

STATE OF MINNESOTA  
IN SUPREME COURT

ORDER OF PROMULGATION OF AMENDMENTS TO THE RULES OF  
CIVIL PROCEDURE IN THE DISTRICT COURTS OF THE  
STATE OF MINNESOTA AND FORMS THEREOF AND APPENDICES THERETO

WHEREAS the Advisory Committee appointed by the Supreme Court under the provisions of Laws 1947, chapter 498, section 2, has recommended to the court amendments to certain of the Rules of Civil Procedure in the District Courts and of forms thereof and of appendices thereto, and the court has considered said recommendations,

NOW, THEREFORE, IT IS ORDERED that the hereto annexed amendments to the Rules of Civil Procedure in the District Courts of the State of Minnesota and of forms thereof and of appendices thereto be, and the same hereby are, promulgated and shall be effective on July 1, 1959.

Dated March 3rd, 1959.

BY THE COURT:

Roger L. Dell  
Chief Justice

Thomas Gallagher

Leroy E. Matson

Frank T. Gallagher

Oscar R. Knutson

Martin A. Nelson

William P. Murphy

Associate Justices

AMENDMENTS TO RULES OF CIVIL PROCEDURE  
FOR THE DISTRICT COURTS RECOMMENDED TO  
THE SUPREME COURT BY ITS ADVISORY COMMITTEE (1958)

Amend following rules to read as follows:

Rule 4.01

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 either in person or 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.

Rule 4.04

The summons may be served by three weeks<sup>0</sup> 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;

(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.

#### Rule 4.041

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.

#### Rule 6.05

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.

#### Rule 7.01

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.

#### Rule 14.01

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.

#### Rule 14.03

Add new rule reading:

Rule 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.

#### Rule 15.04

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.

#### Rule 17.02

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

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

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

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

## Rule 23

Add new rule reading:

### Rule 23.04 Orders to Insure Adequate Representation.

The court at any stage of an action under Rule 23.01 may impose such terms as shall fairly and adequately protect the interests of the persons on whose behalf the action is brought or defended. It may order that notice be given, in such manner as it may direct, of the pendency of the action, of a proposed settlement, of entry of judgment or of any other proceedings in the action, including notice to the absent persons that they may come in and present claims and defenses if they so desire. Whenever the representation appears to the court inadequate fairly to protect the interests of absent persons who may be bound by the judgment, the court may, at any time prior to judgment, order an amendment of pleadings by eliminating therefrom all reference to representation of the absent persons, and order the entry of judgment in such form as to affect only the parties to the action and those adequately represented.

### Rule 25.04

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.

### Rule 30.02

After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated time or place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters may not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that the deposition be sealed and thereafter opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from annoyance, expense, embarrassment or oppression. The power of the court under this rule shall be exercised with liberality toward the accomplishment of its purpose to protect parties and witnesses.

### Rule 30.06

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then place the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly deliver or mail it to the clerk of the court in which the action is pending, or, if the deposition was taken under Rule 26.07, to an arbitrator.

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

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

### Rule 35

Amend the heading to read:

#### RULE 35. PHYSICAL, MENTAL AND BLOOD EXAMINATION OF PERSONS.

### Rule 35.01

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.

### Rule 35.02

(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.

## Rule 37.02

(1) Contempt. If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so, the refusal may be considered a contempt of the court making the order or the court in which the action is pending.

(2) Other Consequences. If any party or an officer or managing agent of a party refuses to obey an order made under Rule 37.01 requiring him to answer designated questions, or an order made under Rule 34, or an order made under Rule 35, the court may make such orders in regard to the refusal as are just, and among others the following:

- (a) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the mental or physical or blood condition sought to be examined, 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 in evidence designated documents or things or items of testimony, or from introducing evidence of mental or physical or blood condition sought to be examined;
- (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) 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 rule, unless the party failing to comply shows that he is unable to produce such person for examination.
- (e) In lieu of any of the foregoing orders or in addition thereto an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to mental or physical or blood examination.

## Rule 38.03

### Rule 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 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 8 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.

## Rule 41.02

(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 or for lack of an indispensable party, operates as an adjudication upon the merits.

## Rule 43.02

### Rule 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, 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.

## Rule 45.03

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.

## Rule 45.06

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



#### Rule 52.02

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. 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.

#### Rule 54.02

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.

#### Rule 55.01

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.

#### Rule 56.03

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.

#### Rule 56.05

Rule 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.

#### Rule 58.01

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.

#### Rule 58.02

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.

### Rule 59.01

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) A transcript of the proceedings at the trial cannot be obtained;
- (6) Excessive or insufficient damages, appearing to have been given under the influence of passion or prejudice;
- (7) 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;
- (8) 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.

### Rule 59.02

If the motion be made for a cause mentioned in Rule 59.01, clauses (1) to (5), pertinent facts not appearing of record shall be shown by affidavit; if for any other cause, a case shall first be settled and included in the record, unless the moving party notices the motion to be heard on the minutes of the court. If the motion is made on the minutes, it shall be heard on the minutes of the judge or of the reporter and it shall not be necessary for the moving party to furnish the court or the opposing party a transcript of the reporter's minutes, or of any part thereof, as a condition to having the motion heard; but, if the order be appealed from, a case shall be proposed by the appellant and be settled and returned with the record to the supreme court. The records and files of the court pertaining to the case may be referred to without being mentioned in the notice of motion.

### Rule 59.07

A case shall mean a written statement of the proceedings in the cause, excluding all pleadings and other papers properly filed with the clerk. It should contain only the evidence and other proceedings on the trial material to the questions of law or

fact that the parties may choose to present for review. The transcript must have been ordered, and the order accepted by the reporter, not later than 30 days after verdict or notice of the filing of the decision. The date of delivery of the transcript shall be reported by the reporter to the clerk and recorded by the clerk. The party preparing a case shall serve the same on the adverse party, by copy, within 10 days after delivery of the transcript. The party served may in like manner propose amendments thereto within 5 days. Such case, with the amendments, if any, shall within 10 days after the service of such amendments be presented to the judge or referee who tried the cause, for settlement, upon notice of 5 days. If a motion be heard on the minutes, the aggrieved party may order a transcript within 10 days after notice of decision thereon and propose a case as provided by this rule. The times herein limited may be extended by order of the court; and the court, in its discretion and upon proper terms, may grant leave to propose a case after the time herein allowed therefor has expired.

#### Rule 62.01

Amend the heading to read:

Rule 62.01 Stay on Motions.

#### Rule 81.01

Rule 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 mandamus and 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.

#### Rule 86

Amend the heading to read:

RULE 86. EFFECTIVE DATE.

#### Rule 86.02

Rule 86.02 Effective Date of Amendments.

The amendments adopted on March 3rd, 1959, will take effect on July 1st, 1959. 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.

AMENDMENTS TO FORMS

Amend following forms to read as follows:

Form 1.

SUMMONS

State of Minnesota,  
County of \_\_\_\_\_.

District Court  
\_\_\_\_\_ Judicial District

A. B.,

Plaintiff

vs.

C. D.

Defendant

SUMMONS

The State of Minnesota to the Above-Named Defendant:

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

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

The object of this action is \_\_\_\_\_]

Signed: \_\_\_\_\_

Attorney for Plaintiff.

Address: \_\_\_\_\_

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

Form 17.

SUMMONS AND COMPLAINT AGAINST THIRD-PARTY DEFENDANT

State of Minnesota,

District Court

County of \_\_\_\_\_.

\_\_\_\_\_ Judicial District

A. B.,

Plaintiff

vs.

C. D.,

Defendant and Third-Party

Plaintiff

SUMMONS

vs.

E. F.,

Third-Party Defendant

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

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

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

Signed: \_\_\_\_\_

Attorney for Defendant and  
Third-Party Plaintiff.

Address: \_\_\_\_\_

A. B.,

Plaintiff

vs.

C. D.,

Defendant and Third-Party Plaintiff

vs.

E. F.,

Third-Party Defendant

THIRD-PARTY  
COMPLAINT

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

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

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

Signed: \_\_\_\_\_,

Attorney for C. D.,  
Third-Party Plaintiff.

Address: \_\_\_\_\_.

AMENDMENTS TO APPENDICES

Amend Appendix A to read as follows:

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 208	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).
Chapter 579	Actions against boats and vessels
	Writ of certiorari
	Writ of habeas corpus
	Writ of ne exeat

Amend Appendix B(1) to read as follows:

APPENDIX B(1).

LIST OF RULES SUPERSEDING STATUTES.

Rule	Statute Superseded
	M. S. A. 1949
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 )
	373.07 ) superseded to extent inconsistent
	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) & (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 in- consistent
11		544.15 last paragraph and that part of 1st sentence as follows: "in a court of record shall be subscribed by the party or his attorney, and"
12.01		543.02 1st sentence
		544.29 2d sentence
		546.29
12.02		544.03
		Dist. Ct. Rule 7 and Rule 22(c)
		543.15 2d sentence
		544.04
		544.06
		544.08
		544.18

12.05 } 12.06 } 12.08	544.10 544.17 544.03 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	
	546.39	
42.01	546.04	1st sentence
42.02	546.04	2d sentence
43.02	595.03	
43.04	595.05	
45.04	597.11	
46	547.03	
47.01	Dist Ct. Rule 27(a)	
47.02	546.095	
49.01	546.20	
49.02	546.20	
50.02	605.06	1st and 2d sentences
51	546.14	
	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
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



Amend Appendix B(2) to read as follows:

APPENDIX B(2).

LIST OF STATUTES SUPERSEDED BY RULES

Statute Superseded	By Rule
M. S. A. 1949	
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
540.03	17.01
540.05	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; & generally
543.16		5.01
543.17		5.02
543.18		5.02; 6.05
544.01		7.01
544.02		8.01; 10.01
544.03		7.01; 12.02; 12.08
544.04		8.01; 8.02; 12.02
544.05		8.05; 13.01; 13.02; 13.05; 20.01
544.06		8.05; 7.01; 10.02; 12.02
544.07		55.01
544.08		7.01; 12.02
544.09		7.01
544.10		12.06
544.11		15.04
544.12		22
544.13		24.01; 24.03
544.14		67.02
544.15	last paragraph and part of 1st sentence reading "in a court of record shall be subscribed by the party or his attorney, and"	11
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
546.01		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		51
546.20		49.01; 49.02
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
557.01		70
575.02		67.03
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
600.01		34; 37.02
600.06	1st and 2d sentences	50.02

District Court Rules  
Superseded

By Rule

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

NOTES ON AMENDMENTS TO RULES OF CIVIL PROCEDURE  
FOR THE DISTRICT COURTS RECOMMENDED TO THE  
SUPREME COURT BY ITS ADVISORY COMMITTEE (1958)

Rule  
4.04

The amendment eliminates the requirement that the complaint and affidavit be filed simultaneously.

4.041

The additional information required by the rule is substantially identical with the notice of lis pendens published with the summons in actions for partition and to determine adverse claims (558.02<sup>1</sup> and 559.02, both preserved by Appendix A.) The publication of either would probably be sufficient, but the existing confusion warrants the amendment and corresponding changes in the Appendices and the Forms. The form of summons prescribed by 284.16 for actions involving tax titles is not changed.

6.05

The amendment removes doubt as to whether the rule includes notice of an event, such as placing the action on the calendar (Rule 38.03) and makes for uniformity.

7.01

Reference to leave of court is deleted as unnecessary and as inconsistent with Rule 14.01 as now amended.

14.01 )  
14.03 )

Under the amendment a defendant may assert a third-party claim without leave of court at any time within 45 days after service of summons upon him, and thereafter by leave of court upon notice to all other parties. Notice of service of the third-party summons must be given to all parties to the action and copies of third-party pleadings furnished to other parties when requested.

The 45-day free period will afford time to develop the facts, by discovery procedures or otherwise, and thus avoid the assertion of third-party claims for which there is no sound basis, as now sometimes occurs. On the other hand, it will encourage the assertion of such claims before the free period expires, for it is to be anticipated that, with notice to all of the parties and sharper scrutiny by the court, an application made after the free period will be granted only under exceptional circumstances. The present state of the jury calendars in the metropolitan areas is such that the free period proposed will not give rise to delay. The new Rule 14.03, which applies to third-party claims whenever asserted, should enable judges of all districts to prevent the tardy injection of such claims. See ~~49~~ Minn. L. R., p. 115.

43  
The inclusion by the amendment as a third-party defendant of one who is already a party to the action is intended to cover situations not provided for by cross-claims under Rule 13.07 and does not limit or impair procedures under that rule.

15.04

Some federal courts have held that under the corresponding federal rule a supplemental pleading may not be served if the original pleading is defective. The amendment accords with the majority rule.

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<sup>1</sup> Sections of Minnesota Statutes are referred to only by number, as "588.02," and chapters, as "chapter 105."

17.01 )  
17.02 )

There has been some apprehension that the rules abolished the action by a trustee for death by wrongful act in behalf of decedent's next of kin (including minors) under 573.02 and the action by a parent under 540.08 for injury to a minor child. The doubt will be resolved by listing both sections in Appendix A.

Although the present Rule 17.02, except for its first sentence, follows the former statute (540.06) providing for the appointment of a guardian ad litem, it has been the subject of some criticism. The amendment expands the present rule and conforms it more nearly to probate court procedure for the appointment of a general guardian.

23.04

The amendment provides additional protection in class actions for members of the class who are not parties.

25.04

The limitation of six months for substitution is dropped as unnecessary and to conform to Rule 25.01.

30.02

The amendment gives the court the same control over the time of taking a deposition it now has over the place. For the amendment relating to sealing of depositions, see Rule 30.06(1).

30.06(1)

It seems plain from the present rule, in conjunction with Rule 30.06(2) and a related provision in Rule 30.02, that the deposition is open to inspection after being filed, but attorneys report difficulties. The amendment makes clear the right of inspection, makes the two rules consistent, and permits sending the deposition to the clerk by regular mail.

35.01  
35.02(1)  
37.02(2)  
37.02(2)(e)

} The amendments follow those proposed for the federal rules and provide for the examination of the agent of a party and of a person under his control, broaden its provisions for exchange of reports of examination, delete surplusage from Rule 37.02(2), and add sanctions against a party for failure to produce for examination his agent or a person under his control.

38.03

The amendment requires service on counsel for all parties not in default, including such as may become parties subsequent to the initial service of the note of issue, provides that the action remains on the calendar from term to term, and contains clarifying language.

The Advisory Committee was urged to recommend that a third-party plaintiff be obligated to serve the note of issue on his third-party defendant, but has concluded that the last sentence of the amendment, tentatively proposed last year, should stand. The recommended requirement of Rule 14.01 - that the third-party plaintiff give notice of his third-party proceeding to all other parties -- will apprise them of the introduction of an additional party, whether it be before or after the initial service of the note of issue, and requiring one who wants the action on the calendar to serve an additional party seems not too great a burden. The

amendment places the same obligation on him to serve additional parties brought in by intervention, interpleader, order of the court, or otherwise, and no good reason is apparent for differentiating between those and a third-party defendant.

Failure to make the follow-up service is guarded against by permitting any other party to make it, and the sanctions and relief afforded by the new Rule 14.03 will always be available.

41.02            There is added a provision for dismissal by the court on its own motion and a provision that dismissal for lack of an indispensable party be without prejudice. The rule has been divided into three paragraphs.

43.02            The present rule permits counsel for the adverse party to cross-examine the adverse party or an officer, director, managing agent or employe (here grouped as "agent"), and to contradict and impeach the agent. Under the amendment the adverse party may be examined by his own counsel under the rules applicable to direct examination; other parties adversely affected by his testimony may cross-examine, contradict and impeach him, and the agent may be cross-examined, contradicted and impeached by the adverse party as well as by other parties thus making certain that if he proves hostile to the adverse party the latter may cross-examine him. It is anticipated that in the exercise of its broad discretion in controlling examinations of this type the court will not permit the adverse party to cross-examine an agent who is obviously biased in his favor.

45.03            Substituted service of subpoena is restored in the language of 4.03(a).

45.06            Punishment for contempt is prescribed by 588.10, 596.02 and 596.04 are superseded only insofar as they apply to the district court.

52.02            Revisions in successive drafts of the original Rule 52.02 inadvertently limited the time for a motion for amended findings or additional findings to the time fixed by subparagraph (2) of Rule 59.03. The amendment is intended to make applicable to a motion for amended findings or additional findings the other periods prescribed by the latter rule.

54.02            Some federal courts have held that final judgment may be entered only on fewer than all of the claims, and not as to fewer than all of the parties. The amendment follows the majority rule and clarifies the language.



- 55.01           The addition is made at the suggestion of the Attorney General to obviate the need of applying to the court for an order for default judgment in the numerous actions for collection of income and certain other taxes.
- 56.03           Answers to interrogatories under Rule 33 are added to the matters that may be considered. Provision is made for entry of summary judgment against as well as for the moving party, in conformity with decisions of several federal courts.
- 56.05           Some federal courts have held that a formal averment or a naked denial in a pleading suffices to create an issue of fact for summary judgment purposes. The amendment adopts the majority rule that since the movant must support his motion by specific facts the effective operation of the rule requires that the adverse party support his opposition to the motion in like manner.
- 58.01           The amendment puts orders for the recovery of money only or for costs or denying relief in the same category as a general verdict. The provision for entry of judgment without taxation of costs follows the federal Rule and supersedes the Minnesota decision law that a judgment is not final until costs are taxed or are waived. A party can protect himself against entry of judgment without notice by obtaining an anticipatory stay under the amended Rule 58.02.
- 58.02           Under the terms of the present Rule a stay may be entered only after the return of the verdict or the filing of the decision. The amendment permits an anticipatory stay. Federal Courts of Appeals have upheld local court rules providing for an automatic stay for a limited period.
- 59.01    )           Inability to obtain a transcript belongs with the  
59.02    )           causes that must be shown by affidavit.
- 59.07           The change is made to conform the language to that of Rule 59.03(1) and (2).
- 62.01           The present heading is narrower in scope than is the Rule and may mislead.
- 81.01(1)        The phrase "and other proceedings" is added to include the extraordinary writs which will be listed in Appendix A.
- 81.01(2)        The amendment abolishes the writ of mandamus, as does the federal Rule, and the writ of quo warranto, or, more accurately, the information in the nature of quo warranto, as well.

Since chapter 556 authorizing the attorney general to bring an ordinary action for usurpation of office, etc., permits broader relief and imposes sanctions beyond those provided for by the Rules, it is preserved by listing in Appendix A.

The attorney general may by statute proceed by quo warranto against certain corporations and associations regulated by the state. These also are listed in Appendix A.

The writs of certiorari, habeas corpus and ne  
exeat are preserved in like manner since the procedures  
do not lend themselves to conversion into ordinary actions.

81.01(3)

This is the present Rule 86.02 re-written to include  
the supersession of statutes not listed in Appendix B and  
not preserved by Rule 81.01(1). The effect of Rule 1 is  
to supersede all statutes, except those listed in Appendix A,  
in conflict with the Rules. For the convenience of the  
bench and bar the Advisory Committee undertook to list  
superseded statutes in Appendix B, but since it cannot give  
assurance that all are included it recommends this amendment  
to prevent possible misunderstanding as to the non-exclusive  
character of Appendix B.

## COMMENTS

In its study of amendments to the Rules the Advisory Committee has had the benefit of suggestions and recommendations from the Committee on Court Rules of the Minnesota State Bar Association, some District Bar Associations and many judges and lawyers. All proposals presented have been given full consideration.

The amendments recommended by the Advisory Committee are those which in its judgment are necessary to correct errors, supply inadvertent omissions, remove conflicts and ambiguities and effect substantial improvements in the operation of the Rules.

Lack of a staff to check closely the present Rules in their final form resulted in a number of inadvertences. Some of them are referred to below; none seemed important enough to warrant amendment:

A cross reference to a decimal subdivision of a Rule is sometimes given where a reference to the Rule as a whole would suffice, but in the main it is used advisedly. For instance, the reference in Rule 12.05 to a decimal subdivision is required because the remedy provided by that Rule is directed at a violation of Rule 10.02 and not of Rule 10.01. Changes in cross references that might be, but are not, made occur in Rules 10.01, 12.07, 44.02, 44.03, 55.02, 59.06, 62.01.

In some instances the statutory word "cause" or "case" occurs instead of the word "action." See Rules 38.03, 45.05, 59.07, 59.08.

Of the same character are the references (in Rule 62.01 and 67.02) to "section" instead of "rule." See Rules 62.01 and 67.02.

In other instances statutory words and phrases relating to references and referees and their reports are surplusage because of changes in practice effected by the Rules. See Rules 38.01, 59.01, 59.03(1), 59.03(3), 59.07.

Among major proposals made to the Advisory Committee and not accepted by it are the following:

Conform Rules 13.01 and 13.02, relating to counter-claims, to Federal Rules.

Subject to discovery in automobile negligence actions the existence and extent of insurance coverage.

Permit making insurance carrier a defendant in such actions.

Limit to 30 the permissible number of written interrogatories under Rule 33.

Amend Rule 49.01 to permit judge to explain to the jury the legal conclusions which will follow from its findings of fact by special verdict.