under this topic

Always open

Interpretation of rules, 77.01

Appeals to

Costs and disbursements (courts)

Actions of court administrators, 54.04

Statutes relating to, not superseded by rules, 81.02

Applications to

Deposit of money or personal property by person in possession

Bond, court administrator as custodian, 67.04

Garnishment proceedings, requirements, 67.02

Generally, 67.02

Ex parte temporary restraining orders, 65.01

Intervention, 24.01, 24.02

Summary judgment

Refusal, 56.06

Temporary injunctions, 65.02

Appointments by

Interpreters, 43.07

Referees (court)

Compensation and salaries, fixing at time of, 53.01

How made, 53.01

Approvals by

Class actions

Dismissal or compromise, 23.05, 23.06

Deposit of money or personal property with court, 67.01

Stipulations

Discovery, procedure, modification, Rule 29

Surety bonds, default judgments, 55.01

Chambers

Proceedings conducted in, 77.02

Civil actions

Defect or error in proceedings

Harmless error, when treated as, Rule 61

Class actions, duties regarding

Generally, 23.02 to 23.07

Court administrators' orders

Suspension, alteration, or rescission, 77.03

Depositing with

Money or personal property, 67.01

Filing with, see Filing with under COURT

ADMINISTRATORS

Findings

Class actions

Maintainable actions, 23.02

Findings of fact

Actions tried by court or with advisory jury

Duties, generally, 52.01

Sufficiency of evidence to support, questions about, 52.02

Amendment

Time limit, 52.02

Credibility of witnesses, regard given to court's judgment, 52.01

How stated, 52.01

Interlocutory injunctions

Duties, generally, 52.01

Setting aside

Standard, clearly erroneous, 52.01

Hearings, see HEARINGS

Judges, see DISTRICT COURT JUDGES

Judgments

Relief from

Independent action, 60.02

Procedure, generally, 60.02

Juries, duties regarding, see JURIES

Jurisdiction

Extension or limitation of

Prohibited, interpretation of rules, Rule 82

Lack of

Dismissal of action for, effect, 41.02

Open court

Trials on merits, conduct in, requirements, 77.02

Orders

Class actions

Maintainable actions, 23.02

Orders of conduct, 23.04

DISTRICT COURT (Cont'd)

Orders (Cont'd)

Declaratory judgment

Advancement on court calendar, Rule 57

Depositions

Before action to perpetuate testimony, 27.01

Pending appeal, 27.02

Sanctions, party giving notice of taking, 30.07

Termination or limitation of examination, 30.04

Testimony, recorded by telephone or other electronic means, 30.02

Discovery conferences, 26.06

Dismissal of actions

Involuntary dismissal, 41.02

Previously dismissed actions, payment of costs, 41.04

Voluntary dismissal, 41.01

Errors or defects in

Harmless error, when treated as, Rule 61

Formal exceptions, unnecessary, Rule 46

Interpleaders, Rule 22

Interrogatories

Answers to, deferral, 33.02

Judgment notwithstanding the verdict

Motion for new trial after, 50.02

Judgments

Compelling obedience

Persons not parties to action, Rule 71

Specific performance, Rule 70

Entry of, 58.01

Stay of entry, 58.02

Medical examinations

Contents, requirements, 35.01

Deposition of medical experts, 35.04

Report of findings, 35.02

Money or personal property to be held by court pending proceedings

Acceptance of deposit by person in possession, 67.02

Deposit in financial institution, 67.04

Seizure, 67.03

New trials

Initiative of court, 59.05

Objections to

Absence, no prejudice, Rule 46

Making known to court, Rule 46

Minutes of, requirements, Rule 46

Parties to suits

Joinder of parties, generally, 19.01

Substitution of parties, 25.01 to 25.04

Pleadings

Amendments to, 15.01

Facsimile transmission of, failure to comply with rule, 5.05

More definite statement, 12.05

Multiple defendants, service between, 5.03

Paragraphing and separate statement, 12.05

Reply to answer, 7.01

Service of, requirements, generally, 5.01, 5.02

Striking, 12.06

Supplemental pleadings, 15.04

Pretrial conferences

Combining with discovery conferences, 26.06

Pretrial orders, 16.05

Scheduling orders, 16.02

Protective orders

Discovery

Compelling discovery, 37.01

Failure to comply, contempt of court, 37.02

Generally, 26.03

Third-party practice, 14.03

Reference of action to referee (court)

Powers and duties of referees, scope and limitations, 53.03

Statement of necessity, 53.01

Relief from

Correction of clerical mistakes or errors, 60.01

Grounds, 60.02

Marriage dissolution, exception, 60.02

Motions for, effect on finality, 60.02

DISTRICT COURT (Cont'd)**Orders (Cont'd)**

Representations to

Signing pleadings, effect, 11.02

Requests for admission

Failure to admit, sanctions, 37.03

Sufficiency of answers or objections, 36.01

Withdrawal or amendment of admissions, 36.02

Separate trials

Counterclaims, 13.09, 42.02

Cross-claims, 13.09, 42.02

Separate issues, 42.02

Third-party claims, 42.02

Subpoenas

Requests for production of documents or things, 45.04

Witnesses, expenses of nonparties, 45.06

Summary judgment

Continuances to permit discovery, 56.06

Facts not in controversy, 56.04

Trials

Advisory juries, 39.02

Consolidation, common question of law or fact, 42.01

Petitions to

Deposit of money or personal property by person in possession

Contents, requirements, 67.02

Reference of action to referees (court)

Nonjury actions

Reports, adoption, modification, rejection, or recommital, 53.05

DISTRICT COURT JUDGES**Calendar**

Setting cases on for trial, duties, Rule 40

Chief judges

Assignment of judge to case after removal of judge

Duties, generally, 63.03, 63.04

Death

Post-trial duties, effect, 63.01

Disability

Post-trial duties, effect, 63.01

Disqualification

Bias, defined, 63.02

By party, requirements, see Removal of judge under this topic

Interest in case or bias, 63.02

Illness

Post-trial duties, effect, 63.01

Interpretation of rules

Prejudice, 63.03

Name of judge

Pleadings, inclusion in caption, requirements, 10.01

Notice given

Disqualification of judge for interest or bias, 63.02

Post-trial duties

Death, illness, or disability

Performance by another judge, 63.01

Removal of judges

Bias, interpreted as affirmative showing of prejudice, 63.03

Chief judge, duties, 63.03

Disqualification by party

Matter of right, 63.03

Substitute judge, affirmative showing of prejudice required, 63.03

Notice requirements, 63.03

Prejudice

Substitute judge, affirmative showing required, 63.03

Restrictions, 63.03

DOCUMENTS**Delivery of documents**

Judgment for specific acts or performance, enforcement, generally, Rule 70

DOCUMENTS OF TITLE**Delivery of documents**

Judgment for specific acts or performance, enforcement, generally, Rule 70

DURESS**Defenses**

Affirmative defenses, 8.03

ESTOPPEL**Defenses**

Affirmative defenses, 8.03

EVIDENCE**Admissibility**

Non-acceptance of settlement offer, limitations, Rule 68

Official records

Domestic records, 44.01

Foreign records, 44.01

Lack of record, written statements regarding, 44.02

Method of proof, 44.03

Temporary injunction

Evidence received at hearing, 65.02

Transcripts

Manner of proof at trial, Rule 80

Admitted in error

Harmless error, when treated as, Rule 61

Depositions, see Evidence under DEPOSITIONS**Excluded evidence**

Harmless error, when treated as, Rule 61

Form

Generally, 43.01

Motions based on facts not appearing of record, 43.05

Interpretation of rules**Temporary injunctions**

Hearings, preservation of right of jury trial, 65.02

Motions

Based on facts not in record, affidavits, form of evidence, 43.05

Newly discovered evidence

New trial, grounds, 59.01

Relief from judgment or order, grounds, 60.02

Official records**Domestic records**

Authentication, requirements, 44.01

Foreign records

Authentication, requirements, 44.01

Lack of record

Written statements regarding, 44.02

Method of proof, 44.03

Opinion evidence

Juries, preliminary instructions regarding, 39.03

Preponderance of

Juries, preliminary instructions regarding, 39.03

Rebuttable evidence

Transcripts, Rule 80

Sufficiency to support findings

Questions concerning, raising, when allowed, 52.02

EXECUTIONS (CREDITORS REMEDIES)**Judgment for payment of money**

Process to enforce, Rule 69

EXPERTS**Disclosure**

Certificates of service, filing, exception, 5.04

Expert opinions

Discovery, 26.02

Fees

Payment, discovery, trial preparation, 26.02

Reports

Certificates of service, filing, exception, 5.04

EXPRESS COMPANIES**Service of process on, 4.03****FAX MACHINES****Pleadings**

Filing with court administrator, 5.05

FINAL JUDGMENT**Costs and disbursements (courts)**

Omission, effect, 58.01

Relief from

Correction of clerical mistakes or errors, when permitted, 60.01

Grounds, 60.02

FINAL JUDGMENT (Cont'd)

- Relief from (Cont'd)
 - Marriage dissolution, exception, 60.02
 - Motions for, effect on finality, 60.02
 - Procedure for obtaining, limitations, 60.02

FOREIGN COUNTRIES

- Agreements
 - Service of process, 4.04
- Service of process in
 - Generally, 4.04

FORMS (DOCUMENTS)

- Answers
 - Money had and received
 - Counterclaim for interpleader, Form 16
 - Presentation of defenses under Rule 12.02, Form 15
- Appendix of forms
 - Interpretation of rules, Rule 84
 - Purpose, interpretation of rules, Rule 84
- Complaints
 - Conversion, Form 10
 - Conveyances
 - Specific performance to convey land, Form 11
 - Declaratory judgment and interpleader, Form 12
 - For goods sold and delivered, Form 4
 - For money
 - Had and received, Form 7
 - Lent, Form 5
 - Paid by mistake, Form 6
 - Interpleader and declaratory judgment, Form 12
 - Negligence
 - General form, Form 8
 - Plaintiff unable to determine responsibility, Form 9
 - Willful or reckless behavior, Form 9
 - On an account, Form 3
 - Promissory note, Form 2
 - Specific performance
 - Conveyance of land, Form 11
 - Third-party defendant, Form 17
- Counterclaims, Form 15
- Cross-claims, Form 15
- Introductory statement, Appendix of Forms
- Motions
 - Intervention as defendant, Form 18
 - Notice of motion, Form 14, Form 18
 - To dismiss
 - Failure to state a claim upon which relief can be granted, Form 14
 - Lack of jurisdiction, Form 14
 - Lack of service of process, Form 14
 - To quash summons, Form 14
- Notices
 - Acknowledgment of service by mail, Form 22
 - Motions, Form 14, Form 18
- Parties to suits
 - Allegation of reason for omitting party, Form 21
- Request for admission, Form 20
- Request for production of documents, Form 19
- Request for production of things, Form 19
- Subject matter index for civil cases, Form 23
- Summons
 - General form, Form 1
 - Receipt of
 - Notice and acknowledgment of service by mail, Form 22
 - Third-party defendant, Form 17

FORUM NON CONVENIENS

- Dismissal of action for, effect, 41.02

FRAUD

- Defenses
 - Affirmative defenses, 8.03
- New trial
 - Grounds, 59.01
- Pleadings
 - Statements regarding, requirements, 9.02
- Relief from judgment or order
 - Grounds, 60.02

FRAUDULENT CONVEYANCES

- Actions to set aside
 - Joinder of remedies, 18.02

GOOD FAITH

- Summary judgment
 - Facts in controversy, requirement, 56.04

GUARDIANS AD LITEM

- Appointment
 - Applications for
 - Contents, requirements, 17.02
 - Hearings, requirements, 17.02
 - Notice requirements, 17.02
 - Persons given priority, 17.02
 - Bonds (officers and fiduciaries)
 - Requirements, 17.02
 - Qualifications, 17.02
 - Residency, requirement, 17.02
- HEARINGS**
- Ex parte hearings
 - Where conducted, restrictions, 77.02
 - Guardians ad litem
 - Appointment, 17.02
 - Preliminary hearings
 - Motions
 - Defense motions, 12.04
 - For judgment on the pleadings, 12.04
 - Where conducted, 77.02

HOLIDAYS

- Legal holidays
 - Defined, 6.01

INJUNCTIONS

- Ex parte temporary restraining orders
 - Applicants
 - Security for costs and damages, requirement, 65.03
 - Basis for granting
 - Affidavits, 65.01
 - Verified complaints, 65.01
 - Notice
 - When not required, 65.01
- Injunctions, generally
 - Form, 65.04
 - Scope, 65.04
- Interlocutory injunctions
 - Findings of fact, amendment, 52.01
 - Scope, 65.04
- Restraining orders, generally
 - Form, 65.04
 - Scope, 65.04
- Stay of proceedings to enforce judgment
 - Pending appeal, 62.02
- Temporary injunctions
 - Hearings
 - Evidence, admissibility, 65.02
 - Trial on merits, when ordered, 65.02
 - Interpretation of rules
 - Preservation of right of jury trial, 65.02
 - Motions, see Temporary injunctions under MOTIONS
 - Notice requirements, 65.02

INTERLOCUTORY PROCEEDINGS

- Depositions
 - Admissibility, objections to, 32.02
 - Purposes for which depositions may be used, 32.01
- Injunctions
 - Findings of fact, amendment, 52.01
- Summary judgment
 - Rendering on issue of liability, 56.03

INTERPLEADERS

- Persons required to interplead
 - Defendants, obtaining through cross-claims or counterclaims, Rule 22
 - Generally, Rule 22
 - Objections to, grounds disallowed, Rule 22

INTERPRETATION OF RULES

- Appearance
 - Quasi in rem jurisdiction, 4.04

INTERPRETATION OF RULES (Cont'd)

- Calendar
 - Placing action on, repealed, 38.03
- Counterclaims
 - State of Minnesota
 - Limitation of right to assert against, 13.04
- Depositions
 - Subpoenas
 - Notice of taking, authority for issuance of subpoena, 45.04
 - Taken by telephone or other electronic means, 30.02
- Discovery
 - Evasive or incomplete answers or response
 - Failure to disclose, answer, or respond, 37.01
 - Requests, responses, and objections
 - Signatures
 - Certification of information contained in request, response, or objection, 26.07
- Dismissal of actions
 - Adjudication on merits, interpreted as
 - Exceptions, 41.02
 - Generally, 41.02
- District court
 - Deemed always open, 77.01
 - Jurisdiction, extension or limitation of by rules, Rule 82
- District court judges
 - Judicial prejudice, bias interpreted as, 63.03
- Evidence
 - Excluded evidence
 - Harmless error, Rule 61
 - Temporary injunction hearings
 - Jury trial, right to, preservation, 65.02
- Forms (documents)
 - Appendix of forms, purpose, Rule 84
- Generally, Rule 1
- Interpleaders, Rule 22
- Judgments
 - Enforcement for or against persons not parties to action, Rule 71
 - Specific performance
 - Act performed by another after failure of party to do so, effect, Rule 70
 - Stay of entry
 - No extension of time to file motion for new trial, 59.06
- Judicial prejudice
 - Bias interpreted as, removal of judges, 63.03
- Jury trials
 - Waiver, 38.02
- Pleadings
 - Substantial justice, requirement, 8.06
- Referees (court)
 - Appointment, 53.02
- Subpoenas
 - Authority for issuance of
 - Depositions, notice of taking, proof of service of, 45.04
- Summary judgment
 - Facts not in controversy, deemed established, 56.04

INTERPRETERS

- Appointment, 43.07
- Compensation
 - Generally, 43.07

INTERROGATORIES

- Answers to
 - Business records
 - Option to produce, 33.03
 - Specifications, 33.03
 - Deferral, 33.02
 - Failure to answer, sanctions, 37.01 to 37.04
 - Restatement preceding, requirement, 33.01
 - Service, time limit
 - Exception, 33.01
 - Generally, 33.01
 - Signatures, requirements, 33.01
- Certificates of service
 - Filing requirements, exception, 5.04
- Juries, see Interrogatories under JURIES
- Number
 - Computation, 33.01

INTERROGATORIES (Cont'd)

- Number (Cont'd)
 - Limitation
 - Exception, 33.01
 - Generally, 33.01
- Objections to
 - Contents, requirements, 33.01
 - Grounds for, 33.02
 - Notice of hearing on, 33.01
- Parties to suits
 - Parties submitting
 - Motions, objections or failure to answer, 33.01
 - Party upon whom interrogatories are served
 - Business records, answers derived from inspection of, option to produce, 33.03
 - When interrogatories may be served, 33.01
 - Who may serve, 33.01
- Restatement of interrogatory
 - Prior to answer, requirement, 33.01
- Scope
 - Generally, 33.02

INTERVENORS

- Attorney general
 - Constitutionality of acts of legislature, 24.04
- Intervention of right
 - Application, requirements, 24.01
 - Procedure, 24.03
- Notice of intervention
 - Requirements, 24.03
 - Waiver, 24.03
- Permissive intervention
 - Application, requirements, 24.02
 - State agencies, 24.02
- Who may intervene
 - Intervention of right, 24.01
 - Permissive intervention, 24.02

JOINDER OF PARTIES

- Joinder not feasible
 - Determination of disposition of action by court, criteria, 19.02
- Misjoinder of parties
 - Dismissal of action, not grounds for, Rule 21
- Nonjoinder of parties
 - Dismissal of action for, effect, 41.02
 - Statements in pleadings regarding, 19.03
 - When parties may be dropped from or added to action, Rule 21
- Permissive joinder
 - Defendants, 20.01
 - Plaintiffs, 20.01
- Persons to be joined
 - Class actions, exceptions, 19.04
 - Generally, 19.01
 - Plaintiffs, persons refusing to be joined as, 19.01
- Separate trials, reasons for, 20.02

JUDGMENTS

- Class actions
 - Contents, requirements, 23.03
- Costs and disbursements (courts)
 - Insertion in, 54.04
- Counterclaims
 - Separate trials, separate judgments, 13.09
- Cross-claims
 - Separate trials, separate judgments, 13.09
- Declaratory judgment, see DECLARATORY JUDGMENT
- Default judgment, see DEFAULT JUDGMENT
- Enforcement
 - Payment of money, see EXECUTIONS (CREDITORS REMEDIES)
- Persons not parties to action, Rule 71
- Process to enforce
 - Generally, Rule 69
 - Stay of proceedings to enforce, see Judgments under STAY OF PROCEEDINGS
- Specific acts or performance, see Specific acts or performance under this topic

JUDGMENTS (Cont'd)

Entry of

Court administrator, duties, see Judgments under COURT ADMINISTRATORS

Defined, 58.01

Delay for taxation of costs, not permitted, 58.01

Effective date, 58.01

Stay of entry, see Stay of entry under this topic

Execution of, see Enforcement under this topic

Final determination of rights of parties in an action

Judgment defined as, 54.01

Final judgment, see FINAL JUDGMENT

Form, 54.01

Multiple claims for relief

Judgment as to one or more, but fewer than all, effect, 54.02

Multiple parties

Judgment as to one or more, but fewer than all, effect, 54.02

Notwithstanding the verdict, motions for, see Judgment notwithstanding the verdict under MOTIONS

Relief from, see Relief from under FINAL JUDGMENT

Relief granted by

Type and amount, prevailing party, 54.03

Specific acts or performance

Enforcement, generally, Rule 70

Personal property

Title to, divestiture, effect, Rule 70

Real property

Title to, divestiture, effect, Rule 70

Stay of entry

Conditions imposed, 58.02

Interpretation of rules, 59.06

Time limit

Generally, 58.02

Summary judgment, see SUMMARY JUDGMENT

JUDICIAL REVIEW

Findings of fact

Requests for, not necessary, 52.01

JURIES

Advisory juries

When used, 39.02

Examination of jurors

By attorneys, 47.01

By court, 47.01

By parties, 47.01

Excusing of jurors from duty

When permitted, 47.04

Instructions

Effect of jury's answers on outcome of case

Comparative fault questions, 49.01

Generally, 49.01

Errors, objections to

Fundamental law or controlling principle, Rule 51

Time for making, generally, Rule 51

General verdicts, 49.02

Interrogatories, 49.02

Omitted issues, effect, 49.01

Preliminary instructions, see Preliminary instructions under this topic

Requirements, generally, 49.01

Special verdicts, see SPECIAL VERDICTS

Written instructions

Copy of, when allowed in jury room, Rule 51

Written requests for

Objections, Rule 51

Proposed action by court, Rule 51

When filed with court, Rule 51

Interrogatories

Answers to

Consistent with each other but one or more inconsistent with general verdict, 49.02

Consistent with general verdict, 49.02

Inconsistent with each other and one or more inconsistent with general verdict, 49.02

Instructions regarding, 49.02

Submission by court, 49.02

Jury trials, see JURY TRIALS

JURIES (Cont'd)

Number of jurors

Requirements, Rule 48

Preliminary instructions

Repetition at time of final instructions, Rule 51

Scope of instructions, 39.03

Separation after retirement

When permitted, 47.03

JURISDICTION

Extension or limitation of by rules of civil procedure

Prohibited, interpretation of rules, Rule 82

Lack of jurisdiction

Dismissal of action for, effect, 41.02

JURY TRIALS

Advisory juries

When used, 39.02

Calendar

Setting cases on for trial, Rule 40

Evidence, see Jury trials under EVIDENCE

Opening statements

Generally, 39.04

Waiver, 39.04

Right preserved

Directed verdicts, denial of motion for, effect, 50.01

Generally, 38.01

Temporary injunction hearings, 65.02

Waivers

Contracts, actions on, 38.02

Failure to appear at trial, 38.02

Interpretation of rules, 38.02

Oral consent in open court, 38.02

Written consent of parties, 38.02

LACHES

Defenses

Affirmative defenses, 8.03

LAWSUITS

Commencement

Forms of action

Civil action designated as only form of action, Rule 2

Service of summons, 3.01

Real party in interest

Prosecution in name of, requirement, 17.01

Testimony

Actions to perpetuate, 27.03

Venue

District courts, Rule 82

LETTERS ROGATORY

Address, form

Depositions taken in foreign countries, 28.02

Evidence obtained in response to

Exclusion, limitations

Depositions taken in foreign countries, 28.02

Issuance

Depositions taken in foreign countries, 28.02

LOCAL GOVERNMENTS

Service of process on, 4.03

MENTALLY ILL PERSONS

Committed persons

Parties to suits, 17.02

Service of process on, 4.03

MENTALLY RETARDED PERSONS

Residents, regional treatment centers

Parties to suits, 17.02

Service of process on, 4.03

MONEY

Adverse claims to

Person in possession

Deposit with court pending proceedings, 67.02

Garnishment proceedings, application of rules, 67.02

Civil actions regarding

Deposit with court pending proceedings, 67.01, 67.04

Seizure by court, 67.03

MONEY (Cont'd)

Judgments for payment of
Enforcement, see EXECUTIONS (CREDITORS
REMEDIES)

MOTIONS

Actions referred to referees (court)

Nonjury actions

Motion for action on report or objection to findings,
53.05

Affidavits supporting or opposing, see AFFIDAVITS

Based on facts not appearing of record

Hearings on, form of evidence, 43.05

Contents

Requirements, generally, 7.02

Defenses presented by motion

Consolidation

Omission of available defenses, effect, 12.07, 12.08

When permitted, 12.07

Failure to join a party, 12.02

Failure to state a claim upon which relief can be granted

Generally, 12.02

Treated as motion for summary judgment, 12.02

When permitted, 12.08

Insufficiency of service of process

When permitted, 12.02

When waived, 12.08

Joinder with other defenses

No waiver, 12.02

Lack of jurisdiction

Dismissal of action, 12.08

Over person, 12.02

Over subject matter, 12.02

Made before pleading, 12.02

Pretrial hearings regarding, 12.04

Rulings on

Findings of fact, unnecessary, 52.01

Depositions

Hearings

Admissibility, objections to, 32.02

Purposes for which depositions may be used, 32.01

Pending appeal to perpetuate testimony

Contents, requirements, 27.02

Suppression, time for making, 32.04

Termination or limitation of examination, 30.04

Testimony, recorded by telephone or other electronic
means, 30.02

Directed verdicts

Denial

Grounds for, 50.01

Jury trial, no waiver of right to, 50.01

Right to offer evidence as if motion had not been made,
50.01

Grounds for, statement of, requirement, 50.01

Made at close of all evidence, 50.01

Made at close of evidence offered by opponent, 50.01

Discovery

Conferences, 26.06

Motions to compel, 37.01

Protective orders, generally, 26.03

Dismissal of action

Rulings on

Findings of fact, requirement, 52.01

When made by defendant, 41.02

Ex parte temporary restraining orders

Dissolution or modification by adverse party, 65.01

Findings of fact, amendment

Generally, 52.02

Stay of proceedings to enforce judgment pending, 62.01

Form of pleadings

Application of rule, 7.02

Signatures, 7.02, 11.01

Technical forms not required, 8.05

For more definite statement

Contents, 12.05

Noncompliance with order granting motion, sanctions,
12.05

When permitted, 12.05

MOTIONS (Cont'd)

Forms (documents), see Motions under FORMS
(DOCUMENTS)

For paragraphing and separate statement

Contents, 12.05

Noncompliance with order granting motion, sanctions,
12.05

When permitted, 12.05

Hearings

Judgment notwithstanding the verdict, 50.02

Telephone conferences, 7.02

Interrogatories, 33.01

Interventions

Requirements, generally, 24.02

Judgment notwithstanding the verdict

Denial

Prevailing party, new trial, 50.02

Granting

Grounds, 50.02

Hearings, requirements, 50.02

Motion in the alternative for new trial, inclusion, 50.02

Stay of proceedings to enforce judgment pending, 62.01

Time for making, 50.02

Judgment on the pleadings

Certain defenses, when permitted, 12.08

Either party may move for, 12.03

Preliminary hearing, 12.04

Rulings on

Findings of fact, unnecessary, 52.01

Treated as summary judgment motion, 12.03

Motion to strike

Insufficient defense, 12.06

Pleadings not in compliance with Rule 11, 12.06

Redundant, immaterial, impertinent, or scandalous matters,
12.06

When permitted, 12.06

New trials

Basis

Affidavits, when allowed, 59.02

Court record, 59.02

Contents

Amendment of findings of fact, motion included with,
52.02

Denial, 50.02

Granting, 50.02

Hearing, time limits, 59.03

Service of, time limits, 50.02, 59.03

Stay of proceedings to enforce judgment pending, 62.01

Notice of motions

Forms (documents), see Notices under FORMS
(DOCUMENTS)

Oral arguments

Written submission for decision without, 7.02

Parties to suits

Substitution of parties, 25.01 to 25.04

Post-trial motions

Findings of fact, amendment, see Findings of fact,
amendment under this topic

Judgment notwithstanding the verdict, see Judgment
notwithstanding the verdict under this topic

New trials, see New trials under this topic

Relief from judgment or order, see Relief from judgment
or order under this topic

Relief from judgment or order

Clerical mistakes or errors, 60.02

Generally, 60.02

Stay of proceedings to enforce judgment pending, 62.01

Requests for admission

Amendment of, 36.02

Sufficiency of answers or objections, 36.01

Requests for entry upon land

Failure of party to respond, 34.02

Objections to, 34.02

Requests for production of documents or things

Failure of party to respond, 34.02

Objections to, 34.02

MOTIONS (Cont'd)

- Service of process
 - Affidavits opposing
 - One day before hearing, 6.04
 - Depositions
 - Pending appeal to perpetuate testimony, 27.02
 - Discovery motions, 26.06
 - Ex parte motions
 - Exception, 6.04
 - Requirements, 6.04
 - Motion and notice of hearing
 - Five days before hearing, 6.04
 - Requirements, generally, 5.01
 - Responsive pleadings
 - Ten days after service of notice of court's action, 12.01
- Subpoenas
 - To deny, grounds, 45.02
 - To quash or modify, grounds, 45.02
- Summary judgment
 - Affidavits in support of or opposing, see Summary judgment under **AFFIDAVITS**
 - For defendant, 56.02
 - For plaintiff, 56.01
 - Judgment on the pleadings treated as, 12.03
 - Notice requirements, 56.03
 - Rulings on
 - Findings of fact unnecessary, 52.01
 - Service of process, requirements, 56.03
- Temporary injunctions
 - Ex parte temporary restraining order granted
 - Hearing, precedence, 65.01
- Trials
 - Advisory juries, 39.02
 - New trials, see New trials under this topic
- Writing
 - Ex parte motions, exception, 7.02
 - Requirements, generally, 7.02

NEGLIGENCE

- Comparative fault
 - Jury instructions regarding, 49.01
- Contributory negligence
 - Affirmative defenses, 8.03

NEW TRIALS

- Affidavits in support of
 - Contents, 59.02
 - Service of process, time limits, 59.04
- Generally, 59.01
- Grounds
 - Accident or surprise, 59.01
 - Damages, given under passion or prejudice, 59.01
 - Death, illness, or disability of presiding judge, 63.01
 - Errors of law at trial, 59.01
 - Evidence, newly discovered, 59.01
 - Fair trial, moving party deprived of, 59.01
 - Harmless error, exception, Rule 61
 - Judgment notwithstanding the verdict, 50.02
- Juries
 - Answers to interrogatories, relation to general verdict, 50.02
 - Instructions, error of fundamental law or controlling principle, Rule 51
 - Misconduct, 59.01
 - Verdict not justified by evidence or contrary to law, 59.01
- Initiative of court
 - Grounds, specification, requirement, 59.05
 - Notice requirements, 59.05
- Motions for, see New trials under **MOTIONS**

OATHS

- Depositions
 - Officers before whom depositions are taken, administering, duties, 30.03
- Witnesses
 - Affirmations in lieu of, 43.04

ORDINANCES

- Pleadings
 - Statements regarding, requirements, 9.04

PARTIES TO SUITS

- Admissions, see **REQUESTS FOR ADMISSION**
- Appearance
 - Defined, 5.01
 - Failure to appear
 - Actions referred to referees (court), 53.04
 - Default judgment, see **DEFAULT JUDGMENT**
 - Jury trials, waiver of right to, 38.02
- Children
 - Representation, generally, 17.02
 - Service of process on, 4.02
- Cross-claims between, see **CROSS-CLAIMS**
- Depositions
 - Generally, see **DEPOSITIONS**
 - Stipulations regarding, see **STIPULATIONS**
- Discovery
 - Supplemental responses to, see **DISCOVERY**
- Guardians ad litem, see **GUARDIANS AD LITEM**
- Intervention
 - Written consent of all parties, notice requirements waived, 24.03
- Joinder of parties, see **JOINDER OF PARTIES**
- Juries
 - Examination of jurors, see Examination of jurors under **JURIES**
- Jury trials
 - Waiver, 38.02
- Medical examinations
 - Notice received, 35.01
 - Report of findings
 - Failure to deliver, sanctions, 35.02
 - Obtaining, adverse party, waiver of privilege, 35.02
 - When permitted, 35.01
- Mentally ill persons
 - Representation, generally, 17.02
 - Service of process on, 4.02
- Mentally retarded persons
 - Representation, generally, 17.02
 - Service of process on, 4.02
- Notice given
 - Deposit of money or personal property with court, 67.01
 - Removal of judge
 - Service on opposing party, time limit, 63.03
 - Settlement offers, Rule 68
- Notice received
 - Application for default judgment, 55.01
 - Meeting of parties
 - Actions referred to referees (court), 53.04
- Payments by
 - Fees
 - Referees (court), 53.01
- Persons not parties to action
 - Judgments, enforcement, Rule 71
 - Liability
 - Process for enforcement of judgments, Rule 71
- Pleadings, see Parties to suits under **PLEADINGS**
- Prisoners
 - Representation, generally, 17.02
 - Service of process on, 4.03
- Real party in interest
 - Civil actions prosecuted in name of, 17.01
 - Joinder, 17.01
 - Ratification, 17.01
 - Substitution, 17.01
- Requests by
 - Actions referred to referees (court)
 - Speed proceedings or make report, 53.04
- Service of process on
 - Notice of filing
 - Court orders or entry of judgment, 77.04
 - Parties in default, 5.01
 - Requirements, generally, 5.01
- Settlement offers
 - Acceptance of by adverse party, time limit, Rule 68
- Signatures
 - Discovery requests, responses, and objections, 26.07
 - Pleadings, requirements, 11.01

PARTIES TO SUITS (Cont'd)

Specific performance

Failure to comply with judgment

Act ordered done by another, effect, Rule 70

Substitution of parties

Death

Effect, generally, 25.01

Public officers, 25.04

Substitution by court, when permitted, 25.01

Depositions previously taken, right to use not affected, 32.01

Incompetency

Effect, 25.02

Public officers

Death, 25.04

Separation from office, 25.04

Real party in interest, 17.01

Transfer of interest

Effect, 25.03

Summary judgment, see SUMMARY JUDGMENT

Third-party claims, see THIRD-PARTY CLAIMS

Third-party practice, see THIRD-PARTY PRACTICE

Trials, see TRIALS

Unrepresented parties

Final pretrial conferences, attendance, requirement, 16.04

Notice received

Scheduling conferences, pretrial conferences, 16.02

Sanctions

Pretrial orders, failure to obey, 16.06

Scheduling conferences, failure to attend or obey orders, 16.06

PARTNERSHIPS

Service of process on, 4.03

PEACE OFFICERS

Service of process

Proof of service, 4.06

PERSONAL PROPERTY

Adverse claims to

Person in possession

Deposit with court pending proceedings, 67.02

Garnishment proceedings, application of rules, 67.02

Civil actions

Depositing with court, 67.01

Seizure by court, 67.03

Title

Judgment for divestiture, enforcement, Rule 70

PERSONAL SERVICE

Associations

Delivery to managing agent, 4.03

Service by consent pursuant to statute, 4.03

Cities

Delivery to chief executive officer, 4.03

Corporations

Delivery to officer or agent, 4.03

Nonresident corporations

Actions affecting real property, delivery to agent, 4.044

Counties

Delivery to chair of county board or county auditor, 4.03

Express companies

Delivery to agent, 4.03

Individuals

Children, 4.03

Delivery to individual, 4.03

Leaving a copy at individual's residence, restrictions, 4.03

Mentally ill persons, 4.03

Mentally retarded persons, 4.03

Nonresident individuals

Real property, actions affecting, delivery to agent, 4.044

Prisoners, 4.03

Service by consent pursuant to statute, 4.03, 4.044

Local governments

Delivery to member of governing board, 4.03

Partnerships

Delivery to managing agent, 4.03

Service by consent pursuant to statute, 4.03

Personal service out of state, see SERVICE BY

PUBLICATION**PERSONAL SERVICE (Cont'd)**

Proof of service

Affidavit of person making service, contents, requirements, 4.06

Public corporations

Generally, 4.03

Manner of service when service cannot be made as provided by rule, 4.03

School districts

Delivery to school board member, 4.03

State of Minnesota

Delivery to attorney general, 4.03

Towns

Delivery to chair of town board or town clerk, 4.03

Transportation companies

Delivery to agent, 4.03

PHYSICAL EXAMINATIONS

Disclosures

After waiver, 35.04

Contents, 35.04

Examinations permitted, 35.01

Medical privilege, see Medical privilege under PRIVILEGES AND IMMUNITY

Parties to suits

Notice received, 35.01

Report of findings

Failure to deliver, sanctions, 35.02

Obtaining, adverse party, waiver of privilege, 35.02

When permitted, 35.01

Persons to be examined

Notice received, 35.01

Reports concerning

Delivery to parties or persons examined, requirement, 35.02

Waivers

Medical privilege, when deemed waived, 35.03

Reports, adverse parties, 35.02

PLAINTIFFS

Death of plaintiff

Substitution of parties, 25.01

Default judgment

Application of rules, 55.02

Joinder of parties

Permissive joinder, 20.01

Summary judgment, see SUMMARY JUDGMENT

Third-party practice, see THIRD-PARTY PRACTICE

Voluntary dismissal of actions

Procedure, 41.01

PLEADINGS

Amendments to

Claims acquired or maturing after pleading, 13.05

Evidence, amendments to conform to

Failure to amend, effect, 15.02

Generally, 15.02

Objections, 15.02

Omitted counterclaims, 13.06

Relation back of amendments

Change of party, requirements, 15.03

Date of original pleadings, 15.03

Response to amended pleadings, 15.01

Substitution of true name of party, 9.08

When permitted, 15.01

Capacity to sue or be sued

Statements regarding, requirements, 9.01

Claims for relief

Contents, requirements, generally, 8.01

Joinder of claims, 18.01

Joinder of parties

Exception, class actions, 19.04

Nonjoinder, statements regarding, 19.03

Money, demand for, statement of amount, 8.01

Relief in the alternative, demand for, 8.01

Responsive pleadings not required

Assertion of defense to claim for relief at trial, 12.02

Deemed denied or avoided, 8.04

Responsive pleadings required

Failure to deny deemed admission, 8.04

Separate statements, requirements, 10.02

PLEADINGS (Cont'd)

Claims for relief (Cont'd)

Special damages

Statements regarding, requirements, 9.07

Two or more statements in the alternative

Consistency, not required, 8.05

Insufficiency of one statement, effect, 8.05

Permitted, 8.05

Unliquidated damages

Greater than \$50,000, 8.01

Less than \$50,000, 8.01

Conditions precedent

Performance or occurrence of condition

Denial, specificity, requirement, 9.03

General statements, 9.03

Counterclaims, see COUNTERCLAIMS

Cross-claims, see CROSS-CLAIMS

Defenses

Affirmative defenses, see Affirmative defenses under

DEFENSES

Contents, requirements, generally, 8.02

Mistake in designation, treatment as proper designation, 8.03

Separate statements, requirements, 10.02

Two or more defenses stated in the alternative

Consistency, not required, 8.05

Insufficiency of one defense, effect, 8.05

Permitted, 8.05

Demurrers

Prohibited, 7.01

Denials

Failure to deny, effect, 8.04

General denials, 8.02

Insufficient knowledge or information, effect, 8.02

Partial denials, 8.02

Specific denials, 8.02, 9.03

Filing with court

Exceptions, 5.04

Facsimile transmissions

Compliance with rule, failure, penalties, 5.05

Delivery of original document, requirements, 5.05

Fees, 5.05

Receipt, filing deemed complete, 5.05

Transmission equipment, requirements, 5.05

Transmission fee, 5.05

Requirements, generally, 5.04

Form of pleadings

Caption, requirements, 10.01

Case type indicator

Omission, pleadings stricken for failure to comply with rule, 10.04

Requirements, generally, 10.01

Concise, simple, and direct, requirement, 8.05

Exhibits

Deemed part of statement of claim or defense, 10.03

Names of parties, requirements, 10.01

Paragraphs

Contents, requirements, 10.02

Numbering, requirements, 10.02

Statements, adoption by reference, 10.03

Technical forms not required, 8.05

Title of action, requirements, 10.01

Fraud

Statements regarding, requirements, 9.02

Intent

General statements regarding, 9.02

Interpretation of rules

Counterclaims against State of Minnesota, limitation, 13.04

Signatures

Certification of information contained in pleadings, 11.02

Statements

No responsive pleading required, deemed denied or avoided, 8.04

Responsive pleading required, failure to deny deemed admission, 8.04

Substantial justice, requirement, 8.06

Interventions

Requirements, generally, 24.03

PLEADINGS (Cont'd)

Judgments

Statements regarding, requirements, 9.05

Knowledge

General statements regarding, 9.02

Malice

General statements regarding, 9.02

Mistake

Statements regarding, requirements, 9.02

Official acts

Statements regarding, requirements, 9.04

Official documents

Statements regarding, requirements, 9.04

Ordinances

Statements regarding, requirements, 9.04

Parties to suits

Names of parties

Complaint, requirement, 10.01

Opposing party unknown, 9.08

Pleadings allowed

Generally, 7.01

Pleas and exceptions for insufficiency of a pleading

Prohibited, 7.01

Sanctions for noncompliance with rules

Case type indicator

Omission, pleadings stricken, 10.04

Facsimile transmissions

Filing with court, failure to comply with rule, 5.05

Pleadings in violation of Rule 10.02, 12.05

Signatures

Omission, pleadings stricken, 11.01, 11.03

Pleadings signed in violation of rule, 11.03

Service of

Delivery, defined, 5.02

Documents required to be served, 5.01

How made, 5.02

Numerous defendants

Service between, 5.03

Parties in default, when required, 5.01

Proof of service

Written admission, 5.02

Service by mail

Complete upon mailing, 5.02

Signatures

Attorneys, requirements, 11.01

Omission, pleadings stricken for failure to comply with rule, 11.01, 11.03

Parties not represented by attorney, requirements, 11.01

Supplemental pleadings

When permitted, 15.04

Third party claims

Joinder, 18.01

Time and place

Statements regarding considered material, 9.06

Vague and ambiguous pleadings

Motion for compliance with rule or more definite statement, 12.05

Verification

Requirements, generally, 11.01 to 11.03

PRETRIAL CONFERENCES

Discovery conferences

Combining with, 26.06

District court, duties regarding, 16.01 to 16.05

Final pretrial conference

Attorneys, attendance, requirements, 16.04

Subjects discussed at, 16.04

Unrepresented parties, attendance, requirements, 16.04

When held, 16.04

Pretrial orders, see Orders under DISTRICT COURT

Purposes for holding

Generally, 16.01

Scheduling conferences

Modification, 16.02

Notice requirements, 16.02

Time limits, setting, 16.02

Subjects considered

Attorneys, authority to enter into stipulation, 16.03

Generally, 16.03

PRISONERS

- Deposition by written questions, 31.01
- Parties to suits, 17.02
- Service of process on, 4.03

PRIVILEGES AND IMMUNITY

- Medical privilege
 - Waivers
 - Requests for medical examination report, 35.02
 - Voluntarily placing medical issue in controversy, 35.03

PROBATE

- Application of rules, Rule 66

PUBLIC CORPORATIONS

- Service of process on, 4.03

REAL PROPERTY

- Title to
 - Affected by action
 - Service by publication, contents, requirements, 4.041
 - Judgment for divestiture, enforcement, Rule 70

RECEIVERS AND RECEIVERSHIP

- Application of rules, Rule 66
- Appointment
 - Effect, Rule 66
- Foreign receivers
 - Rights subordinate to local creditors, Rule 66

REFEREES (COURT)

- Appointment
 - When permitted, 53.01
- Compensation and salaries
 - Payment by county, 53.01
 - Payment by parties
 - Failure to pay, 53.01
 - Generally, 53.01
- Findings of fact
 - Inclusion in report, requirement, 53.05
- Jury actions
 - Admissible as evidence of matters found, 53.05
- Nonjury actions
 - Acceptance by court, 53.05
 - Objections to, 53.05
 - Stipulation to, 53.05
- Interpretation of rules
 - Appointment, exception, not the rule, 53.02
- Notice given
 - Meeting of parties, 53.04
- Powers and duties
 - Actions where accounts are at issue, 53.04
 - Evidence, 53.03
 - Reasonable diligence, requirements, 53.04
 - Scope and limitations, 53.03
- Proceedings
 - Adjournment, 53.04
 - Ex parte proceedings, permitted, 53.04
 - Reasonable diligence, requirements, 53.04
- Referral of actions to
 - Exception, not the rule, 53.02
- Jury actions
 - Complicated issues, requirements, 53.02
 - Referee's findings, 53.05
- Nonjury actions
 - Exceptional condition, requirements, 53.02
 - Referee's findings, 53.05
- Reports
 - Contents
 - Findings of fact and conclusions of law, 53.05
 - Draft reports
 - Submission to attorneys, 53.05
 - Effect, generally, 53.05
 - Filing requirements, 53.05
 - Withholding as security for payment of fees, prohibited, 53.01

REMEDIES

- Injunctions, see INJUNCTIONS
- Joinder of remedies
 - Generally, 18.02

REMEDIES (Cont'd)

- Seizure of person or property
 - When available, Rule 64
- Temporary injunctions, see Temporary injunctions under INJUNCTIONS

REPEAL

- Jury trials
 - Calendar, placing on, 38.03

REQUESTS FOR ADMISSION

- Admissions
 - Effect, 36.02
 - Failure to admit, sanctions, 37.03
 - Scope, 36.02
 - Withdrawal or amendment of, 36.02
- Answers
 - Contents, 36.01
 - Denials, requirements, 36.01
 - Signatures, requirements, 36.01
- Certificates of service
 - Filing requirements, exception, 5.04
- Contents, requirements
 - Each matter set forth separately, 36.01
 - Writing, requirement, 36.01
- Forms (documents), see Requests for admission under FORMS (DOCUMENTS)
- Objections to
 - Requirements, generally, 36.01
- Service of process
 - Copies of documents to be served with request, 36.01
 - Generally, 36.01
 - Time limit for serving, 36.01

REQUESTS FOR ENTRY UPON LAND

- Objections to
 - Requirements, generally, 34.02
- Parties to suits
 - Responses
 - Contents, 34.02
 - Failure to respond, sanctions, 37.01 to 37.04
 - Time limit for serving, 34.02
 - Written responses, requirement, 34.02
 - Service of process, 34.02
- Persons not parties
 - Independent actions against, 34.03
- Scope of request
 - Purposes for which land may be entered upon, 34.01

REQUESTS FOR PRODUCTION OF DOCUMENTS OR THINGS

- Certificates of service
 - Filing requirements, exception, 5.04
- Content
 - Requirements, 34.02
- Depositions
 - Notice for oral examination, inclusion, 30.02
- Forms (documents), see Requests for production of documents or things under FORMS (DOCUMENTS)
- Objections to
 - Requirements, generally, 34.02
- Organization of documents produced, 34.02
- Parties to suits
 - Responses
 - Contents, 34.02
 - Failure to respond, sanctions, 37.01 to 37.04
 - Time limit for serving, 34.02
 - Written responses, requirement, 34.02
 - Service of process, 34.02
- Persons not parties
 - Independent actions against, 34.03
- Scope of request
 - Documents or things to be produced, 34.01

RES JUDICATA

- Defenses
 - Affirmative defenses, 8.03

RESTITUTION

Defendants

Restitution to after judgment

Service by publication, no actual notification of action, 4.043

RULES OF CIVIL PROCEDURE

Application, generally, §1.01 to §1.03

Citation, Rule 85

Class actions, see **CLASS ACTIONS**

Discovery

Depositions, see **DEPOSITIONS**Generally, see **DISCOVERY**Interrogatories, see **INTERROGATORIES**Medical examinations, see **MEDICAL EXAMINATIONS**Requests for admission, see **REQUESTS FOR****ADMISSION**Requests for entry upon land, see **REQUESTS FOR ENTRY UPON LAND**Requests for production of documents or things, see **REQUESTS FOR PRODUCTIONS OF DOCUMENTS OR THINGS**

District court rules

Requirements, Rule 83

Effective date

Amendments, §6.01

Generally, §6.01

Pending actions, when excepted, §6.01

Forms (documents)

Appendix of forms

Interpretation of rules, Rule 84

Generally, see **FORMS (DOCUMENTS)**Injunctions, see **INJUNCTIONS**Interpleaders, see **INTERPLEADERS**Interpretation, see **INTERPRETATION OF RULES**Intervention, see **INTERVENORS**

Judgments

Declaratory judgment, see **DECLARATORY JUDGMENT**Default judgment, see **DEFAULT JUDGMENT**Generally, see **JUDGMENTS**Summary judgment, see **SUMMARY JUDGMENT**

Minnesota statutes

Rules incorporated into, §1.03

Superseded

Exceptions, §1.02

Limitation, §1.01

Motions, see **MOTIONS**Parties to suits, see **PARTIES TO SUITS**

Pleadings

Answers, see **ANSWERS**Complaints, see **COMPLAINTS**Counterclaims, see **COUNTERCLAIMS**Cross-claims, see **CROSS-CLAIMS**Defenses, see **DEFENSES**Generally, see **PLEADINGS**Third-party practice, see **THIRD-PARTY PRACTICE**Pretrial conferences, see **PRETRIAL CONFERENCES**Receivers and receivership, see **RECEIVERS AND****RECEIVERSHIP**Remedies, see **REMEDIES**

Scope of rules, Rule 1

Service of process

Generally, see **SERVICE OF PROCESS**Personal service, see **PERSONAL SERVICE**Service by mail, see **SERVICE BY MAIL**Service by publication, see **SERVICE BY PUBLICATION**

Special proceedings not governed by rules

Generally, §1.01

Stay of proceedings, see **STAY OF PROCEEDINGS**Summonses, see **SUMMONSES**Third-party claims, see **THIRD-PARTY CLAIMS**Time, see **TIME**Trials, see **TRIALS****SCHOOL DISTRICTS**

Service of process on, 4.03

SEPARATE MAINTENANCE

Service by publication

Requirements, generally, 4.04

SERVICE BY MAIL

Acknowledgment of service

Commencement of action, 3.01

Complete upon mailing, 5.02

Documents to be included in mailing

Requirements, generally, 4.05

Failure to return notice and acknowledgment, effect, 4.05

Notice of filing

Court orders or entry of judgment, 7.04

Proof of service

Acknowledgment or written admission of person served, 4.06

Costs of personal service, payment, 4.05

Service ineffectual, 4.05

Time limits

Additional time added to prescribed period, 6.05

SERVICE OF PROCESSComplaints, see Service with summons under **COMPLAINTS**

Generally

Who may serve, 4.02

Personal service, see **PERSONAL SERVICE**Pleadings, see Service of under **PLEADINGS**

Proof of service

Amendments to, 4.07

Pleadings, 5.02

Requirements, generally, 4.06

Return of service, see Proof of service under this topic

Service by mail, see **SERVICE BY MAIL**

Service by publication

Affidavits

Plaintiffs' affidavits, contents, 4.04

Printers' affidavits

Contents, 4.04

Proof of service, 4.06

Defenses

Defense after judgment

Dissolution of marriage, exception, 4.043

Generally, 4.043

Restitution to defendant after enforcement of judgment, 4.043

No actual notification of action, 4.043

Dissolution of marriage, 4.04

Jurisdiction

When sufficient to confer, personal service out of state, 4.04

Mortgage foreclosures, 4.04

Personal service outside state

Debtors, 4.04

Foreign corporations, 4.04

Foreign countries, 4.04

Nonresident individuals, 4.04

Proved by affidavit, effect, 4.04

Resident individuals who have left state, 4.04

Quasi in rem jurisdiction

Appearance by defendant to contest, 4.04

Obtained by service by publication, 4.04

Real property, civil actions affecting

Contents of publication, requirements, 4.041

Nonresident owners

Service by publication not allowed, 4.044

Summonses

How served, 4.04

Service deemed complete, 4.04

Service outside state

Generally, 4.04

Service outside United States

Generally, 4.04

Sheriffs, see Service of process under **SHERIFFS**Subpoenas, see Service of under **SUBPOENAS**

Summons

Service on defendant

Commencement of action, 3.01

SERVICE OF PROCESS (Cont'd)

Time limits

Additional time

Service by mail, see Time limits under SERVICE BY MAIL

Service late in day, 6.05

SHERIFFS

Seizure of money or property

Money or property to be held by court pending proceedings, 67.03

Service of process

Authority to make service of process, 4.02

Certificates and certifications

Proof of service, 4.06

Summons

Delivery to sheriff

Actual service or publication, requirement, 3.01

Commencement of action, 3.01

SIGNATURES

Discovery, 26.07

Motions

Effect, 11.02

Discovery, exception, 11.03

Failure to sign, sanctions, 11.03

Requirements, 11.01

Pleadings

Effect, 11.02

Discovery, exception, 11.03

Failure to sign, sanctions, 11.03

Requirements, 11.01

SPECIAL VERDICTS

Form

Generally, 49.01

Written findings, 49.01

SPECIFIC PERFORMANCE

Judgment for

Enforcement, generally, Rule 70

STANDARD OF PROOF

Juries

Preliminary instructions regarding, 39.03

STATE AGENCIES

Civil actions

Intervention in, requirements, 24.02

STATE OF MINNESOTA

Service of process on, 4.03

STATUTE OF FRAUDS

Defenses

Affirmative defenses, 8.03

STATUTES OF LIMITATIONS

Defenses

Affirmative defenses, 8.03

STAY OF PROCEEDINGS

Actions previously dismissed

Plaintiffs, payment of costs, 41.04

Judgments, enforcement of

Application of rules

Appellate court, power not limited, 62.05

Grounds

Injunction pending appeal, 62.02

Multiple claims for relief, final judgment to less than all, 62.06

Post-trial motions, 62.01

Security bonds, when required, 62.01, 62.06

Stay on appeal

Rules of civil appellate procedure, application, 62.03

State agencies, security bond not required, 62.04

Pleadings

Facsimile transmission of, failure to comply with rule, 5.05

STIPULATION

Discovery

Depositions

Persons before whom depositions may be taken, Rule

29

STIPULATION (Cont'd)

Discovery (Cont'd)

Depositions (Cont'd)

Taken by telephone or other electronic means, 30.02

Modification of procedures, Rule 29

Dismissal

Procedure, 41.01

Findings of fact

Referees (court), effect, 53.05

Juries

Majority verdict, Rule 48

Number of jurors, Rule 48

Pretrial conferences

Attorneys, authority to enter into, 16.03

SUBPOENAS

Depositions

Notice of taking

Proof of service, authority for issuance of subpoena, 45.04

Requests for production of documents or things

Inclusion, effect, 45.04

Objections to

Effect, 45.04

Writing, requirement, 45.04

Witnesses

Compelling attendance, 30.01, 45.04

Nonparty organizations, notice to designate deponent for, 30.02

Place of examination, 45.04

Failure to obey

Defined as contempt of court, 45.07

Hearings

Service of, 45.05

Interpretation of rules

Depositions, notice of taking

Proof of service of, authority for issuance of subpoena, 45.04

Issuance

Court administrators, duties, 45.01

Restrictions, 45.01

Violation of rule, effect, 45.01

Motions

To deny, 45.02

To quash or modify, grounds, 45.02

Service of

How made, 45.03

Witness fees and expenses, tendering with subpoena

Exceptions, 45.03

Requirement, 45.03

Trials

Service of, 45.05

Witnesses

Compelling production of documentary evidence, 45.02

Contents, requirements, 45.01

Witnesses

Compelling testimony, 45.01

Nonparty witnesses, fees and expenses

Party serving subpoena

Failure to tender, 45.06

Tendering with, requirement, 45.03

SUBPOENAS DUCES TECUM

Depositions

Notice of oral examination, inclusion, 30.02

SUMMARY JUDGMENT

Affidavits

Bad faith affidavits, effect, 56.07

Form, requirements, generally, 56.05

Good faith, requirement, generally, 56.04

Opposing affidavits

Affidavits, depositions, or discovery unavailable, 56.06

Form, requirements, generally, 56.05

Supplementary affidavits, 56.05

Supporting affidavits

When required, 56.01, 56.02

Case not fully adjudicated on motion

Facts not in controversy, deemed established, 56.04

Trial court, duties, 56.04

SUMMARY JUDGMENT (Cont'd)

- Interlocutory summary judgment
 - Issues upon which judgment may be rendered, 56.03
- Interpretation of rules
 - Facts not in controversy, deemed established, 56.04
- Motions, see Summary judgment under MOTIONS
- Parties to suits
 - Failure to respond to motion, effect, 56.05
- Response to motion for
 - Adverse parties, failure to respond, effect, 56.05
 - Pleadings, reliance on statements or denials insufficient, 56.05

SUMMONSES

- Amendment, 4.07
- Contents
 - Requirements, 4.01
- Forms, see Summons under FORMS (DOCUMENTS)
- Service by publication
 - Generally, 4.04
- Service by sheriff
 - Commencement of action, 3.01
- Service of, see Summons under SERVICE OF PROCESS
- Service on defendant
 - Commencement of action, 3.01

SUPREME COURT

- Chief justice
- Notice received
 - Disqualification of district court judge, 63.02
- Rules of civil procedure, duties regarding
- Personal service
 - Public corporations
 - Manner of service when service cannot be made as provided by rule, 4.03

SURETIES

- Appointments by
 - Agent, court administrator, irrevocable appointment, 65.03
- Liability
 - Enforcement, generally, 65.03
- Submission to jurisdiction of court
 - Requirement, 65.03

SURETY BONDS

- Default judgment
 - Requirements, 55.01
- Temporary injunctions
 - Security for costs and damages, requirements, 65.03
- Temporary restraining orders
 - Security for costs and damages, requirements, 65.03

TAPE RECORDERS

- Depositions
 - Use during, 30.02

TELEPHONE CALLS

- Depositions, see Telephone depositions under DEPOSITIONS

TESTIMONY

- Actions to perpetuate, 27.03
- Contradicting
 - Depositions, use, 32.01
- Depositions
 - Contradicting, depositions, use, 32.01
 - Impeachment, depositions, use, 32.01
 - Objections to, grounds, 32.04
 - Trials, offers of, format, requirements, 32.03
 - Use of depositions
 - During hearings on interlocutory proceedings, see Depositions under INTERLOCUTORY PROCEEDINGS
 - During hearings on motions, see Depositions under MOTIONS
 - During trials, see Depositions under TRIALS
 - Video depositions
 - Rules governing, 30.02
 - Special procedures regarding, 30.02
 - Stenographic transcripts of, 30.02
 - Use of at trial, 30.02, 32.05
 - Witnesses
 - Competency, objection to, 32.04

TESTIMONY (Cont'd)

- Form
 - Requirements, generally, 43.01
- Impeachment
 - Depositions, use, 32.01
- Oral testimony
 - Evidence hearings
 - Motions based on facts not of record, 43.05
 - Trials, requirements, 43.01
- Weighing
 - Juries, preliminary instructions regarding, 39.03

THIRD-PARTY CLAIMS

- Default judgment, application of rule, 55.02
- Dismissal
 - Generally, 41.03
 - Grounds, 41.03
 - Without prejudice, 41.03
- Generally, see THIRD-PARTY PRACTICE
- Joinder, 18.01
- Separate trials
 - Grounds for, 42.02

THIRD-PARTY PRACTICE

- Defendants
 - As third-party plaintiffs
 - Pleadings, requirements, 14.01
 - When defendant may bring in third-party, 14.01
 - Third-party defendants
 - Claims permitted against plaintiff, 14.01
 - Counterclaims permitted, 14.01
 - Cross-claims permitted, 14.01
 - Defenses permitted, 14.01
- Plaintiffs
 - Claims against third-party plaintiffs
 - Claims permitted, 14.01
 - When plaintiff may bring in third-party, 14.02
 - Third-party claims, see THIRD-PARTY CLAIMS

TIME

- Computation of time prescribed by rule
 - Days excluded, 6.01
 - Days included, 6.01
 - Term of court
 - Expiration, effect, 6.03
- Discovery
 - Procedure, modification
 - Limitations, Rule 29
- Enlargement of time prescribed by rule
 - Depositions, 31.01
 - Exceptions, 6.02
 - Interrogatories, 33.01
 - Requirements, generally, 6.02
- Shortening of time prescribed by rule
 - Depositions, 31.01
 - Interrogatories, 33.01

TOWNS

- Service of process on, 4.03

TRANSCRIPTS

- Depositions
 - Generally, 30.03
 - Video depositions, backup simultaneous, 30.02
- Evidence, use as, Rule 80

TRANSPORTATION COMPANIES

- Service of process on, 4.03

TRIALS

- By court
 - Advisory juries, when used, 39.02
 - Evidence, see Trials by court under EVIDENCE
 - Issues to be tried by court, 39.01
 - Opening statements
 - Generally, 39.04
 - Waiver, 39.04
- Calendar
 - Setting cases on for trial, Rule 40
- Common question of law or fact
 - Consolidation of actions, 42.01

TRIALS (Cont'd)

- Depositions
 - Admissibility, objections to, 32.02
 - Purposes for which depositions may be used, generally, 32.01
 - Rebuttal of evidence, 32.03
- Evidence, generally, see EVIDENCE
- Interrogatories
 - Answers to
 - Purposes for which answers to interrogatories may be used, 33.02
- Joint trials
 - Common question of law or fact, 42.01
- Jury trials, see JURY TRIALS
- New trials, see NEW TRIALS
- Open court
 - Trials on merits conducted in, requirement, 77.02
- Opening statements
 - Generally, 39.04
 - Waiver, 39.04
- Separate trials
 - Counterclaims, 13.09, 42.02
 - Cross-claims, 13.09; 42.02
 - Parties to suits
 - Reasons for, 20.02
 - Third-party claims, 42.02
- Testimony, see TESTIMONY
- Trial preparation
 - Discoverable information, see DISCOVERY
- Waivers
 - Opening statements, 39.04
- Witnesses, see WITNESSES

VENUE

- Civil actions
 - District courts, Rule 82

VERDICTS

- Directed verdicts
 - Motions for, see Directed verdicts under MOTIONS
- Judgment notwithstanding
 - Motions for, see Judgment notwithstanding the verdict under MOTIONS
 - Verdict accompanied by answers to interrogatories, generally, 49.02
- Judgment on
 - Verdict accompanied by answers to interrogatories, generally, 49.02
- Setting aside
 - Harmless error, not grounds for, Rule 61
- Unanimous verdicts
 - Requirements, Rule 48

VERIFICATION

- Complaints, see Verified complaints under COMPLAINTS
- Costs and disbursements (courts)
 - Affidavits of disbursements, 54.04
- Depositions
 - Petitions before action to perpetuate testimony, 27.01

VIDEO

- Video recording devices
 - Depositions, use during, 30.02

VIDEO TAPES

- Depositions
 - Use, 30.02

WAIVERS

- Defenses
 - Affirmative defenses, 8.03
 - Generally, 12.08

WAIVERS (Cont'd)

- Depositions
 - Errors and irregularities in, 32.04
- Jury trials
 - Opening statements, 39.04
 - Right to, 38.02
- Medical examinations
 - Medical privilege, 35.03
 - Reports obtained by party or person, 35.02
- Notice requirements
 - Interventions, 24.03
- Trials
 - Opening statements, 39.04

WITNESSES

- Compelling testimony
 - Actions referred to referees (court), 53.04
 - Subpoenas, 45.01
 - Trials, generally, 45.01
- Credibility
 - Court's judgment concerning
 - Findings of fact, 52.01
 - Juries, preliminary instructions regarding, 39.03
- Cross examination, see Examination of witnesses under this topic
- Depositions
 - Competency, objection to, 32.04
 - Effect, 32.03
 - Failure to answer
 - After court order, defined as contempt of court, 37.02
 - Generally, 37.01
 - Oath, requirement, 30.03
 - Place of examination
 - Nonresidents, 45.04
 - Residents, 45.04
 - Review, requirements, 30.05
 - Signatures
 - Requirements, generally, 30.05
 - Subpoena, subject to, 30.01
- Direct examination, see Examination of witnesses under this topic
- Subpoenas
 - Compelling attendance, 30.01
 - Compelling testimony, 45.01
 - Nonparty witnesses, fees and expenses
 - Party serving
 - Failure to tender, 45.06
 - Tendering with subpoena, requirement, 45.03
- Testimony, generally, see TESTIMONY

WRITS OF ATTACHMENT

- Judgment for specific acts or performance
 - Enforcement of judgment, Rule 70

WRITS OF AUDITA QUERELA

- Abolished
 - Relief from judgment or order, 60.02

WRITS OF CORAM NOBIS

- Abolished
 - Relief from judgment or order, 60.02

WRITS OF CORAM VOBIS

- Abolished
 - Relief from judgment or order, 60.02

WRITS OF EXECUTION

- Judgment for delivery of possession
 - Process to enforce, Rule 70
- Judgment for payment of money
 - Process to enforce, Rule 69
- Referees (court)
 - When entitled to, 50.01