STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

In re: Supreme Court Task
Force on Uniform Local Rules

Recommendations of Minnesota Supreme Court Task Force on Uniform Local Rules

Final Report

November 20, 1990

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LOCAL RULES TASK FORCE

SUMMARY OF TASK FORCE RECOMMENDATIONS

Background of the Task Force

The Task Force was appointed by the Minnesota Supreme Court on October 24, 1989, and has been chaired by Chief Justice Peter S. Popovich. The Task Force has met monthly and has reviewed all the local rules of practice adopted in any district in Minnesota. The Task Force has also reviewed the Code of Rules for the District Courts, Rules of Uniform Decorum, Uniform Rules of Family Court Procedure, Uniform Rules of Probate Court Procedure, Conciliation Court Rules and the Minnesota Commitment Act Rules.

The Task Force's Mission

The Task Force was asked by the Minnesota Supreme Court to review the diverse local rules that have been adopted in each of the state's ten judicial districts with an eye to determining which, if any, of these rules should be made uniform. The loudest voice for uniformity in local rules came from practicing lawyers. Lack of uniformity unquestionably increases the costs of litigation for litigants and increases the risks that actions may be decided on procedural grounds rather than the merits. The Minnesota State Bar Association formally requested the Supreme Court to appoint a committee to look at the problem of lack of uniformity.

Minnesota has traditionally embraced uniformity where feasible. The Conference of Chief Judges has worked for increased uniformity in court forms used throughout the court system, and a remarkable degree of uniformity has been achieved. To a large degree, the various and disparate rules that have been adopted in Minnesota have simply "grown up separately." In the absence of any unifying force, the districts have adopted different rules simply by random process. Many of the distinctions in the rules make no difference, and the task of making the rules uniform in many substantive areas is not daunting.

In addition to concerns over lack of uniformity in practice, the Task Force also addressed concerns that many facets of practice are presently covered in numerous differed sets of rules. For example, the present rules relating to jury selection are spread among numerous different sets of rules. Commentators have criticized the rules governing jury selection as being "not particularly accessible." *See* Shapiro & La Bissonniere, Voir Dire in Civil Actions: Rules and Procedures, Minn. Trial Law., Fall 1989, at 9. Minn. R. Civ. P. 47.01 and a new Rule 147.1 of the Code of Rules will now provide the necessary information in more readily accessible format.

Uniformity in court rules has also been a goal of modern court administration in the federal courts. The Judicial Conference of the United States has recently undertaken a comprehensive review of the diverse local rules that have grown up in the 94 United States District Courts and has recommended steps toward making those rules more uniform throughout the country.

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

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

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

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

. . .

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

Comments received from members of the Bench and Bar have strongly favored efforts to make the rules of practice uniform throughout the state.

The Work of the Task Force

The Task Force is broadly composed of practicing lawyers, trial and appellate court judges, and court administrators. The Task Force scheduled monthly meetings in October, November, December, 1989, and January, February, March, April, May, June, July 1990, twice in October and in November 1990. Meetings were generally held on Saturdays, and some were all-day meetings. Attendance at Task Force meetings always included the vast majority of Task Force members.

The Task Force drafted, revised, and reviewed numerous drafts of the rules. It is literally impossible to document all of the proposed changes that were considered by the Task Force and all of the changes that have been made in initial proposals to yield this Final Report. This final draft has benefited immensely from the comments of its various and diverse members, members of the bench, representatives of the various bar associations and organizations, as well as individual laywers.

The Task Force circulated and published a Discussion Draft of these proposed rules in August 1990 and held a Public Hearing on the rules in early October.

Guiding Principles of Task Force

The Task Force decided early on that there were a number of basic goals that should guide its work.

1. In the absence of special local concerns, rules of procedure in the trial courts best serve the interests of justice if they are uniform state-wide.

2. Uniformity without concern for the local concerns of individual districts and counties would be counterproductive.

3. Procedural rules should not simply duplicate or restate the substantive law, nor should they needlessly duplicate each other.

4. Procedural rules governing a single subject matter ought to be codified in a single place or use a single system so that locating related rules is readily accomplished.

The Task Force examined the work of the Judicial Conference of the United States' project on uniform local rules. That project examined local rules, and recommended various uniform versions of rules dealing with particular subject matters, but stopped short of either requiring uniformity or prohibiting non-uniform rules. The Task Force reached the conclusion that uniform provisions should be implemented by single rules having statewide application. Accordingly, the recommendation of the Task Force is for the adoption of a new Code of Rules for the District Courts that contains all provisions that should be made uniform. Local rules would remain only for strictly local matters.

Specific Recommendations

The Task Force's recommendations are set forth in the following Final Report The vast majority of the rules the Task Force recommends for adoption by the Supreme Court are already in force in some form. The Task Force's recommendations include a comprehensive recodification of the existing Code of Rules for the District Courts, the Rules for Uniform Decorum in the District Courts, the Civil Trialbook, the Rules of Family Court Procedure, Probate Rules, Conciliation Court Rules, and the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment Act of 1982. These rules, with few exceptions, were simply recodified with no significant substantive change. The language of each rule was reviewed, and numerous changes were made to delete gender-specific language, references to abolished actions or offices ("clerk" or "court clerk" has been replaced by "court administrator"), and generally to modernize or make consistent the language of the rules.

These recommendations do include a number of changes in the existing rules. Among the more significant changes are:

1. Abolition of the note of issue procedure for scheduling matters, and replacing it with a court-directed process through use of scheduling orders in every case. [Code of Rules 116.1-.3; Minn. R. Civ. P. 38.03]. Similar processes are implemented for family matters. [Code of Rules 304.1].

2. Creation of a uniform motion practice in all civil matters, with briefing schedules, provisions for telephone hearings, and the requirement of an attempt to resolve all motion disputes prior to hearing. [Code of Rules 107.1]. A similar motion practice rule is supplied for family court matters. [Code of Rules 303.3].

3. Updating of the rules governing minor settlements. [Code of Rules 117.3].

4. Creation of a uniform method for numbering exhibits whereby each exhibit will be given a unique exhibit number. [Code of Rules 143.3(d)].

5. Implementation of a uniform procedure for removal of judges, referees, and judicial officers for cause, [Code of Rules 163.1] and providing a procedure for exercising the statutory right to challenge having any referee hear a matter. [Code of Rules 163.2]. *See* Minn. Stat. § 484.70, subd. 6 (1990).

6. Creation of rules for the Housing Courts in Hennepin and Ramsey Counties. [Code of Rules 701-711].

The rules include a numbering system by which the provision in the Code of Rules is associated with the relevant rule of civil procedure. Thus, the rules governing pretrials are 116.1, etc., associated with Minn. R. Civ. P. 16. The forms included in the Appendix of Forms are also numbered to indicate the rule to which they are related.

The Task Force considered the Final Report of the Minnesota Supreme Court and Minnesota State Bar Association Task Force on Alternative Dispute Resolution, as approved in June 1990. Because the ADR Task Force report will require further consideration in the Legislature and by the Courts, this Task Force has not implemented any of the ADR proposals in these rules. Consideration of that subject may be appropriate at a later date.

Format of Report

This report presents proposed rules in a form suitable for adoption by the Minnesota Supreme Court. Because Rules 1 through 183.2 have been derived from a number of different sources, but nonetheless incorporate existing provisions from those sources without significant change, they are presented in blank form as new rules. No highlighting is included due to their diverse origins. The sources of these rules include the existing Code of Rules for the District Courts, the various local rules, the Civil Trialbook, and the Rules for Uniform Decorum in the District Courts. The remaining rules, however, are presented in the legislative style, with highlighting to indicate additions and interlining to indicate deletions from the existing rules.

The Task Force has included comments on the specific rules where appropriate. In most instances, these proposed rules include and retain the comments of the advisory committees that recommended adoption or amendment to the existing rules from which these rules are derived. The Task Force comments are intended primarily to assist the Court in understanding the reasons for the recommended language of the Task Force proposals. They may also, should the rules be adopted by the Court, be helpful to the bench and bar after implementation.

Public Information and Hearing

The Task Force held a public hearing on the rules contained in its Discussion Draft on October 4, 1990. Notice of the public hearing was published in the weekly Supreme Court edition of Finance and Commerce. The entire Discussion Draft of the Proposed rules was published at that time. A number of sections of the Minnesota State Bar Association have offered comments on the proposed rules, and those comments have been considered by the Task Force and incorporated into the Task Force's recommendations to the extent deemed appropriate.

Additionally, the proposed rules were distributed to all Minnesota judges by the Office of Research and Planning, and the Task Force made presentations and responded to questions and coments at the Continuing Education Fall Conference for the Minnesota Judiciary on September 5, 1990. The Task Force also solicited and received comments from a number of individual judges, from the judges of the benches of various judicial districts, and from the Conference of Chief Judges.

Effective Date

The Task Force has given consideration to an appropriate effective date for the proposed rule changes. Given the fact that the vast majority of the rule changes proposed will not make any substantial change in practice in the courts, the Task Force believes they should be implemented immediately. In accordance with the sound practice of the Supreme Court of adopting rules with effective dates of January 1 or July 1, the Task Force recommends that these rules be adopted effective on July 1, 1991. The Task Force intends to present a series of CLE programs on the rules in each of the judicial districts as soon as the adoption decision is rendered. These programs will be directed to all practicing attorneys and all judges.

The Conference of Chief Judges recommended to the Task Force that these rules, if adopted, have an effective date delayed to January 1, 1992. The Task Force believes that the concerns of the Conference can be accomodated by an early hearing on these recommendations and an early order promulgating the rules, as this would provide maximum time to the districts for implementation.

The rules should be made applicable to all actions pending on the effecitve date and to those filed thereafter. For cases on file but not yet scheduled on the effective date, the filing date for scheduling purposes should be deemed the effective date of the rules, thus bringing all pending cases into the scheduling processes of the rules within a short time after the rules become effective.

Ongoing Review of Local Rules

One important provision of the proposed rules is the proposed amendment to Minn. R. Civ. P. 83. This change will allow local court rules to be adopted in the future only with the approval of the Supreme Court. The purpose of this rule is to maintain the uniformity acheived in this recommended report, as in the absence of centralized rulemaking authority local rules would again diverge and multiply.

Although not particularly devoted to prolonging itself, the Task Force recommends that some standing advisory committee of lawyers and judges, with composition similar to that of the Task Force, be kept in place to review the operation of the new rules and to consider any proposals for local rules that may be forthcoming from the individual districts. The Task Force believes that those members of the Task Force who have actively involved themselves in the Task Force's work would be logical and willing members of this advisory committee. The composition and terms of service for the ongoing advisory committee should be determined by the Supreme Court.

The Chair and Reporter of the Task Force will be available at the Court's pleasure to review the Task Force recommendations and to answer any questions

Dated: November 20, 1990.

Respectfully submitted,

MINNESOTA SUPREME COURT TASK FORCE ON UNIFORM LOCAL RULES

PROPOSED AMENDMENTS TO CODE OF RULES FOR THE DISTRICT COURTS

Rules Applicable to All Court Proceedings

Rule 1.1 Scope of Rules

(a) Scope. These rules shall apply in all trial courts of the State of Minnesota.

(b) Modification. A judge may modify the application of these rules in any case to prevent manifest injustice.

(c) Responsibility of Parties Appearing Pro Se. Whenever these rules require that an act be done by counsel or by an attorney, the same duty is required of a party appearing pro se.

Task Force Comment--1991 Adoption

Subsection (a) is new.

Subsection (b) is patterned after 4th Dist. R. 7.02

Subsection (c) is patterned after 4th Dist. R. 9.02.

These rules apply in all trial court proceedings in Minnesota, including all civil and criminal proceedings. The Task Force believes it is desirable to have common practices involving decorum and the responsibilities of the court and counsel in all proceedings, and these rules accomplish that. Because the rules are derived from existing Trialbook and local rule provisions that are widely followed, these rules should codify existing practice rather than create significant changes in practice.

Rule 2.1 Court Decorum

(a) Flag. The flags of the United States and the State of Minnesota shall be displayed on or in close proximity to the bench when court is in session.

(b) Conduct of judges and attorneys. Dignity and solemnity shall be maintained in the courtroom. Attorneys shall appear in court in appropriate courtroom attire. There shall be no unnecessary conversation, loud whispering, newspaper or magazine reading or other distracting activity in the courtroom during trial.

(c) Formalities in opening court. At the opening of each court day, the formalities to be observed shall consist of the following: court personnel shall direct all present to stand, and shall say clearly and distinctly:

> Everyone please rise! The District Court of the _____ Judicial District, County of _____, State of Minnesota is now open. Judge _____ presiding. Please be seated.
>
> (Rap gavel or give other signal immediately prior to directing audience to be seated.)

At any time thereafter during the day that court is reconvened court personnel shall give warning by gavel or otherwise, and as the judge enters, cause all to stand until the Judge is seated.

(The above rule (to) or (to not) apply to midmorning and midafternoon recesses of the court at the option of the judge.)

(d) The Jury. Jurors shall take their places in the jury box before the judge enters the courtroom. Court personnel shall assemble the jurors when court is reconvened.

When a jury has been selected and is to be sworn, the presiding judge or clerk shall request everyone in the courtroom to stand.

(e) Court Personnel. Court personnel shall maintain order as litigants, witnesses and the public assemble in the courtroom, during trial and during recesses. Court personnel shall

direct them to seats and refuse admittance to the courtroom in such trials where the courtroom is occupied to its full seating capacity.

(f) Swearing of witnesses. When the witness is sworn, court personnel shall request the witness's full name, and after being sworn, courteously invite the witness to be seated on the witness stand.

(g) Manner of administration of oath. Oaths and affirmations shall be administered to jurors and witnesses in a slow, clear, and dignified manner. Witnesses should stand near the bench, or witness stand as sworn. The swearing of witnesses should be an impressive ceremony and not a mere formality.

Task Force Comment--1991 Adoption

Subsections (a) and (b) are derived from Rules 1-3 of the Rules of Uniform Decorum respectively.

Subsection (c) is derived from Rules 4 and 5 of the Rules of Uniform Decorum.

Subsection (d) is derived from Rule 6 of the Rules of Uniform Decorum.

Subsection (e) is derived from Rule 8 of the Rules of Uniform Decorum.

Subsection (f) is derived from Rule 9 of the Rules of Uniform Decorum.

Subsection (g) is derived from Rule 10 of the Rules of Uniform Decorum.

Rule 3.1 Role of Judges

(a) Dignity. The judge shall be dignified, courteous, respectful and considerate of the lawyers, the jury and witnesses. The judge shall wear a robe at all trials and courtroom appearances. The judge shall at all times treat all lawyers, jury members, and witnesses fairly and shall not discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, sexual preference, status with regard to public assistance, disability, or age.

(b) Punctuality. The judge shall be punctual in convening court, and prompt in the performance of judicial duties, recognizing that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality on part of a judge justifies dissatisfaction with the administration of the business of the court.

(c) Impartiality. During the presentation of the case, the judge shall maintain absolute impartiality, and shall neither by word or sign indicate favor to any party to the litigation. The judge shall be impersonal in addressing the lawyers, litigants and other officers of the court.

(d) Intervention. The judge should generally refrain from intervening in the examination of witnesses or argument of counsel; however, the court shall intervene upon its own initiative to prevent a miscarriage of justice or obvious error of law.

(e) Decorum in court. The judge shall be responsible for order and decorum in the court and shall see to it at all times that parties and witnesses in the case are treated with proper courtesy and respect.

(f) Accurate record. The judge shall be in complete charge of the trial at all times and shall see to it that everything is done to obtain a clear and accurate record of the trial. It is a duty to see that the witnesses testify clearly so that the reporter may obtain a correct record of all proceedings in court.

(g) Comment upon verdict. The judge should not comment favorably or adversely upon the verdict of a jury when it may indirectly influence the action of the jury in causes remaining to be tried.

Task Force Comment--1991 Adoption

Subsection (a) is derived from Rules 23 and 24 of the Rules of Uniform Decorum. The quoted material from the Code of Judicial Conduct is deleted from the rule as surplusage.

Subsection (b) is derived from Rule 25 of the Rules of Uniform Decorum.

Subsection (c) is derived from Rules 26 and 29 of the Rules of Uniform Decorum.

Subsection (d) is derived from Rule 27 of the Rules of Uniform Decorum.

Subsection (e) is derived from Rule 30 of the Rules of Uniform Decorum.

Subsection (f) is derived from Rule 31 of the Rules of Uniform Decorum.

The Task Force considered the recommendations of the Minnesota Supreme Court Task Force on Gender Fairness, and recommends that this rule be adopted to implement, in part, the recommendations of that body. *See* Minnesota Supreme Court Task Force for Gender Fairness in the Courts, 15 Wm. Mitchell L. Rev. 825 (1989). The rule specifically incorporates the definition of discriminatory conduct in the Minnesota Human Rights Act, Minn. Stat. § 363.01, subd. 1(1) (1990). The Task Force has added to the statutory definition of discrimination the category of sexual preference.

Rule 4.1 Role of Attorneys

(a) Officer of court. The lawyer is an officer of the court and should at all times uphold the honor and maintain the dignity of the profession, maintaining at all times a respectful attitude toward the court.

(b) Addressing court or jury. Except when making objections, lawyers should rise and remain standing while addressing the court or the jury. In addressing the court, the lawyer should refer to the judge as "Your Honor" or "The Court." Counsel shall not address or refer to jurors individually or by name or occupation, except during voir dire, and shall never use the first name when addressing a juror in voir dire examination. During trial, counsel shall not exhibit familiarity with the judge, jurors, witnesses, parties or other counsel, nor address them by use of first names (except for children).

(c) Approaching bench. The lawyers should address the court from a position at the counsel table. If a lawyer finds it necessary to discuss some question out of the hearing of the jury at the bench, the lawyer may so indicate to the court and, if invited, approach the bench for the purpose indicated. In such an instance, the lawyers should never lean upon the bench nor appear to engage the court in a familiar manner.

(d) Non-Discrimination. Lawyers shall treat all parties, participants, other lawyers, and court personnel fairly and shall not discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, sexual preference, status with regard to public assistance, disability, or age.

Task Force Comment--1991 Adoption

Subsection (a) is derived from Rule 12 of the Rules of Uniform Decorum.

Subsection (b) is derived from Rule 13 of the Rules of Uniform Decorum, and Trialbook ¶¶ 29 and 58.

Subsection (c) is derived from Rule 14 of the Rules of Uniform Decorum.

Subsection (d) is new.

The provisions of subsection (b) require counsel to stand when addressing comments, objections, or arguments to the judge or jury. Rule 143.2 permits counsel to examine witnesses either while standing or while seated at counsel table.

The Task Force considered the recommendations of the Minnesota Supreme Court Task Force on Gender Fairness, and recommends that this rule be adopted to implement, in part, the recommendations of that body. *See* Minnesota Supreme Court Task Force for Gender Fairness in the Courts, 15 Wm. Mitchell L. Rev. 825 (1989). The rule specifically incorporates the definition of discriminatory conduct in the Minnesota Human Rights Act, Minn. Stat. § 363.01, subd. 1(1) (1990). The Task Force has added to the statutory definition of discrimination the category of sexual preference.

Rule 5.1 Ex Parte Orders

(a) Notice. In any application for ex parte relief, the court may require a demonstration or explanation of the efforts made to notify affected parties, or the reasons why such efforts were not made. The reasons supporting ex parte relief should be recited in the order.

(b) Prior Application. No ex parte order shall be issued unless an affidavit is submitted with the application showing:

(1) No prior applications for the relief requested or for a similar order have been made; or,

(2) The court and judge to whom the prior application was made; the result of the prior application; and what new facts are presented with the current application.

Failure to comply with this rule may result in vacation of any order entered.

Task Force Comment--1991 Adoption

Subsection (a) is new, although it codifies the practice of the vast majority of judges.

Subsection (b) is derived from existing Rule 10 of the Code of Rules for the District Courts. This rule applies in all trial court proceedings, including criminal actions. The Minnesota Supreme Court Advisory Committee on Criminal Procedure joins the Task Force in recommending that this rule apply in all trial court proceedings.

The review of the efforts made to provide notice is an integral part of permitting ex parte relief to be granted. The rule does not specify what showing must be made and does not state how it is to be made because the Task Force recognizes that a wide variety of circumstances apply to the seeking and obtaining of ex parte orders. In some circumstances, there may be proper reasons to justify ex parte relief even if notice could be given, and in those limited instances, a showing of those reasons should be made and reviewed by the court. The more common situation will involve description of the efforts made to give notice. The court may require the information in written or affidavit form, may take oral testimony, or may base the decision on the statements of counsel, either in person or by telephone. The Task Force also believes that if notice to affected parties is deemed unnecessary, the order should state the facts supporting ex parte relief without notice.

RULES GOVERNING CIVIL ACTIONS

Rule 101.1 Scope of Rules

Rules 101.1 through 183.2 shall apply in all civil actions, except any civil matters governed by the Rules of Juvenile Procedure.

Task Force Comment--1991 Adoption

The rules in the 100-series are intended to apply to all civil actions. The Rules of Juvenile Procedure govern juvenile court proceedings, and these rules are intended not to change juvenile court practice in any direct way.

Rule 103.1 Certificate of Representation and Parties

A party filing a civil case shall, at the time of filing, notify the court administrator in writing of the name, address, and telephone number of all counsel and unrepresented parties, if known. If that information is not then known to the filing party, it shall be provided to the court administrator in writing by the filing party within seven days of learning it.

Any party impleading additional parties shall provide the same information to the court administrator.

The court administrator shall, upon receipt of the completed certificate, notify all parties or their attorneys of the date of filing the action and the file number assigned.

Task Force Comment--1991 Adoption

This rule is derived from 7th Dist. R. 7 (eff. Jan. 1, 1990).

The final sentence is derived from 2d Dist. R. 2(b).

This rule formalizes the requirement to provide information about all parties when an action is filed. Its need derives from the commencement of actions by service and the fact that many pleadings are routinely not filed. The certificate of representation and parties serves a purpose of allowing the court to give notice of assignment of a judge to the case (in those districts making that assignment prior to trial), thereby triggering for all parties the 10-day period to remove an assigned judge under Minn. R. Civ. P. 63.

This requirement now exists in the Fourth and Seventh districts, and seems to be the type of requirement the Task Force seeks to make uniform statewide. The required information may be submitted in typed form or on forms available from the court administrator. A sample form is included in the Appendix of Forms as Form 103.1.

Rule 105.2 Proof of Service

When service has been made before filing, proofs of service shall be affixed to all papers so that the identity of the instrument is not obscured. If a document is filed before service, proof of service shall be filed promptly after service is made.

Task Force Comment--1991 Adoption

This rule derived from Rule 13 of the Code of Rules for the District Courts.

The second sentence is new, drafted to provide for filing of documents where service is to be made after filing.

Rule 105.3 Withdrawal of Counsel

After an attorney has appeared for a party in any action, withdrawal will be effective only if written notice of withdrawal is served on all parties who have appeared and is filed with

the court administrator. The notice of withdrawal shall include the address and phone number where the party can be served or notified of matters relating to the action.

Withdrawal of counsel does not create any right to continuance of any scheduled trial or hearing.

Task Force Comment--1991 Adoption

The Task Force believes that uniformity in withdrawal practice and procedure would be desirable. Existing practice varies, in part due to differing rules and in part due to differing practices in the absence of a rule of statewide application. The primary concern upon withdrawal is the continuity of the litigation. Withdrawal should not impose additional burdens on opposing parties. The Task Force considered various rules that would make it more onerous for attorneys to withdraw, but determined those rules are not necessary nor desirable. Consistent with the right of parties to proceed pro se, they may continue to represent themselves where their attorneys have withdrawn. This rule establishes the procedure for withdrawal of counsel; it does not itself authorize withdrawal nor does it change the rules governing a lawyer's right or obligation to withdraw in any way. *See* Minn. R. Prof. Cond. 1.16. The rule does not affect or lessen an attorney's obligations to the client upon withdrawal. Those matters are governed by the Minnesota Rules of Professional Conduct. *See* Minn. R. Prof. Cond. 1.16. Enforcement of those rules is best left to the Lawyers Professional Responsibility Board.

The rule makes it clear that the withdrawal of counsel does not, in itself, justify continuance of any trial or hearing. Of course, withdrawal or substitution of counsel may be part of a set of circumstances justifying the exercise of the court's discretion to grant a continuance.

Rule 107.1 Motion Practice

(a) Applicability of Rule. This rule shall govern all civil motions, except those in family court matters governed by Rules 301.1 through 312.2 and in commitment proceedings subject to Rules 601 through 612. It governs both dispositive and non-dispositive motions, defined as follows:

(1) Dispositive motions are motions which seek to dispose of all or part of the claims or parties, except motions for default judgment. They include motions to dismiss a party or claim, motions for summary judgment and motions under Rule 12.02(a)-(f), Minnesota Rules of Civil Procedure.

(2) Non-dispositive motions are all other motions, including but not limited to discovery, third party practice, temporary relief, intervention or amendment of pleadings.

(b) Date for hearing motions. A hearing date and time shall be obtained by contacting the court administrator or a designated motion calendar deputy.

(c) Requirements for dispositive motions:

(1) **Moving party, supporting documents, time limits.** No motion shall be heard until the moving party serves one copy of the following documents on opposing counsel and mails to (or files with) the court administrator at least 30 days prior to the hearing:

(i) Notice of Motion;
(ii) Motion;
(iii) Proposed Order;
(iv) Any Affidavits and Exhibits to be submitted in conjunction with the motion;
(v) Memorandum of Law; and
(vi) In summary judgment motions, the statement required by subsection 3 of this rule.

(2) **Responding party, supporting documents, time limits**. The party responding to the motion shall serve one copy of the following documents on opposing counsel and shall file the original with the Court Administrator at least 9 days prior to the hearing:

(i) Memorandum of Law;
(ii) Affidavits and Exhibits; and
(iii) In summary judgment motions, the statement required by subsection 3 of this rule.

(3) **Additional Requirement for Summary Judgment Motions.** All motions for summary judgment shall contain a Statement of Facts as to Which There is No Genuine Issue, listing material facts which support the motion. Each such material fact shall be separately numbered and stated, with a direct reference to page and line of depositions, paragraph numbers of discovery, and direct and clear reference to other portions of the record which support the asserted fact. Papers opposing a motion for summary judgment shall contain a Statement of Disputed Facts, separately numbered, stating which of the propounded material facts are disputed, with a direct reference to page and line of depositions, paragraph numbers of discovery, and direct and clear reference to other portions of the record which contradict asserted facts or support facts in opposition to the motion. This rule applies to motions brought under Rule 56 and under Rule 12 if factual matter is to be considered.

(d) Requirements for Non-dispositive motions:

(1) **Moving party, supporting documents, time limits**. No motion shall be heard until the moving party serves one copy of the following documents on opposing counsel and mails the original to (or files it with) the court administrator at least 14 days prior to the hearing:

(i) Notice of Motion;
(ii) Motion;
(iii) Proposed Order;
(iv) Any Affidavits and Exhibits to be submitted in conjunction with the motion; and
(v) Any Memorandum of Law the party intends to submit.

(2) **Responding party, supporting documents, time limits**. The party responding to the motion shall serve one copy of the following documents on opposing counsel and shall file the original with (or mail it to) the court administrator at least 7 days prior to the hearing:

(i) Any Memorandum of Law the party intends to submit; and
(ii) Any relevant Affidavits and Exhibits.

(e) Page Limit. No memorandum of law submitted in connection with any motion shall exceed 35 pages except upon permission of the court. In the case of motions involving discovery requests, the moving party's memorandum shall set forth only the particular discovery requests which are the subject of the motion, the response and a concise recitation of why the response or objection is improper.

(f) Failure to comply. If the moving papers are not properly served and filed, the hearing may be cancelled. If responsive papers are not properly served and filed in non-dispositive motions, the court may deem the motion unopposed and may issue the proposed order without hearing. With respect to a dispositive motion, the court, in its discretion, may refuse to permit oral argument by the party not filing the required statement, may allow reasonable attorney's fees, or may proceed in such other manner as the court deems appropriate.

(g) Motions requiring emergency treatment. In the event the moving party seeks temporary relief where irreparable harm will result absent immediate action by the court, or where the court otherwise determines, the court may waive or modify the time limits established by this rule.

(h) Witnesses at motion. No testimony will be taken at motion hearings except under unusual circumstances. Any party seeking to present witnesses at a motion hearing shall obtain

prior consent of the court and shall notify the adverse party in the moving papers of the names of the witnesses which that party intends to call at the motion.

(i) Telephone hearings. When a motion is to be heard by telephone conference call, the moving party shall be responsible either to initiate the conference call or to comply with the court's instructions regarding initiation of the conference call. If necessary, adequate provision shall be made for making a record of the telephone hearing.

(j) Requirement to attempt to resolve dispute. No motion will be heard unless the parties have conferred by telephone, face to face, or in writing in an attempt to resolve their differences prior to the hearing. The moving party shall initiate such conference. The moving party shall certify to the court, before the time of the hearing, compliance with this rule or any reasons for not complying, including lack of availability or cooperation of opposing counsel.

(k) Settlement of motion issues. Whenever any motion or issue that is part of a pending or submitted motion is settled, the moving party shall promptly advise the court of the settlement.

(l) Notice of hearing date. A party obtaining a date or time for a hearing on a motion or a matter to be set on any calendar for hearing shall promptly give notice of the hearing date and time to all other parties who have appeared in the action.

Task Force Comment--1991 Adoption

This rule is derived primarily from Rule 15 of the Local Rules of the Seventh District. Provisions are also included from Rule 8 of the Local Rules of the Second District (2d Dist. R. 8(h)(1) & 8(j)(1)).

Subdivisions (k) and (l) are new.

This rule is intended to create uniform motion practice in all districts of the state. The existing practices diverge in many ways. The inconsistent requirements for having a motion heard impose significant burdens on litigants and their counsel. The Task Force is confident that this new rule will make civil practice more efficient and fairer, consistent with the goals of the rules of civil procedure set forth in Minn. R. Civ. P. 1.

The time limits set forth in this rule were arrived at after extensive discussion. The Task Force attempted to balance the needs of the courts to obtain information on motions sufficiently in advance of the hearing to permit judicial preparation and the needs of counsel and litigants to have prompt hearings after the submission of motions. The time limits for dispositive motions are admittedly longer than the 10-day requirement set forth in Minn. R. Civ. P. 56.03. The Task Force is of the view that these requirements are not necessarily inconsistent because the rules serve two different purposes. The civil procedure rule establishes a minimum notice period to the adversary, while this provision in the code of rules sets forth a standard to facilitate the court's consideration of the motions. The time requirements of this rule may be readily modified by the court, while the minimum notice requirements of Minn. R. Civ. P. 56.03 is mandatory unless waived by the parties themselves. *See, McAllister v. Independent School District No. 306*, 276 Minn. 549, 149 N.W.2d 81 (1967).

The statements of facts required by this rule are made for the purpose of the then-pending motion only, and are not to be judicial admissions for other purposes. The Task Force modified the existing local rule in the seventh district to remove any provision that might suggest that summary judgment motions would be treated as defaults if the required statements of fact were not submitted or that might be interpreted to reduce the factual record for summary judgment motions from that specified in Minn. R. Civ. P. 56.05. This will avoid the conflict dealt with by the Minnesota Court of Appeals in *Bunkowske v. Briard*, ___ N.W.2d ___ (Minn. Ct. App., Oct. 23, 1990). Counsel seeking to have the court consider matters located elsewhere in the court file will need to identify those materials in the statements of facts required by the rule, but will not have to refile the documents.

Subdivision (j) is a new requirement in the statewide rules, but is a familiar one to most lawyers. Many state and federal courts require parties to meet and confer in an attempt to resolve discovery disputes. *See* Second Dist. Rule 8(h); Fourth Dist. Rule 2.02; R. Haydock & D. Herr, Discovery Practice § 8.2 & n.3 (2d ed. 1988) (federal court local rules collected). The Task Force believes that it is reasonable and worthwhile to require informal efforts to attempt to resolve all motion disputes, not just discovery disputes. The Task Force also believes, however, that a rule requiring a face-to-face meeting in all situations would be unwise. This rule requires that some appropriate efforts be made to resolve motion disputes before hearing with the court, but does not specify a specific mechanism. In some instances, a face-to-face meeting will be productive; in other cases a short phone call will suffice to exhaust any possibility of resolution of the matter. The Task Force considered exempting dispositive motions from the requirements of the rule in view of the likely futility of conferring with adversaries over matters that would be dispositive, but determined that the effort expended in conferring in these matters is justified by the likely resolution or narrowing of some disputes or focusing of the dispute for judicial resolution.

Subdivision (l) is a new provision intended both to give parties notice of hearings in advance of the minimum required by other rules. It is intended primarily to prevent a party from obtaining a hearing date and time weeks in advance of a hearing but then delaying giving notice until shortly before the hearing. This practice appears to give an unnecessary tactical advantage to one side. Additionally, by requiring that more than the minimum notice be given in many cases, it will be possible for the responding parties to set on for hearing any additional motions they may have. This may result in the more efficient hearing of multiple motions on a single hearing date.

The definitions of "dispositive" and "non-dispositive" motions should be fairly easy to follow in practice. The definitions are similar to those used in Minnesota federal court practice, *see* Local Rule 4 (D. Minn), *reprinted in* Minn. Rules of Ct. 885-86 (West. 1990). Federal court practice treats motions for interlocutory injunctive relief as dispositive because these matters are heard with other dispositive motions before judges rather than magistrates, but there is no reason to treat these motions as dispositive in state-court practice. Indeed, most such motions in state court are heard on expedited schedules set at the time of initial appearance.

The language of subsection (f) permits the court, but does not require it, to strike a motion where the rule is not followed. The permissive language is included to make it clear the court retains the discretion to hear matters even if the rules have been ignored, but should not be viewed as suggesting that the court needs to provide a hearing on whether such a motion will be stricken. Courts may administratively provide that hearings on motions not served and filed in accordance with the rule will be automatically or routinely cancelled.

The Task Force considered the adoption of the Seventh District's rule that called for the trial judge to "make every effort" to rule on non-dispositive motions on the day of hearing and dispositive motions within 30 days of hearing. Seventh Dist. R. 15(8). That provision was adopted as part of the revision of motion practice in that district whereby earlier briefing was required with the expected result of earlier decision. Although the purpose of that rule is laudable, the Task Force decided it is not good practice to adopt rules that are purely hortatory in nature, and do not impose any specific requirements or standards. Nonetheless, the Task Force hopes that those benefits of early briefing will flow from the proposed changes on a statewide basis. The Task Force also noted that a statute governs the outer limits of the time for decision. *See* Minn. Stat. § 546.27, subd. 1 (1990) (establishing 90-day period for decision).

Rule 107.2 Form of Pleadings

(a) Form of Pleadings. All pleadings or other papers required to be filed shall be legibly handwritten, typewritten, or printed on one side, double spaced, on plain unglazed paper of good texture. Every page shall have a top margin of not less than one inch, free from all typewritten, printed, or other written matter. Papers produced and filed by facsimile transmission as allowed by the Rules of Civil Procedure and in accordance with any supplemental Supreme Court rules or orders shall also be filed.

(b) Paper size. All papers served or filed by any party shall be on standard size 8½ X 11 inch paper.

(c) Backings not allowed. No pleading, motion, order, or other paper offered to the court administrator for filing shall be backed or otherwise enclosed in a covering. Any papers that cannot be attached by a single staple in the upper lefthand corner shall be clipped or tied by an alternate means at the upper lefthand corner.

Task Force Comment--1991 Adoption

This rule is based on 4th Dist. R. 1.01 (a) & (b), with changes.

Although the rule permits the filing of handwritten documents, the clearly preferred practice in Minnesota is for typewritten documents. Similarly, commercially printed papers are rarely, if ever, used in Minnesota trial court practice, and the use of printed briefs in appellate practice is discouraged.

Rule 112.1 Ne Exeat

Upon the allowance of a writ of ne exeat the court shall require an undertaking or bond to be approved by the court in the penal sum of not less than $250. Such bond shall be conditioned upon payment to the party detained of such damages as that party may sustain by reason of the writ, if the court eventually decides that the party applying was not entitled to the writ.

Task Force Comment--1991 Adoption

This Rule is derived from existing Rule 19.

Although this rule has not seen frequent use used, it also has not caused any problems, so the Task Force recommends that it be adopted by the Minnesota Supreme Court for uniform statewide application. The writ of ne exeat has not been abolished, and its use is occasionally encountered.

Rule 116.1 Scheduling Orders

(a) Applicability of Rule. The requirements of this rule shall apply to all civil actions except the following:

(1) Conciliation court appeals where no jury trial is demanded and conciliation court actions;

(2) Family court matters arising under Minnesota Statutes, Chapters 257, 260, 518, 518A, 518B, and 518C;

(3) Public assistance appeals under Minn. Stat. § 256.045, subd. 7;

(4) Unlawful detainer actions pursuant to Minn. Stat. §§ 566.01, et seq.;

(5) Implied consent proceedings pursuant to Minn. Stat. § 169.123;

(6) Juvenile court proceedings;

(7) Civil commitment proceedings subject to Rules 601 through 612 of these rules;

(8) Probate court proceedings;

(9) Periodic trust accountings under Rule 172.1 of these rules; and

(10) Proceedings under Minn. Stat. § 609.748 relating to harassment restraining orders.

The court may invoke the procedures of this rule in any action where not otherwise required.

(b) Procedure. During the first sixty days after filing an action, each party shall submit scheduling information on a form to be available from the court. This statement shall include any of the following applicable to the action:

(1) The status of service of the action;
(2) Whether the statement is jointly prepared;
(3) Description of case;
(4) Discovery contemplated and estimated completion date;
(5) Whether assignment to an expedited, standard, or complex track is requested;
(6) Suggestions for deadlines pursuant to subsection (c) of this Rule;
(7) The estimated trial time and a jury trial is requested or waived;
(8) Any proposals for adding additional parties;
(9) Other pertinent or unusual information that may affect the scheduling or completion of pretrial proceedings;
(10) Whether alternative dispute resolution is recommended;
(11) A proposal for establishing any of the deadlines or dates to be included in a scheduling order pursuant to subsection (c) of this rule.

After sixty days from filing, the court may enter a scheduling order following a telephone or in-court conference of the attorneys and any unrepresented parties, or may do so without hearing.

(c) Contents of Order. Within 90 days of the filing of every action, the court shall enter a scheduling order establishing a date for the completion of discovery and other pre-trial preparation, and establishing any of the following:

(1) Deadlines for joining additional parties, whether by amendment or third-party practice;
(2) Deadlines for bringing non-dispositive or dispositive motions;
(3) Deadlines or specific dates for submitting particular issues to the court for consideration;
(4) A deadline for completing any independent physical, mental or blood examination pursuant to Minn. R. Civ. P. 35;
(5) A date for a formal discovery conference pursuant to Minn. R. Civ. P. 26.06, a pretrial conference or conferences pursuant to Minn. R. Civ. P. 16, or a further scheduling conference.
(6) Deadlines for filing any pre-trial submissions, including proposed instructions, verdicts, or findings of fact, witness lists, exhibits lists, statements of the case or any similar documents;
(7) Whether the case is a jury trial, or court trial if a jury has been waived by all parties;
(8) A date for submission of a Joint Statement of the Case pursuant to Rule 116.2 of these rules; or
(9) A trial date.

(d) Amendment. A scheduling order pursuant to this rule may be amended at a pre-trial conference or upon motion for good cause shown. Except in unusual circumstances, a motion to extend deadlines under a pretrial order shall be made before the expiration of the affected time period.

Task Force Comment--1991 Adoption

This rule is new. This rule is intended to establish a uniform, mandatory practice of dealing with scheduling in every case by some court action. The rule does not

establish, however, a single means of complying with the scheduling requirement nor does it set any rigid or uniform schedules.

Although the rule allows parties to submit scheduling information separately, this information may also be submitted jointly and required to be submitted jointly. In many cases, the efficient handling of the case may be fostered by the parties meeting to discuss scheduling issues and submitting a joint statement.

The rule contemplates establishment of a separate deadline for completion of an independent medical examination because the Task Force believes that it is frequently desirable to allow such an examination to take place after the conclusion of other discovery. The rule does not create any specific schedule for independent medical examinations, but allows, and encourages, the court to consider this question separately. The timing of these examinations is best not handled by rigid schedule, but rather, by the exercise of judgment on the part of the trial judge based upon the views of the attorneys, any medical information bearing on timing and the status of other discovery, as well as the specific factors set forth in Minn. R. Civ. P. 35. The Task Force considered a new rule 136.1 expressly to exempt the use of requests for admissions pursuant to Minn. R. Civ. P. 36 from discovery completion deadlines in the ordinary case. The Task Force determined that a separate rule exempting requests for admissions from discovery deadlines in all cases was not necessary, but encourages use of extended deadlines for requests for admissions in most cases. The primary function served by these requests is not discovery, but the narrowing of issues, and their use is often most valuable at the close of discovery. *See* R. Haydock & D. Herr, Discovery Practice § 7.2 (2d ed. 1988). Because requests for admissions serve an important purpose of narrowing the issues for trial and resolving evidentiary issues relating to trial, it is often desirable to allow use of these requests after the close of other discovery.

Rule 116.2 Joint Statement of the Case

(a) Requirement. When directed to do so by the court, the attorneys for the parties must confer and execute a Joint Statement of the Case setting forth a statement of the case and listing their agreements and disagreements. The plaintiff shall initiate and schedule the meeting and shall be responsible for filing the Joint Statement of the Case within these time limits.

(b) Contents of Statement. The Joint Statement of the Case shall contain the following information to the extent applicable:

(1) a statement that all parties have been served, that the case is at issue, and that all parties have joined in the filing of the Statement of the Case.

(2) an estimated trial time.

(3) whether a jury trial is requested, and if so, by which party.

(4) counsels' opinion whether the case should be handled as an expedited, standard, or complex case (determination to be made by the court).

(5) a concise statement of the case indicating the facts that Plaintiff(s) intend to prove and the legal basis for all claims.

(6) a concise statement of the case indicating the facts that Defendant(s) intend to prove and the legal basis for all defenses and counterclaims.

(7) names and addresses of all witnesses known to the attorney or client who may be called at the trial by each party, including expert witnesses and the particular area of expertise each expert will be addressing.

(8) cases involving personal injury, a statement by each claimant, whether by complaint or counter-claim, setting forth the following:

(i) a detailed description of claimed injuries, including claims of permanent injury. If permanent injuries are claimed, the name of the doctor or doctors who will so testify;

(ii) an itemized list of special damages to date including, but not limited to, auto vehicle damage and method of proof thereof; hospital bills, x-ray charges, and other doctor and medical bills to date; loss of earnings to date fully itemized; and

(iii) whether parties will exchange medical reports (*See* Minn. R. Civ. P. 35.04).

(9) cases involving vehicle accidents, a statement setting forth the following:

(i) a description of vehicles and other instrumentalities involved with information as to ownership or other relevant facts; and

(ii) name of insurance carriers involved, if any.

If no Joint Statement of the Case has been timely filed, the court may set the matter for a hearing. At the hearing, all trial counsel must be present or represented by someone completely familiar with the case. If the court finds that any party has not proceeded with due diligence in preparing the case for trial and cooperating in efforts to meet and prepare this Memorandum, the court may impose sanctions or take action as it deems appropriate. (See Form 116.2).

Task Force Comment--1991 Adoption

This rule is new. The procedures implemented by this rule supplement the procedures of Rule 116.1.

The rule does not require that a joint statement of the case be used. The court can direct the parties to file separate statements, although the same format should be followed for such separate statements of the case.

The requirement that the parties confer to prepare a statement does not require a face-to-face meeting; the conference can be by telephone if that is suited to the needs of the particular case.

Rule 116.3 Pre-Trial Conferences

(a) Settlement Procedures. Settlement conferences are encouraged and recommended for case disposition. However, because of the diversity of approaches to be used, specific procedures are not set forth.

Attorneys will be notified of the procedures to be followed in any action where settlement conferences are to be held.

(b) Procedures to Be Followed. In those courts where a formal pre-trial conference is held prior to assignment for trial, a trial date shall be set and the conference shall cover those matters set forth in paragraphs (d) and (e) of this rule.

(c) Settlement Discussions with court. The court may request counsel to explore settlement between themselves further and, if requested by all parties, may engage in settlement discussions.

(d) Pre-trial chambers conferences. At an informal chambers conference before trial and before a panel of prospective jurors is summoned, the trial court shall:

(1) determine whether settlement possibilities have been exhausted;

(2) determine whether all pleadings have been filed;

(3) ascertain the relevance to each party of each cause of action; and,

(4) with a view to ascertaining and reducing the issues to be tried, shall inquire:

(i) whether the issues in the case may be narrowed or modified by stipulations or motions;

(ii) whether dismissal of any of the causes of actions or parties will be requested;

(iii) whether stipulations may be reached as to those facts about which there is no substantial controversy;

(iv) whether stipulations may be reached for waiver of foundation and other objections regarding exhibits, tests, or experiments;

(v) whether there are any requests for producing evidence out of order;

(vi) whether motions in limine to exclude or admit specified evidence or bar reference thereto will be requested; and

(vii) whether there are any unusual or critical legal or evidentiary issues anticipated;

(5) ask the parties to disclose the number and names of witnesses they anticipate calling, and to make good faith estimates as to the length of testimony and arguments;

(6) inquire whether the number of experts or other witnesses may be reduced;

(7) ascertain whether there may be time problems in presentation of the case, *e.g.*, because of other commitments of counsel, witnesses, or the court and advise counsel of the hours and days for trial; and

(8) ascertain whether counsel have graphic devices they want to use during opening statements; and

(9) ascertain whether a jury, if previously demanded, will be waived. If a jury is requested, the judge shall make inquiries with a view to determining:

(i) the areas of proposed voir dire interrogation to be directed to prospective jurors, and whether there is any contention that the case is one of "unusual circumstances";

(ii) the substance of a brief statement to be made by the trial court to the prospective jurors outlining the case, the contentions of the parties, and the anticipated issues to be tried;

(iii) the number of alternate jurors (it is suggested that the identity of the alternates not be disclosed to the jury); and

(iv) in multiple party cases, whether there are issues as to the number of "sides" and allocation of peremptory challenges.

(e) Formal conference. After conclusion of the informal chambers conference and any review of the court file and preliminary research the court finds advisable, a formal record shall be made of:

(1) arguments and rulings upon motions, bifurcation, and order of proof;

(2) statement of stipulations, including whether graphic devices can be used during opening statement; and

(3) in a jury trial, specification of:

(i) the brief statement the trial court proposes to make to prospective jurors outlining the case, contentions of the parties, and anticipated issues to be tried;

(ii) the areas of proposed voir dire interrogation to be directed to the prospective jurors;

(iii) whether any of the defendants have adverse interests to warrant individual peremptory challenges and number of them;

(iv) the number of alternate jurors, if any, and the method by which the alternates shall be determined;

(v) the need for any preliminary jury instructions.

Task Force Comment--1991 Adoption

Subsection (a) of this rule is derived from Trialbook ¶ 6. The deleted language is unnecessary as it merely repeats other requirements.

Subsection (b) of this rule is derived from Trialbook ¶ 7.

Subsection (c) of this rule is derived from Trialbook ¶ 8.

Subsection (d) of this rule is derived from Trialbook ¶ 9.

Subsection (e) of this rule is derived from Trialbook ¶ 10.

This rule sets forth many of the matters which can, and often should, be discussed in pretrial proceedings. The rule does not enumerate all the subjects that can be discussed or resolved in pretrial conferences or other pretrial proceedings. The

pretrial conference is intended to be a flexible device and the trial judge has considerable discretion to tailor the pretrial conference to suit the needs of an individual case. Many matters that may be useful in pretrial conferences are discussed in the Federal Judicial Center's Manual for Complex Litigation (2d ed. 1985).

Rule 117.1 Actions by Representatives--Attorneys' Fees

In actions for personal injury or death by wrongful act, brought by persons acting in a representative capacity, contracts for attorney's fees shall not be regarded as determinative of fees to be allowed by the court.

Task Force Comment--1991 Adoption

This rule is current Rule 1 of the Code of Rules for the District Court, without change.

Rule 117.2 Actions for Death by Wrongful Act

(a) Application for Appointment of Trustee. Every application for the appointment of a trustee of a claim for death by wrongful act under Minn. Stat. § 573.02, shall be made by the verified petition of the surviving spouse or one member of the next of kin of the decedent. The petition shall show the dates and places of the decedent's birth and death; the decedent's address at the time of death; the name, age and address of the decedent's surviving spouse and each next of kin; and the name, age, occupation and address of the proposed trustee. The petition shall also show whether or not any previous application has been made in any court for the appointment of a trustee for such claim, and if a previous application has been made, the facts with reference thereto and its disposition shall also be stated. The written consent of the proposed trustee to act as such shall be endorsed on or filed with such petition.

(b) Notice and Hearing. The petition for appointment of trustee will be heard upon such notice, given in such form and in such manner and upon such persons as may be determined by the court, unless waived by all next of kin or the court.

(c) Caption. The petition, any order entered thereon, and the trustee's oath, will be entitled: "In the matter of the appointment of a trustee for the next of kin of _____, Decedent."

(d) Transfer of action. If the trustee, after appointment and qualification, commences an action for death by wrongful act in a county other than that in which the trustee was appointed, a certified copy of the petition, the order entered thereon and the oath shall be filed in the court where such action be commenced, at the time the summons and complaint are filed therein, and the court file and jurisdiction over the trust will thereupon be transferred to such court.

(e) Distribution of proceeds. Application for the distribution of money recovered under Minn. Stat. § 573.02 shall be by verified petition of the trustee. Such petition shall show the amount which has been received upon action or settlement; a detailed statement of disbursements paid or incurred, if any; the amount, if any, claimed for services of the trustee and of the trustee's attorney; the amount of the funeral expenses and of demands for the support of the decedent; the name, age and address of the surviving spouse and each next of kin and the share to which each is entitled.

If an action were commenced, such petition shall be heard by the court in which the action was tried, or in the case of a settlement, by the court in which the action was pending at the time of settlement. If an action were not commenced, the petition shall be heard by the court in which the trustee was appointed. The court hearing the petition shall approve, modify, or disapprove the proposed disposition and shall specify the persons to whom the proceeds are to be paid.

The petition for distribution will be heard upon notice, given in form and manner and upon such persons as may be determined by the court, unless waived by all heirs or the court. The court by order, or by decree of distribution, will direct distribution of the money to the persons entitled thereto by law. Upon the filing of a receipt from each distributee for the amount assigned to that distributee, the trustee shall be discharged.

The foregoing procedure will, so far as can be applicable, also govern the distribution of money recovered by personal representatives under the Federal Employers' Liability Act (45 U.S.C. § 51) and under Minn. Stat. § 219.77.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 2 of the Code of Rules for the District Courts. The Task Force has amended the rule to refer to "next of kin" rather than "heirs."

The Task Force considered the advisability of amending section (e) of this rule to require the court to consider and either approve, modify, or disapprove the settlement itself, in addition to the disposition of proceeds as required under the existing rule. Although it appears that good reasons exist to change the rule in this manner, the Minnesota Supreme Court has indicated that the trial court has no jurisdiction to approve or disapprove the settlement amounts agreed upon by the parties. The court can only approve the distribution of those funds among the heirs and next of kin. *See Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 200 n.1 (Minn. 1986).

Rule 117.3 Actions on Behalf of Minors and Incompetent Persons

(a) When Petition and Order are Required. No part of the proceeds of any action or claim for personal injuries on behalf of any minor or incompetent person shall be paid to any person except under written petition to the court and written order of the court as hereinafter provided. This rule governs a claim or action brought by a parent of a minor, by a guardian ad litem or general guardian of a minor or incompetent person, or by the guardian of a dependent, neglected or delinquent child, and applies whether the proceeds of the claim or action have become fixed in amount by a settlement agreement, jury verdict or court findings, and even though the proceeds have been reduced to judgment.

(b) Contents and Filing of Petition. The petition shall be verified by the parent or guardian, shall be filed before the court makes its order, and shall include the following:

(1) The name and birth date of the minor or other incompetent person.

(2) A brief description of the nature of the claim if a complaint has not been filed.

(3) An attached affidavit or letter of a health care provider showing the nature of the injuries, the extent of recovery and the prognosis if the court has not already heard testimony covering these matters.

(4) Whether the parent, or the minor or incompetent person, has collateral sources covering any part of the principal and derivative claims, including expenses and attorneys fees, and whether subrogation rights have been asserted by any collateral source.

(c) Representation.

(1) If the attorney who presents the petition has been retained by the tortfeasor or its insurer, the attorney shall disclose to the court and to the petitioner the nature of the representation, how he or she is being paid, the frequency with which the attorney has been retained by the tortfeasor or insurer, and whether the attorney is giving legal advice to the petitioner. The petition shall not be denied by the court solely because of the petitioner's representation.

(2) The court may, at its discretion, refer the petitioner to an attorney selected by the petitioner (or by the court if petitioner requests or declines to select an attorney),

to evaluate the proposed settlement and advise the court whether the settlement is reasonable considering all relevant facts. The opinion shall be in writing, and the court shall provide a copy to the petitioner and all tortfeasors or their representative, regardless of whether a filing fee has been paid by the tortfeasor. This appointment shall be made pursuant to Minn. R. Evid. 706.

(3) The attorney accepting the referral must agree not to represent the petitioner or the minor or accept a referral fee in the event that the petition is denied by the court.

(4) For the legal opinion thus rendered to the court, the tortfeasor or the insurer shall pay a reasonable sum ordered by the court; however, the insurer or tortfeasor may be reimbursed from settlement proceeds up to one half thereof, also upon order of the court. An order for attorney's fees payment in excess of $300.00 can issue only upon a court hearing with notice to the insurer or tortfeasor and the petitioner.

(5) The opinion of the referred-to attorney shall not be binding upon the court.

(d) Hearing on the Petition. The minor or incompetent person and the petitioner shall personally appear before the court at the hearing on the petition unless their appearance is specifically waived by the court because the action has been fully or partially tried or for other good cause. The reporter shall, when ordered by the court, keep a record of the hearing. The hearing shall be ex parte unless otherwise ordered.

(e) Terms of the Order. The court's order shall:

(1) Approve, modify or disapprove the proposed settlement or disposition and specify the persons to whom the proceeds are to be paid.

(2) State the reason or reasons why the proposed disposition is approved if the court is approving a settlement for an amount which it feels is less than what the injuries and expenses, might seem to call for, *e.g.*, limited insurance coverage, dubious liability, comparative fault or other similar considerations.

(3) Determine what expenses may be paid from the proceeds of any recovery by action or settlement, including the attorney's fee. Attorney's fees will not be allowed in any amount in excess of one-third of the recovery, except on a showing that: (i) an appeal to an appellate court has been perfected and a brief by the plaintiff's attorney has been printed therein and (ii) there has been an expenditure of time and effort throughout the proceeding which is substantially disproportionate to a one-third fee. No sum will be allowed, in addition to attorney fees, to reimburse any expense incurred in paying an investigator for services and mileage, except in those circumstances where the attorney's fee is not fully compensatory or where the investigation must be conducted in any area so distant from the principal offices of the attorney so employed that expense of travel and related expense would be substantially equal to, or in excess of, usual investigating expenses.

(4) Specify what disposition shall be made of the balance of the proceeds of any recovery after payment of the expenses authorized by the court.

(i) The court may authorize investment of all or part of such balance of the proceeds in securities of the United States, or in an annuity or other form of structured settlement, including a medical assurance agreement, but otherwise shall order the balance of the proceeds deposited in one or more banks, savings and loan associations or trust companies where the deposits will be fully covered by Federal deposit insurance.

(ii) In lieu of such disposition of the proceeds, the order may provide for the filing by the petitioner of a surety bond approved by the court conditioned for payment to the ward in a manner therein to be specified of such moneys as the ward is entitled to receive, including interest which would be earned if the proceeds were invested.

(5) If part or all of the balance of the proceeds is ordered deposited in one or more financial institutions, the court's order shall direct:

(i) that the defendant pay the sum to be deposited directly to the financial institution;

(ii) that the deposit book or other deposit document be issued in the name of the minor or incompetent person;

(iii) that the deposit book (or other deposit document) be transmitted by the financial institution to the court administrator for safekeeping within 5 days after its receipt of the deposit;

(iv) that the financial institution shall not make any disbursement from the deposit except upon order of the court; and

(v) that a copy of the court's order shall be delivered to said financial institution by the petitioner with the remittance for deposit. The financial institution(s) and the type of investment therein shall be as specified Minn. Stat. § 540.08, as amended. Two or more institutions shall be used if necessary to have full Federal deposit insurance coverage of the proceeds plus future interest.

In every case, minor settlement orders shall include a provision substantially as follows:

IT IS FURTHER ORDERED that the deposit shall remain with the designated financial institution until ____date____ at which time the minor shall reach eighteen (18) years of age, and time deposits should be established with a maturity date on or before that date. On the date of majority the financial institution is hereby authorized to release the funds __(name of beneficiary)__ upon presentation of the deposit book or other deposit document that has been obtained from the court administrator, without further order of this Court.

(6) Authorize or direct the investment of proceeds of the recovery in securities of the United States only if practicable means are devised comparable to the provisions of paragraphs (4) and (5) above, to insure that funds so invested will be preserved for the benefit of the minor or incompetent person, and the original security instrument be deposited with the court administrator consistent with paragraph (5) above.

(f) Structured Settlements. If the settlement involves the purchase of an annuity or other form of structured settlement, the court shall:

(1) Determine the cost of the annuity or structured settlement to the tortfeasor by examining the proposal of the annuity company or other generating entity;

(2) Require that the company issuing the annuity or structured settlement have a financial rating equivalent to A.M. Best Co. Class A-8 or better, or that a trust making periodic payments be funded by United States Government obligations;

(3) Order that the original annuity policy be deposited with the court administrator, and the policy be returned to the owner of the policy when:

(i) The minor reaches majority;

(ii) The terms of the policy have been fully performed; or

(iii) The minor dies, whichever occurs first.

(4) In its discretion, permit the annuity company to make a "qualified assignment" within the meaning and subject to the conditions of Section 130(c) of the Internal Revenue Code;

(5) In its discretion, order that the tortfeasor or its insurer, or both of them, to guarantee the payments contracted for in the annuity or other form of structured settlement; and

(6) Provide that:

(i) The person receiving periodic payments is entitled to each periodic payment only when the payment becomes due;

(ii) That the person shall have no rights to the funding source; and

(iii) That the person cannot designate the owner of the annuity nor have any right to control or designate the method of investment of the funding medium; and

(7) Direct that the appropriate party or parties will be entitled to receive appropriate receipts, releases or a satisfaction of judgment, pursuant to the agreement of the parties.

(g) **General Guardians.** When an action is brought by a general guardian appointed and bonded by a court of competent jurisdiction, the requirements of this rule may be modified as deemed desirable by the court because of bonding or other action taken by the appointing court, except that there must be compliance with the settlement approval requirements of Section 540.08 of the Minnesota Statutes or amendments thereof.

Task Force Comment--1991 Adoption

This rule is derived from Minn. Stat. § 540.08 (1990) and existing Rule 3 of the Code of Rules for the District Courts. There are also substantial new provisions.

The Task Force considered it a thoughtful recommendation that a minor's social security number be required to be included on all minor settlement petitions. Such a requirement would make it easier to locate a minor at the time of reaching majority. The Task Force ultimately concluded, however, the privacy interests dictate that the inclusion of this number should not be mandatory. The information may nonetheless be required by the financial institution with which the funds are deposited, and many attorneys will routinely include in petitions in order to facilitate locating the minor should the need arise.

Section (b)(4) is new. It is designed to advise the court of factors to take into consideration when approving or disapproving a settlement on behalf of the minor or incompetent person.

Section (c) is new. It addresses a situation where a tortfeasor or insurer has negotiated a settlement with a minor's family or guardian, and court approval of that settlement is necessary. Oftentimes the plaintiff does not wish to incur attorney's fees to obtain that approval, so as a part of the settlement, the tortfeasor or the insurer makes the arrangements to draft and present the petition. The court needs to be satisfied that the settlement is fair. The Task Force discussed at length whether or not an attorney hired and paid by an insurer or tortfeasor should be permitted to represent the minor or incompetent person to obtain the approval of the court. It was decided that the petitioner should not be compelled to obtain counsel, and that "arranged counsel" may appear, provided that there is full disclosure to the petitioner of the interests of the insurer or tortfeasor.

Section (c)(2) is new and is designed to provide a procedure for the court to obtain advice to evaluate the reasonableness of a settlement. The court may appoint an attorney selected by the petitioner or the court may designate an attorney of its own choice. In either case, where a referral is made under this section, the attorney accepting the referral may not represent the petitioner to pursue the claim, should the petition be denied by the court. Section (c)(4) provides that the cost of the consultation provided for in section (c)(2) shall be born equally by the petitioner and the tortfeasor or insurer.

Finally, section (c)(4) provides that any opinions rendered by a selected attorney on behalf of the minor or incompetent person are advisory only.

Section (e)(4) expands the types of investments that may be used in managing the settlement proceeds while retaining the requirements of security of investment. It incorporates Minn. Stat. § 540.08 (1990) regarding structured settlements, and it allows that settlements may include a medical assurance agreement. A medical assurance agreement is a contract whereby future medical expenses of an undetermined amount will be paid by a designated person or entity.

Section (f) is new. It establishes criteria for approval of structured settlements, and it requires the court to determine the cost of the annuity to insure that the periodic payments reflect a cost comparable to a reasonable settlement amount. Where a minor or incompetent receives a verdict representing future damages greater than $100,000.00 and the guardian determines that a structured settlement pursuant to Minn. Stat. § 549.25 (1990) would be in the best interests of the minor or incompetent person, this rule shall apply to the implementation of the election pursuant to the statute.

Rule 117.4 Guardian Ad Litem

(a) Role of Guardian. Whenever the court appoints a guardian ad litem, the guardian ad litem shall be furnished copies of all pleadings, documents and reports by the party or agency which served or submitted them. A party or agency submitting, providing or serving reports and documents to or on a party or the court, shall provide copies promptly thereafter to the guardian ad litem.

Upon motion, the court may extend the guardian ad litem's powers as it deems necessary. Except upon a showing of exigent circumstances, the guardian ad litem shall submit any recommendations, in writing, to the parties and to the court at least 10 days prior to any hearing at which such recommendations shall be made. For purposes of all oral communications between a guardian ad litem and the court, the guardian ad litem shall be treated as a party.

(b) Guardian Not Attorney for Any Party. The guardian ad litem shall not be an attorney for any party to the action.

Task Force Comment--1991 Adoption

This rule supplements Minn. R. Civ. P. 17.02.

The rule requires all discussions with a guardian ad litem regarding a case to be made as if the guardian ad litem were a party. It does not prohibit general discussions or briefing of guardians ad litem or potential guardians ad litem from taking place ex parte.

In personal injury actions, neither the lawyer nor any member of the lawyer's firm should be guardian. For the same reason, such a lawyer should not accept a referral fee with respect to the guardianship.

Rule 139.1 Preliminary Instructions

After the jury is sworn, but before opening statements, the judge shall instruct the jurors generally as follows:

(1) to refrain from communicating in writing or by other means about the case, to use the jury room rather than remaining in the courtroom or hallway, and to avoid approaching, or conversations with counsel, litigants, or witnesses, and that they must not discuss the case, or any aspect of it among themselves or with other persons;

(2) that if a juror has a question or communication for the court (*e.g.*, as regards time scheduling), it should be taken up with, or transmitted through, the appropriate court personnel who is in charge of the jurors as to their physical facilities and supplies;

(3) that the jurors will be supplied with note pads and pencils, on request, and that they may only take notes on the subject of the case for their personal use, though they may bring such notes with them into the jury room once they commence deliberations in the case. The jury should receive a cautionary instruction that they are to rely primarily on their collective recollection of what they saw and heard in the courtroom and that extensive note taking may distract them from properly fulfilling this function;

(4) as to law which the judge determines to be appropriate; and

(5) that, as with other statements of counsel, the opening statement is not evidence but only an outline of what counsel expect to prove.

Upon submission of the case to the jury, the judge shall instruct the jury that they shall converse among themselves about the case only in the jury room and only after the entire jury has assembled.

Task Force Comment--1991 Adoption

This rule was derived from Trialbook ¶ 16, without significant change.

Rule 139.2 Opening Statement and Arguments

(a) Scope of Opening. Counsel on each side, in opening the case to the jury, shall only state the facts proposed to be proven. During opening statement counsel may use a blackboard or paper for illustration only. There shall be no display to the jury of, nor reference to, any chart, graph, map, picture, model or any other graphic device unless, outside the presence of the jurors:

(1) it has been admitted into evidence; or

(2) such display or reference has been stipulated to; or

(3) leave of court for such reference or display has been obtained.

(b) Final Arguments. Final arguments to the jury shall not misstate the evidence. During final argument counsel may use a blackboard or paper for illustration only. A graphic device, such as a chart, summary or model, which is to be used for illustration only in argument shall be prepared and shown to opposing counsel before commencement of the argument. Upon request by opposing counsel, it shall remain available for reference and be marked for identification.

(c) Reporting. Opening statements and final arguments shall be reported.

(d) Objections. Objections to remarks by counsel either in the opening statement to the jury or in the closing argument shall be made while such statement or argument is in progress or at the close of the statement or argument. Any objection shall be argued outside the juror's hearing. If the court is uncertain whether there has been a misstatement of the evidence in final argument, the jurors shall be instructed to rely on their own recollections.

Task Force Comment--1991 Adoption

Subsection (a) is derived from existing Rule 27(a) and Trialbook ¶ 17.

Subsection (b) is derived from Trialbook ¶¶ 30 and 44.

Subsection (c) is new.

Subsection (d) is derived from existing Rule 27(f) and Trialbook ¶ 31.

The practice of various courts in reporting opening statements and final arguments has not been uniform. The Task Force strongly recommends that the rules provide for reporting of all opening statements and final arguments so that these portions of the trial proceedings are available for transcription. Most judges now follow this practice. In some cases, parties exercising their right to make a record of these trial proceedings have been presented with bills from the official court reporter for this service. In the absence of an order for a transcript, the Task Force believes no extra charges should properly be made for the mere making of a record of what transpires in the trial court.

Rule 140.1 Notice of Settlement

When any action in which any pleading or other paper has been filed is settled, counsel shall immediately advise the appropriate assignment office, and shall also advise the office of the judge assigned to the case or then assigned to hear any matter relating to the case.

Task Force Comment--1991 Adoption

This rule is based on 2d Dist. R.9(a). Other districts have similar rules. This new rule, derived from current local rule provisions, makes explicit what courts now expect and which common courtesy requires.

Rule 140.2 Continuance

If a trial setting has been established by scheduling order after hearing the parties, the court shall decline to consider requests for continuance except those made by motion. A single request for a reasonable continuance of a trial setting set by notice without hearing should be granted by the court upon agreement of all parties, provided that the request is made within 20 days after notice of the setting to the parties. All other requests for continuance shall be made by motion with notice to all parties.

Task Force Comment--1991 Adoption

This rule reflects the result of extensive discussions by the Task Force. This rule is intended to create a uniform continuance practice statewide, consistent with the widely differing assignment practices. The rule creates a presumptive right to one continuance only in cases where a trial setting is made mechanically and without consultation of the parties and their attorneys and then only if all parties agree. If the setting has been made after hearing parties, there would be no presumed continuance. In any case, the court can deny requests for continuance.

Rule 143.1 Availability of Witnesses

(a) Exchange of Information as to Future Scheduling. In order to facilitate efficient scheduling of future witnesses and court time, all parties shall communicate with one another and exchange good faith estimates as to the length of witness examinations together with any other information pertinent to trial scheduling.

(b) "On-Call" Witnesses. It is the responsibility of an "on-call" witness proponent to have the witness present in court when needed.

(c) Completion of Witness' Testimony. Except with the court's approval, a witness' testimony shall be pursued to its conclusion and not interrupted by the taking of other evidence.

Upon the conclusion of a witness's testimony the court should inquire of all counsel whether the witness may be excused from further attendance and if affirmative responses are given, the court may then excuse the witness.

(d) Excluding Witnesses. Exclusion of witnesses shall be in accordance with Rule 615, Minnesota Rules of Evidence.

(e) Issuance of Warrants. A warrant for arrest or body attachment for failure of a witness to attend shall not be released for service unless it is shown by the applicant party, in a hearing outside the presence of jurors, that (1) service of the process compelling attendance was made at a time providing the witness with reasonable notice and opportunity to respond, and (2) no reasonable excuse exists for the failure to attend or, if the reason for the failure to attend is unknown to the applicant party, due diligence was used in attempting to communicate with such witness to ascertain the reason for the failure to attend.

Task Force Comment--1991 Adoption

Subsection (a) is derived from Trialbook ¶ 54.
Subsection (b) is derived from Trialbook ¶ 55.
Subsection (c) is derived from Trialbook ¶ 56.
Subsection (d) is derived from Trialbook ¶ 57, with significant change.
Subsection (e) is derived from Trialbook ¶ 61.

Subsection (d) now simply makes it clear that Minn. R. Evid. 615 governs the sequestration of witnesses. The existing provision of Trialbook ¶ 57 appears to be inconsistent with the Rules of Evidence, and should be superseded.

Rule 143.2 Examination of Witnesses

(a) Examination from Counsel Table. The lawyers shall be seated or stand at the counsel table while examining witnesses, except when identifying or examining exhibits, or when other circumstances require a modification of the procedure. If the court permits, counsel may use a standing or table top lectern.

(b) Objections. Lawyers shall state objections succinctly, stating only the specific legal grounds for the objection without argument. Argument, if allowed by the court, and any offer of proof shall be made outside of the hearing of the jury and on the record.

(c) Caution to Witnesses. Before taking the stand and outside of the hearing of the jury, a witness called by counsel shall be cautioned by such counsel to be responsive to the questions and to wait in answering until a question is completed and a ruling made on any objection. Lawyers should advise their clients and witnesses of the formalities of court appearances.

Counsel shall not caution a witness while on the stand as to the manner of answering questions but may request the court to do so.

(d) Questions Not to be Interrupted. A question shall not be interrupted by objection unless then patently objectionable.

(e) Effect of Asking Another Question. An examiner shall not repeat the witness' answer to the prior question before asking another question.

An examiner shall wait until the witness has completed answering before asking another question. If a question is asked before the preceding question of the same examiner is answered or any objection is ruled upon, it shall be deemed a withdrawal of the earlier question.

(f) Number of Examinations. On the trial of actions only one counsel on each side shall examine or cross-examine a witness, and one counsel only on each side shall sum up the case to the jury, unless the judge otherwise orders.

(g) Counsel's Use of Graphic Devices. Counsel may use a graphic device to diagram, calculate, or outline chronology from witnesses' testimony.

(h) Familiarity with witnesses, jurors and opposing counsel. Lawyers and judges shall not exhibit undue familiarity with adult witnesses, parties, jurors or opposing counsel, or each other and the use of first names shall be avoided. In arguments to the jury, no juror shall be singled out and addressed individually. When addressing the jury, the lawyers shall first address the court, who shall recognize the lawyer.

(i) Matters to be Out of Jury's Hearing. The following matters shall be held outside the hearing of jurors. Counsel wishing to argue such matters shall request leave from the court. The first time this request is granted in a trial, the judge shall advise the jurors that matters of law are for the court rather than the jury and that discussions as to law outside the jurors' hearing are necessary and proper for counsel to request.

(1) Arguments: Evidentiary arguments and offers of proof as provided for in subsection (c) of this rule;

(2) Offers to Stipulate: Counsel shall not confer about stipulations within possible jury hearing, or without leave of the court;

(3) Requests for Objects: Other than requests to a witness during testimony, requests by a party to opposing counsel for objects or information purportedly in the possession of the opposing counsel or party shall be made outside the hearing of jurors;

(4) Motions: Motions for judgments on the pleadings, to exclude evidence, directed verdict, and mistrial shall be made and argued outside the hearing of the jurors. If the ruling affects the issues to be tried by the jury, the court, after consulting with counsel, shall advise the jurors. Immediately upon granting a motion to strike any

evidence or arguments to the jury, the court shall instruct the jury to disregard the matter stricken; and

(5) Sensitive Areas of Inquiry: Areas of inquiry reasonably anticipated to be inflammatory, highly prejudicial, or inadmissible, shall be brought to the attention of opposing counsel and the court outside the hearing of jurors before inquiry. A question of a witness shall be framed to avoid the suggestion of any inadmissible matter.

(j) Questioning by Judge. The judge shall not examine a witness until the parties have completed their questions of such witness and then only for the purpose of clarifying the evidence. When the judge finishes questioning, all parties shall have the opportunity to examine the matters touched upon by the judge. If an attorney wants to object to a question posed by the court, he or she shall make an objection on the record outside the presence of the jury. The attorney shall make a "motion to strike" and ask for a curative instruction.

(k) Advice of Court as to Self-Incrimination. Whenever there is a likelihood of self-incrimination by a witness, the court shall advise the witness outside the hearing of the jurors of the privilege against self-incrimination.

(l) Policy Against Indication as to Testimony. Persons in the courtroom shall not indicate by facial expression, shaking of the head, gesturing, shouts or other conduct disagreement or approval of testimony or other evidence being given, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them.

(m) Policy on Approaching the Bench. Except with approval of the court, persons in the courtroom shall not traverse the area between the bench and counsel table, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them.

(n) Use of Depositions and Interrogatories. A party, before reading into evidence from depositions or interrogatories, shall cite page and line numbers to be read, and pause briefly for review by opposing counsel and the court and for any objections. The court may require designation of portions of depositions to be used at trial in a pretrial order.

Task Force Comment--1991 Adoption

Subsections (a)-(e) are derived from ¶¶ 48-53 of the Trialbook, in order.
Subsection (f) is derived from existing Rule 27(d) of the Code of Rules.
Subsection (g) is derived from ¶ 59 of the Trialbook.
Subsection (h) is derived from ¶ 58 of the Trialbook.
Subsection (i) is derived from ¶ 18 of the Trialbook
Subsections (j)-(m) are derived from ¶¶ 62-65 of the Trialbook, In order.
Subsection (n) is derived from Trialbook, ¶ 22.

Rule 143.3 Exhibits

(a) Pre-Trial Exchange of Lists of Exhibits. Each party shall prepare a list of exhibits to be offered in evidence, and exchange copies of such lists with other counsel prior to the pre-trial conference. Such lists shall briefly describe each exhibit anticipated to be offered in evidence. Prior to the commencement of trial, copies of all documents on the list of exhibits shall be made available by the proponent for examination and copying by any other party.

(b) Counsel to Organize Numerous Exhibits. If it can reasonably be anticipated that numerous exhibits will be offered in a trial, all counsel shall meet with designated court personnel shortly prior to or during a recess of the trial for the purpose of organizing and marking the exhibits.

All exhibits shall be marked for identification before any reference by counsel or by a witness.

(c) Marking of Exhibits First Disclosed During Trial. When an exhibit is first disclosed during the course of trial, the proponent shall have it marked for identification before referring to it.

(d) Uniform Methods of Marking Exhibits. Exhibits proposed by any party shall be marked in a single series of arabic numbers, without designation of the party offering each exhibit. Exhibit numbers may be consecutive or may be pre-assigned in blocks to each party.

(e) Collections of Similar and Related or Integrated Documents. Each collection of similar and related or integrated documents shall be marked with a single designation. If reference is made to a specific document or page in such collection, it shall be marked with a letter the arabic exhibit number assigned to the collection, *e.g.*, "1-a," "21-b," "2-g," etc.

(f) Oral Identification of Exhibits at First Reference. Upon first reference to an exhibit the proponent shall briefly refer to its general nature, without describing the contents.

(g) When Exhibits to be Given to Jurors. Exhibits admitted into evidence, subject to cursory examination, such as photographs and some other demonstrative evidence, may be handed to jurors only after leave is obtained from the court.

Other exhibits admitted into evidence, not subject to cursory examination, such as writings, shall not be handed to jurors until they retire to the jury room upon the cause being submitted to them. If a party contends that an exhibit not subject to cursory examination is critical and should be handed to jurors in the jury box during the course of the trial, counsel shall request leave from the court. Such party shall be prepared to furnish sufficient copies of the exhibit, if reasonably practicable, for all jurors in the event such leave is granted; and upon concluding their examination, the jurors should return the copies to the bailiff. In lieu of copies, and if reasonably practicable, enlargements or projections of such exhibits may be utilized. The court may permit counsel to read short exhibits or portions of exhibits to the jury.

(h) Exhibits Admitted in Part. If an exhibit admitted into evidence contains some inadmissible matter, *e.g.*, a reference to insurance, excluded hearsay, opinion or other evidence lacking foundation, the court, outside the hearing of the jury, shall specify the excluded matter and withhold delivery of such exhibit to the jurors unless and until the inadmissible matter is physically deleted.

Such redaction may be accomplished by photocopying or other copying which deletes the inadmissible portions, and in such event, the proponent of such exhibit shall prepare and furnish a copy.

If redaction by such copying is not accomplished, the parties shall seek to reach a stipulation as to other means; and failing so to do, the admissible matter may be read into evidence with leave of the court.

(i) Evidence Admitted for a Limited Purpose. When evidence is received for a limited purpose or against less than all other parties, the court shall so instruct the jury at the time of admission and, if requested by counsel, during final instructions.

Task Force Comment--1991 Adoption

Subsection (a) is derived from Trialbook ¶ 37.
Subsection (b) is derived from Trialbook ¶ 38.
Subsection (c) is derived from Trialbook ¶ 39.
Subsection (d) is derived, with change, from Trialbook ¶ 40.
Subsection (e) is derived from Trialbook ¶ 41.
Subsection (f) is derived from Trialbook ¶ 42.
Subsection (g) is derived from Trialbook ¶ 19.
Subsection (h) is derived from Trialbook ¶ 20.
Subsection (i) is derived from Trialbook ¶ 21.

The change made in subsection (d) expands on the uniformity attempted in the Trialbook. This new rule requires a uniform method of marking exhibits, without the cumbersome prefixes that are frequently now encountered. The Task Force believes that a uniform numbering system will benefit the courts and litigants. The new system will permit exhibits to be used without labeling to show "ownership" or "lineage" of the exhibit. This system will also facilitate numbering of exhibits in multi-party cases, where the current practice creates complicated numbers at trial and burdensome citations on appeal. Attorneys and judges with experience in using

this system believe it works fairly, predictably, and efficiently. The rule permits flexibility in assignment of exhibit numbers, allowing them to be issued seriatim at trial or in blocks of numbers assigned to each party prior to trial.

The provisions of subsection (g) are not intended to limit in any way the discretion of the trial court as to what evidence is allowed to go to the jury room. Any evidence that is fragile, perishable, or hazardous may properly not be allowed into the jury deliberation room.

Rule 143.4 Custody of Exhibits

(a) Return of Exhibits to Court Personnel. Immediately after conclusion of the examination of a witness regarding an exhibit shown to a witness, counsel shall return it to the court personnel.

(b) Exhibits after Trial. Upon the completion of trial, the administrator shall index and retain all exhibits until the case is finally disposed of and all times for appeal have expired and they are either retrieved by the party offering them or destroyed pursuant to subsection (c) of this rule. In the event an appeal is taken, the court administrator shall deliver the exhibits to the Clerk of Appellate Courts in accordance with the procedures of the appellate courts.

(c) Retrieval or Destruction of Exhibits. It shall be the duty of the attorney or party offering exhibits in evidence to remove all exhibits from the custody of the court upon final disposition of a case. Failure to do so within 15 days of being notified to do so will be deemed authorization to destroy such exhibits.

(d) Bulky Exhibits. Any time after trial and upon the agreement of all parties, the court administrator may arrange the return of bulky exhibits to the party offering them at trial.

Task Force Comment--1991 Adoption

Subsection (a) is derived from Trialbook ¶ 43.

Subsection (b) is new, although the subject is covered in a number of current rules.

Subsection (c) is derived from 2d Dist. R. 11, with changes.

Rule 143.5 Sealing and Handling of Confidential Exhibits

Briefs, depositions, and other documents or an exhibit such as a trade secret, formula or model shall be treated as confidential if all parties stipulate to that effect or if good cause is shown for such treatment.

If size permits, such an exhibit shall be placed in a sealed envelope clearly labeled as follows:

> "This envelope contains Exhibits _____ which are confidential and sealed by order of the court. This envelope shall not be opened, nor the contents hereof revealed, except by prior order of the court."

Such an envelope and other confidential exhibits shall be kept in a locked container such as a file cabinet or some other secure location under the supervision of the administration until released by order of the court.

If testimony is taken which would reveal the substance of confidential exhibits, the courtroom shall be cleared of all persons other than parties, their attorneys, and court personnel. Those present, including jurors, shall be enjoined by the court from disclosing the substance of the confidential exhibits.

The pertinent portions of the reporter's notes or transcript shall be kept in a locked container after being placed in a sealed envelope clearly labeled as follows:

> "This envelope contains confidential references sealed by order of the court. This envelope shall not be opened, nor the contents hereof revealed, except by prior order of the court."

Briefs and other papers submitted in or after trial ordinarily should not describe the substance of confidential exhibits but should refer to them only by number or letter designation pursuant to the uniform method of marking exhibits.

Task Force Comment--1991 Adoption

Subsection (a) is derived from Trialbook ¶ 47.

Rule 143.6 Interpreters

The party calling a witness for whom an interpreter is required shall advise the court in advance of the need for an interpreter. Parties shall not use a relative or friend as an interpreter in a contested proceeding, except as approved by the court.

Task Force Comment--1991 Adoption

This rule is derived from Trialbook ¶ 60.

Rule 147.1 Voir Dire of Jurors

(a) Swearing Jurors to Answer. The entire panel shall be sworn by the clerk to truthfully answer the voir dire questions put to them. The clerk shall then draw the names of the necessary persons who shall take their appropriate seats in the jury box.

(b) Statement of the Case To and Examination of Prospective Jurors. The court shall make a brief statement to the prospective jurors introducing the counsel and parties and outlining the case, contentions of the parties, and anticipated issues to be tried and may then permit the parties or their attorneys to conduct voir dire or may itself do so. In the latter event, the court shall permit the parties or their attorneys to supplement the voir dire by such further nonrepetitive inquiry as it deems proper.

(c) Challenges for Cause. A challenge for cause may be made at any time during voir dire by any party or at the close of voir dire by all parties.

(d) Peremptory Challenges. Each adverse party shall be entitled to two peremptory challenges, which shall be made alternately beginning with the defendant. The parties to the action shall be deemed two, plaintiffs being one party, defendants the other. If the court finds that two or more defendants have adverse interests, the court shall allow each adverse defendant additional peremptory challenges. When there are multiple adverse parties, the court shall determine the order of exercising peremptory challenges.

(e) Voir Dire of Replacements. When a prospective juror is excused, the replacement shall be asked by the court:

(1) whether he or she heard and understood the brief statement of the case previously made by the judge;

(2) whether he or she heard and understood the questions;

(3) whether, other than to personal matters such as prior jury service, area of residence, employment, and family, the replacement's answers would be different from the previous answers in any substantial respect.

If the replacement answers in the affirmative to (3) above, the court shall inquire further as to those differing answers and counsel may make such supplemental examination as the court deems proper.

(f) Alternates. In any trial the court may allow alternate jurors to be seated. The alternate or alternates shall be the last juror or jurors seated. Any alternates shall be excused before the jury retires to deliberate and shall not participate in deliberations unless all parties agree on the record or in writing to have alternates participate in deliberations.

(g) Cases in Which Insurance Company Interested in Defense or Outcome of Action. In all civil jury cases, in which an insurance company or companies are not parties, but are interested in the defense or outcome of the action, the presiding judge shall, upon the request of any party, be advised of the name of such company or companies, out of the hearing of the

jury, as well as the name of the local agent of such companies. When so disclosed, no inquiry shall be permitted by counsel as to such names in the hearing of the jury, nor shall disclosure be made to the jury that such insurance company is interested in the action.

During examination of the jurors by the court, the jurors shall, upon request of any party, be asked collectively whether any of them have any interest as policyholders, stockholders, officers, agents or otherwise in the insurance company or companies interested in the defense or outcome of the action, but such question shall not be repeated to each individual juror. If none of the jurors indicate any such interest in the company or companies involved, then no further inquiry shall be permitted with reference thereto.

If any of the jurors manifest an interest in any of the companies involved, then the court shall further inquire of such juror or jurors as to any interest in such company, including any relationship or connection with the local agent of such interested company, to determine whether such interests or relationship disqualifies such juror.

Task Force Comment--1991 Adoption

Subsections (a), (b), (d), and (f) are derived from Trialbook ¶ 11-15.

Subsection (g) is derived from existing Rule 31 of the Code of Rules for the District Courts. The rule is modified to specify that the court conducts the examination of potential jurors about their possible involvement with any interested insurers, thereby allowing the subject to be covered without the potential for introducing prejudice, rather than revealing it. The court should exercise its discretion to make certain that any affirmative answers to the court's questions be fully explored. *See Hunt v. Regents of Univ. of Minn.*, 460 N.W.2d 28, 33-34 (Minn. 1990).

Subsection (c) is derived from the analogous provision of the rules of criminal procedure, Minn. R. Crim. P. 26.02(3)(a)(4). The present rule provisions relating to jury selection are spread among numerous different sets of rules. The civil rules have not heretofore specified a time for exercise of peremptory challenges. Some judges ask a party conducting voir dire examination before the conclusion of the jury selection process to "pass the jury for cause." This rule will make it clear that challenges for cause can be made at any time, even after voir dire by other parties.

Commentators have criticized the rules governing jury selection as being "not particularly accessible." *See* Shapiro & La Bissonniere, Voir Dire in Civil Actions: Rules and Procedures, Minn. Trial Law., Fall 1989, at 9. Minn. R. Civ. P. 47.01 and this new Rule 147.1 will now provide the necessary information in more readily accessible format.

Although the rule provides for administration of oaths to jurors, an affirmation should be used as to any juror or panel member preferring it.

Rule 149.1 Special Verdicts

(a) Special Verdict Forms. A party requesting a special verdict form should prepare the proposed form and submit it to the court and serve it upon the other counsel prior to the chambers conference referred to in Rule 151.1 of these rules.

(b) Filing. Proposed special verdict forms shall be filed and made part of the record in the case.

(c) Copies of Verdict. The court may provide copies of the verdict form to the jury or to each juror for use during arguments or instruction.

Task Force Comment--1991 Adoption

Subsection (a) is derived from Trialbook ¶ 33.

Subsection (b) is new.

Subsection (c) is new. The Task Force believes that it may be useful in some cases to allow the jury to have a copy or copies to be used during arguments of

counsel or instructions by the court. It is not wise to permit multiple copies of the verdict form to be taken into the jury room, however.

Rule 149.2 Questions by Jurors

If the jury has a question regarding the case during deliberations, the court shall instruct the foreperson to reduce it to writing and submit it through appropriate court personnel. Upon receipt of such a written question, the court shall review the propriety of an answer with counsel, unless counsel have waived the right to participate. Such review may be in person or by telephone, and shall be on the record outside the hearing of the jury. The written question and answer shall be made a part of the record. The answer shall be given in open court, absent a stipulation to the contrary.

Task Force Comment--1991 Adoption

This rule is derived from Trialbook ¶ 34.

Rule 149.3 Polling and Discharge

(a) Polling the Jury. Upon the return of any verdict and at the request of a party the jury shall be polled. Polling shall be conducted by the trial court or by the clerk at the trial court's direction by asking each juror: "Is the verdict read your verdict?"

(b) Discharge of the Jury. In discharging the jury, the court shall:

(1) Thank the jury for their service;

(2) Not comment on the propriety of any verdict or failure to reach same;

(3) Advise the jurors that they may, but need not, speak with anyone about the case; and

(4) Specify where and when any jurors are to return for further service.

Task Force Comment--1991 Adoption

Subsection (a) is derived from Trialbook ¶ 35.

Subsection (b) is derived from Trialbook ¶ 36.

Rule 151.1 Instructions

(a) When Jury Instructions to be Submitted. Jury instructions shall be submitted in accordance with Minnesota Rules of Civil Procedure, Rule 51. Written requests for instructions shall list authorities.

(b) Conference Regarding Instructions and Verdicts. Before final argument and after submission to the court of all proposed jury instructions and verdict forms, a conference shall be held outside the presence of jurors.

A reporter is not required at the beginning of the conference while the court reviews with counsel any proposed instructions or verdict forms and discusses:

(1) whether any proposed instructions or verdict forms are inappropriate and will be voluntarily withdrawn;

(2) whether there is any omission of instructions or verdict forms which are appropriate and shall be offered and given without objection; and

(3) whether there is any other modification of instructions or verdict forms to which the parties will stipulate.

Thereafter, the conference shall be reported and the court shall:

(1) specify those instructions and verdict forms the court proposes to give, refuse, or modify, whether at the request of a party or on its own initiative;

(2) hear formal argument, and rule upon any objections to, and offers of, the proposed instruction and verdict forms.

(c) Specifying Disposition of Instructions. Upon determining the instructions to be given, refused, or modified, the court shall indicate the disposition and sign or initial them.

(d) Stipulations Regarding Further Procedure. At a conference prior to the submission of the case to the jury, the court may request that the parties consider stipulating:

(1) that in the absence of any counsel the court may, upon request of the jury, read to the jury any and all instructions previously given;

(2) that in the absence of the court after the original submission of the case to the jury, any judge of the court may act in the court's place up to and including the time of dismissal of the jury;

(3) that a stay of entry of judgment for an agreed upon number of days shall be granted after a verdict;

(4) that a sealed verdict may be returned; and

(5) that the presence of the clerk and reporter, the right to poll the jury, and the right to have the verdict immediately recorded and filed in open court are waived.

(e) Changing Jury Instructions. If, after the chambers conference and at any time before giving the instructions and verdict form to the jurors, the court determines to make any substantive change the court shall so advise all parties outside the hearing of jurors. If the court determines to make a substantive change after final argument, the court shall permit additional final argument. The court shall also make a statement on the record regarding any changes.

(f) Use of Jury Instructions in Jury Room. Jury instructions may be sent to the jury room for use by the jurors if the court so directs. The number, title, citation of authority, and history shall be removed from each instruction. Stricken portions shall be totally obliterated and any additions shall be completely legible.

Task Force Comment--1991 Adoption

Subsection (a) is derived from Trialbook ¶ 24.
Subsection (b) is derived from Trialbook ¶ 25.
Subsection (c) is derived from Trialbook ¶ 26.
Subsection (d) is derived from Trialbook ¶ 27.
Subsection (e) is derived from Trialbook ¶ 28
Subsection (f) is derived from Trialbook ¶ 32.

Rule 154.1 Expert Witness Fees

On affidavit showing that a fee equalling or exceeding that has been billed, the court administrator may tax $300.00 per day for an expert witness fee as a disbursement in a civil case, subject to increase or decrease by a judge on appeal. The amount allowed shall be in such amount as is deemed reasonable for such services in the community where the trial occurred and in the field of endeavor in which the witness has qualified as an expert. No allowance shall be made for preparation or in conducting of experiments outside the courtroom by an expert.

Task Force Comment--1991 Adoption

This rule is derived from Rule 11 of the Code of Rules for the District Courts.

Rule 155.1 Default Hearings

(a) Scheduling Hearings. Default hearings are scheduled as motions, and a date and time for default hearings can be obtained from the court administrator or a designated motion assignment deputy.

(b) Proof of Claim. A party entitled to judgment by default shall move the court for judgment in that party's favor, setting forth by affidavit the facts which entitle that party to relief. Either the party or the party's attorney may make the affidavit, which may include reliable hearsay.

Should it appear to the court that the moving party is entitled to judgment based upon the affidavits submitted, and that oral testimony is unnecessary, the court may order judgment by default in favor of such party.

Task Force Comment--1991 Adoption

The procedure for scheduling a hearing on a default is the same as that under Rule 107.1(b) for scheduling motion hearings.

Rule 158.1 Automatic Stay

Unless otherwise ordered, the court administrator shall enter an automatic 30-day stay of entry of judgment upon the receipt of any jury verdict.

Task Force Comment--1991 Adoption

This rule is derived from 7th Dist. R. 11, and is similar to the local rules in other districts.

This rule reflects a common practice in the trial courts, even in those districts that do not have a specific rule requiring a stay. The Task Force believes it is a desirable to make this practice both uniform and explicit. The stay allows parties to file post-trial motions and to perfect an appeal without entry of judgment or formal collection efforts. At the end of the 30-day period, stay is governed by Minn. R. Civ. P. 62.03 and the supersedeas bond requirements of the Minnesota Rules of Civil Appellate Procedure.

Rule 158.2 Judgment--Entry by Adverse Party

When a party is entitled to have judgment entered in that party's favor upon the verdict of a jury, report of a referee, or decision or finding of the court, and neglects to enter the same for 10 days after the rendition of the verdict or notice of the filing of the report, decision or finding; or after the expiration a stay, the opposite party may cause judgment to be entered on five days' notice to the party entitled thereto.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 17 of the Code of Rules for the District Courts.

Rule 160.1 Pleadings

(a) Requirement of Affidavit of Merits. Any application for leave to answer or reply after the time limited by statute or rule, or to open a judgment and for leave to answer and defend, shall be accompanied by a copy of the answer or reply, and an affidavit of merits and be served on the opposite party.

(b) Contents of Required Affidavits. In an affidavit of merits made by the party, the affiant shall state with particularity the facts relied upon as a defense or claim for relief, that the affiant has fully and fairly stated the facts in the case to counsel, and that the affiant has a good and substantial defense or claim for relief on the merits, as the affiant is advised by counsel after such statement and believes true, and the affiant shall also give the name and address of such counsel.

An affidavit shall also be made by an attorney who shall state that from the showing of the facts made by the party to the attorney believes that such party has a good and substantial defense or claim for relief on the merits.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 22 of the Code of Rules for the District Courts.

Rule 163.1 Hearing on Motion to Remove Judge for Actual Prejudice or Bias

All motions for removal of a judge, referee, or judicial officer, on the basis of actual prejudice or bias shall be heard in the first instance by the judge sought to be removed. If that judge denies the motion, it may subsequently be heard and reconsidered by the Chief Judge of the district or another judge designated by the Chief Judge.

Task Force Comment--1991 Adoption

The procedure and time limits are derived from the requirements of Rule 63.03 of the Minnesota Rules of Civil Procedure for removing a judge by notice to remove. The Task Force believes it is desirable to use the same procedures, time limits, and time calculation rules for these different types of removal.

The rules do not currently specify the procedure to be followed when a motion is made pursuant to Minn. R. Civ. P. 63.02 to remove a judge from hearing a case on the grounds of actual bias or prejudice. This rule requires the motion to be heard initially by the judge sought to be removed, and allows the chief judge of the district to reconsider the motion if it is denied by the affected trial judge. The rule does not require the party seeking removal to bring the motion for reconsideration before the chief judge; it merely permits that reconsideration. Bringing the motion for reconsideration should not be construed as any condition precedent to appellate review, whether by appeal or extraordinary writ.

The rule intentionally allows a motion for reconsideration only if the trial court denies the motion for removal. If the motion is granted, it should only be addressed further on appeal.

The procedure for review by the chief judge of the district is not entirely satisfactory. Consideration should be given to facilitating appeal of these issues to the appellate courts, but the Task Force did not directly address this question because of the current limited jurisdiction of the appellate courts to hear appeals of decisions by judges declining to recuse themselves.

Rule 163.2 Procedure for Challenge for Having a Referee Hear a Matter

Any party objecting to having any referee hear a contested trial, hearing, motion or petition shall serve and file the objection within ten days of notice of the assignment of a referee to hear any aspect of the case, but not later than the commencement of any hearing before a referee.

Task Force Comment--1991 Adoption

This rule serves to comply with the requirements of Minn. Stat. § 484.70, subd. 6 (1990), which provides:

> No referee may hear a contested trial, hearing, motion or petition if a party or attorney for a party objects in writing to the assignment of the referee to hear the matter. The court shall, by rule, specify the time within which an objection must be filed.

This rule is intended to specify the procedure for filing this notice. The procedure and time limits are derived from the requirements of Rule 63.03 of the Minnesota Rules of Civil Procedure for removing a judge by notice to remove. The Task Force believes it is desirable to use the same procedures, time limits, and time calculation rules for these different types of removal.

This rule should apply to all referee assignments with the exception of referees assigned in Housing Court in Ramsey and Hennepin Counties. These courts are governed by Rule 702 of these rules.

Rule 164.1 Garnishments and Attachments--Bonds to Release--Entry of Judgment Against Garnishee

(a) Bond. Garnishments or attachments shall not be discharged through a personal bond under Minn. Stat. § 571.61, without one day's written notice of the application therefor to the adverse party; but if a surety company's bond is given, notice shall not be required.

(b) Requirement of Notice. Judgment against a garnishee shall be entered only upon notice to the garnishee and the defendant, if known to be within the jurisdiction of the court, showing the date and amount of the judgment against the defendant, and the amount for which plaintiff proposes to enter judgment against the garnishee after deducting such fees and allowances as the garnishee is entitled to receive. If the garnishee appears and secures a reduction of the proposed judgment, the court may make an appropriate allowance for fees and expense incident to such appearance.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 15 of the Code of Rules for the District Courts.

Rule 165.1 Restraining Order--Bond

Before any restraining order shall be issued, except in aid of writs of execution or replevin, in harassment proceedings, in actions for dissolution of marriage or orders for protection in domestic abuse proceedings, or in any other case exempted by law, the applicant shall give a bond in the penal sum of at least $2,000, executed by the applicant or by some person for the applicant as a principal, approved by the court and conditioned for the payment to the party restrained of such damages as the restrained person shall sustain by reason of the order, if the court finally decides that the applicant was not entitled thereto.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 24 of the Code of Rules for the District Courts.

By statute, governmental entities are not required to post bonds for temporary restraining orders. Minn. Stat. § 574.18 (1990). Accordingly, a specific provision allowing waiver of the bond requirement is included in the rule for cases provided by law.

Rule 165.2 Orders to Show Cause

An order to show cause will be issued only in a case where a statute or rule of civil procedure provides that such an order may be issued or where the court deems it necessary to require the party to appear in person at the hearing.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 21 of the Code of Rules for the District Courts.

Rule 165.3 Injunctive Relief Against Municipalities.

No applications for temporary restraining orders against any city, county, state or governmental agency will be granted without prior oral or written notice to the adverse party. The applications shall be accompanied by a written statement describing the manner of notice.

Task Force Comment--1991 Adoption

This rule is derived from Second District Rule 8(j)(1).

Rule 166.1 Receivers

(a) Venue. All actions or proceedings for the sequestration of the property of corporations or for the appointment of receivers thereof, except actions or proceedings instituted by the Attorney General in behalf of the state, shall be instituted in the county in which the principal place of business of said corporation is situated; provided, that for the convenience of witnesses and to promote the ends of justice the venue may be changed by order of court.

(b) Appointment of Receivers. Receivers, trustees, guardians and others appointed by the court to aid in the administration of justice shall be wholly impartial and indifferent to all parties in interest, and selected with a view solely to their character and fitness. Except by consent of all parties interested, or where it clearly appears that prejudice will otherwise result, no person who is or has been during the preceding year a stockholder, director or officer of a corporation shall be appointed as receiver for such corporation. Receivers shall be appointed only upon notice to interested parties, such notice to be given in the manner ordered by the court; but if it shall be clearly shown that an emergency exists requiring the immediate appointment of a temporary receiver, such appointment may be made ex parte.

(c) Bond. Every receiver after appointment shall give a bond to be approved by the court in such sum and conditioned as the court shall direct, and shall make and file with the court administrator an inventory and estimated valuation of the assets of the estate in the receiver's custody; and, unless otherwise ordered, appraisers shall then be appointed and their compensation fixed by order of the court.

(d) Claims. Claims of creditors of corporations, the subject of sequestration or receivership proceedings, shall be duly verified and filed in the office of the court administrator. The court, by order, shall fix the time for presentation, examination and adjustment of claims and the time for objecting thereto, and notice of the order shall be given by such means, including publication if deemed desirable, as the court therein shall direct. Written objections to the allowance of any claim may be made by the party to the proceeding by serving a copy of such objection upon the claimant or the claimant's attorney. Where no objection is made within the time fixed by said order, the claim may stand admitted and be allowed without proof. Issues of law and fact shall be tried as in other cases.

(e) Annual Inventory and Report. Every receiver shall file an annual inventory and report showing the condition of the estate and a summary of the proceedings to date. The clerk shall keep a list of receiverships and notify each receiver and the court when such reports are due.

(f) Attorney as Receiver. When an attorney has been appointed receiver, no attorney for such receiver shall be employed except upon the order of the court, which shall be granted only upon the petition of the receiver, stating the name of counsel whom the receiver wishes to employ and showing the necessity for such employment.

(g) Employment of Counsel. No receiver shall employ more than one counsel, except under special circumstances requiring the employment of additional counsel; and in such cases only after an order of the court made on a petition showing such circumstances, and on notice to the party or person on whose behalf or application the receiver was appointed. No allowance shall be made to any receiver for expenses paid or incurred in violation of this rule.

(h) Use of Funds. No receiver or other trustee appointed by the court, nor any attorney acting for such receiver or trustee, shall withdraw or use any trust funds to apply on the

receiver's compensation for services except on written order of court, duly made after such notice as the court may direct, and filed in the proceeding.

(i) Allowance of Fees. All applications for the allowance of fees to receivers and their attorneys shall be accompanied by an itemized statement of the services performed and the amount charged for each item shown.

Compensation of receivers and their attorneys shall be allowed only upon the order of the court after such notice to creditors and others interested as the court shall direct, of the amounts claimed, as compensation and of the time and place of hearing the application for their allowance.

(j) Final Account. Every receiver shall take a receipt for all disbursements made by him in excess of one dollar, shall file the same with the final account, and shall recite such filing in a verified petition for the allowance of such account. Final accounts shall disclose the status of the property of the estate as to unpaid or delinquent taxes and the same shall be paid by the receiver to the extent that the funds in the receiver's custody permit, over and beyond costs and expenses of the receivership.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 23 of the Code of Rules for the District Courts.

Rule 166.2 Banks in Liquidation

Petitions for orders approving the sale or compounding of doubtful debts, or the sale of real or personal property, or authorizing a final dividend, of any bank, state or national, in liquidation, shall be heard after notice to all interested persons given as herein provided.

Upon the filing of the petition, the court shall enter an order reciting the substance of the petition and the time and place for hearing thereon, and advising all interested parties of their right to be heard.

A copy of the order shall be published once in a legal newspaper published near the location of the bank in liquidation, which publication shall be made at least ten days prior to the time fixed for the hearing; or the court may direct notice to be given by such other method as it shall deem proper. If it shall appear to the court that delay may prejudice the rights of those interested, the giving of notice may be dispensed with.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 5 of the Code of Rules for the District Court.

Rule 167.1 Attorneys as Sureties

No practicing attorney shall be accepted as surety on a bond or undertaking required by law.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 4 of the Code of Rules for the District Courts.

Rule 169.1 Supplemental Proceedings

(a) Previous Applications. If an ex parte application is made, any previous applications for a supplemental proceeding order concerning the pending case shall be disclosed to the Court in the form of an affidavit.

(b) Referee. Referees in supplementary proceedings and in garnishment disclosures shall be notaries public or attorneys at law and shall not be the creditor's attorney or an

employee or partner of the creditor or the creditor's attorney and said referees must take and subscribe the appropriate oath.

(c) Continuances. Orders in supplementary proceedings shall specify the name of the Referee and provide that in the examination of the judgment debtor the Referee shall not grant more than two continuances.

Task Force Comment--1991 Adoption

This rule is derived from 4th Dist. R. 12

Rule 171.1 Condemnation

(a) Objection To Commissioner. Within ten (10) days after the order appointing the commissioners has been filed, the petitioner or any respondent may serve on all other parties and file with the appointing judgment an affidavit objecting to the appointment of any one or more of the commissioners and setting forth the reasons for the objection. Within five (5) days after receiving such an objection, the judge in the exercise of discretion may appoint a new commissioner to replace any commissioner concerning whom objection has been made. If the judge does not appoint a new commissioner within five (5) days, the objection shall be deemed overruled.

(b) Notice of Appeal. In condemnation cases the notice of appeal from the award of the Commissioners shall be accompanied by a certificate of representation as required by Rule 3.02 of these rules.

Task Force Comment--1991 Adoption

This rule is derived from 4th Dist. R. 10 and is intended to supplement statutes providing for the appointment of commissioners and the filing of a notice of appeal. *See* Minn. Stat. §§ 117.075 & .145 (1990).

The deleted material is either part of, or inconsistent with, the statute governing eminent domain proceedings. *See* Minn. Stat. § 117.075 (1990). In either case, it should be deleted.

The remaining provisions dealing with fees and objection procedures may be useful.

Rule 172.1 Trustees--Accounting--Petition For Appointment

Every trustee subject to the jurisdiction of the district court shall file an annual account, duly verified, of the trusteeship with the court administrator within 60 days after the end of each accounting year. Such accounts shall contain the following:

(1) Statements of the total inventory or carrying value and of the total fair market value of the assets of the trust principal as of the beginning of the accounting period. In cases where a previous account has been rendered, the totals used in these statements shall be the same as those used for the end of the last preceding accounting period,

(2) A complete itemized inventory of the assets of the trust principal as of the end of the accounting period, showing both the inventory or carrying value of each asset and also the fair market value thereof as of such end of the accounting period, unless, because such value is not readily ascertainable or for other sufficient reason, this provision cannot reasonably be complied with. Where the fair market value of any item at the end of the accounting period is not used, a notation of such fact and the reason therefor shall be indicated on the account.

(3) An itemized statement of all income transactions during the period of such account.

(4) A summary statement of all income transactions during the period of such account, including the totals of distributions of income to beneficiaries and the totals of trustees' fees and attorneys' fees charged to income.

(5) An itemized statement of all principal transactions during the period of such account.

(6) A reconciliation of all principal transactions during the period of such account, including the totals of distributions of principal to beneficiaries and the totals of trustees' fees and attorneys' fees charged to principal as well as the totals of liquidations and reinvestments of principal cash.

An account shall be deemed to comply with the foregoing requirements which contains, in substance, where applicable, the following items:

RECONCILIATION OF PRINCIPAL

	Debit	Credit
Assets at beginning of accounting period:		$___
Increases:		
Proceeds of assets sold		$___
Less inventory value		___
Assets acquired		___
Premiums amortized		___
Other increases*		___
Decreases:		
Inventory value of assets sold	$___	
Less proceeds of sale	___ $___	
Cost to trust of acquired assets	$___	
Income taxes charge. able against principal		___
Discounts amortized		___
Trustees' fees		___
Attorneys' fees		___
Distributions to beneficiaries		___
Other decreases*		___
Assets at end of accounting period		___
	$___	$___

STATEMENT OF MARKET VALUE OF PRINCIPAL ASSETS

Beginning of period	$___
End of period	$___

(See notations as to any departures from fair market values at appropriate date elsewhere in this or the preceding account)

*(List other decreases and increases by categories)

SUMMARY OF INCOME

	Debit	Credit
Balance (overdraft) at beginning of Accounting period	$___	
Increases:		
Interest		___
Dividends	___	
Real estate income	___	
Discounts amortized	___	
Other increases*	___	
Decreases:		
Premiums amortized		$___
Accrued interest on assets purchased		___
Real estate expenses		___
Trustees' fees		___
Attorneys' fees		___
Income taxes chargeable against income		___
Miscellaneous expenses	___	
Distributions to beneficiaries	___	
Other decrease*	___	
Balance (overdraft) at end of Accounting period	___	
	$___	$___

*(List other decreases and increases by categories)

ITEMIZATION OF INCOME TRANSACTIONS
ITEMIZATION OF PRINCIPAL TRANSACTIONS

(Per separate schedules attached)

INVENTORY OF PRINCIPAL ASSETS AT END OF ACCOUNTING PERIOD

	Inventory Value	Market Value*
	$	$
Bonds (list)		
Preferred stocks (list)		

Common stocks (list)
Common trust funds (list)
Real estate (list)
Other (list)
Cash (list)

$____ $____

*(Note any exceptions to fair market value at end of accounting period and reasons therefor)

If any asset realized a net income less than one per cent of the inventory value or acquisition cost, describe the asset and explain in a supporting schedule what net income was realized and why it is deemed advisable to retain this asset.

Final accounts shall disclose the state of the property of the trust estate as to unpaid or delinquent taxes and such taxes shall be paid by the trustee to the extent that the funds in the trust permit, over and beyond the cost and expenses of the trust administration, except where a special showing is made by the trustee that it is in the best interests of the trust and is lawful for the unpaid or delinquent taxes not to be paid.

There shall also be filed with the court administrator proof of mailing of such account to the last addresses known to the trustee of, or of the service of such account upon, such of the following beneficiaries or their natural or legal guardians as are known to, or reasonably ascertainable by, the trustee;

(a) Beneficiaries entitled to receive income or principal at the date of the accounting; and

(b) Beneficiaries who, were the trust terminated at the date of the accounting, would be entitled to share in distributions of income or principal.

The court administrator shall keep a list of trusteeships and notify each trustee and the court when any such annual account has not been filed within 120 days from the end of the accounting year.

Hearings upon annual accounts may be ordered upon the request of any interested party. A hearing shall be held on such annual accounts at least once every five years upon notice as set forth in Minn. Stat. § 501.35; provided, that in trusts of the value of $20,000 or less, the five year hearing requirement may be waived by the court in its discretion. Any hearing on an account may be ex parte if each party in interest then in being shall execute waiver of notice in writing which shall be filed with the court administrator, but no account shall be finally allowed except upon a hearing on the record in open court. Such five year hearings shall be held within 150 days after the end of the accounting period of each fifth annual unallowed account, and the court administrator shall notify each trustee and the Court if the hearing is not held within such 150 day period.

Except in those cases in which a trust company or national banking association having trust powers is the trustee or one of the trustees, the petition for confirmation of the appointment of the trustee or trustees shall include an inventory, including a description of the assets of the trust known to the petitioners and an estimate by them of the market value of such assets at the date of the petition. The petition shall also set forth the relationship, if any, of the trustee or trustees to the beneficiaries of the trust.

Task Force Comment--1991 Adoption

This Rule was derived from existing Rule 28 of the Code of Rules for the District Courts.

Rule 177.5 Use of Administrator's Files

No papers on file in a cause shall be taken from the custody of the court administrator except upon order of the court.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 12(b) of the Code of Rules for the District Courts, without substantial change.

Rule 183.1 Pictures and Voice Recordings

No pictures or voice recordings, except the recording made as the official court record, shall be taken in any courtroom, area of a courthouse where courtrooms are located, or other area designated by published local rule, during a trial or hearing of any case or special proceeding incident to a trial or hearing, or in connection with any grand jury proceeding.

This rule shall be superseded by specific rules of the Minnesota Supreme Court relating to use of cameras in the courtroom or use of videotaped recording of proceedings to create the official record of any case.

Task Force Comment--1991 Adoption

This rule is derived from the current local rules of three districts.

It appears that this rule is desired by the benches of three districts and it may be useful to have an articulated standard for the guidance of attorneys, litigants, the press, and the public.

The Supreme Court has adopted rules allowing cameras in courtrooms in limited circumstances, and it is inappropriate to have a written rule that does not accurately state the standards which lawyers are expected to follow. See *In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct*, No. C7-81-300 (Minn. S. Ct. May 22, 1989). The court has recently ordered an experimental program for videotaped recording of proceedings for the official record in the Third, Fifth and Seventh Judicial Districts. *In re Videotaped Records of Court Proceedings in the Third, Fifth, and Seventh Judicial Districts*, No. C4-89-2099 (Minn. S. Ct. Nov. 17, 1989) (order). The proposed local rule is intended to allow the local courts to comply with the broader provisions of the Supreme Court Orders, but to prevent unauthorized use of cameras in areas of the courthouse where there is no right to access with cameras.

Rule 183.2 Appearance by Out of State Attorneys

Attorneys duly admitted to practice in the trial courts of any other jurisdiction may appear in any of the courts of this state provided (a) the pleadings are also signed by an attorney duly admitted to practice in the State of Minnesota, and (b) such attorney admitted in Minnesota is also present before the court, in chambers or in the courtroom or participates by telephone in any hearing conducted by telephone. The out-of-state attorney may after that, in the discretion of the court, actually conduct the proceedings without the presence of Minnesota counsel.

Any lawyer appearing pursuant to this rule shall be subject to the disciplinary rules and regulations governing Minnesota attorneys and by applying to appear or appearing in any action shall be subject to the jurisdiction of the Minnesota courts.

Task Force Comment--1991 Adoption

This rule is derived from 3rd Dist. R. 1.

This rule is intended to supplement Minn. Stat. § 481.02 (1990) and would supersede the statute to the extent the rule may be inconsistent with it. This rule

recognizes and preserves the power and responsibility of the court to determine the proper role to be played by lawyers not admitted to practice in Minnesota.

REGISTRATION OF LAND TITLES

PROCEEDINGS FOR INITIAL REGISTRATION

Rule 201 Applicability of Rules

Rules 201 through 222 of these rules apply to all actions and proceedings in the district court relating to registration of land titles, including proceedings subsequent to initial registration.

Task Force Comment--1991 Adoption

These rules include all of the provisions of the current Code of Rules for the District Courts, Part II, and include additional rules derived from detailed local rules provisions dealing with subjects not addressed in the Code of Rules. No significant substantive changes have been made except to add these new provisions to the statewide rules.

Rule 202 Applications--Indorsements

Applications shall be approved as to form by the examiner, and there shall be indorsed thereon the name and address of the applicant's attorney, or of the applicant if the applicant appears in person.

Rule 203 Abstracts of Title

The abstract when filed shall show the record of the patent or other conveyance from the United States, the record of the certified copy of the application, and shall include searches as to all state and federal judgments, federal and state tax liens, real estate taxes and tax and special assessment sales. The abstract also shall contain bankruptcy searches in the office of the County Recorder in the county in which the land is located. Additional bankruptcy searches in the office of the clerk of federal district court shall be required only in examination of title to lands in Hennepin, Ramsey and St. Louis counties.

Rule 204 Title Based Upon an Adjudication Not Final, or Upon Estoppel

When the title of the applicant or the release or discharge of any incumbrance thereon is based upon an adjudication not final, or upon estoppel, and there remains a right of appeal or contest, all parties having such right of appeal or contest shall be made parties defendant.

Rule 205 Examiner's Report--Petition and Order for Summons

The examiner's report shall specify the names of all parties deemed necessary parties defendant. Petitions for summons shall set forth ~~such~~ those names and the names of such other parties as the applicant deems to be necessary, and the names, if known to the applicant, or ascertainable by him by reasonable inquiry of the successors in interest of such persons known to the applicant to be deceased. The petition shall recite that the petitioner has made a diligent effort by reasonable inquiry and search to ascertain the place of residence of all defendants named therein, and where the place of residence of a defendant is unknown to the petitioner, the petition shall so recite such fact.

Rule 206 Papers to be Filed--Effect of Notice and Appearance

~~If a~~ A defendant ~~in addition to~~ who ~~appearing~~ appears or ~~filing~~ files an answer, ~~as by statute required shall~~ and who also serves a copy ~~thereof upon~~ the applicant or the applicant's attorney, ~~the defendant~~ shall be entitled to notice of all subsequent proceedings in that action.

Rule 207 Affidavit of No Answer and Clerk's Certificate of Default

The default of defendants who fail to appear and answer shall be shown by the certificate of the clerk entitled and filed in the action, and by the affidavit of the applicant's attorney, if the applicant appears by attorney; otherwise by the applicant's affidavit.

Rule 208 Hearings in Default Cases--Filing Note of Issue and Papers

Initial applications, where no issue has been joined, shall be heard by the court at any special term, ~~unless by local rules adopted for any particular county or district, or by special order, other days have been designated for such hearings~~; or they may be heard by an examiner, to whom the matter has been specially referred. In counties where the examiner checks the proceedings in advance of the hearings, the note of issue and all papers necessary to complete the files shall be filed; and all documentary evidence proposed to be used by the applicant or petitioner shall be delivered to the examiner at least three days before the hearing, together with the proposed order for judgment and decree.

Rule 209 Issues Raised by Answer--Reply

All facts alleged in an answer, which are not in accordance with the allegations of the application, shall be considered at issue without reply by the applicant. But if the answer sets up rights admitted in the application, or in a reply of the applicant, the hearing may proceed as in case of a default, and the registration shall be subject to such rights.

Rule 210 Trial of Contested Issues

In all cases where the answer raises
n issue which is ~~not~~ undisposed of by stipulation or otherwise, the matter shall be noted for trial. ~~at the general term.~~ The procedure and the method of determination shall be the same as in the trial of similar issues in civil actions or proceedings.

Rule 211 Interlocutory Decree Establishing Boundaries

When the applicant seeks to fix and establish all or some of the boundary lines of the land, the applicant shall have the premises surveyed by a registered land surveyor and shall cause to be filed in the proceeding a plat of the survey showing the correct boundaries of the premises. The applicant shall furnish the examiner with such abstracts of title of adjoining lands as the latter shall require in determining the necessary parties defendant in the fixing and establishing of such boundaries. The hearing upon such application may be separate from or in connection with the hearing upon the application to register, but before any final adjudication of registration, the court by order shall fix and establish such boundaries and direct the establishment of "judicial landmarks" in the manner provided by Minnesota Statutes section 559.25. In the decree of registration thereafter entered, and in certificates of title thereafter issued, the description of the land shall contain appropriate reference to such "judicial landmarks."

Rule 212 Protection of Interests Acquired Pendente Lite--Provision for Immediate Registration after Hearing

At the time of the hearing of the application for judgment, the applicant shall satisfy the court by continuation of abstract, if required by the examiner, and other proper proof, of any changes~~, if any~~, in the title, or in the incumbrances ~~thereon~~ arising since the filing of the application. When the decree is signed, the applicant shall forthwith file ~~the same~~ it with the

~~clerk~~ court administrator, together with a receipt of the registrar showing payment of all sums due ~~him~~ for the registration of the decree, and the issuance of a certificate of title ~~in pursuance to said decree~~, and thereupon the ~~clerk~~ court administrator shall certify a copy of the decree and file the same for registration with the registrar.

PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION

Rule 213 Title of Proceedings

Proceedings subsequent to the initial registration under sections 508.44, 508.45, 508.58, 508.59, 508.61, 508.62, 508.67, 508.671, ~~508.68, 508.69,~~ 508.70, 508.71, and 508.73, shall be commenced by filing with the ~~clerk~~ court administrator a verified petition by a party in interest, which shall be entitled:

> "In the Matter of the Petition of ____ in Relation to (description of property) registered in Certificate of Title No. ____ for (relief sought)."

The petition shall allege the facts justifying the relief sought, the names of all interested parties as shown by the certificate of title, and their interests therein.

Rule 214 Trial and Hearing

In proceedings where no notice is required and in proceedings where the required process or notice has been served and the time for appearance has expired without any issue having been raised, the proceedings shall be noted for trial and heard the same as in proceedings upon default for initial registration. Issues raised in these proceedings shall be noted for trial and disposed of the same as similar issues in other civil proceedings.

Rule 215 New Certificates, Amendments, Etc.

In proceedings under sections 508.44, 508.45, 508.58, 508.59, 508.61, 508.62, 508.67, 508.671, ~~508.68, 508.69,~~ 508.70, 508.71, and 508.73, the examiner shall make such examination as to the truth of the allegations contained in the petition ~~as to him may seem~~ necessary, or as directed by the court. In all cases where notice is necessary and the manner ~~thereof~~ of notice is not prescribed by statute, it shall be by an order to show cause, which shall designate the respondents, the manner of service, and the time within which service shall be made. Any final order or decree directed in such proceeding shall be approved as to form by the examiner before presentation to the court.

Rule 216 New Duplicate Certificate

Every petition for a new duplicate certificate shall be filed with the clerk and a certified copy thereof may be filed with the registrar for registration as a memorial on the certificate of title. Thereupon the court shall issue a citation addressed "To Whom It May Concern," fixing a time and place of hearing and prescribing the mode of service. No order shall be made for a new duplicate except upon hearing and due proof that the duplicate theretofore issued has been lost or destroyed, or cannot be produced. If it shall appear at the hearing that there are any known parties in interest to whom notice should be given, the hearing shall be continued and an order entered accordingly.

Rule 217 Cases Not Requiring Special Order of Court

When the interest of a life tenant has been terminated by death, the Registrar may receive and enter a memorial of a duly certified copy of the official death certificate and an affidavit of identity of the decedent with the life tenant named in the certificate of title; and in

such case the memorial of said certificate and affidavit shall be treated as evidence of the discharge of said life tenancy.

Task Force Comment--1991 Adoption

This rule is derived from 4th Dist. R. 11.02(d).

Rule 218 State Tax Deeds

A deed from the State of Minnesota in favor of the registered owner shall be registered as a memorial on the certificate of title as a discharge of an Auditor's Certificate of forfeiture to the State.

In cases where the state deed of repurchase is dated subsequent to the date of any conveyance by the repurchasing registered owner to another, the County Auditor, a deputy Auditor, or the County Land Commissioner may endorse on the state deed a statement that the repurchase was made prior to or concurrent with the date of the conveyance by the registered owner.

Task Force Comment--1991 Adoption

This rule is derived from 4th Dist. R. 11.03

Rule 219 Deeds of Housing and Urban Development

In the registration of deeds or other instruments hereinafter listed for titles or interest registered in the name of an individual as Secretary of Housing and Urban Development, the Registrar of Titles shall be guided by 12 U.S.C. § 1710(g), which confers upon any designated officer, agent or employee the power to convey and to execute in the name of the Secretary deeds of conveyance, deeds of release, assignments of mortgages, satisfactions of mortgages, and any other written instrument relating to real property or any interest therein which has been acquired by the Secretary; and the Registrar of Titles shall accept the statement of the certificate of acknowledgement attached to any such instrument as evidence of the official character of the Secretary or the Secretary's designated officer, agent or employee executing the instrument.

Task Force Comment--1991 Adoption

This rule is derived from 4th Dist. R. 11.04.

Rule 220 Birth Certificates

The Registrar of Titles is authorized to receive for registration of memorials upon any outstanding certificate of title an official birth certificate pertaining to a registered owner named in said certificate of title showing the date of birth of said registered owner, providing there is attached to said birth certificate an affidavit of an affiant who states that he/she is familiar with the facts recited, stating that the party named in said birth certificate is the same party as one of the owners named in said certificate of title; and that thereafter the Registrar of Titles shall treat said registered owner as having attained the age of majority at a date 18 years after the date of birth shown by said certificate.

Task Force Comment--1991 Adoption

This rule is derived from 4th Dist. R. 11.05.

Rule 221 Death Certificates

The Registrar of Titles may receive official certificates of death issued by the United States Department of Defense or other military department in lieu of a certificate of death.

Task Force Comment--1991 Adoption

This rule is derived from 4th Dist. R. 11.06.

Rule 222 Condominiums

The procedure for administration by the Registrar of the Uniform Condominium Act shall be as follows:

(a) The declaration, bylaws and any amendments thereto, to be filed in the office of the Registrar of Titles, must be executed and acknowledged and embrace land within the county.

(b) In order to have uniformity in the recording offices and to protect the interests of the public generally, the general requirements of Minnesota Statutes Section 505.08 as to the platting of land shall be followed, namely: as authorized by subd. 2a of said Section 505.08, only one set of transparencies shall be filed. The transparencies shall be of 4 mil. thickness, black on white on clear Mylar and be made by a fixed photo process. The transparencies shall be 20 by 30 inches in size. More detailed information on the drafting of the ~~floor plans~~ condominium plat may be obtained from the Registrar of Titles.

(c) The ~~floor plans are~~ condominium plat is to be numbered serially beginning with the next number after the last apartment ownership number assigned pursuant to the Minnesota Condominium Act, Minnesota Statutes Chapter 515, and the numbers shall run consecutively within the offices of the County Recorder and the Registrar of Titles.

(d) Where registered land is to be submitted for administration under said act, the declarant, prior to filing ~~his or her~~ the declaration and bylaws, shall obtain an Order of the Court in a Proceedings Subsequent to Initial Registration of land that the Declaration, including the ~~floor plans~~ condominium plat, and Bylaws, as submitted, comply with the various requirements of Minnesota Statutes Chapter 515A, and any amendments thereto. The Order shall direct the Registrar of Titles to accept such documents for registration and to enter them as separate memorials on the original Certificate of Title and on the Owner's Duplicate Certificate thereof. Reference to such documents, including the document numbers and dates of filing, shall be carried forward to each succeeding Certificate, including any Mortgagees' or Lessees' Duplicate Certificates.

(e) A condominium shall not include both registered land and unregistered land, but shall consist only of land that is all registered under Minnesota Statutes Chapter 508 or land of which no part is so registered.

Task Force Comment--1991 Adoption

This rule is derived from 4th Dist. R. 11.07.

RULES OF FAMILY COURT PROCEDURE

Rule 301.1 Applicability of Rules

Rules 301 through 312.4 apply to all proceedings in Family Court. These rules and, where not inconsistent, the Minnesota Rules of Civil Procedure shall apply to family law practice except where they are in conflict with applicable statutes.

Task Force Comment--1991 Adoption

These rules are derived primarily from the Rules of Family Court Procedure. Highlighting is included to show the changes from those rules. New provisions have been added from various local rules. (Highlighting has not been included on all numbering changes in order to avoid clutter.) The advisory committee comments from the Rules of Family Court Procedure are included except where inconsistent with new provisions or where applicable rules are not retained.

These rules apply to the following specific types of actions that are generally treated as family court actions:

1. Marriage dissolution proceedings (Minn. Stat. ch. 518);
2. Child custody enforcement proceedings (Minn. Stat. ch. 518A);
3. Domestic abuse proceedings (Minn. Stat. ch. 518B);
4. Support enforcement proceedings (Minn. Stat. ch. 518C--R.U.R.E.S.A.);
5. Contempt actions in Family Court (Minn. Stat. ch. 588);
6. Parentage determination proceedings (Minn. Stat. §§ 257.51-.74);
7. Actions for reimbursement of public assistance (Minn. Stat. § 256.87);
8. Withholding of refunds from support debtors (Minn. Stat. § 289A.50, subd. 5);
9. Proceedings to compel payment of child support (Minn. Stat. § 393.07, subd. 9); and
10. Proceedings for support, maintenance or county reimbursement judgments (Minn. Stat. § 548.091).

Rule 302.1 Commencement of Proceedings

(a) Service. Marriage dissolution, legal separation and annulment proceedings shall be commenced by service of a summons and petition upon the person of the other party, or by publication pursuant to court order. Service in other family court proceedings shall be governed by the rules of civil procedure.

(b) Joint Petition. No summons shall be required if a joint petition is filed. Proceedings shall be deemed commenced when both parties have signed the verified petition.

(c) Service by Publication. Service of the summons and petition may be made by publication only upon an order of the court. If the respondent subsequently is located, personal service shall be made before the final hearing.

(d) Service upon foreign nationals. In every action for dissolution of marriage brought against a foreign national, in which summons and complaint are not served by handing them to the respondent within the continental United States, the attorney for petitioner shall be requested, upon the commencement of such action, to notify the nearest consul or vice-consul of the country of which respondent is a national of the title and venue of such action, the manner in which and date upon which jurisdiction was acquired and shall upon request furnish a copy of such summons and complaint.

Family Court Rules Advisory Committee Commentary

Proceedings for dissolution, legal separation and annulment are governed by Minn. Stat. ch. 518. Minn. Stat. § 518.10 sets out the requisites for the petition. Minn. Stat. § 518.11 governs service by publication and

precludes substitute service or service by mail under Minn. R. Civ. P. 4.05. The respondent's answer must be served within 30 days. Minn. Stat. § 518.12. The joint proceeding is commenced on the date when both parties have signed the petition; no summons is required. Minn. Stat. §§ 518.09 & .11. In cases involving foreign nationals, see Part I, Rule 30, Code of Rules for District Court.

Custody proceedings under the Uniform Child Custody Jurisdiction Act are governed by Minn. Stat. 518A. Interstate service and notice must be accomplished at least 20 days prior to any hearing in Minnesota. Service within the state is set forth in Minn. R. Civ. P. 4.

Domestic abuse proceedings are governed by Minn. Stat. Ch. 518B. Ex parte orders for protection must include notice of a hearing within 14 days of the issuance of the order. Personal service upon the respondent must be effected not less than 5 days prior to the first hearing.

Support proceedings under the revised Uniform Reciprocal Enforcement of Support Act are governed by Minn. Stat. Ch. 518C. The time for answer is governed by the law of the responding jurisdiction.

Actions to establish parentage are governed by Minn. Stat. Ch. 257. Actions for reimbursement for public assistance are governed by Minn. Stat § 256.87. Defendant has 20 days to answer the complaint in each action.

The Petitioner must notify the public agency responsible for support enforcement of all proceedings if either party is receiving or has applied for public assistance. Minn. Stat. § 518.551.

A party appearing pro se shall perform the acts required by rule or statue in the same manner as an attorney representing a party. An attorney dealing with a party pro se shall proceed in the same manner, including service of process, as in dealing with an attorney.

Task Force Comment--1991 Adoption

Subsection (a) is derived from Rule 1.01 of the Rules of Family Court Procedure.

Subsection (b) is derived from Second District Local Rule 1.011.

Subsection (c) is derived from Second District Local Rule 1.013. *See* Minn. Stat. § 518.11 (1990). This is to protect the children and help avoid secret proceedings if the respondent is able to be located.)

Section (d) is derived from existing Rule 30 of the Code of Rules for the District Courts.

The Task Force considered a recommendation to delete subsection on the grounds it deals incompletely with subject matter covered by statute, specifically The Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Criminal Matters, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638, 658 UNTS 163 (entered into force for the United States Feb. 10, 1969).

Rule 302.2 Continuances

Rule 140.2 of the Code of Rules shall be followed in connection with continuances for pre-hearings and trial settings. No continuance of a motion shall be granted unless requested within ~~three (3)~~ 3 days of receiving notice under Rule 303.1(a) and unless good cause is shown.

Rule 302.3 Time

Time is governed by Minnesota Rules of Civil Procedure, except where a different time is specified by statute. Procedural time limits may be shortened for good cause shown.

Family Court Rules Advisory Committee Commentary

Family Court proceedings involve human considerations which may require expeditious judicial attention. The shortening of time should be the exception and not the rule. A motion to shorten time will be granted only upon demonstration of the unusual circumstances justifying this extraordinary relief. See Rule 2.05.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 1.04 of the Rules of Family Court Procedure.

Rule 302.4 Designation of Parties

Parties to dissolution, legal separation, annulment, custody, domestic abuse, U.C.C.J.A., and R.U.R.E.S.A. proceedings shall be designated as petitioner (joint petitioners) and respondent. Parties to paternity and Chapter 256.87 reimbursement actions shall be designated as plaintiff and defendant. After so designating the parties, it is permissible to refer to them as husband and wife by inserting the following in any petition, order, decree, etc.:

Petitioner is hereinafter referred to as (wife/husband), and respondent as (husband/wife).

Task Force Comment--1991 Adoption

This rule is derived from existing Second District R. 1.07.

Rule 303.1 Scheduling of Motions

(a) Notice.

(1) All motions shall be accompanied by either an order to show cause or by a notice of motion which shall state, with particularity, the time and place of the hearing and the name of the judge, referee, or judicial officer, as assigned by the local assignment clerk.

(2) Except in cases in which the parties reside in the same residence and there is a possibility of abuse, a party who obtains a date and time for hearing a motion, shall promptly give notice of the hearing date and time and the name of the judge or referee, if known, to all other parties in the action.

(b) Notice of Time to Respond. All motions and orders to show cause shall contain the following statement:

> All responsive pleadings shall be served and mailed to or filed with the court administrator no later than five days prior to the scheduled hearing. The court may, in its discretion, disregard any responsive pleadings served or filed with the court administrator less than five days prior to such hearing in ruling on the motion or matter in question.

Family Court Rules Advisory Committee Commentary

The scheduling of cases and the assignment of judges, judicial officers or referees is often a situation in which local calendaring practices prevail. Effective disposition of litigation requires immediate notice of the hearing officer's identity to preclude last minute filing of notices to remove or affidavits of prejudice.

Task Force Comment--1991 Adoption

Subdivision (a)(1) of this rule is derived from existing Rule 2.01 of the Rules of Family Court Procedure.

Subdivision (a)(2) is from the new Rule 107.1(m) of the Code of Rules. This provision is intended to make uniform the requirement that all hearing dates obtained from courts be disclosed to all parties in the action in order to facilitate the hearing of all matters then known to be ready for hearing.

Subdivision (b) of this rule is derived from Second Judicial District Rule 2.011.

Rule 303.2 Form of Motion

(a) Specificity and Supporting Documents. Motions shall set out with particularity the relief requested in individually numbered paragraphs. All motions must be supported by appropriate affidavits, relevant and material to the issues before the court. The paragraphs of the affidavits should be specific and factual; where possible, they should be numbered to correspond to the paragraphs of the motion. ~~In all motions for temporary relief, where issues of child support or spousal maintenance are before the court, both parties shall submit an application for temporary relief on the form set forth at Rule 10.01.~~

(b) Application for Temporary Relief. When temporary financial relief is requested, such as child support, maintenance and attorney's fees, the application for temporary relief form set forth at Rule 311.1 shall be served and filed by the moving and responding parties. Additional facts, limited to relevant and material matters, shall be added at paragraph 10 of the

application form or by supplemental affidavit. Sanctions for failure to comply include, but are not limited to, the striking of pleadings or hearings.

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 2.02 of Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from Second Judicial District Rule 2.021.

The local rule from which subdivision (b) is derived included a requirement that information be filed on forms, and that typewritten or word-processed documents would not be accepted for filing. The Task Force considered the desirability of requiring information to be submitted on pre-printed forms, and determined that such requirements should not be retained. Many modern law offices cannot readily prepare such documents as word processing machines have displaced the typewriters for which the forms are designed. The Task Force also believes that these requirements only increase the cost of litigation and limit access to the courts.

Rule 303.3 Motion Practice

(a) Requirements for Motions.

(1) Moving Party, supporting documents, time limits. No motion shall be heard unless the initial moving party serves a copy of the following documents on opposing counsel and mails to (or files with) the court administrator at least 14 days prior to the hearing:

(i) Notice of motion in form required by Rule 302.1(a);
(ii) Motion;
(iii) Any relevant affidavits and exhibits; and
(iv) Any memorandum of law the party intends to submit.

(2) Motion Raising New Issues. A responding party raising new issues other than those raised in the initial motion shall serve one copy of the following documents on opposing counsel and shall mail to (or file with) the court administrator at least 10 days prior to the hearing:

(i) Notice of motion in form required by Rule 302.1(a);
(ii) Motion;
(iii) Any relevant affidavits and exhibits; and
(iv) Any memorandum of law the party intends to submit.

(3) Responding party, supporting documents, time limits. The party responding to issues raised in the initial motion, or the party responding to a motion which raises new issues, shall serve one copy of the following documents on opposing counsel and shall file the originals with the court administrator at least five days prior to the hearing, inclusive of Saturdays, Sundays, and holidays:

(i) Any memorandum of law the party intends to submit
(ii) Any relevant affidavits and exhibits.

(b) Failure to comply. In the event an initial moving party fails to timely serve and file documents required in this rule, the hearing shall be cancelled. If responsive papers are not properly served and filed, the court may deem the initial motion or motion raising new issues unopposed and may issue an order without hearing. The court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, may consider the matter unopposed, may allow reasonable attorney's fees, or may proceed in such other manner as the Court deems appropriate.

(c) Requirement to attempt to resolve dispute. No motion, except motion for temporary relief, will be heard unless the parties have conferred by telephone, face to face, or by exchange of correspondence in an attempt to resolve their differences prior to the hearing. The moving party shall initiate such conference. The moving party shall certify to the court,

before the time of the hearing, compliance with this rule or any reasons for not complying, including lack of availability or cooperation of opposing counsel.

(d) Settlement of Motion Issues. Whenever any motion or issue that is part of a pending or submitted motion is settled, the moving party shall promptly advise the court of the fact of settlement.

(e) Motion with Request for Oral Testimony. Motions, except for contempt proceedings, shall be submitted on affidavits, exhibits, documents subpoenaed to the hearing, memoranda, and arguments of counsel unless otherwise ordered by the court for good cause shown. If demand is made for the taking of oral testimony, and if the matter cannot be heard adequately in the scheduled time, the hearing shall be utilized as a prehearing conference. Requests for hearing time in excess of one-half hour shall be submitted by written motion specifically setting forth the necessity and reason that evidence cannot be submitted by affidavit. The motion shall include names of witnesses, nature and length of testimony, including cross-examination, and types of exhibits, if any. The court may issue an order limiting the number of witnesses each party may call, the scope of their testimony, and the total time for each party to present evidence. Such an order shall be made only after the attorney for each party has had an opportunity to suggest appropriate limits. Any motion relating to custody or visitation shall additionally state whether either party desires the court to interview minor children. No child under the age of fourteen years will be allowed to testify without prior written notice to the other party and court approval.

Family Court Rules Advisory Committee Commentary

Minn. Stat. § 518.131, subd. 8 grants a party the right to present oral testimony upon the filing of a demand either in the initial application for temporary relief or in the response thereto.

The party demanding oral testimony should provide a list of the proposed witnesses, the scope of their testimony and an estimate of the required time.

Task Force Comment--1991 Adoption

Subdivisions (a)-(d) of this rule are new. They are derived from parallel provisions in new Rule 107.1 of the Code of Rules, and are intended to make motion practice in family court matters as similar to that in other civil actions as is possible and practical given the particular needs in family court matters.

Subdivision (e) of this rule is derived from Rule 2.04 of Rules of Family Court Procedure and from Second Judicial District Rules 2.041 and 2.042.

The requirement in subsection (c) of an attempt to resolve motion disputes requires that the efforts to resolve the matter be made before the hearing, not before bringing the motion. It is permissible under the rule to bring a motion and then attempt to resolve the motion. If the motion is resolved, subsection (d) requires the parties to advise the court immediately.

Rule 303.4 Ex-parte Relief

(a) Motion. The court may grant ex-parte relief only if requested by a motion with supporting affidavit, properly executed.

(b) Order to Show Cause. An order to show cause shall not be used to grant ex-parte relief except in those cases where permitted pursuant to Rule ~~2.06~~ 303.5.

(c) Filing. All such orders and supporting documents must be filed with the order appropriately signed out for personal service. A conformed file copy of such order shall be retained by the court administrator in the file.

(d) Interim Support Order. To insure support for an unemployed party or a party with children pending a full temporary hearing, an initial order to show cause may, if the situation warrants, contain the following:

> IT IS FURTHER ORDERED that pending the aforesaid scheduled hearing, you, shall pay to the (petitioner) (respondent) commencing forthwith ____ percent of your net earnings after the usual deductions for FICA,

withholding taxes and group insurance, such payments to be made within 24 hours of your receipt of such earnings for each pay period. These payments are to insure that provision is made by you for the support of your (wife) (husband) (and) (children) pending the aforesaid hearing.

The percentage to be used will be in accordance with the statutory child support guidelines and such other factors related to maintenance as the court deems appropriate.

There must be a showing in the Application for Temporary Relief or separate affidavit of the necessity for the interim order for support.

Family Court Rules Advisory Committee Commentary

Minn. R. Civ. P. 65.01 states the notice requirements for ex parte relief. Minn. Stat. § 518.131 controls ex parte temporary restraining orders.

Task Force Comment--1991 Adoption

Subdivisions (a), (b) and (c) of this rule are derived from existing Rule 2.05 of the Rules of Family Court Procedure.

Subdivision (d) of this rule is derived from Second District Local Rule 2.051.

Rule 303.5 Orders to Show Cause

Orders to show cause shall be obtained in the same manner specified for ex-parte relief. Such orders may require production of limited financial information deemed necessary by the court. An order to show cause shall be issued only where the motion seeks a finding of contempt or the supporting affidavit makes an affirmative showing of:

(a) a need to require the party to appear in person at the hearing; or

(b) the need for interim support is warranted, or

(c) the production of limited financial information deemed necessary by the court, or

(d) such other limited relief and appropriate restraining orders, as addressed individually in the separate supportive affidavit for ex parte relief.

Family Court Rules Advisory Committee Commentary

The use of orders to show cause can be abused by requiring a personal appearance where none is necessary. A timely notice of motion informing a party of the time to appear, if he or she wishes, is adequate in most proceedings.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 2.06 of the Rules of Family Court Procedure. The Family Law Section of the Minnesota State Bar Association recommended additional specific language limiting use of orders to show cause and the Task Force agrees that this clarification should be useful. Orders to show cause are specifically authorized, in limited circumstances, by statute. *See, e.g.,* Minn. Stat. §§ 256.87, subd. 1a & 393.07, subd. 9 (1990).

Rule 303.6 Orders and Decrees Requiring Child Support or ~~Spousal~~ Maintenance

All orders and judgments and decrees which include awards of child support and/or maintenance, unless otherwise directed by the court, shall include the following provisions:

"That both parties are hereby notified that:

(a) Payment of support ~~and/~~or ~~spousal~~ maintenance, or both, is to be as ordered herein, and the giving of gifts or making purchases of food, clothing and the like will not fulfill the obligation.

(b) Payment of support must be made as it becomes due, and failure to secure, or denial of rights of, visitation is not an excuse for non-payment, but the aggrieved party must seek relief through proper motion filed with the court.

(c) The payment of support ~~and/~~or ~~spousal~~ maintenance, or both, takes priority over payment of debts and other obligations.

(d) A party who remarries after dissolution and accepts additional obligations of support does so with full knowledge of his or her prior obligations under this proceeding.

(e) Child support and~~/or spousal~~ maintenance ~~is~~are based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that payments are made regularly throughout the year as ordered.[n]

Task Force Comment--1991 Adoption

This rule is derived from Rule 7.01 of the Rules of Family Court Procedure and Second District Rule 2.09.

Rule 304.1 Scheduling Orders

(a) Applicability of Rule. The requirements of this rule shall apply to all proceedings in family court except:

(1) Actions for reimbursement of public assistance (Minn. Stat. § 256.87;
(2) Contempt (Minn. Stat. ch. 588);
(3) Domestic abuse proceedings (Minn. Stat. ch. 518B;
(4) Child custody enforcement proceedings (Minn. Stat. ch. 518A);
(5) Support enforcement proceedings (Minn. Stat. ch. 518C--R.U.R.E.S.A.);
(6) Withholding of refunds from support debtors (Minn. Stat. § 289A.50, subd. 5);
(7) Proceedings to compel payment of child support (Minn. Stat. § 393.07, subd. 9); and
(8) Proceedings for support, maintenance or county reimbursement judgments (Minn. Stat. § 548.091).

(b) Procedure. During the first 60 days after filing an action or within 60 days after a temporary hearing, whichever is later, each party shall submit scheduling information on a form to be available from the court. This information shall include any of the following applicable to the action:

(1) Whether minor children are involved, and if so:
  (i) Whether custody is in dispute; and
  (ii) Whether the case involves any issues seriously affecting the welfare of the children;
(2) Whether the case involves complex evaluation issues, and/or marital and non-marital property issues;
(3) Whether the case needs to be expedited, and if so, the specific supporting facts;
(4) Whether the case is complex, and if so, the specific supporting facts;
(5) Specific facts about the case which will affect readiness for trial; and
(6) A proposal for establishing any of the deadlines or dates to be included in a scheduling order pursuant to this rule.

After 60 days from initial filing or temporary hearing, whichever is later, the court may enter a scheduling order following a telephone or in-court conference of the attorneys and any unrepresented parties, or may do so without hearing.

(c) Contents of Order. The court shall enter a scheduling order within 90 days after filing an action or within 90 days after a temporary hearing, whichever is later, of the filing of every action, and such order may establish any of the following:

(1) Deadlines or specific dates for the completion of discovery and other pretrial preparation;
(2) Deadlines or specific dates for serving, filing or hearing motions;
(3) Deadlines or specific dates for completion and review of custody/visitation mediation and evaluation or property mediation;
(4) A deadline or specific date for the prehearing conference; and
(5) A deadline or specific date for the trial or final hearing.

(d) Amendment. A scheduling order pursuant to this rule may be amended at a prehearing conference or upon motion for good cause shown, or upon approval by authorized court personnel if there is agreement of all parties.

Task Force Comment--1991 Adoption

This rule is new. It is patterned after the similar new Rule 116.1 of the Code of Rules of Rules for the District Court. The Task Force believes that the scheduling information and procedures in family court and other civil matters should be made as uniform as possible, consistent with the special needs in family court matters.

Matters not scheduled under the procedures of this rule are scheduled by motion practice under Rule 303 of these rules.

Rule 305.1 Prehearing Statement

Each party shall complete a prehearing conference statement ~~on~~ substantially in the form set forth at Rule ~~10.01~~311.1 which shall be served upon all parties and mailed to or filed with the court at least 10 days prior to the date of the prehearing conference.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 4.02 of the Rules of Family Court Procedure. The existing family court rule includes a requirement that information be filed on forms, and that typewritten or word-processed documents would not be accepted for filing. The Task Force considered the desirability of requiring information to be submitted on pre-printed forms, and determined that such requirements should not be retained. Many modern law offices cannot readily prepare such documents as word processing machines have displaced the typewriters for which the forms are designed. The Task Force also believes that these requirements only increase the cost of litigation and limit access to the courts.

Rule 305.2 Prehearing Conference Attendance

(a) Parties and Counsel. Unless excused by the court for good cause, the parties and attorneys who will try the proceedings shall attend the prehearing conference, prepared to negotiate a final settlement. If a stipulation is reduced to writing prior to the prehearing conference, the case may be heard as a default at the time scheduled for the conference. In that event, ~~O~~only the party obtaining the decree need appear.

(b) Failure to Appear--Sanctions. If a party fails to appear at a prehearing conference, the court may dispose of the proceedings without further notice to that party.

(c) Failure to Comply--Sanctions. Failure to comply with the rules relating to prehearing conferences may result in the case being stricken from the contested calendar, granting of partial relief to the appearing party, striking of the non-appearing party's pleadings and the hearing of the matter as a default, award of attorney fees and costs, and such other relief as the court finds appropriate, without further notice to the defaulting party.

Family Court Rules Advisory Committee Commentary

In disposing of a proceeding, the Court may dismiss it entirely, grant relief to the party appearing, grant attorney fees, bifurcate the proceedings and grant partial relief, or grant any other relief which the court may deem appropriate. See Rule ~~4.05~~ 306.2(c).

Task Force Comment--1991 Adoption

Subsection (a) of this rule is derived from existing Rule 4.03 of the Rules of Family Court Procedure.

Subsection (b) of this rule is derived from existing Rule 4.04 of the Rules of Family Court Procedure.

Subsection (c) of this rule is derived from existing Rule 4.05 of the Rules of Family Court Procedure.

Rule 306.1 Default Hearings

To place a matter on the default calendar for final hearing, the moving party shall comply with the following, as applicable:

(a) Without Stipulation-- No Appearance. In all default proceedings where a stipulation has not been filed, an affidavit of default and of non-military status of the defaulting party or a waiver by that party of any rights under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, shall be filed with the court.

(b) Without Stipulation--Appearance. Where the defaulting party has appeared by a pleading other than an answer, or personally without a pleading, and has not affirmatively waived notice of the other party's right to a default hearing, the moving party shall notify the defaulting party in writing at least ten (10) days before the final hearing of the intent to proceed to Judgment. The notice shall state:

> You are hereby notified that an application has been made for a final hearing to be held not sooner than three (3) days from the date of this notice. You are further notified that the court will be requested to grant the relief requested in the petition at the hearing.

The default hearing will not be held until the notice has been mailed to the defaulting party at the last known address and an affidavit of service by mail has been filed.

(c) Default with Stipulation. Whenever a stipulation settling all issues has been executed by the parties, the stipulation shall be filed ~~with a note of issue, together~~ with an affidavit of non-military status of the defaulting party or a waiver of that party's rights under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, if not included in the stipulation.

In a stipulation where a party appears pro se, the following waiver shall be executed by that party:

> I know I have the right to be represented by an attorney of my choice. I hereby expressly waive that right and I freely and voluntarily sign the foregoing stipulation.

Family Court Rules Advisory Committee Commentary

The stipulation should establish that one of the parties may proceed as if by default, without further notice to or appearance by the other party.

The waiver of counsel should be prepared as an addendum following the parties' signatures on the stipulation.

Task Force Comment--1991 Adoption

Subsections (a) and (b) of this rule are derived from existing Rule 5.01 of the Rules of Family Court Procedure.

Subsection (c) of this rule is derived from existing Rule 5.02 of the Rules of Family Court Procedure.

Rule 306.2 Default Proceedings--Preparation of Decree

In a scheduled default matter, proposed findings of fact, conclusions of law, order for judgment and judgment and decree shall be submitted to the court in advance of, or at, the final hearing.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 5.03 of the Rules of Family Court Procedure.

Rule 307.1 Final Hearings

(a) Failure to Appear--Sanctions. Failure to appear at the scheduled final hearing may result in the case being stricken from the contested calendar, granting of partial relief to the appearing party, striking of the non-appearing party's pleadings and the hearing of the matter as a default, an award of attorney's fees and costs, and such other relief as the court finds appropriate, without further notice to the defaulting party.

(b) Stipulations Entered in Open Court--Preparation of Findings. Where a stipulation has been entered orally upon the record, the attorney directed to prepare the decree shall submit it to the court with a copy to each party. Unless a written, fully executed stipulation is filed or unless the decree contains the written approval of the attorney for each party, a transcript of the oral stipulation shall be filed by the attorney directed to prepare the decree. Responsibility for the cost of the transcript shall be determined by the court. Entry of the decree shall be deferred for ~~ten (10) working~~14 days to allow for objections unless the decree contains the written approval of the attorney for each party.

Task Force Comment--1991 Adoption

Subsection (a) of this rule is derived from existing Rule 6.01 of the Rules of Family Court Procedure.

Subsection (b) of this rule is derived from existing Rule 6.02 of the Rules of Family Court Procedure.

Rule 308.1 Final Decree

(a) Awards of Child Support and/or ~~Spousal~~ Maintenance. All judgments and decrees which include awards of child support and/or ~~spousal~~ maintenance, unless otherwise directed by the court, shall include the provisions set forth in Rule 303.6.

(b) Public Assistance. When a party is receiving or has applied for public assistance, the party obtaining the judgment and decree shall serve a copy on the agency responsible for child support enforcement, and the decree shall direct that all payments of child support and spousal maintenance shall be made to the agency providing the assistance for as long as the custodial parent is receiving assistance.

(c) Child Support Enforcement. When a private party has applied for or is using the services of the local child support enforcement agency, a copy of the decree shall be served by mail by the party submitting the decree for execution upon the county agency involved.

(d) Supervised Custody or Visitation. ~~Where there is an ongoing supervision of custody or visitation, at copy of the judgment and decree shall be provided to the appropriate agency by the party obtaining the decree.~~ A copy of any judgment and decree directing ongoing supervision of custody or visitation shall be provided to the appropriate agency by the party obtaining the decree.

Family Court Rules Advisory Committee Commentary

Minn. Stat. § 518.551 requires that maintenance or support must be ordered payable to the public agency so long as the obligee is receiving public assistance.

Agencies responsible for enforcement of child support in private cases also require a copy of the judgment and decree.

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 7.01 of the Rules of Family Court Procedure. The list of provisions is not set forth in this rule, as it was set forth in full in new Rule 303.6.

Subdivision (b) is derived from Rule 7.02 of the Rules of Family Court Procedure, and also in part from Second District Local Rule 7.021.

Subdivision (c) is derived from Second District Local Rule 7.022.

Subdivision (d) of this rule, replacing existing Rule 7.03 of the Rules of Family Court Procedure, was recommended to the Task Force by the Minnesota State Bar Association Family Law Section.

Rule 308.2 Statutorily Required Notices

Where statutes require that certain subjects be addressed by notices in an order or decree, the notices shall not be included verbatim but shall be set forth in an attachment and incorporated by reference.

Family Court Rules Advisory Committee Commentary

See Rule 10.01, Form 3, for the concept of the form of the attachment.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 7.04 of the Rules of Family Court Procedure.

Rule 308.3 ~~Findings~~Sensitive Matters

~~**(a) Required.** All orders and decrees in family court proceedings shall contain particularized findings of fact sufficient to support the determination of custody and visitation, child support and/or maintenance, distributions of property, and other issues decided by the court.~~

~~**(b) Sensitive Matters.**~~ Whenever the findings of fact include private or sensitive matters, a party may submit a judgment and decree supported by separate documents comprising findings of fact, conclusions of law, and order for judgment.

~~**Family Court Rules Advisory Committee Commentary**~~

~~See Minn. R. Civ. P. 52.01; Wallin v. Wallin, 290 Minn. 261, 187 N.W.2d 627 (1971); Rosenfeld v. Rosenfeld, 311 Minn. 76, 249 N.W.2d 168 (1976); Moylan v. Moylan, 384 N.W.2d 859 (Minn. 1986).~~

Task Force Comment--1991 Adoption

The Task Force recommends repeal of existing Rule 7.05 of the Rules of Family Court Procedure because the requirement for findings is well established by the common law, and a rule recodifying the settled law is surplusage.

The recommended rule is patterned after Second District Rule 7.051. Its purpose is to allow sensitive factual and legal matters to be preserved in separate documents so that the need for disseminating confidential and sensitive matters can be minimized. This rule does not create a right to maintain the privacy of any portion of the findings; it allows the court to create documents that may be useful for some public purposes without including all other parts of the findings.

Rule 309.1 Contempt

(a) Moving Papers--Service; Notice. Contempt proceedings shall be initiated by an order to show cause served upon the person of the alleged contemnor together with motions accompanied by appropriate supporting affidavits.

The order to show cause shall direct the alleged contemnor to appear and show cause why he/ or she should not be held in contempt of court and why the moving party should not be granted the relief requested by the motion.

The order to show cause shall contain at least the following:

(1) A reference to the specific order of the court alleged to have been violated and date of entry of the order;

(2) A quotation of the specific applicable provisions ordered; and

(3) The alleged failure(s) to comply.

(b) Affidavits. The supportingve affidavit of the moving party shall set forth each alleged violation of the order with particularity. Where the alleged violation is a failure to pay sums of money, the affidavit shall state the kind of payments in default and shall specifically set forth the payment dates and the amounts due, paid and unpaid for each failure.

The respondingve affidavit shall set forth with particularity any defenses the alleged contemnor will present to the court. Where the alleged violation is a failure to pay sums of money, the affidavit shall set forth the nature, dates and amount of payments, if any.

The supportive affidavit and the responsive affidavit shall contain numbered paragraphs which shall be numbered to correspond to the paragraphs of the motion where possible.

Family Court Rules Advisory Committee Commentary

Service of the order to show cause upon the person provides jurisdiction for the issuance of a writ of attachment or bench warrant, if necessary, and meets the requirement for an opportunity to be heard. See Clausen v. Clausen, 250 Minn. 293, 84 N.W.2d 675 (1976); Hopp v. Hopp, 279 Minn. 170, 156 N.W.2d 212 (1968).

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 8.01 of the Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from existing Rule 8.01 of the Rules of Family Court Procedure. The new language is derived from Second District Local Rule 8.011.

Rule 309.2 Contempt--Hearing Procedure

The alleged contemnor must appear in person before the court to be afforded the opportunity to resist the motion for contempt by sworn testimony. The court shall not act upon affidavit alone, absent express waiver by the ~~responding person~~ alleged contemnor of the right to offer sworn testimony.

Family Court Rules Advisory Committee Commentary

For the right to counsel in contempt proceedings, see Cox v. Slama, 355 N.W.2d 401 (Minn. 1984).

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 8.02 of the Rules of Family Court Procedure.

Rule 309.3 Contempt--Sentencing

(a) Default of Conditions for Stay. Where the court has entered an order for contempt with a stay of sentence and there has been a default ~~of the conditions~~ in the performance of the condition(s) for the stay, before a writ of attachment or a bench warrant will be issued, an affidavit of non-compliance and request for writ of attachment must be served upon the person of the defaulting party, unless the person is shown to be avoiding service.

(b) Writ of Attachment. The writ of attachment shall direct law enforcement officers to bring the defaulting party before the court for a hearing to show cause why the stay of sentence

should not be revoked. A proposed order for writ of attachment shall be submitted to the court by the moving party.

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 8.03 of the Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from existing Rule 8.03 of the Rules of Family Court Procedure, with the new language added from Second District Rule 8.031.

Rule 310.1 Court-Ordered Mediation

(a) Initiation. The court may issue an order for mediation upon a motion by a party, by stipulation of the parties, ~~at a hearing for temporary relief, or when a note of issue has been filed asserting custody as a contested issue.~~ or upon the court's own initiative. The court shall not require mediation when it finds probable cause that domestic or child abuse has occurred. ~~or~~ Wwhere the parties have made an unsuccessful effort to mediate with a qualified mediator ~~additional mediation need not be required~~.

(b) Order--Condition Precedent. When ordered by the court, participation in mediation shall be a condition precedent to the scheduling of a final hearing in a dissolution proceeding.

Task Force Comment--1991 Adoption

Subsection (a) of this rule is derived from existing Rule 9.01 of the Rules of Family Court Procedure.

Subsection (b) of this rule is derived from Second District Local Rule 9.011.

Rule 310.2 Mediators

(a) Appointment. The court shall appoint a mediator from its approved list, unless the parties stipulate to a mediator not on the list.

Each party shall be entitled to file a request for substitution within seven (7) days after receipt of notice of the appointed mediator. The court shall then appoint a different mediator with notice given to the parties.

(b) Qualification and Training. The court shall establish an approved list of mediators who qualify for appointment by statute.

Family Court Rules Advisory Committee Commentary

Co-mediation (mediation conducted by a mediator of each gender) may be available to the parties at the request of either party and with the approval of the court.

Task Force Comment--1991 Adoption

Subsection (a) of this rule is derived from existing Rule 9.02 of the Rules of Family Court Procedure.

Subsection (b) of this rule new. The Task Force believes that some specific provision should be made for qualification and training of mediators. Minn. Stat. § 518.619 (1990) sets forth qualifications for mediators.

Rule 310.3 Mediation Attendance

(a) Mandatory Orientation. Parties ordered by the court to participate in mediation shall attend the orientation session.

(b) Mediation Sessions. Mediation sessions shall be informal and conducted at a suitable location designated by the mediator. Both parties shall appear at the time scheduled by the mediator, and attendance is limited to the parties, unless all parties and the mediator agree to the presence of other persons.

To assist in resolving contested issues, the parties may involve resource persons including attorneys, appraisers, accountants, and mental health professionals.

Family Court Rules Advisory Committee Commentary

In the orientation session the mediator should assess the appropriateness of the parties for mediation, describe the mediation process, elicit questions from the parties about how the process works, inquire if they have retained attorneys, advise them to consult their attorneys before and during the mediation process, distribute a copy of Rule IX and obtain the parties' signatures on the agreement to mediate.

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 2.09 of the Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from existing Second District Rule 9.031.

Rule 310.4 Scope of Mediation

Mediation may address all issues of controversy between the parties, unless limited by court order.

Family Court Rules Advisory Committee Commentary

The parties may involve resource persons to assist in resolving contested issues. Resource persons may include both parties' attorneys, appraisers, accountants, and mental health professionals.

Only the parties and the mediator(s) should attend mediation sessions unless the parties and mediator agree otherwise.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 9.04 of the Rules of Family Court Procedure.

Rule 310.5 Confidentiality

Mediation proceedings under these rules are privileged, not subject to discovery, and inadmissible as evidence in family court proceedings without the written consent of both parties.

Mediators and attorneys for the parties, to the extent of their participation in the mediation process, cannot be called as witnesses in the family court proceedings.

No record shall be made without the agreement of both parties, except for a memorandum of issues that are resolved.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 2.09 of the Rules of Family Court Procedure.

Rule 310.6 Termination of Mediation

Mediation shall be terminated upon the earliest of the following circumstances to occur:

(a) a complete agreement of the parties;

(b) the partial agreement of the parties and a determination by the mediator that further mediation will not resolve the remaining issues; or

(c) the determination by the mediator or either party that the parties are unable to reach agreement through mediation or that the proceeding is inappropriate for mediation.

Family Court Rules Advisory Committee Commentary

The mediator may determine that further mediation is inappropriate based upon information that one of the parties, or a child of a party, has been physically or sexually abused by the other party. See Minn. Stat. § 518.619, subd. 2.

These rules recognize that there may be a continuing concurrent obligation to report domestic, child, physical, or sexual abuse under different statutes.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 9.06 of the Rules of Family Court Procedure.

Rule 310.7 Mediators' Memorandum

(a) Submissions. Upon termination of mediation, the mediator shall submit a memorandum to the parties and the court setting out (1) the complete or partial agreement of the parties and enumerating the issues upon which they cannot agree, or (2) that no agreement has been reached, without any explanation.

(b) Copy to Attorney. Where a party is represented by an attorney, the mediator shall send a copy of the memorandum to that party's attorney as well as the party.

(c) Agreement. The parties' agreement shall be reduced to writing by counsel for the petitioner, or counsel for the respondent with the consent of the petitioner, in the form of a marital termination agreement, stipulation, or similar instrument. The written agreement shall be signed by both parties and their counsel and submitted to the court for approval ~~in accordance with Section III of these rules.~~

Family Court Rules Advisory Committee Commentary

Where the parties are represented by attorneys, the mediator should send a copy of the memorandum to the parties' attorneys.

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 9.07 of the Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from Second District Rule 9.071.

Subdivision (c) of this rule is derived from Second Judicial District Rule 9.072.

Rule 310.8 Child Custody Investigation

When the parties are unable to reach agreement on custody through mediation, the mediator may not conduct a custody investigation, unless the parties agree in writing executed after the termination of mediation, that the mediator shall conduct the investigation or unless there is no other person reasonably available to conduct the investigation or evaluation. Where the mediator is also the sole investigator for a county agency charged with making recommendations to the court regarding child custody and visitation, the court administrator shall make all reasonable attempts to obtain reciprocal services from an adjacent county. Where such reciprocity is possible, another person or agency is "reasonably available."

Family Court Rules Advisory Committee Commentary

Although Minn. Stat. § 518.619, subd. 6 permits the mediator to conduct the investigation, it is the intent of this rule to define when the mediator can reasonably do so. Minn. Stat. § 518.167, subd. 3 contemplates the bifurcation of mediation and the custody investigation to insure confidentiality. The rule acknowledges the difficulty of implementing such a requirement in those counties with only one court services staff member.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 9.08 of the Rules of Family Court Procedure.

Rule 310.9 Fees

Each court shall establish fees for mediation services. The court may allocate payment of the fees among the parties and the county.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 9.09 of the Rules of Family Court Procedure.

Rule 311.1 Forms

The forms contained in the Appendix of Forms are sufficient under these rules.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 10.01 of the Rules of Family Court Procedure.

Rule 312.1 Notice of Assignment to Judge; Parties' Submissions

Upon the filing of the notice of review of a referee's findings or recommended order, the court administrator shall notify each party:

(a) of the name of the judge to whom the review has been assigned;

(b) that the moving party shall have 10 days from the date of mailing the notice of assignment in which to file and serve a memorandum; and

(c) that the responding party(s) shall have 20 days from the date of mailing the notice of assignment within which to file and serve a responsive memorandum.

Failure to file and serve these submissions on a timely basis may result in dismissal of the review or disallowance of the submissions. No additional evidence may be filed and no personal appearance will be allowed except upon order of the court for good cause[1] shown after notice of motion and motion.

The review shall be based on the record before the referee and additional evidence will not be considered, except for compelling circumstances constituting good cause.

Task Force Comment--1991 Adoption

This rule is derived from Second District Rules 11.03 & 11.04.

Rule 312.2 Transcript of Referee's Hearing

If either party desires to submit a transcript of the hearing held before the referee, arrangements must be made with the court reporter at the earliest possible time, and the court must be advised of the date by which the transcript will be filed. The desire to submit a transcript and ordering of the transcript shall not delay the due dates for the submissions described in Rule 311.3.

Task Force Comment--1991 Adoption

This rule is derived from Second District Rule 11.05.

MINNESOTA PROBATE RULES

Rule 401 Applicability of Rules

Rules 401 through 416 apply to all Probate proceedings.

Task Force Comment--1991 Adoption

Rules 401 through 416 are the Minnesota Probate Rules recodified, but not otherwise significantly changed. Rule 401 is a new rule intended to make it clear what actions are governed by these rules.

Rule 402 Definitions

(a) Formal Proceedings. A formal proceeding is a hearing conducted before the court with notice to interested persons. Formal proceedings seek a judicial determination.

(b) Informal Proceedings. An informal proceeding is conducted by the judge, the registrar, or the person or persons designated by the judge for probate of a will or appointment of a personal representative. Informal proceedings seek an administrative determination and not a judicial determination and are granted without prior notice and hearing.

(c) Supervised Administration. Supervised administration is a single, continuous, in rem proceeding commenced by a formal proceeding.

(d) Code. The code is the Uniform Probate Code as adopted by the State of Minnesota.

Rule 403 Documents

(a) Preparation of Original Documents. It shall be the responsibility of attorneys and others appearing before the court or registrar to prepare for review and execution appropriate orders, decrees, statements, applications, petitions, notices and related documents, complete and properly drafted, to address the subject matter and relief requested.

(b) Official Forms. The official forms adopted by the Minnesota District Judges' Association or promulgated by the Commissioner of ~~Securities~~Commerce shall be used.

(c) Documents and Files. The court shall make its files and records available for inspection and copying.

No file, or any part thereof, shall be taken from the custody of the court, except the original court order required to be displayed to an individual or entity when the order is served. A document or exhibit which has been filed or submitted in any proceeding can thereafter be withdrawn only with the permission of the court. Any document which is written in a language other than English shall be accompanied by a verified translation into the English language.

(d) Verification of Filed Documents. Every document filed with the court must be verified as required by the code, except a written statement of claim filed with the court administrator by a creditor or a pleading signed by the attorney for a party in accordance with the Rules of Civil Procedure for the district courts.

Probate Committee Comment

The court will accept photocopies of forms if the copies are made by a process that is permanent, on hard stock paper, are free of smudges and otherwise clearly legible and have been reproduced in the same length as the original form and prescribed type size. In using photocopies of forms in courts that are not utilizing a flat file system, the case heading and nomenclature must appear on the outside of the form when folded appropriately for permanent filing.

Task Force Comment--1991 Adoption

The change in this rule is made to reflect the new title of the office formerly known as Commissioner of Securities. *See* Minn. Stat. § 80A.14, subd. 5 (1990).

Rule 404 Notice in Formal Proceedings

(a) General Notice Requirements. In all formal proceedings notice of a hearing on any petition shall be given as provided in the code after the court issues the order for hearing. Where mailed notice is required, proof of mailing the notice of hearing shall be filed with the court administrator before any formal order will issue. Mailed notice shall be given to any interested person as defined by the code or to the person's attorney. Where notice by personal service or publication is required by the code, proof of personal service or publication shall be filed with the court administrator before the formal order will issue.

(b) Notice of Proceedings for Determination of Testacy and Appointment of Personal Representative. In proceedings which adjudicate testacy, notice of the hearing on the petition shall be given after the court administrator issues the order for hearing. Proof of publication of the order for hearing, in accordance with the code, shall be filed with the court administrator before the order will issue. In proceedings for the formal appointment of a personal representative, the same notice requirements shall pertain except notice by publication shall not be required if testacy has been previously determined. Where creditors claims are to be barred, the published notice shall include notice to creditors.

Mailed notice shall be given to all known heirs-at-law, all devisees under any will submitted for formal probate and all interested persons as defined by the code or ordered by the court and shall include in appropriate cases the attorney general, foreign consul and attorneys representing the interested persons.

Mailed notice shall be given to the surviving spouse of the following rights:

~~(a)~~(1) The right to receive the decedent's wearing apparel, furniture and household goods and other personal property as provided in the code or by law.

~~(b)~~(2) The right to receive maintenance payments during administration of the estate as provided in the code or by law.

~~(c)~~(3) The right to take an elective share of one-third of the augmented estate as provided in the code and the homestead as provided in the code or by law.

(c) Waiver of Notice in Formal Proceedings. Except in proceedings governed by subdivision (b) of this rule, an interested person may waive notice of any formal proceeding in accordance with the code. The written waiver shall evidence the person's consent to the order sought in the proceeding.

Probate Committee Comment

Publication required by this notice must be completed prior to the hearing date.

Rule 405 Interim Orders

(a) Interim Orders Available From Court Only. The court has no power to intervene in any unsupervised administration unless a formal petition invoking the court's authority is filed by an interested person.

The court or registrar does not have authority to issue ex parte interim orders in unsupervised proceedings except that the registrar may issue the certificate of discharge provided for in the code.

In supervised administration, the court may issue ex parte orders only for strong and compelling reasons.

Probate Committee Comment

Determinations by the registrar are informal and do not bring the estate or interested persons under the supervisory authority of the court. A personal representative appointed in informal proceedings may petition the court for a formal determination as to any matter within the jurisdiction of the court. It may also be necessary to seek the formal determination of the court as to the admissibility of a will, determination of heirship, or other matters as a condition precedent to obtaining the requested relief.

Rule 406 Uncontested Formal Proceedings

(a) Uncontested Formal Proceedings; Hearings and Proof. The court shall call the calendar in open court for all hearings set for a designated time. If a petition in a formal proceeding is unopposed, the court will enter in the record the fact that there was no appearance in opposition to the petition and that no objection has been filed with the court. Thereupon, the court shall:

~~(a)~~(1) Make its determination after conducting a hearing in open court, requiring appearance of petitioner and testimony or other proof of the matters necessary to support the order sought; or

~~(b)~~(2) Make its determination on the strength of the pleadings without requiring the appearance of petitioner or of petitioner's attorney and without requiring testimony or proof other than the verified pleadings; or

~~(c)~~(3) Make its determination based on such combination of ~~(a)~~(1) and ~~(b)~~(2) above as the court in its discretion deems proper.

In any uncontested formal proceeding, the court shall determine that (i) the time required for any notice has expired; (ii) any required notice has been given; (iii) the court has jurisdiction of the subject matter; (iv) venue is proper; and (v) the proceeding was commenced within the time limitations prescribed by the code as a prerequisite to determining other issues presented to the court for determination in the proceeding. The court shall be satisfied that the pleadings and any other proof presented support the order sought in any uncontested formal proceeding.

Rule 407 Appointment

(a) Nomination and Renunciation. When two or more persons have equal or higher priority to appointment as personal representative, those who do not renounce must concur in writing in nominating another to act for them, or in applying for appointment. In formal appointment proceedings, concurrence by persons who have equal or higher priority is presumed after notice has been given unless a written objection is filed.

(b) Nonresident Personal Representatives. The court or registrar may appoint a nonresident personal representative.

Rule 408 Informal Proceedings

(a) Contents of the Application. Application for informal probate or appointment proceedings shall contain information required by the code and the approximate value of the following categories of assets:

Probate Assets

Homestead	$_____
Other Real Estate	$_____
Cash	$_____
Securities	$_____
Other	$_____

Non-Probate Assets

Joint Tenancy	$_____
Insurance	$_____
Other	$_____

Approximate Indebtedness $_____

In all estate proceedings, whether testate or intestate, the application must contain a statement that specifically eliminates all heirs or devisees other than those listed in the application.

Probate Committee Comment

Examples

(These are not intended to be exhaustive)

The statements will necessarily vary, depending upon who survives the decedent, and must close out any class affected:

(1) Where only the spouse survives, the application should state "That decedent left no surviving issue, natural or adopted, legitimate or illegitimate."

(2) Where only children survive, the application should state "That the decedent left surviving no spouse; no children, natural or adopted, legitimate or illegitimate, other than herein named; and no issue of any deceased children."

(3) Where the spouse and children survive, the application should state "That the decedent left surviving no children, natural or adopted, legitimate or illegitimate, other than herein named and no issue of any deceased children."

(4) Where only brothers or sisters of decedent survive, the application should state "That the decedent left surviving no spouse; issue; parents; brothers or sisters other than herein named; and no issue of deceased brothers or sisters."

(5) Where only first cousins survive, the application should state "That the decedent left surviving no spouse; issue; parents; brothers or sisters or issue thereof, grandparents; aunts or uncles; and no first cousins other than herein named."

(6) In all eases, the application should state either:

(a) That all the heirs-at-law survived the decedent for 120 hours or more; or

(b) that all the heirs-at-law survived the decedent for 120 hours or more except the following: (name or names).

(7) In all cases where a spouse and children survive, the application should state either:

(a) That all of the issue of the decedent are also issue of the surviving spouse; or

(b) That one or more of the issue of the decedent are not also issue of the surviving spouse.

(b) Will Testimony. The registrar shall not require any affidavit or testimony with respect to execution of a will prior to informal probate if it is a self-proved will or appears to have been validly executed.

Probate Committee Comment

Applicants for informal probate of a will which is not self-proved are encouraged to preserve evidence concerning the execution of the will if a formal testacy proceeding may later be required or desired.

(c) Appearances. The applicant is required to appear before the registrar unless represented by counsel. The registrar may also waive appearance by counsel.

(d) Informal Proceedings: Notice of Informal Probate of Will and Informal Appointment of Personal Representative. In informal proceedings, notice of appointment of a personal representative shall be given after the registrar issues the order appointing the personal representative. Proof of placement for publication shall be filed with the court administrator before letters will issue. Where mailed notice is required, an affidavit of mailing of the order appointing the personal representative shall be filed with the court administrator before letters will issue. If the informal proceedings include the informal probate of a will, the notice shall include notice of the issuance of the statement of informal probate of the will. Where creditors claims are to be barred, the published notice shall include notice to creditors.

Mailed notice shall be given to all known heirs-at-law, all devisees under any will submitted for informal probate and all interested persons as defined by the code and shall include in appropriate cases the attorney general, foreign consul and attorneys representing interested persons.

Mailed notice shall be given to the surviving spouse of the following rights:

~~(a)~~(1) The right to receive the decedent's wearing apparel, furniture and household goods and other personal property as provided in the code or by law.

~~(b)~~(2) The right to receive maintenance payments during administration of the estate as provided in the code or by law.

~~(c)~~(3) The right to take an elective share of one-third of the augmented estate as provided in the code and the homestead as provided in the code or by law.

Rule 409 Formal Testacy and Appointment Proceedings

(a) Contents of Petition. A petition in formal testacy and appointment proceedings shall contain the information required by the code and the information concerning the approximate value of assets required by Rule ~~6(1)~~408(a). In all estate proceedings, whether testate or intestate, the petition must contain an allegation that specifically eliminates all heirs or devisees other than as listed in the petition.

(b) Conversion to Supervised Administration. Any estate which has been commenced as an informal proceeding or as an unsupervised formal proceeding may be converted at any time to a supervised administration upon petition. The court shall enter an order for hearing on said petition. Notice of hearing shall be given in accordance with Rule ~~2(1)~~404(a). If testacy has not been adjudicated in a prior formal proceeding, notice of hearing must meet the specific notice requirements for formal testacy proceedings provided by Rule ~~2(2)~~404(b) including notice by publication.

Rule 410 Transfer of Real Estate

(a) Transfers of Real Estate in Supervised and Unsupervised Administration; Transfer by Personal Representative of Real Property for Value; Documents Required. A personal representative shall provide a transferee of real property for value with the following documents:

(1) A certified copy of unrestricted letters (30 days must have elapsed since date of issuance of letters to an informally appointed personal representative);

(2) A certified copy of the will; and

(3) A personal representative's deed or other instrument transferring any interest in real property which shall contain the marital status of the decedent and the consent of spouse, if any.

(b) Distribution of Real Property; Documents Required. A personal representative shall provide a distributee of real property with the following documents:

~~(a)~~(1) When distribution is made by decree, a certified copy of the decree of distribution assigning any interest in real property to the distributee.

~~(b)~~(2) When distribution is made by deed from a personal representative in unsupervised administration:

(i) A certified copy of unrestricted letters (30 days must have elapsed since date of issuance of letters to an informally appointed personal representative);

(ii) A certified copy of the will; and

(iii) A personal representative's deed of distribution of any interest in real property to the distributee which shall contain the marital status of the decedent and consent of spouse, if any.

~~(c)~~(3) When distribution is made by deed from the personal representative in supervised administration:

(i) A certified copy of unrestricted letters;

(ii) A certified copy of an order of distribution which authorizes the distribution of any interest in real property to the distributee;

(iii) A certified copy of the will; and

(iv) A personal representative's deed of distribution of any interest in real property to the distributee.

Rule 411 Closing Estates

(a) Notice of Formal Proceedings for Complete Settlement Under Minn. Stat. § 524.3-1001. If testacy has been adjudicated in a prior formal proceeding, notice of hearing on a petition for complete settlement under Minn. Stat. § 524.3-1001 must meet the requirements of Rule ~~2.01~~ 404(a), but notice by publication specifically provided for in Minn. Stat. § 524.3-403

is not required. If testacy has not been adjudicated in a prior formal proceeding, notice of hearing on a petition for complete settlement under Minn. Stat. § 524.3-1001, must meet the specific notice requirements for formal testacy proceedings provided in Minn. Stat. § 524.3-403, including notice by publication.

(b) Notice of Formal Proceedings for Settlement of Estate Under Minn. Stat. § 524.3-1002. If an estate is administered under an informally probated will and there has been no adjudication of testacy in a prior formal proceeding, the court may make a final determination of rights between the devisees under the will and against the personal representative under Minn. Stat. § 524.3-1002, if no part of the estate is intestate. The court will not adjudicate the testacy status of the decedent. Notice of hearing on a petition must meet the requirements of Minn. Stat. § 524.1-401. Notice by publication specifically provided for in Minn. Stat. § 524.3-403 is not required.

Rule 412 Fees, Vouchers, and Tax Returns

(a) Fees. The court may require documentation or it may appoint counsel to determine the reasonableness of the fees charged by the attorney and the personal representative. The court may order the fees of the appointed counsel to be paid out of the estate.

(b) Vouchers. Unless otherwise ordered by the court, vouchers for final and interim accounts need not be filed.

(c) Tax Returns. Unless ordered by the court, copies of the United States Estate Tax closing letter and the Minnesota notification of audit results need not be filed.

Rule 413 Subsequent Proceedings

(a) Authority of Personal Representative During One Year Period After Filing Closing Statement. For one year from the date of filing the closing statement authorized by the code, the personal representative shall have full and complete authority to execute further transfers of property; to complete transactions; to complete distributions; to correct misdescriptions or improper identification of assets; or to transfer or distribute omitted property. During this period, the personal representative shall ascertain any matters of unfinished administration which must be completed prior to the termination of the representative's authority.

(b) Authority of Personal Representative to Transfer or Distribute Omitted Property During One Year Period After Filing Closing Statement. In the case of omitted property discovered after the filing of the closing statement authorized by the code, but before termination of the personal representative's authority, the personal representative must, as required by the code, file a supplementary inventory with the court and mail a copy to any surviving spouse, other distributees, and other interested persons, including creditors whose claims are unpaid and not barred. Proof of service by mail must be filed with the court prior to any transfer of the omitted property by the personal representative.

(c) Notice of Proceedings for Subsequent Administration After Termination of Personal Representative's Authority. Appointment of a personal representative in subsequent administration may only be secured in formal proceeding. If testacy has been adjudicated in a formal proceeding, notice of hearing must meet the requirements of Rule ~~2(1)~~403(a), but the notice by publication specifically provided for in Minn. Stat. § 524.3-403 is not required. If testacy has not been adjudicated previously and only appointment of a personal representative is sought, notice of hearing must meet the specific notice requirements for formal testacy proceedings provided in Minn. Stat. § 524.3-403, but notice by publication is not required. In the case of subsequent administration involving omitted property, the personal representative must comply with the inventory, mailing and filing requirements of Rule ~~11(2)~~413(b).

(d) Proof Required for Formal Settlement or Distribution in Subsequent Administration. During a subsequent administration, when an order of settlement of the estate and decree or order of distribution is sought, the court must be satisfied with the pleadings and

any other proof (including accounting for all assets, disbursements, and distributions made during the prior administration) before issuing its order.

Rule 414 Fiduciaries

~~**(a) Attorney Serving as a Fiduciary.**~~ If the attorney for the estate, a partner, associate or employee is the personal representative of the estate, **except where one of them is a family member of the decedent,** the administration shall be supervised. In such a case, both the attorney for the estate and the personal representative must keep separate time records and differentiate the charges for their duties in each capacity. The attorney should only serve as fiduciary at the unsolicited suggestion of the client and the attorney must realize that there are legal, ethical and practical problems that must be overcome in order to perform the duties of a fiduciary and attorney.

Task Force Comment--1991 Adoption

This recommended change is made to permit family members, who happen to be attorneys, to serve as fiduciaries without automatically subjecting the estate to the burdens of supervised administration. Although supervised administration may be appropriate in individual cases, the Task Force believes that it should not be uniformly imposed on the families of attorneys.

Rule 415 Registrar

(a) Authority. The functions of the registrar may be performed either by a judge of the court or by a person designated by the court in a written order filed and recorded in the office of the court, subject to the following:

~~(a)~~(1) Each judge of the court may at any time perform the functions of registrar regardless of whether the court has designated other persons to perform those functions.

~~(b)~~(2) The functions and powers of the registrar are limited to the acts and orders specified by the code and these rules.

~~(c)~~(3) Any person designated registrar by the court shall be subject to the authority granted by and the continuing direction of the court.

~~(d)~~(4) The registrar is not empowered to intervene or issue orders resolving conflicts related to the administration of the estate.

(b) Registrar Has No Continuing Authority. The registrar does not have any continuing authority over an estate after the informal probate is granted or denied and shall not require the filing of any additional documents other than are required by the code (law) and these rules.

Rule 416 Guardianships and Conservatorships

(a) Responsibility of Attorney. Upon the appointment of a conservator or guardian of the estate, the appointee shall nominate an attorney of record for that conservatorship or guardianship, or shall advise the court that he or she shall act pro se. The named attorney shall be the attorney of record until terminated by the conservator or guardian, or, with the consent of the court, by withdrawal of the attorney. If the attorney is terminated by the conservator or guardian, written notice of substitution or pro se representation shall be given to the court (by the conservator or guardian, or by the attorney who has received oral or written notice of termination), and until such notice, the former attorney shall be recognized.

(b) Visitors in Guardianship and Conservatorship Proceedings. A visitor, as defined by law, may be appointed in every general guardianship or conservatorship proceeding.

Every visitor shall have training and experience in law, health care or social work, as the case may be, depending upon the circumstances of the proposed ward or conservatee.

The visitor shall be an officer of the court and shall be disinterested in the guardianship or conservatorship proceedings. If the court at any time determines that the visitor, or the firm

or agency by which he or she is employed, has or had, at the time of hearing, a conflict of interest, the court shall immediately appoint a new visitor and may, if necessary, require a hearing de novo.

The visitor shall, (a) without outside interferences, meet with the proposed ward or conservatee, either once or more than once as the visitor deems necessary, (b) observe his or her appearance, lucidity and surroundings, (c) serve, read aloud, if requested, and explain the petition and notice of hearing, (d) assist, if requested, in obtaining a private or court appointed attorney, (e) advise the proposed ward or conservatee that a report will be filed at least five (5) days before the hearing and that the report is available to the proposed ward or conservatee or the ward's or conservatee's attorney, (f) prepare a written report to the court setting forth all matters the visitor deems relevant in determining the need for a guardian or conservator, including recommendations concerning appointment and limitation of powers, (g) file the original report with the court and, (h) serve a copy upon the petitioner or petitioner's attorney at least five (5) days prior to the hearing, (i) appear, testify and submit to cross examination at the hearing concerning his or her observations and recommendations, unless such appearance is excused by the court.

(c) Voluntary Petition. If an adult voluntarily petitions or consents to the appointment of a guardian or conservator of the estate as set forth in the law, then it is not necessary for such adult to be an "incapacitated person" as defined by the law.

(d) Amount of Bond. The court may, at any time, require the filing of a bond in such amount as the court deems necessary and the court, either on request of an interested party, or on its own motion, may increase or decrease the amount of the bond. The court, in requiring a bond, if any, or in determining the amount thereof, shall take into account not only the nature and value of the assets, but also the qualifications of the guardian or conservator.

(e) Effect of Allowance of Accounts. The filing, examination and acceptance of an annual account, without notice of hearing, shall not constitute a determination or adjudication on the merits of the account, nor does it constitute the court's approval of the account.

(f) Required Periodic Settlement of Accounts. No order settling and allowing an annual or final account shall be issued by the court except on a hearing with notice to interested parties. A hearing for the settlement and allowance of an annual or final account may be ordered upon the request of the court or any interested party. A hearing shall be held for such purpose in each guardianship or conservatorship of the estate at least once every five years upon notice as set forth in the law, and the rules pursuant thereto. However, in estates of the value of $20,000 or less, the five year hearing requirement may be waived by the court in its discretion. Such five year hearings shall be held within 150 days after the end of the accounting period of each fifth annual unallowed account and the court administrator shall notify such guardian or conservator, the guardian's or conservator's attorney and the court if the hearing is not held within the 150 day period.

(g) Notice of Hearing on Account. Notice of time and place for hearing on the petition for final settlement and allowance of any account shall be given to the ward or conservatee, to the guardian or conservator if such person was not the petitioner for settlement of the accounts, to the spouse, adult children and such other interested persons as the court may direct. Whenever any funds have been received by the estate from the Veterans Administration during the period of accounting, notice by mail shall be given to the regional office. The notice may be served in person or by depositing a copy in the U.S. mail to the last known address of the person or entity being served. When a ward or conservatee is restored to capacity, that person is the only interested person. When a ward or conservatee dies, the personal representative of the estate is the only interested person.

(h) Appearance on Petition for Adjudication of Accounts. When a verified annual or final account is filed in accord with the law and an adjudication is sought, and notice given as required by the law or waived as provided below, and the court determines that the account should be allowed, the account may be allowed upon the pleadings without appearance of the guardian or conservator. If the ward, conservatee or any interested person shall object to the account, or demand the appearance of the guardian or conservator for hearing on the account,

at any time up to and including the date set for the hearing, the court will continue the hearing, if necessary, to a later date and require the appearance of the guardian/conservator for examination. Notice of hearing may be waived with the consent of all interested persons.

(i) **Successor Guardian; Notice to Ward or Conservatee.** The notice required by law shall include the right of the ward or conservatee to nominate and instruct the successor.

CONCILIATION COURT RULES

Rule 501 Applicability of Rules

Rules 501 through 526 apply to all Conciliation Court proceedings, except in Hennepin and Ramsey counties.

Task Force Comment--1991 Adoption

These rules are patterned after the existing rules of conciliation court practice. In order to avoid confusion and to facilitate future statewide application of the rules, procedural matters that are covered by statutes governing conciliation court practice have been incorporated into these rules. The existing rules are seriously in need of revision and updating. The current rules incorporate statutory provisions from statutes that have long ago been superseded, including a $500.00 jurisdictional limit rather than the current statutory limit of $ 4,000.00. (*Compare* Concil. Ct. R. 1.02 *with* Minn. Stat. § 487.30 (1990).

Because Hennepin and Ramsey County Conciliation Courts are governed by separate statutes which create different procedures for conciliation court proceedings in those counties, *see* Minn. Stat. §§ 488A.12-.17; 488A.29-.34 (1990), the uniform rules cannot readily apply in those counties. It is the recommendation of the Task Force that the Legislature repeal the separate jurisdictional statutes for Hennepin and Ramsey County District Courts, so that all conciliation court proceedings statewide are conducted under a single statute. When that legislative action is taken, this rule should then be amended to make these Conciliation Court Rules applicable throughout the state as well.

When the legislative revisions occur, the Task Force recommends that procedural matters contained in the statutes be repealed as well, so that court procedures can be governed by appropriate Supreme Court Rule.

~~**Rule 1.01 Establishment**~~

~~There is hereby established within the civil and criminal division of the County Court a conciliation court, with jurisdiction and powers hereinafter stated.~~

Task Force Comment--1991 Adoption

This rule is unnecessary; establishment is mandated by statute and the courts have already been established.

Rule 502 Jurisdiction

The conciliation court shall have jurisdiction as prescribed by law. ~~Excepting actions involving title to real estate, conciliation court has jurisdiction to hear, conciliate, try and determine civil actions at law where the amount in controversy does not exceed the sum of $500.00 or such other amount as may be prescribed by law from time to time. Territorial jurisdiction of conciliation court is coextensive with the boundaries of the County of _____.~~

Task Force Comment--1991 Adoption

This rule is derived from Rule 1.02 of Rules for the Conciliation Courts.

Rule 503 Powers; Issuance of Process

The ~~C~~conciliation court ~~has all the power of the county court and~~ may issue process as necessary or proper to carry out the purposes of conciliation court.

Task Force Comment--1991 Adoption

This rule is derived from Rule 1.03 of Rules for the Conciliation Courts.

~~**Rule 1.04 Terms of Court**~~

~~The judge(s) shall hold terms of court as necessary to hear and dispose of all claims promptly after filing.~~

Rule 504 Computation of Time

In computing any period of time prescribed ~~herein~~ by these rules, the day of the act, event or default, after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included unless it falls on a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed is less than seven days, intervening Saturdays, Sundays and holidays shall be excluded in the computation.

Task Force Comment--1991 Adoption

The exclusion of Saturdays from the computation of time brings the rule in line with Minn. R. Civ. P. 6.01.

This rule is derived from Rule 1.05 of Rules for the Conciliation Courts.

Rule 505 Judge(s); ~~Clerk~~Administrator; Report~~ingers; Salaries; Quarters and Supplies; Full and Part Time Judicial Officers~~

~~1.~~(a) **Judges.** The judge(s) and, where authorized by statute, full and part time judicial officers and referees of the ~~county~~ district court shall serve as judge(s) of conciliation court for such periods and at such times as the judge(s) shall determine. A judge, ~~or~~ judicial officer, or referee so serving shall be known as a conciliation judge.

~~2.~~(b) **Administrator.**

(1) The ~~Clerk of the County Court~~ court administrator shall ~~serve as the~~ manage the ~~Clerk of C~~conciliation ~~C~~court, and may delegate a deputy ~~clerk or clerks~~ or deputies to assist ~~him~~ in performing ~~his~~ the duties herein prescribed. The ~~clerk~~ court administrator shall keep records and accounts and perform such duties as may be prescribed by the judge(s). ~~He~~ The court administrator shall account for, and pay over to the official entitled thereto, all fees received ~~by him in the same fashion required in his the capacity of District Court Administrator~~ as required by statute or rule.

(2) Under supervision of the conciliation court judges, the court administrator shall explain to litigants the procedures and functions of the conciliation court and shall assist litigants in filling out the forms provided under rules 508(b) and 518(b) of these rules. The performance of these duties shall not constitute the practice of law.

~~3.~~(c) **Reporting.** Conciliation court trials and proceedings shall not be reported. ~~Each court reporter appointed by a judge of county court shall assist that judge in carrying out his the duties as conciliation judge, but unless ordered to do so by that judge, he shall not report trials or proceedings in conciliation court.~~

~~4. The judge(s), clerk, deputy clerks, and court reporters shall receive only their salaries payable for serving as officers of district court while serving in conciliation courts. All oaths taken and bonds given by the judge(s), clerk, deputy clerks and court reporters for their respective offices in county court include their acts in conciliation court, whether or not so expressed therein.~~

~~5. Quarters for holding sessions of conciliation court shall be any of the regular places of holding county court sessions as prescribed herein. Sessions of conciliation court shall be held at the following locations, at the times indicated:~~

~~_____ on _____ at __ M.~~
~~_____ on _____ at __ M.~~

~~The clerk shall procure and furnish necessary forms, stationery, books and other supplies necessary for use of the court, cost thereof to be part of the budget of the county court.~~

Task Force Comment--1991 Adoption

Assistance to litigants under part (b)(2) is required by Minn. Stat. § 487.30, subd. 6 (1990). *Accord* Minn. Stat. §§ 488A.13, subd. 2; 488A.30, subd. 2 (1990). The prohibition against transcribing conciliation court proceedings recognizes that conciliation court is not a court of record and that most litigants are not represented by legal counsel. Provisions regarding salaries, supplies and terms are not appropriate for inclusion in procedural rules.

This rule is derived from Rule 1.06 of Rules for the Conciliation Courts.

Rule 506 Commencement of Action

An action is commenced against a defendant when a complaint is filed with the ~~clerk~~ court administrator of ~~c~~Conciliation ~~c~~Court and a filing fee as established by rule 507 of these rules ~~County Court pursuant to M.S. 487.81~~ is paid to the administrator~~Clerk~~ or the affidavit in lieu of filing fees prescribed in rule 507 is filed with the administrator.

Task Force Comment--1991 Adoption

This rule is derived from Rule 1.07 of Rules for the Conciliation Courts.

Rule 507 Fees; Affidavit in Lieu of Fees

The court administrator shall charge and collect a filing fee of $13.00 from every plaintiff and from every defendant when the first paper for that party is filed in any conciliation court action. If the plaintiff or defendant signs and files with the court administrator an affidavit claiming no money or property and an inability to pay a filing fee, no filing fee is required. If the affiant prevails on a claim or counterclaim, the amount of the filing fee which would have been payable by the affiant must be included in the order for judgment and paid to the administrator of conciliation court by the affiant out of any money recovered by the affiant on the judgment.

Task Force Comment--1991 Adoption

The uniform, statewide filing fee is now established at $13.00. Minn. Stat. § 357.022 (1990). The affidavit is permitted by Minn. Stat. § 487.30, subd. 6a (1990). *Accord* Minn. Stat. §§ 488A.14, subd. 1; 488A.31, subd. 1 (1990).

Rule 508 Complaint; Contents; Verification

(a) **Claim; Verification; Contents.** The complaint shall contain a brief statement of the amount, date of accrual and nature of the claim, and name and address of the plaintiff and the defendant. The ~~clerk~~ court administrator shall ~~prepare~~ assist with the completion of the complaint upon request. The complaint shall be verified by the plaintiff.

(b) **Uniform Complaint or Counterclaim; Acceptance by Court.** A complaint or counterclaim in the uniform form prescribed by the Supreme Court shall be accepted by any conciliation court administrator and shall be forwarded together with the entire filing fee, if any,

to the court administrator of the appropriate conciliation court. Every conciliation court shall accept a uniform complaint or counterclaim which has been properly completed and which has been properly forwarded to the court by another conciliation court.

Task Force Comment--1991 Adoption

Assistance is required by Minn. Stat. § 487.30, subd. 6 (1990), which also provides that assistance does not constitute the unauthorized practice of law. *Accord* Minn. Stat. §§ 488A.13, subd. 2; 488A.30, subd. 2 (1990). The uniform forms are required pursuant to Minn. Stat. §§ 487.23; 487.30, subd. 1a (1990). *Accord* Minn. Stat. §§ 488A.14, subd. 3a; 488A.31, subd. 3a (1990).

This rule is derived from Rule 1.08 of Rules for the Conciliation Courts.

Rule 509 Summons; Trial Date

When an action has been properly commenced, the ~~clerk~~ court administrator shall set a trial date, ~~advising plaintiff thereof. The clerk shall summon the defendant by mail or personal service;~~ prepare a summons, and cause it to be served upon the parties by first class mail. ~~t~~The summons shall state the amount and nature of the claim; require the defendant to appear at the hearing in person or if a corporation, by officer or agent and without attorney except by leave of the court; shall specify that if ~~he~~ the defendant does not appear judgment by default will be entered ~~against him~~ for the relief demanded, and shall summarize the requirements for filing a counterclaim;. ~~u~~Unless otherwise ordered by a judge, the hearing date shall be not less than 10 days from the date of mailing or service of the summons.

Task Force Comment--1991 Adoption

This rule is derived from Rule 1.09 of Rules for the Conciliation Courts.

Rule 510 Counterclaim

The defendant may interpose a counterclaim within jurisdiction of conciliation court which ~~he~~ the defendant has against the plaintiff, whether or not arising out of the transaction or occurrence which is the subject matter of plaintiff's claim. The counterclaim shall be interposed by defendant filing with the ~~clerk~~ court administrator a brief statement of the amount, date of accrual and nature of the counterclaim, verified by the defendant, and by payment of defendant of a filing fee as established by rule 507 of these rules ~~of the county court pursuant to M.S. § 487.81~~ to the ~~clerk~~ court administrator or by filing with the administrator the affidavit in lieu of filing fees prescribed in rule 507. The ~~clerk~~ court administrator shall ~~draw up~~ assist with the preparation of the counterclaim on request. The ~~clerk~~ court administrator shall note the filing of the counterclaim on the original claim, promptly notify plaintiff by mail thereof and set the counterclaim for hearing on the same date as the original claim. No counterclaim shall be filed less than five days ~~of~~ before the trial date of plaintiff's claim except by permission of the judge, who ~~may in his~~ has discretion to allow a filing within said five day period. Should a continuance be requested by and granted to plaintiff because of such late filing, the judge may require payment of costs by defendant, absolute or conditional, not to exceed $25.00.

Task Force Comment--1991 Adoption

This rule is derived from Rule 1.10 of Rules for the Conciliation Courts.

Rule 511 Counterclaim in Excess of Court's Jurisdiction

If the defendant not less than five days of the date set for trial of plaintiff's complaint, files with the ~~clerk~~ court administrator an affidavit stating that:

~~(1)~~(a) ~~he~~ the defendant has a counterclaim against plaintiff arising out of the same transaction or occurrence as plaintiff's claim, the amount of which is beyond monetary jurisdiction of the conciliation court, and

~~(2)~~(b) ~~he~~ the defendant has filed or intends to file within 30 days an action against plaintiff in a court of competent jurisdiction based on such claim, the ~~clerk~~ court administrator shall strike plaintiff's action from the calendar, advising plaintiff by mail. Said striking shall be subject to reinstatement at any time after thirty days and up to three years, upon the filing by plaintiff of an affidavit showing that ~~he~~ the plaintiff has not been served with a summons by defendant. If the action is reinstated, the ~~clerk~~ court administrator shall set the case for trial and summon the defendant as originally whereupon the court shall hear and determine the matter.

Task Force Comment--1991 Adoption

This rule is derived from Rule 1.11 of Rules for the Conciliation Courts.

Rule 512 Trial

~~1.~~(a) **Testimony and Exhibits.** The judge shall hear testimony of the parties, their witnesses, and shall consider exhibits offered by the parties.

~~2.~~(b) **Appearances.** Appearances in conciliation court shall be by the parties, without attorneys, except by leave of the court; a removal of the cause to ~~county~~ district court, however, as provided in these rules, may be taken through an attorney at law.

~~3.~~(c) **Evidence.** The judge shall normally receive only evidence admissible under the rules of evidence, but in ~~his~~ the exercise of discretion; and in the interests of justice, ~~he~~ may receive otherwise inadmissible evidence.

~~4.~~(d) **Conciliation; Judgment.** If the parties agree on a settlement the judge shall order judgment in accordance therewith. If no agreement is reached, the judge shall summarily hear, determine the cause, and order judgment.

~~5.~~(e) **Failure of Defendant to Appear.** If the defendant fails to appear at the time set for hearing, after being summoned as ~~herein~~ provided in these rules, the judge in his or her discretion may either hear the plaintiff and order default judgment to be entered or continue the matter to a later date, notice of said subsequent trial date to be given by the ~~clerk~~ court administrator to defendant by mail.

~~6.~~(f) **Failure of Plaintiff to Appear, Defendant Present.** Should plaintiff fail to appear at the trial, but defendant appears, the judge may hear the defendant and either order judgment of dismissal on the merits, order a dismissal without prejudice, or continue the trial to a later date~~;~~ if the matter is continued to a later date, the ~~clerk~~ court administrator shall promptly notify the plaintiff thereof by mail.

~~7.~~(g) **Continuances.** On proper showing of good cause, a continuance may be ~~ordered~~ granted by the court on motion of either party. The court may require payment of costs, absolute or conditional, not to exceed $25.00, as a condition of such an order.

Task Force Comment--1991 Adoption

This rule is derived from Rule 1.12 of Rules for the Conciliation Courts.

Rule 513 Absolute or Conditional Costs; Filing of Orders

In any case in which payment of absolute or conditional costs has been ordered as a condition of an order under any provision of these rules, the amount so ordered shall be paid to the ~~clerk~~ court administrator before the order becomes effective or is filed. Conditional costs shall be held by the ~~clerk~~ court administrator to abide the final order to be entered in the case; absolute costs shall be paid over by the ~~clerk~~ court administrator forthwith to the other party as ~~his~~ that party's absolute property.

Task Force Comment--1991 Adoption

This rule is derived from Rule 1.13 of Rules for the Conciliation Courts.

Rule 514 Notice of Order for Judgment

The ~~clerk~~ court administrator shall promptly mail to each party a notice of the order for judgment entered by the judge~~,~~ ~~which~~ The notice shall state the number of days allowed for obtaining an order to vacate (where there has been a default) or for removing the cause to the civil division of ~~county~~ district court~~,~~ ~~civil division.~~ The notice shall also contain a statement that if the cause is removed to district court, the court may, in its discretion, allow the prevailing party to recover from the aggrieved party an amount not to exceed $50.00 as costs if the prevailing party on appeal is not the aggrieved party in the original action.

Task Force Comment--1991 Adoption

The additional contents of the notice are required by Minn. Stat. § 487.30, subd. 7 (1990). *Accord* Minn. Stat. §§ 488A.16, subd. 1; 488A.33, subd. 1 (1990).

This rule is derived from Rule 1.14 of Rules for the Conciliation Courts.

Rule 515 Entry of Judgment

The ~~clerk~~ court administrator shall enter judgment forthwith as ordered by the judge. The judgment shall be dated as of the date notice is sent to the parties. The judgment so entered becomes finally effective twenty days after mailing of the notice, unless:

~~1.~~(a) payment has been made in full, or

~~2.~~(b) removal to ~~county~~ district court has been perfected, or

~~3.~~(c) an order vacating the prior order for judgment has been filed, or

(d) ordered by a judge.

~~The judgment so entered becomes finally effective ten days after the mailing of notice.~~ Any judgment ordered may provide for satisfaction by payment in installments in amounts and at times, as the judge determines. Should any installment not be paid when due, the entire unpaid balance of the judgment ordered, becomes immediately due and payable.

Task Force Comment--1991 Adoption

Grammatical changes and the twenty-day period bring the rule in line with Minn. Stat. § 487.30, subd. 5a (1990). *Accord* Minn. Stat. §§ 488A.16, subd. 2; 488A.33, subd. 2 (1990).

This rule is derived from Rule 1.15 of Rules for the Conciliation Courts.

Rule 516 Costs and Disbursements

There shall be included in the order for judgment the filing fee paid by the prevailing party. Additionally the judge may include therein all or part of disbursements incurred by the prevailing party which would be taxable in ~~county~~ district court. The order for judgment also may include or be adjusted by the amount of any conditional costs previously ordered to be paid by either party.

Task Force Summary--1991 Adoption

This rule is derived from Rule 1.16 of Rules for the Conciliation Courts.

Rule 517 Payment of Judgment

The non-prevailing party may pay all or any part of the judgment to the ~~clerk~~ court administrator for benefit of the prevailing party or may pay the prevailing party directly. The ~~clerk~~ court administrator shall enter on ~~his~~ the court's records any payment made to the

administrator~~clerk~~ or the prevailing party directly when satisfied that said direct payments have in fact been made.

Task Force Summary--1991 Adoption

This rule is derived from Rule 1.17 of Rules for the Conciliation Courts.

Rule 518 Docketing of Judgment in ~~County~~ District Court; Enforcement

(a) **Docketing.** When a judgment has become finally effective as defined in Rule ~~1.15~~ 515 the judgment creditor may obtain a transcript of the judgment from the ~~clerk of conciliation court~~ court administrator on payment of a fee of $7.50 ~~as established by rule of the county district court pursuant to M.S. 487.31~~ and ~~file it with the clerk of county~~ transcribe the judgment to district court without additional fee. Once filed ~~therein~~ in district court the judgment becomes and is enforceable as a judgment of ~~county~~ district court. No writ of execution or garnishment summons shall be issued out of conciliation court.

(b) **Enforcement.** Unless the parties have otherwise agreed, if a conciliation court judgment has been docketed in district court for a period of at least 30 days and the judgment is not satisfied, the district court shall upon request of the judgment creditor order the judgment debtor to mail to the judgment creditor information as to the nature, amount, identity, and location of all the debtor's assets, liabilities, and personal earnings. The information shall be provided on a form prescribed by the Supreme Court, and the information shall be sufficiently detailed to enable the judgment creditor to obtain satisfaction of the judgment by way of execution on nonexempt assets and earnings of the judgment debtor. The order shall contain a notice that failure to complete the form and mail it to the judgement creditor within ten days after service of the order may result in a citation for civil contempt of court. Cash bail posted as a result of being cited for civil contempt of court order under this rule may be ordered payable to the creditor to satisfy the judgment, either partially or fully.

Task Force Comment--1991 Adoption

The statewide fee for issuing a transcript is established by statute at $7.50. Minn. Stat. § 357.021 (1990). The enforcement duties in part (b) are required by Minn. Stat. § 487.30, subd. 5 (1990). *Accord* Minn. Stat. §§ 488A.16, subd. 8; 488A.33, subd. 7 (1990).

This rule is derived from Rule 1.18 of Rules for the Conciliation Courts.

Rule 519 Judgment Payable in Installments

No transcript of a judgment of conciliation court payable in installments shall be issued and filed until 20 days after default in payment of an installment due.

Task Force Comment--1991 Adoption

This rule is derived from Rule 1.19 of Rules for the Conciliation Courts.

Rule 520 Vacation of Judgment Order and Judgment

~~1.~~(a) **Vacation of Order for Judgment Within 20 Days.** When a default judgment or judgment of dismissal on the merits has been ordered for failure to appear, the judge within ~~twentyten~~ days after notice was mailed may vacate said judgment order ex parte and grant a new hearing on a proper showing by the defaulting party of lack of notice, mistake, inadvertence or excusable neglect as the cause of ~~his~~ that party's failure to appear. Absolute or conditional costs not to exceed $25.00 to the other party may be ordered as a prerequisite to that relief.

~~2.~~(b) **Vacation of Judgment After 20 days.** A default judgment may be vacated by the judge more than ten days after finally effective upon a proper showing by the defendant that ~~he~~ the defendant did not receive a summons before the hearing within sufficient time to permit a

defense and ~~that he~~ did not receive notice of the order for default judgment within sufficient time to permit ~~him to apply~~ application for relief within ~~twentyten~~ days after notice, or upon other good cause shown. Said vacation, if ordered, shall grant a new trial on the merits and may be conditioned upon payment of absolute or conditional costs not to exceed $25.00. ~~The clerk shall promptly notify the other party, under either of subsections (1) or (2) of the new trial date.~~

(c) **Notice.** The court administrator shall promptly notify the parties by mail of a new trial date created pursuant to this rule.

Task Force Comment--1991 Adoption

The good cause grounds for relief in part (b) and the twenty day period in both parts (a) and (b), and notice by mail in part (c) are required by Minn. Stat. § 487.30, subds. 5c, 5b (1990). *Accord* Minn. Stat. §§ 488A.16, subds. 5, 6; 488A.33, subds. 5, 8 (1990).

This rule is derived from Rule 1.20 of Rules for the Conciliation Courts.

Rule 521 Removal to ~~County~~ District Court; Appeal

(a) **Trial de novo**. Any person aggrieved by an order for judgment entered ~~by a conciliation judge~~ in conciliation court after contested hearing may remove the cause to ~~county~~ district court for trial de novo. An "aggrieved person" may be either the judgment debtor or creditor.

(b) **Removal Procedure**. To effect removal, the aggrieved party must perform all the following within ~~twentyten~~ days after the date the court administrator~~clerk~~ mailed to ~~him~~ that party notice of the judgment order:

~~(1)a.~~ Serve on the opposing party or the opposing party's attorney, by personal service or by mail, a demand for removal of the cause to ~~county~~ district court for trial de novo, stating whether trial demanded is to be by court or jury; the demand shall indicate name, address, and telephone number of the aggrieved party's attorney, if any.

~~(2)b.~~ File with the ~~clerk of conciliation court~~ court administrator the original demand for removal with proof of service. If the opposing party or the opposing party's attorney cannot be found for ~~personal~~ service of the demand within the ~~twentyten~~ day period, the aggrieved party may file with the ~~clerk~~ court administrator within said ~~twentyten~~ day period the original and copy of the demand together with an affidavit by ~~himself~~ the party or ~~his~~ the party's attorney showing that after due and diligent search the opposing party or opposing party's attorney cannot be located. Thereupon the ~~clerk~~ court administrator shall mail the copy of the demand to the opposing party at ~~his~~ the party's last known residence address.

~~(3)c.~~ File with the ~~clerk of conciliation court~~ court administrator an affidavit by the aggrieved party or ~~his~~ that party's attorney stating that the removal is made in good faith and not for purposes of delay.

~~(4)d.~~ Pay to the ~~clerk of conciliation court~~ court administrator as the fee for removal the amount prescribed by law for filing a civil action in ~~county~~ district court.

~~(c)3.~~ **Limited Removal.**

~~(1)a.~~ When a motion for vacation of an order for judgment, or judgment under Rule ~~1.20~~ ~~520~~ ~~subds. 1 or 2~~(a) or (b), is denied, the aggrieved party may demand limited removal to the ~~county~~ district court for hearing de novo, ~~his motion.~~ Procedure for service and filing of the demand for limited removal and notice of hearing de novo and proof of service thereof and procedure in case of inability of the aggrieved party to make ~~personal~~ service on the opposing party or the opposing party's attorney shall be in the same manner prescribed in part (b) of this Rule ~~1.21 subd. 2(a) and (b)~~. The fee payable by the aggrieved party to the ~~clerk of conciliation court~~ court administrator for limited removal shall be the

same as the filing fee prescribed by law for filing of a civil action in ~~county~~ district court~~, which shall be paid by the clerk of conciliation court to the clerk of county court, together with filing of the removal demand, notice of hearing, and other papers filed in conciliation court in the cause.~~ The ~~clerk of county~~ court administrator shall then place the matter on the special term calendar for the date specified in the notice. At the hearing in ~~county~~ district court, either party may be represented by an attorney at law.

~~(2)~~b. A ~~county court~~ judge ~~or judicial officer~~ other than the conciliation court judge who denied the motion, shall hear the motion de novo and may (~~1~~A) deny the motion or (~~2~~B) grant the motion. In determining the motion the judge shall consider the entire file plus any affidavits submitted by either party or their attorneys.

~~(3)~~c. The ~~clerk~~ court administrator ~~of county court~~ shall send by mail a copy of the order made in ~~county~~ district court after de novo hearing to both parties and ~~return the file to the clerk of~~ the venue shall be transferred back to conciliation court.

~~(d)4.~~ **Demand for Jury Trial.** Where no jury trial is demanded on removal by the aggrieved party, if the opposing party desires a jury trial ~~he~~ that party shall serve a demand therefor upon the aggrieved party or ~~his~~ that party's attorney and file the demand with proof of service thereon with the ~~clerk of conciliation court~~ court administrator within ten days after the demand for removal was served on ~~him~~ the party or attorney.

~~(e)5.~~ **Removal Perfected; Vacating of Judgment.** When all removal papers have been filed properly and all requisite fees paid ~~as herein provided~~ the removal is perfected; the ~~conciliation court~~ original judge shall prepare and file an order vacating the order for judgment in conciliation court together with a certificate setting out generally proceedings had, issues tried and the order entered in conciliation court.

~~(f)6.~~ ~~Clerk's~~ Court Administrator's **Duties upon Removal.** Upon filing of the judge's order and certificate ~~(subd. 5)~~ under part (e) of this rule the ~~clerk of conciliation court~~ court administrator shall ~~pay to the clerk of the county court the removal fee and shall~~ file in ~~county~~ district court the whole contents of the conciliation court file of the cause.

~~(g)7.~~ ~~**Note of Issue not Necessary**~~ **Trial Setting.** ~~No note of issue shall be necessary upon removal to county court.~~ The matter shall be set for trial ~~as if a note of issue had been filed in conciliation court.~~ in district court as other civil actions.

Task Force Comment--1991 Adoption

The twenty day period, service by mail, and service on an attorney for a party are required by Minn. Stat. § 487.30, subd. 9 (1990). *Accord* Minn. Stat. §§ 488A.17, subd. 2; 488A.34, subd. 2 (1990).

This rule is derived from Rule 1.21 of Rules for the Conciliation Courts.

Rule 522 Issues; Amendments in ~~County~~ District Court

Issues for trial in ~~county~~ district court shall be those in conciliation court as set out in the judge's certificate; however, amendments to the issues may be granted in ~~county~~ district court on motion therein brought in the usual manner for such motions; granting or denial of such motions shall be in the discretion of the judge of ~~county~~ district court. Provided, however, that if either party seeks to increase the amount of a claim or counterclaim, the party seeking the increase shall give notice to the opposing party by serving upon that party ~~him~~ a formal complaint, as provided by the Rules of Civil Procedure~~ for the Municipal Courts.~~

Task Force Summary--1991 Adoption

This rule is derived from Rule 1.22 of Rules for the Conciliation Courts.

Rule 523 Procedure in ~~County~~ District Court

Trial in the ~~county~~ district court shall, except as otherwise expressly provided in these rules, be as if originally commenced therein, and according to the rules of civil procedure, ~~governing trials therein. In county courts having more than one judge, t~~The judge who presided in conciliation court shall not preside in the appeal.

Task Force Comment--1991 Adoption

This rule is derived from Rule 1.23 of Rules for the Conciliation Courts.

Rule 524 Costs in ~~County~~ District Court

~~Should the judgment creditor remove the cause to county court, and the final judgment be increased by $10.00 or less, he shall recover no costs in county court. If the judgment debtor removes the cause to county court and the final judgment is decreased by $10.00 or less, he shall be entitled to no costs in county court. Should the removing party effect a change in the final judgment, in his favor, in excess of $10.00 he shall be entitled to costs pursuant to M.S. § 487.23, subd. 5.~~

(a) For the purposes of this rule, "removing party" means the party who demands removal to district court or the first party who serves or files a demand for removal, if another party also demands removal. "Opposing party" means any party as to whom the removing party seeks a reversal in whole or in part.

(b) If the removing party prevails in district court, the removing party may recover costs from the opposing party as though the action were commenced in district court. If the removing party does not prevail, the court shall award the opposing party an additional $200.00 as costs.

(c) For purposes of this rule, the removing party prevails in district court if:

(1) the removing party recovers at least $500.00 or 50 percent of the amount or value of property that the removing party requested on removal, whichever is less, when the removing party was denied any recovery in conciliation court;

(2) the opposing party does not recover any amount or any property from the removing party in district court when the opposing party recovered some amount or some property in conciliation court;

(3) the removing party recovers an amount or value of property in district court that exceeds the amount or value of property that the removing party recovered in conciliation court by at least $500.00 or 50 percent, whichever is less; or

(4) the amount or value of property that the opposing party recovers from the removing party in district court is reduced from the amount or value of property that the opposing party recovered in conciliation court by at least $500.00 or 50 percent, whichever is less.

(d) Costs or disbursements in conciliation or district court shall not be considered in determining whether there was a recovery by either party in either court or in determining the difference in recovery under this rule.

Task Force Comment--1991 Adoption

The definition of terms and $200.00 opposing party's costs are established by Minn. Stat. § 487.30, subd. 8 (1990). *Accord* Minn. Stat. §§ 488A.17, subd. 10; 488A.34, subd. 9 (1990). The removing party's costs are established by existing conciliation court rule 1.24, which incorporates Minn. Stat. § 487.23, subd. 5 (1990).

This rule is derived from Rule 1.24 of Rules for the Conciliation Courts.

Rule 525 Appeal

The judgment of the ~~county~~ district court on removal from conciliation court in any cause may be appealed to the ~~district~~ court of appeals as in other civil cases ~~in the manner provided by law~~.

Task Force Comment--1991 Adoption

Appeal to the court of appeals is provided by Minn. Stat. § 480A.06, subd. 1 (1990). *Accord* Minn. Stat. §§ 488A.17, subd. 12; 488A.34, subd. 11 (1990).

This rule is derived from Rule 1.25 of Rules for the Conciliation Courts.

Rule 526 Local Rules

~~Any court may adopt rules governing its practice not in conflict with these rules.~~

Local rules governing conciliation court procedure may be established in accordance with the procedure established in Minn. R. Civ. P. 83.

Task Force Comment--1991 Adoption

This rule replaces Rule 1.26 of Rules for the Conciliation Courts. A new rule is necessary to preserve the uniformity achieved by these rules. This rule incorporates the procedure of Minn. R. Civ. P. 83 and will require Supreme Court approval of any new local or statewide rule provisions.

RULES GOVERNING COMMITMENT ACT PROCEEDINGS

Rule 601 Applicability of Rules

Rules 601 through 614 apply to all actions arising under the Minnesota Civil Commitment Act, Minn. Stat. §§ 253B.01, *et seq.* In the event of any conflict or inconsistency with provisions of any other set of rules (*e.g.*, Rules 101.1 through 183.2 of these rules, or the Rules of Civil Procedure) Rules 601 through 614 shall be controlling in all proceedings under the Minnesota Commitment Act.

Task Force Comment--1991 Adoption

These rules supersede the Special Rules of Procedure Governing Proceedings Under The Minnesota Commitment Act of 1982. The Task Force has not recommended any substantial changes to these rules, but recommends they be recodified as part of the Code of Rules. Because the Task Force has not extensively revised these rules, the comments of the drafting committee relating to the original adoption of the rules are retained.

Rule 602 Requirements of Petition for Commitment

~~1.01~~(a) The petition for commitment shall be verified and shall allege facts sufficient to support the relief prayed for, including a description of respondent's behavior and the time and place of alleged occurrences. Each factual allegation shall be supported by observations of witnesses named in the petition or in a list appended thereto. The petition shall not contain judgmental or conclusory statements unless supported by such factual observations.

~~1.02~~(b) The petition shall specify the disposition sought.

Commitment Drafting Committee Comment--1982

A. The term "respondent" is used in these Rules to refer to the person who is the subject of any proceeding under the Mental Commitment Act.

B. It is the intention of these Rules that the requirements of Rule 1.01 shall apply to other types of petitions filed under the Mental Commitment Act as well [e.g., petitions filed pursuant to Price v. Shepard, 307 Minn. 250, 239 N.W.2d 905 (1976)].

Task Force Comment--1991 Adoption

This rule is derived from existing mental commitment Rule 1.01 and 1.02.

Rule 603 Summons; Apprehend and Confine Orders

~~2.01~~(a) Except in circumstances in which an apprehend and/or confine order is permitted pursuant to ~~Rule 2.02 herein~~ subdivision (b) of this Rule, respondent shall be personally served a summons issued by the court, directing ~~him~~ respondent to appear at stated times and places for examination and/or hearing. The summons shall state, in bold print, that an order to apprehend and/or confine respondent may be issued if he does not appear pursuant to the summons.

~~2.02~~(b) An order to apprehend and/or confine respondent prior to commitment may be issued only if,

~~(a)~~(1) respondent has failed to appear for examination or hearing pursuant to a summons or orders; or

~~(b)~~(2) the court finds, on the basis of credible evidence, that serious imminent physical harm is likely if such order is not issued.

Commitment Drafting Committee Comment--1982

A. Apprehend and confine orders should not be used initially as a device to obtain an examination of respondent. Rather, unless there is a particularized showing by petitioner that imminent serious harm is likely unless respondent is apprehended, or respondent has not voluntarily appeared for pre-hearing examination or hearing pursuant to a summons or order, a summons should be used in order to give respondent an opportunity

to appear voluntarily for the pre-hearing examination or hearing. For purposes of this Rule, the term "hearing" shall include all court proceedings.

B. The Minnesota Commitment Act of 1982, § 7, subd. 6 (Minn. Stat. § 253B.07, subd. 6) identifies three grounds upon which an apprehend and hold order can be issued. The first requires a showing of "serious imminent physical harm to the proposed patient or others. The second requires a showing that the proposed patient has not voluntarily appeared for examination or hearing pursuant to a summons. The third reads as follows: "A request for a petition for commitment of a person institutionalized pursuant to Section 5 has been filed." Hospitalization under Section 5 requires a finding that the person is "in imminent danger of causing injury to himself or others if not immediately restrained." Since this is essentially the same standard as is enunciated in Rule 2.02, this statutory condition is not separately referred to in the Rule.

Rule 604 Provisions of Counsel

~~3.01(a)~~ The court shall appoint counsel for respondent immediately upon the filing of a petition, and shall assure that representation is available to respondent throughout the proceeding in accordance with these rules.

~~3.02(b)~~ Upon request by a person committed under the Minnesota Commitment Act, the court shall appoint counsel to represent the person in connection with the filing of, and subsequent proceedings under, a petition pursuant to Minn. Stat. § 253B.17.

Commitment Drafting Committee Comment--1982

A. Respondent is entitled to representation and assistance of legal counsel at each of the critical stages of a commitment proceeding under the Mental Commitment Act. Such representation and assistance includes the following:

1. seeking any appropriate remedies for release at the time of confinement and prior to the commitment hearing including investigation, preparing for and representing respondent at the preliminary hearing; and,
2. advising and counseling respondent with respect to a request for an immediate hearing; and,
3. advising respondent with respect to any summons or other order requiring cooperation for the purpose of examination; and,
4. investigating, preparing for, and representing respondent at the commitment hearings; and,
5. counseling with respect to respondent's right to appear at the hearing; and,
6. if the respondent demands, or if otherwise appropriate, perfecting and prosecuting an appeal; and,
7. receiving reports about respondent, and taking appropriate actions in response thereto to advise the respondent of and protect his rights; and,
8. if the respondent demands, or if otherwise appropriate, opposing an order extending the commitment or making it indeterminate; and,
9. counseling and representing with respect to a petition seeking the court's review or approval of any involuntary administration of treatment or medication, such as a petition filed pursuant to Price v. Shepard, 307 Minn. 250, 239 N.W.2d 905 (1976); and,
10. counseling and representing with respect to any other judicial proceeding under the Mental Commitment Act, affecting respondent, whether initiated by petitioner, respondent, or other person or agency.

B. It is the intention of the Rule that respondent not be permitted to waive the right to representation in accordance with these Rules.

Rule 605 Role of Respondent's Counsel

(a) Respondent's counsel, as in other adversary proceedings, shall advocate vigorously on behalf of respondent.

(b) Counsel shall continue to represent respondent in all proceedings in which respondent has a right to counsel under the ~~M.C.A.~~ Minnesota Commitment Act or these rules, unless and until permitted to withdraw by the court.

(c) Counsel shall advise respondent with candor concerning all aspects of the case, including, where possible, ~~his~~ counsel's professional opinion as to the probable outcome.

(d) To the extent that respondent does not articulate his desires in any particular aspect of the proceeding, counsel shall take the position which preserves respondent's legal rights, including opposing the petition.

(e) Unless instructed to the contrary by respondent, counsel may present evidence of the existence of alternatives less restrictive than those sought in the petition.

(f) To the extent that respondent articulates instructions in the following areas, they are binding on counsel:

(1) what ultimate disposition to seek and which dispositions to oppose;
(2) whether to waive ~~his~~ the right to attend the hearing or hearings;
(3) whether to testify on his or her own behalf;
(4) whether to demand an immediate hearing or consent to continuances.

(g) Except as provided ~~in Rules 4.05 and 4.06 hereof~~ in subdivisions (e) and (f) of this rule, decisions as to what witnesses to call, whether and how to conduct examination of witnesses, what hearing and trial motions to make, and all other hearing and trial decisions are the exclusive province of counsel after consultation with respondent.

Commitment Drafting Committee Comment--1982

A. All proceedings under the Mental Commitment Act are adversarial. Minimum adversary representation ordinarily includes, but is not limited to:

1. being familiar with statute and case law and court rules which govern commitment proceedings; and,
2. interviewing respondent no later than 24 hours after confinement pursuant to an order to apprehend and/or confine, or no later than 24 hours after service of a summons, at which time the attorney should provide respondent with a detailed description of the commitment process, including respondent's right to an immediate hearing and a timely preliminary hearing; and,
3. reviewing respondent's medical records, if there are any, early enough to insure sufficient time to investigate and secure additional medical evaluations, and/or prepare for the hearings; and,
4. contacting or interviewing all persons whose testimony might tend to support respondent's position and subpoenaing witnesses if necessary; and,
5. investigating alternatives less restrictive than those sought in the petition; and,
6. attempting to interview prior to the hearing any persons who might testify for petitioner at the hearing; and,
7. informing respondent of the latter's legal rights, including the right of appeal.

B. Rule 4.02 is intended to insure that once appointed, the same lawyer will continue to represent respondent. It should be noted that the Supreme Court Study Commission on the Mentally Disabled and the Courts found many instances of successive appointments of different attorneys at the various stages of a commitment proceeding.

Rule 606 Access to Medical Records

~~5.01~~(a) Upon request of respondent's counsel, petitioner shall provide access to respondent's medical records in petitioner's control.

~~5.02~~(b) Upon respondent's request the court shall authorize the custodian of any portion of respondent's medical records to provide respondent, or respondent's counsel, access to those records.

~~5.03~~(c) On motion of respondent, the court shall exclude from evidence testimony based upon, or introduction of any portion of, any medical record improperly withheld.

~~5.04~~(d) Upon request of petitioner, respondent, at least 24 hours prior to the hearing, shall provide access to medical records ~~he~~ respondent intends to introduce.

Commitment Drafting Committee Comment--1982

A. This Rule is intended to supplement the discovery and protective order provisions contained in the Minnesota Rules of Civil Procedure for County and for District Courts.

B. The term "medical records" should be construed broadly to include, but not by way of limitation, all materials contained in any hospital or medical file, laboratory or psychological test results and third party information.

Rule 607 Preliminary Hearings

~~6.01~~(a) No person may be held longer than 72 hours pursuant to an order to apprehend and confine unless a hearing has been held and it has been determined by the court that cause exists to continue to hold the person.

~~6.02(b)~~ The 72-hour period shall be exclusive of Saturdays, Sundays and legal holidays. It shall commence upon the person being taken into custody, or if the person is then a patient in a hospital, upon issuance of the order to confine.

~~6.03(c)~~ At the hearing, petitioner shall have the burden of proof to show that serious imminent physical harm to the respondent or others is likely unless confinement is continued.

~~6.04(d)~~ Hearsay evidence may be admitted at the hearing; including, but not limited to, the petition, hospital records which are not privileged, police records and affidavits.

~~6.05(e)~~ The hearing may be waived by respondent either on the record or by written statement signed by respondent and respondent's counsel.

Commitment Drafting Committee Comment--1982

See § 7, subd. 7 of the Minnesota Commitment Act of 1982 (Minn. Stat. § 253B.07, subd. 7) and State ex rel. Doe v. Madonna, 295 N.W.2d 356 (Minn. 1980).

Rule 608 Appointment of Examiners

~~7.01(a)~~ The court shall prepare and file a list of examiners from which it regularly makes its appointments. A statement of the manner and rate of compensation of examiners shall be attached to that list.

~~7.02(b)~~ If a second examiner is appointed upon respondent's request, this examiner shall be reimbursed according to the compensation statement in ~~Rule 7.01~~subdivision (a) of this rule, unless otherwise ordered by the court.

~~7.03(c)~~ Each county or probate court may adopt local rules governing the timing of the respondent's request for the appointment of a second examiner.

Commitment Drafting Committee Comment--1982

A. The requirements of Rule 7.01 are designed to assist respondent and respondent's counsel in choosing an examiner. Neither the court nor respondent is limited to the names contained in the list required by Rule 7.01. The compensation statement enables a proposed examiner to know in advance what to expect when requested to serve.

B. Rule 7.02 authorizes the court to allow a higher rate of compensation in appropriate cases. If there are unusual issues or problems, the court might be asked in advance to authorize a different rate of compensation than usual.

C. Rule 7.03 is designed to allow local flexibility in establishing procedures for the appointment of examiners. Probate and county courts are encouraged to adopt local rules which will facilitate the use of a single examiner by allowing respondent's counsel time to review the first examiner's report before being required to submit a request for the appointment of a second examiner.

Rule 609 Examination of Respondent

~~8.01(a)~~ Each court-appointed examiner shall conduct an examination of respondent. All examinations shall conform to the same standards as apply to any aspect of professional practice.

~~8.02(b)~~ Each of the court-appointed examiners shall prepare a separate report containing a statement regarding each of the following:

~~(a)~~(1) whether or not respondent is mentally ill, mentally retarded, or chemically dependent and the facts upon which this opinion is based;

~~(b)~~(2) whether the examiner recommends commitment, and the facts upon which the recommendation is based;

~~(c)~~(3) the examiner's recommendation as to the form, location and conditions of treatment, and the facts upon which this recommendation is based; and

~~(d)~~(4) when the petition alleges that respondent is mentally ill and dangerous to the public, whether or not there is a substantial likelihood that respondent will engage in acts capable of inflicting serious physical harm on another, and the facts upon which this opinion is based.

~~8.03(c)~~ All reports prepared by court-appointed examiners shall be made available to counsel for petitioner and counsel for respondent.

Commitment Drafting Committee Comment--1982

A. Rules 8.01 and 8.02 require each examiner to conduct his own examination of respondent and to write an individual report for each examination. These requirements are designed to provide the court with independent opinions about respondent. However, they do not preclude examinations by different examiners held simultaneously.

B. The Supreme Court Study Commission on the Mentally Disabled and the Courts strongly urged that examinations conform to "accepted professional standards" and be conducted "in a professionally acceptable environment." Since "professional standards" are to be determined by the profession, Rule 8.01 merely requires that the standards be followed. Counsel may inquire as to the standards, and the court may make a case-by-case determination as to whether such standards are being met. In the event that standards are not met, or the place of examination is deemed inappropriate, the court may reject the examination report and appoint a new examiner, or order that the examination be repeated in an appropriate manner.

C. Rule 8.02 is intended to insure that the court be as fully informed as possible in order that it can make an appropriate disposition. It is not the intention of these Rules that the court include in its order a specification of the treatment to be administered.

Rule 610 Location of Hearing; Rules of Decorum

~~9.01~~(a) All hearings under the ~~M.C.A.~~ Minnesota Commitment Act shall be held in a courtroom unless respondent cannot be moved without jeopardy to ~~his~~ respondent's physical health.

~~9.02~~(b)(1) The courtroom, if located in a treatment facility, shall:

(~~a~~i) be separate from any treatment area within the hospital; and

(~~b~~ii) provide adequate space to separate physically the judge or hearing officer from respondent, petitioner, and their respective counsel; and

(~~c~~iii) provide adequate space to separate physically the witnesses and observers from all others.

(2) The treatment facility in which a courtroom is located shall:

(~~a~~i) if possible, provide judicial chambers apart from the courtroom; and

(~~b~~ii) provide a room for private attorney-client conferences apart from, but located near, the courtroom.

(3) A courtroom located in a treatment facility shall not be employed for a hearing if respondent is not then a patient therein and respondent or respondent's counsel objects.

~~9.03~~(c) (1) The judge or hearing officer shall assure the decorum and orderliness of the commitment hearing.

(2) The judge or hearing officer shall wear a judicial robe while conducting the commitment hearing.

(3) The judge or hearing officer shall afford to respondent an opportunity to be dressed in conformity with the dignity of court appearances.

Commitment Drafting Committee Comment--1982

A. See comments to the Supreme Court Study Commission on the Mentally Disabled and the Courts, Recommendation 17.

B. Probate and county courts may adopt local rules, governing the location of hearings, which are consistent with the minimum standards expressed in Rule 9.

C. Guidelines for Minnesota Court Facilities (1979), prepared by the Minnesota Supreme Court Judicial Planning Committee, should be referred to and followed where practicable. Particular attention should be given to the "Standards for Courtrooms" section of that booklet.

D. If the courtroom is in a treatment facility, it should preferably be in the administrative area of the treatment facility.

E. A room in a treatment facility is not unsuitable for use as a courtroom merely because it is used for other purposes when court is not in session.

Rule 611 Presence of Respondent at Hearing

~~10.01~~(a) Except as provided in ~~Rule 10.02 hereof~~subdivision (b) of this rule, the court shall conduct no hearing in the absence of respondent, unless the court finds, from the showing made at the hearing, that respondent has been informed of his right to be present at the hearing, and has freely and knowingly chosen not to attend.

~~10.02~~(b) The court in rare instances may exclude a respondent who is seriously disruptive or who is totally incapable of comprehending and participating in the proceedings. In such instances, the court shall, with specificity on the record, state the behavior of respondent or other circumstances justifying proceeding in the absence of the respondent.

Commitment Drafting Committee Comment--1982

Section 8, subd. 5 of the Minnesota Commitment Act of 1982 (Minn. Stat. § 253B.08, subd. 5) requires that all waivers regarding the proposed patient's attendance at the hearing "shall be on the record." Rule 10.01 provides further definition of the waiver requirement.

~~**Rule 11. Disposition**~~

~~Rule 11.01. The court shall not commit respondent unless commitment is justified by findings based upon evidence at the hearing.~~

Commitment Drafting Committee Comment--1982

A. It is the intention of this Rule that there be no commitment by default.

B. See Recommendation 9, Final Report of the Supreme Court Study Commission on the Mentally Disabled and the Courts.

Task Force Comment--1991 Adoption

This rule can be deleted because it simply states the obvious and restates clear case law requiring findings. There is no purpose in retaining a separate rule for these purposes.

Rule 612 Indeterminate Commitment of Persons Mentally Ill and Dangerous to the Public

~~12.01~~(a) Prior to making the final determination with regard to a person initially committed as mentally ill and dangerous to the public, the court shall hold a hearing. The hearing shall be held within 14 days of the court's receipt of the written review statement, if one is filed, or within 90 days of the date of initial commitment, whichever is earlier, unless otherwise agreed by the parties.

~~12.02~~(b) As its final determination, the court may, subject to rule 20.01, subd. 4 of the Rules of Criminal Procedure:

~~(a)~~(1) Discharge the respondent's commitment;

~~(b)~~(2) Commit the respondent as mentally ill only, in which case the respondent's commitment shall be deemed to have commenced upon the date of initial commitment, for purposes of determining the maximum length of the determinate commitment; or

~~(c)~~(3) Commit the respondent for an indeterminate period as mentally ill and dangerous to the public.

~~12.03~~(c) At the request of respondent, the court shall appoint an examiner of the respondent's choice, in accordance with Rule ~~7.02~~ 608(b), for purposes of the hearing referred to in this Rule.

~~12.04~~(d) The parties shall have the same rights at the hearing as would be applicable in an initial commitment hearing.

~~12.05~~(e) The written report of the head of the hospital, pursuant to Minn. Stat. § 253B.073, subd. 21, shall be in narrative form, and shall address the following items in detail, including supportive data and documentation therefor:

~~(a)~~(1) respondent's present condition and current behavior, and the diagnosis;

~~(b)~~(2) the facts, if any, that establish that respondent continues to satisfy the statutory requirements for commitment;

~~(c)~~(3) a description of treatment efforts and response to treatment by respondent during hospitalization;

~~(d)~~(4) respondent's prognosis;

~~(e)~~(5) respondent's individual treatment plan;

~~(f)~~(6) an opinion as to whether respondent is in need of further care and treatment;

~~(g)~~(7) an opinion as to where further care and treatment, if needed, could be best provided;

~~(h)~~(8) an opinion as to whether respondent is dangerous to the public or himself.

~~12.06~~(f) At the hearing, the court may consider the findings of fact made following the original commitment hearing, and other competent evidence relevant to respondent's present need for continued commitment. The burden of proof at the hearing is upon the proponent of indeterminate commitment to establish by clear and convincing evidence that:

~~(a)~~(1) the statutory requirements for commitment under the ~~M.C.A.~~ Minnesota Commitment Act continue to be met; and

~~(b)~~(2) there is no appropriate less restrictive alternative available.

~~**Rule 13. Guardians Ad Litem**~~

~~13.01(a) No guardian ad litem shall be appointed for respondent unless the interests of justice so require.~~

~~13.02(b) In any case in which a guardian ad litem has been appointed, counsel for respondent shall represent respondent and not the guardian ad litem.~~

~~**Committment Drafting Committee Comment--1982**~~

~~A. In some circumstances, the instructions of a respondent to counsel (e.g., not to oppose the petition), may undermine the adversary process. Appointment of a guardian ad litem may be necessary in such cases to insure that the factual and legal issues before the court are fully explored.~~

~~B. The guardian ad litem shall be party to the proceeding, and may subpoena, examine and cross-examine witnesses and testify. It is the responsibility of the guardian ad litem to insure that a full range of evidence concerning the best interests of respondent is presented in the proceeding. The guardian ad litem, whether appointed hereunder or under any other rule or statute, shall have no authority to consent to the hospitalization of respondent, to the administration of any particular treatment to respondent, or ot any disposition of the petition other than dismissal. His or her duty is to respondent, and may include, where appropriate, petitioning the court for removal of counsel for respondent.~~

~~C. In appointment a guardian ad litem, the court should be cognizant of the fact that the interests of parents, spouses, or other close relatives may be in conflict with those of respondent. Thus, despite Rule 17, Rules of Civil Procedure, priority should not be given to such individuals in the appointment of a guardian ad litem.~~

Task Force Comment--1991 Adoption

This rule can be deleted because Minn. R. Civ. P. 17.02 as well as a new rule recommended in 1990, Rule 117.4 of these rules, govern guardians ad litem in all cases, including those arising under the Minnesota Commitment Act. *See* Proposed Rule 117.4.

HOUSING COURT RULES--HENNEPIN AND RAMSEY COUNTIES

Rule 701 Applicability of Rules

In Hennepin and Ramsey Counties, Rules 701 through 711 apply to all proceedings in Housing Court. These rules and, where not inconsistent, the Minnesota Rules of Civil Procedure, shall apply to housing court practice except where they are in conflict with applicable statutes.

Task Force Comment--1991 Adoption

These rules apply only in Hennepin and Ramsey Counties. Housing Courts created by the legislature exist only in those counties.

These rules were drafted as a joint effort of legal advisory committees for the Ramsey and Hennepin County Housing Courts. Those committees met on a number of occasions, and these rules are the result of significant drafting efforts and compromise. Those drafting committees included the Housing Court Referee, court administrator, judges, and practitioners of landlord and tenant law in each County. The rules are generally drawn from a current local rule, 4th Dist. R. 13 and the Housing Court Temporary Rules, Rule 17.

The Task Force is mindful that Housing Court is currently in existence in only Ramsey and Hennepin Counties, 1989 Minn. Laws ch. 328, art. 2, §§ 17, 18 & 19 (uncodified), and these rules should be reviewed and revised if Housing Courts are used in other districts.

Rule 702 Housing Court Referee

A housing referee shall preside over all hearings and trials concerning matters scheduled on the unlawful detainer calendar as well as the building and housing code calendar.

A party may request that a judge hear a case by filing such request in writing with the court administrator at least 1 day prior to the scheduled hearing date.

Task Force Comment--1991 Adoption

The procedure for removal of a referee assigned in Housing Court is intended to be different, due to the exigencies of practice in that court, from the procedure created by Rule 163.2 of these rules.

Rule 703 Parties

An unlawful detainer action shall be brought in the name of the owner of the property or other person entitled to possession of the premises. No agent shall sue in the agent's own name. Any agent suing for a principal shall attach a copy of the Power of Authority to the complaint at the time of filing.

No person other than a principal or a duly licensed attorney shall be allowed to appear in Housing Court unless the Power of Authority is attached to the complaint at the time of filing, and no person other than a duly licensed attorney shall be allowed to appear unless the Power of Authority is so attached to the complaint. An agent or lay advocate may appear without a written Power of Authority if the party being so represented is an individual and is also present at the hearing.

Task Force Comment--1991 Adoption

The Task Force expresses no opinion about whether or the extent to which the role of lay advocates constitutes the unauthorized practice of law. *See* Minn. Stat. § 481.01, *et seq.* (1990).

Rule 704 Complaint

(a) Contents of Complaint. The plaintiff in an unlawful detainer case shall file with the court administrator a complaint containing the following:

(1) A description of the premises including a street address;

(2) The legal owner of the property or other person entitled to possession of the premises;

(3) A statement of how plaintiff has complied with Minnesota Statutes § 504.22 by written notice to the defendant, by posting or by actual knowledge of the defendant;

(4) The facts which authorize recovery; and,

(5) A request for return of possession of the property.

(b) Signature. The complaint shall be signed by the plaintiff or the plaintiff's authorized agent or a duly licensed attorney.

(c) Termination. If the complaint contains allegations of holding over after termination of the lease, a copy of the termination notice, if any, must be attached to the complaint or provided to defendant or defendant's counsel at the initial appearance, unless the plaintiff does not possess a copy of the notice or if the defendant at the hearing acknowledges receipt of the notice.

(d) Breach. If the complaint contains allegations of breach of the lease or rental agreement, a copy of the lease or rental agreement, if any, must be attached to the complaint or provided to defendant and defendant's counsel at the initial appearance, unless the plaintiff does not possess a copy.

Rule 705 Return of Summons

All summons shall be served in the manner required by Minnesota Statutes, ch. 566, and the affidavit of service shall be filed with the court by 3:00 o'clock p.m. 3 business days prior to the hearing or the matter may be stricken. The affidavit must contain the printed or typed name of the person who served the summons.

Rule 706 Filing of Affidavits

Upon return of the sheriff or other process server indicating that the defendant cannot be found in the county and, in the case of a nonresidential premises, where no person actually occupies the premises described in the complaint, or, in the case the premises described in the complaint is residential, service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 and 10:00 p.m., the plaintiff or plaintiff's attorney shall file an affidavit stating that the defendant cannot be found or on belief that the defendant is not in the state.

Following the filing of such affidavit, the court administrator shall issue copies of the summons and complaint for posting and mailing. A copy of the summons and complaint shall be mailed by the plaintiff or the plaintiff's attorney to the defendant at the defendant's last known address, if any is known to the plaintiff. Service of the summons may then be made upon the defendant by posting the summons in a conspicuous place on the premises for not less than 1 week.

Upon issuance of the summons and complaint for posting and mailing, the plaintiff or plaintiff's attorney shall file another affidavit stating that a copy of the summons and complaint has been mailed to the defendant at defendant's last known address or that such an address is unknown to the plaintiff. A separate affidavit shall be filed stating that the summons has been posted and the date and location of posting.

Rule 707 Calendar Call

At the first call of the calendar the parties shall specify whether the case is a default or for trial, and if for trial, whether by court or jury. Proposed Order forms will be available at the hearing. It is the responsibility of the plaintiff to properly complete the proposed order prior to the case being called for hearing. When each case is called for hearing, the defendant shall be asked whether the defendant admits or denies the charges in the complaint. Matters involving unlawful ouster or lockouts, utility shutoffs and other emergency relief, and motions for temporary restraining orders shall be heard first, then default cases shall be heard in their calendar order, followed by contested cases triable to the court without a jury. If a jury trial is demanded, the jury fee must be paid before the jury is impaneled. Contested cases shall be set for trial the same day as the initial hearing, if possible, or set on the first available calendar date.

Rule 708 Withheld Rent

In any unlawful detainer case where a tenant withholds rent in reliance on a defense, the defendant shall deposit forthwith into court an amount in cash, money order or certified check payable to the District Court equal to the rent due as the same accrues or such other amount as determined by the court to be appropriate as security for the plaintiff, given the circumstances of the case.

Rule 709 Restitution

A writ of restitution shall issue within 24 hours after the entry of judgment, excluding Saturdays, Sundays and legal holidays, unless a stay authorized by law is specifically ordered by the court.

Rule 710 Motions

The court will not entertain motions to reinstate a stricken case. Given the expedited and summary nature of proceedings scheduled on the unlawful detainer calendar, motion papers shall be served and filed as soon as practicable. Time limits otherwise established in the rules shall not apply.

Rule 711 Review of Referee's Decision

(a) Notice. A party not in default may seek judge review of a decision or sentence recommended by the referee by serving and filing a notice of review on the form prescribed by the court administrator. The notice must be filed within 10 days after an oral announcement in court by the referee of the recommended order or within 13 days after service by mail of the adopted written order, whichever occurs first. Service of the written order shall be deemed complete and effective upon the mailing of a copy of the order to the last known address of the petitioner.

A judge's review of a decision recommended by the referee shall be de novo based upon the record established before the referee.

(b) Stays. In civil cases, filing and service of a notice of review does not stay entry of judgment nor vacate a judgment if already entered unless the petitioner requests and the referee orders a bond, payment(s) in lieu of a bond, or waiver of bond and payment(s). The decision to set or waive a bond or payment(s) in lieu of bond shall be based upon Minn. R. Civ. App. P. 108, subd. 1 & 5. A hearing on a bond or payment(s) in lieu of bond shall be scheduled before the referee, and the referee's order shall remain in effect unless a judge modifies or vacates the order.

In criminal cases, the execution of judgment or sentence shall be stayed pending review by the judge.

(c) **Transcripts.** The petitioner must obtain a transcript from the referee's court reporter. The petitioner must make satisfactory arrangements for payment with the court reporter or arrange for payment in forma pauperis.

Any transcript request by the petitioner must be made within 1 day of the date the notice of review is filed. The transcript must be provided within 5 business days after its purchase by the petitioner.

For good cause the reviewing judge may extend any of the time periods described in this Rule 711(c).

(d) Determination. The reviewing judge shall complete the review and issue a decision thereon within 10 days after receipt of the complete record of the case.

JURY MANAGEMENT RULES

Rule 801 General Policy

Persons shall be selected randomly for jury service, from the broadest possible cross section of people in the area served by the court. All qualified persons have an obligation to serve as jurors when summoned, and all should be considered for jury service.

Task Force Comment--1991 Adoption

These Jury Management Rules have already been adopted by the Minnesota Supreme Court. *See* Order Promulgating Jury Management Rules, No. C5-85-837 (Minn. Sup. Ct. June 14, 1990). The Task Force recommends that they be included as part of the Code of Rules.

Rule 802 Definitions

(a) "Court" means a district court of this state, and includes, when the context requires, any judge of the court.

(b) "Court administrator," "judicial district administrator," and "jury commissioner" include any deputy of the court designated to perform the functions listed in these rules.

(c) "Source list" means the voter registration list for the jurisdiction served by the court, which may be supplemented with names from other sources as set out in the jury administration plan.

(d) "Voter registration list" means the official record of persons registered to vote.

(e) "Drivers' license list" means the record, maintained by the department of public safety, of persons over 18 years old licensed to drive a motor vehicle or issued a state identification card.

(f) "Master list" means a list of names and addresses, or identifying numbers of prospective jurors, randomly selected from the source list.

(g) "Juror" means a person summoned for service who either is deferred to a specific future date, attends court for the purpose of serving on a jury, or is on call and available to report to court when requested.

(h) "Random selection" means the selection of names in a manner totally immune to the purposeful or inadvertent introduction of subjective bias and such that no recognizable class of the population from which names are being selected can be purposely included or excluded.

(i) "Petit jury" means a body of six persons, impaneled and sworn in any court to try and determine, by verdict, any question or issue of fact in a civil or criminal action or proceeding, according to law and the evidence as given them in court. In a criminal action where the offense charged is a felony, a petit jury is a body of 12 persons, unless the defendant consents to a jury of six.

Rule 803 Jury Commissioner

(a) A jury commissioner is established in each county to administer the jury system under the supervision and control of the chief judge of the judicial district. The jury commissioner shall be the judicial district administrator or designee. If another person is designated jury commissioner, the other person shall be responsible to the judicial district administrator in the performance of the jury commissioner's tasks.

(b) The jury commissioner shall collect and analyze information regarding the performance of the jury system on a regular basis in order to evaluate:

(1) the representativeness and inclusiveness of the jury source list;
(2) the effectiveness of qualification and summoning procedures;
(3) the responsiveness of individual citizens to jury duty summonses;
(4) the efficient use of jurors; and
(5) the cost effectiveness of the jury system.

(c) The jury commissioner should seek to secure adequate and suitable facilities for juror use in each court facility in which jury trials are held.

Rule 804 Jury Administration Plan

(a) Each jury commissioner shall develop and place into operation a written plan for the administration of the jury system. The plan shall be designed to further the policies of these rules.

(b) Each plan must

(1) describe the jury system;

(2) give a detailed description of the random selection procedures to be used in all phases of juror selection, in accordance with Rule 805;

(3) identify the lists of names, if any, which shall be used to supplement the source list, and describe the storage media by which the lists shall be maintained;

(4) indicate if a master list is to be used, and set the minimum number of names which can be used;

(5) list the conditions which will justify excusing a juror, as well as those which justify deferral;

(6) describe the juror qualification questionnaire, which will be used to gather information to determine if a prospective juror is qualified;

(7) contain policies and procedures for enforcing a summons and for monitoring failures to respond;

(8) describe juror orientation and instruction for jurors upon initial contact prior to service; upon first appearance at the courthouse; upon reporting to a courtroom for voir dire; following empanelment; during the trial; prior to deliberations; and after the verdict has been rendered or when a proceeding is terminated without a verdict.

Rule 805 Random Selection Procedures

(a) Random selection procedures shall be used throughout the juror selection process. Any method may be used, manual or automated, that provides each eligible and available person with an equal probability of selection.

(b) Random selection procedures shall be employed in

(1) selecting persons to be summoned for jury service;

(2) assigning prospective jurors to panels; and

(3) calling prospective jurors for voir dire.

(c) Departures from the principle of random selection are appropriate

(1) to exclude persons ineligible for service in accordance with Rule 808;

(2) to excuse or defer prospective jurors in accordance with Rule 810;

(3) to remove prospective jurors for cause or if challenged peremptorily in accordance with applicable rules of procedure;

(4) to equalize service among all prospective jurors in accordance with Rule 812.

Rule 806 Jury Source List

(a) The jury commissioner for each county shall be responsible for compiling and maintaining copies of all lists to be used in the random selection of prospective jurors. These lists shall be compiled when the court finds it necessary. No names shall be placed on the source list, master list, grand jury list, or petit jury venire except as provided by the applicable jury administration plan, or these rules.

(b) The voter registration list for the county must serve as the source list. The source list may be supplemented with names from other lists specified in the jury administration plan.

Whoever has custody, possession, or control of the lists used in compiling the source list shall provide them to the jury commissioner, upon request and for a reasonable fee, at any reasonable time. All lists shall contain the name and address of each person on the list.

(c) The source list must be used for the random selection of names or identifying numbers of prospective jurors to whom qualification questionnaires and summonses for service must be sent.

(d) When the source list is so large that its use for selecting prospective jurors and mailing out summonses and questionnaires is unreasonably cumbersome, burdensome, and noneconomical, a second list may be created. This master list shall be randomly drawn from the source list.

(e) The jury commissioner shall review the jury source list once every four years for its representativeness and inclusiveness of the adult population in the county and report the results to the chief judge of the judicial district.

(f) If the chief judge, or designee, determines that improvement is needed in the representativeness or inclusiveness of the jury source list, appropriate corrective action shall be ordered.

Rule 807 Jury Questionnaire and Summons. One-Step Process

(a) The jury commissioner shall mail to every prospective juror whose name has been drawn a juror qualification questionnaire and summons for service, along with instructions to fill out and return the questionnaire by mail within ten days of receipt.

(b) The notice summoning a person to jury service and the questionnaire eliciting essential information regarding that person shall be:

(1) combined in a single mailing;

(2) phrased so as to be readily understood by an individual unfamiliar with the legal and jury systems; and

(3) delivered by first class mail.

(c) A summons shall clearly explain how and when the recipient must respond and the consequences of a failure to respond.

(d) The questionnaire shall be phrased and organized so as to facilitate quick and accurate screening, and should request only that information essential for:

(1) determining whether a person meets the criteria for eligibility;

(2) determining whether there exists a mental or physical disability which would prevent the person from rendering satisfactory jury service;

(3) providing basic background information including age, race, gender, occupation, educational level, address, marital status, prior jury service within the past four years, occupation of spouse, and the age(s) of any children; and

(4) efficiently managing the jury system.

(e) The jury commissioner shall make a list of the persons to whom the summons and questionnaire have been sent, but neither the names nor the list shall be disclosed except as provided in these rules.

Rule 808 Qualifications for Jury Service

(a) The jury commissioner shall determine on the basis of information provided on the juror qualification questionnaire, supplemented if necessary, whether the prospective juror is qualified for jury service. This determination shall be entered on the questionnaire or other record designated by the court.

(b) To be qualified to serve as a juror, the prospective juror must be:

(1) A citizen of the United States.

(2) At least 18 years old.

(3) A resident of the county.

(4) Able to communicate in the English language.

(5) Be physically and mentally capable of rendering satisfactory jury service. A person claiming disability may be required to submit a physician's certificate as to the disability, and the Judge may inquire of the certifying physician.

(6) A person who has had their civil rights restored if they have been convicted of a felony.

(7) A person who has not served as a state or federal grand or petit juror in the past four years.

(c) A judge, serving in the judicial branch of the government, is disqualified from jury service.

Rule 809 Discrimination Prohibited

A citizen shall not be excluded from jury service in this state on account of race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance disability, age, occupation or economic status.

Rule 810 Excuses and Deferrals

(a) All automatic excuses or disqualifications from jury service are eliminated except as provided in Rule 808.

(b) Eligible persons who are summoned may be excused from jury service only if:

(1) their ability to receive and evaluate information is to impaired that they are unable to perform their duties as jurors and they are excused for this reason by a jury commissioner or a judge;

(2) they request to be excused because their service would be a continuing hardship to them or to members of the public and they are excused for this reason by the jury commissioner.

(c) Upon request from a qualified prospective juror, the jury commissioner shall determine whether the prospective juror meets the conditions for deferral set out in the jury administration plan. The deferral shall be for a reasonable time, after which the prospective juror shall be available for jury service, in accordance with the court's direction. Deferral of jury service is encouraged as an alternative to excuse from service.

(d) A member, officer, or employee of the legislature is excused from jury service while the legislature is in session.

Rule 811 Term of Jury Service

The time that persons are called upon to perform jury service and be available for jury service is the shortest period consistent with the needs of justice.

(a) In counties with a population of 100,000 or more, a term of service must not exceed two weeks or the completion of one trial, whichever is longer.

(b) In counties with a population of less than 100,000 but more than 50,000, a term of service must not exceed two months. However, no person is required to continue to serve after the person has reported to the courthouse for ten days or after the completion of the trial on which the juror is sitting, whichever is longer.

(c) In counties with a population of less than 50,001 but more than 15,000, a term of service must not exceed four months. However, no person is required to continue to serve after the person has reported to the courthouse for ten days or after the completion of the trial on which the juror is sitting, whichever is longer.

(d) In counties with a population of 15,000 or less, a term of service shall not exceed six months. However, no person is required to continue to serve after the person has reported to the courthouse for selection for three days, or after the completion of the trial on which the juror is sitting, whichever is longer.

(e) Chief judges and judicial district administrators shall review the frequency of juror use in each county in determining the shortest period of jury service that will enable the greatest number of citizens to have the opportunity to report to the courthouse and participate in the jury system. All courts shall adopt the shortest period of jury service that is practical.

Rule 812 Juror Use

(a) Courts shall employ the services of prospective jurors so as to achieve optimum use with minimum inconvenience to jurors.

(b) Courts shall determine the minimally sufficient number of jurors needed to accommodate trial activity; this information and appropriate management techniques shall be used to adjust both the number of individuals summoned for jury duty and the number assigned to jury panels.

(c) Courts may employ procedures to ensure that each prospective juror who has reported to the courthouse is assigned to a courtroom for voir dire each day before any prospective juror is assigned a second time that day.

Rule 813 Challenging Compliance with Selection Procedure

(a) A party may move to stay the proceedings, quash the indictment or for other appropriate relief, on the ground that these rules have not been complied with. Such motion should be made within seven days after the moving party discovers or should have discovered the grounds for the motion, and in any event before the petit jury is sworn to try the case.

(b) If a motion filed under (a) contains a sworn statement of facts which, if true, constitute a substantial failure to comply with these rules, the moving party is entitled to present the testimony of the jury commissioner, any relevant records and papers even if not public or otherwise available, and any other relevant evidence in support of the motion. If the court determines that there has been a substantial failure to comply with these rules in the selection of either a grand jury or a petit jury, the court shall stay the proceedings while a jury is selected in conformity with these rules.

(c) The procedures prescribed by this Rule are the exclusive means by which a party may challenge a jury on the grounds that the jury was not selected in conformity to these rules.

Rule 814 Records

(a) The names of qualified prospective jurors drawn and the contents of juror qualification questionnaires completed by those prospective jurors must be made available to the public upon specific request to the court, supported by affidavit setting forth the reasons for the request, unless the court determines in any instance that in the interest of justice this information should be kept confidential or its use limited in whole or in part.

(b) The contents of juror qualification questionnaires must be made available to attorneys upon request in advance of voir dire. The court may restrict access to addresses of the prospective jurors.

(c) The jury commissioner shall make sure that all records and lists are preserved for the length of time ordered by the court. The contents of any records or lists not made public shall not be disclosed until one year has elapsed since preparation of the list and all persons selected to serve have been discharged, unless a motion is brought under Rule 813.

RULES RELATING TO CRIMINAL MATTERS

Rule 901 Applicability of Rules

These rules apply in all criminal actions, and supplement the Minnesota Rules of Criminal Procedure.

Task Force Comment--1991 Adoption

The rules set forth here are derived from existing local rules. In order to further uniformity in practice in criminal proceedings throughout the state, the Task Force reviewed the existing local rules, and combined those rules having potential usefulness in all cases into a single code. The Task Force then submitted those rules to the Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure. The recommendations of that Advisory Committee have been endorsed and ratified by this Task Force, and these rules incorporate all of the recommendations of the Advisory Committee.

Rule 902 Bail

(a) Approval of Bond Procurers Required. No person shall engage in the business of procuring bail bonds, either cash or surety, for persons under detention until an application is approved by the court. The application form shall be obtained from the court administrator. The completed application shall then be filed with the administrator stating the information requested.

(b) Corporate Sureties. Any corporate surety on a bond submitted to the court shall be one approved by the court and authorized to do business in the State of Minnesota.

(c) Surety Insolvency. Whenever a corporate surety becomes insolvent, the local agent shall notify the court in every county in which it has issued or applied to issue bonds, in writing immediately. Within fourteen (14) days after such notice to the court, the agent shall file with the court administrator a security bond to cover outstanding obligations of the insolvent surety, which may be reduced automatically as the obligations are reduced. In the absence of such surety or security bond, a summons shall be sent to all principals on the bonds of the surety; if no response is made thereto, bench warrants shall be issued.

(d) Posting Bonds. Before any person can be released on bond, such bond must be approved by a judge after submission to the prosecuting attorney for approval of form and execution and filed with the court administrator during business hours or thereafter with the custodian of the jail, except that (a) cash bail may be deposited with the jailer as provided in Minnesota Criminal Rules of Procedure, (b) in cases where bail has been set by the court and the defendant has provided a bail bond with corporate surety at night or other times when a judge is not available to approve the bond, that the jail be authorized to release the defendant upon deposit by defendant with the jailer of a bond completed except for the approval by a judge, provided that the bail bond agent obtaining release of a defendant under this exception file with the Chief Judge a certificate on behalf of the corporate surety issuing any such bond to the effect that the fact that the bond contained no signature of a judge approving such bond at the time the defendant was released will not be used as a defense to any claim of forfeiture of such bond.

(e) Forfeiture of Bonds. Whenever a bail bond is forfeited by a judge, the surety and bondsman shall be notified thereof by the court administrator in writing, and be directed to make payment in accordance with the terms of the bond within ninety (90) days from the date of the order of forfeiture. A copy of the order of forfeiture shall be forwarded with the notice.

(f) Reinstatement. Any motion for reinstatement of a forfeited bond or cash bail shall be supported by a petition and affidavit and shall be filed with the Administrator. A copy of said petition and affidavit shall be served upon the county attorney in the manner required by Rule 4.03(e)(1) of Minnesota Rules of Civil Procedure. A petition for reinstatement filed

within ninety (90) days of the date of this order of forfeiture shall be heard and determined by the judge who ordered forfeiture, or the chief judge. Reinstatement may be ordered on such terms and conditions as the court may require. A petition for reinstatement filed between ninety (90) days and one hundred eighty (180) days from date of forfeiture shall be heard and determined by the judge who ordered forfeiture or the judge's successor and reinstatement may be ordered on such terms and conditions as the court may require, but only with concurrence of the Chief Judge and upon the condition that a minimum penalty of not less than ten per cent (10%) of forfeited bail be imposed. No reinstatement of a forfeited bond or cash bail shall be allowed unless the petition and affidavit are filed within one hundred eighty (180) days from the date of the order of forfeiture.

(g) Forfeited Bail Money. All forfeited bail money shall be deposited in the state treasury in the manner provided by law.

(h) Bonding Privilege Suspension. A failure to make the payment on a forfeited bail within ninety (90) days as above provided shall automatically suspend the surety and its agent from writing further bonds; and such suspension shall continue until the principal amount of the bond is deposited in cash with the court administrator.

Task Force Comment--1991 Adoption

This Rule is derived from 4th Dist. R. 8.02. Pretrial release is governed by Minn. R. Crim. P. 6, and this rule supplements the provisions of that rule. The Task Force believes that specific, written standards relating to the issuance and forfeiture of bail bonds would be useful to practitioners, courts, and to those issuing bonds.

The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure recommended that this local rule be incorporated in the Code of Rules for uniform statewide application and the Task Force concurs in that recommendation.

Rule 903 Certificates of Representation

In any criminal case, an attorney representing a client, other than a public defender, shall file with the clerk on the first appearance a "certificate of representation," in such form and substance as a majority of judges specifies.

Once an attorney has filed a certificate of representation, that attorney cannot withdraw from the case until all proceedings have been completed, except upon written order of the court pursuant to a written motion, or upon written substitution of counsel approved by the court ex parte.

An attorney who wishes to withdraw from a criminal case must file a written motion and serve it by mail or personal service upon the client and upon the prosecutor; and the attorney shall have the matter heard by the court. No motion of withdrawal will be heard within 10 days of a date certain for hearing or trial, and the application for withdrawal shall set forth such fact.

If the court approves the withdrawal, it shall be effective after the order has been served on the client and the prosecutor by mail or personal service and due proof of such service has been filed with the court administrator.

Task Force Comment--1991 Adoption

This rule is derived from 4th Dist. R. 8.05.

The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure recommended that this local rule be incorporated in the Code of Rules for uniform statewide application and the Task Force concurs in that recommendation.

Rule 904 Timely Appearances

Once the non-felony arraignment court calendar has convened, no attorney shall approach the courtroom clerk or the court. Any attorney appearing late must notify the bailiff in the courtroom of his or her presence. The bailiff will then transmit the information to the court and the case will be called by instruction of the presiding judge.

Task Force Comment--1991 Adoption

This rule is derived from 4th Dist. R. 8.06.

The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure recommended that this local rule be incorporated in the Code of Rules for uniform statewide application and the Task Force concurs in that recommendation.

Rule 905 Complaints and Warrants--Submission to Second Judge

A complaint or search warrant application which is found by a judge to be defective or otherwise insufficient shall not be submitted to another judge without a full and complete disclosure of such finding to the second judge.

Task Force Comment--1991 Adoption

This rule is derived from 4th Dist. R. 8.10.

The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure recommended that this local rule be incorporated in the Code of Rules for uniform statewide application and the Task Force concurs in that recommendation.

Rule 906 Custody of Exhibits

Exhibits marked in criminal cases shall be kept by the court administrator until the time for appeal has expired or any appeal has been decided, unless surrender of the exhibits is ordered by the judged before whom the case was tried or the chief judge of the district.

Task Force Comment--1991 Adoption

This rule is derived from 4th Dist. R. 6.03. The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure recommended that this local rule be incorporated in the Code of Rules for uniform statewide application and the Task Force concurs in that recommendation.

PROPOSED AMENDMENTS TO MINNESOTA RULES OF CIVIL PROCEDURE

Rule 11. Signing of Pleadings, Motions and other Papers; Sanctions

Every pleading, motion and other paper of a party represented by an attorney shall be personally signed by at least one attorney of record in the attorney's individual name and shall state the attorney's address, telephone number, and attorney registration number. A party who is not represented by an attorney shall personally sign the pleading, motion or other paper and state the pleader's address and telephone number. Except when otherwise specifically provided by rule or statute, pleadings need not be verified by affidavit or accompanied by affidavit. The signature of an attorney or party constitutes a certification that the pleading, motion or other paper has been read; that to the best of the signer's knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, ant that it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including reasonable attorney fees.

Every pleading, motion and other paper shall be dated next to the signature.

Task Force Comment--1991 Adoption

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

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

Rule 38 Jury Trial of Right.

* * *

~~**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 and the telephone numbers of the respective counsel, and shall serve the same on counsel for all parties not in default and file it, with proof of service with the clerk within 10 days after such service in all districts where but one term of court is held annually and in all other districts at least 28 days before the beginning of a general term, and thereupon the action shall be placed on the calendar for trial and shall remain thereon from term to term until tried or stricken therefrom. The party serving a note of issue shall, and any other party may, serve a note of issue upon counsel for any person who becomes a party to the action subsequent to the initial service.~~

Task Force Comment--1991 Adoption

This amendment to repeal this rule is appropriate because the use of notes of issue filed by the parties will be replaced by the court-initiated scheduling. *See* proposed Rule 116.1(c) of the Code of Rules for the District Courts.

Rule 55.01 Judgment

* * *

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

* * *

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

Task Force Comment--1991 Adoption

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

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

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

* * *

Rule 63.03 Notice to Remove.

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

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

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

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

Task Force Comment--1991 Adoption

This amendment to Minn. R. Civ. P. 63.03 is intended to provide a uniform mechanism for removing any judicial officer, whether a judge or referee. This rule would replace various inconsistent provisions of the existing rules. 4th Dist. R. 16.01 requires objections to any referee to be filed one court day before the hearing. 2d Dist. R. 23 requires objection within 10 days after notice of assignment and not later than commencement, consistent with the statute and rule governing judges.

Rule 83. Rules by District Courts

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

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

Task Force Comment--1991 Adoption

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

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

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

> (c) Uniform standards of justice. The procedures by which the court system administers justice should be based on principles applicable throughout the system, and, so far as practicable, should be uniform in their particulars. The court system should have:
>
> (i) Uniform rules of procedure, promulgated by a common authority;
>
> (ii) Rules of court administration that are uniform so far as possible and have local variations only as approved by an appropriate central authority in the court system;
>
> . . .

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

APPENDIX OF FORMS

The Task Force recommends that the existing forms appended to the Rules of Family Court Procedure and Forms UCF8, UCF9, and UCF10 appended to the Rules for the Conciliation Courts be retained and appended to the Code of Rules. The following new forms should also be incorporated in the Appendix to the Code of Rules.

FORM 103.1 CERTIFICATE OF REPRESENTATION AND PARTIES

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF _____ _____ **JUDICIAL DISTRICT**

CERTIFICATE OF REPRESENTATION AND PARTIES

(ONLY THE INITIAL FILING ATTORNEY/PARTY NEEDS TO COMPLETE THIS FORM)
Date Case Filed: _____ File Number _____

_____ vs. _____

Pursuant to Rule 103.1 of the Code of Rules for the District Court, this form must be completed and filed with the court administrator at the time of filing or 7 days after the initial filing date.

LIST ALL ATTORNEYS/PRO SE PARTIES INVOLVED IN THIS CASE.

ATTORNEY FOR PLAINTIFF(S)	ATTORNEY FOR DEFENDANT(S) (If not known, name party and address)
_____ Name of Party	_____ Name of Party
_____ Atty Name (Not firm name)	_____ Atty Name (Not firm name)
_____ Address	_____ Address
_____ _____ _____ Phone Number	_____ _____ _____ Phone Number
_____ MN Atty ID No.	_____ MN Atty ID No.

(Please use other side for additional attorneys/parties.)

Date
Attorney for:

Name of Party

Atty Name (Not firm name)

Address

Phone Number

MN Atty ID No.

Filing Attorney/Party
Attorney for:

Name of Party

Atty Name (Not firm name)

Address

Phone Number

MN Atty ID No.

Attorney for:

Name of Party

Atty Name (Not firm name)

Address

Phone Number

MN Atty ID No.

Attorney for:

Name of Party

Atty Name (Not firm name)

Address

Phone Number

MN Atty ID No.

FORM 116.1 PROPOSED SCHEDULING INFORMATION
(Civil Matters--Non-Family)

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF _____ — _____ JUDICIAL DISTRICT

Case Type: _____

_____,

Plaintiff,

PROPOSED SCHEDULING FORM

v.

_____,

Defendant.

---

1. All parties (have) (have not) been served with process.

2. All parties (have) (have not) joined in the filing of this form.

3. Brief description of the case: _____
_____
_____..

4. It is estimated that the discovery specified below can be completed within ____ months from the date of this form. (Check all that apply, and supply estimates where indicated.)

a.	Interrogatories	No ____	Yes ____
b.	Document Requests	No ____	Yes ____, estimated number: ____
c.	Factual Depositions	No ____	Yes ____, estimated number: ____
d.	Medical Evaluations	No ____	Yes ____, estimated number: ____
e.	Experts Subject to Discovery	No ____	Yes ____, estimated number: ____

5. Assignment as an ____ expedited ____ standard ____ complex case is requested. (If not standard case assignment, include brief statement setting forth the reasons for the request.)

_____

_____

6. The dates and deadlines specified below are suggested.

a. _____ Deadline for joining additional parties, whether by amendment or third party practice.

b. _____ Deadline for bringing non-dispositive motions.

c. _____ Deadline for bringing dispositive motions.

d. _____ Deadline for submitting _____ (specify issue) to the court.

e. _____ Deadline for completing independent physical examination pursuant to Minn. R. Civ. P. 35.

f. _____ Date for formal discovery conference pursuant to Minn. R. Civ. P. 26.06.

g. _____ Date for pretrial conference pursuant to Minn. R. Civ. P. 16.

h. _____ Date for scheduling conference.

i. _____ Date for submission of a Joint Statement of the Case pursuant to Rule 116.2 of the Code of Rules.

j. _____ Trial Date.

k. _____ Deadline for filing (proposed instructions), (verdicts), (findings of fact), (witness list), (exhibit list).

l. _____ Deadline for _____ (specify)

7. Estimated trial time: _____ days _____ hours (estimates less than a day must be stated in hours).

8. A jury trial is: ( ) waived by consent of _____ (specify party) pursuant to R. Civ. P. 38.02.
( ) requested by _____ (specify party). (NOTE: Applicable fee must be enclosed.)

9. Alternative dispute resolution (is) (is not) recommended, in the form of:
_____ (specify *e.g.*, arbitration, mediation)

10. Please list any additional information which might be helpful to the court when scheduling this letter.

_____

_____

Signed: _____
Attorney for (Plaintiff) (Defendant)

Attorney Reg. #: _____
Firm: _____
Address: _____
Telephone: _____
Date: _____

Signed: _____
Attorney for (Plaintiff) (Defendant)

Attorney Reg. #: _____
Firm: _____
Address: _____
Telephone: _____
Date: _____

FORM 116.2 JOINT STATEMENT OF THE CASE

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF _____ _____ JUDICIAL DISTRICT

Case Type: _____

_____,

Plaintiff, PROPOSED SCHEDULING FORM

v.

_____,

Defendant.

---

1. All parties have been served with process. The case is at issue and all parties have joined in the filing of this Joint Statement of the Case.

2. Estimated trial time: ___ days ___ hours (estimates less than a day must be stated in hours).

3. Jury is requested by the ___ plaintiff ___ defendant. [If this is a change from a court to a jury request, then a $30 fee must be paid when filing this document.]

4. Concise statement of the case including facts plaintiff(s) intend to prove and legal basis for claims:

_____
_____
_____

5. Concise statement of the case indicating facts defendant(s) intend to prove and legal basis for defenses and counterclaim:

_____
_____
_____

6. List the names and addresses of witnesses known to either party that either party may call. Indicate the party who expects to call the witness and whether the party intends to qualify that witness as an expert. (Attach additional sheets if necessary.)

Party	Name/Addresses of Witnesses	Please Indicate if Expert Witness
_____	_____	_____ Yes
_____	_____	_____ Yes
_____	_____	_____ Yes

7. In claims involving personal injury, attach a statement by each claimant, whether by complaint or counterclaim, setting forth a detailed description of claimed injuries and an itemized list of special damages as required by the rule. Indicate whether parties will exchange medical reports.

8. In claims involving vehicle accidents, attach a statement describing the vehicles with information as to ownership and the name of insurance carriers, if any.

[Signature Blocks]

(If more space is needed to add additional information or parties, attach a separate sheet typed in the same format.)

The undersigned counsel have met and conferred this ___ day of _____ and certify the foregoing is true and correct.

_____
Signature

_____
Signature

_____
Signature

_____
Signature

FORM 304.1 PROPOSED SCHEDULING INFORMATION
(Family Court Matters)

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF _____ _____ JUDICIAL DISTRICT

Case Type: _____

_____,

Plaintiff, PROPOSED SCHEDULING FORM

v.

_____,

Defendant.

---

1. All parties (have) (have not) been served with process.

2. All parties (have) (have not) joined in the filing of this form.

3. The case involves the following (check all that apply and supply estimates where indicated):

   a. minor children No ____ Yes ____, number: ____

   b. custody dispute No ____ Yes ____

   c. marital property No ____ Yes ____, estimated amount: $____

   d. nonmarital property No ____ Yes ____, estimated amount: $____

   e. complex evaluation issues No ____ Yes ____

4. It is estimated that the discovery specified below can be completed within _____ months from the date of this form. (Check all that apply and supply estimates where indicated.)

   a. Interrogatories No ____ Yes ____

   b. Document Requests No ____ Yes ____, estimated number: ____

   c. Factual Depositions No ____ Yes ____, estimated number: ____

   d. Medical Evaluations No ____ Yes ____, estimated number: ____

e. Experts No ____ Yes ____, estimated number: ____

5. Assignment as an ____ expedited ____ standard ____ complex case is requested. (If not standard case assignment, include brief statement setting forth the reasons for the request.)

_____

_____

6. The dates and deadlines specified below are suggested.

a. _____ Deadline for bringing motion regarding: _____ (specify).

b. _____ Deadline for completion and review of property mediation.

c. _____ Deadline for completion and review of custody/visitation mediation.

d. _____ Deadline for completion and review of custody/visitation evaluation.

e. _____ Deadline for submitting _____ (specify) to the court.

f. _____ Date for formal discovery conference.

g. _____ Date for prehearing conference.

h. _____ Date for trial or final hearing.

7. Estimated trial or final hearing time: ____ days ____ hours (estimates less than a day must be stated in hours).

8. Alternative dispute resolution (is) (is not) recommended, in the form of: _____ (specify *e.g.* arbitration, mediation)

9. Please list any additional information which might be helpful to the court when scheduling this matter, including *e.g.* facts which will affect readiness for trial and any issues that significantly affect the welfare of the children:

_____

_____

Signed: _____
Attorney for (Plaintiff) (Defendant)

Attorney Reg. #: _____
Firm: _____
Address: _____
Telephone: _____
Date: _____

Signed: _____
Attorney for (Plaintiff) (Defendant)

Attorney Reg. #: _____
Firm: _____
Address: _____
Telephone: _____
Date: _____

Appendix B

RECOMMENDED DISPOSITION OF EXISTING RULES

With the specific exceptions set forth below, the following rules should be repealed in their entirety:

Local Rules for First District

Local Rules for Second District

Local Rules for Third District

Local Rules for Fourth District

Local Rules for Fifth District

Local Rules for Sixth District

Local Rules for Seventh District

Local Rules for Eighth District

Local Rules for Ninth District

Local Rules for Tenth District

Code of Rules for the District Courts

All provisions of the Minnesota Civil Trialbook

Rules for Uniform Decorum

Rules of Family Court Procedure

Rules for the Conciliation Courts

Minnesota Probate Rules

Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment Act of 1982

Conciliation Court Personal Receivership Rules--St. Louis County

The following provisions may be retained as local rules.

Second District Local Rule 5 (regarding case setting)
Fourth District Local Rule 1.01(d) (regarding special captions)

Fourth District Local Rule 5 (relating to mandatory, non-binding arbitration program)
Fourth District Local Rule 13 (pending adoption of Housing Court Rules)
Tenth District Local Rule 14 (relating to juvenile court proceedings)

Hennepin County Conciliation Court Special Rules of Procedure, reprinted in Minn. Rules of Ct. at 683 (West pamph. ed. 1990).