

STATE OF MINNESOTA

IN SUPREME COURT

C6-84-2134

OFFICE OF  
APPELLATE COURTS

NOV 25 1996

**FILED**

PROMULGATION OF AMENDMENTS TO THE  
MINNESOTA RULES OF CIVIL PROCEDURE

ORDER

WHEREAS, the Supreme Court Advisory Committee on the Rules of Civil Procedure has recommended certain amendments to the Rules of Civil Procedure; and

WHEREAS, on October 9, 1996, the Supreme Court held a hearing on the proposed amendments; and

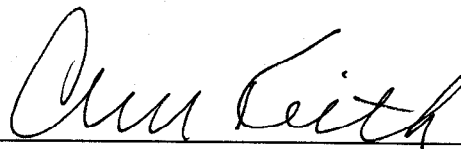
WHEREAS, the Supreme Court has reviewed the proposals and is fully advised in the premises,

IT IS FURTHER ORDERED that:

1. The attached amendments to the Rules of Civil Procedure be, and the same are, hereby prescribed and promulgated to be effect on January 1, 1997.
2. The attached amendments shall apply to all actions pending on the effective date and to those filed thereafter.
3. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein.

Dated: *November 22, 1996*

BY THE COURT:



A.M. KEITH  
Chief Justice

C6-84-2134  
**STATE OF MINNESOTA**  
**IN SUPREME COURT**

**In re:**

**Supreme Court Advisory Committee**  
**on Rules of Civil Procedure**

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1 **RULE 1 SCOPE OF RULES**

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

5 **ADVISORY COMMITTEE COMMENTS—1996 AMENDMENTS**

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

11 **RULE 4 SERVICE**

12 \* \* \*

13 4.04 Service by Publications; Personal Service out of State

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

16 **(a1)** When the defendant is a resident individual domiciliary having  
17 departed from the state with intent to defraud creditors, or to avoid service, or  
18 remains concealed therein with the like intent;

19 **(b2)** When the plaintiff has acquired a lien upon property or credits  
20 within the state by attachment or garnishment, and

21 **(1A)** The defendant is a resident individual who has  
22 departed from the state, or cannot be found therein, or

23 **(2B)** The defendant is a nonresident individual or a  
24 foreign corporation, partnership or association;

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

29 **(e3)** When the action is for marriage dissolution or separate  
30 maintenance and the court has ordered service by published notice;

31 **(d4)** When the subject of the action is real or personal property within  
32 the state in or upon which the defendant has or claims a lien or interest, or the  
33 relief demanded consists wholly or partly in excluding the defendant from any  
34 such interest or lien;

35 **(e5)** When the action is to foreclose a mortgage or to enforce a lien on  
36 real estate within the state.

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

43 affiant. The service of the summons shall be deemed complete 21 days after the first  
44 publication.

45 (b) Personal Service Outside State. Personal service of such summons outside the  
46 state, proved by the affidavit of the person making the same sworn to before a person  
47 authorized to administer an oath, shall have the same effect as the published notice provided  
48 for herein.

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

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

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

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

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

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

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

67 or

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

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

74 ADVISORY COMMITTEE COMMENTS—1996 AMENDMENTS

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

81 **RULE 5 SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS**

82 \* \* \*

83 5.02 Service; How Made

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

86 the party is ordered by the court. Written admission of service by the party or the party's  
87 attorney shall be sufficient proof of service. Service upon the attorney or upon a party shall  
88 be made by delivering a copy to the attorney or party; transmitting a copy by facsimile  
89 machine to the attorney or party's office; or by mailing a copy to the attorney or party at  
90 either's the attorney's or party's last known address or, if no address is known, by leaving it  
91 with the court administrator. Delivery of a copy within this rule means: Handing it to the  
92 attorney or to the party; or leaving it at either's the attorney's or party's office with a clerk or  
93 other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous  
94 place therein; or, if the office is closed or the person to be served has no office, leaving it at  
95 the attorney's or party's dwelling house or usual place of abode with some person of suitable  
96 age and discretion then residing therein. Service by mail is complete upon mailing. Service  
97 by facsimile is complete upon completion of the facsimile transmission.

98 \* \* \*

#### 99 5.04 Filing Certificate of Service

100 ~~Upon the filing of any paper with the court, all papers required to be served upon a~~  
101 ~~party shall be filed with the court either before service or within a reasonable time thereafter;~~  
102 ~~but unless filing is ordered by the court on motion or upon its own initiative, depositions,~~  
103 ~~interrogatories, requests to admit, and requests for production and answers and responses~~  
104 ~~thereto shall not be filed. Unless required to be filed for issuance of a subpoena for a~~  
105 ~~deposition, a notice of taking deposition need not be filed. All papers after the complaint~~  
106 required to be served upon a party, together with a certificate of service, shall be filed with  
107 the court within a reasonable time after service, except expert disclosures and reports,  
108 depositions upon oral examination and interrogatories, requests for documents, requests for  
109 admission, and answers and responses thereto shall not be filed unless upon order of the court  
110 or for use in the proceeding.

#### 111 5.05 Filing; Facsimile Transmission

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

117 Within 5 days after the court has received the transmission, the party filing the  
118 document shall forward the following to the court:

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

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

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

129 **ADVISORY COMMITTEE COMMENTS—1996 AMENDMENTS**

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

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

142 The amendment to Rule 5.02 provides an express mechanism for service by  
143 facsimile. Service by facsimile has become widely accepted and is used in Minnesota  
144 either by agreement or presumption that it is acceptable under the rules or at least has  
145 not been objected to by the parties. The committee believes an express authorization  
146 for service by facsimile is appropriate and preferable to the existing silence on the  
147 subject. The committee's recommendation is modeled on similar provisions in the  
148 Wisconsin and Florida rules. See Wis. Stat. §§ 801.14(2) & .15(5)(b); Fla. R. Civ. P.  
149 1.080(b)(5). Service by facsimile is allowed in other jurisdictions as well. See, e.g.,  
150 Ill. S. Ct. R. 11(b)(4); S. Dak. R. 15-6-5(b); Cal. R. Civ. P. 2008.

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

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

171 **RULE 6 TIME**

172 **6.01 Computation**

173 In computing any period of time prescribed or allowed by these rules, by the local  
174 rules of any district court, by order of court, or by any applicable statute, the day of the act,  
175 event, or default from which the designated period of time begins to run shall not be  
176 included. The last day of the period so computed shall be included, unless it is a Saturday, a  
177 Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day  
178 on which weather or other conditions have made the office of the court administrator  
179 inaccessible, in which event the period runs until the end of the next day which is not a

180 ~~Saturday, a Sunday, or a legal holiday~~ one of the aforementioned days. When the period of  
181 time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal  
182 holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), "legal  
183 holiday" includes any holiday defined or designated by statute.

184 \* \* \*

185 6.04 For Motions; Affidavits

186 A written motion, other than one which may be heard ex parte, and notice of the  
187 hearing thereof shall be served no later than 5 days before the time specified for the hearing,  
188 unless a different period is fixed by these rules or by order of the court. Such an order may  
189 for cause shown be made on ex parte application. ~~A motion may be supported by papers on~~  
190 ~~file by reference; supporting papers not on file~~ When a motion is supported by affidavit,  
191 the affidavit shall be served with the motion; and, except as otherwise provided in Rule  
192 59.04, opposing affidavits may be served not later than one day before the hearing, unless the  
193 court permits them to be served at some other time.

194 6.05 Additional Time After Service by Mail or Service Late in Day

195 Whenever a party has the right or is required to do some act or take some proceedings  
196 within a prescribed period after the service of a notice or other paper upon the party, ~~or~~  
197 ~~whenever such service is required to be made a prescribed period before a specified event,~~  
198 and the notice or paper is served upon the party by mail, three days shall be added to the  
199 prescribed period. If service is made by any means other than mail and accomplished after  
200 5:00 p.m. local time on the day of service, one additional day shall be added to the prescribed  
201 period.

202 **ADVISORY COMMITTEE COMMENTS—1996 AMENDMENTS**

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

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

219 **RULE 16 PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT**

220 \* \* \*

221 16.03 Subjects for Consideration

222 ~~The participants a~~At any conference held pursuant to under this rule may consider and  
223 ~~take consideration may be given, and the court may take appropriate action, with respect to:~~

224 (a) the formulation and simplification of the issues, including the elimination of  
225 frivolous claims or defenses;

226 (b) the necessity or desirability of amendments to the pleadings;

227 (c) the possibility of obtaining admissions of fact and of documents which will avoid  
228 unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings  
229 from the court on the admissibility of evidence;

230 (d) the avoidance of unnecessary proof and of cumulative evidence; ~~, and limitations~~  
231 or restrictions on the use of testimony under Rule 702 of the Minnesota Rules of Evidence;

232 (e) the appropriateness and timing of summary adjudication under Rule 56;

233 ~~(f) the advisability of referring matters pursuant to Rule 53; the control and~~  
234 scheduling of discovery, including orders affecting discovery pursuant to Rule 26 and Rules  
235 29 through 37;

236 (eg) the identification of witnesses and documents, the need and schedule for filing  
237 and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

238 ~~(fh) the advisability of referring matters pursuant to Rule 53;~~

239 ~~(g) the possibility of settlement or the use of extrajudicial procedures to resolve the~~  
240 ~~dispute;~~

241 (i) settlement and the use of special procedures to assist in resolving the dispute when  
242 authorized by statute or rule;

243 (hj) the form and substance of the pretrial order;

244 (ik) the disposition of pending motions;

245 (jl) the need for adopting special procedures for managing potentially difficult or  
246 protracted actions that may involve complex issues, multiple parties, difficult legal questions,  
247 or unusual proof problems; and

248 ~~(k) such other matters as may aid in the disposition of the action. At least one of the~~  
249 ~~attorneys for each party participating in any conference before trial shall have authority to~~  
250 ~~enter into stipulations and to make admissions regarding all matters that the participants may~~  
251 ~~reasonably anticipate may be discussed.~~

252 (m) an order for a separate trial pursuant to Rule 42.02 with respect to a claim,  
253 counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the  
254 case;

255 (n) an order directing a party or parties to present evidence early in the trial with  
256 respect to a manageable issue that could, on the evidence, be the basis for a directed verdict  
257 under Rule 50.01 or an involuntary dismissal under Rule 41.02(b);

258 (o) an order establishing a reasonable limit on the time allowed for presenting  
259 evidence; and

260 (p) such other matters as may facilitate the just, speedy, and inexpensive disposition  
261 of the action.

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



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**ADVISORY COMMITTEE COMMENTS—1996 AMENDMENTS**

This change conforms Rule 16.03 to its federal counterpart. The rule is expanded to enumerate many of the functions with which pretrial conferences must deal. Although the courts have inherent power to deal with these matters even in the absence of a rule, it is desirable to have the appropriate subjects for consideration at pretrial conferences expressly provided for by rule. The federal changes expressly provide for discussion of settlement, in part, to remove any confusion over the power of the court to order participation in court-related settlement efforts. *See, e.g., G. Heileman Brewing Co. v. Joseph Oat Corp.*, 871 F.2d 648 (7th Cir. 1989); *Strandell v. Jackson County, Ill. (In re Tobin)*, 838 F.2d 884 (7th Cir. 1988); *Klothe v. Smith*, 771 F.2d 667 (2d Cir. 1985); *Buss v. Western Airlines, Inc.*, 738 F.2d 1053 (9th Cir. 1984).

278 **RULE 28 PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN**

279 \* \* \*

280 28.02 In Foreign Countries

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

296 Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or  
297 convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory),  
298 or (3) on notice before a person authorized to administer oaths in the place where the  
299 examination is held, either by the law thereof or by the law of the United States, or (4) before  
300 a person commissioned by the court, and a person so commissioned shall have the power by  
301 virtue of the commission to administer any necessary oath and take testimony. A commission  
302 or a letter of request shall be issued on application and notice and on terms that are just and  
303 appropriate. It is not requisite to the issuance of a commission or a letter of request that the  
304 taking of the deposition in any other manner is impracticable or inconvenient; and both a  
305 commission and a letter of request may be issued in proper cases. A notice or commission  
306 may designate the person before whom the deposition is to be taken either by name or  
307 descriptive title. A letter of request may be addressed "To the Appropriate Authority in [here  
308 name the country]." When a letter of request or any other device is used pursuant to any  
309 applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or  
310 convention. Evidence obtained in response to a letter of request need not be excluded merely

311 because it is not a verbatim transcript, because the testimony was not taken under oath, or  
312 because of any similar departure from the requirements for depositions taken within the  
313 United States under these rules.

314 **ADVISORY COMMITTEE COMMENTS—1996 AMENDMENTS**

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

322 **RULE 29 STIPULATIONS REGARDING DISCOVERY PROCEDURE**

323 Unless otherwise directed by the court ~~The~~ parties may by stipulation (1) provide that  
324 depositions may be taken before any person, at any time or place, upon any notice, and in any  
325 manner, and when so taken may be used like other depositions, and (2) ~~modify the procedures~~  
326 ~~provided in these rules for other methods of discovery.~~ other procedures governing or  
327 limitations placed upon discovery, except that stipulations extending the time provided in  
328 Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set  
329 for completion of discovery, for hearing of a motion, or for trial, be made only with the  
330 approval of the court.

331 **ADVISORY COMMITTEE COMMENTS—1996 AMENDMENTS**

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

340 **RULE 30 DEPOSITIONS UPON ORAL EXAMINATION**

341 \* \* \*

342 30.02 Notice of Examination: General Requirements: Special Notice; Non-Stenographic  
343 Method of Recording; Production of Documents and Things; Deposition of  
344 Organization; Depositions by Telephone.

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

352 (b) ~~Leave of court is not required for the taking of a deposition by plaintiff if the~~  
353 ~~notice states that the person to be examined will be unavailable for examination within the~~

354 ~~state unless the person's deposition is taken before expiration of the 30-day period, and sets~~  
355 ~~forth facts to support the statement. The plaintiff's attorney shall sign the notice, certifying~~  
356 ~~thereby that to the best of the attorney's knowledge, information, and belief, the statement and~~  
357 ~~supporting facts are true. Rule 11 sanctions are applicable to the certification. If a party~~  
358 ~~shows that, after being served with notice hereunder, the party was unable through exercise of~~  
359 ~~diligence to obtain counsel to represent the party at the taking of the deposition, the~~  
360 ~~deposition may not be used against such party.~~

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

366 (c) ~~The court may for cause shown enlarge or shorten the time for taking the~~  
367 ~~deposition. With prior notice to the deponent and other parties, any party may designate~~  
368 ~~another method to record the deponent's testimony in addition to the method specified by the~~  
369 ~~person taking the deposition. The additional record or transcript shall be made at that party's~~  
370 ~~expense unless the court otherwise orders.~~

371 (d) ~~The court may upon motion order that the testimony at a deposition be recorded~~  
372 ~~by other than stenographic means, in which event the order shall designate the manner of~~  
373 ~~recording, preserving, and filing the deposition, and may include other provisions to assure~~  
374 ~~that the recorded testimony will be accurate and trustworthy. If the order is made, a party~~  
375 ~~may nevertheless arrange to have a stenographic transcription made at the party's own~~  
376 ~~expense.~~

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

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

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

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

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

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

#### 412 30.03 Examination and Cross-Examination; Record of Examination; Oath; Objections.

413 Examination and cross-examination of witnesses may proceed as permitted at the trial  
414 ~~pursuant to Rule 43.02 under the provisions of the Minnesota Rules of Evidence except Rules~~  
415 103 and 615. The officer before whom the deposition is to be taken shall put the witness on  
416 oath or affirmation and shall personally, or by someone acting under the officer's direction  
417 and in the officer's presence, record the testimony of the witness. The testimony shall be  
418 taken stenographically or recorded by any other means ordered in accordance with Rule  
419 30.02(d). If requested by one of the parties, the testimony shall be transcribed.

420 All objections made at the time of the examination to the qualifications of the officer  
421 taking the deposition, ~~or to the manner of taking it, or to the evidence presented, or to the~~  
422 ~~conduct of any party, and or to any other objection to aspect of the proceedings shall be noted~~  
423 ~~by the officer upon the deposition;~~ but the examination shall proceed, with the testimony  
424 being Evidence objected to shall be taken subject to the objections. In lieu of participating in  
425 the oral examination, a party may serve written questions in a sealed envelope on the party  
426 taking the deposition and ~~that the party taking the deposition shall transmit them to the~~  
427 officer, who shall propound them to the witness and record the answers verbatim.

#### 428 30.04 Schedule and Duration; Motion to Terminate or Limit Examination

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

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

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

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

#### 462 **30.05 ~~Submission to Review by Witness; Changes; Signing~~**

463 ~~When the testimony is stenographically transcribed, the deposition shall be submitted~~  
464 ~~to the witness for examination and shall be read to or by the witness, unless such examination~~  
465 ~~and reading are waived by the witness and by the parties. Any changes in form or substance~~  
466 ~~which the witness desires to make shall be entered upon the deposition by the officer with a~~  
467 ~~statement of the reasons given by the witness for making them. The deposition shall then be~~  
468 ~~signed by the witness, unless the parties by stipulation waive the signing or the witness is ill,~~  
469 ~~cannot be found, or refuses to sign. If the deposition is not signed by the witness within 30~~  
470 ~~days of its submission to the witness, the officer shall sign it and state on the record the fact~~  
471 ~~of the waiver or of the illness or absence of the witness, or the fact of the refusal to sign,~~  
472 ~~together with the reason, if any, given therefor; and the deposition may then be used as fully~~  
473 ~~as though signed, unless on a motion to suppress pursuant to Rule 32.04(d) the court holds~~  
474 ~~that the reasons given for the refusal to sign require rejection of the deposition in whole or in~~  
475 ~~part.~~

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

483 **30.06 Certification and Filing by Officer; Exhibits; Copies; Notices of Filing**

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

495 Documents and things produced ~~by or~~ for inspection during the examination of the  
496 witness shall, upon the request of a party, be marked for identification and annexed to the  
497 deposition, and may be inspected and copied by any party, except that if the person  
498 producing the materials desires to retain them, the person may (1) offer copies to be marked  
499 for identification and annexed to the deposition and to serve thereafter as originals, if the  
500 person affords to all parties fair opportunity to verify the copies by comparison with the  
501 originals, or (2) offer the originals to be marked for identification, after giving each party an  
502 opportunity to inspect and copy them, in which event the materials may then be used in the  
503 same manner as if annexed to the deposition. Any party may move for an order that the  
504 original be annexed to and returned with the deposition pending final disposition of the.

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

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

512 **ADVISORY COMMITTEE COMMENTS—1996 AMENDMENTS**

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

519 Rule 30.04 is largely new and includes important provisions governing the conduct  
520 of depositions. Most important is Rule 30.04(a), which is intended to constrain the  
521 conduct of attorneys at depositions. The rule limits deposition objections to concise  
522 statements that are directed to the record and not so suggesting a possible answer to  
523 the deponent. This rule is intended to set a high standard for conduct of depositions.  
524 The problem of deposition misconduct, though probably not as severe as has been  
525 noted in some reported cases, is still a frequent and unfortunate part of Minnesota  
526 practice. See, e.g., *Hall v. Clifton Precision*, 150 F.R.D. 525 (E.D. Pa. 1993);  
527 *Paramount Communications, Inc. v. QVC Network, Inc.*, 637 A.2d 34, 51-57 (Del.  
528 1994); *Kelvey v. Coughlin*, 625 A.2d 775 (R.I. 1993).

529 Rule 30.06 is amended to follow its federal counterpart, retaining the existing  
530 mechanism for delivering transcripts of depositions to the lawyer or party noticing the

531  
532

deposition rather than filing them with the court. This difference is necessary because  
Minn. R. Civ. P. 5.04 does not permit filing discovery in the absence of an order.

533 **RULE 31 DEPOSITIONS OF WITNESSES UPON WRITTEN QUESTIONS**

534 31.01 Serving Questions; Notice

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

539 ~~(b) A party desiring to take the deposition upon written questions shall serve them~~  
540 ~~upon every other party with a notice stating (1) the name and address of the person who is to~~  
541 ~~answer them, if known, and if the name is not known, a general description sufficient to~~  
542 ~~identify the person or the particular class or group to which the person belongs, and (2) the~~  
543 ~~name or descriptive title and address of the officer before whom the deposition is to be taken.~~  
544 ~~A deposition upon written questions may be taken of a public or private corporation or a~~  
545 ~~partnership, association, or governmental agency in accordance with the provisions of Rule~~  
546 ~~30.02(f).~~

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

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

556 ~~(c) A party desiring to take a deposition upon written questions shall serve them upon~~  
557 ~~every other party with a notice stating (1) the name and address of the person who is to~~  
558 ~~answer them, if known, and if the name is not known, a general description sufficient to~~  
559 ~~identify the person or the particular class or group to which the person belongs, and (2) the~~  
560 ~~name or descriptive title and address of the officer before whom the deposition is to be taken.~~  
561 ~~A deposition upon written questions may be taken of a public or private corporation or a~~  
562 ~~partnership or association or governmental agency in accordance with the provisions of Rule~~  
563 ~~30.02(f).~~

564 ~~(d) Within 14 days after the notice and written questions are served, a party may~~  
565 ~~serve cross questions upon all other parties. Within 7 days after being served with cross~~  
566 ~~questions, a party may serve redirect questions upon all other parties. Within 7 days after~~  
567 ~~being served with redirect questions, a party may serve recross questions upon all other~~  
568 ~~parties. The court may for cause shown enlarge or shorten the time.~~

569 31.02 Officer to Take Responses and Prepare Record

570 A copy of the notice and copies of all questions served shall be delivered by the party  
571 taking the deposition to the officer designated in the notice, who shall proceed promptly, in

572 the manner provided by Rules 30.03, 30.05, and 30.06, to take the testimony of the witness in  
573 response to the questions and to prepare, certify, and ~~return them to the party taking the~~  
574 ~~deposition. Upon payment of reasonable charges therefor, the officer shall furnish a copy of~~  
575 ~~the deposition to any party or to the deponent file or mail the deposition, attaching thereto the~~  
576 copy of the notice and the questions received by the officer.

577 \* \* \* \*

578 **ADVISORY COMMITTEE COMMENTS—1996 AMENDMENTS**

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

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

587 **RULE 32 USE OF DEPOSITIONS IN COURT PROCEEDINGS**

588 \* \* \*

589 **32.03 ~~Effect of Taking or Using Depositions~~ Form of Presentation**

590 ~~A party does not make a person the party's own witness for any purpose by taking that~~  
591 ~~person's deposition. The introduction in evidence of the deposition or any part thereof for~~  
592 ~~any purpose other than that of contradicting or impeaching the deponent makes the deponent~~  
593 ~~the witness of the party introducing the deposition, but this shall not apply to the use by an~~  
594 ~~adverse party of a deposition pursuant to Rule 32.01(b). At the trial or hearing, any party~~  
595 ~~may rebut any relevant evidence contained in a deposition whether introduced by that party or~~  
596 ~~by any other party.~~

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

603 \* \* \*

604 **ADVISORY COMMITTEE COMMENTS—1996 AMENDMENTS**

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

610 **RULE 33 INTERROGATORIES TO PARTIES**



611 **33.01 Availability**

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

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

623 (c) Objections shall state with particularity the grounds for the objection and may be  
624 served either as a part of the document containing the answers or separately. ~~Within 15 days~~  
625 ~~after service of objections to interrogatories, the party proposing the interrogatory shall serve~~  
626 ~~notice of hearing on the objections at the earliest practicable time. Failure to serve said~~  
627 ~~notice shall constitute a waiver of the right to require answers to each interrogatory to which~~  
628 ~~objection has been made. The party submitting the interrogatories may move for an order~~  
629 ~~under Rule 37.01 with respect to any objection to or other failure to answer an interrogatory.~~  
630 Answers to interrogatories to which objection has been made shall be deferred until the  
631 objections are determined.

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

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

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**ADVISORY COMMITTEE COMMENTS—1996 AMENDMENTS**

This change retains the existing rule on interrogatories, and does not adopt the 1993 amendment to its federal counterpart. The federal courts adopted in 1993 an express numerical limitation on the number of interrogatories, limiting them to 25. Minnesota took this action to limit discovery in the 1975 amendments to the rules, limiting interrogatories to 50, and this limit has worked well in practice. The committee believes that the other changes in the federal rules are not significant enough in substance to warrant adoption in Minnesota.

The rule, however, is amended in one important way. The existing provision requiring a party receiving objections to interrogatories to move within 15 days to have the objections determined by the court and the waiver of a right to answers if such a motion is not made within the required time has not worked well. There is no reason to require such prompt action, and much to commend more orderly consideration of the objections. The absolute waiver of the old rule gives way to an explicit right to

657 have the matter resolved by the court, and permits that to be done at any time. This  
658 permits the party receiving objections to determine their validity, attempt to resolve  
659 any dispute, consider the eventual importance of the information, and possibly to take  
660 the matter up with the court in conjunction with other matters. All of these reasons  
661 favor a more flexible rule.

662 **RULE 37 FAILURE TO MAKE DISCOVERY OR COOPERATE IN DISCOVERY:**  
663 **SANCTIONS**

664 37.01 Motion for Order Compelling Discovery

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

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

673 (b) **Motion.** ~~If a deponent fails to answer a question propounded or submitted~~  
674 ~~pursuant to Rule 30 or Rule 31, or a corporation or other entity fails to make a designation~~  
675 ~~pursuant to Rule 30.02(f) or Rule 31.01, or a party fails to answer an interrogatory submitted~~  
676 ~~pursuant to Rule 33, or if a party, in response to a request for inspection submitted pursuant~~  
677 ~~to Rule 34, fails to respond that inspection will be permitted as requested or fails to permit~~  
678 ~~inspection as requested, the discovering party may move for an order compelling an answer,~~  
679 ~~or a designation, or an order compelling inspection in accordance with the request. When~~  
680 ~~taking a deposition on oral examination, the proponent of the question may complete or~~  
681 ~~adjourn the examination before applying for an order.~~

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

684 If a deponent fails to answer a question propounded or submitted under Rules 30 or  
685 31, or a corporation or other entity fails to make a designation under Rule 30.02(f) or  
686 31.01(c), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in  
687 response to a request for inspection submitted under Rule 34, fails to respond that inspection  
688 will be permitted as requested or fails to permit inspection as requested, the discovering party  
689 may move for an order compelling an answer, or a designation, or an order compelling  
690 inspection in accordance with the request. The motion must include a certification that the  
691 movant has in good faith conferred or attempted to confer with the person or party failing to  
692 make the discovery in an effort to secure the information or material without court action.  
693 When taking a deposition on oral examination, the proponent of the question may complete or  
694 adjourn the examination before applying for an order.

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

698 (d) ~~Award of Expenses of Motion.~~ Expenses and Sanctions.

699 (1) If the motion is granted, or if the requested discovery is provided  
700 after the motion was filed, the court shall, after affording an opportunity for  
701 hearing to be heard, require the party or deponent whose conduct necessitated  
702 the motion or the party or attorney advising such conduct or both of them to  
703 pay to the moving party the reasonable expenses incurred in obtaining the  
704 order, making the motion, including attorney fees, unless the court finds that  
705 the opposition to the motion motion was filed without the movant's first  
706 making a good faith effort to obtain the discovery without court action, or that  
707 the opposing party's nondisclosure, response, or objection was substantially  
708 justified or that other circumstances make an award of expenses unjust.

709 (2) If the motion is denied, the court may enter any protective order  
710 authorized under Rule 26.03 and shall, after affording an opportunity for  
711 hearing to be heard, require the moving party or the attorney advising filing the  
712 motion or both of them to pay to the party or deponent who opposed the  
713 motion the reasonable expenses incurred in opposing the motion, including  
714 attorney fees, unless the court finds that the making of the motion was  
715 substantially justified or that other circumstances make an award of expenses  
716 unjust.

717 (3) If the motion is granted in part and denied in part, the court may  
718 enter any protective order authorized under Rule 26.03 and may, after affording  
719 an opportunity to be heard, apportion the reasonable expenses incurred in  
720 relation to the motion among the parties and persons in a just manner.

721 \* \* \*

722 **ADVISORY COMMITTEE COMMENTS—1996 AMENDMENTS**

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

725 **RULE 43 EVIDENCE TAKING OF TESTIMONY**

726 43.01 **Form and Admissibility**

727 In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute or  
728 by these rules, the Minnesota Rules of Evidence, or other rules adopted by the Supreme Court. All evidence shall be  
729 admitted which is admissible under the statutes of this state or under the Minnesota Rules of Evidence. In any case, the  
730 statute or rule which favors the reception of the evidence governs, and the evidence shall be presented according to the most  
731 convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness  
732 to testify shall be determined in like manner.

733 43.02 **Examination of Hostile Witnesses and Adverse Parties**

734 A party may interrogate an unwilling or hostile witness by leading questions. A party may call an adverse party or  
735 a witness identified with an adverse party, and interrogate either by leading questions and contradict and impeach the party or  
736 witness on material matters in all respects as if either had been called by the adverse party. A witness who is an adverse  
737 party may be examined by the attorney of the witness upon the subject matter of examination in chief under the rules  
738 applicable to direct examination, and may be cross examined, contradicted, and impeached by any other party adversely  
739 affected by the testimony of the witness. A witness identified with an adverse party may be cross examined, contradicted,  
740 and impeached by any party to the action.

741 [Abrogated.]

742 43.03 **Record of Excluded Evidence**

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

750 \* \* \*

751 43.06 **Res Ipsa Loquitur**

752 Res ipsa loquitur shall be regarded as nothing more than one form of circumstantial evidence creating a permissive  
753 inference of negligence. The plaintiff shall be given the benefit of its natural probative force existing at the close of all the  
754 evidence even though the plaintiff has introduced specific evidence of negligence or made specific allegations of negligence  
755 in the plaintiff's pleadings.  
756 [Abrogated.]

757 \* \* \*

758 **ADVISORY COMMITTEE COMMENTS—1996 AMENDMENTS**

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

764 **RULE 44 PROOF OF OFFICIAL RECORD**

765 **44.01 Authentication**

766 (a) **Domestic.** An official record or an entry therein, kept within the United States, or  
767 any state, district, commonwealth, territory, or insular possession thereof or within the  
768 Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, when  
769 admissible for any purpose, may be evidenced by an official publication thereof or by a copy  
770 attested by the officer having the legal custody of the record, or by the officer's deputy, and  
771 accompanied by a certificate that such officer has the custody. The certificate may be made  
772 by a judge of a court of record of the district or political subdivision in which the record is  
773 kept, authenticated by the seal of the court, or may be made by any public officer having a  
774 seal of office and having official duties in the district or political subdivision in which the  
775 record is kept, authenticated by the seal of that office. or within a territory subject to the  
776 administrative or judicial jurisdiction of the United States, or an entry therein, when  
777 admissible for any purpose, may be evidenced by an official publication thereof or by a copy  
778 attested by the officer having the legal custody of the record, or by the officer's deputy, and  
779 accompanied by a certificate that such officer has the custody. The certificate may be made  
780 by a judge of a court of record of the district or political subdivision in which the record is  
781 kept, authenticated by the seal of the court, or may be made by any public officer having a  
782 seal of office and having official duties in the district or political subdivision in which the  
783 record is kept, authenticated by the seal of the officer's office.

784 (b) **Foreign.** A foreign official record, or an entry therein, when admissible for any  
785 purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a

786 person authorized to make the attestation, and accompanied by a final certification as to the  
787 genuineness of the signature and official position of the attesting person, or of any foreign  
788 official whose certificate of genuineness of signature and official position relates to the  
789 attestation or is in a chain of certificates of genuineness of signature and official position  
790 relating to the attestation. A final certification may be made by a secretary of embassy or  
791 legation, consul general, consul, vice consul, or consular agent of the United States, or a  
792 diplomatic or consular official of the foreign country assigned or accredited to the United  
793 States. If reasonable opportunity has been given to all parties to investigate the authenticity  
794 and accuracy of the documents, the court may, for good cause shown, admit an attested copy  
795 without final certification or permit the foreign official record to be evidenced by an attested  
796 summary with or without a final certification. (i) of the attesting person, or (ii) of any  
797 foreign official whose certificate of genuineness of signature and official position relates to  
798 the attestation or is in a chain of certificates of genuineness of signature and official position  
799 relating to the attestation. A final certification may be made by a secretary of embassy or  
800 legation, consul general, vice consul, or consular agent of the United States, or a diplomatic  
801 or consular official of the foreign country assigned or accredited to the United States. If  
802 reasonable opportunity has been given to all parties to investigate the authenticity and  
803 accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy  
804 without final certification or (ii) permit the foreign official record to be evidenced by an  
805 attested summary with or without a final certification. The final certification is unnecessary if  
806 the record and the attestation are certified as provided in a treaty or convention to which the  
807 United States and the foreign country in which the official record is located are parties.

808 \* \* \*

#### 809 ~~44.04 Determination of Foreign Law~~

810 A party who intends to raise an issue concerning the law of a foreign country shall  
811 give notice by pleadings or other reasonable written notice. The court, in determining foreign  
812 law, may consider any relevant material or source, including testimony, whether or not  
813 submitted by a party or admissible pursuant to Rule 43. The court's determination shall be  
814 treated as a ruling on a question of law.

#### 815 ADVISORY COMMITTEE COMMENTS—1996 AMENDMENTS

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

### 820 **RULE 81 APPLICABILITY; IN GENERAL**

#### 821 **81.01 Statutory and Other Procedures**

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

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

828 [Abrogated].

829 (c) **Statutes Superseded.** Subject to provision (a) of this rule, the statutes listed in  
830 Appendix B and all other statutes inconsistent or in conflict with these rules are superseded  
831 insofar as they apply to pleading, practice, and procedure in the district court.

832 **ADVISORY COMMITTEE COMMENTS—1996 AMENDMENTS**

833 Rule 81.01(b) should be abrogated to reflect the decision of the Minnesota  
834 Supreme Court in *Rice v. Cornolly*, 488 N.W.2d 241, 244 (Minn. 1992), in which the  
835 court held: "[W]e have determined that quo warranto jurisdiction as it once existed in  
836 the district court must be reinstated and that petitions for the writ of quo warranto and  
837 information in the nature of quo warranto shall be filed in the first instance in the  
838 district court. The court recognized its retention of original jurisdiction under Minn.  
839 Stat. § 480.04 (1990), and also indicated its "future intention to exercise that  
840 discretion in only the most exigent of circumstances. We comment further that the  
841 reinstatement of quo warranto jurisdiction in the district court is intended to exist side  
842 by side with the appropriate alternative forms of remedy heretofore available . . ."  
843 488 N.W.2d at 244. The continued existence of a rule purporting to recognize a  
844 procedural remedy now expressly held to exist can only prove misleading or confusing  
845 in future litigation. Abrogation of the rule is appropriate to obviate any lack of clarity.

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

849 **APPENDIX A. SPECIAL PROCEEDINGS UNDER RULE 81.01**

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

|     |                                      |  |
|-----|--------------------------------------|--|
| 852 | <u>MS.A. 1949</u>                    |  |
| 853 | <u>Minn. Stat. (1996)</u>            |  |
| 854 | <u>48.525 to 48.527</u>              | Escheated funds of banks and trust companies               |
| 855 | <u>64.32 64B.30</u>                  | Quo warranto against fraternal benefit association         |
| 856 | <u>67.42 67A.241</u>                 | Quo warranto against town mutual fire insurance<br>company |
| 857 |                                      |  |
| 858 | <u>73.09 to 73.16</u>                | Actions on orders of State Fire Marshal                    |
| 859 | <u>80.14, subd. 2</u>                | Actions by Commissioner of Securities                      |
| 860 | <u>80.225</u>                        | Proceedings by Commissioner of Securities                  |
| 861 | <u>Chapters 105 to 113 103A-110A</u> | Drainage   |
| 862 | <u>Chapter 117</u>                   | Eminent domain proceedings (see also Gen. R. Prac.<br>141) |
| 863 |                                      |  |
| 864 | <u>160.26</u>                        | Drainage of roads  |
| 865 | <u>162.20</u>                        | Establishment of roads by judicial proceedings             |
| 866 | <u>Chapter 166</u>                   | Roads or cartways jointly constructed or improved          |
| 867 | <u>Chapter 209</u>                   | Election contests  |
| 868 | <u>Chapter 253B</u>                  | Civil commitment   |
| 869 | <u>Chapter 259</u>                   | Adoption; change of name                                   |
| 870 | <u>Chapter 271.06(7)</u>             | Proceedings in tax court                                   |

|     |                               |  |
|-----|-------------------------------|--|
| 871 | Chapter 277                   | Delinquent personal property taxes   |
| 872 | Chapter 278                   | Objections and defenses to taxes on real estate  |
| 873 | Chapter 279                   | Delinquent real estate taxes   |
| 874 | 284.07 to 284.26              | Actions involving tax titles   |
| 875 | <del>Chapter 299F.10-17</del> | <del>Actions on orders of state fire marshal</del>   |
| 876 | <del>325.21</del>             | <del>Quo warranto for violation of statutes regulating trade</del>   |
| 877 | <del>462.56</del>             | <del>Development plan</del>  |
| 878 | 501.33 to 501.38              | Proceedings relating to trusts   |
| 879 | Chapter 503                   | Townsite lands   |
| 880 | Chapter 508                   | Registration of title to lands ( <u>see also Gen.R. Prac. 201-216</u> )  |
| 881 |                               |  |
| 882 | 514.01 to 514.17              | Mechanics liens  |
| 883 | <del>514.35 to 514.39</del>   | <del>Motor vehicle liens</del>   |
| 884 | Chapter 518                   | <u>Divorce Dissolution of marriage</u>   |
| 885 | 540.08                        | Insofar as it provides for action by parent for injury to minor child ( <u>see also Gen. R. Prac. 145</u> )  |
| 886 |                               |  |
| 887 | Chapter 556                   | Action by attorney general for usurpation of office, etc.  |
| 888 | Chapter 558                   | Partition of real estate (except that part of second sentence of 558.02 beginning 'a copy of which')   |
| 889 |                               |  |
| 890 | Chapter 559                   | Actions to determine adverse claims (except that part of third sentence of 559.02 beginning 'a copy of which')   |
| 891 |                               |  |
| 892 |                               |  |
| 893 | 561.11 to 561.15              | Petition by mortgagor to cultivate lands   |
| 894 | 573.02                        | Action for death by wrongful act ( <del>as amended by Laws 1951, Chapter 697, and Laws 1965, Chapter 837</del> ) ( <u>see also Gen. R. Prac. 142-144</u> ) |
| 895 |                               |  |
| 896 |                               |  |
| 897 | Chapter 579                   | Actions against boats and vessels  |
| 898 | Writ of certiorari            |  |
| 899 | Writ of habeas corpus         |  |
| 900 | Writ of ne exeat              |  |
| 901 | Writ of mandamus              |  |