

STATE OF MINNESOTA

IN SUPREME COURT

No. 35394, 35395

SUPREME COURT

FILED

AUG 26 1981

JOHN McCARTHY,  
CLERK

HEARING ON PROPOSED AMENDMENTS  
TO RULES OF CIVIL PROCEDURE FOR  
DISTRICT COURTS AND MUNICIPAL  
COURTS

O R D E R

IT IS HEREBY ORDERED that a hearing on proposed amendments to the Rules of Civil Procedure for District and Municipal Courts shall be held in the Supreme Court Chambers in the State Capitol, St. Paul, Minnesota, at 9 a.m. on Thursday, October 15, 1981.

It is proposed to amend Rules 7.02, 14.01, 24.03, 28.01, 30.06, 32.01, 33.03, and 34.02 of the Rules of Civil Procedure for District and Municipal Courts as follows:

Rule 7. PLEADING ALLOWED: FORM OF MOTIONS

Rule 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. The parties may agree to written submission to the court for decision without oral argument.

(2) The rules applicable for captions, signing, and other matters of form of pleadings

apply to all motions and other papers provided for by these rules.

#### Rule 14. THIRD-PARTY PRACTICE

##### 14.01. When Defendant May Bring in Third Party

Within ~~45~~ 90 days after service of the summons upon him, and thereafter either by written consent of all parties to the action or by leave of court granted on motion upon notice to all parties to the action, a defendant as a third-party plaintiff may serve a summons and complaint, together with a copy of plaintiff's complaint, upon a person, whether or not 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 crossclaims 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 24. INTERVENTION

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Rule 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.

Rule 24.03. Procedure

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

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

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

Rule 30. DEPOSITIONS UPON ORAL EXAMINATION

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. Unless otherwise ordered by the court or agreed to by the parties, he shall then place securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (herein insert the name of witness)" and shall promptly deliver or mail it to the clerk of the court file it with the clerk of the court in which the action is pending, or send it by registered or certified mail to the clerk thereof for filing.

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 if the person producing the materials desires to retain them he may (a) the person producing the materials may substitute copies to be marked for identification, offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and or (b) offers the originals to be marked for identification after giving if any person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, in which event 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 given prompt notice of its filing to all other parties.

Rule 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS

32.01. Use of Depositions

At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the 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 or for any purpose permitted by the Minnesota Rules of Evidence.

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(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 has been brought in any court of the United States or 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. A deposition previously taken may also be used as permitted by the Minnesota Rules of Evidence.

Rule 33. INTERROGATORIES TO PARTIES

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33.03 Option to Produce Business Records

Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection

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

Rule 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

34.02 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. A party who produces documents for inspection shall produce them as they are kept in the usual course of busi-

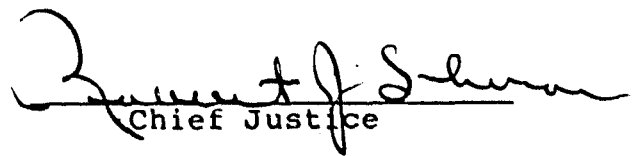
ness at the time of the request or, at the option of the producing party, shall organize them to correspond with the categories in the request.

IT IS FURTHER ORDERED that advance notice of the hearing be given by the publication of this order once in the Supreme Court edition of FINANCE AND COMMERCE, ST. PAUL LEGAL LEDGER, and BENCH AND BAR.

IT IS FURTHER ORDERED that members of the bench and bar desiring to be heard shall file briefs or petitions setting forth their position and shall also notify the Clerk of the Supreme Court, in writing, on or before October 8, 1981, of their desire to be heard on the matter. Ten copies of each brief, petition, or letter should be supplied to the Clerk.

DATED: August 24<sup>th</sup>, 1981.

BY THE COURT

  
Chief Justice