

STATE OF MINNESOTA

IN SUPREME COURT

ADM04-8001 (formerly C6-84-2134), CX-89-1863, C4-84-2133

**ORDER PROMULGATING AMENDMENTS
TO RULES OF CIVIL PROCEDURE, GENERAL
RULES OF PRACTICE, AND RULES OF CIVIL
APPELLATE PROCEDURE**

The Supreme Court Advisory Committee on the Rules of Civil Procedure has recommended certain amendments to the Rules of Civil Procedure and related changes to the General Rules of Practice and the Rules of Civil Appellate Procedure.

On November 10, 2005, the court held a hearing on the proposed amendments.

The court has reviewed the proposals and is advised in the premises.

IT IS ORDERED that:

1. The attached amendments to the Rules of Civil Procedure, the General Rules of Practice, and the Rules of Civil Appellate Procedure be, and the same are, prescribed and promulgated to be effective on January 1, 2006.

2. These amendments shall apply to all actions or proceedings pending on or commenced on or after the effective date, provided that in cases in which a timely and otherwise proper motion is brought under either the old or the new version of Rule 50.02 of the Rules of Civil Procedure, the time for appeal will be governed by Rule 104.01, subd. 2, of the Rules of Civil Appellate Procedure, even if the wrong version of Rule 50.02 is used.

3. The inclusion of advisory committee comments is made for convenience and

Amendments to Minnesota Rules of Civil Procedure

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

* * *

Rule 5.05. Filing; Facsimile Transmission

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

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

- (a) a \$25 transmission fee for each 50 pages, or part thereof, of the filing;
- ~~and~~
- (b) ~~the original signed document~~ any bulky exhibits or attachments; and
- (c) the applicable filing fee or fees, if any.

If a paper is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the party transmitting it for filing and made available to the court or any party to the action upon request.

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

Advisory Committee Comment—2006 Amendment

Rule 5.05 is amended to delete the requirement that an "original" document follow the filing by facsimile. The requirement of a double filing causes confusion and unnecessary burdens for court administrators, and with the dramatic improvement in quality of received faxes since this rule was adopted in 1988, it no longer serves a useful purpose. Under the amended rule, the document filed by facsimile is the original for all purposes unless an issue

31 arises as to its authenticity, in which case the version transmitted electronically
32 and retained by the sender can be reviewed.

33 The filing fee for fax filings in Rule 5.05 is changed from \$5.00 to \$25.00
34 because fax filings, even under the streamlined procedures of the amended rule,
35 still impose significant administrative burdens on court staff, and it is therefore
36 appropriate that this fee, unchanged since the rule's adoption in 1988, be
37 increased. A number of committee members expressed the view that facsimile
38 filing was, and still is, intended to be a process used on a limited basis in
39 exigent or at least unusual circumstances. It is not intended to be a routine
40 filing method.

41 The rule does not provide a specific mechanism for collecting the
42 transmission fee required under the rule. Because prejudice may occur to a
43 party if a filing is deemed ineffective, the court should determine the
44 appropriate consequences of failure to pay the necessary fee.

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46 **RULE 16. PRETRIAL CONFERENCES; SCHEDULING;**
47 **MANAGEMENT**

48 * * *

49 **Rule 16.03. Subjects for Consideration**

50 At any conference under this rule consideration may be given, and the court
51 may take appropriate action, with respect to:

52 * * *

53 (n) an order directing a party or parties to present evidence early in the trial
54 with respect to a manageable issue that could, on the evidence, be the basis for a
55 ~~directed-verdict~~ judgment as a matter of law under Rule 50.01 or an involuntary
56 dismissal under Rule 41.02(b);

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59 **Advisory Committee Comment—2006 Amendment**

60 Rule 16.03(n) is amended to reflect the new name for motions under Rule
61 50.01 as amended effective January 1, 2006.

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63 **RULE 23. CLASS ACTIONS**

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67 **Rule 23.03. ~~Determination~~ by Order Whether to Certify a Class**
68 **Action to be Maintained; Appointing Class Counsel;**

69 **Notice and Membership in Class; Judgment; Actions**
70 **Conducted Partially as Class Actions Multiple Classes and**
71 **Subclasses**

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

76 ~~(b) In any class action maintained pursuant to Rule 23.02(c), the court shall~~
77 ~~direct to the members of the class the best notice practicable under the~~
78 ~~circumstances, including individual notice to all members who can be identified~~
79 ~~through reasonable effort. The notice shall advise each member that (1) the court~~
80 ~~will exclude from the class any person who so requests by a specified date; (2) the~~
81 ~~judgment, whether favorable or not, will include all members who do not request~~
82 ~~exclusion; and (3) any member who does not request exclusion may, but need not,~~
83 ~~enter an appearance through counsel.~~

84 **(a) Certification Order.**

85 (1) When a person sues or is sued as a representative of a class, the
86 court must—at an early practicable time—determine by order whether to
87 certify the action as a class action.

88 (2) An order certifying a class action must define the class and the
89 class claims, issues, or defenses, and must appoint class counsel under Rule
90 23.07.

91 (3) An order under Rule 23.03(a)(1) may be altered or amended
92 before final judgment.

93 **(b) Notice.**

94 (1) For any class certified under Rule 23.02(a) or (b), the court may
95 direct appropriate notice to the class.

96 (2) For any class certified under Rule 23.02(c), the court must direct
97 to class members the best notice practicable under the circumstances,

98 including individual notice to all members who can be identified through
99 reasonable effort. The notice must concisely and clearly state in plain,
100 easily understood language:

101 (A) the nature of the action,

102 (B) the definition of the class certified,

103 (C) the class claims, issues, or defenses,

104 (D) that a class member may enter an appearance through
105 counsel if the member so desires,

106 (E) that the court will exclude from the class any member who
107 requests exclusion, stating when and how members may elect to be
108 excluded, and

109 (F) the binding effect of a class judgment on class members
110 under Rule 23.03(c).

111 **(c) Identification of Class Members.** The judgment in an action
112 maintained as a class action ~~pursuant to~~ under Rule 23.02(a) or (b), whether or not
113 favorable to the class, shall include and describe those whom the court finds to be
114 members of the class. The judgment in an action maintained as a class action
115 ~~pursuant to~~ under Rule 23.02(c), whether or not favorable to the class, shall
116 include and specify or describe those to whom the notice provided in Rule
117 23.03(b) was directed, and who have not requested exclusion, and whom the court
118 finds to be members of the class.

119 **(d) Issue Classes and Subclasses.** When appropriate (1) an action may be
120 brought or maintained as a class action with respect to particular issues, or (2) a
121 class may be divided into subclasses and each subclass treated as a class; and the
122 provisions of this rule shall then be construed and applied accordingly.

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124 * * *

126 **Rule 23.05. Dismissal or Compromise Settlement, Voluntary**
127 **Dismissal, or Compromise**

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

131 **(a) Court Approval.**

132 (1) A settlement, voluntary dismissal, or compromise of the claims,
133 issues, or defenses of a certified class is effective only if approved by the
134 court.

135 (2) The court must direct notice in a reasonable manner to all class
136 members who would be bound by a proposed settlement, voluntary
137 dismissal, or compromise.

138 (3) The court may approve a settlement, voluntary dismissal, or
139 compromise that would bind class members only after a hearing and on
140 finding that the settlement, voluntary dismissal, or compromise is fair,
141 reasonable, and adequate.

142 **(b) Disclosure Required.** The parties seeking approval of a settlement,
143 voluntary dismissal, or compromise under Rule 23.05(a) must file a statement
144 identifying any agreement made in connection with the proposed settlement,
145 voluntary dismissal, or compromise.

146 **(c) Additional Opt-Out Period.** In an action previously certified as a
147 class action under Rule 23.02(c), the court may refuse to approve a settlement
148 unless it affords a new opportunity to request exclusion to individual class
149 members who had an earlier opportunity to request exclusion but did not do so.

150 **(d) Objection to Settlement.**

151 (1) Any class member may object to a proposed settlement,
152 voluntary dismissal, or compromise that requires court approval under Rule
153 23.05(a)(1).

154 (2) An objection made under Rule 23.05(d)(1) may be withdrawn
155 only with the court’s approval.

156 **Rule 23.06. Appeals**

157 The court of appeals may in its discretion permit an appeal from an order of
158 a district court granting or denying class action certification under this rule. An
159 application to appeal must be sought within the time provided in Rule 105 of the
160 Minnesota Rules of Civil Appellate Procedure, and shall be subject to the other
161 provisions of that rule. An appeal does not stay proceedings in the district court
162 unless the district judge or the court of appeals so orders.

163 **Rule 23.07. Class Counsel**

164 **(a) Appointing Class Counsel.**

165 (1) Unless a statute provides otherwise, a court that certifies a class
166 must appoint class counsel.

167 (2) An attorney appointed to serve as class counsel must fairly and
168 adequately represent the interests of the class.

169 (3) In appointing class counsel, the court

170 (A) must consider:

171 (i) the work counsel has done in identifying or investigating
172 potential claims in the action,

173 (ii) counsel’s experience in handling class actions, other
174 complex litigation, and claims of the type asserted in the action,

175 (iii) counsel’s knowledge of the applicable law, and

176 (iv) the resources counsel will commit to representing the class;

177 (B) may consider any other matter pertinent to counsel’s ability
178 to fairly and adequately represent the interests of the class;

179 (C) may direct potential class counsel to provide information on
180 any subject pertinent to the appointment and to propose terms for
181 attorney fees and nontaxable costs; and

182 (D) may make further orders in connection with the
183 appointment.

184 **(b) Appointment Procedure.**

185 (1) The court may designate interim counsel to act on behalf of the
186 putative class before determining whether to certify the action as a class
187 action.

188 (2) When there is one applicant for appointment as class counsel,
189 the court may appoint that applicant only if the applicant is adequate under
190 Rule 23.07(a)(2) and (3). If more than one adequate applicant seeks
191 appointment as class counsel, the court must appoint the applicant best able
192 to represent the interests of the class.

193 (3) The order appointing class counsel may include provisions about
194 the award of attorney fees or nontaxable costs under Rule 23.08.

195 **Rule 23.08. Attorney Fees Award**

196 In an action certified as a class action, the court may award reasonable
197 attorney fees and nontaxable costs authorized by law or by agreement of the
198 parties as follows:

199 **(a) Motion for Award of Attorney Fees.** A claim for an award of
200 attorney fees and nontaxable costs must be made by motion, subject to the
201 provisions of this subdivision, at a time set by the court. Notice of the motion
202 must be served on all parties and, for motions by class counsel, directed to class
203 members in a reasonable manner.

204 **(b) Right to Object.** A class member, or a party from whom payment is
205 sought, may object to the motion.

206 **(c) Hearing and Findings.** The court may hold a hearing and must find
207 the facts and state its conclusions of law on the motion under Rule 52.01.

208 **(d) Reference to Special Master.** The court may refer issues related to
209 the amount of the award to a special master as provided in Rule 53.01(a).

210 **Rule 23.0609. Derivative Actions by Shareholders or Members**

211 In a derivative action brought by one or more shareholders or members to
212 enforce a right of a corporation or of an unincorporated association, the
213 corporation or association having failed to enforce a right which may properly be
214 asserted by it, the complaint shall allege that the plaintiff was a shareholder or
215 member at the time of the transaction of which the plaintiff complains or that the
216 plaintiff's share or membership thereafter devolved on the plaintiff by operation of
217 law. The complaint shall also allege with particularity the efforts, if any, made by
218 the plaintiff to obtain the desired action from the directors or comparable authority
219 and, if necessary, from the shareholders or members, and the reasons for the
220 plaintiff's failure to obtain the action or for not making the effort. The derivative
221 action may not be maintained if it appears that the plaintiff does not fairly and
222 adequately represent the interest of the shareholders or members similarly situated
223 in enforcing the right of the corporation or association. The action shall not be
224 dismissed or compromised without the approval of the court, and notice of the
225 proposed dismissal or compromise shall be given to shareholders or members in
226 such manner as the court directs.

227 **Rule 23.0710. Actions Relating to Unincorporated Associations**

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

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236 **Advisory Committee Comment—2006 Amendment**

237 Rule 23 is extensively revamped by these amendments. The
238 recommended changes primarily adopt the amendments made to federal rule 23
239 in 2003. The reasons for these amendments are set forth in the advisory
240 committee notes that accompanied the federal rule amendments. *See Fed. R.*
241 *Civ. P. 23, Advis. Comm. Notes—2003 Amends., reprinted in FED. CIV. JUD.*

242 PROC. & RULES 132-37 (West 2005 ed.). Those notes provide useful
243 information on the purposes for these amendments and may be consulted for
244 interpretation of these rules.

245 Rule 23.03(a)(1) requires class certification to be taken up “at an early
246 practicable time” rather than “as soon as practicable.” Although these
247 standards are substantially similar, the former rule’s phrasing occasionally
248 prompted courts to feel they did not have the leeway to defer ruling on
249 certification until a later, more logical time. In many cases, certification cannot
250 be decided without consideration of the practicalities of trying the case, making
251 early certification impractical. *See generally* MANUAL FOR COMPLEX
252 LITIGATION (FOURTH) § 21.133 (Fed. Jud. Ctr. 2004). Rule 23.03(a)(2) places
253 in the rule an express requirement that the class be defined at the time of
254 certification and that class counsel be appointed. Precise definition of the class
255 is necessary to identify the persons entitled to relief, bound by a judgment in
256 the case, and entitled to notice. *Id.* § 21.222. The procedures for appointment
257 of class counsel are set forth in Rule 23.07. The rule omits reference to a
258 “conditional” certification, reflecting the disfavor this device has earned, but
259 preserves the ability of courts to amend a certification order any time before
260 final judgment is entered.

261 Rule 23.03(b) establishes the power of the court to direct notice to the
262 class in actions certified under Rule 23.02(a) or (b) (where notice is not
263 generally required) and also states the requirement that notice be given to
264 members of classes certified under Rule 23.02(c). Rule 23.03(b)(2) provides
265 guidance on the content and form of these required notices, and requires the use
266 of plain language. Sample plain-language class notice documents are available
267 on the Federal Judicial Center’s website, <http://www.fjc.gov>. These
268 requirements are intended to improve the amount of useful information
269 available to potential class members and to inform their decision on class
270 participation.

271 Rule 23.05 is expanded to define the procedures for review and approval
272 of class settlements. The rule adopts the changes in Fed. R. Civ. P. 23(e) with
273 one stylistic modification. The federal rule, read literally, might appear to
274 suggest that a trial court must approve every settlement submitted for approval;
275 the language is reworked in the proposed rule to make it clear that although
276 court approval is required for a settlement to be effective, the court’s options
277 are not constrained. Indeed, many proposed settlements are properly rejected
278 for not being in the interest of class members. Rule 23.05(a)(3) requires that a
279 hearing be held, and Rule 23.05(b) creates an express requirement that any
280 “side” agreements relating to the settlement must be identified in a statement
281 filed with the court. Rule 23.05(a)(1) removes an ambiguity that existed under
282 the old rule, and now expressly requires court approval only of claims of a
283 certified class.

284 Rule 23.05(c) authorizes the court to allow a “second opt-out” right in
285 actions certified under Rule 23.02(c). In these actions an opt-out deadline is
286 typically established early in the period following certification. This provision
287 allows the court to permit class members who have not opted out to do so with
288 knowledge of the actual settlement terms.

289 Rule 23.06 makes it clear that decisions relating to class certification are
290 subject to appellate review on a discretionary basis. This rule is slightly
291 different from its federal counterpart because Minnesota has an established
292 process for discretionary appeals of interlocutory orders, Minn. R. Civ. App. P.
293 105, that is not present in the federal system. This new provision does not
294 substantially change existing Minnesota practice, as the Minnesota appellate
295 courts have allowed discretionary appeals under Rule 105. *See, e.g., Gordon v.*
296 *Microsoft Corp.*, 645 N.W.2d 393 (Minn. 2002). The federal rule adopts a
297 shorter 10-day deadline for seeking appellate review of decisions relating to
298 class certification decisions. The committee believes that consistency with the
299 requirements for other discretionary appeals in Minnesota is more important
300 than consistency with the federal rule on this point. The other provisions of
301 Rule 105 and the appellate rules generally apply to appeals under Rule 23.06.

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RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY

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Rule 26.02. Discovery, Scope and Limits

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

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(a) In General. Parties may obtain discovery regarding any matter, not privileged, ~~which that~~ that is relevant to ~~the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party,~~ a claim or defense of any party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. ~~The~~ Relevant information sought need not be admissible at the trial if the ~~information sought~~ discovery appears reasonably calculated to lead to the discovery of admissible evidence.

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The court may establish or alter the limits on the number of depositions and interrogatories and may also limit the length of depositions under Rule 30 and the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the

331 importance of the proposed discovery in resolving the issues. The court may act
332 upon its own initiative after reasonable notice or pursuant to a motion under
333 subdivision (e) Rule 26.03.

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335 **Advisory Committee Comment—2006 Amendment**

336 The amendment to Rule 26.02 is simple but potentially quite important.
337 The rule is amended to conform to Fed. R. Civ. P. 26(b) as amended in 2000.
338 Although the proposed changes were expected to create as many problems as
339 they solved, *see, e.g.*, John S. Beckerman, *Confronting Civil Discovery's Fatal*
340 *Flaws*, 84 MINN. L. REV. 505, 537-43 (2000); Jeffrey W. Stempel & David F.
341 Herr, *Applying Amended Rule 26(b)(1) in Litigation: The New Scope of*
342 *Discovery*, in 199 F.R.D. 396 (2001), the change in the scope of discovery, to
343 limit it to the actual claims and defenses raised in the pleadings, has worked
344 well in federal court, and most feared problems have not materialized. *See*
345 *generally* Thomas D. Rowe, Jr., *A Square Peg in a Round Hole? The 2000*
346 *Limitation on the Scope of Federal Civil Discovery*, 69 TENN. L. REV. 13, 25-27
347 (2001); Note, *The Sound and the Fury or the Sound of Silence?: Evaluating the*
348 *Pre-Amendment Predictions and Post-Amendment Effects of the Discovery*
349 *Scope-Narrowing Language in the 2000 Amendments to Federal Rule of Civil*
350 *Procedure 26(b)(1)*, 37 GA. L. REV. 1039 (2003). Courts have simply not
351 found the change dramatic nor given it a draconian interpretation. *See, e.g.*,
352 *Sanyo Laser Prod., Inc. v. Arista Records, Inc.*, 214 F.R.D. 496 (S.D. Ind.
353 2003).

354 The narrowing of the scope of discovery as a matter of right does not
355 vitiate in any way the traditional rule that discovery should be liberally
356 allowed. It should be limited to the claims and defenses raised by the
357 pleadings, but the requests should still be liberally construed. *See, e.g.*,
358 *Graham v. Casey's General Stores*, 206 F.R.D. 251, 253 (S.D. Ind. 2002)
359 ("Even after the recent amendments to Federal Rule of Civil Procedure 26,
360 courts employ a liberal discovery standard.").

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363 **RULE 30. DEPOSITIONS UPON ORAL EXAMINATION**

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365 **Rule 30.02. Notice of Examination; General Requirements; Special**
366 **Notice; Non-Stenographic Method of Recording;**
367 **Production of Documents and Things; Deposition of**
368 **Organization; Depositions by Telephone**

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370 **(a) Notice.** A party desiring to take the deposition of any person upon oral
371 examination shall give reasonable notice in writing to every other party to the
372 action. The notice shall state the name and place for taking the deposition and the
373 name and address of each person to be examined, if known, and, if the name is not
374 known, a general description sufficient to identify the person or the particular class

375 or group to which the person belongs. If a subpoena duces tecum is to be served
376 on the person to be examined, the designation of the materials to be produced as
377 set forth in the subpoena shall be attached to or included in the notice.

378 **(b) Notice of Method of Recording.** The party taking the deposition shall
379 state in the notice the method by which the testimony shall be recorded. Unless
380 the court orders otherwise, it may be recorded by sound, sound-and-visual, or
381 stenographic means, and the party taking the deposition shall bear the cost of the
382 recording. Any party may arrange for a transcription to be made from the
383 recording of a deposition taken by non-stenographic means.

384 **(c) Additional Recording Method.** With prior notice to the deponent and
385 other parties, any party may designate another method to record the deponent's
386 testimony in addition to the method specified by the person taking the deposition.
387 The additional record or transcript shall be made at that party's expense unless the
388 court otherwise orders.

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

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

397 **(d) Role of Officer.** Unless otherwise agreed by the parties, a deposition
398 shall be conducted before an officer appointed or designated under Rule 28 and
399 shall begin with a statement on the record by the officer that includes (A) the
400 officer's name and business address; (B) the date, time, and place of the
401 deposition; (C) the name of the deponent; (D) the administration of the oath or
402 affirmation to the deponent; and (E) an identification of all persons present. If the
403 deposition is recorded other than stenographically, the officer shall repeat items

404 (A) through (C) at the beginning of each unit of recorded tape or other recording
405 medium. The appearance or demeanor of deponents or attorneys shall not be
406 distorted through camera or sound-recording techniques. At the end of the
407 deposition, the officer shall state on the record that the deposition is complete and
408 shall set forth any stipulations made by counsel concerning the custody of the
409 transcript or recording and the exhibits, or concerning other pertinent matters.

410 (e) **Production of Documents.** The notice to a party deponent may be
411 accompanied by a request made in compliance with Rule 34 for the production of
412 documents and tangible things at the taking of the deposition. The procedure of
413 Rule 34 shall apply to the request.

414 (f) **Deposition of Organization** A party may in the party's notice and in a
415 subpoena name as the deponent a public or private corporation or a partnership,
416 association, or governmental agency and describe with reasonable particularity the
417 matters on which examination is requested. In that event, the organization so
418 named shall designate one or more officers, directors, or managing agents, or other
419 persons who consent to testify on its behalf, and may set forth, for each person
420 designated, the matters on which the person will testify. A subpoena shall advise a
421 non-party organization of its duty to make such a designation. The persons so
422 designated shall testify as to matters known or reasonably available to the
423 organization. This provision does not preclude taking a deposition by any other
424 procedure authorized in these rules.

425 (g) **Telephonic Depositions.** The parties may stipulate in writing or the
426 court may upon motion order that a deposition be taken by telephone or other
427 remote electronic means. For the purposes of this rule and Rules 28.01, 37.01(a),
428 37.02(a) and 45.04~~3~~3, a deposition taken by such means is taken in the district and
429 at the place where the deponent is to answer questions.

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Advisory Committee Comment—2006 Amendment

Rule 30.02 is amended only to add subsection titles. This change is made for convenience and consistency with the style of other rules, and is not intended to affect the rule's interpretation. Rule 30.02(g) is amended to

435 renumber one of the rule cross-references to reflect the amendment and
436 renumbering of Rule 45 as part of the amendments effective January 1, 2006.

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441 **Rule 30.04. Schedule and Duration; Motion to Terminate or Limit**
442 **Examination**

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

448 (b) **Duration.** ~~By order the court may limit the time permitted for the~~
449 ~~conduct of a deposition, but shall allow additional time consistent with Rule~~
450 ~~26.02(a) if needed for a fair examination of the deponent or if the deponent or~~
451 ~~another party impedes or delays the examination. Unless otherwise authorized by~~
452 the court or stipulated by the parties, a deposition is limited to one day of seven
453 hours. The court must allow additional time consistent with Rule 26.02(a) if
454 needed for a fair examination of the deponent or if the deponent or another person,
455 or other circumstance, impedes or delays the examination.

456 (c) **Sanctions.** If the court finds such an impediment, delay, or other
457 conduct that has frustrated the fair examination of the deponent, it may impose
458 upon the persons responsible an appropriate sanction, including the reasonable
459 costs and attorney's fees incurred by any parties as a result thereof.

460 (ed) **Suspension of Examination.** At any time during a deposition, on
461 motion of a party or of the deponent and upon a showing that the examination is
462 being conducted in bad faith or in such manner as unreasonably to annoy,
463 embarrass, or oppress the deponent or party, the court in which the action is
464 pending or the court in the district where the deposition is being taken may order
465 the officer conducting the examination to cease forthwith from taking the

466 deposition, or may limit the scope and manner of the taking of the deposition as
467 provided in Rule 26.03. If the order made terminates the examination, it shall be
468 resumed thereafter only upon the order of the court in which the action is pending.
469 Upon demand of the objecting party or deponent, the taking of the deposition shall
470 be suspended for the time necessary to make a motion for an order. The
471 provisions of Rule 37.01(d) apply to the award of expenses incurred in relation to
472 the motion.

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Advisory Committee Comment—2006 Amendment

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Rule 30.04(a) is amended to remove an ambiguity in the current rule. As amended, the rule expressly extends the prohibition against improper instruction of a deponent not to answer to all persons (including counsel for a non-party witness), instead of just “parties.”

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Rule 30.04(b) is amended to adopt a specific time limit on depositions. Although parties may agree to a longer deposition and the court can determine that longer examination is appropriate, a deposition is made subject to a limit of one day lasting seven hours. This amendment is identical to the change in Fed. R. Civ. P. 30(d)(2) made in 2000. The purpose of this amendment is to decrease the burden of discovery on witnesses and to encourage focused examination of all deponents. Where the examining party engages in proper and focused examination and encounters unhelpful responses or inappropriate objections, or where the issues in the case dictate that additional time is necessary to permit a fair examination, the court is required to provide it. The rule establishes a presumptive limit on the length of depositions, not the presumptive length. Most depositions will continue to be much shorter than seven hours, and the rule does not limit courts from establishing shorter time limits in particular cases.

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Rule 30.06. Certification and Filing by Officer; Exhibits; Copies; Notices of Filing

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(a) Certification by Officer; Exhibits. The officer shall certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness, and shall certify that the deposition has been transcribed, that the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies. This certificate shall be in writing and accompany the record of the deposition. Unless otherwise ordered by the court or agreed to by the

506 parties the officer shall securely seal the deposition in an envelope or package
507 endorsed with the title of the action and marked “Deposition of (herein insert the
508 name of witness),” and shall promptly send it to the attorney or party who
509 arranged for the transcript or recording, who shall store it under conditions that
510 will protect it against loss, destruction, tampering, or deterioration.

511 Documents and things produced for inspection during the examination of
512 the witness shall, upon the request of a party, be marked for identification and
513 annexed to the deposition and may be inspected and copied by any party, except
514 that if the person producing the materials desires to retain them, the person may
515 (1) offer copies to be marked for identification and annexed to the deposition and
516 to serve thereafter as originals if the person affords to all parties fair opportunity to
517 verify the copies by comparison with the originals, or (2) offer the originals to be
518 marked for identification, after giving each party an opportunity to inspect and
519 copy them, in which event the materials may then be used in the same manner as if
520 annexed to the deposition. Any party may move for an order that the original be
521 annexed to and returned with the deposition pending final disposition of the case.

522 **(b) Duties of Officer.** Unless otherwise ordered by the court or agreed by
523 the parties, the officer shall retain stenographic notes of any deposition taken
524 stenographically or a copy of the recording of any deposition taken by another
525 method. Upon payment of reasonable charges therefor, the officer shall furnish a
526 copy of the transcript or other recording of the deposition to any party or to the
527 deponent.

528 **(c) Notice of Receipt of Transcript.** The party taking the deposition shall
529 give prompt notice of its receipt from the officer to all other parties.

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Advisory Committee Comment—2006 Amendment

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Rule 30.06 is amended only to add subsection titles. This change is made
534 for convenience and consistency with the style of other rules, and is not
535 intended to affect the rule’s interpretation

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Rule 30.07. Failure to Attend or to Serve Subpoena; Expenses

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

(b) Failure to Serve Subpoena on Non-Party Witness. If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon that witness, and the witness because of such failure does not attend, and if another party attends in person or by attorney on the expectation that the deposition of that witness is to be taken, the court may order the party giving notice to pay to such other party the amount of the reasonable expenses incurred by those individuals in so attending, including reasonable attorney fees.

Advisory Committee Comment—2006 Amendment
Rule 30.07 is amended only to add subsection titles. This change is made for convenience and consistency with the style of other rules, and is not intended to affect the rule’s interpretation

RULE 41. DISMISSAL OF ACTIONS

Rule 41.01. Voluntary Dismissal; Effect Thereof

(a) By Plaintiff by Stipulation. Subject to the provisions of Rules 23.05, 23.06~~9~~ and 66, an action may be dismissed by the plaintiff without order of court (1) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (2) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

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Advisory Committee Comment—2006 Amendment

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Rule 41.01(a) is amended to renumber one of the rule cross-references to reflect the amendment and renumbering of Rule 23 as part of the amendments effective January 1, 2006.

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RULE 43. TAKING OF TESTIMONY

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Rule 43.07. Interpreters

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

584

585

Advisory Committee Comment—2006 Amendment

586

Rule 43.07 is amended to conform the rule to the statutory requirement that the “fees and expenses of a qualified per diem interpreter for a court must be paid by the state courts.” Minn. Stat. § 546.44, subd. 3 (2004). Language is stricken from the second sentence to eliminate the conflict between the rule and statute regarding payment of court-appointed interpreters.

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This amendment is drawn from the language of Minn. R. Crim. P. 26.03, subd. 16.

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RULE 45. SUBPOENA

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Rule 45.01. ~~For Attendance of Witnesses; Form; Issuance~~

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

604 ~~(b) Subpoenas shall be issued only in connection with a duly noted~~
605 ~~deposition as set forth in Rule 45.04 or in connection with a hearing or trial as set~~
606 ~~forth in Rule 45.05. Violation of this provision constitutes an abuse of process,~~
607 ~~and shall subject the attorney or party to appropriate sanctions or damages.~~

608 ~~(c) Every subpoena shall contain a notice to the person to whom it is~~
609 ~~directed advising that person of the right to reimbursement for certain expenses~~
610 ~~pursuant to Rule 45.06, and the right to have the amount of those expenses~~
611 ~~determined prior to compliance with the subpoena.~~

612 **(a) Form.**

613 Every subpoena shall

614 (1) state the name of the court from which it is issued; and

615 (2) state the title of the action, the name of the court in which it is
616 pending, and its court file number, if one has been assigned; and

617 (3) command each person to whom it is directed to attend and give
618 testimony or to produce and permit inspection and copying of designated
619 books, documents or tangible things in the possession, custody or control of
620 that person, or to permit inspection of premises, at a time and place therein
621 specified; and

622 (4) contain a notice to the person to whom it is directed advising
623 that person of the right to reimbursement for certain expenses pursuant to
624 Rule 45.03(d), and the right to have the amount of those expenses
625 determined prior to compliance with the subpoena.

626 A command to produce evidence or to permit inspection may be joined
627 with a command to appear at trial or hearing or at deposition, or may be issued
628 separately.

629 **(b) Subpoenas Issued In Name of Court.** A subpoena commanding
630 attendance at a trial or hearing, for attendance at a deposition, or for production or
631 inspection shall be issued in the name of the court where the action is pending.

632 (c) Issuance by Court or by Attorney. The court administrator shall
633 issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall
634 complete it before service. An attorney as officer of the court may also issue and
635 sign a subpoena on behalf of the court where the action is pending.

636

637 **Rule 45.02. ~~For Production of Documentary Evidence~~**

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

645 **Rule 45.032. Service**

646 ~~A subpoena may be served by the sheriff, a deputy sheriff, or any other~~
647 ~~person who is not a party. Service of a subpoena upon a person named therein~~
648 ~~shall be made by delivering a copy thereof to such person or by leaving a copy at~~
649 ~~the person's usual place of abode with some person of suitable age and discretion~~
650 ~~then residing therein and by tendering to the person the fees for 1 day's attendance~~
651 ~~and the mileage allowed by law. When the subpoena is issued on behalf of the~~
652 ~~state of Minnesota or an officer or agency thereof, fees and mileage need not be~~
653 ~~tendered.~~

654 (a) Who May Serve and Method of Service. A subpoena may be served
655 by any person who is not a party and is not less than 18 years of age. Service of a
656 subpoena upon a person named therein shall be made by delivering a copy thereof
657 to such person or by leaving a copy at the person's usual place of abode with some
658 person of suitable age and discretion then residing therein and, if the person's
659 attendance is commanded, by tendering to that person the fees for one day's

660 attendance and the mileage allowed by law. When the subpoena is issued on
661 behalf of the state of Minnesota or an officer or agency thereof, fees and mileage
662 need not be tendered. Prior notice of any commanded production of documents
663 and things or inspection of premises before trial shall be served on each party in
664 the manner prescribed by Rule 5.02.

665 **(b) Statewide Service.** Subject to Rule 45.03(c)(1)(B), a subpoena may be
666 served at any place within the state of Minnesota.

667 **(c) Proof of Service.** Proof of service when necessary shall be made by
668 filing with the court administrator of the court on behalf of which the subpoena is
669 issued a statement of the date and manner of service and of the names of the
670 persons served, certified by the person who made the service.

671 **(d) Compensation of Subpoenaed Person.** The party serving the
672 subpoena shall make arrangements for reasonable compensation as required under
673 Rule 45.03(d) prior to the time of the taking of such testimony. If such reasonable
674 arrangements are not made, the person subpoenaed may proceed under Rule
675 45.03(c) or 45.03(b)(2). The party serving the subpoena may, if objection has
676 been made, move upon notice to the deponent and all parties for an order directing
677 the amount of such compensation at any time before the taking of the deposition.
678 Any amounts paid shall be subject to the provisions of Rule 54.04.

679 **Rule 45.03. Protection of Persons Subject to Subpoenas**

680 **(a) Requirement to Avoid Undue Burden.** A party or an attorney
681 responsible for the issuance and service of a subpoena shall take reasonable steps
682 to avoid imposing undue burden or expense on a person subject to that subpoena.
683 The court on behalf of which the subpoena was issued shall enforce this duty and
684 impose upon the party or attorney in breach of this duty an appropriate sanction,
685 which may include, but is not limited to, lost earnings and a reasonable attorney's
686 fee.

687 **(b) Subpoena for Document Production Without Deposition.**

688 (1) A person commanded to produce and permit inspection and
689 copying of designated books, papers, documents, or tangible things, or
690 inspection of premises need not appear in person at the place of production
691 or inspection unless commanded to appear for deposition, hearing, or trial.

692 (2) Subject to Rule 45.04(b), a person commanded to produce and
693 permit inspection and copying may, within 14 days after service of the
694 subpoena or before the time specified for compliance if such time is less
695 than 14 days after service, serve upon the party or attorney designated in
696 the subpoena written objection to inspection or copying of any or all of the
697 designated materials or of the premises. If objection is made, the party
698 -serving the subpoena shall not be entitled to inspect and copy the materials
699 or inspect the premises except pursuant to an order of the court by which
700 the subpoena was issued. If objection has been made, the party serving the
701 subpoena may, upon notice to the person commanded to produce, move at
702 any time for an order to compel the production. Such an order to compel
703 production shall protect any person who is not a party or an officer of a
704 party from significant expense resulting from the inspection and copying
705 commanded.

706 **(c) Motion to Quash or Modify Subpoena.**

707 (1) On timely motion, the court on behalf of which a subpoena was
708 issued shall quash or modify the subpoena if it

709 (A) fails to allow reasonable time for compliance;

710 (B) requires a person who is not a party or an officer of a party
711 to travel to a place outside the county where that person resides, is
712 employed or regularly transacts business in person, except that, subject
713 to the provisions of Rule 45.03(c)(2)(C), such a person may in order to
714 attend trial be commanded to travel from any such place within the
715 state of Minnesota, or

716 (C) requires disclosure of privileged or other protected matter
717 and no exception or waiver applies, or

718 (D) subjects a person to undue burden.

719 (2) If a subpoena

720 (A) requires disclosure of a trade secret or other confidential
721 research, development, or commercial information, or

722 (B) requires disclosure of an unretained expert's opinion or
723 information not describing specific events or occurrences in dispute and
724 resulting from the expert's study made not at the request of any party,
725 or

726 (C) requires a person who is not a party or an officer of a party
727 to incur substantial expense to travel outside the county where that
728 person resides, is employed or regularly transacts business in person to
729 attend trial, the court may, to protect a person subject to or affected by
730 the subpoena, quash or modify the subpoena or, if the party in whose
731 behalf the subpoena is issued shows a substantial need for the
732 testimony or material that cannot be otherwise met without undue
733 hardship and assures that the person to whom the subpoena is addressed
734 will be reasonably compensated, the court may order appearance or
735 production only upon specified conditions.

736 **(d) Compensation of Certain Non-Party Witnesses.** Subject to the
737 provisions of Rules 26.02 and 26.03, a witness who is not a party to the action or
738 an employee of a party [except a person appointed pursuant to Rule 30.02(f)] and
739 who is required to give testimony or produce documents relating to a profession,
740 business, or trade, or relating to knowledge, information, or facts obtained as a
741 result of activities in such profession, business, or trade, is entitled to reasonable
742 compensation for the time and expense involved in preparing for and giving such
743 testimony or producing such documents.

744 **Rule 45.04. Subpoena for Taking Depositions; Place of Examination**
745 **Duties in Responding to Subpoena**

746 ~~(a) Proof of service of notice to take a deposition, as provided in Rules~~
747 ~~30.02 and 31.01 or in the rules of a state where the action is pending, constitutes a~~
748 ~~sufficient authorization for the issuance of subpoenas for the persons named or~~
749 ~~described therein. The subpoena may command the person to whom it is directed~~
750 ~~to produce and permit inspection and copying of designated books, papers,~~
751 ~~documents, or tangible things which constitute or contain matters within the scope~~
752 ~~of the examination permitted by Rule 26.02, but in that event the subpoena will be~~
753 ~~subject to the provisions of Rules 26.03 and 45.04(b).~~

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

764 ~~(c) A resident of this state may be required to attend an examination only~~
765 ~~in the county wherein the resident resides or is employed or transacts business in~~
766 ~~person, or at such other convenient place as is fixed by order of the court. A~~
767 ~~nonresident of the state may be required to attend in any county of the state.~~

768 **(a) Form of Production.** A person responding to a subpoena to produce
769 documents shall produce them as they are kept in the usual course of business or
770 shall organize and label them to correspond with the categories in the demand.

771 **(b) Claims of Privilege.** When information subject to a subpoena is
772 withheld on a claim that it is privileged or subject to protection as trial preparation

773 materials, the claim shall be made expressly and shall be supported by a
774 description of the nature of the documents, communications, or things not
775 produced that is sufficient to enable the demanding party to contest the claim.

776 **Rule 45.05. Subpoena for a Hearing or Trial**

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

782 **Rule 45.05. Contempt**

783 Failure by any person without adequate excuse to obey a subpoena served
784 upon that person may be deemed a contempt of the court on behalf of which the
785 subpoena was issued. An adequate cause for failure to obey exists when a
786 subpoena purports to require a non-party to attend or produce at a place not within
787 the limits provided by Rule 45(c)(1)(B).

788 **Rule 45.06. Expenses of Non-Parties**

789 ~~Subject to the provisions of Rules 26.02 and 26.03, a witness who is not a~~
790 ~~party to the action or an employee of a party [except a person appointed pursuant~~
791 ~~to Rule 30.02(f)] and who is required to give testimony or produce documents~~
792 ~~relating to a profession, business, or trade, or relating to knowledge, information,~~
793 ~~or facts obtained as a result of activities in such profession, business, or trade, is~~
794 ~~entitled to reasonable compensation for the time and expense involved in~~
795 ~~preparing for and giving such testimony or producing such documents.~~

796 ~~The party serving the subpoena shall make arrangements for such~~
797 ~~reasonable compensation prior to the time of the taking of such testimony. If such~~
798 ~~reasonable arrangements are not made, the person subpoenaed may proceed under~~
799 ~~Rule 45.02 or 45.04(b). The party serving the subpoena may, if objection has been~~
800 ~~made, move upon notice to the deponent and all parties for an order directing the~~

801 ~~amount of such compensation at any time before the taking of the deposition. Any~~
802 ~~amounts paid shall be subject to the provisions of Rule 54.04.~~

803 ~~**Rule 45.07. Contempt**~~

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

805

806 **Advisory Committee Comment—2006 Amendment**

807 Rule 45 is replaced, virtually in its entirety, by its federal counterpart.
808 Provisions of the federal rule that do not apply in state court practice are
809 deleted or replaced by comparable provisions consistent with current
810 Minnesota practice. The new rule recognizes the scope of the subpoena power
811 in the existing rule and does not significantly change it. Portions of the federal
812 rule not relevant to state practice have been deleted. The rule adopts the
813 language of the federal rules referring to the court where an action is pending.
814 Because Minnesota allows actions to be commenced by service, the action is
815 “pending” before the court named in the caption after service even though it is
816 not on file with the court. See Minn. R. Civ. P. 3.01. The rule is not intended
817 to change the existing practice that permitted subpoenas to be issued even
818 though an action had not been filed.

819
820 The most significant “new” provisions of the rule are the authorization
821 of issuance of subpoenas by attorneys as officers of the court (Rule 45.01(c))
822 and the adoption of a mechanism for requiring production of documents
823 without requiring a deposition to be conducted (Rule 45.01(a)(3)). The rule
824 retains the provisions of former Rule 45.06, which provide for expenses of non-
825 parties put to particular expense of complying with a subpoena. Those
826 provisions are now bifurcated, with portions relating to notice of the right to
827 costs in Rule 45.01, dealing with the form of subpoenas, and the provision
828 requiring payment in Rule 45.03(d). Additionally, Rule 45.03(a) places an
829 affirmative duty on the attorney issuing or serving a subpoena to avoid
830 imposing undue burden or expense on the person receiving it.

831

832

833 ~~**RULE 50. MOTION FOR A DIRECTED VERDICT; JUDGMENT**~~
834 ~~**NOTWITHSTANDING VERDICT; ALTERNATIVE MOTION**~~
835 ~~**JUDGMENT AS A MATTER OF LAW IN JURY TRIALS;**~~
836 ~~**ALTERNATIVE MOTION FOR NEW TRIAL; CONDITIONAL RULINGS**~~

837

838 ~~**Rule 50.01. Directed Verdict; When Made; Effect Judgment as a**~~
839 ~~**Matter of Law**~~

840 ~~A motion for a directed verdict may be made at the close of the evidence~~
841 ~~offered by an opponent or at the close of all the evidence. A party who moves for~~
842 ~~a directed verdict at the close of the evidence offered by an opponent shall, after~~
843 ~~denial of the motion, have the right to offer evidence as if the motion had not been~~
844 ~~made. A motion for a directed verdict which is not granted is not a waiver of trial~~
845 ~~by jury even though all parties to the action have moved for directed verdicts. A~~

846 ~~motion for a directed verdict shall state the specific grounds therefor. If the~~
847 ~~evidence is sufficient to sustain a verdict for the opponent, the motion shall not be~~
848 ~~granted. The order of the court granting the motion for a directed verdict is~~
849 ~~effective without any assent of the jury.~~

850 (a) Standard. ~~If during a trial by jury a party has been fully heard on an~~
851 ~~issue and there is no legally sufficient evidentiary basis for a reasonable jury to~~
852 ~~find for that party on that issue, the court may decide the issue against that party~~
853 ~~and may grant a motion for judgment as a matter of law against that party with~~
854 ~~respect to a claim or defense that cannot under the controlling law be maintained~~
855 ~~or defeated without a favorable finding on that issue.~~

856 (b) Timing and Content. ~~Motions for judgment as a matter of law may be~~
857 ~~made at any time before submission of the case to the jury. Such a motion shall~~
858 ~~specify the judgment sought and the law and the facts on which the moving party~~
859 ~~is entitled to the judgment.~~

860 **Rule 50.02. Judgment Notwithstanding Verdict Renewing Motion for**
861 **Judgment After Trial; Alternative Motion for New Trial**

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

867 ~~(b) A motion for judgment notwithstanding the verdict may include in the~~
868 ~~alternative a motion for a new trial.~~

869 ~~(c) A motion for judgment notwithstanding the verdict or notwithstanding~~
870 ~~the jury has disagreed and been discharged shall be served and heard within the~~
871 ~~times specified in Rule 59 for the service and hearing of a motion for a new trial~~
872 ~~and may be made on the files, exhibits, and minutes of the court. On a motion for~~
873 ~~judgment notwithstanding the jury has disagreed and been discharged, the date of~~
874 ~~discharge shall be the equivalent of the date of rendition of a verdict within the~~

875 ~~meaning of that rule, but such motion must in any event be served and heard~~
876 ~~before a retrial of the action is begun.~~

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

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

893 ~~(f) If the motion for judgment notwithstanding the verdict is denied, the~~
894 ~~party who prevailed on that motion may, as respondent, assert grounds entitling~~
895 ~~that party to a new trial in the event the appellate court concludes that the trial~~
896 ~~court erred in denying the motion for judgment notwithstanding the verdict. If the~~
897 ~~appellate court reverses the judgment, nothing in this rule precludes it from~~
898 ~~determining that the respondent is entitled to a new trial, or from directing the trial~~
899 ~~court to determine whether a new trial shall be granted.~~

900 If, for any reason, the court does not grant a motion for judgment as a
901 matter of law made at the close of all the evidence, the court is considered to have
902 submitted the action to the jury subject to the court's later deciding the legal
903 questions raised by the motion. The movant may renew the request for judgment

904 as a matter of law by serving a motion within the time specified in Rule 59 for the
905 service of a motion for a new trial—and may alternatively request a new trial or
906 join a motion for a new trial under Rule 59. In ruling on a renewed motion, the
907 court may:

908 (a) if a verdict was returned:

909 (1) allow the judgment to stand,

910 (2) order a new trial, or

911 (3) direct entry of judgment as a matter of law; or

912 (b) if no verdict was returned:

913 (1) order a new trial, or

914 (2) direct entry of judgment as a matter of law.

915 **Rule 50.03. Granting Renewed Motion for Judgment as a Matter of**
916 **Law; Conditional Rulings; New Trial Motion**

917 **(a) Renewed Motion.** If the renewed motion for judgment as a matter of
918 law is granted, the court shall also rule on the motion for a new trial, if any, by
919 determining whether it should be granted if the judgment is thereafter vacated or
920 reversed, and shall specify the grounds for granting or denying the motion for the
921 new trial. If the motion for a new trial is thus conditionally granted, the order
922 thereon does not affect the finality of the judgment. In case the motion for a new
923 trial has been conditionally granted and the judgment is reversed on appeal, the
924 new trial shall proceed unless the appellate court has otherwise ordered. In case
925 the motion for a new trial has been conditionally denied, the respondent on appeal
926 may assert error in that denial; and if the judgment is reversed on appeal,
927 subsequent proceedings shall be in accordance with the order of the appellate
928 court.

929 **(b) Timing.** Any motion for a new trial under Rule 59 by a party against
930 whom judgment as a matter of law is rendered shall be served and heard within the
931 times specified in Rule 59 for the service and hearing of a motion for a new trial.

932 **Rule 50.04. Denial of Motion for Judgment as a Matter of Law**

933 If the motion for judgment as a matter of law is denied, the party who
934 prevailed on that motion may, as respondent on appeal, assert grounds entitling the
935 party to a new trial in the event the appellate court concludes that the trial court
936 erred in denying the motion for judgment. If the appellate court reverses the
937 judgment, nothing in this rule precludes it from determining that the respondent is
938 entitled to a new trial, or from directing the trial court to determine whether a new
939 trial shall be granted.

940
941 **Advisory Committee Comment—2006 Amendment**

942 Rule 50 is amended in toto to adopt the changes made in 1991 to Fed. R.
943 Civ. P. 50. The 1991 amendment of the federal rule was made to remove the
944 archaic language and procedures of directing verdicts and granting j.n.o.v. The
945 amended rule states a standard that the former rule already recognized: a
946 uniform standard for motions made after trial begins of a “motion for judgment
947 as a matter of law.” The purpose of the change is two-fold: to adopt names that
948 better describe the role of the motions and, because the motions essentially
949 apply the same standard, to give them a common name.

950 This change is not intended to change substantive practice relating to
951 these motions. The federal rule amendment in 1991 was not intended to change
952 the actual practice under that rule. *See* Fed. R. Civ. P. 50(a), Advisory Comm.
953 Notes—1991 Amend. The federal courts have recognized the non-substantive
954 nature of the amendment. *See* 9A CHARLES ALAN WRIGHT & ARTHUR R.
955 MILLER, FEDERAL PRACTICE & PROCEDURE § 2521, at 243 n.15 and
956 accompanying text (2d ed. 1995) (collecting cases).

957 The timing provisions of the rule have been changed slightly to
958 accommodate Minnesota procedure relating to the service and filing of post-
959 decision motions. Like the current rule, motions under Rule 50 must be served
960 and filed in accordance with the timing mechanism and deadlines of Minn. R.
961 Civ. P. 59.

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963
964 **RULE 51. INSTRUCTIONS TO THE JURY; OBJECTIONS;**
965 **PRESERVING A CLAIM OF ERROR**

966 ~~At the close of the evidence or at such earlier time during the trial as the~~
967 ~~court reasonably directs, any party may file written requests that the court instruct~~
968 ~~the jury on the law as set forth in the requests. The court shall inform counsel of its~~
969 ~~proposed action upon the requests prior to their arguments to the jury, and such~~
970 ~~action shall be made a part of the record. The court shall instruct the jury before or~~
971 ~~after closing arguments of counsel except, in the discretion of the court,~~

972 preliminary instructions need not be repeated. The instructions may be in writing
973 and, in the discretion of the court, one or more complete copies may be taken to
974 the jury room when the jury retires to deliberate. No party may assign as error
975 unintentional misstatements and verbal errors or omissions in the charge, unless
976 that party objects thereto before the jury retires to consider its verdict, stating
977 specifically the matter to which that party objects and the ground of the objections.
978 An error in the instructions with respect to fundamental law or controlling
979 principle may be assigned in a motion for a new trial although it was not otherwise
980 called to the attention of the court.

981 **Rule 51.01. Requests**

982 **(a) At or Before the Close of Evidence.** A party may, at the close of the
983 evidence or at an earlier reasonable time that the court directs, file and furnish to
984 every other party written requests that the court instruct the jury on the law as set
985 forth in the requests.

986 **(b) After the Close of Evidence.** After the close of the evidence, a party
987 may:

988 (1) file requests for instructions on issues that could not reasonably
989 have been anticipated at an earlier time for requests set under Rule
990 51.01(a), and

991 (2) with the court's permission file untimely requests for
992 instructions on any issue.

993 **Rule 51.02. Instructions**

994 The court:

995 (a) must inform the parties of its proposed instructions and proposed action
996 on the requests before instructing the jury and before final jury arguments;

997 (b) must give the parties an opportunity to object on the record and out of
998 the jury's hearing to the proposed instructions and actions on requests before the
999 instructions and arguments are delivered; and

1000 (c) may instruct the jury at any time after trial begins and before the jury is
1001 discharged.

1002 **Rule 51.03. Objections**

1003 (a) **Form.** A party who objects to an instruction or the failure to give an
1004 instruction must do so on the record, stating distinctly the matter objected to and
1005 the grounds of the objection.

1006 (b) **Timeliness.** An objection is timely if:

1007 (1) a party that has been informed of an instruction or action on a
1008 request before the jury is instructed and before final jury arguments, as
1009 provided by Rule 51.02(a), objects at the opportunity for objection required
1010 by Rule 51.02(b); or

1011 (2) a party that has not been informed of an instruction or action on
1012 a request before the time for objection provided under Rule 51.02(b)
1013 objects promptly after learning that the instruction or request will be, or has
1014 been, given or refused.

1015 **Rule 51.04. Assigning Error; Plain Error**

1016 (a) **Assigned Error.** A party may assign as error:

1017 (1) an error in an instruction actually given if that party made a
1018 proper objection under Rule 51.03, or

1019 (2) a failure to give an instruction if that party made a proper
1020 request under Rule 51.01, and—unless the court made a definitive ruling on
1021 the record rejecting the request—also made a proper objection under Rule
1022 51.03.

1023 (b) **Plain Error.** A court may consider a plain error in the instructions
1024 affecting substantial rights that has not been preserved as required by Rule
1025 51.04(a)(1) or (2).

1026

1027 **Advisory Committee Comment—2006 Amendment**

1028 Rule 51 is entirely new with this amendment. The new rule is modeled
1029 on its federal counterpart, Fed. R. Civ. P. 51, as it was amended in 2003. The
1030 changes are intended primarily to provide detailed procedural guidance where

1031 the existing rule is either silent or vague. *See generally* Fed. R. Civ. P. 51,
1032 Advis. Comm. Notes—2003 Amend., *reprinted in* FED. CIV. JUD. PROC. &
1033 RULES 227 (West 2005 ed.).

1034 Rule 51.02(c) continues to recognize that the court may give instructions
1035 to the jury at any time after trial begins, including preliminary instructions
1036 before opening statements or the taking of evidence, during the trial, and at the
1037 end of trial either before or after the arguments of counsel.
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1040 **RULE 52. FINDINGS BY THE COURT**

1041 **Rule 52.01. Effect**

1042 In all actions tried upon the facts without a jury or with an advisory jury,
1043 the court shall find the facts specially and state separately its conclusions of law
1044 thereon and direct the entry of the appropriate judgment; and in granting or
1045 refusing interlocutory injunctions the court shall similarly set forth the findings of
1046 fact and conclusions of law which constitute the grounds for its action. Requests
1047 for finding are not necessary for purposes of review. Findings of fact, whether
1048 based on oral or documentary evidence, shall not be set aside unless clearly
1049 erroneous, and due regard shall be given to the opportunity of the trial court to
1050 judge the credibility of the witnesses. The findings of a referee, to the extent
1051 adopted by the court, shall be considered as the findings of the court. It will be
1052 sufficient if the findings of fact and conclusions of law are stated orally and
1053 recorded in open court following the close of the evidence or appear in an opinion
1054 or memorandum of decision filed by the court or in an accompanying
1055 memorandum. Findings of fact and conclusions of law are unnecessary on
1056 decisions on motions pursuant to Rules 12 or 56 or any other motion except as
1057 provided in Rules 23.08(c) and 41.02.

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1059 **Advisory Committee Comment—2006 Amendment**

1060 Rule 52.01 is amended to renumber one of the rule cross-references to
1061 reflect the amendment and renumbering of Rule 23 as part of the amendments
1062 effective January 1, 2006.
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1065 **RULE 53. MASTERS/REFEREES**

1066 **Rule 53.01. Appointment and Compensation**

1067 ~~The court in which any action is pending may appoint a referee therein.~~
1068 ~~When the court shall state in its order of appointment that the reference is made~~
1069 ~~necessary by press of business, the fees of the referee, as taxed and allowed by the~~
1070 ~~court, shall be paid out by the county treasury, as the salaries of county officers are~~
1071 ~~paid. In other cases the compensation to be allowed to a referee shall be fixed by~~
1072 ~~the court, and shall be charged upon such of the parties or paid out of any fund or~~
1073 ~~subject matter of the action which is in the custody and control of the court as the~~
1074 ~~court may direct. The referee's report shall not be retained as security for the~~
1075 ~~referee's compensation; but when the party ordered to pay the compensation~~
1076 ~~allowed by the court does not pay it after notice and within the time prescribed by~~
1077 ~~the court, the referee is entitled to a writ of execution against the delinquent party.~~

1078 **(a) Authority for Appointment.** Unless a statute provides otherwise, a
1079 court may appoint a master only to:

1080 (1) perform duties consented to by the parties;

1081 (2) hold trial proceedings and make or recommend findings of fact
1082 on issues to be decided by the court without a jury if appointment is
1083 warranted by

1084 (A) some exceptional condition, or

1085 (B) the need to perform an accounting or resolve a difficult
1086 computation of damages; or

1087 (3) address pretrial and post-trial matters that cannot be addressed
1088 effectively and timely by an available district judge.

1089 **(b) Disqualification.** A master must not have a relationship to the parties,
1090 counsel, action, or court that would require disqualification of a judge, unless the
1091 parties consent with the court's approval to appointment of a particular person
1092 after disclosure of any potential grounds for disqualification.

1093 (c) Expense. In appointing a master, the court must consider the fairness
1094 of imposing the likely expenses on the parties and must protect against
1095 unreasonable expense or delay.

1096 **Rule 53.02. Reference Order Appointing Master**

1097 ~~A reference to a referee shall be the exception and not the rule. In actions~~
1098 ~~to be tried by a jury, a reference shall be made only when the issues are~~
1099 ~~complicated; in actions to be tried without a jury, save in matters of account, a~~
1100 ~~reference shall be made only upon a showing that some exceptional condition~~
1101 ~~requires it.~~

1102 (a) Notice. The court must give the parties notice and an opportunity to be
1103 heard before appointing a master. A party may suggest candidates for
1104 appointment.

1105 (b) Contents. The order appointing a master must direct the master to
1106 proceed with all reasonable diligence and must state:

1107 (1) the master's duties, including any investigation or enforcement
1108 duties, and any limits on the master's authority under Rule 53.03;

1109 (2) the circumstances—if any—in which the master may
1110 communicate ex parte with the court or a party;

1111 (3) the nature of the materials to be preserved and filed as the record
1112 of the master's activities;

1113 (4) the time limits, method of filing the record, other procedures,
1114 and standards for reviewing the master's orders, findings, and
1115 recommendations; and

1116 (5) the basis, terms, and procedure for fixing the master's
1117 compensation under Rule 53.08.

1118 (c) Entry of Order. The court may enter the order appointing a master
1119 only after the master has filed an affidavit disclosing whether there is any ground
1120 for disqualification and, if a ground for disqualification is disclosed, after the
1121 parties have consented with the court's approval to waive the disqualification.

1122 (d) Amendment. The order appointing a master may be amended at any
1123 time after notice to the parties and an opportunity to be heard.

1124 **Rule 53.03. Powers Master's Authority**

1125 ~~The order of reference to the referee may specify or limit the referee's~~
1126 ~~powers and may direct the referee to report only upon particular issues, or to do or~~
1127 ~~perform particular acts or to receive and report evidence only and may fix the time~~
1128 ~~and place for beginning and closing the hearings and for the filing of the referee's~~
1129 ~~report. Subject to the specifications and limitations stated in the order, the referee~~
1130 ~~has and shall exercise the power to regulate all proceedings in every hearing~~
1131 ~~before it and to do all acts and take all measures necessary or proper for the~~
1132 ~~efficient performance of the referee's duties specified in the order. The referee~~
1133 ~~may require the production of evidence upon all matters embraced in the~~
1134 ~~reference, including the production of all books, papers, vouchers, documents, and~~
1135 ~~writings applicable thereto. Unless otherwise directed by the order of reference,~~
1136 ~~the referee may rule upon the admissibility of evidence, may put witnesses on oath~~
1137 ~~and examine them, and may call the parties to the action and examine them upon~~
1138 ~~oath. When a party so requests, the referee shall make a record of the evidence~~
1139 ~~offered and excluded in the same manner and subject to the same limitations as~~
1140 ~~provided in Rule 43.03 for a court sitting without a jury.~~

1141 Unless the appointing order expressly directs otherwise, a master has
1142 authority to regulate all proceedings and take all appropriate measures to perform
1143 fairly and efficiently the assigned duties. The master may by order impose upon a
1144 party any noncontempt sanction provided by Rule 37 or 45, and may recommend a
1145 contempt sanction against a party and sanctions against a nonparty.

1146 **Rule 53.04. Proceedings Evidentiary Hearings**

1147 (a) ~~Meetings.~~—When a reference is made, the court administrator shall
1148 ~~forthwith furnish the referee with a copy of the order of reference. Upon receipt~~
1149 ~~thereof, unless the order of reference otherwise provides, the referee shall~~
1150 ~~forthwith set a time and place for the first meeting of the parties or their attorneys~~

1151 to be held within 20 days after the date of the order of reference and shall notify
1152 the parties or their attorneys. It is the duty of the referee to proceed with all
1153 reasonable diligence. Either party, on notice to the parties and referee, may apply
1154 to the court for an order requiring the referee to speed the proceedings and make
1155 the report. If a party fails to appear at the time and place appointed, the referee
1156 may proceed ex parte or, in the referee's discretion, adjourn the proceedings to a
1157 future day, giving notice to the absent party of the adjournment.

1158 (b) **Witnesses.** The parties may procure the attendance of witnesses before
1159 the referee by the issuance and service of subpoenas pursuant to Rule 45. If,
1160 without adequate excuse, a witness fails to appear or give evidence, the witness
1161 may be punished as for a contempt and be subjected to the consequences,
1162 penalties, and remedies provided in Rules 37 and 45.

1163 (c) **Statement of Accounts.** When matters of accounting are in issue, the
1164 referee may prescribe the form in which the accounts shall be submitted and in any
1165 proper case may require or receive in evidence a statement by a certified public
1166 accountant who is called as a witness. Upon objection of a party to any of the
1167 items thus submitted or upon a showing that the form of statement is insufficient,
1168 the referee may require a different form of statement to be furnished, or the
1169 accounts or specific items thereof to be proved by oral examination of the
1170 accounting parties or upon written interrogatories or in such other manner as the
1171 referee directs.

1172 Unless the appointing order expressly directs otherwise, a master
1173 conducting an evidentiary hearing may exercise the power of the appointing court
1174 to compel, take, and record evidence.

1175 **Rule 53.05. Report Master's Orders**

1176 (a) **Contents and Filing.** The referee shall prepare a report upon the
1177 matters submitted by the order of reference and, if required to make findings of
1178 fact and conclusions of law, shall set them forth in the report. The referee shall
1179 file the report with the court administrator and in an action to be tried without a

1180 jury, unless otherwise directed by the order of reference, shall file with it a
1181 transcript of the proceedings and the evidence and the original exhibits. The court
1182 administrator shall forthwith mail notice of the filing to all parties.

1183 ~~(b) **In Nonjury Actions.** In an action to be tried without a jury, the court
1184 shall accept the referee's findings of fact unless clearly erroneous. Within 10 days
1185 after being served with notice of the filing of the report, any party may serve
1186 written objections thereto upon the other parties. Application to the court for
1187 action upon the report and upon objections thereto shall be by motion and upon
1188 notice as prescribed in Rule 6.04. After a hearing, the court may adopt the report,
1189 modify it, reject it in whole or in part, receive further evidence, or recommit it
1190 with instructions.~~

1191 ~~(c) **In Jury Actions.** In an action to be tried by a jury, the referee shall not
1192 be directed to report the evidence. The referee's findings upon the issues
1193 submitted are admissible as evidence of the matters found and may be read to the
1194 jury, subject to the ruling of the court upon any objections in point of law which
1195 may be made to the report.~~

1196 ~~(d) **Stipulation as to Findings.** The effect of a referee's report is the same
1197 whether or not the parties have consented to the reference; but, when the parties
1198 stipulate that a referee's findings of fact shall be final, only questions of law
1199 arising upon the report shall thereafter be considered.~~

1200 ~~(e) **Draft Report.** Before filing the report, a referee may submit a draft
1201 thereof to attorneys for all parties for the purpose of receiving their suggestions.~~

1202 A master who makes an order must file the order and promptly serve a copy
1203 on each party. The court administrator must enter the order on the docket.

1204 **Rule 53.06. Master's Reports**

1205 A master must report to the court as required by the order of appointment.
1206 The master must file the report and promptly serve a copy of the report on each
1207 party unless the court directs otherwise.

1208 **Rule 53.07. Action on Master's Order, Report, or Recommendations**

1209 (a) Action. In acting on a master’s order, report, or recommendations, the
1210 court must afford an opportunity to be heard and may receive evidence, and may:
1211 adopt or affirm; modify; wholly or partly reject or reverse; or resubmit to the
1212 master with instructions.

1213 (b) Time To Object or Move. A party may file objections to—or a motion
1214 to adopt or modify—the master’s order, report, or recommendations no later than
1215 20 days from the time the master’s order, report, or recommendations are served,
1216 unless the court sets a different time.

1217 (c) Fact Findings. The court must decide de novo all objections to
1218 findings of fact made or recommended by a master unless the parties stipulate with
1219 the court’s consent that:

- 1220 (1) the master’s findings will be reviewed for clear error, or
- 1221 (2) the findings of a master appointed under Rule 53.01(a)(1) or (3)
1222 will be final.

1223 (d) Legal Conclusions. The court must decide de novo all objections to
1224 conclusions of law made or recommended by a master.

1225 (e) Procedural Matters. Unless the order of appointment establishes a
1226 different standard of review, the court may set aside a master’s ruling on a
1227 procedural matter only for an abuse of discretion.

1228 **Rule 53.08. Compensation**

1229 (a) Fixing Compensation. The court must fix the master’s compensation
1230 before or after judgment on the basis and terms stated in the order of appointment,
1231 but the court may set a new basis and terms after notice and an opportunity to be
1232 heard.

1233 (b) Payment. The compensation fixed under Rule 53.08(a) must be paid
1234 either:

- 1235 (1) by a party or parties; or
- 1236 (2) from a fund or subject matter of the action within the court’s
1237 control.

1238 (c) Allocation. The court must allocate payment of the master’s
1239 compensation among the parties after considering the nature and amount of the
1240 controversy, the means of the parties, and the extent to which any party is more
1241 responsible than other parties for the reference to a master. An interim allocation
1242 may be amended to reflect a decision on the merits.

1243 **Rule 53.09. Appointment of Statutory Referee**

1244 A statutory referee employed in the judicial branch is subject to this rule
1245 only when the order referring a matter to the statutory referee expressly provides
1246 that the reference is made under this rule.

1247

1248 **Advisory Committee Comment—2006 Amendment**

1249 Rule 53 is replaced by a new rule derived nearly verbatim from its federal
1250 counterpart, Fed. R. Civ. P. 53. The federal rule was extensively revised by
1251 amendment in 2003. That amendment was taken up by the federal advisory
1252 committee after it had received empirical research on the use of masters in
1253 federal court. See THOMAS E. WILLGING *ET AL.*, SPECIAL MASTERS’ INCIDENCE
1254 AND ACTIVITY (Fed. Jud. Ctr. 2000).

1255 The federal rule provides significantly more detailed guidance to courts
1256 and litigants on the proper use of masters than either its predecessor or the
1257 current Minnesota rule. The committee believes that the changes to the federal
1258 rule are thoughtful and are valuable to litigants, and therefore appropriate for
1259 adoption in Minnesota.

1260 The rule is not intended to expand the use of masters, but is designed to
1261 make the use of masters more readily accomplished in the minority of cases
1262 where their use is warranted.

1263 Rule 53.01 includes specific guidance on the circumstances justifying or
1264 permitting the appointment of a master. Most significantly, the rule clarifies
1265 that in the absence of consent a master cannot be assigned to try issues on
1266 which the parties are entitled to a jury trial; mere press of other business would
1267 not trump the jury trial right. Although the court has greater latitude under the
1268 rule for issues triable to the court, either consent or some truly exceptional
1269 circumstances must be present. Short of trying issues, however, there are many
1270 roles that masters may play in civil cases, particularly in complex cases where
1271 the parties consent to the appointment. See generally Lynn Jokela & David F.
1272 Herr, *Special Masters in State Court Complex Litigation: An Available and*
1273 *Underused Case Management Tool*, 31 WM. MITCHELL L. REV. 1299 (2005).

1274 Rule 53.02 establishes specific requirements for the order appointing a
1275 master. These subjects reflect a form of “best practices” for the use of masters,
1276 and they define procedures to be followed upon referral to a master. The rule
1277 intentionally makes these provisions mandatory because they are matters prone
1278 to dispute if not resolved at the time of appointment.

1279 Rule 53.03 clarifies the extent of a master’s authority and defines those
1280 powers expansively within the confines of the duties assigned to the master.
1281 The rule explicitly authorizes the imposition of discovery sanctions other than
1282 contempt by a master, and allows a master to recommend imposition of
1283 contempt sanctions.

1284 The procedures established under Rule 53.07 are intended to clarify the
1285 role of master and ensure that all parties, including the appointing judge and
1286 appointed master, understand the master’s role. The standards of review of a

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master’s decisions are particularly important to the parties and the court, and are set forth with special detail.

Compensation of masters under this rule should be established in the order of appointment. *See* Rule 53.02(b)(5). In the majority of cases, compensation will be ordered to be paid by the parties pursuant to Rule 53.08(b)(1). The provision of Rule 53.08(b)(2) provides for payment from a fund created by the litigation, as where fees are awarded under the “common fund” doctrine, or by a fund that is the subject matter of the litigation. The federal rule advisory committee has recognized that it may be appropriate to revise the allocation ordered on an interim basis once the action is concluded. *See* Fed. R. Civ. P. 53(h), Advis. Comm. Notes—2003 Amend., *reprinted in* FED. CIV. JUD. PROC. & RULES 237 (West 2005 ed.).

Rule 53.09 distinguishes between masters under this rule, and regular court employees authorized as “referees” by statute. “Statutory referees” as used in the rule refers to court employees, whether full- or part-time, who serve regularly in multiple cases or calendars. *See, e.g.*, Minn. Stat. §§ 260.031 (juvenile court referees authorized); 484.013, subd. 3 (referees authorized for housing calendar consolidation program); 484.70 (referees generally in district court); 491A.03, subd. 1 (2004) (referees in conciliation court in second and fourth districts). In certain situations, a “referee” appointed pursuant to statute for a single case should be viewed as a master under Rule 53. *See, e.g.*, Minn. Stat. §§ 116B.05 (referee in particular environmental action); 558.04 (2004) (referees for partition of real estate). The procedures governing statutory referees are generally found in the statutes authorizing their use.

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

Rule 62.01. Stay on Motions

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

Advisory Committee Comment—2006 Amendment

Rule 62.01 is amended to reflect the new name for motions under Rule 50.01 as amended effective January 1, 2006.

Amendments to Minnesota General Rules of Practice for the District Courts

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TITLE I. RULES APPLICABLE TO ALL COURT PROCEEDINGS

* * *

RULE 6. FORM OF PLEADINGS

Rule 6.01. Format

All pleadings or other papers required to be filed shall be double spaced and legibly handwritten, typewritten, or printed on one side of 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. ~~The original 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.~~

Advisory Committee Comment—2006 Amendment

Rule 6.01 is amended to delete a sentence dealing with filing by facsimile. The former provision is, in effect, superseded by Minn. R. Civ. P. 5.05, as amended effective January 1, 2006.

TITLE IV. RULES OF FAMILY COURT PROCEDURE

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PART B. EXPEDITED CHILD SUPPORT PROCESS

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Rule 355.02. Types of Service

Subdivision 1. Personal Service.

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(a) Upon Whom.

(1) Upon an Individual. Personal service upon an individual in the state shall be accomplished by delivering a copy of the summons and complaint, notice, motion, or other document to the individual personally or by leaving a copy at the individual’s house or usual place of residence with some person of suitable age and discretion who presently lives at that location. If the individual has, pursuant to statute, consented to any other method of service or appointed an agent to receive service, or if a statute designates a state official to receive service, service may be made in the manner provided by such statute. If the individual is confined to a state institution, personal service shall be accomplished by also serving a copy of the document upon the chief executive officer at the institution. Personal service upon an individual outside the state shall be accomplished according to the provisions of Minn. Stat. ch. 518C (2000) and Minn. Stat. § 543.19 (2000). Personal service may not be made on ~~Sunday~~, a legal holiday, or election day.

* * *

Rule 361.02. Exchange of Documents

Subd. 4. ~~Redaction of Social Security Numbers~~ Treatment of Confidential Information. To retain privacy, restricted identifiers (e.g., social security numbers, employer identification numbers, financial account numbers) must be blackened out from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11 of these rules. In addition, financial source documents (e.g., tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled “Sealed Financial Source Documents” as required in Rule 11.

* * *

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1384 **Rule 361.06. Subpoenas**

1385 **Subdivision 1. Written Request.** Requests for subpoenas for the
1386 attendance of witnesses or for the production of documents shall be in writing and
1387 shall be submitted to the court administrator. The request shall specifically
1388 identify any documents requested, include the full name and home or business
1389 address of all persons to be subpoenaed, and specify the date, time, and place for
1390 responding to the subpoena. The court administrator shall issue a subpoena in
1391 accordance with Minn. R. Civ. P. 45 signed and sealed stating the name of the
1392 court and the title of the action, but otherwise in blank. The party requesting the
1393 subpoena shall fill out the subpoena before having it served. An attorney as
1394 officer of the court may also issue and sign a subpoena on behalf of the court
1395 where the action is pending.

1396 **Subd. 2. Service of Subpoenas Shall be by Personal Service.** ~~Except as~~
1397 ~~noted in this subdivision, a~~All subpoenas issued by the district court, shall be
1398 personally served by the sheriff or by any other person who is at least 18 years of
1399 age who is not a party to the action. Employees of the county agency may
1400 personally serve subpoenas. The person being served shall, at the time of service,
1401 be given the fees and mileage allowed by Minn. Stat. § 357.22 (2000). When the
1402 subpoena is requested by the county agency, fees and mileage need not be paid.
1403 The cost of service, fees, and expenses of any witnesses who have been served
1404 subpoenas shall be paid by the party at whose request the witness appears. The
1405 person serving the subpoena shall provide proof of service by filing the original
1406 subpoena with the court, along with an affidavit of personal service.

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Advisory Committee Comment—2006 Amendment

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Rule 361.06 is amended, effective January 1, 2006, to conform the subpoena provisions to the parallel procedures of Minn. R. Civ. P. 45, which is amended at the same time.

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1416 **Rule 370.04. Filing Requirements**

1417 **Subdivision 1. Initiating Party.** No later than five (5) days before any
1418 scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from
1419 the date the last party was served, the initiating party shall file the following with
1420 the court:

- 1421 (a) the original summons;
- 1422 (b) the original complaint;
- 1423 (c) the original supporting affidavit, if served;
- 1424 (d) the request for hearing form, if returned to the initiating party; and
- 1425 (e) proof of service upon each party pursuant to Rule 355.04.

1426 **Subd. 2. Responding Party.** If a noninitiating party responds with a
1427 written answer pursuant to Rule 370.05, the following shall be filed with the court
1428 no later than five (5) days before any scheduled hearing or, if no hearing is
1429 scheduled, within fourteen (14) days from the date the last party was served:

- 1430 (a) the original written answer; and
- 1431 (b) proof of service upon each party pursuant to Rule 355.04.

1432 **Subd. 3. Facsimile Transmission.** If a paper is filed by facsimile, the
1433 sender's original must not be filed but must be maintained in the files of the party
1434 transmitting it for filing and made available to the court or any party to the action
1435 upon request.

1436 **Subd. 34. Treatment of Confidential Information.** To retain privacy,
1437 restricted identifiers (e.g., social security numbers, employer identification
1438 numbers, financial account numbers) must be blackened out from any documents
1439 provided under this rule and may only be submitted on a separate Confidential
1440 Information Form as required in Rule 11 of these rules. In addition, financial
1441 source documents (e.g., tax returns, wage stubs, credit card statements) must be
1442 submitted under a cover sheet entitled "Sealed Financial Source Documents" as
1443 required in Rule 11.

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Rule 371.04. Filing Requirements

Subdivision 1. Initiating Party. No later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served, the initiating party shall file the following with the court:

- (a) the original summons;
- (b) the original complaint;
- (c) the original supporting affidavit, if served; and
- (d) proof of service upon each party pursuant to Rule 355.04.

Subd. 2. Responding Party. If a noninitiating party responds with a written response pursuant to Rule 371.05, the following, if served, shall be filed with the court no later than five (5) days before any scheduled hearing:

- (a) the original written answer; or
- (b) a request for blood or genetic testing; and
- (c) proof of service upon each party pursuant to Rule 355.04.

Subd. 3. Facsimile Transmission. If a paper is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the party transmitting it for filing and made available to the court or any party to the action upon request.

Subd. 34. Treatment of Confidential Information. To retain privacy, restricted identifiers (e.g., social security numbers, employer identification numbers, financial account numbers) must be blackened out from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11 of these rules. In addition, financial source documents (e.g., tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Sealed Financial Source Documents" as required in Rule 11.

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1477 **Rule 372.04. Filing Requirements**

1478 **Subdivision 1. Initiating Party.** No later than five (5) days before any
1479 scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from
1480 the date the last party was served, the initiating party shall file the following with
1481 the court:

- 1482 (a) the original notice of motion;
- 1483 (b) the original motion;
- 1484 (c) the original supporting affidavit;
- 1485 (d) the request for hearing form, if returned to the initiating party; and
- 1486 (e) proof of service upon each party pursuant to Rule 355.04.

1487 **Subd. 2. Responding Party.** If a noninitiating party responds with a
1488 responsive motion or counter motion pursuant to Rule 372.05, the following shall
1489 be filed with the court no later than five (5) days before any scheduled hearing or,
1490 if no hearing is scheduled, within fourteen (14) days from the date the last party
1491 was served:

- 1492 (a) the original responsive motion or counter motion; and
- 1493 (b) proof of service upon each party pursuant to Rule 355.04.

1494 **Subd. 3. Facsimile Transmission.** If a paper is filed by facsimile, the
1495 sender's original must not be filed but must be maintained in the files of the party
1496 transmitting it for filing and made available to the court or any party to the action
1497 upon request.

1498 **Subd. 34. Treatment of Confidential Information.** To retain privacy,
1499 restricted identifiers (e.g., social security numbers, employer identification
1500 numbers, financial account numbers) must be blackened out from any documents
1501 provided under this rule and may only be submitted on a separate Confidential
1502 Information Form as required in Rule 11 of these rules. In addition, financial

1503 source documents (e.g., tax returns, wage stubs, credit card statements) must be
1504 submitted under a cover sheet entitled “Sealed Financial Source Documents” as
1505 required in Rule 11.

Amendment to Minnesota Rules of Civil Appellate Procedure

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RULE 104. TIME FOR FILING AND SERVICE OF NOTICE OF APPEAL

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1510 **Rule 104.01. Time for Filing and Service**

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1512 **Subd. 2. Effect of Post-Decision Motions.** Unless otherwise provided by
1513 law, if any party serves and files a proper and timely motion of a type specified
1514 immediately below, the time for appeal of the order or judgment that is the subject
1515 of such motion runs for all parties from the service by any party of notice of filing
1516 of the order disposing of the last such motion outstanding. This provision applies
1517 to a proper and timely motion:

1518 (a) for judgment ~~notwithstanding the verdict~~ as a matter of law under
1519 Minn. R. Civ. P. 50.02;

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1522 **Advisory Committee Comment—2006 Amendment**

1523 Rule 104.01, subd. 2(a) is amended to reflect the new name for a motion
1524 challenging the legal sufficiency of a verdict under Minn. R. Civ. P. 50.02. As
1525 a result of the amendment to Minn. R. Civ. P. 50.02, the former “motion for
1526 directed verdict” and “motion for judgment notwithstanding the verdict” are
1527 both now referred to as motions for “judgment as a matter of law.” Rule
1528 104.01, subd. 2(a) is amended to reflect this nomenclature. During the short
1529 transition period during which timely appeals might be taken from cases where
1530 either motions for judgment notwithstanding the verdict or motions for
1531 judgment as a matter of law may have been filed after the trial court decision,
1532 the court should consider the two motions fungible in determining whether an
1533 appeal is timely.