

# GENERAL RULES OF PROCEDURE FOR THE DISTRICT COURT

## Part A. Rules of Civil Procedure for the District Court

Adopted November 14, 1974  
Effective January 1, 1978  
As amended through August 1, 1980

### (1) 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. Process.**

- 4.01 Summons; Form.
- 4.02 By Whom Served.
- 4.03 Personal Service.
  - (a) Upon an Individual.
  - (b) Upon Partnerships and Associations.
  - (c) Upon a Corporation.
  - (d) Upon the State.
  - (e) Upon Public Corporations.
- 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 Process Other than Summons and Subpoena; Service of.
- 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.

**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.

**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.

**Rule 11. Signing of Pleadings.**

**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. Pre-Trial Procedure; Formulating Issue.**

## 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 Scope of Discovery.
  - (1) In General.
  - (2) Insurance Agreements.
  - (3) Trial Preparations: Materials.
  - (4) Trial Preparations: Experts.
- 26.03 Protective Orders.
- 26.04 Sequence and Timing of Discovery.
- 26.05 Supplementation of Responses.
- 26.06, 26.07 Deleted.

**Rule 27. Depositions before Action or Pending Appeal.**

- 27.01 Before Action.
  - (1) Petition.
  - (2) Notice and Service.
  - (3) Order and Examination.
  - (4) Use of Deposition.
- 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; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization.
- 30.03 Examination and Cross-Examination; Record of Examination; Oath; Objections.
- 30.04 Motion to Terminate or Limit Examination.
- 30.05 Submission to Witness; Changes; Signing.
- 30.06 Certification and Filing by Officer; Copies; Notice 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.
- 31.04 Deleted.

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

- 32.01 Use of Depositions.
- 32.02 Objections to Admissibility.
- 32.03 Effect of Taking or Using Depositions.
- 32.04 Effect of Errors and Irregularities in Depositions.
  - (1) As to Notice
  - (2) As to Disqualification of Officer
  - (3) As to Taking of Deposition
  - (4) As to Completion and Return of Deposition

**Rule 33. Interrogatories to Parties.**

- 33.01 Availability; Procedure for Use.
- 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 Examinations 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; Sanctions.**

- 37.01 Motion for Order Compelling Discovery.
  - (1) Appropriate Court.
  - (2) Motion.
  - (3) Evasion or Incomplete Answer.
  - (4) Award of Expenses of Motion.
- 37.02 Failure to Comply with Order.
  - (1) Sanctions by Court in County Where Deposition is Taken.
  - (2) Sanctions by Court in Which Action is Pending.
- 37.03 Expenses on Failure to Admit.
- 37.04 Failure of 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.
  - (1) By Plaintiff; by Stipulation.
  - (2) By Order of Court.
- 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. Consolidation; Separate Trials.**

- 42.01 Consolidation.
- 42.02 Separate Trials.

**Rule 43. Evidence.**

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

**Rule 44. Proof of Official Record.**

- 44.01 Authentication.
  - (1) Domestic.
  - (2) Foreign.
- 44.02 Lack of Record.
- 44.03 Other Proof.
- 44.04 Determination of Foreign Law.

**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 Contempt.

**Rule 46. Exceptions Unnecessary.**

**Rule 47. Jurors.**

- 47.01 Examination of Jurors.
- 47.02 Alternate Jurors.
- 47.03 Separation of Jury.

**Rule 48. Juries of Less than Twelve; Majority 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 Jury; Objection.**

**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.
  - (1) Meetings.
  - (2) Witnesses.
  - (3) Statement of Accounts.
- 53.05 Report.
  - (1) Contents and Filing.
  - (2) In Non-Jury Actions.
  - (3) In Jury Actions.
  - (4) Stipulation as to Findings.
  - (5) Draft 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.
- 59.07 Case; How and When Settled [Deleted].
- 59.08 Setting Case; When Judge Incapacitated [Deleted].

**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; Affidavit of Prejudice; Assignment of a Judge.**

- 63.01 Disability of Judge.
- 63.02 Interest or Bias.
- 63.03 Affidavit of Prejudice.
- 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.

**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; Tender of Money in Lieu of Judgment.**

- 68.01 Offer of Judgment.
- 68.02 Tender of Money in Lieu of Judgment.

**Rule 69. Execution.**

**Rule 70. Judgment for Specific Acts; Vesting Title.**

**Rule 71. Process in Behalf of and against Persons Not Parties.**

IX. DISTRICT COURTS AND CLERKS

**Rule 77. District Courts and Clerks.**

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

**Rule 80. Stenographic Report or Transcript as Evidence.**

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

- 81.01 Statutory and Other Procedures.
  - (1) Procedures Preserved.
  - (2) Procedures Abolished.
  - (3) Statutes Superseded.

- 81.02 Appeals to District Court.  
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.  
86.02 Effective Date of Amendments.

(2) Text of Rules

I. SCOPE OF RULES—ONE FORM OF ACTION

**Rule 1. Scope of Rules**

These rules govern the procedure in the district courts of the State of Minnesota in all suits of a civil nature, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

**Rule 2. One Form of Action**

There shall be one form of action to be known as "civil actions."

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

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

**3.01 Commencement of the Action**

A civil action is commenced against each defendant when the summons is served upon him or is delivered to the proper officer for such service; but such delivery shall be ineffectual unless within 60 days thereafter the summons be actually served on him or the first publication thereof be made.

**3.02 Service of Complaint**

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

**Rule 4. Process**

**4.01 Summons; Form**

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

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

#### 4.02 By Whom Served

The sheriff of the county in which the defendant is found may make service of summons and other process, and fees and mileage shall be allowed therefor.

Any person not a party to the action may make service of a summons.

#### 4.03 Personal Service

Service of summons within the state shall be made as follows:

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

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

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

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

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

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

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

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

- (1) To the chairman of the county board or to the county auditor of a defendant county.
- (2) To the chief executive officer or to the clerk of a defendant city, village or borough.
- (3) To the chairman of the town board or to the clerk of a defendant town.
- (4) To any member of the board or other governing body of a defendant school district.
- (5) To any member of the board or other governing body of a defendant public board or public body not hereinabove enumerated.

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

#### **4.04 Service by Publications; Personal Service out of State**

The summons may be served by three weeks' published notice in any of the cases enumerated hereafter when there shall have been filed with the court the complaint and an affidavit of the plaintiff or his attorney stating the existence of one of such cases, and that he believes the defendant is not a resident of the state, or cannot be found therein, and either that he has mailed a copy of the summons to the defendant at his place of residence or that such residence is not known to him. The service of the summons shall be deemed complete 21 days after the first publication. Personal service of such summons without the state, proved by the affidavit of the person making the same sworn to before a person authorized to administer an oath, shall have the same effect as the published notice herein provided for.

Such service shall be sufficient to confer jurisdiction:

(1) When the defendant is a resident individual having departed from the state with intent to defraud his creditors, or to avoid service, or keeps himself concealed therein with like intent;

(2) When the plaintiff has acquired a lien upon property or credits within the state by attachment or garnishment, and

(a) The defendant is a resident individual who has departed from the state, or cannot be found therein, or

(b) The defendant is a nonresident individual, or a foreign corporation, partnership or association;

When quasi in rem jurisdiction has been obtained, a party defending such action thereby submits personally to the jurisdiction of the court. An appearance solely to contest the validity of such quasi in rem jurisdiction is not such a submission.

(3) When the action is for divorce or separate maintenance and the court shall have ordered that service be made by published notice;

(4) When the subject of the action is real or personal property within the state in or upon which the defendant has or claims a lien or interest, or the relief demanded consists wholly or partly in excluding him from any such interest or lien;

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

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

#### **4.041 Additional Information to be Published**

In all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon, real property is involved or affected or is brought in question, the publication shall also contain a description of the real property involved, affected or brought in question thereby, and a statement of the object of the action. No other notice of the pendency of the action need be published.

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

#### **4.042 Service of the Complaint**

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

#### **4.043 Service by Publication; Defendant May Defend; Restitution**

If the summons be served by publication, and the defendant receives no actual notification of the action, he shall be permitted to defend upon applica-

tion to the court before judgment and for sufficient cause; and, except in an action for divorce, the defendant, in like manner, may be permitted to defend at any time within one year after judgment, on such terms as may be just. If the defense be sustained, and any part of the judgment has been enforced, such restitution shall be made as the court may direct.

#### **4.044 Nonresident Owner of Land Appointing an Agent**

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

#### **4.05 Process Other Than Summons and Subpoena; Service of**

Process other than summons and subpoena shall be served as directed by the court issuing the same.

#### **4.06 Return**

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

#### **4.07 Amendments**

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

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

#### **5.01 Service; When Required; Appearance**

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

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

#### **5.02 Service; How Made**

Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Written admission of service by the party or his attorney shall be sufficient proof of service. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this rule means: Handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge,

leaving it in a conspicuous place therein; or, if the office is closed, or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

### **5.03 Service; Numerous Defendants**

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

### **5.04 Filing**

(1) All pleadings, affidavits, bonds, and other papers in an action shall be filed with the clerk, unless otherwise provided by statute or by order of the court.

(2) All pleadings shall be so filed on or before the second day of the term at which the action is noticed for trial; otherwise the court may continue the action or strike it from the calendar.

(3) All affidavits, notices and other papers designed to be used in any cause shall be filed prior to the hearing of the cause unless otherwise directed by the court.

## **Rule 6. Time**

### **6.01 Computation**

In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

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

### **6.02 Enlargement**

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

### **6.03 Unaffected by Expiration of Term**

The continued existence or the expiration of a term of court does not affect or limit the period of time provided for the doing of any act or the taking of any proceeding, or affect the power of the court to do any act or take any proceeding in any action which has been pending before it.

**6.04 For Motions; Affidavits**

A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. A motion may be supported by papers on file by reference; supporting papers not on file shall be served with the motion; and, except as otherwise provided in Rule 59.04, opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.

**6.05 Additional Time After Service by Mail**

Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon him, or whenever such service is required to be made a prescribed period before a specified event, and the notice or paper is served by mail, three days shall be added to the prescribed period.

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

**III. PLEADINGS AND MOTIONS****Rule 7. Pleadings Allowed; Form of Motions****7.01 Pleadings**

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

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

**7.02 Motion and Other Papers**

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. Motions provided in these rules are motions requiring a written notice to the party and a hearing before the order can be issued unless the particular rule under which the motion is made specifically provides that the motion may be made ex parte.

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

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

**Rule 8. General Rules of Pleading****8.01 Claims for Relief**

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which he deems himself entitled, and if a recovery of money be demanded the amount shall be stated. Relief in the alternative or of several different types may be demanded.

### **8.02 Defenses; Form of Denials**

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

### **8.03 Affirmative Defenses**

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

### **8.04 Effect of Failure to Deny**

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

### **8.05 Pleading to be Concise and Direct; Consistency**

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

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

### **8.06 Construction of Pleadings**

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

## **Rule 9. Pleading Special Matters**

### **9.01 Capacity**

It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of a partnership or an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party

to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

### **9.02 Fraud, Mistake, Condition of Mind**

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

### **9.03 Conditions Precedent**

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

### **9.04 Official Document or Act**

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

### **9.05 Judgment**

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

### **9.06 Time and Place**

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

### **9.07 Special Damages**

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

### **9.08 Unknown Party; How Designated**

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

## **Rule 10. Form of Pleadings**

### **10.01 Caption; Names of Parties**

Every pleading shall have a caption setting forth the name of the court and the county in which the action is brought, the title of the action, and a designation as in Rule 7. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

### **10.02 Paragraph; Separate Statements**

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

count or defense whenever a separation facilitates the clear presentation of the matter set forth.

### **10.03 Adoption by Reference; Exhibits**

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

### **Rule 11. Signing of Pleadings**

Every pleading of a party represented by an attorney shall be personally signed by at least one attorney of record in his individual name and shall state his address. A party who is not represented by an attorney shall personally sign his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certification by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken, as provided in Rule 12.06, as sham and false and the action may proceed as though the pleading had not been served. An attorney may be subjected to appropriate disciplinary action for a wilful violation of this rule or for the insertion of scandalous or indecent matter in a pleading.

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

#### **12.01 When Presented**

Defendant shall serve his answer within 20 days after service of the summons upon him unless the court directs otherwise pursuant to Rule 4.043. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows unless a different time is fixed by order of the court: (1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after service of notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

#### **12.02 How Presented**

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) Lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; (4) insufficiency of service of process; (5) failure to state a claim upon which relief can be granted; and (6) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense that the plead-

ing fails to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

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

### **12.03 Motion for Judgment on the Pleadings**

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

### **12.04 Preliminary Hearing**

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

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

If a pleading to which a responsive pleading is permitted violates the provisions of Rule 10.02, or is so vague and ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a compliance with Rule 10.02 or for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after service of notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

### **12.06 Motion to Strike**

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

### **12.07 Consolidation of Defenses in Motion**

A party who makes a motion under this rule may join with it the other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in Rule 12.08(2) hereof on any of the grounds there stated. (As amended Nov. 10, 1967, effective Feb. 1, 1968.)

### **12.08 Waiver or Preservation of Certain Defenses**

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

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

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. (As amended Nov. 10, 1967, effective Feb. 1, 1968.)

### **Rule 13. Counterclaim and Cross-Claim**

#### **13.01 Compulsory Counterclaims**

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

#### **13.02 Permissive Counterclaims**

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

#### **13.03 Counterclaim Exceeding Opposing Claim**

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

#### **13.04 Counterclaim Against the State of Minnesota**

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

#### **13.05 Counterclaim Maturing or Acquired After Pleading**

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

#### **13.06 Omitted Counterclaim**

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

#### **13.07 Cross-Claim Against Co-Party**

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

**13.08 Joinder of Additional Parties**

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

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

**13.09 Separate Trials; Separate Judgment**

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

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

Within 45 days after service of the summons upon him, and thereafter by leave of court granted on motion upon notice to all parties to the action, a defendant as a third-party plaintiff may serve a summons and complaint, together with a copy of plaintiff's complaint, upon a person, whether or not he is a party to the action, who is or may be liable to him for all or part of the plaintiff's claim against him and after such service shall forthwith serve notice thereof upon all other parties to the action. Copies of third-party pleadings shall be furnished by the pleader to any other party to the action within 5 days after request therefor. The person so served, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12 and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and cross-claims as provided in Rule 13. A third-party defendant may proceed under this rule against any person who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

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

**14.02 When Plaintiff May Bring in Third Party**

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

**14.03 Orders for Protection of Parties and Prevention of Delay**

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

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

**Rule 15. Amended and Supplemental Pleadings****15.01 Amendments**

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

**15.02 Amendments to Conform to the Evidence**

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

**15.03 Relation Back of Amendments**

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

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

**15.04 Supplemental Pleadings**

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

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

**Rule 16. Pre-Trial Procedure; Formulating Issue**

In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) The advisability of a preliminary reference of issues to a referee;
- (6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to nonjury actions or extend it to all actions.

**IV. PARTIES****Rule 17. Parties Plaintiff and Defendant; Capacity****17.01 Real Party in Interest**

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

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

**17.02 Infants or Incompetent Persons**

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

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

The application for appointment shall show (1) the name, age and address of the party, (2) if he be a minor, the names and addresses of his parents, and, if his parents be dead or have abandoned him, the name and address of his custodian or his testamentary or other guardian, if any, (3) the name and address of his spouse, if any, and (4) the name, age and address and occupation of the person whose appointment is sought.

If the appointment is applied for by the party or by his spouse, parent, custodian, or testamentary or other guardian, the court may hear the application with or without notice. In all other cases written notice of the hearing on the application shall be given at such time as the court shall prescribe, and shall be served upon the party, his spouse, parent, custodian and testamentary or other guardian, if any, and, if he be an inmate of a public institution, the chief executive officer thereof. If the party be a nonresident, or if after diligent search he cannot be found within the state, notice shall be given to such persons and in such manner as the court may direct.

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

## **Rule 18. Joinder of Claims and Remedies**

### **18.01 Joinder of Claims**

A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal, or equitable, as he has against an opposing party. (As amended Nov. 10, 1967, effective Feb. 1, 1968.)

### **18.02 Joinder of Remedies; Fraudulent Conveyances**

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

## **Rule 19. Joinder of Persons Needed for Just Adjudication**

### **19.01 Persons to be Joined if Feasible**

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

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

### **19.02 Determination by Court Whenever Joinder not Feasible**

If a person as described in Rule 19.01(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or

other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. (As amended Nov. 10, 1967, effective Feb. 1, 1968.)

### **19.03 Pleading Reasons for Nonjoinder**

A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in Rule 19.01 (1)-(2) hereof who are not joined, and the reasons why they are not joined. (As amended Nov. 10, 1967, effective Feb. 1, 1968.)

### **19.04 Exception of Class Actions**

This rule is subject to the provisions of Rule 23. (Added Nov. 10, 1967, effective Feb. 1, 1968.)

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

### **20.01 Permissive Joinder**

All persons may join in one action as plaintiffs if they assert any right to relief, jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of fact or law common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities. (As amended Nov. 10, 1967, effective Feb. 1, 1968.)

### **20.02 Separate Trials**

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

## **Rule 21. Misjoinder and Nonjoinder of Parties**

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

## **Rule 22. Interpleader**

Persons having claims against the plaintiff may be joined as defendants and required to interplead, in an action brought for that purpose, when their claims are such that the plaintiff is or may be exposed to multiple liability. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. If such a defendant admits he is subject to liability, he may, upon paying the amount claimed or delivering the property claimed or its value into court or to such person as the court may direct, move for an order to substitute the claimants other than the plaintiff as defendants in his stead. On compliance with the terms of such order, the defendant shall be discharged and the action shall proceed against the substituted defendants. It is not ground for objection to such joinder or to such motion that the claims of the several claimants or the

titles on which their claims depend do not have a common origin or are not identical with but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. The provisions of this rule do not restrict the joinder of parties permitted in Rule 20.

### **Rule 23. Class Actions**

#### **23.01 Prerequisites to a Class Action**

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

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

#### **23.02 Class Actions Maintainable**

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

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

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

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

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

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

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

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

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

(2) In any class action maintained under Rule 23.02(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude

him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under Rule 23.02(1) or 23.02(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under Rule 23.02(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in Rule 23.03(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

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

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

#### **23.04 Orders in Conduct of Actions**

In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

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

#### **23.05 Dismissal or Compromise**

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

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

#### **23.06 Derivative Actions by Shareholders or Members**

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interest of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or

compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

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

### **23.07 Actions Relating to Unincorporated Associations**

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

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

## **Rule 24. Intervention**

### **24.01 Intervention of Right**

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

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

### **24.02 Permissive Intervention**

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

### **24.03 Procedure**

A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

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

### **24.04 Notice to Attorney General**

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

## **Rule 25. Substitution of Parties**

### **25.01 Death**

(1) If a party dies and the claim is not extinguished or barred, the court may order substitution of the proper parties. The motion for substitution may be

made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of process.

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

#### **25.02 Incompetency**

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

#### **25.03 Transfer of Interest**

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

#### **25.04 Public Officers; Death or Separation from Office**

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

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

### **V. DEPOSITIONS AND DISCOVERY**

#### **Rule 26. General Provisions Governing Discovery**

##### **26.01 Discovery Methods**

Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical (including blood) and mental examinations; and requests for admission. Unless the court orders otherwise under subdivision 26.03 of this rule, and except as provided in Rule 33.01, the frequency of use of these methods is not limited.

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

##### **26.02 Scope of Discovery**

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

(1) **In General.** Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangi-

ble things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

**(2) Insurance Agreements.** In any action in which there is an insurance policy which may afford coverage, any party may require any other party to disclose the coverage and limits of such insurance and the amounts paid and payable thereunder and under Rule 34 may obtain production of the insurance policy, provided, however, that the above provision will not permit such disclosed information to be introduced into evidence unless admissible for other grounds.

**(3) Trial Preparation: Materials.** Subject to the provisions of subdivision 26.02(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision 26.02(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party, or a party, may obtain without the required showing a statement concerning the action or its subject matter previously made by that person who is not a party. If the request is refused, the person may move for a court order. The provisions of Rule 37.01(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

**(4) Trial Preparation: Experts.** Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision 26.02(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision 26.02(4) (C) of this rule, concerning fees and expenses as the court may deem appropriate.

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

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions 26.02(4) (A) (ii) and 26.02(4) (B) of this rule; and (ii) with respect to discovery obtained under subdivision 26.02(4) (A) (ii) of this rule the court may require, and with respect to discovery obtained under subdivision 26.02(4) (B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

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

### **26.03 Protective Orders**

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37.01(4) apply to the award of expenses incurred in relation to the motion.

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

### **26.04 Sequence and Timing of Discovery**

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

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

### **26.05 Supplementation of Responses**

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response

was incorrect when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

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

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

**Rule 27. Depositions Before Action or Pending Appeal**

**27.01 Before Action**

(1) **Petition.** A person who desires to perpetuate his own testimony or that of another person regarding any matter may file a verified petition in the district court of the county of the residence of an expected adverse party. The petition shall be entitled in the name of the petitioner and shall show (a) that the petitioner expects to be a party to an action but is presently unable to bring it or cause it to be brought, (b) the subject matter of the expected action and his interest therein, (c) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it, (d) the names or a description of the persons he expects will be adverse parties and their addresses so far as known, and (e) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the deposition of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) **Notice and Service.** The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the state in the manner provided in Rule 4.03 for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4.03, an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent, the provisions of Rule 17.02 apply.

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

(4) **Use of Deposition.** If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in this state, in accordance with the provisions of Rule 26.04.

**27.02 Pending Appeal**

If an appeal has been taken from a judgment or order of a district court, or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment or order was rendered may allow the taking of the deposition of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case, the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each, and (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.

(Amended Nov. 26, 1969.)

**27.03 Perpetuation by Action**

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

**Rule 28. Persons Before Whom Depositions May be Taken****28.01 Within the United States**

Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

**28.02 In Foreign Countries**

In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice, and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in (here name the country)." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these Rules.

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

**28.03 Disqualification for Interest**

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

**Rule 29. Stipulations Regarding Discovery Procedure**

The parties may by stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner, and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery.

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

**Rule 30. Depositions Upon Oral Examination****30.01 When Depositions May Be Taken**

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

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

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

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (a) states that the person to be examined will be unavailable for examination within the state unless his deposition is taken before expiration of the 30-day period, and (b) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that after he was served with notice under this subdivision (2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition of himself or other person, the deposition may not be used against such party.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The court may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate

and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense.

(5) The notice to a party deponent may include or be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (6) does not preclude taking a deposition by any other procedure authorized in these rules.

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

### **30.03 Examination and Cross-Examination; Record of Examination; Oath; Objections**

Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 43.02. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision 30.02(4) of this rule. If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objection. In lieu of participating in the oral examination, a party may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

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

### **30.04 Motion to Terminate or Limit Examination**

At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26.03. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37.01(4) apply to the award of expenses incurred in relation to the motion.

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

### **30.05 Submission to Witness; Changes; Signing**

When the testimony is stenographically transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness, or the fact of the refusal to sign, together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 32.04(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. (As amended Nov. 14, 1974, effective Jan. 1, 1975.)

### **30.06 Certification and Filing by Officer; Copies; Notice of Filing**

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then place the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert the name of witness)" and shall promptly deliver or mail it to the clerk of the court in which the action is pending.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (a) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (b) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

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

### **30.07 Failure to Attend or to Serve Subpoena; Expenses**

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

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him, and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable

attorney's fees.

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

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

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

After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witness may be compelled by the use of subpoena as provided in Rule 45.

A party desiring to take the deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30.02 (6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

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

#### **31.02 Officers to Take Responses and Prepare Record**

A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rules 30.03, 30.05, and 30.06, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

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

#### **31.03 Notice of Filing**

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

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

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

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

#### **32.01 Use of Depositions**

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

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

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, employee or managing agent or a person designated under Rule 30.02(6) or 31.01 to testify on behalf of a

public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (a) that the witness is dead; or (b) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or (c) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (d) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (e) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witness orally in open court, to allow the deposition to be used.

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

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

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

### **32.02 Objections to Admissibility**

Subject to the provisions of Rules 28.02 and 32.04(3), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of evidence if the witness were then present and testifying.

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

### **32.03 Effect of Taking or Using Depositions**

A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision 32.01(2) of this rule. At the trial or hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

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

### **32.04 Effect of Errors and Irregularities in Depositions**

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

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

(3) **As to Taking of Deposition.**

(a) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them

before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

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

(c) Objection to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

**(4) As to Completion and Return of Deposition.** Errors and irregularities in the manner in which the testimony is transcribed, preserved or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained. (As amended Nov. 14, 1974, effective Jan. 1, 1975.)

### **Rule 33. Interrogatories to Parties**

#### **33.01 Availability; Procedure for Use**

(1) Any party may serve upon any other party written interrogatories. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action, and upon any other party with or after service of the summons and complaint upon that party. No party may serve more than a total of 50 interrogatories upon any other party unless permitted to do so by the court upon motion, notice and a showing of good cause. In computing the total number of interrogatories each subdivision of separate questions shall be counted as an interrogatory.

(2) The party upon whom the interrogatories have been served shall serve separate written answers or objections to each interrogatory within 30 days after service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of summons and complaint upon that defendant. The court, on motion and notice and for good cause shown, may enlarge or shorten the time.

(3) Objections shall state with particularity the grounds for the objection and may be served as a part of the document containing the answers or separately. Within 15 days after service of objections to interrogatories, the party proposing the interrogatory shall serve notice of hearing on the objections at the earliest practicable time. Failure to serve said notice shall constitute a waiver of the right to require answers to each interrogatory to which objection has been made. Answers to interrogatories to which objection has been made shall be deferred until the objections are determined.

(4) Answers to interrogatories shall be stated fully in writing and shall be signed under oath by the party served or, if the party served is the state or a corporation or a partnership or an association, by any officer or managing agent, who shall furnish such information as is available. A party shall restate the interrogatory being answered immediately preceding the party's answer to that interrogatory.

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

**33.02 Scope; Use at Trial**

Interrogatories may relate to any matters which can be inquired into under Rule 26.02, and the answers may be used to the extent permitted by the rules of evidence.

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

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

**33.03 Option to Produce Business Records**

Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

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

**Rule 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes****34.01 Scope**

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

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

**34.02 Procedure**

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

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The

response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

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

#### **34.03 Persons Not Parties**

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

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

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

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

#### **35.01 Order of Examinations**

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

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

#### **35.02 Report of Findings**

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

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

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

#### **35.03 Waiver of Medical Privilege**

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

physical or blood condition.

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

### **35.04 Medical Disclosures and Depositions of Medical Experts**

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

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

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

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

Disclosures under this Rule shall include the conclusions of such treating or examining medical expert.

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

## **Rule 36. Requests for Admission**

### **36.01 Request for Admission**

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

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless within 30 days after service of the request, or within such shorter or longer time as the court may allow the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and, when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37.03, deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court deter-

mines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37.01(4) apply to the award of expenses incurred in relation to the motion.

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

### **36.02 Effect of Admission**

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

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

## **Rule 37. Failure to Make Discovery; Sanctions**

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

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) **Appropriate Court.** An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deponent's failure to answer questions propounded or submitted under Rule 30 or Rule 31, to the court in the county where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the county where the deposition is being taken.

(2) **Motion.** If a deponent fails to answer a question propounded or submitted under Rule 30 or Rule 31, or a corporation or other entity fails to make a designation under Rule 30.02(6) or Rule 31.01, or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26.03.

(3) **Evasion or Incomplete Answer.** For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) **Award of Expenses of Motion.** If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

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

### **37.02 Failure to Comply with Order**

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

(2) **Sanctions by Court in Which Action is Pending.** If a party or an officer, director, employee or managing agent of a party or a person designated under Rule 30.02(6) or Rule 31.01 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision 37.01 of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

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

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

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

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

(e) Where a party has failed to comply with an order under Rule 35.01 requiring him to produce another for examination, such orders as are listed in paragraphs (a), (b), and (c) of this subdivision, unless the party failing to comply shows that he is unable to produce such person for examination.

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

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

### **37.03 Expenses on Failure to Admit**

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

reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

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

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

If a party or an officer, director, employee or managing agent of a party or a person designated under Rule 30.02(6) or Rule 31.01 to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (a), (b), and (c) of subdivision 37.02(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

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

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

## VI. TRIALS

### **Rule 38. Jury Trial of Right**

#### **38.01 Right Preserved**

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

#### **38.02 Waiver**

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

- (1) By failing to appear at the trial;
- (2) By written consent, by the party or his attorney, filed with the clerk;
- (3) By oral consent in open court, entered in the minutes.

#### **38.03 Placing Action on Calendar**

A party desiring to have an action placed on the calendar for trial shall, after issue is joined, prepare a note of issue setting forth the title of the action, whether the issue is one of fact or of law, and if an issue of fact whether it is triable by court or by jury, and the names and addresses and the telephone numbers of the respective counsel, and shall serve the same on counsel for all parties not in default and file it, with proof of service, with the clerk within 10 days after such service in all districts where but one term of court is held annually and in all other districts at least 28 days before the beginning of a general term; and thereupon the action shall be placed on the calendar for trial and shall remain thereon from term to term until tried or stricken therefrom. The party serving a note of issue shall, and any other party may, serve a note of issue upon counsel for any person who becomes a party to the action subsequent to the initial service.

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

**Rule 39. Trial by Jury or by the Court****39.01 By Court**

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

**39.02 Advisory Jury and Trial by Consent**

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

**39.03 Preliminary Instructions in Jury Trials**

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

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

**39.04 Opening Statements by Counsel**

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

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

**Rule 40. Assignment of Cases for Trial**

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

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

(1) **By Plaintiff; by Stipulation.** Subject to the provisions of Rule 23.03 and of Rule 66, an action may be dismissed by the plaintiff without order of court (a) by filing a notice of dismissal not less than 10 days before the opening of the term of court at which the action is noted for trial or, in counties having continuous terms of court, not less than 10 days before the day on which the action is first set for trial, if a provisional remedy has not been allowed or a counterclaim made or other affirmative relief demanded in the answer, or (b) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) **By Order of Court.** Except as provided in paragraph (1) of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a coun-

terclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

#### **41.02 Involuntary Dismissal; Effect Thereof**

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

(2) After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. In an action tried by the court without a jury the court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52.01.

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

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

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

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

#### **41.04 Costs of Previously Dismissed Action**

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

### **Rule 42. Consolidation; Separate Trials**

#### **42.01 Consolidation**

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

#### **42.02 Separate Trials**

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

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

**Rule 43. Evidence****43.01 Form and Admissibility**

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules. All evidence shall be admitted which is admissible under the statutes of this state, or under the rules of evidence heretofore applied in the trials of actions in the courts of this state. In any case, the statute or rule which favors the reception of the evidence governs, and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.

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

A party may interrogate an unwilling or hostile witness by leading questions. A party may call an adverse party or his managing agent or employe or an officer, director, managing agent or employe of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate him by leading questions and contradict and impeach him on material matters in all respects as if he had been called by the adverse party. Where the witness is an adverse party he may be examined by his counsel upon the subject matter of his examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted and impeached by any other party adversely affected by his testimony. Where the witness is an officer, director, managing agent, or employe of the adverse party he may be cross-examined, contradicted and impeached by any party to the action.

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

**43.03 Record of Excluded Evidence**

In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. The court may require the offer to be made out of the hearing of the jury. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. In actions tried without a jury the same procedure may be followed, except that the court, upon request, shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

**43.04 Affirmation in Lieu of Oath**

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

**43.05 Evidence and Motions**

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

**43.06 Res Ipsa Loquitur**

Res ipsa loquitur shall be regarded as nothing more than one form of circumstantial evidence creating a permissive inference of negligence. The plaintiff shall be given the benefit of its natural probative force existing at the close of all the evidence even though he has introduced specific evidence of negligence or made specific allegations of negligence in his pleadings.

### 43.07 Interpreters

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

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

## Rule 44. Proof of Official Record

### 44.01 Authentication

(1) **Domestic.** An official record kept within the United States, or any state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.

(2) **Foreign.** A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidence by an attested summary with or without a final certification.

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

### 44.02 Lack of Record

A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in Rule 44.01(1) in the case of a domestic record, or complying with the requirements of Rule 44.01(2) for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

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

### 44.03 Other Proof

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

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

### 44.04 Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source,

including testimony, whether or not submitted by a party or admissible under Rule 43. The court's determination shall be treated as a ruling on a question of law.

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

#### **Rule 45. Subpoena**

##### **45.01 For Attendance of Witnesses; Form; Issuance**

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

##### **45.02 For Production of Documentary Evidence**

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

##### **45.03 Service**

A subpoena may be served by the sheriff, by his deputy, or any other person who is not a party. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person or by leaving a copy at his usual place of abode with some person of suitable age and discretion then residing therein and by tendering to him the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the state of Minnesota or an officer or agency thereof, fees and mileage need not be tendered.

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

##### **45.04 Subpoena for Taking Depositions; Place of Examination**

(1) Proof of service of notice to take a deposition as provided in Rules 30.02 and 31.01 or in a state where the action is pending constitutes a sufficient authorization for the issuance of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26.02, but in that event the subpoena will be subject to the provisions of Rules 26.03 and 45.04(2).

(2) The person to whom the subpoena is directed may, within 10 days after service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to the production, inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to the production or, nor the right to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(3) A resident of this state may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of court. A nonresident of the state may be required to attend in any county of the state. (As amended Nov. 14, 1974, effective Jan. 1, 1975.)

#### **45.05 Subpoena for a Hearing or Trial**

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

#### **45.06 Contempt**

Failure to obey a subpoena without adequate excuse is a contempt of court. (As amended March 3, 1959, effective July 1, 1959.)

#### **Rule 46. Exceptions Unnecessary**

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been taken it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him. A minute of the objection to the ruling or order shall be made by the judge or reporter. (As amended Nov. 26, 1969.)

#### **Rule 47. Jurors**

##### **47.01 Examination of Jurors**

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

##### **47.02 Alternate Jurors**

The court may direct that one or two jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the principal jurors. An alternate juror who does not replace a principal juror shall be discharged after the jury retires to consider its verdict. If one or two alternate jurors are called, each party is entitled to one peremptory challenge in addition to those otherwise allowed by law. The additional peremptory challenge may be used only against an alternate juror, and the other peremptory challenges allowed by law shall not be used against the alternates.

##### **47.03 Separation of Jury**

After the jury has retired for its deliberations, the court, in its discretion, may permit the jury to separate overnight and return to its deliberations the following morning. (Added Nov. 10, 1967, effective Feb. 1, 1968.)

**Rule 48. Juries of Less Than Twelve; Majority Verdict**

The parties may stipulate that the jury shall consist of any number less than 12, or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

**Rule 49. Special Verdicts and Interrogatories****49.01 Special Verdicts**

(1) The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and require written findings thereon as it deems most appropriate. The court shall give to the jury such explanations and instructions concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict. Except as provided in Rule 49.01(2), neither the court nor counsel shall inform the jury of the effect of its answers on the outcome of the case.

(2) In actions involving Minn. Stat. 1971, Sec. 604.01, the court shall inform the jury of the effect of its answers to the percentage of negligence question and shall permit counsel to comment thereon, unless the court is of the opinion that doubtful or unresolved questions of law, or complex issues of law or fact are involved, which may render such instruction or comment erroneous, misleading or confusing to the jury.

(As amended Jan. 5, 1973.)

**49.02 General Verdict Accompanied by Answer to Interrogatories**

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

**Rule 50. Motion for a Directed Verdict; Judgment Notwithstanding Verdict; Alternative Motion****50.01 Directed Verdict; When Made; Effect**

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

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

**50.02 Judgment Notwithstanding Verdict**

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

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

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

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

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

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

trial court to determine whether a new trial shall be granted.  
(As amended Nov. 10, 1967, effective Feb. 1, 1968.)

### **Rule 51. Instructions to Jury; Objection**

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

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

### **Rule 52. Findings by the Court**

#### **52.01 Effect**

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a referee, to the extent that the court adopts them, shall be considered as the findings of the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41.02.

#### **52.02 Amendment**

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

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

### **Rule 53. Referees**

#### **53.01 Appointment and Compensation**

The court in which any action is pending may appoint a referee therein. When the court shall state in its order of appointment that the reference is made necessary by press of business, the fees of the referee, as taxed and allowed by the court, shall be paid out of the county treasury, as the salaries of county offi-

cers are paid. In other cases the compensation to be allowed to a referee shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action which is in the custody and control of the court as the court may direct. The referee shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the referee is entitled to a writ of execution against the delinquent party.

### **53.02 Reference**

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

### **53.03 Powers**

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

### **53.04 Proceedings**

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

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

(3) **Statement of Accounts.** When matters of accounting are in issue before the referee, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is

insufficient, the referee may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

### **53.05 Report**

(1) **Contents and Filing.** The referee shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) **In Non-Jury Actions.** In an action to be tried without a jury the court shall accept the referee's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6.04. The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

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

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

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

## **Rule 54. Judgments; Costs**

### **54.01 Definition; Form**

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

### **54.02 Judgment upon Multiple Claims**

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

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

**54.03 Demand for Judgment**

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

**54.04 Costs**

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

**Rule 55. Default****55.01 Judgment**

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

(1) When the plaintiff's claim against a defendant is upon a contract for the payment of money only, or for the payment of taxes and penalties and interest thereon owing to the state, the clerk, upon request of the plaintiff and upon affidavit of the amount due, which may not exceed the amount demanded in the complaint, shall enter judgment for the amount due and costs against the defendant.

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

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

(4) When service of the summons has been made by published notice, or by delivery of a copy without the state, no judgment shall be entered on default until the plaintiff shall have filed a bond, approved by the court, conditioned to abide such order as the court may make touching the restitution of any property collected or obtained by virtue of the judgment in case a defense is thereafter permitted and sustained; provided, that in actions involving the title to real estate or to foreclose mortgages thereon such bond shall not be required. (As amended March 3, 1959, effective July 1, 1959.)

**55.02 Plaintiffs; Counterclaimants; Cross-Claimants**

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

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

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

**56.02 For Defending Party**

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

**56.03 Motion and Proceedings Thereon**

The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.  
(As amended March 3, 1959, effective July 1, 1959.)

**56.04 Case not Fully Adjudicated on Motion**

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

**56.05 Form of Affidavits; Further Testimony; Defense Required**

Supporting and opposing affidavits shall be made on personal knowledge shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. When a motion for summary judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere averments or denials of his pleading but must present specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.  
(As amended March 3, 1959, effective July 1, 1959.)

**56.06 When Affidavits are Unavailable**

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

**56.07 Affidavits Made in Bad Faith**

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

**Rule 57. Declaratory Judgments**

The procedure for obtaining a declaratory judgment pursuant to M.S.A. 1949, c. 555, shall be in accordance with these rules, and the right to trial by jury is retained under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

**Rule 58. Entry of Judgment; Stay****58.01 Entry**

Unless the court otherwise directs, and subject to the provisions of Rule 54.02, judgment upon the verdict of a jury, or upon an order of the court for the recovery of money only or for costs or that all relief be denied, shall be entered forthwith by the clerk; but the court shall direct the appropriate judgment to be entered upon a special verdict or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49 or upon an order of the court for relief other than money or costs. Entry of judgment shall not be delayed for the taxation of costs, and the omission of costs shall not affect the finality of the judgment. The judgment in all cases shall be entered and signed by the clerk in the judgment book; this entry constitutes the entry of the judgment; and the judgment is not effective before such entry. A copy thereof, also signed by the clerk, shall be attached to the judgment roll. (As amended March 3, 1959, effective July 1, 1959.)

**58.02 Stay**

The court may order a stay of entry of judgment upon a verdict or decision for a period not exceeding the time required for the hearing and determination of a motion for new trial or for judgment notwithstanding the verdict or to set the verdict aside or to dismiss the action or for amended findings, and after such determination may order a stay of entry of judgment for not more than 30 days. In granting a stay of entry of judgment under this rule for any period exceeding thirty (30) days after verdict or decision, the court, in its discretion, may impose such conditions for the security of the adverse party as may be deemed proper. (As amended March 3, 1959, effective July 1, 1959; November 10, 1967, effective February 1, 1968.)

**Rule 59. New Trials****59.01 Grounds**

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

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

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

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

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

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

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

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

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

#### **59.02 Basis of Motion**

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

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

#### **59.03 Time for Motion**

A notice of motion for a new trial shall be served within 15 days after a general verdict or service of notice by a party of the filing of the decision or order; and the motion shall be heard within 30 days after such general verdict or notice of filing, unless the time for hearing be extended by the court within the 30 day period for good cause shown.

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

#### **59.04 Time for Serving Affidavits**

When a motion for new trial is based upon affidavits, they shall be served with the notice of motion. The opposing party shall have 10 days after such service in which to serve opposing affidavits, which period may be extended by the court upon an order extending the time for a hearing under Rule 59.03. The court may permit reply affidavits.

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

#### **59.05 On Initiative of Court**

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

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

**59.06 Stay of Entry of Judgment**

A stay of entry of judgment under Rule 58 shall not be construed to extend the time within which a party may serve a motion hereunder.  
(As amended November 10, 1967, effective February 1, 1968.)

**59.07 Case; How and When Settled [Deleted effective February 1, 1968]****59.08 Settling Case; When Judge Incapacitated [Deleted effective February 1, 1968]****Rule 60. Relief From Judgment or Order****60.01 Clerical Mistakes**

Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the appellate court.  
(As amended Nov. 26, 1969.)

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

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment (other than a divorce decree), order, or proceeding and may order a new trial or grant such other relief as may be just for the following reasons: (1) Mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.03; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this Rule 60.02 does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Rule 4.043, or to set aside a judgment for a fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

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

**Rule 61. Harmless Error**

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

**Rule 62. Stay of Proceedings to Enforce a Judgment****62.01 Stay on Motions**

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

**62.02 Injunction Pending Appeal**

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

**62.03 Stay Upon Appeal**

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

(Amended November 26, 1969.)

**62.04 Stay in Favor of the State or Agency Thereof**

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

**62.05 Power of Appellate Court Not Limited**

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

**62.06 Stay of Judgment Upon Multiple Claims**

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

**Rule 63. Disability or Disqualification of Judge; Affidavit of Prejudice; Assignment of a Judge****63.01 Disability of Judge**

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

**63.02 Interest or Bias**

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

**63.03 Affidavit of Prejudice**

Any party or his attorney may make and serve on the opposing party and file with the clerk an affidavit stating that, on account of prejudice or bias on the part of the judge who is to preside at the trial or at the hearing of any motion, he has good reason to believe and does believe that he cannot have a fair trial or hearing before such judge. The affidavit shall be served and filed not less than 10 days prior to the first day of a general term, or 5 days prior to a special term or a day fixed by notice of motion, at which the trial or hearing is to be had, or, in any district having two or more judges, within one day after it is ascertained which judge is to preside at the trial or hearing. Upon the filing of such affidavit, with proof of service, the clerk shall forthwith assign the cause to another judge of the same district, and if there be no other judge of the district who is qualified, or if there be only one judge of the district, he shall forthwith notify the chief justice of the supreme court.

**63.04 Assignment of Judge**

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

## VII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

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

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

**Rule 65. Injunctions****65.01 Temporary Restraining Order; Notice; Hearing; Duration**

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

order. On written or oral notice to the party who obtained the ex parte temporary restraining order, the adverse party may appear and move its dissolution or modification, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(Added November 10, 1967, effective February 1, 1968.)

### **65.02 Temporary Injunction**

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

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

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

(Added November 10, 1967, effective February 1, 1968.)

### **65.03 Security**

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

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

(Added November 10, 1967, effective February 1, 1968.)

### **Rule 66. Receivers**

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. A foreign receiver shall have capacity to sue in any district court, but his rights are subordinate to those of local creditors. The practice in the administration of estates by the court shall be in accordance with M.S.A. 1949, c. 576, and with the practice heretofore followed in the courts of this state or as provided in rules promulgated by the district courts. In all other respects, the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

### **Rule 67. Deposit in Court**

#### **67.01 In an Action**

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

**67.02 When no Action is Brought**

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

**67.03 Court May Order Deposit or Seizure of Property**

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

**67.04 Money Paid into Court**

Where money is paid into the court to abide the result of any legal proceedings, the judge may order it deposited in a designated state or national bank or savings bank. In the absence of such order, the clerk of court is the official custodian of all moneys, and the judge, on application of any person paying such money into court, may require the clerk to give an additional bond, with like condition as the bond provided for in M.S.A. 1949, § 485.01, in such sum as the judge shall order.

**Rule 68. Offer of Judgment; Tender of Money in Lieu of Judgment****68.01 Offer of Judgment**

At any time more than one day before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property, or to the effect specified in his offer, with costs and disbursements then accrued. If before trial the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with the proof of service thereof, and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible, except in a proceeding to determine costs and disbursements. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs and disbursements incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.

**68.02 Tender of Money in Lieu of Judgment**

If the action be for the recovery of money, instead of the offer of judgment provided for in Rule 68.01, the defendant may tender to the plaintiff the full amount to which he is entitled, together with costs and disbursements then accrued. If such tender be not accepted, the plaintiff shall have no costs and disbursements unless he recover more than the sum tendered; and the defendant's costs and disbursements shall be deducted from the recovery, or, if they exceed the recovery, he shall have judgment for the excess. The fact of such tender having been made shall not be pleaded or given in evidence.

**Rule 69. Execution**

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with M.S.A. 1971, c. 550. In aid of the judgment or execution, the judgment creditor, or his successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules. (As amended November 14, 1974, effective January 1, 1975.)

**Rule 70. Judgment for Specific Acts; Vesting Title**

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

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

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

**Rules 72-76. [Reserved for Future Use.]**

**IX. DISTRICT COURTS AND CLERKS****Rule 77. District Courts and Clerks****77.01 District Courts Always Open**

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

**77.02 Trials and Hearings; Orders in Chambers**

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

**77.03 Clerk's Office and Orders by Clerk**

All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but his action may be suspended or altered or rescinded by the court upon cause shown.

**77.04 Notice of Orders or Judgments**

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

**Rules 78-79. [Reserved for Future Use.]****Rule 80. Stenographic Report or Transcript as Evidence**

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

**Rule 81. Applicability; in General****81.01 Statutory and Other Procedures**

(1) **Procedures Preserved.** These rules do not govern pleadings, practice and procedure in the statutory and other proceedings listed in Appendix A insofar as they are inconsistent or in conflict with the rules.

(2) **Procedures Abolished.** The writ of quo warranto and information in the nature of quo warranto are abolished. The relief heretofore available thereby may be obtained by appropriate action or appropriate motion under the practice prescribed in these rules.

(3) **Statutes Superseded.** Subject to the provisions of subparagraph (1) of this rule, the statutes listed in Appendix B and all other statutes inconsistent or in conflict with these rules are superseded insofar as they apply to pleading, practice and procedure in the district court.

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

**81.02 Appeals to District Courts**

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

**81.03 Rules Incorporated into Statutes**

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

**Rule 82. Jurisdiction and Venue**

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

**Rule 83. Rules by District Courts**

Any court may adopt rules governing its practice, and the judges of the district courts, pursuant to M.S.A. 1949, §§ 484.33 and 484.52, may adopt rules, not in conflict with these rules.

**Rule 84. Appendix of Forms**

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate. [The Appendix of Forms is not reprinted in this edition.]

**Rule 85. Title**

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

**Rule 86. Effective Date****86.01 Effective Date and Application to Pending Proceedings**

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

**86.02 Effective Date of Amendments**

The amendments adopted on November 10, 1967, will take effect on February 1, 1968. They govern all proceedings in actions brought after they take effect, and also all further proceedings in actions then pending, except as to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible, or would work injustice, in which event the former procedure applies.

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

## APPENDIX A

## Special Proceedings Under Rule 81.01

Following is a list of statutes and special proceedings which will be excepted from these rules insofar as they are inconsistent or in conflict with the procedure and practice provided by these rules:

**M.S.A. 1949**

48.525 to 48.527 .....	Escheated funds of banks and trust companies
64.32 .....	Quo warranto against fraternal benefit association
67.42 .....	Quo warranto against town mutual fire insurance company
73.09 to 73.16 .....	Actions on orders of State Fire Marshal
80.14 subd. 2 .....	Actions by Commissioner of Securities
80.225 .....	Proceedings by Commissioner of Securities
Chapters 105 to 113 .....	Drainage
Chapter 117 .....	Eminent domain proceedings
160.26 .....	Drainage of roads

162.20 ..... Establishment of roads by judicial proceedings  
 Chapter 166 ..... Roads or cartways jointly constructed or improved  
 Chapter 209 ..... Election contests  
 Chapter 259 ..... Adoption; change of name  
 Chapter 277 ..... Delinquent personal property taxes  
 Chapter 278 ..... Objections and defenses to taxes on real estate  
 Chapter 279 ..... Delinquent real estate taxes  
 284.07 to 284.26 ..... Actions involving tax titles  
 325.21 ..... Quo warranto for violation of statutes regulating trade  
 462.56 ..... Development plan  
 501.33 to 501.38 ..... Proceedings relating to trusts  
 Chapter 503 ..... Townsite lands  
 Chapter 508 ..... Registration of title to lands  
 514.01 to 514.17 ..... Mechanics liens  
 514.35 to 514.39 ..... Motor vehicle liens  
 Chapter 518 ..... Divorce  
 540.08 ..... Insofar as it provides for action by parent for injury to minor child  
 Chapter 556 ..... Action by attorney general for usurpation of office, etc.  
 Chapter 558 ..... Partition of real estate (except that part of second sentence of 558.02 beginning 'a copy of which')  
 Chapter 559 ..... Actions to determine adverse claims (except that part of third sentence of 559.02 beginning 'a copy of which')  
 561.11 to 561.15 ..... Petition by mortgagor to cultivate lands  
 573.02 ..... Action for death by wrongful act (as amended by Laws 1951, Chapter 697, and Laws 1965, Chapter 837)  
 Chapter 579 ..... Actions against boats and vessels  
 Writ of certiorari  
 Writ of habeas corpus  
 Writ of ne exeat  
 Writ of mandamus  
 (As amended November 10, 1967, effective February 1, 1968.)

APPENDIX B(1)

List of Rules Superseding Statutes

<b>Rule</b>	<b>Statute Superseded</b>	<b>M.S.A. 1971</b>
2.01 .....	540.01	
3.01 .....	541.12	
	543.01	
3.02 .....	543.04	1st sentence
4.01 .....	543.02	
4.02 .....	543.03	
4.03 .....		
(a).....	543.05	
(b).....	540.15	the clause "and the summons may be served on one or more of them"
	540.151	the clause "and the summons may be served on one or more of them"

(c) 1st sentence:.....	543.08	1st paragraph, 1st sentence of 3d paragraph, and 4th paragraph
(c) 2d sentence: .....	543.08	2d clause of 1st sentence of 3d paragraph
	543.09	
	543.10	
(d) .....	543.07	
(e) .....	543.06	
	365.40	} superseded to extent inconsistent
	373.07	
	411.07	
4.04 .....	543.11	
	543.12	
	543.15	last clause of 1st sentence
4.042 .....	543.04	2d and 3d sentences
4.043 .....	543.13	
4.044 .....	557.01	3d sentence through "but" following semicolon
4.05 .....	None	484.03, 586.05 and 587.02 contain same provision
4.06 .....	543.14	
4.07 .....	544.30	} superseded in part
	544.32	
	544.34	
5.01 .....	543.16	
5.02 .....	543.09	last sentence
	543.10	last sentence
	543.17	
	543.18	
	557.01	clause following semicolon in 3d sentence
		Dist. Ct. Rule 25
5.04 .....	544.35	
6.02 .....	544.32	} superseded in part
	544.34	
6.03 .....	544.32	superseded in part
6.04 .....	545.01	
6.05 .....	543.18	
7.01 .....	544.01	
	544.03	
	544.06	3d sentence
	544.08	
	544.09	
	546.02	1st sentence
		Dist. Ct. Rule 7 and Rule 22(c)
7.02 .....	545.01	1st sentence
		Dist. Ct. Rule 20
8.01 .....	544.02	(2) 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 sub- scribed by the party or his attorney, and"
12.01 .....	543.02	1st sentence
	544.29	2d sentence
	546.29	
12.02 .....	544.03	
		Dist. Ct. Rule 7 and Rule 22(c)
	543.15	2d sentence
	544.04	
	544.06	
	544.08	
	544.18	
12.05 .....	544.10	
12.06 .....	544.17	
12.08 .....	544.03	subd. 3
13.01 .....	544.05	
13.02 .....	544.05	
13.05 .....	544.05	
13.08 .....	540.16	
14.01 .....	540.16	
14.02 .....	540.16	
15.01 .....	544.29	1st sentence
	544.30	
15.02 .....	544.30	
	544.31	
15.04 .....	544.11	
17.01 .....	540.02	
	540.04	
17.02 .....	540.06	
18.01 .....	544.27	
19.02 .....	540.16	
20.01 .....	540.10	
	544.05	
	544.27	
	548.02	(548.20 covers 2d sentence of 548.02)
22 .....	50.12	to extent inconsistent
	227.17	
	228.20	
	544.12	
23.01 .....	540.02	
24.01 .....	50.12	to extent inconsistent
	544.13	
24.03 .....	544.13	

25.01.....	540.12	to extent inconsistent
25.03.....	540.12	to extent inconsistent
26.01.....	597.01	
	597.04	
	597.05	
26.04.....	597.12	
	597.15	
	597.16	
26.05.....	597.12	
26.07.....	597.01	
27.01.....	598.01	
	598.02	
	598.03	
	598.05	to 598.11, inclusive
28.01.....	597.01	
	597.04	
28.02.....	597.01	
	597.04	
29.....	597.06	
30.01.....	597.01	
	597.02	
30.03.....	597.07	
	597.10	
30.05.....	597.07	
	597.08	
30.06.....	597.08	
	597.09	
30.07.....	597.14	
31.01.....	597.04	
	597.05	
31.02.....	597.07	
	597.08	
	597.09	
	597.10	
32.01.....	597.13	
32.02.....	597.13	
32.03.....	597.12	
	597.13	
32.04.....	597.13	
34.....	603.01	
37.02.....	597.11	
	603.01	
38.01.....	546.03	2d sentence
38.02.....	546.26	
38.03.....	546.05	1st four sentences
39.01.....	546.03	1st clause of 3d sentence
39.02.....	546.03	last clause of 3d sentence
40.....	546.05	5th sentence
41.01.....	546.39	
41.02.....	546.38	
42.01.....	546.04	1st sentence
42.02.....	546.04	2d sentence
43.02.....	595.03	
43.04.....	595.05	

45.04 .....	597.11	
46 .....	547.03	
47.01 .....	Dist. Ct. Rule 27(a)	
47.02 .....	546.095	
49.01 .....	546.14	(Laws 1971, Ch. 715)
49.02 .....	546.20	
50.02 .....	605.06	1st and 2d sentences
51 .....	546.14	(Laws 1971, Ch. 715)
	547.03	
52.01 .....	546.27	1st sentence
53.01 .....	546.33	1st paragraph
	546.34	
53.03 .....	546.36	
53.04 .....	546.36	
53.05 .....	546.36	
54.03 .....	548.01	
54.04 .....	549.10	
55.01 .....	544.07	
58.01 .....	548.03	
58.02 .....	546.25	2d sentence
	547.023	
	Dist. Ct. Rule 26	
59.01 .....	547.01	
59.02 .....	547.02	
59.03 .....	547.02	
59.07 .....	547.04	
	547.05	
59.08 .....	547.06	
60.01 .....	544.32	
	544.34	
60.02 .....	544.32	
	544.34	
61 .....	544.33	
63.02 .....	542.13	
63.03 .....	542.16	
63.04 .....	542.13	
	542.16	
65 .....	585.01-585.04	to extent inconsistent
67.02 .....	544.14	
67.03 .....	576.02	
67.04 .....	485.02	1st sentence
68.01 .....	546.40	
68.02 .....	546.41	
70 .....	557.04	
77.01 .....	546.30	1st sentence
77.04 .....	546.30	3d sentence

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

## APPENDIX B(2)

## List of Statutes Superseded by Rules

<b>Statute Superseded</b>	<b>By Rule</b>
<b>M.S.A. 1971</b>	
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
544.11	15.04
544.12	22
544.13	24.01; 24.03
544.14	67.02
544.15	last paragraph and part of 1st sentence reading "in a court of record shall be subscribed by the party or his attorney, and".....
	11
544.16	8.06
544.17	12.05; 12.06
544.18	8.04; 12.02
544.19	9.05
544.20	9.04
544.23	9.03
544.24	Generally
544.25	Generally
544.26	Generally
544.27	8.05; 10.02; 18.01; 20.01
544.28	9.08
544.29	12.01; 15.01
544.30	4.07; 6.02; 15.01; 15.02
544.31	15.02
544.32	4.07; 6.02, 6.03; 60.01; 60.02; 61
544.33	61
544.34	4.07; 6.02; 60.01; 60.02
544.35	5.04
545.01	6.04; 7.02
546.02	1st sentence.....
	7.01
546.03	2d and 3d sentences.....
	38.01; 39.01; 39.02
546.04	42.01; 42.02
546.05	all except last 3 sentences.....
	38.03; 40
546.095	47.02
546.14	(Laws 1971, Ch. 715).....
	49.01; 51
546.20	49.01; 51
546.25	beginning with "or, in its discretion * * * *"
	58.02
546.26	38.02
546.27	1st sentence.....
	52.01
546.29	12.01
546.30	1st and 3d sentences.....
	77.01; 77.04
546.33	1st paragraph.....
	53.01
546.34	53.01
546.36	53.03; 53.04; 53.05
546.38	41.02
546.39	41.01; 41.02
546.40	68.01
546.41	68.02
547.01	59.01

547.02	59.02; 59.03
547.023	58.02
547.03	46; 51
547.04	59.07
547.05	59.07
547.06	59.08
548.01	54.03
548.02	20.01
548.03	58.01
549.10	54.04
557.01 3d sentence	4.044; 5.02
557.04	70
576.02	67.03
585.01-585.04 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; as amended January 5, 1973.)

## (3) Index to Rules of Civil Procedure

- Abode, service of subpoena by leaving copy at place of, Rule 45.03.
- Abolition of certain procedures, Rule 81.01.
- Absence of witness, deposition use, Rule 32.01.
- Accident, new trial on ground of, Rule 59.01.
- Accord and satisfaction, affirmative defense, Rule 8.03.
- Accounts,
  - Complaint on, form, Form 3.
  - Referees, statement of accounts, Rule 53.04.
- Addresses,
  - Contents of application for appointment of guardian ad litem, Rule 17.02.
  - Contents of note of issue, Rule 38.03.
  - Summons to give address where subscriber may be served, Rule 4.01.
- Admissibility of depositions, objections, Rule 32.02.
- Admissions,
  - Effect, Rule 36.02.
  - Expenses on refusal to admit, Rule 37.03.
  - Pleadings, Rules 8.02, 8.04.
  - Requests for admission, Rule 36.01.
    - Discovery method, Rule 26.01.
    - Form, Form 20.
- Admissions of fact, pre-trial procedure, Rule 16.
- Adoption, change of name, rules not governing where inconsistent with statutes, Rule 81.01.
- Adultery, divorce on ground of, jury trial, Rule 38.01.
- Adverse claims, actions to determine, rules not governing where inconsistent with statutes, Rule 81.01.
- Adverse or pecuniary interest, disqualification for taking deposition, Rule 28.03.
- Affidavits,
  - Filing, Rule 5.04.
  - New trial, Rule 59.02.
    - Affidavit to show pertinent facts, Rule 59.02.
    - Time for serving affidavits, Rule 59.04.
  - Prejudice of judge, Rule 63.03.
  - Proof of service of summons and other process, Rule 4.06.
  - Service of summons by publication, Rule 4.04.
  - Summary judgment,
    - Adverse party's service of opposing affidavits, Rule 56.03.
    - Affidavits made in bad faith, Rule 56.07.
    - Continuance to permit affidavits to be obtained, Rule 56.06.
    - Form, Rule 56.05.
  - Temporary injunctions, Rules 65.01, 65.02.
  - Time of service, Rule 6.04.
- Affirmation, in lieu of oath, Rule 43.04.
- Affirmative defenses,
  - Accord and satisfaction, etc., Rule 8.03.
  - Service, numerous defendants, Rule 5.03.
- Age,
  - Contents of application for appointment of guardian ad litem, Rule 17.02.
  - Service of subpoena by leaving copy with person of suitable age, Rule 45.03.
  - Witness, age precluding attendance or testimony, deposition use, Rule 32.01.

Agent of party, mental, physical or blood examination, Rule 35.01.

Alternate jurors, court's power, Rule 47.02.

Alternative claims or defenses, pleading, Rule 8.05.

Amendments,

Effective date of amendments to rules, Rule 86.02.

Findings by court, Rule 52.02.

Omitted counterclaim, Rule 13.06.

Pleadings, Rule 15.

Conforming to evidence, Rule 15.02.

Leave of court, Rule 15.01.

Pre-trial conference, Rule 16.

Relation back of amendments, Rule 15.03.

Responses to requests for discovery, Rule 26.05.

Summons or other process, discretion of court, Rule 4.07.

Annoyance, discovery, protective orders, Rule 26.03.

Answer,

Complaint for money had and received with counterclaim for interpleader, form, Form 16.

Defenses under Rule 12.02, form, Form 15.

Interrogatories, post.

Pleading, Rule 7.01.

Requests for admissions, Rule 36.01.

Service of summons by publication, time, Rule 4.042.

Statement in summons as to time for service of answer, Rule 4.01.

Time of service, Rule 12.01.

Appeals,

Appellate court's power to stay proceedings as not limited pending appeal, Rule 62.05.

Correction of clerical mistakes pending appeal, Rule 60.01.

Costs, amount of determination by court clerk, Rule 54.04.

Deposition taken pending appeal, Rule 27.02.

District courts, appeals to, rules not superseding statutory provisions, Rule 81.02.

Injunction pending appeal, Rule 62.02.

Judgment notwithstanding verdict, grant or denial of motion, Rule 50.02.

New trial, grant or denial of motion, Rule 50.02.

Stay of enforcement of judgment upon appeal, Rule 62.03.

Appearance,

Class actions, Rule 23.03.

Quasi in rem jurisdiction, Rule 4.04.

Service or filing of any paper in proceeding, Rule 5.01.

Necessity, Rule 5.01.

Appellate court, stay of proceedings pending appeal, power not limited, Rule 62.05.

Appendix, forms, contemplation of rules, Rule 84.

Application for appointment of guardian ad litem, Rule 17.02.

Application of rules, Rule 81.

Appointment,

Guardian ad litem, Rule 17.02.

Referees, Rule 53.01.

Arbitration and award,

Affirmative defense, Rule 8.03.

Arbitrators, subpoena for hearing, Rule 45.05.

Assignments,

Cases for trial, Rule 40.

- Judges, Rule 63.04.
- Associations,
  - Capacity to sue or be sued not required to be alleged, Rule 9.01.
  - Class actions, Rule 23.07.
  - Derivative actions by shareholders or members, Rule 23.06.
  - Summons, personal service, Rule 4.03.
- Assumption of risk, affirmative defense, Rule 8.03.
- Attachment,
  - Property of disobedient party, compelling obedience to judgment, Rule 70.
  - Service of summons by publication when plaintiff acquires lien upon property, Rule 4.04.
- Attorney general,
  - Notice when constitutionality of act of legislature is drawn into question, Rule 24.04.
  - Summons upon state by delivering copy to, Rule 4.03.
- Attorneys,
  - Application by, for appointment of guardian ad litem, Rule 17.02.
  - Certification, unavailability of deponent for examination, Rule 30.02.
  - Depositions, attorney disqualified from taking, Rule 28.03.
  - Disciplinary action,
    - Insertion of scandalous or indecent matter in pleadings, Rule 11.
    - Signing of pleadings, Rule 11.
  - Examination of witness who is an adverse party by his counsel, Rule 43.02.
  - Fees. Attorneys' fees, generally, post.
  - Note of issue, names, addresses and telephone numbers, Rule 38.03.
  - Opening statements, Rule 39.04.
  - Service of note of issue on, Rule 38.03.
  - Service upon attorney, Rule 5.02.
  - Setting forth names and addresses in note of issue, Rule 38.03.
  - Signing of pleadings, Rule 11.
  - Subscribing to summons by plaintiff's attorney, Rule 4.01.
  - Writings respecting attorney's mental impressions, etc., scope of discovery, Rule 26.02.
- Attorneys' fees,
  - Failure of party to attend own deposition or serve answers, Rule 37.04.
  - Failure to comply with order compelling discovery, Rule 37.02.
  - Motion for order compelling discovery, Rule 37.01.
  - Refusal to admit genuineness of documents, payment of expenses incurred in making proof, Rule 37.03.
- Audita querela, writ abolished, Rule 60.02.
- Authentication, records, Rule 44.
  - Bailee suing in own name without joining real party in interest, Rule 17.01.
- Bankruptcy, discharge as affirmative defense, Rule 8.03.
- Banks,
  - Escheated funds, rules not governing where inconsistent with statutes, Rule 81.01.
  - Money paid into court order deposited, Rule 67.04.
- Bias, judge, Rule 63.02.
- Bills and notes, complaint on promissory note, form, Form 2.
- Bills of review, abolished, Rule 60.02.
- Blood condition, examination by physician, report of findings, Rule 35.02.
- Blood examination,
  - Discovery, methods, Rule 26.01.
  - Medical disclosures and depositions of medical experts, Rule 35.04.

Orders, Rule 35.01.

Waiver of medical privilege, Rule 35.03.

Blood relationship, physical and mental examination by physician, Rule 35.01.

Boats, actions against, rules not governing where inconsistent with statute, Rule 81.01.

Bonds,

Filing, Rule 5.04.

Guardian ad litem representing infant or incompetent, Rule 17.02.

Judgment by default, Rule 55.01.

Temporary injunction, Rule 65.03.

Boroughs, summons, service by delivering copy to chief executive officer or clerk, Rule 4.03.

Business records, interrogatories, option to produce records, Rule 33.03.

Calendar,

Declaratory relief, advancing on calendar, Rule 57.

Placing action on, Rule 38.03.

Pre-trial calendar, Rule 16.

Capacity of party to sue or be sued, raising issue, Rule 9.01.

Caption, pleading, Rule 10.01.

Cartways, joint construction or improvement, rules not governing where inconsistent with statutes, Rule 81.01.

Certiorari, rules inconsistent with statutes, Rule 81.01.

Chambers,

Orders in, Rule 77.02.

Charts, inspection and copying, discovery, scope, Rule 34.01.

Chief Justice,

Assignment of judges, Rule 63.04.

Notice of disqualification of judge, Rule 63.02.

Citation, rules, Rule 85.

Cities, summons, service by delivering copy to chief executive officer or clerk, Rule 4.03.

Civil action, one form of action, Rule 2.

Claims,

Assertion by third-party defendant, Rule 14.01.

Defense of failure to state claim, time of making, Rule 12.08.

Discovery, scope, Rule 26.02.

Final judgment in case of multiple claims, Rule 54.02.

Involuntary dismissal, Rule 41.02.

Joinder, Rule 18.01.

Motion to dismiss presenting defense of failure to state claim, form, Form 14.

Plaintiff's assertion against third-party defendant, Rule 14.01.

Supplemental pleading where original pleading is defective in statement, Rule 15.04.

Class actions, Rules 19.04, 23.

Clerical mistakes, judgments, etc., relief, Rule 60.01.

Clerks of court,

Assignment of cause to another judge of same district on filing of affidavit of prejudice, Rule 63.03.

Custodian of monies deposited, Rule 67.04.

Delivery of deposition to, Rule 30.06.

Filing of pleadings, affidavits, etc., Rule 5.04.

Mailing deposition to, Rule 30.06.

Mailing notice of orders or judgments, Rule 77.04.

- Orders grantable without order of court, Rule 77.03.
- Referee to file report with, Rule 53.05.
- Service upon attorney or upon party by leaving copy with, Rule 5.02.
- Signing of judgment in judgment book, Rule 58.01.
- Subpoenas issued by, Rule 45.01.
- Sureties on temporary injunction bond or undertaking, agent for service of process, etc., Rule 65.03.
- Commencement of action,
  - Ratification by real party in interest, Rule 17.01.
  - Service or delivery of summons, Rule 3.01.
- Comment by attorney, special verdicts, comparative negligence, Rule 49.01.
- Commercial paper, complaint on, Form 2.
- Commission to take deposition in foreign country, Rule 28.02.
- Commissioner of securities,
  - Actions by, rules not governing where inconsistent with statutes, Rule 81.01.
  - Proceedings by, rules not governing where inconsistent with statutes, Rule 81.01.
- Comparative negligence, special verdict, instructions to jury, Rule 49.01.
- Compelling attendance of witnesses,
  - Depositions upon written questions, Rule 31.01.
  - Taking depositions, subpoena use, Rule 30.01.
- Compensation,
  - Interpreters, Rule 43.07.
  - Referees, Rule 53.01.
- Complaint,
  - Derivative actions by shareholders or members, Rule 23.06.
- Forms,
  - Account, Form 3.
  - Claim for debt and to set aside fraudulent conveyance, Form 12.
  - Commercial paper, Form 2.
  - Conversion, Form 10.
  - Goods sold and delivered, Form 4.
  - Interpleader and declaratory relief, Form 13.
  - Money had and received, Form 7.
  - Money lent, Form 5.
  - Money paid by mistake, Form 6.
  - Negligence, Form 8.
  - Negligence where plaintiff unable to determine which person responsible, Form 9.
  - Promissory note, Form 2.
  - Specific performance of contract to convey land, Form 11.
  - Third-party defendant, complaint against, Form 17.
- Names of parties, Rule 10.01.
- Pleading, Rule 7.01.
- Service, Rule 4.042.
- Service by defendant as third-party plaintiff, Rule 14.01.
- Service with summons, Rule 3.02.
- Third-party defendant, complaint against, form, Form 17.
- Compromise and settlement,
  - Class actions, Rule 23.
  - Derivative actions by shareholders or members, Rule 23.06.
  - Unincorporated associations, actions relating to, Rule 23.07.
- Compulsory counterclaims, elements, Rule 13.01.

- Computation, time, Rule 6.01.
- Conditions precedent,
  - Class actions, Rule 23.01.
  - Pleading, Rule 9.03.
- Consent, guardian ad litem, Rule 17.02.
- Consideration, failure as affirmative defense, Rule 8.03.
- Consolidation,
  - Actions involving common question of law or fact, Rule 42.01.
  - Defenses in motion, Rule 12.07.
  - Temporary injunction motion hearing and trial of action on merits, Rule 65.02.
- Construction of pleadings, Rule 8.06.
- Construction of rules, Rule 1.
- Contempt,
  - Disobedience of subpoena, Rule 45.06.
  - Failure to deposit property in court, Rule 67.03.
  - Judgment, failure to obey, Rule 70.
  - Party or witness refusing to be sworn or to answer questions, Rule 37.02.
  - Subpoenas, contempt for failure to attend as witness, Rule 45.06.
  - Summary judgment, contempt for making affidavits in bad faith, Rule 56.07.
  - Witness failing to appear before referee, Rule 53.04.
- Contents of application for appointment of guardian ad litem, Rule 17.02.
- Continuance, amendment of pleadings to conform to evidence, Rule 15.02.
- Contracts,
  - Judgment by default, Rule 55.01.
  - Jury trial in actions arising on contract, waiver, Rule 38.02.
- Contradiction of adverse parties, Rule 43.02.
  - Officer, director, etc., of adverse party, Rule 43.02.
- Contradiction of testimony of deponent as witness, deposition use, Rule 32.01.
- Contributory negligence, affirmative defense, Rule 8.03.
- Conversion, complaint for, form, Form 10.
- Conveyances,
  - Complaint for specific performance of contract to convey land, form, Form 11.
  - Judgment directing party to execute conveyance, effect of failure to comply with order, Rule 70.
- Copies,
  - Deposition, furnishing to party or witness, Rule 30.05.
  - Reports of mental, physical, etc., examinations, Rule 35.01.
  - Service of subpoena by delivering or leaving copy, Rule 45.03.
  - Third-party pleadings, furnishing, Rule 14.01.
- Copying,
  - Discovery, scope, Rule 34.01.
  - Documents and things produced for inspection during deposition, Rule 30.06.
- Coram vobis, writ abolished, Rule 60.02.
- Corporations,
  - Depositions of employees, Rule 30.02.
  - Depositions upon written questions, Rule 31.01.
  - Designation of deponent, failure, motion for order compelling discovery, Rule 37.01.
  - Interrogatories, Rule 33.01.
  - Summons, personal service, Rule 4.03.
- Costs,
  - Allowance, Rule 54.04.

- Appeal of determination of amount, Rule 54.04.
- Delay of entry of judgment for taxation of, Rule 58.01.
- Dismissal of action, costs of previously dismissed action, Rule 41.04.
- Entry of judgment on order for, Rule 58.01.
- Interpreters, compensation, Rule 43.07.
- Motion for order requiring statement concerning action or its subject matter, Rule 26.02.
- Offer of judgment refused, Rule 68.01.
- Omission of costs affecting finality of judgment, Rule 58.01.
- Temporary injunction, security for payment of costs, Rule 65.03.
- Tender of money in lieu of judgment refused, Rule 68.02.
- Counterclaims,
  - Generally, Rule 13.
  - Against state, Rule 13.04.
  - Answer presenting, form, Form 15.
  - Compulsory, Rule 13.01.
  - Default judgment, Rule 55.02.
  - Dismissal, Rule 41.03.
  - Exceeding opposing claim, Rule 13.03.
  - Interpleader,
    - Form, Form 16.
    - Obtained by, Rule 22.
  - Joinder of additional parties, Rule 13.08.
  - Joinder of claims, Rule 18.01.
  - Maturing or acquired after pleading, Rule 13.05.
  - Mistaken designation, Rule 8.03.
  - Omitted counterclaim, Rule 13.06.
  - Permissive, Rule 13.02.
  - Plaintiff's dismissal of action, effect, Rule 41.01.
  - Plaintiff's right to bring in third-party, Rule 14.02.
  - Pleading, Rule 7.01.
  - Reply, time of service, Rule 12.01.
  - Separate trials and judgments, Rules 13.09, 42.02.
  - Summary judgment, Rule 56.01.
    - For defending party, Rule 56.02.
  - Third-party defendants, Rule 14.01.
- Counties, summons, service by delivering copy to chairman of county board or auditor, Rule 4.03.
- County board, summons served by delivering copy to chairman, Rule 4.03.
- County treasury, referee's fees payable out of, Rule 53.01.
- Court reporters, stenographic report or transcript as evidence, Rule 80.
- Court rooms, trials upon merits to be conducted in, Rule 77.02.
- Courts, issues of fact triable by, Rule 39.01.
- Cross-claims,
  - Generally, Rule 13.
  - Answer presenting, form, Form 15.
  - Co-parties, Rule 13.07.
  - Default judgment, Rule 55.02.
  - Dismissal, Rule 41.03.
  - Interpleader obtained by way of, Rule 22.
  - Joinder, Rule 18.01.
  - Joinder of additional parties, Rule 13.08.
  - Pleading, Rule 7.01.
  - Separate trials and judgments, Rules 13.09, 42.02.

Summary judgment, Rule 56.01.

For defending party, Rule 56.02.

Third-party defendants, Rule 14.01.

Cross-examination,

Adverse parties, Rule 43.02.

Depositions, Rule 30.03.

Officer, director, etc., of adverse party, Rule 43.02.

Cross-questions, depositions upon written questions, Rule 31.01.

Cultivating lands, mortgagor's petition, rules not governing where inconsistent with statutes, Rule 81.01.

Damages,

New trial on ground of excessive or insufficient damages, Rule 59.01.

Pleading special damages, Rule 9.07.

Temporary injunction, security for payment of damages, Rule 65.03.

Date,

Effective date of amendments to rules, Rule 86.02.

Effective date of rules, Rule 86.01.

Death,

Actions for wrongful death, rules inconsistent with statutes, Rule 81.01.

Deposed witness, deposition use, Rule 32.01.

Judge, performance of duties by successor, Rule 63.01.

Parties, substitution, Rule 25.01.

Public officers, substitution of successor as party to action, Rule 25.04.

Decedents, physical, mental and blood examinations, waiver of medical privilege, Rule 35.03.

Decision,

Adjudication of fewer than all multiple claims or parties, Rule 54.02.

Grounds for new trial, Rule 59.01.

Stay of entry of judgment on, Rule 58.02.

Declaratory judgments,

Procedure for obtaining, Rule 57.

Summary judgment, Rule 56.01.

For defending party, Rule 56.02.

Declaratory relief, complaint for interpleader and declaratory relief, form, Form 13.

Decrees. Judgments, generally, post.

Deeds, judgment directing party to deliver, effect of failure to comply with order, Rule 70.

Default judgment,

Generally, Rules 54.03, 55.

District court clerk's power to enter, Rule 77.03.

Summons to notify default will be rendered on failure to timely serve answer, Rule 4.01.

Defendant as third-party plaintiff, Rule 14.01.

Defendants,

Permissive joinder, Rule 20.01.

Person refusing to join as plaintiff made defendant, Rule 19.01.

Defenses,

Adverse party on motion for summary judgment, Rule 56.05.

Affirmative defenses, Rule 8.03.

Answer presenting defenses under Rule 12.02, form, Form 15.

Consolidation in motion, Rule 12.07.

Discovery, scope, Rule 26.02.

Failure to join persons needed for just adjudication, defense made by later pleading, Rule 12.08.

- Failure to state claim upon which relief can be granted, defense made by later pleading, Rule 12.08.
- Manner of presenting, Rule 12.02.
- Manner of stating, Rule 8.02.
- Motion, kinds of defenses made by, Rule 12.02.
- Omission of defenses from motion, Rule 12.07.
- Pleadings, Rule 8.02.
- Preliminary hearing, Rule 12.04.
- Preservation, Rule 12.08.
- Representative on behalf of infant or incompetent, Rule 17.02.
- Supplemental pleading where original pleading is defective in statement, Rule 15.04.
- Third-party defendant, Rule 14.01.
- Waiver, Rule 12.08.
- When presented, Rule 12.01.
- Delay,
  - Assertion of third-party claim, prevention, Rule 14.03.
  - Entry of judgment for taxation of costs, Rule 58.01.
- Delinquent taxes, rules inconsistent with statutes, Rule 81.01.
- Delivery,
  - Deposition by officer, Rule 30.06.
  - Reports of mental, blood, etc., examination of persons, Rule 35.02.
  - Service of subpoena by delivery of copy, Rule 45.03.
  - Summons, commencement of action, Rule 3.01.
- Demand, service, necessity, Rule 5.01.
- Demurrer, insufficiency of pleadings, demurrer not allowed, Rule 7.01.
- Denials,
  - Effect of failure to deny, Rule 8.04.
  - Form, Rule 8.02.
- Deposit in court,
  - Generally, Rule 67.
  - Court may order deposit or seizure of property, Rule 67.03.
  - In action, Rule 67.01.
  - Money paid into court, Rule 67.04.
  - No action brought, Rule 67.02.
- Depositions,
  - Absence of witness, deposition use, Rule 32.01.
  - Action to perpetuate testimony as not affected by rule regarding deposition, Rule 27.03.
  - Admissibility, objections, Rule 32.02.
  - Age of deponent precluding trial attendance or testimony, deposition use, Rule 32.01.
  - Attendance of witnesses, subpoena, Rule 30.01.
  - Attorney disqualified from taking, Rule 28.03.
  - Before action, Rule 27.01.
  - Certification by officer, Rule 30.06.
  - Changes in form or substance, Rule 30.05.
  - Commissioning persons to take depositions in foreign countries, Rule 28.02.
  - Compelling attendance of witnesses, Rule 30.01.
    - Depositions upon written questions, Rule 31.01.
  - Competency of testimony, objections, Rule 32.04.
  - Competency of witness, objections, Rule 32.04.
  - Completion and return, errors and irregularities, effect, Rule 32.04.
  - Contradiction of testimony, deposition use, Rule 32.01.

- Copies, officer's right to make reasonable charges, Rule 30.06.
- Corporations,
  - Depositions upon written questions, Rule 31.01.
  - Employees, Rule 30.02.
- Cross-examination of witnesses, Rule 30.03.
- Cross-questions, depositions upon written questions, Rule 31.01.
- Death of witness, deposition use, Rule 32.01.
- Dismissal of action, subsequent action involving same subject matter and parties, deposition use, Rule 32.01.
- Disqualification from taking for interest, Rule 28.03.
- Disqualification of officer taking, errors and irregularities, effect, Rule 32.04.
- Effect, taking or using depositions, Rule 32.03.
- Employee disqualified from taking, Rule 28.03.
- Evasion or incomplete answer, Rule 37.01.
- Examination of witnesses, Rule 30.03.
- Expenses incurred, payment by person failing to attend or to serve subpoena, Rule 30.07.
- Extension of time for taking, Rule 30.02.
- Failure of party to attend or serve answers, consequences, Rule 37.04.
- Failure to attend or serve subpoena, Rule 30.07.
- Filing,
  - Notice, Rules 30.06, 31.03.
  - Officer, Rule 30.06.
- Impeachment of testimony, deposition use, Rule 32.01.
- Imprisonment of deponent precluding attendance or testimony, deposition use, Rule 32.01.
- Insurance coverage, Rule 26.02.
- Letters rogatory, taking depositions in foreign countries, Rule 28.02.
- Materiality of testimony, objections, Rule 32.04.
- Medical experts, Rule 35.04.
- Motion for order compelling discovery, Rule 37.01.
- Motion heard on, Rule 43.05.
- Motion to terminate or limit examination, Rule 30.04.
- Notice,
  - Errors and irregularities, effect, Rule 32.04.
  - Filing, Rules 30.06, 31.03.
  - Foreign country, taking deposition in, Rule 28.02.
  - Medical experts, Rule 35.04.
  - Oral examination, Rules 30.01, 30.02.
  - Taking before action, Rule 27.01.
- Objections, Rule 30.03.
  - Admissibility, Rule 32.02.
  - Errors and irregularities in depositions, effect, Rule 32.04.
- Officers to take responses and prepare record, depositions upon written questions, Rule 31.02.
- Oral examination, Rules 26.01, 30.
  - Errors and irregularities, effect, Rule 32.04.
  - Motion for order compelling discovery, Rule 37.01.
- Orders,
  - Protection of parties and witnesses, Rule 26.03.
  - Recording of oral examination, Rule 30.02.
- Partnerships, Rule 30.02.
  - Depositions upon written questions, Rule 31.01.

- Party without counsel, deposition use, Rule 30.02.
- Pending appeal, Rule 27.02.
- Persons before whom depositions may be taken, Rule 28.
  - Foreign countries, Rule 28.02.
  - Within United States, Rule 28.01.
- Petition for taking of deposition before action, Rule 27.01.
- Protective orders, Rule 26.03.
- Record of oral examination, Rule 30.02.
- Recross questions, depositions upon written questions, Rule 31.01.
- Redirect questions, depositions upon written questions, Rule 31.01.
- Relative disqualified from taking, Rule 28.03.
- Relevancy of testimony, objections, Rule 32.04.
- Sequence and timing of discovery, Rule 26.04.
- Serving written questions, Rule 31.01.
- Shortening time for taking, Rule 30.02.
- Sickness of deponent precluding attendance or testimony, deposition use, Rule 32.01.
- Signing, Rule 30.05.
- State,
  - Depositions upon written questions, Rule 31.01.
  - Employees, Rule 30.02.
- Stenographic recordings, Rule 30.02.
- Stipulation regarding taking, Rule 29.
- Submission to witness for examination, Rule 30.05.
- Subpoena duces tecum, attaching to notice of oral examination, Rule 30.02.
- Subpoena for taking, Rule 45.04.
  - Compelling attendance of witnesses, Rule 30.01.
  - Deposition upon written questions, Rule 31.01.
- Substitution of parties, deposition use, Rule 32.01.
- Summary judgment,
  - Affidavits supplemented or opposed by depositions, Rule 56.05.
  - Continuance to permit depositions to be taken, Rule 56.06.
- Suspension of taking for time necessary to make motion for order, Rule 30.04.
- Taking of depositions,
  - Effect, Rule 32.03.
  - Errors and irregularities, effect, Rule 32.04.
- Temporary injunctions, Rule 65.02.
- Time,
  - Cross-questions or redirect questions, depositions upon written questions, Rule 31.01.
  - Extension or shortening of time for taking, Rule 30.02.
    - Depositions upon written questions, Rule 31.01.
    - When depositions may be taken, Rule 30.01.
- Timing and sequence of discovery, Rule 26.04.
- Transcription of testimony, errors and irregularities, effect, Rule 32.04.
- Transmission of written questions to officer to be propounded to witness and recorded, Rule 30.03.
- United States, persons before whom depositions may be taken, Rule 28.01.
- Use of depositions, Rule 32.01.
  - Deposition taken before action, Rule 27.01.
  - Effect, Rule 32.03.
- Waiver of errors and irregularities, Rule 32.04.
- Written questions, Rule 26.01.

Deposition upon, Rule 31.01.

Errors and irregularities, effect, Rule 32.04.

Officers to take responses and prepare records, Rule 31.02.

Transmittal to officer for propounding to witness and recording, Rule 30.03.

Derivative actions by shareholders or members, Rule 23.06.

Development plan, rules not governing where inconsistent with statutes, Rule 81.01.

Directed verdict, time when made, effect, Rule 50.01.

Directors, corporations or partnerships, depositions, designation of deponent, Rule 30.02.

Discovery, Rule 26 et seq.

Aid in judgment or execution, Rule 69.

Conduct of discovery, sequence and timing, Rule 26.04.

Depositions, generally, ante.

Entry upon lands or other property, generally, post.

Execution, proceedings in aid of judgments, Rule 69.

Facts and opinions of experts, Rule 26.02.

Inspections, post.

Insurance coverage, Rule 26.02.

Interrogatories, generally, post.

Judgments, proceedings in aid of judgment, Rule 69.

Limitation on use of methods, Rule 26.01.

Medical disclosures, Rule 35.04.

Methods, Rule 26.01.

Motion for order compelling discovery, Rule 37.01.

Failure to comply with order, Rule 37.02.

Orders,

Compelling discovery, Rule 37.01.

Failure to comply with order, Rule 37.02.

Discovery procedures, Rule 34.02.

Failure to comply with order compelling discovery, Rule 37.02.

Materials prepared in anticipation of litigation, Rule 26.02.

Protective orders, Rule 26.03.

Supplementation of responses to discovery requests, Rule 26.05.

Persons not parties, Rule 34.03.

Procedures, Rule 34.02.

Production of books and documents, generally, post.

Protective orders, Rule 26.03.

Responses to discovery requests, supplementation, Rule 26.05.

Scope of discovery, Rules 26.02, 34.01.

Sequence and timing of discovery, Rule 26.04.

Stipulations, modification of discovery procedures, Rule 29.

Summary judgment, continuance to permit discovery to be had, Rule 56.06.

Discretion of court,

Amendment of summons or other process, Rule 4.07.

New trial on ground of abuse, Rule 59.01.

Dismissal and nonsuit, Rule 41.

Class actions, Rule 23.

Costs of previously dismissed action, Rule 41.04.

Counterclaim, cross-claim or third-party claim, Rule 41.03.

Derivative actions by shareholders or members, Rule 23.06.

Failure to join indispensable party, Rules 19.02, 41.02.

Failure to prosecute action in name of real party in interest, Rule 17.01.

Forum non conveniens, Rule 41.02.

- Involuntary dismissal, effect, Rule 41.02.
- Lack of jurisdiction, Rules 12.08, 41.02.
- Misjoinder of parties as not constituting ground for, Rule 21.
- Motion to dismiss presenting defenses of failure to state claim, etc., form, Form 14.
- Order of court, necessity, Rule 41.01.
- Receivers, action not to be dismissed except by order of court where receiver has been appointed, Rule 66.
- Stipulation of dismissal signed by all parties, Rule 41.01.
- Third-party claim, Rule 14.03.
- Unincorporated associations, actions relating to, Rule 23.07.
- Voluntary dismissal, effect, Rule 41.01.
- District court clerks, orders grantable without court order, Rule 77.03.
- District courts, Rule 77 et seq.
  - Always open, Rule 77.01.
  - Appeals to, rules not superseding statutory provisions, Rule 81.02.
- Divorce,
  - Adultery as ground, jury trial, Rule 38.01.
  - Rules not governing where inconsistent with statutes, Rule 81.01.
  - Summons, service by publication, Rule 4.04.
- Documentary evidence, subpoena for production, Rules 45.01, 45.02.
- Documents,
  - Admission of genuineness, expenses on refusal to admit, Rule 37.03.
  - Requests for admission of genuineness, Rule 36.01.
- Drafts, inspection and copying, discovery, scope, Rule 34.01.
- Drainage,
  - Roads, rules not governing where inconsistent with statutes, Rule 81.01.
  - Rules not governing where inconsistent with statutes, Rule 81.01.
- Drawings, inspection and copying, discovery, scope, Rule 34.01.
- Duress, affirmative defense, Rule 8.03.
- Economy, separate trials, Rule 42.02.
- Elections, contest, rules not governing where inconsistent with statutes, Rule 81.01.
- Embarrassment,
  - Discovery, protective orders, Rule 26.03.
  - Party, assertion of third-party claim, prevention, Rule 14.03.
- Eminent domain, rules not governing where inconsistent with statutes, Rule 81.01.
- Entry, judgment, Rule 58.01.
  - Default judgment, Rule 55.01.
  - Multiple claims or multiple parties, Rule 54.02.
  - Stay, Rule 58.02.
- Entry upon land or other property,
  - Methods of discovery, Rule 26.01.
  - Motion for order compelling discovery, Rule 37.01.
    - Failure to comply with motion, Rule 37.02.
  - Persons not parties, discovery, Rule 34.03.
  - Scope of discovery, Rule 34.01.
- Errors and irregularities in depositions, effect, Rule 32.04.
- Escheat, funds of banks and trust companies, rules not governing where inconsistent with statutes, Rule 81.01.
- Estoppel, affirmative defense, Rule 8.03.
- Evidence,
  - Generally, Rule 43.

Admissibility, Rule 43.01.

Referee's power to rule upon, Rule 53.03.

Affirmation in lieu of oath, Rule 43.04.

Conforming, amendment of pleadings, Rule 15.02.

Defendant's motion for dismissal after plaintiff's completion of presentation, Rule 41.02.

Foreign law, determination, Rule 44.04.

Form, Rule 43.01.

Harmless error in admission or exclusion, Rule 61.

Insurance coverage, Rule 26.02.

Interpreters, Rule 43.07.

Interrogatories, admissibility of evidence obtained in response to, Rule 28.02.

Lack of records, Rule 44.02.

Leading questions, Rule 43.02.

Motion for summary judgment, Rule 56.05.

New trial on ground of newly discovered evidence, Rule 59.01.

Physical examinations, waiver of medical privilege, Rule 35.03.

Proof of official records, Rule 44.

Record of excluded evidence, Rule 43.03.

Referee's power to require production of evidence, Rule 53.03.

Res ipsa loquitur, Rule 43.06.

Scope of examination and cross-examination, Rule 43.02.

Stenographic report or transcript, Rule 80.

Temporary injunctions, Rule 65.02.

#### Examination,

Depositions, witnesses, Rule 30.03.

Discovery, scope of examinations, Rule 26.02.

Jurors, Rule 47.01.

Medical disclosures and depositions of medical experts, Rule 35.04.

Mental examination, generally, post.

Physical examination, generally, post.

#### Exceptions,

Formal exceptions to rulings or orders unnecessary, Rule 46.

Insufficiency of pleading, exceptions not allowed, Rule 7.01.

#### Execution,

Discovery, proceedings in aid of execution, Rule 69.

Process to enforce judgment for payment of money, Rule 69.

Referee's right to writ against party failing to pay compensation, Rule 53.01.

Executive officer of public institution, notice of hearing relative to appointment of guardian ad litem, Rule 17.02.

Executors and administrators, suing in own name without joining real party in interest, Rule 17.01.

#### Exhibits,

Hearing on motion for new trial, Rule 59.02.

Pleading, exhibit as part of statement of claim or defense, Rule 10.03.

#### Expenses,

Discovery, undue expense burden, protective orders, Rule 26.03.

Failure of party to attend own deposition or serve answers, Rule 37.04.

Failure to comply with order compelling discovery, Rule 37.02.

Motion for order requiring statement concerning action or its subject matter, Rule 26.02.

Motion for order to compel discovery, Rule 37.01.

Motion for protective orders, discovery, Rule 26.03.

- Motion to terminate or limit examination by deposition, Rule 30.04.
- Prevention of undue expense by assertion of third-party claim, Rule 14.03.
- Expert witnesses,
  - Discovery of facts and opinions, scope, Rule 26.02.
  - Limitation of number, pre-trial conference, Rule 16.
  - Medical disclosures and depositions of medical experts, Rule 35.04.
- Express corporation, summons, personal service, Rule 4.03.
- Extension of time, Rule 6.02.
  - Depositions, taking, Rule 30.02.
  - Depositions upon written questions, Rule 31.01.
- Federal agencies, intervention when party relies upon executive order, Rule 24.02.
- Fees,
  - Attorneys' fees, generally, ante.
  - Depositions, copies, Rule 30.06.
  - Experts, time spent in responding to discovery, Rule 26.02.
  - Service of summons, Rule 4.02.
- Fellow-servants, injury by fellow servants as affirmative defense, Rule 8.03.
- Filing,
  - Consent and oath, guardian ad litem, Rule 17.02.
  - Depositions, notice, Rules 30.06, 31.03.
  - Note of issue, Rule 38.03.
  - Pleadings and other papers, Rule 5.
  - Referee's report, Rule 53.05.
- Final judgment,
  - Motion for relief as not affecting finality, Rule 60.02.
  - Multiple claims or multiple parties, Rule 54.02.
- Findings,
  - Amendment on motion for new trial, Rule 59.01.
  - Court, Rule 52.
    - Rendition of judgment after motion for dismissal, Rule 41.02.
  - Involuntary dismissal, Rule 41.02.
  - Majority of jurors, Rule 48.
  - Physical and mental examination by physician, report of findings, Rule 35.02.
- Foreign corporation,
  - Summons,
    - Personal service, Rule 4.03.
    - Service by publication, Rule 4.04.
- Foreign countries,
  - Depositions, persons before whom depositions may be taken, Rule 28.02.
  - Records, authentication, Rule 44.01.
- Foreign courts, pleading judgment or decision, Rule 9.05.
- Foreign language, interpreters, Rule 43.07.
- Foreign law, determination, Rule 44.04.
- Foreign receivers, capacity to sue, Rule 66.
- Foreign states,
  - Records, authentication, Rule 44.01.
  - Subpoena for taking depositions within state, Rule 45.04.
- Forms,
  - Admissions under rule, request for, Form 20.
  - Affidavits, summary judgment, Rule 56.05.
  - Allegation of reason for omitting party, Form 21.
  - Answer presenting defenses under Rule 12.02, Form 15.

Answer to complaint for money had and received with counterclaim for interpleader, Form 16.

Appendix, contemplation of rules, Rule 84.

Complaint,

Account, Form 3.

Claim for debt and to set aside fraudulent conveyance, Form 12.

Conversion, Form 10.

Goods sold and delivered, Form 4.

Interpleader and declaratory relief, Form 13.

Money had and received, Form 7.

Money lent, Form 5.

Money paid by mistake, Form 6.

Negligence, Form 8.

Plaintiff unable to determine which person responsible, Form 9.

Promissory note, Form 2.

Specific performance of contract to convey land, Form 11.

Third-party defendant, Form 17.

Intervening as defendant under rule, motion, Form 18.

Motions,

Dismiss presenting defenses of failure to state claim, etc., Form 14.

Intervention as defendant under rule, Form 18.

Notice,

Motion to intervene as defendant under rule, Form 18.

Request for production of documents, etc., Form 19.

Photographing objects, request for, Form 19.

Pleadings, Rule 10.

Production of documents, etc., motion for, Form 19.

Request for admission under rule, Form 20.

Summons, Rule 4.01, Form 1.

Third-party defendant, summons and complaint against, Form 17.

Forms of action, civil action as only form, Rule 2.

Forum non conveniens, dismissal of action, Rule 41.02.

Fraternal benefit associations, quo warranto against, rules inconsistent with statutes, Rule 81.01.

Fraud,

Affirmative defense, Rule 8.03.

Judgment, relief, Rule 60.02.

New trial, Rule 60.02.

Pleading, Rule 9.02.

Summons upon defendant departing from state to defraud creditors, service by publication, Rule 4.04.

Fraudulent conveyances,

Complaint on claim for debt and to set aside, form, Form 12.

Joinder with claim for money, Rule 18.02.

Freight agent, summons upon transportation or express corporations served by delivering copy, Rule 4.03.

Fundamental error, instructions, assignment of error in motion for new trial notwithstanding absence of objection, Rule 51.

Garnishment,

Deposit in court when no action is brought, Rule 67.02.

Service of summons by publication when plaintiff acquires lien upon property, Rule 4.04.

General denial, form, Rule 8.02.

- General verdict accompanied by answer to interrogatories, Rule 49.02.
- Goods sold and delivered, complaint for, form, Form 4.
- Guardian ad litem, infants or incompetent persons represented by, Rule 17.02.
- Guardian and ward, summons, manner of serving infant under fourteen, Rule 4.03.
- Guardians,
  - Application by, for appointment of guardian ad litem, Rule 17.02.
  - Suing in own name without joining real party in interest, Rule 17.01.
- Habeas corpus, rules inconsistent with statutes, Rule 81.01.
- Harmless error, Rule 61.
- Hearings,
  - Application for appointment of guardian ad litem, Rule 17.02.
  - Manner of conducting, Rule 77.02.
  - Motion applying to court for order, Rule 7.02.
  - Subpoena for hearing, Rule 45.05.
- Holidays, computation of time, Rule 6.01.
- Hostile witnesses,
  - Cross-examination, contradiction, etc., Rule 43.02.
  - Interrogation by leading questions, Rule 43.02.
- Hypothetical claims or defenses, pleading, Rule 8.05.
- Illegality, affirmative defense, Rule 8.03.
- Illness, witness, illness precluding attendance or testimony, deposition use, Rule 32.01.
- Impeachment,
  - Adverse parties, Rule 43.02.
  - Deposition to impeach testimony of deponent, use, Rule 32.01.
  - Officer, director, etc., of adverse party, Rule 43.02.
- Imprisonment, witness imprisonment precluding attendance or testimony, deposition use, Rule 32.01.
- Incompetents,
  - Depositions, taking before action, Rule 27.01.
  - Parties, continuance by or against representative, Rule 25.02.
  - Representative's right to sue or defend on behalf of incompetent, Rule 17.02.
- Incorporation of rules in statutes, Rule 81.03.
- Indecent matter, pleading, disciplinary action against attorney, Rule 11.
- Infants,
  - Depositions, taking before action, Rule 27.01.
  - Injury by parent, rules inconsistent with statutes, Rule 81.01.
  - Representative's right to sue or defend on behalf of infant, Rule 17.02.
  - Summons, personal service, Rule 4.03.
- Information, discovery, scope, Rule 26.02.
- Injunctions, Rule 65.
  - Appeal from judgment granting or denying injunction, Rule 62.02.
  - Temporary injunctions, Rule 65.
- Inspections,
  - Discovery,
    - Motion for order compelling discovery, Rule 37.01.
    - Failure to comply with order, Rule 37.02.
  - Persons not parties, Rule 34.03.
  - Procedures, Rule 34.02.
  - Scope, Rule 34.01.
- Documents or things produced at time of deposition, Rule 30.06.
- Objections to inspections or copying of documents or books, Rule 45.04.

Property and objects, request for inspection, form, Form 19.

Request for inspection, failure to serve written response, consequences, Rule 37.04.

Instructions to jury, Rule 51.

Comparative negligence cases, special verdicts, Rule 49.01.

Preliminary instructions, Rule 39.03.

Repetition after completion of arguments, Rule 51.

Insufficient knowledge or information, pleading, Rule 8.02.

Insular possessions, depositions, persons before whom depositions may be taken, Rule 28.01.

Insurance, disclosure of coverage and production of policy, Rule 26.02.

Intent, pleading, Rule 9.02.

Interest,

Default judgment in action for payment of taxes and interest, Rule 55.01.

Judge precluded from sitting in cause, Rule 63.02.

Interlocutory judgment, summary judgment on issue of liability notwithstanding existence of genuine issue as to amount of damages, Rule 56.03.

Interpleader, Rule 22.

Complaint for interpleader and declaratory relief, form, Form 13.

Counterclaim for interpleader, form, Form 16.

Interpreter, Rule 43.07.

Interrogatories,

Answers, Rule 33.01.

Effect on rendition of summary judgment, Rule 56.03.

Entry of judgment on verdict accompanied by, Rule 58.01.

Availability, Rule 33.01.

Business records, option to produce, Rule 33.03.

Evasion or incomplete answer, Rule 37.01.

Experts, facts and opinions, discovery, scope, Rule 26.02.

Failure to serve answers, consequences, Rule 37.04.

General verdict accompanied by answer to, Rule 49.02.

Motion for order compelling discovery, Rule 37.01.

Objections, Rule 33.01.

Option to produce business records, Rule 33.03.

Procedure for use, Rule 33.01.

Scope of interrogatories, Rule 33.02.

Service, Rule 33.01.

Time, service of interrogatories, answers or objections, Rule 33.01.

Use at trial, Rule 33.02.

Written interrogatories, Rule 26.01.

Intervention,

Generally, Rule 24.

Motion to intervene as defendant under rule, form, Form 18.

Notice to attorney general when constitutionality of act is drawn in question, Rule 24.04.

Permissive intervention, Rule 24.02.

Procedure, Rule 24.03.

Rightful intervention, Rule 24.01.

Irregularities in depositions, effect, Rule 32.04.

Joinder of claims, Rule 18.01.

Joinder of parties,

Counterclaims or cross-claims, Rule 13.08.

Determination by court whenever joinder not feasible, Rule 19.02.

Involuntary plaintiffs, Rule 19.01.

- Permissive joinder, Rule 20.
- Persons needed for just adjudication, Rule 19.
- Persons to be joined if feasible, Rule 19.01.
- Pleading reasons,
  - Nonjoinder of indispensable party, Rule 19.03.
  - Omitting party, form, Form 21.
- Real party in interest, Rule 17.01.
- Judges,
  - Affidavit of prejudice, Rule 63.03.
  - Assignment, Rule 63.04.
  - Disability, Rule 63.01.
  - Interest or bias, Rule 63.02.
  - Orders in chambers, Rule 77.02.
- Judgments,
  - Appeals, generally, ante.
  - Attachment, compelling obedience to judgment, Rule 70.
  - Audita querela writs abolished, Rule 60.02.
  - Bills of review abolished, Rule 60.02.
  - Class actions, Rule 23.03.
  - Clerical mistakes, Rule 60.01.
  - Contempt, failure to obey judgment, Rule 70.
  - Costs inserted in judgment, Rule 54.04.
  - Cross-claims, judgment upon multiple cross-claims, Rule 54.02.
  - Default judgment, generally, ante.
  - Definition, Rule 54.01.
  - Demand for judgment, Rule 54.03.
  - Discovery, proceedings in aid of judgment, Rule 69.
  - District court clerk's power to enforce and execute, Rule 77.03.
  - Entry, judgment, ante.
  - Excusable neglect, relief, Rule 60.02.
  - Execution, Rule 69.
  - Finality as not affected by motion for relief, Rule 60.02.
  - Finality as not affected by omission of costs, Rule 58.01.
  - Foreign court, pleading, Rule 9.05.
  - Fraud, relief, Rule 60.02.
  - Inadvertence, relief, Rule 60.02.
  - Injunction pending appeal, Rule 62.02.
  - Motion for relief, stay of enforcement of judgment, Rule 62.01.
  - Multiple claims, Rule 54.02.
    - Stay of judgment upon, Rule 62.06.
  - Newly discovered evidence, relief, Rule 60.02.
  - Notice of filing or entry, Rule 77.04.
  - Notwithstanding jury's disagreement and discharge, Rule 50.02.
  - Notwithstanding verdict, Rule 50.02.
  - Offer of judgment, Rule 68.01.
  - Opening judgment on motion for new trial, Rule 59.01.
  - Pleadings, Rule 9.05.
    - Motion, Rule 12.03.
  - Release, relief, Rule 60.02.
  - Relief from judgment or order, Rule 60.
  - Satisfaction, relief, Rule 60.02.
  - Seizure of person or property to secure satisfaction of judgment, Rule 64.
  - Separate trials, judgments on counterclaims or cross-claims, Rule 13.09.
  - Service of offer of judgment, necessity, Rule 5.01.

- Signed by clerk in judgment book, Rule 58.01.
- Specific acts, Rule 70.
- State or agency, stay in favor of, Rule 62.04.
- Stay, Rule 58.02.
- Stay of entry as not extending time for serving motion for new trial, Rule 59.06.
- Stay of proceedings to enforce judgment, Rule 62.
- Stay upon appeal, Rule 62.03.
- Summary judgment, Rule 56.
- Tender of money in lieu of judgment, Rule 68.02.
- Vacating, etc., harmless error, Rule 61.
- Vesting title, Rule 70.
- Writs of coram nobis and coram vobis abolished, Rule 60.02.
- Jurisdiction,
  - Defense of lack of jurisdiction made by motion, Rule 12.02.
  - Waiver, Rule 12.08.
  - Dismissal of action for lack of, Rules 12.08, 41.02.
  - Motion to dismiss presenting defense of lack of jurisdiction, form, Form 14.
  - Quasi in rem jurisdiction, Rule 4.04.
  - Rules not extending or limiting, Rule 82.
- Jury trial,
  - Advisory jury, Rule 39.02.
  - Alternate jurors, Rule 47.02.
  - Consent of parties, Rule 39.02.
  - Declaratory judgments, Rule 57.
  - Directed verdict effective without assent of jury, Rule 50.01.
  - Disagreement and discharge of jury, motion for judgment notwithstanding, Rule 50.02.
  - Examination of jurors, Rule 47.01.
  - General verdict accompanied by answer to interrogatories, Rule 49.02.
  - Less than 12 jurors, Rule 48.
  - Majority verdict, Rule 48.
  - Misconduct of jury as ground for new trial, Rule 59.01.
  - New trial on ground of irregularity, Rule 59.01.
  - Note of issue, Rule 38.03.
  - Notice, Rule 38.03.
  - Offer of proof made out of hearing of jury, Rule 43.03.
  - Omitted issues, waiver, Rule 49.01.
  - Opening statements by counsel, Rule 39.04.
  - Peremptory challenges of alternate jurors, Rule 47.02.
  - Referees,
    - Complicated issues, Rule 53.02.
    - Report, Rule 53.05.
  - Right preserved, Rule 38.01.
  - Separation of jury, Rule 47.03.
  - Temporary injunction motion hearing, consolidation with trial action on merits, Rule 65.02.
  - Waiver, Rule 38.02.
  - Motion for directed verdict not granted not constituting waiver, Rule 50.01.
- Knowledge, pleading, Rule 9.02
- Laches, affirmative defense, Rule 8.03.
- Leading questions, interrogation of unwilling or hostile witness, Rule 43.02.
- Leave of court,
  - Defendant to bring in third-party, Rule 14.01.

- Depositions, plaintiff seeking to take, Rules 30.01, 30.02.
- Legal holidays, computation of time, Rule 6.01.
- Letters rogatory, depositions, taking in foreign countries, Rule 28.02.
- Licenses, affirmative defense, Rule 8.03.
- Liens,
  - Mechanics' liens, rules not governing where inconsistent with statutes, Rule 81.01.
  - Motor vehicle liens, rules not governing where inconsistent with statutes, Rule 81.01.
  - Summons in action to enforce lien on realty, service by publication, Rule 4.04.
- Limitations,
  - Affirmative defense, Rule 8.03.
  - Frequency of use of discovery methods, Rule 26.01.
- Local court rules, adoption by district courts, Rule 83.
- Local district court rules, computation of time, Rule 6.01.
- Local statutes, pleading, Rule 9.04.
- Mail,
  - Additional time after service by mail, Rule 6.05.
  - Deposition to clerk of court, Rule 30.06.
  - Notice of entry or filing of orders or judgments, Rule 77.04.
  - Prescribed period for service before specified event when notice or paper is served by mail, Rule 6.05.
  - Statement in summons where subscriber may be served by, Rule 4.01.
- Malice, pleading, Rule 9.02.
- Managing agent,
  - Depositions, Rule 30.02.
  - Refusal to answer questions, consequences, Rule 37.02.
- Mandamus, rules inconsistent with statutes, Rule 81.01.
- Materials prepared in anticipation of litigation, discovery, scope, Rule 26.02.
- Mechanics' liens, rules not governing where inconsistent with statutes, Rule 81.01.
- Medical disclosures and depositions of medical experts, Rule 35.04.
- Medical privilege, waiver, Rule 35.03.
- Meetings, referees, Rule 53.04.
- Mental examination,
  - Discovery method, Rule 26.01.
  - Failure to comply with order, consequences, Rule 37.02.
  - Medical disclosures and depositions of medical experts, Rule 35.04.
  - Order, Rule 35.01.
  - Report of findings, Rule 35.02.
  - Waiver of medical privilege, Rule 35.03.
- Methods of discovery, Rule 26.01.
  - Stipulations modifying procedures, Rule 29.
- Misconduct of jury, new trial on ground of, Rule 59.01.
- Misjoinder, parties, Rule 21.
- Mileage, service of summons, Rule 4.02.
- Minutes, objection to ruling or order, Rule 46.
- Mistakes,
  - Complaint for money paid by, form, Form 6.
  - Depositions, errors and irregularities, effect, Rule 32.04.
  - Judgment or order, relief, Rule 60.
  - New trial, ordering, Rule 60.02.
  - Pleading, Rule 9.02.

- Proper party, substitution, relation back of amended pleadings, Rule 15.03.
- Money,
  - Actions for recovery, jury trial, Rule 38.01.
  - Entry of judgment on order for recovery of, Rule 58.01.
  - Payment into court, Rule 67.04.
- Money had and received,
  - Answer to complaint, for, form, Form 16.
  - Complaint for form, Form 7.
- Money lent, complaint for, form, Form 5.
- Money paid, complaint for money paid by mistake, form, Form 6.
- Mortgages,
  - Foreclosure, summons, service by publication, Rule 4.04.
  - Judgment by default in action to foreclose, bond not required, Rule 55.01.
  - Petition by mortgagor to cultivate lands, rules not governing where inconsistent with statutes, Rule 81.01.
- Motions,
  - Admissions, withdrawal or amendment, Rule 36.02.
  - Application to court for order, Rule 7.02.
  - Defenses made by, Rule 12.02.
    - Consolidation of defenses in motion, Rule 12.07.
  - Depositions, motion to terminate or limit examination, Rule 30.04.
  - Discovery, motion for order compelling, Rule 37.01.
    - Failure to comply with order, Rule 37.02.
  - Discovery procedures, Rule 34.02.
  - District courts open for making and directing, Rule 77.01.
  - Facts to be presented by adverse party on motion for summary judgment, Rule 56.05.
  - Hearing on affidavits presented by parties, Rule 43.05.
  - Interrogatories, Rule 33.01.
  - Intervening as defendant under rule, form, Form 18.
  - Intervention, service upon parties, Rule 24.03.
  - Involuntary dismissal of action or claim, Rule 41.02.
  - Judgment notwithstanding verdict, Rule 50.02.
  - Judgment on pleadings, Rule 12.03.
  - Leave of court for defendant to bring in third party, Rule 14.01.
  - More definite statement, Rule 12.05.
  - New trial, Rules 50.02, 60.02.
    - Court's initiative, Rule 59.05.
  - Omission of defenses in motion, Rule 12.07.
  - Parties dropped or added by court order on motion, Rule 21.
  - Pleading, motion to strike, Rule 12.06.
  - Protective orders, discovery, Rule 26.03.
  - Service, necessity, Rule 5.01.
  - Stay of proceedings to enforce judgment, Rule 62.01.
  - Striking of pleadings, Rule 12.06.
  - Substitution of parties upon death, Rule 25.01.
  - Summary judgment, Rule 56.03.
    - Case not fully adjudicated on motion, Rule 56.04.
  - Surety's liability on temporary injunction bond or undertaking, enforcement, Rule 65.03.
  - Technical forms not required, Rule 8.05.
  - Temporary injunctions, Rule 65.
  - Time for service, Rule 6.04.

- Writing, necessity, Rule 7.02.
- Motor vehicles, liens, rules not governing where inconsistent with statutes, Rule 81.01.
- Multiple claims, stay of enforcement of judgment upon part of claims, Rule 62.06.
- Municipal corporations, summons, personal service, Rule 4.03.
- Names,
  - Adoption, change of name, rules not governing where inconsistent with statutes, Rule 81.01.
  - Contents of application for appointment of guardian ad litem, Rule 17.02.
  - Contents of note of issue, Rule 38.03.
  - Pleadings, Rule 10.01.
  - Statement of name of court and names of parties in summons, Rule 4.01.
  - Unknown parties, Rule 9.08.
- Ne exeat, rules inconsistent with statutes, Rule 81.01.
- Negligence,
  - Complaint for,
    - Form, Form 8.
    - Negligence where plaintiff unable to determine which person responsible, form, Form 9.
  - Res ipsa loquitur, Rule 43.06.
- New trial, Rule 60.02.
  - Affidavit, Rule 59.02.
    - Time for serving, Rule 59.04.
  - Appeals, grant or denial of motion, Rule 50.02.
  - Court's initiative, Rule 59.05.
  - Disability of judge, Rule 63.01.
  - Ground, Rule 59.01.
  - Harmless error, Rule 61.
  - Hearing on motion for new trial, Rule 59.02.
    - Time, Rule 59.03.
  - Motion, Rules 50.02, 60.02.
    - Basis of, Rule 59.02.
    - Judgment notwithstanding verdict including alternative motion for new trial, Rule 50.02.
    - Time, Rule 59.03.
  - Notice of motion, Rule 59.05.
  - Reply affidavits, Rule 59.04.
  - Ruling on motions for new trial and judgment notwithstanding verdict, Rule 50.02.
  - Stay of entry of judgment, time to serve motion, Rule 59.06.
  - Stay of judgment on motion for new trial, Rule 62.01.
  - Time,
    - Court of own initiative ordering, Rule 59.05.
    - Motion, Rules 59.03, 60.02.
    - Serving affidavits, Rule 59.04.
  - Transcript of court reporter's notes, use, hearing on motion for new trial, Rule 59.02.
- Newly discovered evidence,
  - New trial, Rules 59.01, 60.02.
  - Relief from judgment, Rule 60.02.
- Nonjoinder, parties, Rule 21.
- Nonresidents,
  - Summons,
    - Service by publication, Rule 4.04.

- Service upon agent of nonresident owner of land, Rule 4.044.
- Note of issue, preparations, etc, Rule 38.03.
- Notice,
  - Application for judgment by default, Rule 55.01.
  - Class actions, Rules 23.03, 23.04.
  - Deposit in court, Rule 67.01.
  - Depositions, ante.
  - Derivative actions by shareholders or members, dismissal, Rule 23.06.
  - Dismissal of action or claim for failure to prosecute, etc. Rule 41.02.
  - Filing of deposition, Rules 30.06. 31.03.
  - Foreign law, intention to raise issue concerning, Rule 44.04.
  - Guardian ad litem representing infant or incompetent, Rule 17.02.
  - Hearing, appointment of guardian ad litem, Rule 17.02.
  - Institution of action, substitution of party, relation back of amended pleadings, Rule 15.03.
  - Judgments, notice of filing or entry, Rule 77.04.
  - Jury trial, Rule 38.03.
  - Motion for leave for defendant to bring in third party, Rule 14.01.
  - Motions,
    - Dismissal of presenting defenses, form, Form 14.
    - Intervention as defendant under rule, form, Form 18.
    - New trial, Rules 59.03, 59.05.
    - Surety's liability on temporary injunction bond or undertaking, enforcement, Rule 65.03.
    - Written notice to party, Rule 7.02.
  - Objections to referee's report, Rule 53.05.
  - Orders, notice of filing or entry, Rule 77.04.
  - Pendency of action,
    - Publication in action involving title to realty, etc., Rule 4.041.
    - Title to property involved, etc., Rule 4.041.
  - Physical and mental examination by physician, Rule 35.01.
  - Requests for production of documents, etc., form, Form 19.
  - Service,
    - Defendant's service of summons, etc., as third-party plaintiff, Rule 14.01.
    - Hearing relative to appointment of guardian ad litem, Rule 17.02.
    - Necessity, Rule 5.01.
  - Summons to notify as to default if answer is not timely served, Rule 4.01.
  - Temporary injunctions, Rule 65.
- Oaths,
  - Affirmation in lieu of, Rule 43.04.
  - Answers to interrogatories, Rule 33.01.
  - Application under for appointment of guardian ad litem, Rule 17.02.
  - Guardian ad litem, Rule 17.02.
  - Party or witness refusing to be sworn, contempt, Rule 37.02.
- Objections,
  - Absence as not prejudicing party, Rule 46.
  - Admissibility of discoverable information, Rule 26.02.
  - Depositions, ante.
  - Instructions to jury, Rule 51.
  - Interrogatories, Rule 33.01.
  - Production, inspection or copying of designated materials, Rule 45.04.
  - Referee's report, Rule 53.05.
  - Requests for admissions, Rule 36.01.

- Waiver, Rule 12.08.
- Officers, corporation or partnerships, depositions, designation of deponent, Rule 30.02.
- Offer, judgment, effect, Rule 68.01.
- Official documents, pleading, Rule 9.04.
- Opening statements by counsel, Rule 39.04.
- Opinion of experts, discovery, scope, Rule 26.02.
- Oppression, discovery, protective orders, Rule 26.03.
- Oral examination. Depositions, ante.
- Orders,
  - Adjudication, fewer than all multiple claims or parties, Rule 54.02.
  - Application to be by motion, Rule 7.02.
  - Chambers, Rule 77.02.
  - Class actions, conduct of actions, Rule 23.04.
  - Delivery of reports of physical, blood, etc., examination of persons, Rule 35.02.
  - Discovery, ante.
  - Dismissal of action or claim for noncompliance, Rule 41.02.
  - District courts open for purpose of making and directing, Rule 77.01.
  - Entry of judgment on court's order, Rule 58.01.
  - Mental, physical or blood examination of persons, Rule 35.01.
  - Notice of filing or entry, Rule 77.04.
  - Protection of parties against delay or prejudice, etc., by assertion of third-party claim, Rule 14.03.
  - Recording of depositions, Rule 30.02.
  - Requests for admissions, Rule 36.01.
  - Service, necessity, Rule 5.01.
  - Stay of entry of judgment, Rule 58.02.
  - Temporary injunction, Rule 65.02.
- Ordinances, pleadings, Rule 9.04.
- Panama Canal Zone, records, authentication, Rule 44.01.
- Paragraphs, pleadings, necessity of numbering paragraphs, Rule 10.02.
- Parent's application for appointment of guardian ad litem, Rule 17.02.
- Parties, rules 17.01-25.04.
  - Allegation of reason for omitting party, form, Form 21.
  - Application for appointment of guardian ad litem, Rule 17.02.
  - Capacity to sue or be sued, raising issue, Rule 9.01.
  - Class actions, Rules 19.04, 23.
  - Counterclaims, joinder of additional parties, Rule 13.08.
  - Cross-claim,
    - Co-party, Rule 13.07.
    - Joinder of additional parties, Rule 13.08.
  - Death, substitution, Rule 25.01.
  - Defense of failure to join persons needed for just adjudication,
    - Later pleading, Rule 12.08.
    - Motion, Rule 12.02.
  - Determination by court whenever joinder not feasible, Rule 19.02.
  - Discovery, generally, ante.
  - Failure to join indispensable party, dismissal of action, Rule 41.02.
  - Final judgment in case of multiple parties, Rule 54.02.
  - Incompetency, continuance by or against representative, Rule 25.02.
  - Incompetent persons, Rule 17.02.
  - Infants, Rule 17.02.
  - Interpleader, Rule 22.

- Interrogatories, generally, ante.
- Intervention, Rule 24.
- Involuntary plaintiffs, Rule 19.01.
- Joinder of claims, Rule 18.01.
- Misconduct of prevailing party as ground for new trial, Rule 59.01.
- Misjoinder, Rule 21.
- Multiple parties,
  - Joinder of claims, Rule 18.01.
  - Judgment, Rule 54.02.
- Names of omitted persons and reasons for nonjoinder to be pleaded, Rule 19.03.
- Names of parties in complaint, Rule 10.01.
- Nonjoinder, Rule 21.
- One already a party as third-party defendant, Rule 14.01.
- Opposing party unknown, manner of designation, Rule 9.08.
- Permissive intervention, Rule 24.02.
- Permissive joinder, Rule 20.
- Persons needed for just adjudication, Rule 19.
- Placing action on calendar for trial, Rule 38.03.
- Process in behalf of and against persons not parties, Rule 71.
- Public officers, effect of death or separation from office, Rule 25.04.
- Real party in interest, Rule 17.01.
- Responses to discovery requests, supplementation, Rule 26.05.
- Separate trials where parties joined, Rule 20.02.
- Service of note of issue, Rule 38.03.
- Service when defendants are numerous, Rule 5.03.
- Substitution, Rule 25.
  - Not affecting right to use depositions previously taken, Rule 26.04.
  - Real party in interest, Rule 17.01.
  - Relation back of amended pleadings, Rule 15.03.
- Supplementation of responses to discovery requests, Rule 26.05.
- Third-parties, defendant's right to bring in, Rule 14.01.
- Third-party defendant, summons and complaint against, form, Form 17.
- Transfer of interest, continuing by or against original party, Rule 25.03.
- Unknown parties, designation in pleadings, Rule 9.08.
- Partition, real estate, rules not governing where inconsistent with statutes, Rule 81.01.
- Partnership,
  - Capacity to sue or be sued not required to be alleged, Rule 9.01.
  - Depositions, Rule 30.02.
    - Written questions, depositions upon, Rule 31.01.
  - Designation of deponent, failure, motion for order compelling discovery, Rule 37.01.
  - Interrogatories, Rule 33.01.
  - Summons, personal service, Rule 4.03.
- Payment, affirmative defense, Rule 8.03.
- Penalties, default judgment in action for payment of taxes and penalties, Rule 55.01.
- Pendency of action, notice,
  - Publication in action involving interest in real property, etc., Rule 4.041.
- Pending proceedings, application of rules, Rule 86.01.
- Personal property, jury trial in action for specific property, Rule 38.01.
- Personal property taxes delinquent, rules inconsistent with statutes, Rule 81.01.
- Personal service,

Statement in summons where subscriber may be served, Rule 4.01.  
Summons, Rule 4.03.

Persons,

Identification and location, discovery, scope, Rule 26.02.  
Seizure to secure satisfaction of judgment, Rule 64.

Petition,

Deposit in court when no action is brought, Rule 67.02.  
Deposition before action, Rule 27.01.  
Mortgagor's petition to cultivate lands, rules not governing where inconsistent with statutes, Rule 81.01.

Photographs, inspection and copying, discovery, scope, Rule 34.01.

Physical examination,

Discovery method, Rule 26.01.  
Failure to comply with order, consequences, Rule 37.02.  
Medical disclosures and depositions of medical experts, Rule 35.04.  
Order, Rule 35.01.  
Report of findings, Rule 35.02.  
Waiver of medical privilege, Rule 35.03.

Physicians,

Medical disclosures and depositions of medical experts, Rule 35.04.  
Physical and mental examination, Rule 35.01.  
Report of findings, Rule 35.02.  
Waiver of medical privilege, Rule 35.03.

Place, pleading, averments of time and place, Rule 9.06.

Place of abode, service of subpoena by leaving copy at, Rule 45.03.

Plaintiffs,

Permissive joinder, Rule 20.01.  
Person made defendant when refusing to join as plaintiff, Rule 19.01.

Pleadings,

Generally, Rules 7-16.  
Admission when not denied, Rule 8.04.  
Adoption of statements by reference, Rule 10.03.  
Affirmative defenses, Rule 8.03.  
Alternative claims or defenses, Rule 8.05.  
Amended pleadings, Rule 15.  
Amendments,  
Conforming to evidence, Rule 15.02.  
Leave of court, Rule 15.01.  
Omitted counterclaim, Rule 13.06.  
Pre-trial conference, Rule 16.  
Relation back, Rule 15.03.  
Substituting true name of opposing party, Rule 9.08.

Answer, Rule 7.01.

Attorneys to sign, Rule 11.

Capacity of party to sue or be sued, Rule 9.01.

Caption, contents, Rule 10.01.

Claims for relief, contents, Rule 8.01.

Complaint, generally, ante.

Compulsory counterclaim, Rule 13.01.

Conciseness, Rule 8.05.

Condition of mind, general averment, Rule 9.02.

Conditions precedent, Rule 9.03.

Construction, Rule 8.06.

Counterclaims, generally, ante.

- Cross-claim, Rule 7.01.
  - Against co-party, Rule 13.07.
  - Joinder of additional parties, Rule 13.08.
  - Separate trials and judgments, Rule 13.09.
- Defenses, generally, ante.
- Demurrers not to be used for insufficiency, Rule 7.01.
- Denials, form, Rule 8.02.
- Derivative actions by shareholders or members, Rule 23.06.
- Effect of failure to deny, Rule 8.04.
- Exceptions not to be used for insufficiency of pleadings, Rule 7.01.
- Exhibit, part of statement of claim or defense, Rule 10.03.
- Filing, Rule 5.
- Foreign law, notice of intention to raise issue concerning, Rule 44.04.
- Form, Rule 10.
  - Rules as applicable to motions and other papers, Rule 7.02.
- Fraud, circumstances to be stated with particularity, Rule 9.02.
- General rules, Rule 8.
- Hypothetical claims or defenses, Rule 8.05.
- Indecent matter, disciplinary action against attorney, Rule 11.
- Intent, general averment, Rule 9.02.
- Issues not raised by pleadings tried by express or implied consent of parties, Rule 15.02.
- Judgment, Rule 9.05.
- Judgment not to contain recital of, Rule 54.01.
- Kinds of pleadings allowed, Rule 7.01.
- Knowledge, general averment, Rule 9.02.
- Malice, general averment, Rule 9.02.
- Mistake, circumstances to be stated with particularity, Rule 9.02.
- Motion for judgment on, Rule 12.03.
- Motion for more definite statement, etc., Rule 12.05.
- Motion to strike, Rule 12.06.
- Names of omitted parties and reasons for nonjoinder to be pleaded, Rule 19.03.
- Names of parties, Rule 10.01.
- Negative averment raising issue of capacity of party to sue or be sued, etc., Rule 9.01.
- Nonjoinder of indispensable party, pleading reasons, Rule 19.03.
- Official document or act, Rule 9.04.
- Ordinances, Rule 9.04.
- Paragraphs, Rule 10.02.
  - Motion for paragraphing, Rule 12.05.
- Permissive counterclaims, Rule 13.02.
- Place, Rule 9.06.
- Pleas not to be used for insufficiency of a pleading, Rule 7.01.
- Redundant matter, motion to strike, Rule 12.06.
- Relief in alternative, Rule 8.01.
- Reply, Rule 7.01.
- Rules as not governing pleadings in certain proceedings, Rule 81.01.
- Scandalous matter,
  - Disciplinary action against attorney, Rule 11.
  - Motion to strike, Rule 12.06.
- Separate statements, Rule 10.02.
  - Motion, Rule 12.05.
- Service, Rule 5.

- Numerous defendants, Rule 5.03.
- Sham pleading, motion to strike, Rule 12.06.
- Signing, Rule 11.
- Special damages, Rule 9.07.
- Special matters, Rule 9.
- Special or local statute, Rule 9.04.
- Striking pleadings, Rule 11.
- Supplemental pleadings, Rule 15.04.
- Technical forms not required, Rule 8.05.
- Third-party complaint, Rule 7.01.
- Time, Rule 9.06.
- Time of service, Rule 12.01.
- Unknown party, manner of designation, Rule 9.08.
- Verification not necessary, Rule 11.
- Pleas, insufficiency of pleading, pleas not allowed, Rule 7.01.
- Prejudice,
  - Dismissal of third-party claim without, Rule 14.03.
  - Prevention by assertion of third-party claim, Rule 14.03.
- Pre-trial procedure, formulating issue, Rule 16.
- Principal and agent, summons, service upon nonresident owner of land appointing agent, Rule 4.044.
- Priority of applications for appointment of guardian ad litem, Rule 17.02.
- Privilege, waiver,
  - Medical privilege, Rule 35.04.
  - Requesting report of physical and mental examination, Rule 35.02.
- Process, Rule 4.
  - Amendment, Rule 4.07.
  - Defense of insufficiency,
    - Motion, Rule 12.02.
    - Waiver, Rule 12.08.
  - District court clerk's powers, Rule 77.03.
  - District courts open for issuing and returning, Rule 77.01.
  - Motion to dismiss presenting defense of lack of service, form, Form 14.
  - Persons not parties, process in behalf of and against, Rule 71.
  - Return, Rule 4.06.
  - Summons, generally, post.
- Production of books and documents,
  - Deposition notice including request for, Rule 30.02.
  - Failure to comply with order, consequences, Rule 37.02.
  - Insurance policy, Rule 26.02.
  - Markings for identification and annexing to and returning with deposition, Rule 30.06.
  - Method of discovery, Rule 26.01.
  - Motion for order compelling discovery, Rule 37.01.
    - Failure to comply with motion, Rule 37.02.
  - Objections to production, Rule 45.04.
  - Persons not parties, discovery, Rule 34.03.
  - Procedures for discovery, Rule 34.02.
  - Referee's powers, Rule 53.03.
  - Request for production, form, Form 19.
  - Scope of discovery, Rules 26.02, 34.01.
  - Subpoena for production, Rules 45.01, 45.02.
    - Attaching to or including in notice for oral examination, Rule 30.02.
- Production of person for mental, physical, etc., examination, order, Rule 35.01.

- Consequences of noncompliance with order, Rule 37.02.
- Promissory note, complaint on, form, Form 2.
- Property, seizure to secure satisfaction of judgment, Rule 64.
- Protection,
  - Parties with respect to assertion of third-party claim, Rule 14.03.
- Protective orders, discovery, Rule 26.03.
- Public corporations, summons, personal service, Rule 4.03.
- Public officers, parties, death or separation from office, substitution, Rule 25.04.
- Publication,
  - Notice of pendency of action, Rule 4.041.
  - Service of summons, Rule 4.04.
- Quashing, subpoenas, Rule 45.02.
- Quasi in rem jurisdiction, Rule 4.04.
- Quasi-judicial tribunal, pleading decision of, Rule 9.05.
- Quo warranto, rules inconsistent with statutes, Rule 81.01.
- Ratification, commencement of action, real party in interest, Rule 17.01.
- Real party in interest, action to be prosecuted in name of, Rule 17.01.
- Real property,
  - Jury trial in action for specific property, Rule 38.01.
  - Partition, rules not governing where inconsistent with statutes, Rule 81.01.
  - Publication of summons to contain description of property involved, Rule 4.041.
  - Specific performance of contract to convey, complaint for, form, Form 11.
- Receivers, Rule 66.
- Recklessness, complaint for negligence where evidence may justify finding of recklessness, form, Form 9.
- Record on appeal, service, necessity, Rule 5.01.
- Records,
  - Authentication of copy, Rule 44.01.
  - Business records, interrogatories, option to produce records, Rule 33.03.
  - Depositions, record of oral examination, Rules 30.02, 30.03.
  - Evidence offered before referee, Rule 53.03.
  - Excluded evidence, Rule 43.03.
  - Foreign records, authentication, Rule 44.01.
  - Inspection and copying, discovery, scope, Rule 34.01.
  - Lack of record, evidence, Rule 44.02.
  - Medical records, disclosure, Rule 35.04.
  - Proof of official records, Rule 44.
  - Other proof, Rule 44.03.
- Recross questions, depositions upon written questions, Rule 31.01.
- Redirect questions, depositions upon written questions, Rule 31.01.
- Referees,
  - Appointment and compensation, Rule 53.01.
  - Contempt of witness failing to appear, Rule 53.04.
  - Draft, submitting to counsel before filing report, Rule 53.05.
  - Ex parte proceeding where party fails to appear, Rule 53.04.
  - Fees payable out of county treasury, Rule 53.01.
  - Findings adopted by court, effect, Rule 52.01.
  - Findings of fact, nonjury action, Rule 53.05.
  - Findings of fact and conclusions of law stated in report, Rule 53.05.
  - Judgment by default, ordering of reference, Rule 55.01.
  - Meetings, Rule 53.04.
  - New trial on ground of irregularity in proceedings, Rule 59.01.
  - Powers, Rule 53.03.

- Preliminary reference of issues to, pre-trial conference, Rule 16.
- Proceedings, Rule 53.04.
- Record of evidence, Rule 53.03.
- Reference to referee as exception, Rule 53.02.
- Report, Rule 53.05.
  - Judgment not to contain, Rule 54.01.
- Statement of account, Rule 53.04.
- Stipulation as to findings, Rule 53.05.
- Witnesses,
  - Power to examine, Rule 53.03.
  - Service of subpoenas, Rule 53.04.
- Registration, title to lands, rules not governing where inconsistent with statutes, Rule 81.01.
- Release,
  - Affirmative defense, Rule 8.03.
  - Judgment, relief, Rule 60.02.
- Remedies, joinder, Rule 18.02.
- Reply,
  - Counterclaim, time of service, Rule 12.01.
  - Pleading, Rule 7.01.
- Reports,
  - Findings of physical and mental examination by physician, Rule 35.02.
  - Referees, Rule 53.05.
  - Stenographic report or transcript as evidence, Rule 80.
- Representative's action or defense on behalf of infant, etc., Rule 17.02.
- Request for admission. Admissions, ante.
- Res ipsa loquitur, permissive inference of negligence, Rule 43.06.
- Res judicata, affirmative defense, Rule 8.03.
- Residence, guardian ad litem, Rule 17.02.
- Responses to discovery requests, supplementation, Rule 26.05.
- Return, service of summons and other process, Rule 4.06.
- Roads,
  - Drainage, rules not governing where inconsistent with statutes, Rule 81.01.
  - Establishment by judicial proceedings, rules not governing where inconsistent with statutes, Rule 81.01.
  - Joint construction or improvement, rules not governing where inconsistent with statutes, Rule 81.01.
- Ryukyu Islands, records, authentication, Rule 44.01.
- Sampling, discovery, scope, Rule 34.01.
- Saturday, computation of time, Rule 6.01.
- Scandalous matter, pleading,
  - Disciplinary action against attorney, Rule 11.
  - Motion to strike, Rule 12.06.
- Schools and school districts, summons, service by delivering copy to member of board, Rule 4.03.
- Scope of discovery, Rule 26.02.
- Scope of interrogatories, Rule 33.02.
- Scope of rules, Rule 1.
- Security,
  - Stay of entry of judgment, Rule 58.02.
  - Temporary injunction, Rule 65.03.
- Seizure,
  - Property, court's order, Rule 67.03.

- Satisfaction of judgment, Rule 64.
- Separate maintenance, summons, service by publication, Rule 4.04.
- Separate trials,
  - Convenience or avoidance of prejudice, Rule 42.02.
  - Judgments on counterclaims or cross-claims, Rule 13.09.
  - Third-party practice, Rule 14.03.
- Separation of jury, Rule 47.03.
- Sequence and timing of discovery, Rule 26.04.
- Service,
  - Additional to prescribed period for service before event where notice or paper served by mail, Rule 6.05.
  - Affidavits, Rule 6.04.
  - Amendment of proof of service, Rule 4.07.
  - Answer, Rule 12.01.
  - Complaint, Rule 4.042.
    - Service of copy with summons, Rule 3.02.
  - Complaint by defendant as third-party plaintiff, Rule 14.01.
  - Interrogatories, answers and objections, Rule 33.01.
  - Mail, Rule 5.02.
  - Manner of making, Rule 5.02.
  - Motion for summary judgment, Rule 56.03.
  - Note of issue, Rule 38.03.
  - Notice of defendant's service of summons, etc., as third-party plaintiff, Rule 14.01.
  - Notice of hearing for appointment of guardian ad litem, Rule 17.02.
  - Numerous defendants, Rule 5.03.
  - Opposing affidavits on motion for summary judgment, Rule 56.03.
  - Pleadings and other papers, Rule 5.
  - Process other than summons or subpoena, Rule 4.05.
  - Proof, written admission as, Rule 5.02.
  - Reply to counterclaim, Rule 12.01.
  - Statement in summons where subscriber may be served, Rule 4.01.
  - Subpoenas, Rule 45.03.
- Summons,
  - Commencement of action, Rule 3.01.
  - Personal service, Rule 4.03.
  - Service by sheriff, Rule 4.02.
- Summons by defendant as third-party plaintiff, Rule 14.01.
- Time, Rule 12.01.
- Settled case, objections to rulings or orders, minutes, Rule 46.
- Sham pleading, motion to strike, Rule 12.06.
- Sheriff,
  - Service of subpoena, Rule 45.03.
  - Service of summons, Rule 4.02.
- Sheriff's certificate, proof of service of summons and other process, Rule 4.06.
- Signatures,
  - Depositions, Rule 30.05.
  - Pleadings, Rule 11.
- Soliciting agent, summons served on transportation or express corporation by delivering copy, Rule 4.03.
- Special damages, pleading, Rule 9.07.
- Special statutes, pleading, Rule 9.04.
- Special verdicts, Rule 49.01.

- Specific performance, contract to convey land, complaint for, form, Form 11.
- Spouse's application for appointment of guardian ad litem, Rule 17.02.
- State,
  - Counterclaim against, Rule 13.04.
  - Depositions,
    - Employees, Rule 30.02.
    - Written questions, depositions upon, Rule 31.01.
  - Designation of deponent, failure, motion for order compelling discovery, Rule 37.01.
  - Interrogatories, Rule 33.01.
  - Judgment, stay in favor of state or its agency, Rule 62.04.
  - Summons, service upon attorney general, Rule 4.03.
- State fire marshal, actions and orders of, rules not governing where inconsistent with statutes, Rule 81.01.
- State officers, summons, personal service, Rule 4.03.
- Statements concerning action or its subject matter, discovery, scope, Rule 26.02.
- Statute of frauds, affirmative defense, Rule 8.03.
- Statute of limitations, affirmative defense, Rule 8.03.
- Statutes,
  - Rules incorporated into, Rule 81.03.
  - Superseded by rules, Rule 81.01.
- Statutes superseded, Rule 81.01.
- Statutory proceedings, rules not governing procedure and practice in, Rule 81.01.
- Stay, judgment, Rule 58.02.
  - Entry of judgment, time to serve new trial motion, Rule 59.06.
- Stay of proceedings, enforcement of judgment, Rule 62.
- Stenographic report, transcript as evidence, Rule 80.
- Stenographic transcriptions, depositions, Rule 30.02.
- Stipulations,
  - Depositions, stipulation regarding taking, Rule 29.
  - Discovery procedures modification, Rule 29.
  - Dismissal of action, Rule 41.01.
  - Jury of less than 12, Rule 48.
  - Majority verdict of jury, Rule 48.
  - Referee's findings, Rule 53.05.
- Stockholders' derivative actions, Rule 23.06.
- Striking pleadings, Rule 11.
  - Motion, Rule 12.06.
- Subpoenas, Rule 45.
  - Attendance of witnesses,
    - Form, issuance, Rule 45.01.
  - Contempt for failure to attend as witness, Rule 45.06.
  - Depositions, ante.
  - Failure to obey, contempt, Rule 45.06.
  - Fees and mileage to be tendered on service, Rule 45.03.
  - Foreign state, action in, taking depositions within state, Rule 45.04.
  - Hearing or trial, Rule 45.05.
  - Non-party organizations, advising of duty to designate deponent, Rule 30.02.
  - Production of documentary evidence, Rule 45.02.
  - Quashing or modifying, Rule 45.02.
  - Service, Rule 45.03.

Witnesses, referees, Rule 53.04.

Subscribers,

Statement in summons where subscriber may be served, Rule 4.01.

Summons, Rule 4.01.

Subscription to summons by plaintiff or attorney, Rule 4.01.

Substitution of parties, Rule 25.

Depositions, use, Rule 32.01.

Real party in interest, Rule 17.01.

Relation back of amended pleadings, Rule 15.03.

Summary judgment,

Affidavits,

Bad faith, Rule 56.07.

Form, Rule 56.05.

Case not fully adjudicated on motion, Rule 56.04.

Claimant, Rule 56.01.

Contempt, affidavits made in bad faith, Rule 56.07.

Continuance to permit affidavits to be obtained or depositions to be taken, Rule 56.06.

Defending party, Rule 56.02.

Depositions, continuance to permit depositions to be taken, Rule 56.06.

Discovery, continuance for discovery to be had, Rule 56.06.

Facts to be presented by adverse party on motion for, Rule 56.05.

Motion and proceedings thereon, Rule 56.03.

Motion asserting defense that pleading fails to state claim to be treated as motion for summary judgment, Rule 12.02.

Summons,

Affidavit to prove service, Rule 4.06.

Agent appointed by individual to receive service, Rule 4.03.

Amendment, discretion of court, Rule 4.07.

Associations, personal service, Rule 4.03.

Cities, etc., personal service, Rule 4.03.

Commencement of action by service of, Rule 3.01.

Complaint to be served with, Rule 3.02.

Contents, Rule 4.01.

Corporations, personal service, Rule 4.03.

Counties, personal service, Rule 4.03.

Fee for service, Rule 4.02.

Form, Rule 4.01; Form 1.

Guardian, manner of serving infant under fourteen, Rule 4.03.

Infants, personal service, Rule 4.03.

Mileage for service, Rule 4.02.

Municipal corporations, personal service, Rule 4.03.

Nonresident owner of land appointing agent, Rule 4.044.

Partnerships, personal service, Rule 4.03.

Personal service, Rule 4.03.

Nonresident owner of land appointing agent, Rule 4.044.

Out of state, effect as published in notice, Rule 4.04.

Public corporations, personal service, Rule 4.03.

Return, Rule 4.06.

School districts, personal service, Rule 4.03.

Service, by whom served, Rule 4.02.

Service by publication, Rule 4.04.

Additional information to be published in action involving realty, Rule 4.041.

- Defense upon application to court where defendant receives no notification of action, Rule 4.043.
- Restitution when defense is sustained, Rule 4.043.
- Service of complaint upon defendant's appearance, Rule 4.042.
- Sheriff's certificate to prove service, Rule 4.06.
- State, service upon attorney general, Rule 4.03.
- State institution inmate, service upon chief executive officer, Rule 4.03.
- State officers, personal service, Rule 4.03.
- Summons by defendant as third party plaintiff, Rule 14.01.
- Third party defendant, summons and complaint against, form, Form 17.
- Towns, personal service, Rule 4.03.
- Sundays, computation of time, Rule 6.01.
- Supplemental pleadings,
  - Generally, Rule 15.04.
- Counterclaim maturing or acquired after pleading, Rule 13.05.
- Supplementation of responses to discovery request, Rule 26.05.
- Surprise, new trial, Rules 59.01, 60.02.
- Surveys, discovery, scope, Rule 34.01.
- Taxes,
  - Default judgment in action for payment of, Rule 55.01.
  - Delinquent taxes, rules inconsistent with statutes, Rule 81.01.
- Telephone numbers of attorneys, note of issue, contents, Rule 38.03.
- Temporary injunctions, Rule 65.
- Tender of money in lieu of judgment, Rule 68.02.
- Term of court, time computation unaffected by continued existence or expiration of term, Rule 6.03.
- Territories, depositions, persons before whom depositions may be taken, Rule 28.01.
- Testamentary guardian, application for appointment of guardian ad litem, Rule 17.02.
- Tests, discovery, scope, Rule 34.01.
- Third party claims,
  - Dismissal, Rules 14.03, 41.03.
  - Joinder, Rule 18.01.
  - Orders for prevention of delay by assertion, etc., Rule 14.03.
  - Separate trials, Rule 42.02.
- Third-party complaint or answer, pleadings, Rule 7.01.
- Third-party defendant, summons and complaint against, form, Form 17.
- Third-party pleadings, defendant as third-party plaintiff, Rule 14.01.
- Third-party practice, Rule 14.
  - Default judgments, Rule 55.02.
  - Defendant's right to bring in third-party, Rule 14.01.
  - Plaintiff's right to bring in third-party, Rule 14.02.
- Ticket agent, summons upon transportation or express corporation served by delivering copy, Rule 4.03.
- Time, Rule 6.
  - Additional time after service by mail, Rule 6.05.
- Answer,
  - Filing, service of summons by publication, Rule 4.042.
  - Service, Rule 12.01.
- Bringing in third party by defendant, when, Rule 14.01.
- Computation, Rule 6.01.
- Depositions, ante.
- Discovery, sequence and timing of discovery, Rule 26.04.

Enlargement, Rule 6.02.

Extension of time, Rule 6.02.

Filing note of issue with clerk, Rule 38.03.

Interrogatories, Rule 33.01.

Judgment notwithstanding verdict, motion for, Rule 50.02.

Motion for new trial, Rules 59.03, 60.02.

Notice of hearing for appointment of guardian ad litem, Rule 17.02.

Pleadings,

    Averment of time and place, Rule 9.06.

    Unknown parties, pleadings, designation, Rule 9.08.

    Service, Rule 12.01.

Request for admissions, responses, Rule 36.01.

Response by guardian ad litem to complaint, Rule 17.02.

Service of motion for summary judgment, Rule 56.03.

Service of motions, Rule 6.04.

Serving affidavits on motion for new trial, Rule 59.04.

Statement in summons as to time for service of answer, Rule 4.01.

Stay of entry of judgment, Rule 58.02.

Supplementation of responses to requests for discovery, Rule 26.05.

Unaffected by expiration of term, Rule 6.03.

Title,

    Judgment vesting, Rule 70.

    Registration of title to lands, rules inconsistent with statutes, Rule 81.01.

    Rules, citation, Rule 85.

    Statement of title of action in note of issue, Rule 38.03.

Town mutual fire insurance company, quo warranto against, rules inconsistent with statutes, Rule 81.01.

Town site land, rules not governing where inconsistent with statutes, Rule 81.01.

Towns and townships, summons, service by delivering copy to chairman of board or to clerk, Rule 4.03.

Trade regulation statutes, quo warranto for violation, rules inconsistent with statutes, Rule 81.01.

Transcript,

    Testimony of witness at trial or hearing stenographically reported, Rule 80.

    Use at hearing on motion for new trial, Rule 59.02.

Transfer of interest, continuance of action by or against original party, Rule 25.03.

Transportation corporation, summons, personal service, Rule 4.03.

Trial preparation materials, discovery, scope, Rule 26.02.

Trials,

    Generally, Rules 38-63.

    Advisory jury, Rule 39.02.

    Affirmation in lieu of oath, Rule 43.04.

    Assignment of cases for trial, Rule 40.

    Assignment of judge, Rule 63.04.

    Conduct in open court, Rule 77.02.

    Consolidation of actions, Rule 42.01.

    Costs, Rule 54.04.

    Declaratory judgments, Rule 57.

    Depositions, use, Rule 32.01.

    Directed verdict, motion, Rule 50.01.

    Disability or disqualification of judge, Rule 63.

    Dismissal,

        Action, Rule 41.

- Counterclaim, cross-claim or third-party claim, Rule 41.03.
- Economy, separate trials, Rule 42.02.
- Evidence, Rule 43.
- Exceptions unnecessary, Rule 46.
- Expedition, separate trials, Rule 42.02.
- Findings by court, Rule 52.
- General verdict accompanied by answer to interrogatories, Rule 49.02.
- Harmless error, Rule 61.
- Interrogatories, use, Rule 33.02.
- Judgments, generally, ante.
- Jurors, Rule 47.
- Jury or court, Rule 39.
- Jury trial by consent, Rule 39.02.
- Jury trial of right, Rule 38.
- Majority verdict of jury, Rule 48.
- New trial, generally, ante.
- Placing action on calendar for, Rule 38.03.
- Referees, Rule 53.
- Separate trials, Rule 42.02.
  - Trial where parties joined, Rule 20.02.
- Separation of jury, Rule 47.03.
- Special verdicts, Rule 49.01.
- Subpoena, Rule 45.
- Summary judgment, generally, ante.
- Use of depositions or interrogatories, Rules 32.01, 33.02.
- Trust companies, escheated funds, rules inconsistent with statutes, Rule 81.01.
- Trust Territory of the Pacific Islands, records, authentication, Rule 44.01.
- Trustees,
  - Deposit in court of property held as trustee, Rule 67.03.
  - Suit in own name without joining real party in interest, Rule 17.01.
- United States territories or possessions, records, authentication, Rule 44.01.
- Unknown parties, pleadings, designation, Rule 9.08.
- Use of depositions or interrogatories, Rules 32.01, 33.02.
- Usurpation of office, action by attorney general for, rules inconsistent with statutes, Rule 81.01.
- Venue, rules not extending or limiting, Rule 82.
- Verdict,
  - Directed verdict, motion, Rule 50.01.
  - Entry of judgment on, Rule 58.01.
  - General verdict accompanied by answer to interrogatories, Rule 49.02.
  - Grounds for new trial, Rule 59.01.
  - Judgment notwithstanding verdict, Rule 50.02.
  - Less than 12 jurors, Rule 48.
  - Majority of jurors, Rule 48.
  - Setting aside, harmless error, Rule 61.
  - Special verdict, Rule 49.01.
  - Stay of entry of judgment on, Rule 58.02.
- Verification, pleadings, Rule 11.
- Vessels, actions against, rules inconsistent with statutes, Rule 81.01.
- Villages, summons, service by delivering copy to chief executive officer or clerk, Rule 4.03.
- Waiver,
  - Affirmative defense, Rule 8.03.
  - Defense or objection as not being waived by being joined with other defenses or objections, Rule 12.02.

Defenses, Rule 12.08.

Depositions, errors and irregularities, Rule 32.04.

Jury trial, Rule 38.02.

Motion for directed verdict not granted not constituting waiver, Rule 50.01.

Medical privilege, Rule 35.03.

Objections, Rule 12.08.

Opening statements by counsel, Rule 39.04.

Wilfulness, complaint for negligence where evidence may justify finding of wilfulness, form, Form 9.

Witnesses,

Contempt, failure to appear, Rule 45.06.

Depositions, generally, ante.

Examination, cross-examination, etc., of adverse parties, Rule 43.02.

Expert witnesses, generally, ante.

Hostile witness,

Cross-examination, contradiction, etc., Rule 43.02.

Interrogation by leading question, Rule 43.02.

Interpreters, Rule 43.07.

Referees,

Issuance of subpoenas, Rule 53.04.

Power to examine, Rule 53.03.

Written questions. Depositions, ante.

Wrongful death actions, rules inconsistent with statutes, Rule 81.01.

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

Adopted by the Minnesota  
District Judges Association  
As Amended through August 1, 1980

### (1) Table of Headnotes

#### PART I. GENERAL RULES

##### Rule

1. Actions by Representatives—Attorney's Fees.
2. Actions for Death by Wrongful Act.
3. Action or Claim on Behalf of Infant or Incompetent Person for Personal Injuries—Disposition of Proceeds to be Approved by the Court in all Cases—Procedure Detailed.
  - (a) When Petition and Order Are Required.
  - (b) Contents and Filing of Petition.
  - (c) Hearing of the Petition.
  - (d) Terms of the Order.
  - (e) General Guardians.
4. Attorneys as Sureties.
5. Banks in Liquidation—Sale of Assets—Final Dividends.
6. Continuance.
7. Costs on Motion.
8. Depositions [Eliminated].
9. Actions for Dissolution of Marriage.
10. Ex Parte Orders.
11. Expert Witness Fees.
12. Filing Orders, Promissory Notes, Checks and Bills of Exchange—Withdrawal of File Papers from Clerk's Custody.
13. Attaching Proof of Service.
14. Framing Issues [Eliminated].
15. Garnishments and Attachments—Bonds to Release—Entry of Judgment against Garnishee.
16. Illegitimacy Proceedings [Eliminated].
17. Judgment—Entry by Adverse Party.
18. Mechanic's Lien—Intervention [Eliminated].
19. Ne Exeat.
20. Notice of Motion [Eliminated].
21. Order to Show Cause.
22. Pleadings.
23. Receivers.
24. Restraining Order—Bond.
25. Service—Admission of Attorney [Eliminated].
26. Stay [Eliminated].
27. Trials.
28. Trustees—Accounting—Petition for Appointment.
29. Venue—Change.
30. Divorce Actions—Service.
31. Civil Jury Cases in which Insurance Company Interested in Defense or Outcome of Action—Examination of Jurors.

#### PART II. REGISTRATION OF LAND TITLES. Proceedings for Initial Registration

1. Application—Indorsements.
2. Abstracts of Title.
3. Title Based Upon an Adjudication Not Final, or Upon Estoppel.
4. Title Derived Through Decree or Adjudicated Tax Sale.
5. Examiner's Report—Petition and Order for Summons.

6. Papers to be Filed—Effect of Notice and Appearance.
7. Affidavit of No Answer and Clerk's Certificate of Default.
8. Hearings in Default Cases—Filing Note of Issue and Papers.
9. Issues Raised by Answer—Reply.
10. Trial of Contested Issues.
11. Interlocutory Decree Establishing Boundaries.
12. Protection of Interests Acquired Pendente Lite—Provision for Immediate Registration After Hearing.

#### Proceedings Subsequent to Initial Registration

13. Title of Proceedings.
14. Trial and Hearing.
15. New Certificates, Amendments, etc.
16. New Duplicate Certificate.

### (2) Text of Rules

#### PART I. GENERAL RULES

##### **Rule 1. Actions by Representatives — Attorney's Fees**

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

##### **Rule 2. Actions for Death by Wrongful Act**

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

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

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

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

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

Application for the distribution of money recovered under M.S.A. 573.02 shall be by verified petition of the trustee. Such petition shall show the amount which has been received upon action or settlement; a detailed statement of disbursements paid or incurred, if any; the amount, if any, claimed for services of

the trustee and of his attorney; the amount of the funeral expenses and of demands for the support of the decedent; the name, age and address of each heir and the share to which each is entitled.

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

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

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

The foregoing procedure will, so far as can be applicable, also govern the distribution of money recovered by personal representatives under the Federal Employers' Liability Act (45 U.S.C.A. 51) and under M.S.A. 219.77. (Adopted June 19, 1952.)

**Rule 3. Action or Claim on Behalf of Infant or Incompetent Person for Personal Injuries—Disposition of Proceeds to be Approved by the Court in all Cases—Procedure Detailed**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) *General Guardians*. When an action is brought by a general guardian appointed and bonded by a court of competent jurisdiction, the requirements of this Rule 3 may be modified as deemed desirable by the Court because of bonding or other action taken by the appointing court, except that there must be compliance with the settlement approval requirements of Section 540.08 of the Minnesota Statutes or amendments thereof.

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

**Rule 4. Attorneys as Sureties**

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

**Rule 5. Banks in Liquidation — Sale of Assets — Final Dividends**

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

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

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

**Rule 6. Continuance**

No civil case on the general term calendar shall be continued by consent of counsel only, or otherwise than by order of the court for cause shown.

(Amended Sept. 15, 1979.)

**Rule 7. Costs on Motion**

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

(b) It shall be the policy to impose costs of not less than \$50.00 for:

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

(2) Failure of a party to appear at the time and place fixed for the taking of his deposition if due notice thereof has been served as provided by Rules of Civil Procedure 30.01.

(Amended Sept. 15, 1979.)

**Rule 8. Depositions [Eliminated Effective Oct. 1, 1964.]**

**Rule 9. Actions for Dissolution of Marriage**

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

STATE OF MINNESOTA  
COUNTY OF \_\_\_\_\_

DISTRICT COURT  
\_\_\_\_\_ JUDICIAL DISTRICT

File No. \_\_\_\_\_

In Re the Marriage of

\_\_\_\_\_  
Petitioner  
and

APPLICATION FOR TEMPORARY  
RELIEF

\_\_\_\_\_  
Respondent

STATE OF MINNESOTA  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_, the petitioner-respondent herein, being first duly sworn, respectfully represents to the court that:

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

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

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

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

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

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

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
Petitioner-Respondent

Notary Public, \_\_\_\_\_ County, Minn.

My commission expires \_\_\_\_\_

STATE OF MINNESOTA

COUNTY OF \_\_\_\_\_

In Re the Marriage of

DISTRICT COURT  
\_\_\_\_\_  
JUDICIAL DISTRICT

\_\_\_\_\_  
Petitioner  
and

File No. \_\_\_\_\_  
Notice of Hearing Application  
for Temporary Relief

\_\_\_\_\_  
Respondent

To The Above Named Petitioner-Respondent

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

\_\_\_\_\_  
Attorney for Petitioner-Respondent  
Address \_\_\_\_\_  
Phone No. \_\_\_\_\_

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

STATE OF MINNESOTA  
 COUNTY OF \_\_\_\_\_  
 In Re the Marriage of \_\_\_\_\_

DISTRICT COURT  
 \_\_\_\_\_ JUDICIAL DISTRICT  
 File No. \_\_\_\_\_

\_\_\_\_\_  
 Petitioner  
 and

ORDER FOR  
 TEMPORARY  
 RELIEF

\_\_\_\_\_  
 Respondent

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

It Is Ordered:

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

- \$ \_\_\_\_\_ for temporary attorney's fees payable \_\_\_\_\_
- \$ \_\_\_\_\_ for disbursements herein payable \_\_\_\_\_
- \$ \_\_\_\_\_ per week-month for relief payable \_\_\_\_\_
- \$ \_\_\_\_\_ per week-month for support of the children payable \_\_\_\_\_

2. That the custody of the minor children is awarded temporarily to the petitioner-respondent, subject to reasonable visitation by the respondent-petitioner \_\_\_\_\_

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

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

\_\_\_\_\_  
 District Judge

Dated \_\_\_\_\_, 19\_\_\_\_

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

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

(Amended Sept. 15, 1979.)

**Rule 10. Ex Parte Orders**

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

**Rule 11. Expert Witness Fees**

On affidavit showing that a fee equalling, or exceeding that has been billed, the clerk may tax \$100.00 per day for an expert witness fee as a disbursement in a civil case, subject to increase or decrease by a judge on appeal. The maximum amount which normally will be allowed by a judge on appeal is \$300.00 per day or fraction thereof for actual appearance in the court and giving testimony in addition to the usual mileage allowance, and the amount allowed shall be in such amount as is deemed reasonable for such services in the community where the trial occurred and in the field of endeavor in which the witness has qualified as an expert. No allowance shall be made for preparation or in conducting of experiments outside the courtroom by the expert. The judge in setting the fee on appeal is governed by the provisions of M.S.A. Sec. 357.25.

(Amended, effective June 13, 1973; amended Feb. 17, 1975; Sept. 15, 1979; June 17, 1980.)

**Rule 12. Filing Orders, Promissory Notes, Checks and Bills of Exchange—Withdrawal of File Papers from Clerk's Custody**

(a) All orders, together with the affidavits and other papers upon which the same are based, which orders are not required to be served, shall be filed forthwith in the office of the clerk. Orders required to be served shall be so filed within three days after the service thereof, and, unless seasonably served and filed, may be vacated.

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

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

(As amended June 1964, effective October 1, 1964.)

**Rule 13. Attaching Proof of Service**

Sheriffs' certificates or other proofs of service shall be affixed to all papers before filing in such a manner as not to obscure the identity of the instrument.

(As amended effective Oct. 1, 1965.)

**Rule 14. Framing Issues [Eliminated Effective Oct. 1, 1964]****Rule 15. Garnishments and Attachments—Bonds to Release—Entry of Judgment Against Garnishee**

(a) Garnishments or attachments shall not be discharged through a personal bond under section 571.61, without one day's written notice of the application therefor to the adverse party; but if a surety company's bond is given, notice shall not be required.

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

**Rule 16. Illegitimacy Proceedings [Deleted September 15, 1979]****Rule 17. Judgment—Entry by Adverse Party**

When a party is entitled to have judgment entered in his favor upon the verdict of a jury, report of a referee, or decision or finding of the court, and neglects to enter the same for 10 days after the rendition of the verdict or notice of the filing of the report, decision or finding, or, in case a stay has been ordered, for ten days after the expiration of such stay, the opposite party may cause judgment to be entered on five days' notice to the party entitled thereto.

**Rule 18. Mechanic's Lien—Intervention [Eliminated Effective Oct. 1, 1964]****Rule 19. Ne Exeat**

Upon the allowance of a writ of ne exeat the court shall require an undertaking or bond in the penal sum of not less than \$250, to be approved by the court. Such bond shall be conditioned upon payment to the party detained of such damages as he may sustain by reason of the writ, if the court shall eventually decide that the party applying was not entitled thereto.

**Rule 20. Notice of Motion [Eliminated Effective Oct. 1, 1964]****Rule 21. Order to Show Cause**

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

**Rule 22. Pleadings**

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

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

An affidavit shall also be made by counsel, who shall state therein that from the showing of the facts made to him by the party he verily believes that such party has a good and substantial defense or claim for relief on the merits. (As amended June 1964, effective Oct. 1, 1964; amended in 1965, effective Oct. 1, 1965.)

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

**Rule 23. Receivers**

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

(b) Receivers, trustees, guardians and others appointed by the court to aid in the administration of justice shall be wholly impartial and indifferent to all parties in interest, and selected with a view solely to their character and fitness.

Except by consent of all parties interested, or where it clearly appears that prejudice will otherwise result, no person who is or has been during the preceding year a stockholder, director or officer of a corporation shall be appointed as receiver for such corporation. Receivers shall be appointed only upon notice to interested parties, such notice to be given in the manner ordered by the court; but if it shall be clearly shown that an emergency exists requiring the immediate appointment of a temporary receiver, such appointment may be made *ex parte*.

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

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

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

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

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

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

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

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

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

(As amended June 1964, effective Oct. 1, 1964.)

**Rule 24. Restraining Order—Bond**

Before any restraining order shall be issued, except in aid of writs of execution or replevin, or in actions for dissolution of marriage, the applicant shall give a bond in the penal sum of at least \$2,000, executed by him or by some person for him as a principal, approved by the court and conditioned for the payment to the party restrained of such damages as he shall sustain by reason of this order, if the court finally decides that the applicant was not entitled thereto. (Amended Sept. 15, 1979.)

**Rule 25. Service—Admission of Attorney [Eliminated June 23, 1954]****Rule 26. Stay [Eliminated June 23, 1954]****Rule 27. Trials**

(a) Eliminated effective Oct. 1, 1964.

(b) Eliminated effective June 18, 1980.

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

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

(e) Deleted September 15, 1979.

(f) Exceptions to remarks by counsel either in the opening statement to the jury or in the closing argument shall be taken while such statement or argument is in progress unless the same is being taken down in full by the court reporter, in which case exceptions taken at the close of the statement or argument shall be deemed seasonable. The services of the court reporter shall be at the expense of the party desiring it, which shall not be taxable as costs.

(Amended Sept. 15, 1979; June 18, 1980.)

**Rule 28. Trustees—Accounting—Petition for Appointment**

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

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

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

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

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

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

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

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

RECONCILIATION OF PRINCIPAL

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

\*(List other decreases and increases by categories)

STATEMENT OF MARKET VALUE OF PRINCIPAL ASSETS

Beginning of period \$ \_\_\_\_\_  
 End of period \$ \_\_\_\_\_

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

SUMMARY OF INCOME

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

\*(List other increases and decreases by categories)

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

INVENTORY OF PRINCIPAL ASSETS AT END  
 OF ACCOUNTING PERIOD

	<u>Inventory Value</u>	<u>Market Value*</u>
Bonds (list)	\$ _____	\$ _____
Preferred stocks (list)		
Common stocks (list)		
Common trust funds (list)		
Real estate (list)		
Other (list)		
Cash (list)		
	\$ _____	\$ _____

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

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

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

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

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

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

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

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

The changes in this rule made by this amendment shall be effective as to accounting periods commencing one year or more after the adoption hereof.

Except in those cases in which a trust company or national banking association having trust powers is the trustee or one of the trustees, the petition for confirmation of the appointment of the trustee or trustees shall include an inventory, including a description of the assets of the trust known to the petitioners and an estimate by them of the market value of such assets at the date of the petition. The petition shall also set forth the relationship, if any, of the trustee or trustees to the beneficiaries of the trust.

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

#### **Rule 29. Venue—Change**

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

**Rule 30. Actions for Dissolution of Marriage— Service**

In every action for dissolution of marriage brought against a foreign national, in which summons and complaint are not served by handing the same to the respondent within the continental United States, the attorney for petitioner shall be requested forthwith, upon the commencement of such action, to notify the nearest consul or vice-consul of the country of which respondent is a national of the title and venue of such action, the manner in which jurisdiction was acquired and the date thereof and shall upon request furnish a copy of such summons and complaint or permit a copy thereof to be made.  
(Amended Sept. 15, 1979)

**Rule 31. Civil Jury Cases in Which Insurance Company Interested in Defense or Outcome of Action—Examination of Jurors**

In all civil jury cases, in which an insurance company or companies are not parties, but are interested in the defense or outcome of the action, counsel for such company or companies may, and upon request of the presiding Judge shall, disclose the name of such company or companies to opposing counsel, out of the hearing of the jury, as well as the name of the local agent of such companies. When so disclosed, no inquiry shall be permitted by counsel as to such names in the hearing of the jury, nor shall disclosure be made to the jury that such insurance company is interested in the action.

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

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

The presiding Judge, in his discretion, may examine the jurors on this feature of the case and not permit counsel to do so.  
(Added June 24, 1948, as amended June 23, 1954.)

## PART II. REGISTRATION OF LAND TITLES PROCEEDINGS FOR INITIAL REGISTRATION

**Rule 1. Application—Indorsements**

Applications shall be approved as to form by the examiner, and there shall be indorsed thereon the name and address of the applicant's attorney, or of the applicant if he appears in person.  
(Amended Sept. 15, 1979.)

**Rule 2. Abstracts of Title**

The abstract when filed shall show the record of the patent or other conveyance from the United States, the record of the certified copy of the application, and shall include searches as to all state and federal judgments, federal tax liens, real estate taxes and tax and special assessment sales. The abstract also shall contain bankruptcy searches in the office of the county recorder in the county in which the land is located. Additional bankruptcy searches in the office of the clerk of federal district court shall be required only in examinations of title to lands in Hennepin, Ramsey and St. Louis counties.  
(Amended Sept. 15, 1979.)

**Rule 3. Title Based Upon an Adjudication not Final, or Upon Estoppel**

When the title of the applicant or the release or discharge of any incumbrance thereon is based upon an adjudication not final, or upon estoppel, and there remains a right of appeal or contest, all parties having such right of appeal or contest shall be made parties defendant.

**Rule 4. Title Derived Through Decree or Adjudicated Tax Sale [Deleted Sept. 15, 1979.]****Rule 5. Examiner's Report—Petition and Order for Summons**

The examiner's report shall specify the names of all parties he deems necessary parties defendant. Petitions for Summons shall set forth such names and the names of such other parties as the applicant deems to be necessary, and the names, if known to the applicant, or ascertainable by him by reasonable inquiry, of the successors in interest of such persons known to the applicant to be deceased. The petition shall recite that the petitioner has made a diligent effort by reasonable inquiry and search to ascertain the place of residence of all defendants named therein, and where the place of residence of a defendant is unknown to the petitioner, the petition shall so recite such fact. (Amended Sept. 15, 1979.)

**Rule 6. Papers to be Filed—Effect of Notice and Appearance**

If a defendant, in addition to appearing or filing his answer, as by statute required, shall serve a copy thereof upon the applicant or his attorney, he shall be entitled to notice of all subsequent proceedings.

**Rule 7. Affidavit of no Answer and Clerk's Certificate of Default**

The default of defendants who fail to appear and answer shall be shown by the certificate of the clerk entitled and filed in the action, and by the affidavit of the applicant's attorney, if he appears by attorney; otherwise by the applicant's affidavit.

**Rule 8. Hearings in Default Cases—Filing Note of Issue and Papers**

Initial applications, where no issue has been joined, shall be heard by the court at any special term, unless by local rules adopted for any particular county or district, or by special order, other days have been designated for such hearings; or they may be heard by an examiner, to whom the matter has been specially referred. In counties where the examiner checks the proceedings in advance of the hearings, the note of issue and all papers necessary to complete the files shall be filed; and all documentary evidence proposed to be used by the applicant or petitioner shall be delivered to the examiner at least three days before the hearing, together with the proposed order for judgment and decree. (Amended Sept. 15, 1979)

**Rule 9. Issues Raised by Answer—Reply**

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

**Rule 10. Trial of Contested Issues**

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

**Rule 11. Interlocutory Decree Establishing Boundaries**

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

(Amended Sept. 15, 1979.)

**Rule 12. Protection of Interests Acquired Pendente Lite—Provision for Immediate Registration After Hearing**

At the time of the hearing of the application for judgment, the applicant shall satisfy the court by continuation of abstract, if required by the examiner, and other proper proof, of changes, if any, in the title, or in the incumbrances thereon arising since the filing of the application. When the decree is signed, the applicant shall forthwith file the same with the clerk, together with a receipt of the registrar showing payment of all sums due him for the registration of the decree, and the issuance of a certificate of title in pursuance to said decree, and thereupon the clerk shall certify a copy of the decree and file the same for registration with the registrar.

(Amended Sept. 15, 1979)

**PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION****Rule 13. Title of Proceedings**

Proceedings subsequent to the initial registration under sections 508.44, 508.45, 508.58, 508.59, 508.61, 508.62, 508.67, 508.68, 508.69, 508.70, 508.71, and 508.73, shall be commenced by filing with the clerk a verified petition by a party in interest, which shall be entitled:

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

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

(Amended Sept. 15, 1979.)

**Rule 14. Trial and Hearing**

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

**Rule 15. New Certificates, Amendments, Etc.**

In proceedings under sections 508.44, 508.45, 508.58, 508.59, 508.61, 508.62, 508.67, 508.68, 508.69, 508.70, 508.71, and 508.73, the examiner shall make such examination as to the truth of the allegations contained in the petition as to him may seem necessary, or as directed by the court. In all cases where notice is necessary and the manner thereof is not prescribed by statute, it shall be by an order to show cause, which shall designate the respondents, the manner of service, and the time within which service shall be made. Any final order or decree directed in such proceeding shall be approved as to form by the examiner before presentation to the court.

(Amended Sept. 15, 1979.)

**Rule 16. New Duplicate Certificate**

Every petition for a new duplicate certificate shall be filed with the clerk and a certified copy thereof may be filed with the registrar for registration as a memorial on the certificate of title. Thereupon the court shall issue a citation addressed "To Whom It May Concern," fixing a time and place of hearing and prescribing the mode of service. No order shall be made for a new duplicate except upon hearing and due proof that the duplicate theretofore issued has been lost or destroyed, or cannot be produced. If it shall appear at the hearing that there are any known parties in interest to whom notice should be given, the hearing shall be continued and an order entered accordingly.

(Amended Sept. 15, 1979.)

## (3) Index to Code of Rules

Abstracts of title,

Bankruptcy searches, Part II, Rule 1.

Registration of land title, contents of, Part II, Rule 2.

Registration of land title proceedings, Part II, Rule 11.

Continuation of abstract, Part II, Rule 12.

Accounts and accounting,

Infant's or incompetent's claim for personal injuries, disposition of proceeds, Part I, Rule 3.

Receivers, Part I, Rule 23.

Trustees, Part I, Rule 28.

Addresses,

Attorney in proceedings for registration of land title, Part II, Rule 1.

Affidavits,

Default of defendant in registration of land title proceedings, Part II, Rule 7.

Ex parte orders, affidavit to sustain, Part I, Rule 10.

Filing, Part I, Rule 12.

Merits, Part I, Rule 22.

Pleadings, attorney's affidavit attached to, Part I, Rule 22.

Agents, insurance companies, Part I, Rule 31.

Aliens, summons and complaint in dissolution action brought against foreign national, Part I, Rule 30.

Alimony, application, form, Part I, Rule 9.

Amendment, pleadings, Part I, Rule 22.

Annual accounting, trustees, Part I, Rule 28.

Answers,

Application after time limited, Part I, Rule 22.

Registration of land title proceedings, Part II, Rules 9, 10.

Failure to answer, Part II, Rule 7.

Service in registration of land title proceedings, Part II, Rule 6.

Appearance,

Depositions, failure to appear, costs, Part I, Rule 7.

Registration of land title proceedings, failure to appear, Part II, Rule 7.

Appraisers, receivers, property in hands of, Part I, Rule 23.

Approval, infant's or incompetent's claim for personal injuries, disposition of proceeds, Part I, Rule 3.

Argument of counsel, exceptions, Part I, Rule 27.

Assessments, abstract, registration of land titles, Part II, Rule 2.

Assets, trustees, accounting, Part I, Rule 28.

Assignment clerks, continuance, general term calendar, Part I, Rule 6.

Attachment, bonds, Part I, Rule 15.

Attorneys,

Address and name of attorney indorsed on application for registration of land title, Part II, Rule 1.

Affidavits of attorney attached to pleading, Part I, Rule 22.

Arguments of counsel, Part I, Rule 27.

Continuance by consent of, Part I, Rule 6.

Examination or cross-examination of witnesses by one attorney, Part I, Rule 27.

Fees,

Application, form, Part I, Rule 9.

Infant's or incompetent's claims for personal injuries, Part I, Rule 3.

Personal injuries or wrongful death action brought by representative, Part I, Rule 1.

Receiver's attorneys, Part I, Rule 23.

Trustees, accounting, Part I, Rule 28.

Receiver, appointment of attorney as, Part I, Rule 23.

Registration of land title proceedings, service of answer on, Part II, Rule 6.

Sureties on bonds or undertakings, Part I, Rule 4.

Bank deposits, infant's or incompetent's claim for personal injuries, disposition of proceeds, Part I, Rule 3.

Banks, liquidating banks, petition for approval or authorization of certain acts, Part I, Rule 5.

Bonds,

Attachment, Part I, Rule 15.

Attorneys as sureties, Part I, Rule 4.

Garnishment, Part I, Rule 15.

Ne exeat, Part I, Rule 19.

Receivers, Part I, Rule 23.

Restraining orders, Part I, Rule 24.

Boundaries, interlocutory decrees establishing boundaries before adjudication registering title, Part II, Rule 11.

Certificate of title,

Duplicate certificate, proceedings for new certificate, Part II, Rule 16.

Proceedings for new or amended certificate, Part II, Rule 15.

Registered title, Part II, Rule 12.

Certificates,

Proof of service, Part I, Rule 13.

Registration of land title proceedings, certificates of default, Part II, Rule 7.

Change of venue,

Sequestration and receivership proceedings against corporation, Part I, Rule 23.

- Time of motion and diligence, Part I, Rule 29.
- Children, actions or claims for personal injuries, disposition of proceeds, Part I, Rule 3.
- Clerks of courts, filing papers with, Part I, Rule 12.
- Complaint, dissolution action against foreign national, Part I, Rule 30.
- Consent,
  - Continuance, general term calendar, Part I, Rule 6.
  - Form, trustee, wrongful death claim, Part I, Rule 2.
- Consul, notice to consul of dissolution action against foreign national, Part I, Rule 30.
- Contested issues, registration of land titles, Part II, Rule 10.
- Continuance,
  - General term calendar, case on, Part I, Rule 6.
  - Registration of land title, proceedings for new duplicate certificate, Part II, Rule 16.
- Corporations, receivers and sequestration of property, Part I, Rule 23.
- Costs,
  - Expert witness fees, Part I, Rule 11.
  - Motions, Part I, Rule 7.
  - Services of court reporter, Part I, Rule 27.
- Court reporter, expenses of services, Part I, Rule 27.
- Criminal trials, public trials, Part I, Rule 27.
- Cross-examination, witnesses, Part I, Rule 27.
- Custody of children, application, form, Part I, Rule 9.
- Custody of clerk, papers taken, Part I, Rule 12.
- Decrees. Judgments, generally, post.
- Defaults,
  - Registration of land titles, Part II, Rules 7, 8.
  - Proceedings subsequent to initial registration, Part II, Rule 14.
- Depositions, failure to appear, costs, Part I, Rule 7.
- Deposits, infant's or incompetent's claim for personal injuries, disposition of proceeds, Part I, Rule 3.
- Dissolution of marriage,
  - Forms, Part I, Rule 9.
  - Restraining order, bond, Part I, Rule 24.
  - Summons, Part I, Rule 9.
  - Summons and complaint, action against foreign national, Part I, Rule 30.
- Duplicates, certificate of land title, proceedings for new duplicate, Part II, Rule 16.
- Entitling, proceedings subsequent to initial registration of land title, Part II, Rule 13.
- Entry of judgment, adverse party, entry by, Part I, Rule 17.
- Estoppel, registration of land title, proceedings based on title by estoppel, Part II, Rule 3.
- Ex parte,
  - Orders, Part I, Rule 10.
  - Temporary receivers, appointment of, Part I, Rule 23.
  - Trustees, annual accounts, Part I, Rule 28.
- Examiner of titles,
  - Registration of land titles, Part II, Rule 1.
  - Abstracts of title of adjoining lands furnished to, Part II, Rule 11.
  - Hearing by, Part II, Rule 8.
  - Petition in subsequent proceedings approved by, Part II, Rule 15.

- Reports of, Part II, Rule 5.
- Exceptions, remarks by counsel, Part I, Rule 27.
- Execution, restraining orders, bond, Part I, Rule 24.
- Expert witness, fees, Part I, Rule 11.
- Fees,
  - Attorneys, ante.
  - Expert witnesses, Part I, Rule 11.
  - Receivers, Part I, Rule 23.
  - Trustees, accounting, Part I, Rule 28.
- Filing,
  - Decree in registration of land title proceedings, Part II, Rule 12.
  - Papers, Part I, Rule 12.
  - Papers in proceedings to register title, Part II, Rule 8.
  - Proof of service, Part I, Rule 13.
- Final dividends, banks in liquidation, Part I, Rule 5.
- Forms,
  - Attorneys' fees, application, Part I, Rule 9.
  - Consent, trustee, wrongful death claim, Part I, Rule 2.
  - Custody of children, application, Part I, Rule 9.
  - Divorce actions, Part I, Rule 9.
  - Oath of trustee, wrongful death claim, Part I, Rule 2.
  - Order appointing trustee, wrongful death claim, Part I, Rule 2.
  - Petition, appointment of trustee, claim for wrongful death, Part I, Rule 2.
  - Summary of income, Part I, Rule 28.
  - Support, application, Part I, Rule 9.
  - Temporary alimony, application, Part I, Rule 9.
  - Trustees, reconciliation of principal, Part I, Rule 28.
- Garnishment, bond and judgment, Part I, Rule 15.
- General term calendar, continuance, Part I, Rule 6.
- Guardian ad litem,
  - Infant's or incompetent's claim for personal injuries, disposition of proceeds, Part I, Rule 3.
- Guardians and wards,
  - Infant's or incompetent's claim for personal injuries, disposition of proceeds, Part I, Rule 3.
  - Qualification for appointment, Part I, Rule 23.
- Hearings,
  - Bank liquidation, Part I, Rule 5.
  - Infant's or incompetent's claim for personal injuries, disposition of proceeds, Part I, Rule 3.
  - Registration of land titles, Part II, Rule 9.
    - Default, Part II, Rule 8.
    - Proceedings for new duplicate certificate, Part II, Rule 16.
    - Proceedings subsequent to initial registration, Part II, Rule 14.
  - Trustees, accounting, Part I, Rule 28.
- Income, trustees, accounting, Part I, Rule 28.
- Incompetents, actions or claims for personal injuries, disposition of proceeds, Part I, Rule 3.
- Indorsement,
  - Application for registration of land titles, Part II, Rule 1.
- Infants, action or claim for personal injuries, disposition of proceeds, Part I, Rule 3.
- Injunctions, restraining orders, Part I, Rule 24.

- Insurance companies, jury, examination of jurors, Part I, Rule 31.
- Interlocutory decrees, boundaries, decrees establishing boundaries before adjudication of registration of land titles, Part II, Rule 11.
- Interrogatories, failure to respond, costs, Part I, Rule 7.
- Inventories,
  - Petition for confirmation of appointment of trustee, Part I, Rule 28.
  - Receivers, Part I, Rule 23.
  - Trustees, accounting, Part I, Rule 28.
- Investigator's fee, infant's or incompetent's claim for personal injuries, disposition of proceeds, Part I, Rule 3.
- Investments, infant's or incompetent's claim for personal injuries, disposition of proceeds, Part I, Rule 3.
- Issues,
  - Note of issue in proceedings to register title, Part II, Rule 8.
  - Registration of land title, Part II, Rules 9, 10, 14.
  - Registration of land title proceedings, Part II, Rules 9, 10.
  - Trial, registration of land titles, Part II, Rule 10.
- Judgments,
  - Boundaries, interlocutory decree establishing boundaries before adjudication of registration of title, Part II, Rule 11.
  - Entry by adverse party, Part I, Rule 17.
  - Filing, registration of land titles, Part II, Rule 12.
  - Garnishee, judgment against, Part I, Rule 15.
  - Negotiable instruments, instrument filed on entry of judgment, Part I, Rule 12.
  - Opening, Part I, Rule 22.
  - Registration of land titles, Part II, Rule 12.
    - Proceedings based on judgment not final, Part II, Rule 3.
    - Proceedings for new or amended certificates, etc., Part II, Rule 15.
    - Proposed judgment delivered to examiner, Part II, Rule 8.
    - Title based on judgment or decree, Part II, Rule 4.
- Judicial land marks, establishment in proceedings to register land title, Part II, Rule 11.
- Jury,
  - Drawing, Part I, Rule 27.
  - Examination of jurors,
    - Insurance companies interested, Part I, Rule 31.
    - Presiding judge, Part I, Rule 27.
  - Peremptory challenges, Part I, Rule 27.
- Land title, registration, Part II, Rules 1 to 16.
- Liquidating banks, orders, Part I, Rule 5.
- Local assessment sale, registration of land titles, title based on assessment sale, Part II, Rule 4.
- Lost instruments, certificate of title, Part II, Rule 16.
- Mental incompetents,
  - Actions or claims for personal injuries, disposition of proceeds, Part I, Rule 3.
- Minors, actions or claims for personal injuries, disposition of proceeds, Part I, Rule 3.
- Motions,
  - Costs, Part I, Rule 7.
- Names, insurance companies interested in action, Part I, Rule 31.
- Ne exeat, bond, Part I, Rule 19.

- Negotiable instruments, judgment in action on, Part I, Rule 12.
- Note of issue,
  - Registration of land titles, Part II, Rules 8, 10.
  - Proceedings subsequent to initial registration, Part II, Rule 14.
- Notice,
  - Distribution of funds recovered for wrongful death, hearing on petition, Part I, Rule 2.
  - Divorce action against foreign national, Part I, Rule 30.
  - Entry of judgment by adverse party, Part I, Rule 17.
  - Garnishment or attachment, discharged on bond, Part I, Rule 15.
  - Liquidating banks, proceedings for approval of certain acts, Part I, Rule 5.
  - Receivers, appointment of, Part I, Rule 23.
  - Registration of land title proceedings, Part II, Rule 6.
  - Trustee of overdue accounts, Part I, Rule 28.
  - Trustee's accounts, hearing on, Part I, Rule 28.
- Oaths, form, trustee, wrongful death claim, Part I, Rule 2.
- Opening statements, contents, Part I, Rule 27.
- Orders,
  - Bank liquidation, Part I, Rule 5.
  - Continuance, general term calendar, Part I, Rule 6.
  - Ex parte orders, Part I, Rule 10.
  - Filing and typewriting, Part I, Rule 12.
  - Form, appointing trustee, wrongful death claim, Part I, Rule 2.
  - Infant's or incompetent's claim for personal injuries, disposition of proceeds, Part I, Rule 3.
  - Show cause, Part I, Rule 21.
  - Show cause in proceedings subsequent to initial registration of land title, Part II, Rule 15.
- Parties, registration of land title proceedings, Part II, Rules 3, 5.
- Paternity, notice of pending proceedings, Part I, Rule 16.
- Pendente lite, registration of land title, protection of interest acquired pendente lite, Part II, Rule 12.
- Peremptory challenges, jurors, Part I, Rule 27.
- Personal injuries,
  - Attorney's fees in action by representative, Part I, Rule 1.
  - Infants or incompetents, disposition of proceeds, Part I, Rule 3.
- Petitions,
  - Appointment of trustee, claim for wrongful death, Part I, Rule 2.
  - Confirmation of appointment of trustee, Part I, Rule 28.
  - Distribution of funds recovered for wrongful death, Part I, Rule 2.
  - Form, appointment of trustee, claim for wrongful death, Part I, Rule 2.
  - Infant's or incompetent's claims for personal injuries, disposition of proceeds, Part I, Rule 3.
  - Liquidating banks, petition for approval or authorization of certain acts, Part I, Rule 5.
  - Registration of land titles, Part II, Rule 5.
    - Proceedings for new duplicate certificates, Part II, Rule 16.
    - Proceedings subsequent to initial registration, Part II, Rules 13, 15.
  - Trustees, petition for accounting, Part I, Rule 28.
- Pleadings,
  - Amendment after time limited, Part I, Rule 22.
  - Dissolution action against foreign national, Part I, Rule 30.
  - Registration of land titles, Part II, Rules 5 to 7, 9, 10.
    - Proceedings for new duplicate certificate, Part II, Rule 16.

- Proceedings subsequent to initial registration, Part II, Rules 13, 15.  
 Proof of service, sheriffs' certificates, Part I, Rule 13.  
 Publication,  
   Orders for bank liquidation, Part I, Rule 5.  
   Summons in dissolution action, Part I, Rule 9.  
 Receivers, appointment, qualifications, bonds, claims against, compensation, etc., Part I, Rule 23.  
 Registration of land titles, proceedings for initial registration and proceedings subsequent to initial registration, Part II, Rules 1 to 16.  
 Replevin, restraining order, bond, Part I, Rule 24.  
 Reply,  
   Application after time limited, Part I, Rule 22.  
   Leave to reply after time limit, Part I, Rule 22.  
   Registration of land title proceedings, Part II, Rule 9.  
 Restraining order, bond, Part I, Rule 24.  
 Sales, assets of banks in liquidation, Part I, Rule 5.  
 Scandalous trials, publicity, Part I, Rule 27.  
 Sequestration, corporate property, Part I, Rule 23.  
 Service,  
   Answer in registration of land title proceedings, Part II, Rule 6.  
   Proof of service, Part I, Rule 13.  
   Registration of land title, proceedings for new duplicate certificate, Part II, Rule 16.  
   Summons and complaint in dissolution action against foreign national, Part I, Rule 30.  
 Settlement, infant's or incompetent's claim for personal injuries, disposition of proceeds, Part I, Rule 3.  
 Sex offenses, publicity of trial, Part I, Rule 27.  
 Sheriffs' certificates, proof of service, Part I, Rule 13.  
 Show cause, registration of land title, proceedings subsequent to initial registration, Part II, Rule 15.  
 Show cause orders, grounds and proceedings, Part I, Rule 21.  
 Stockholders, receivers, appointment as, Part I, Rule 23.  
 Summons,  
   Dissolution action against foreign national, Part I, Rule 30.  
   Dissolution actions, Part I, Rule 9.  
   Registration of land title proceedings, Part II, Rule 5.  
 Support, application, form, Part I, Rule 9.  
 Sureties, attorneys as, Part I, Rule 4.  
 Surveys, registration of land titles, survey filed in proceedings for, Part II, Rule 11.  
 Tax sales,  
   Abstract, registration of land titles, Part II, Rule 2.  
 Taxes, abstract, registration of land titles, Part II, Rule 2.  
 Temporary alimony, application, form, Part I, Rule 9.  
 Temporary receivers, ex parte appointments, Part I, Rule 23.  
 Title to property, registration of land titles, proceedings for, Part II, Rules 1 to 16.  
 Torrens title, proceedings for registration of land titles, Part II, Rules 1 to 16.  
 Transactions, trustees, accounting, Part I, Rule 28.  
 Trial,  
   Conduct in general, Part I, Rule 27.  
   Registration of land titles, Part II, Rule 10.

Proceedings subsequent to initial registration, Part II, Rule 14.

Trustees,

Account, Part I, Rule 28.

Claim for wrongful death, application for appointment, Part I, Rule 2.

Petition for confirmation of appointment, Part I, Rule 28.

Qualifications for appointment, Part I, Rule 23.

Venue,

Change of, Part I, Rule 29.

Sequestration of corporate property, Part I, Rule 23.

Sequestration proceedings and appointment of corporate receiver, Part I, Rule 23.

Wrongful death actions, Part I, Rule 2.

Vice-Consul, notice to vice-consul of dissolution action against foreign national, Part I, Rule 30.

Witnesses,

Examination or cross-examination, Part I, Rule 27.

Expert witness fees, Part I, Rule 11.

Writ of ne exeat, bond, Part I, Rule 19.

Wrongful death,

Attorney's fees in action by representative, Part I, Rule 1.

Claim, appointment of trustee, Part I, Rule 2.

Distribution of funds recovered, Part I, Rule 2.

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

As Amended through August 1, 1980

### COURTROOM

1. The flag of the United States shall at all times while court is in session be displayed on or in close proximity to the bench.
2. Tobacco in any form shall not be used in the courtroom; hats and overcoats should be removed at all times before entering the courtroom; dignity and solemnity of both judges and attorneys should be maintained in the courtroom at all times; unseemly conduct therein at any time shall be deemed to be in poor taste.
3. There shall be no unnecessary conversation, loud whispering, newspaper or magazine reading or other disconcerting or distracting activity by anyone in the courtroom during the progress of the trial.

### OPENING AND SESSIONS OF COURT

4. At the opening of each court day, the formalities to be observed shall consist of the following: the sheriff or bailiff shall, by a rap of the gavel or other signal, direct all present to stand, and the bailiff shall say clearly and distinctly:  
Everyone please rise! Hear Ye—Hear Ye—Hear Ye! The District Court of the \_\_\_\_\_ Judicial District, County of \_\_\_\_\_, State of Minnesota is now open pursuant to adjournment. Judge \_\_\_\_\_ presiding. Please be seated.  
(Bailiff raps gavel or gives other signal immediately prior to announcing to the audience that they shall be seated.)
5. At any time thereafter during the day that court is reconvened, the bailiff shall give warning by gavel or otherwise, and as the judge enters, cause all to stand until the judge is seated.  
(The above rule (to) or (to not) apply to midmorning and midafternoon recesses of the court at the option of the judge.)

### THE JURY

6. When trial is to a jury, the jurors shall take their respective places in the jury box before the judge enters the courtroom. In reconvening after a recess, it is the duty of the bailiff to give warning and assemble the jurors when court is reconvened.
7. When a jury has been selected and is to be sworn, the presiding judge or clerk shall request the jurors to arise, and upon the oath being administered, everyone in the courtroom, including attorneys and the presiding judge, shall stand.

### THE BAILIFF

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

### THE CLERK

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

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

### THE LAWYER

11. The lawyers should advise their clients and witnesses of the formalities of court appearances, thereby avoiding embarrassment to all concerned.

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

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

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

15. The lawyers shall be seated or stand at the counsel table while examining witnesses, except when identifying or examining exhibits, or when other circumstances require a modification of the procedure.

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

See Canons 7-29, 30, 31, 32, 36, Code of Professional Responsibility.

17. All lawyers and court officials shall refrain from wearing articles of clothing suited primarily for sports or leisure time activities during Court appearances.

Pantsuits or dresses shall be appropriate for women. Coats and ties shall be appropriate for men.

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

19. When addressing the jury, the lawyers shall first address the court, who shall recognize the lawyer.

20. The lawyer shall treat opposing counsel and witnesses with courtesy and respect.

See Canon 7-37, 38, DR 7-106C(2), (5), (6), Code of Professional Responsibility.

21. The lawyers as far as possible shall refrain from interrupting each other, speaking at the same time or arguing, thus assisting in making a proper record. Lawyers should instruct their witnesses to testify slowly and clearly so that the court and jury will hear their testimony, and should caution witnesses not to chew anything when testifying.

22. There shall be no demonstration in the courtroom in connection with the rendering of a verdict or other decision.

### THE JUDGE

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

Canon 3.A.(3) of the Code of Judicial Conduct provides:

"A judge should be patient, dignified, and courteous, to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity,

and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.”

24. The judge shall wear a robe at all trials and courtroom appearances.

25. The judge shall be punctual in convening court, and prompt in the performance of his judicial duties, recognizing that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality on his part justifies dissatisfaction with the administration of the business of the court.

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

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

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

29. The judge shall be impersonal in addressing the lawyers and other officers of the court.

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

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

32. If in a trial the lawyers get into a personal colloquy or argument, it is the duty of the trial judge to interrupt and restore order.

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

34. The judge shall at all times exercise the highest degree of patience.

Canon 3.A.(1) of the Code of Judicial Conduct provides:

“A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.”

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

(Adopted June 21, 1978)

## INDEX TO RULES OF DECORUM

### Addressing Jury

Attorneys, Rule 19.

### Admittance

Bailiffs, refusing admittance, Rule 8.

### Adverse Witnesses

Courtesy and respect, Rules 20, 30.

### Apparel

Attorneys, court officials, Rule 17.

Judges, robes, Rule 24.

**Approaching Bench**

Attorneys, Rule 14.

**Arguments of Counsel**

Addressing individual jurors, Rule 16.

Interruptions, opposing counsel, Rule 21.

Judges, intervention, Rule 27.

Objections, Rules 13, 18.

**Attorneys**

Addressing court, Rule 14.

Addressing jury, Rule 19.

Approaching bench, Rule 14.

Arguments of Counsel, generally, this index.

Clothing, Rule 17.

Coloquy, judges duties, Rule 32.

Courteous conduct, opposing counsel and witnesses, Rules 20, 30.

Criticism or embarrassment, judges, Rule 33.

Dignity and solemnity, Rule 2.

Examination of witnesses, intervention of judge, Rule 27.

Familiar manner,

Addressing court, Rule 14.

Addressing witnesses, jurors or opposing counsel, Rule 16.

Instruction to witnesses, Rule 21.

Interrupting, Rule 21.

Intervention of judge, Rule 27.

Objections, Rules 13, 18.

Standing, addressing court or jury, Rule 13.

Unseemly conduct, Rule 2.

Verdicts, demonstrations, Rule 22.

**Badgering Witnesses**

Judges duties, Rule 30.

**Bailiffs**

Generally, Rule 8.

Jury, reconvening after recess, Rule 6.

Opening and sessions of court, Rules 4, 5.

**Browbeating Witnesses**

Judges duties, Rule 30.

**Clerks of Court**

Generally, Rules 9, 10.

**Clothing**

Attorneys, court officials, Rule 17.

Judges, robes, Rule 24.

**Code of Judicial Conduct**

Generally, Rules 23, 34.

**Code of Professional Responsibility**

Generally, Rules 16, 20.

**Coloquy**

Attorneys, judges duties, Rule 32.

**Conduct**

Attorneys, Rule 11 et seq.

Courtroom, Rules 2, 3.

**Confidential Communications**

Judges, criticism of attorney, Rule 33.

- Objections, argument out of hearing of jury, Rule 18.
- Convening Court
  - Judges, punctuality, Rule 25.
- Conversation
  - Courtrooms, Rule 3.
- Court Officers
  - Address by judges, Rule 29.
  - Clothing, Rule 17.
- Courtroom
  - Generally, Rule 1 et seq.
- Counsel
  - Attorneys, generally, this index.
- Counsel Table
  - Attorneys,
    - Addressing court, Rule 14.
    - Examination of witnesses, Rule 15.
- Courtesy
  - Attorneys, opposing counsel, witnesses, Rules 20, 30.
  - Judges, Rule 23.
  - Parties and witnesses, Rule 30.
- Criticism
  - Judges, comments about attorneys, Rule 33.
- Decorum
  - Judges duties, Rule 30.
- Demonstrations
  - Verdicts, Rule 22.
- Dignity
  - Attorneys, Rules 2, 12.
  - Clerks of court, oaths, Rule 10.
  - Judges, Rules 2, 23.
- Distracting Activity
  - Trials, Rule 3.
- Dresses
  - Attorneys and court officials, appropriate clothing, Rule 17.
- Ethics
  - Code of judicial conduct, Rules 23, 34.
  - Code of professional responsibility, Rules 16, 20.
- Examination of Witnesses
  - Generally, Rules 15, 20.
  - Judges, intervention, Rule 27.
- Exhibits
  - Attorneys, position at counsel table, Rule 15.
- Favoritism
  - Judges, Rule 26.
- Flags
  - United States flag, display, Rule 1.
- Formalities
  - Attorneys, advising clients and witnesses, Rule 11.
  - Opening and sessions of court, Rules 4, 5.
- Gum Chewing
  - Witnesses, Rule 21.
- Hats
  - Removal, Rule 2.
- Influence

Judges, comments on verdicts, Rule 35.

#### Interruptions

Opposing counsel, Rule 21.

#### Judges

Generally, Rule 23 et seq.

Approaching bench, Rule 14.

Attorneys addressing court, Rules 13, 19.

Position at counsel table, Rule 14.

Criticism or embarrassment of attorneys, Rule 33.

Dignity and solemnity, Rule 2.

Examination of witnesses, intervention, Rule 27.

Impartiality, Rule 26.

Interruptions attorneys colloquy or argument, Rule 32.

Intervention in trial, Rule 27.

Oaths of witnesses, Rule 28.

Order and decorum, Rule 30.

Patience, Rule 34.

Punctuality, Rule 25.

Robes, Rule 24.

Unseemly conduct, Rule 2.

Verdicts, comments, Rule 35.

#### Judicial Conduct

Code of judicial conduct, Rules 23, 34.

#### Jury

Generally, Rules 6, 7.

Addressing jury, Rules 13, 16, 19.

Clerk of court, duties, Rule 10.

Communications out of presence of jury, approaching bench, Rule 14.

Familiarity with attorneys, Rule 16.

Judges comments, influence, Rule 35.

Oaths and affirmations, Rule 7.

Objections, argument out of hearing of jury, Rule 18.

#### Lawyers

Attorneys, generally, this index.

#### Lecturing Witnesses

Judges duties, Rule 30.

#### Magazines

Reading in courtroom, Rule 3.

#### Names

Attorneys, use of first names, Rule 16.

Witnesses, clerks duties, Rule 9.

#### Newspapers

Reading in courtroom, Rule 3.

#### Oaths and Affirmations

Jury, Rule 7.

Witnesses,

Clerks duties, Rules 9, 10.

Judges duty, Rule 28.

#### Objections

Attorneys, Rules 13, 18.

#### Offer of Proof

Arguments made out of hearing of jury, Rule 18.

#### Opening of Court

Generally, Rules 4, 5.

- Judges, punctuality, Rule 25.
- Opposing Counsel
  - Courtesy and respect, Rule 20.
  - Familiarity with, attorneys, Rule 16.
- Order
  - Bailiffs, duty to maintain order, Rule 8.
  - Judges,
    - Attorneys colloquy or argument, Rule 32.
    - Duties, Rule 30.
- Pantsuits
  - Attorneys and court officials, appropriate clothing, Rule 17.
- Parties
  - Attorneys, advising of formalities, Rule 11.
  - Courtesy and respect, Rules 20, 30.
  - Judges, addressing parties, Rule 27.
- Patience
  - Judges, Rule 34.
- Professional Responsibility
  - Generally, Rules 16, 20.
- Punctuality
  - Judges, Rule 25.
- Recesses
  - Bailiffs, maintaining order, Rule 8.
  - Judges, criticism of attorneys, Rule 33.
  - Jury, Rule 6.
  - Midmorning and midafternoon recesses, Rule 5.
- Records
  - Trial, judges duties, Rule 31.
- Respect
  - Attorneys, Rule 12.
  - Judges, Rule 23.
  - Parties and witnesses, Rule 30.
  - Witnesses, opposing counsel, Rules 20, 30.
- Robes
  - Judges, Rule 24.
- Seating
  - Bailiffs, Rule 8.
- Sessions of Court
  - Formalities, Rules 4, 5.
- Sheriff
  - Opening and sessions of court, Rule 4.
- Shouting at Witnesses
  - Judges duties, Rule 30.
- Smoking
  - Prohibition in courtroom, Rule 2.
- Solemnity
  - Judges and attorneys, Rule 2.
- Spectator Seating
  - Bailiffs duties, Rule 8.
- Standing
  - Attorneys, addressing court or jury, Rule 13.
  - Opening and sessions of court, Rules 4, 5.
  - Swearing jurors and witnesses, Rules 7, 10.
- Terms of Court
  - Judges, comments on verdict, Rule 35.

Opening formalities, Rule 4.

Ties

Attorneys and court officials, appropriate clothing, Rule 17.

Time

Judges, punctuality in convening court, Rule 25.

Tobacco

Use in courtroom, Rule 2.

United States Flag

Display, Rule 1.

Unseemly Conduct

Generally, Rule 2.

Verdicts

Demonstrations, Rule 22.

Judges, comments, Rule 35.

Warning

Jury, reconvening after recess, Rule 6.

Opening and sessions of court, Rules 4, 5.

Reconvening court, Rule 5.

Wearing Apparel

Attorneys, court officials, Rule 17.

Judges, Rule 24.

Whispering

Courtrooms, Rule 3.

Witnesses

Attorneys, advising of formalities, Rule 11.

Badgering, lecturing, etc., Rule 30.

Chewing gum, etc., Rule 21.

Clerk of court, duties, Rules 9, 10.

Courtesy and respect, Rules 20, 30.

Examination, Rules 15, 20.

Intervention by judge, Rule 27.

Instructions of counsel, Rule 21.

Judges duties, clear testimony, Rule 31.

Swearing in by judges, Rule 28.