**STATE OF MINNESOTA**

**IN SUPREME COURT**

**File C6-84-2134**

**IN RE:**

**PROPOSED AMENDMENTS TO THE**

**MINNESOTA RULES OF CIVIL PROCEDURE**

**Respectfully submitted,**

**MINNESOTA SUPREME COURT**
**ADVISORY COMMITTEE ON CIVIL PROCEDURE**

James L. Hetland, Jr., Chair

Hon. Robert E. Bowen
G. Alan Cunningham
J. Peter Dosland
Hon. Nancy C. Dreher
Stephen S. Eckman
Hon. Otis H. Godfrey
Maclay R. Hyde
Prof. Douglas D. McFarland
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David F. Herr, Reporter

**March 25, 1988**

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## SUMMARY OF CHANGES

Despite the volume of the recommended amendments to the Minnesota Rules of Civil Procedure contained in this report, the changes themselves are not as massive as they might appear. The changes fit into three categories, with the greatest number of changes in two groups of very similar changes. The Proposed rules include the following categories of changes:

1. **Deletion of Gender Specific Language.** The Committee has reviewed the Rules of Civil Procedure in their entirety, and have deleted gender specific language in favor of fairer and more accurate phrasing. These changes have involved the majority of the Rules of Civil Procedure. These changes follow similar changes made to the federal rules in 1987 and to the statutes by the Minnesota Legislature in the 1987 Session.

2. **Renaming of Court Administrator.** We recommended a number of changes to refer to the former "Clerk of Court" as "Court Administrator." This change reflects the current title of this position under the statutes.

3. **Specific Changes Intending to Modify Practice.** The following list identifies the more substantive changes contained in these Rules other than those set forth above:

| | |
|---|---|
| Rule 3 | Commencement of Actions by Filing [Alternative recommendations] |
| Rule 5 | Facsimile Transmission |
| Rule 10 | Deletion of Case Type Identifier (if Commencement by Filing Adopted) |
| Rule 28 | Clarifications of Circumstances Disqualifying Deposition Official |
| Rule 30.02 | Videotape Depositions; Telephone Depositions; Numerical Limit on Depositions |
| Rule 30.06 | Certification of Depositions |
| Rule 32 | Use of Videotape Depositions |
| Rule 52 | Application of Clearly Erroneous Standard of Review to All Fact Findings |
| Form 1 | Summons [new] |

## II. COMMENCEMENT OF THE ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

### RULE 3. COMMENCEMENT OF THE ACTION; SERVICE OF THE COMPLAINT

**Rule 3.01. Commencement of the Action [ALTERNATE]**

A ~~civil~~ action is commenced against each defendant:

(a) when the summons is served upon that defendant, or

(b) at the date of acknowledgement of service is service is made by mail, or

(c) when the summons is delivered to the sheriff in the county where the defendant resides for service; but such delivery shall be ineffectual unless within 60 days thereafter the summons be actually served on ~~him~~ that defendant or the first publication thereof be made.

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral. This alternate continues the current practice in Minnesota of commencement of actions by service rather than filing.

**Rule 3.01. Commencement of the Action [ALTERNATE]**

A civil action is commenced by filing a complaint with the court.

~~(a) when the summons is served upon that defendant; or~~

~~(b) at the date of acknowledgement of service is service is made by mail; or~~

~~(c) when the summons is delivered to the sheriff in the county where the defendant resides for service; but such delivery shall be ineffectual unless within 60 days~~

~~thereafter the summons be actually served on him~~ that defendant ~~or the first publication thereof be made.~~

**Notes of Advisory Committee**

The Advisory Committee reached a tied vote on whether to recommend this amendment to Rule 3 to change the long-standing Minnesota practice of commencing an action by service of the complaint rather than by filing it with the court. Because of the tie vote, two separate Advisory Committee comments are provided for this rule.

**REPORT FAVORING ADOPTION OF COMMENCEMENT BY FILING.**

It is the view of half the Advisory Committee that the rule should be amended to provide for commencement of an action by filing the complaint with the court rather than by the service of it. The committee has, both since its last report and at various times in its history, given consideration to the long-standing practice in Minnesota of commencing an action by service rather than by filing. The Advisory Committee has been, and continues to be, reluctant to recommend any change in the rules in the absence of significant perceived benefits from the change, and has in the past perceived that the existing practice works reasonably well and that commencement of an action by filing would impose undue burdens on the court system. It now appears that the time has come to conform Minnesota's practice to that in the Federal courts and in the vast majority of states to provide commencement by filing.

The proposed amendment is identical to Fed. R. Civ. P. 3(a). The Advisory Committee has historically had a strong preference to have practice in the Minnesota state courts conform to the practice in the federal courts to the maximum extent consistent with the efficient administration of justice in the state court systems, bearing

in mind the inherent differences in the caseload and jurisdiction of the courts. The federal courts have, to some degree, expressed the same preference by conforming local federal court practice to Minnesota state court practice where the state and federal rules differ. See, e.g., Local Rule 3B (D. Minn.), reprinted in Minnesota Rules of Court 946 (pamph. ed. 1987) (50-interrogatory limit of Minn. R. Civ. P. 33 applied in federal court).

The primary benefit of commencement by filing is to create a simply method for commencement of an action that creates a readily discernable date. The date of commencement of the action is important in issues relating to limitations as well as other substantive issues. The prior practice in Minnesota deems an action commenced when served, and creates a different commencement date for different defendants. The provision of subparagraph (c) of the current rule, allowing commencement by delivery to the sheriff where the county resides followed by actual service within 60 days, makes the actual date of service a fact that cannot be readily determined by the defendant, is not a matter of public record, and that occasionally is the subject of formal discovery. The entire practice under Rule 3 has historically resulted in a substantial amount of unnecessary litigation. See 1 D. Herr & R. Haydock, Minnesota Practice § 3.3, at 28-33 (2d ed. 1985, Supp. 1987). Obviating the potential for dispute over an issue made important only by the structure of the current rules appears to be desirable.

The members of the committee recommending this change believe that a benefit will occur by having the summons issued by the Court Administrator rather than by attorneys as is now done. The Advisory Committee has received communications from members of the Bar especially lawyers representing indigent persons, who report that the Minnesota summons as now contained in Official Form 1, is frequently misunderstood by clients due to its lack of official status. The committee believes that having the Administrator issue a summons only after the complaint is filed, as is the practice in all

of the federal courts in this country will result in the improvement of the administration of justice.

Improvement in the administration of justice is probably the most important reason to amend the rules. The current practice of "hip pocket" service results in there being a large, unknown number of lawsuits which are never subject to proper administration by the court. Consistent with the now widely recognized increased role of the courts in managing their dockets and caseloads, rather than simply waiting for parties to bring matters before them, half of the committee recommending the adoption of this rule believes that requiring the filing of all civil lawsuits will permit the courts to understand the amount litigation pending before and to manage it effectively for the just and inexpensive resolution of the disputes reflected by those cases. The Advisory Committee gave extensive and patient consideration to the arguments that parties should be free to litigate slowly those matters their not interested in "pushing." We believe, however, that that right should not be superior to the right of the courts to the efficient administration of cases. The current system encourages cases to be filed with the court after having been "pending" for a period of years in unmanaged and unsupervised discovery. When those cases are finally reached for trial, the litigants themselves and the public have the perception that the case has languished for years on the court's docket when, in fact, the court has dealt with it effectively once it was filed.

There are also less urgent, but no less important, reasons for requiring all actions to be commenced by filing. It is fundamentally fairer to have the court's system supported by all the people using the court's resources. Many counties have law libraries that are funded by filing fees. It is known that actions now not filed with inactive litigation contribute to the service load of these facilities. It is logical and fair to have the cost of those facilities borne more equally by all users. The Advisory Committee hopes that the

result of this change will be to permit reduction in these filing fees on a per-case basis to reflect the greater number of cases to be filed under this rule.

This change in Rule 3 requires or permits a number of other changes in the rule. They include the amendment of Rule 4 to provide for issuance of the summons by the clerk and to require dismissal of the action if service is not made after the summons is issued, and the deletion of the amendments made to Rule 10.01 in 1986 to require the inclusion of a case-type indicator in the caption.

Hon. Robert E. Bowen
J. Peter Dosland
Hon. Nancy C. Dreher
David F. Herr
Hon. Ann Day Montgomery

**IN FAVOR OF RETENTION OF PRESENT RULE 3.01.**

Those favoring retention of the present system of commencing an action, as now embodied in Rule 3.01 of the Minnesota Rules of Civil Procedure, do so for various reasons, including:

A. It is a procedure that has been followed throughout the legal history of Minnesota.

B. It has worked and is accepted.

C. The reasons for change do not seem impressive:

1. Permitting a more accurate number count of lawsuits. This is outweighed by the considerably greater cost of finding expanded filing space for Court Administrators. Some Administrator's offices apparently already are sufficiently over taxed so that they refuse to accept any pleadings or discovery process (other than summons, complaint and answer) until shortly before trial. Hennepin County is one such example.

2. Other states require filing as a condition precedent to suit. This seems little reason for a change. Further, it would add to the financial cost of filing fees to small suits which often are expeditiously disposed of without unnecessary costs or publicity.

3. Greater court supervision and control. This does not happen even now in a great majority of cases which are filed in the District Courts. If it were to occur, it would require expenditure of more time from an already over-burdened trial bench. Further, under the present rule any party may seek court supervision by motion at any time.

D. The proposed change requiring filing might be in conflict with established legal rules, e.g., when a suit is commenced for statute of limitation purposes.

E. Finally, the familiar adage "If it ain't broke, don't fix it" is applicable.

G. Alan Cunningham
Stephen S. Eckman
Hon. Otis H. Godfrey
James L. Hetland, Jr.
Hon. Susanne C. Sedgwick

## RULE 4. PROCESS

**Rule 4.01. Summons; Form ~~[ALTERNATE]~~**

The summons shall state the name of the court and the names of the parties, be subscribed by the plaintiff or by ~~his~~ the plaintiff's attorney, give an address within the state where the subscriber may be served in person and by mail, state the time within which these rules require the defendant to serve ~~his~~ an answer, and notify ~~him~~ the defendant that if ~~he~~ the defendant fails to do so judgment by default will be rendered against ~~him~~ the defendant for the relief demanded in the complaint.

**Rule 4.01. Summons; Issuance; Form [ALTERNATE]**

~~The summons shall state the name of the court and the names of the parties, be subscribed by the plaintiff or by his the plaintiff's attorney, give an address within the state where the subscriber may be served in person and by mail, state the time within which these rules require the defendant to serve his an answer, and notify him the defendant that if he the defendant fails to do so judgment by default will be rendered against him the defendant for the relief demanded in the complaint.~~

Upon the filing of the complaint, the administrator shall forthwith issue a summons and deliver the summons to the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff separate or additional summonses shall issue against defendants. The summons shall be in the form of Form 1 and be completed by the plaintiff or the plaintiff's attorney and submitted for signing and sealing by the administrator at the time the complaint is filed.

**Rule 4.02. By Whom Served**

Unless otherwise ordered by the court, the sheriff or any other person not less than 18 years of age and not a party to the action, may make service of a summons or other process.

**Rule 4.03. Personal Service**

Service of summons within the state shall be as follows:

**(a) Upon an Individual.** Upon an individual by delivering a copy to ~~him~~ the individual personally or by leaving a copy at ~~his~~ the individual's usual place of abode with some person of suitable age and discretion then residing therein.

If the individual has, pursuant to statute, consented to any other method of service or appointed an agent to receive service of summons, or if a statute designates a state official to receive service of summons, service may be made in the manner provided by such statute.

If the individual is confined to a state institution, by serving also the chief executive officer at the institution.

If the individual is an infant under the age of 14 years, by serving also ~~his~~ the individual's father or mother, and if ~~he have~~ the infant has neither within the state, then a resident guardian if ~~he have~~ the infant has one known to the plaintiff, and if ~~he have~~ the infant has none, then the person having control of such defendant, or with whom ~~he~~ the infant resides, or by whom ~~he~~ the infant is employed.

* * *

**(e) Upon Public Corporations.** Upon a municipal or other public corporation by delivering a copy

(1) To the ~~chairman~~ chair of the county board or to the county auditor of a defendant county.

(2) To the chief executive officer or to the clerk of a defendant city, village or borough.

(3) To the ~~chairman~~ chair of the town board or to the clerk of a defendant town.

(4) To any member of the board or other governing body of a defendant school district.

(5) To any member of the board or other governing body of a defendant public board or public body not hereinabove enumerated.

If service cannot be made as provided in this Rule 4.03(e), the court may direct the manner of such service.

**Rule 4.04. Service by Publications; Personal Service out of State**

The summons may be served by three weeks' published notice in any of the cases enumerated hereafter when there shall have been filed with the court the complaint and an affidavit of the plaintiff or ~~his~~ the plaintiff's attorney stating the existence of one of the following cases, and that ~~he~~ the affiant believes the defendant is not a resident of the state, or cannot be found therein, and either that ~~he~~ the affiant has mailed a copy of the summons to the defendant at ~~his~~ the defendant's place of residence or that such residence is not known to ~~him~~ the affiant. The service of the summons shall be deemed complete 21 days after the first publication. Personal service of such summons without the state, proved by the affidavit of the person making the same sworn to before a person authorized to administer an oath, shall have the same effect as the published notice herein provided for.

Such service shall be sufficient to confer jurisdiction:

(1) When the defendant is a resident individual domiciliary having departed from the state with intent to defraud ~~his~~ creditors, or to avoid service, or keeps ~~himself~~ remains concealed therein with the like intent;

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

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

(b) The defendant is a nonresident individual, or a foreign corporation, partnership or association;

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

(3) When the action is for marriage dissolution or separate maintenance and the court shall have ordered that service be made by published notice.

(4) When the subject of the action is real or personal property within the state in or upon which the defendant has or claims a lien or interest, or the relief demanded consists wholly or partly in excluding ~~him~~ the defendant from any such interest or lien;

(5) When the action is to foreclose a mortgage or to enforce a lien on real estate within the state.

* * *

**Rule 4.042. Service of the Complaint**

If the defendant shall appear within ten days after the completion of service by publication, the plaintiff, within five days after such appearance, shall serve the complaint, by copy, on the defendant or ~~his~~ the defendant's attorney. The defendant shall then have at least ten days in which to answer the same.

**Rule 4.043. Service by Publication; Defendant May Defend; Restitution**

If the summons be served by publication, and the defendant receives no actual notification of the action, ~~he~~ the defendant shall be permitted to defend upon application to the court before judgment and for sufficient cause; and, except in an action for marriage dissolution, the defendant, in like manner, may be permitted to defend at any time within one year after judgment, on such terms as may be just. If the defense be sustained, and any part of the judgment has been enforced, such restitution shall be made as the court may direct.

**Rule 4.044. Nonresident Owner of Land Appointing an Agent**

If a nonresident person or corporation owning or claiming an interest or lien in or upon lands in the state appoints an agent pursuant to § 557.01, service of summons in an action involving such real estate shall be made upon such agent or ~~his~~ the principal in accordance with Rule 4.03, and service by publication shall not be made upon the principal.

* * *

**Rule 4.06. Return**

Service of summons and other process shall be proved by the certificate of the sheriff making it, by the affidavit of any other person making it, by the written admission or acknowledgement of the party served, or if served by publication, by the affidavit of the printer or ~~his~~ the printer's ~~foreman~~ foreperson or clerk. The proof of service in all cases other than by published notice shall state the time, place, and manner of service. Failure to make proof of service shall not affect the validity of the service.

* * *

**Rule 4.08. Summons: Time Limited for Service**

If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice on the court's own initiative with notice to such party or upon motion.

**Notes of Advisory Committee**

**Rules 4.01, 4.02, 4.03, 4.04, and 4.042**

These amendments are not intended to substantively change the rules. Their sole purpose is to make the language of the rules gender-neutral.

**Rules 4.01 and 4.08**

The amendments to Rule 4.01 and the new Rule 4.08 are necessary by the recommended amendment of Rule 3 to require that actions are commenced upon filing

rather than service. One of the advantages of commencement by service is to cause official process to be issued by the court rather than by individual attorneys. The Committee was advised that in certain cases the receipt of a summons signed by an attorney rather than issued by a court appears to confuse the recipient or fails to impress upon the recipient the importance of the summons. It is believed that a summons issued by the court may be more readily understood by some defendants. The Committee has collaborated with the State Court Administrator to create a form of summons that is readily understood by the defendant.

New Rule 4.08 is necessary to prevent parties from "suing" defendants by filing the summons and complaint with no intention of prosecuting the lawsuit. The rule is drawn substantially from its federal court counterpart, Fed. R. Civ. P. 4(j). Dismissal should occur under the rule when a party fails to make service. If, in fact, no attempt has been made at service or there appears to be inappropriate use of a lawsuit for publicity or other purposes, sanctions should be imposed under Rule 11.

## RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

### Rule 5.01. Service; When Required; Appearance

Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4. A party appears when ~~he~~ that party serves or files any paper in the proceeding.

### Rule 5.02. Service; How Made

Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party ~~himself~~ is ordered by the court. Written admission of service by the party or ~~his~~ the party's attorney shall be sufficient proof of service. Service upon the attorney or ~~upon~~ a party shall be made by delivering or by mailing a copy to the attorney or to ~~him~~ the attorney or party at ~~his~~ the attorney's or party's last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this rule means: Handing it to the attorney or ~~to the~~ party; or leaving it at ~~his~~ the attorney's or party's office with ~~his~~ a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at ~~his~~ the attorney's or party's dwelling house or usual

place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

* * *

**Rule 5.05. Facsimile Transmission**

In any case provided for by any supreme court order, local rule, or by order of the court, filing of any paper with the court may be allowed by use of facsimile transmission. Any facsimile filed in accordance with such order or rule shall have the same force and effect as a signed original.

**Notes of Advisory Committee**

**Rules 5.01 and 5.02**

The amendments to Rules 5.01 and 5.02 are not intended to substantively change the rule. Their sole purpose is to make the language of the rule gender-neutral.

**Rule 5.05**

The Advisory Committee is aware of proposed experiments for the use of facsimile transmission to enhance accessibility to limited judicial resources and facilitate the efficient and inexpensive handling of litigation within the court system and for litigants. See Order Regarding the Experimental Use of Facsimile Transmission, No. C2-87-1853 (Minn. Sup. Ct., Sept. 21, 1987). The Committee recommends this new Rule 5.05 to make it clear that documents can be filed with the court by facsimile in accordance with any order that may be promulgated by the Minnesota Supreme Court and any orders that may

be adopted by local rule. The rule also makes it clear that any such document has the full force and effect of an original. The committee has made no separate provision for handling original orders entered by facsimile transmission. It is the committee's view that the proposed Rule 5.05 will cover issuance of any orders that may be entered or transmitted by facsimile transmission. If provided for in accordance with the rule, a complaint may be filed by facsimile.

It is the belief of the Advisory Committee that facsimile transmissions should be treated uniformly by the courts and should be subject to the same rules as documents transmitted by mail or delivery. Specifically, the committee believes that filing by facsimile transmissions should be deemed accomplished at the time of transmission, and an affidavit stating that fact should provide presumptive proof of filing. This rule is consistent with the rule for mailing of documents for filing. See, e.g., Minn. R. Civ. P. 5.02 (service complete upon mailing); MacLean v. Reynolds, 175 Minn. 112, 220 N.W. 435 (1928).

**RULE 6. TIME**

* * *

**Rule 6.05. Additional Time After Service by Mail**

Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon ~~him,~~ the party, or whenever such service is required to be made a prescribed period before a specified event, and the notice or paper is served by mail, three days shall be added to the prescribed period.

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## III. PLEADINGS AND MOTIONS

### RULE 8. GENERAL RULES OF PLEADING

**Rule 8.01. Claims for Relief**

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which ~~he deems himself entitled~~, the pleader seeks, and if a recovery of money be demanded the amount shall be stated. Relief in the alternative or of several different types may be demanded. If a recovery of money for unliquidated damages is demanded in an amount less than $50,000, the amount shall be stated. If a recovery of money for unliquidated damages in an amount greater than $50,000 is demanded, the pleading shall state merely that recovery of reasonable damages in an amount greater than $50,000 is sought.

**Rule 8.02. Defenses; Form of Denials**

A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If ~~he~~ a party is without knowledge or information sufficient to form a belief as to the truth of an averment, ~~he~~ the party shall so state and this has the effect of a denial. Denials shall fairly met the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, ~~he~~ the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, ~~he~~ the pleader may make ~~his~~ denials as specific denials of designated averments or paragraphs, or ~~he~~ the

pleader may generally deny all the averments except such designated averments or paragraphs as he the pleader expressly admits; but, when he the pleader does so intend to controvert all its averments, he the pleader may do so by general denial subject to the obligations set forth in Rule 11.

* * *

**Rule 8.05. Pleading to be Concise and Direct; Consistency**

* * *

(2) A party may set forth two or more statements of a claim of defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he the party has regardless of consistency and whether based on legal or equitable grounds or both. All statements shall be made subject to the obligations set forth in Rule 11.

* * *

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 9. PLEADING SPECIAL MATTERS

### Rule 9.01. Capacity

It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of a partnership or an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, ~~he~~ the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

* * *

### Rule 9.08. Unknown Party; How Designated

When a party is ignorant of the name of an opposing party and so alleges in ~~his~~ the party's pleading, the opposing party may be designated by any name and when ~~his~~ that opposing party's true name is discovered the process and all pleadings and proceedings in the action may be amended by substituting the true name.

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 10. FORM OF PLEADINGS

### Rule 10.01. Names of Parties

Every pleading shall have a caption setting forth the name of the court and the county in which the action brought, the title of the action, a designation as in Rule 7, ~~and, in the upper right-hand corner of the appropriate case type indicator as set forth in the subject matter index included in the appendix as Form 23.~~ In the complaint, the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the first party on each side with an appropriate indication of other parties.

**Notes of Advisory Committee**

This change is one of the changes allowed by amendment of Rule 3 to allow commencement of action by filing. It should be adopted only if Rule 3.01 is amended to provide for commencement of actions by filing. The language deleted from Rule 10 was included by amendment in 1986 to permit the capture of information for statistical purposes in court administration. The Rule has created some confusion in the courts, and has required this information be placed on all pleadings despite the fact that the information is really only used from the first document actually filed with the court. Its application to all papers in the case has been necessary because the complaint is not necessarily the first document filed. This information will be obtained from the party filing a complaint and it will be unnecessary to restate it on papers filed later.

**RULE 11. SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS; SANCTIONS**

Every pleading, motion and other paper of a party represented by an attorney shall be personally signed by at least one attorney of record in ~~his~~ the attorney's individual name and shall state ~~his~~ the attorney's address. A party who is not represented by an attorney shall personally sign ~~his~~ the party's pleading, motion or other paper and state ~~his~~ the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certification by ~~him~~ the signer that ~~he~~ the signer has read the pleading, motion or other paper; that to the best of ~~his~~ the signer's knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 12. DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED; BY PLEADING OR MOTION; MOTION FOR JUDGMENT ON PLEADINGS

### Rule 12.01. When Presented

Defendant shall serve ~~his~~ an answer within 20 days after service of the summons upon ~~him~~ that defendant unless the court directs otherwise pursuant to Rule 4.043. A party served with a pleading stating a cross-claim against ~~him~~ that party shall serve an answer thereto within 20 days after the service upon ~~him~~ that party. The plaintiff shall serve ~~his~~ a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these period of time as follows unless a different time is fixed by order of the court: (1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after service of notice and the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

### Rule 12.02. How Presented

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) Lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; (4) insufficiency of service of process; (5) failure to state a claim upon which relief can be granted; and (6) failure to join a party under Rule 19. A motion making any of these defenses shall be

made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, ~~he~~ the adverse party may asset at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense that the pleading fails to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

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**Rule 12.05. Motion for More Definite Statement, for Paragraphing and for Separate Statement**

If a pleading to which a responsive pleading is permitted violates the provisions of Rule 10.02, or is so vague and ambiguous that a party cannot reasonably be required to frame a responsive pleading, ~~he~~ the party may move for a compliance with Rule 10.02 or for a more definite statement before interposing ~~his~~ a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after service of notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

**Rule 12.06. Motion to Strike**

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the

service of the pleading upon ~~him,~~ the party, or upon the court's own initiative at any time, the court may order any pleading not in compliance with Rule 11 stricken as sham and false, or may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

**Rule 12.07. Consolidation of Defenses in Motion**

A party who makes a motion under this rule may join with it the other motions herein provided for and then available to ~~him~~ the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to ~~him~~ the party which this rule permits to be raised by motion, ~~he~~ the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in Rule 12.08(2) hereof on any of the grounds there stated.

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**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 13. COUNTERCLAIM AND CROSS-CLAIM

**Rule 13.05. Counterclaim Maturing or Acquired After Pleading**

A claim which either matured or was acquired by the pleader after serving ~~his~~ a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

**Rule 13.06. Omitted Counterclaim**

When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, ~~he~~ the pleader may by leave of court set up the counterclaim by amendment.

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**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 14. THIRD-PARTY PRACTICE

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

Within 90 days after service of the summons upon ~~him~~, a defendant, and thereafter either by written consent of all parties to the action or by leave of court granted on motion upon notice to all parties to the action, a defendant as a third-party plaintiff may serve a summons and complaint, together with a copy of plaintiff's complaint upon a person, whether or not ~~he~~ the person is a party to the action, who is or may be liable to ~~him~~ the third-party plaintiff for all or part of the plaintiff's claim against ~~him~~ the third-party plaintiff and after such service shall forthwith serve notice thereof upon all other parties to the action. Copies of third-party pleadings shall be furnished by the pleader to any other party to the action within 5 days after request therefor. The person so served, hereinafter called the third-party defendant, shall make ~~his~~ any defenses to the third-party plaintiff's claim as provided in Rule 12 and ~~his~~ any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert ~~his~~ any defenses as provided in Rule 12 and ~~his~~ any counterclaims and cross-claims as provided in Rule 13. A third-party defendant may proceed under this rule against any person who is or may be liable to ~~him~~ the third-party defendant for all or part of the claim made in the action against third-party defendant.

**Rule 14.02. When Plaintiff May Bring in Third Party**

When a counterclaim is asserted against a plaintiff, ~~he~~ the plaintiff may cause a third party to be brought in under circumstances which under Rule 14.01 would entitle defendant to do so.

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**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

### Rule 15.01. Amendments

A party may amend ~~his~~ the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleadings is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, ~~he~~ the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend ~~his~~ the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

### Rule 15.02. Amendments to Conform to the Evidence

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of a trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that admission of such evidence would prejudice ~~him~~ the party in maintaining ~~his~~ the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

**Rule 15.03. Relation Back of Amendments**

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against ~~him~~ the party, the party to be brought in by amendment, (1) has received such notice by the institution of the action that ~~he~~ the party will not be prejudiced in maintaining ~~his~~ a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against ~~him~~ that party.

**Rule 15.04. Supplemental Pleadings**

Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit ~~him~~ the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a claim for relief or of a defense. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

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**Rule 16.06. Sanctions**

If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or ~~his~~ the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37.02(2)(b), (c), (d). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing ~~him~~ the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## IV. PARTIES

### RULE 17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

**Rule 17.01. Real Party in Interest**

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in ~~his~~ that person's own name without joining with ~~him~~ that person the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

**Rule 17.02. Infant or Incompetent Persons**

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

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

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

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

**Notes of Advisory Committee**

This amendment is intended to conform the rule to the statute creating the position of Court Administrator to replace the former Clerk of Court, Minn. Stat. § 645.44, subd. 2 (1986). This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 18. JOINDER OF CLAIMS AND REMEDIES

### Rule 18.01. Joinder of Claims

A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal, or equitable, as ~~he~~ the party has against an opposing party.

### Rule 18.02. Joinder of Remedies; Fraudulent Conveyances

Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to ~~him~~, that plaintiff, without first having obtained a judgment establishing the claim for money.

### Notes of Advisory Committee

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

### Rule 19.01. Persons to be Joined if Feasible

A person who is subject to service of process shall be joined as a party in the action if (1) in ~~his~~ the person's absence complete relief cannot be accorded among those already parties, or (2) ~~he~~ the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in ~~his~~ the person's absence may (i) as a practical matter impair or impede ~~his~~ the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk or incurring double, multiple, or otherwise inconsistent obligations by reason of ~~his~~ the person's claimed interest. If ~~he~~ the person has not been so joined the court shall order that ~~he~~ the person be made a party. If ~~he~~ the person should join as a plaintiff but refuses to do so, ~~he~~ the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

### Rule 19.02. Determination by Court Whenever Joinder Not Feasible

If a person as described in Rule 19.01(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to ~~him~~ the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

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**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 20. PERMISSIVE JOINDER OF PARTIES

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**Rule 20.02. Separate Trials**

The court may make such order as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom ~~he~~ the party asserts no claim and who asserts no claim against ~~him~~ the party, and may order separate trials or make other orders to prevent delay or prejudice.

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**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

**RULE 22. INTERPLEADER**

Persons having claims against the plaintiff may be joined as defendants and required to interplead, in an action brought for that purpose, when their claims are such that the plaintiff is or may be exposed to multiple liability. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. If such a defendant admits ~~he is~~ being subject to liability, ~~he~~ that defendant may, upon paying the amount claimed or delivering the property claimed or its value into court or to such person as the court may direct, move for an order to substitute the claimants other than the plaintiff as defendants in ~~his~~ that defendant's stead. On compliance with the terms of such order, the defendant shall be discharged and the action shall proceed against the substituted defendants. It is not ground for objection to such joinder or to such motion that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical with but are adverse to and independent of one another, or that the plaintiff avers that ~~he~~ the plaintiff is not liable in whole or in part to any or all of the claimants. The provisions of this rule do not restrict the joinder of parties permitted in Rule 20.

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

**RULE 23. CLASS ACTIONS**

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**Rule 23.03. Determination by Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions**

* * *

(2) In any class action maintained under Rule 23.02(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude ~~him~~ the member from the class if ~~he~~ the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if ~~he~~ the member desires, enter an appearance through ~~his~~ the member's counsel.

* * *

**Rule 23.06. Derivative Actions by Shareholders or Members**

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall allege that the plaintiff was a shareholder or member at the time of the transaction of which ~~he~~ the plaintiff complains or that ~~his~~ the plaintiff's share or membership thereafter

devolved on ~~him~~ the plaintiff by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action ~~he~~ the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for ~~his~~ the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interest of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

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**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 24. INTERVENTION

### Rule 24.01. Intervention of Right

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and ~~he~~ the applicant is so situated that the disposition of the action may as a practical matter impair or impede ~~his~~ the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

* * *

### Rule 24.03. Procedure

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

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

**Rule 24.04. Notice to Attorney General**

When the constitutionality of an act of the legislature is drawn in question in any action to which the state or an officer, agency or employe of the state is not a party, the party asserting the unconstitutionality of the act shall notify the attorney general thereof within such time as to afford ~~him~~ the attorney general an opportunity to intervene.

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 25. SUBSTITUTION OF PARTIES

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**Rule 25.02. Incompetency**

If a party becomes incompetent, the action shall not abate because of the disability, and the court upon motion served as provided in Rule 25.01 may allow it to be continued by or against ~~his~~ the party's representative.

* * *

**Rule 25.04. Public Officers; Death or Separation from Office**

When any public officer is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against ~~his~~ the officer's successor if it is satisfactorily shown to the court that there is a substantial need for so continuing and maintaining it. Substitution pursuant to this rule may be made when it is shown by supplemental pleading that the successor of any officer adopts or continues or threatens to adopt or continue the action of ~~his~~ the officer's predecessor. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to object.

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## V. DEPOSITIONS AND DISCOVERY

### RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY

* * *

**Rule 26.02. Discovery, Scope and Limits**

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

* * *

(3) **Trial Preparation: Materials.** Subject to the provisions of subdivision 26.02(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision 26.02(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including ~~his~~ the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of ~~his~~ the party's case and that ~~he~~ the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

* * *

**Rule 26.05. Supplementation of Responses**

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement ~~his~~ the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement ~~his~~ the response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which ~~he~~ the person is expected to testify, and the substance of ~~his~~ the person's testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) ~~he~~ the party knows that the response was incorrect when made, or (B) ~~he~~ the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

* * *

**Rule 26.06. Discovery Conference**

At any time after ~~commencement of an action~~ service of the summons the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

* * *

(e) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matter set forth in the motion. Each party and ~~his~~ each party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for a party.

* * *

**Rule 26.07. Signing of Discovery Requests, Responses and Objections**

In addition to the requirements of Rule 33.01(4), every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in ~~his~~ the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state ~~his~~ the party's address. The signature of the attorney or party who constitutes a certification that ~~he~~ the signer has read the request, response, or objection, and that to the best of ~~his~~ the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

* * *

**Notes of Advisory Committee**

**Rule 26.06**

The Advisory Committee recommends that Rule 26.06 be amended to provide for discovery conferences at or after service of the summons rather than after commencement of the action. Although this change is necessary if Rule 3 is amended to permit commencement of actions by filing, the Committee believes this is a change that should be made regardless of the action taken on commencement of actions. This change is intended to allow discovery conferences to be held involving any parties to the action, allowing requests for conferences to be made by plaintiffs after the summons is served or defendants after they are served.

**Rules 26.02, 26.05, 26.06 and 26.07**

The remaining amendments are not intended to substantively change the rule. Their sole purpose is to make the language of the rule gender-neutral.

## RULE 27. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

### Rule 27.01. Before Action

(1) **Petition.** A person who desires to perpetuate ~~his own~~ testimony ~~or that of~~ another person regarding any matter may file a verified petition in the district court of the county of the residence of an expected adverse party. The petition shall be entitled in the name of the petitioner and shall show (a) that the petitioner expects to be a party to an action but is presently unable to bring it or cause it to be brought, (b) the subject matter of the expected action and ~~his~~ the petitioner's interest therein, (c) the facts which ~~he~~ the petitioner desires to establish by the proposed testimony and ~~his~~ the reasons for desiring to perpetuate it, (d) the names or a description of the persons ~~he~~ the petitioner expects will be adverse parties and their addresses so far as known, and (e) the names and addresses of the persons to be examined and the substance of the testimony which ~~he~~ the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the deposition of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

* * *

### Rule 27.02. Pending Appeal

If an appeal has been taken from a judgment or order of a district court, or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment or order was rendered may allow the taking of the deposition of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case, the party who desires to perpetuate the testimony may make a

motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which ~~he~~ the party expects to elicit from each, and (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.

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**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

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### Rule 28.02. In Foreign Countries

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

### Rule 28.03. Disqualification for Interest

No deposition shall be taken before or reported by any person who is a relative or employe or attorney or counsel of any of the parties, or is a relative or employe of such attorney or counsel, or is financially interested in the action, or who has a contract with

the party, attorney, or person with an interest in the action that affects or has a substantial tendency to affect impartiality.

* * *

**Notes of Advisory Committee**

The amendment to Rule 28.02 is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

The amendment to Rule 28.03 is intended to broaden the rule to apply not only to the officer before whom a deposition can be taken, but also to the person who actually reports the proceedings by preparing a transcript. Although these individuals are usually the same person, it is not necessary that they be one person, and the Advisory Committee believes it advantageous to make it clear that disqualification would apply to a party serving in either the capacity of administering the oath and presiding over the deposition and reporting it. It is the Advisory Committee's intention that the rule would apply to persons recording or operating equipment for video taped depositions pursuant to Rule 30.02(4).

The other recommended change to Rule 28.03 is intended to expand the disqualification for interest to persons who, though not relatives or employees of a party or having a direct financial interest in the action, who have contracted with a party or attorney or insurer of a party under terms that would be likely to affect impartiality. The Committee was made aware of certain limited and infrequent instances of contracts between court reporters and parties or their insurers whereby the impartiality of the reporter is questioned. The Committee is also recommending that Rule 30.06(2) be amended to require certification of compliance with the rule. The amendment is not entitled to

prohibit any particular contract between a party or its insurer and a court reporter, and, in fact, believes that many such contracts have the salutary purpose and resolve of decreasing the cost of litigation to all parties. Where a contract has a substantial tendency to render the reporter impartial in any way, the Advisory Committee believes that individual is not a proper officer to report a deposition.

## RULE 30. DEPOSITIONS UPON ORAL EXAMINATION

### Rule 30.01. When Depositions May Be Taken

After ~~commencement of the action~~ service of the summons, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4.04, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision 30.02(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

### Rule 30.02. Notice of Examination: General Requirements: Special Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization; Telephone Depositions

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

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (a) states that the person to be examined will be unavailable for examination within the state unless ~~his~~ the person's deposition is taken before expiration of the 30-day period,

and (b) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and ~~his~~ that signature constitutes a certification by ~~him~~ the person that to the best of ~~his~~ the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that after ~~he was~~ being served with notice under this subdivision (2) ~~he~~ the party was unable through exercise of diligence to obtain counsel to represent ~~him~~ the party at the taking of the deposition ~~of himself or other persons~~ the deposition may not be used against such party.

* * *

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

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

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

The following procedure shall be used for video depositions:

(a) The notice of the taking of a video deposition and a subpoena for the attendance of a non-party witness at the deposition shall state that the

deposition is to be visually recorded and that a backup simultaneous transcript will be taken.

(b) The person making the video recording must retain possession of it. The video recording must securely sealed and marked for identification purposes.

(c) The parties may purchase audio or video copies of the recording from the operator. The operator shall certify that all parties who ordered copies have been charged at the same rate for said copies.

(d) A party who seeks to use a video deposition at trial must provide the court with either:

(1) A transcript of the deposition which shall be used for a ruling on any objections, or

(2) A stipulation by all parties that there are no objections and that the recording or the agreed upon portion of it may be played.

* * *

(6) A party may in ~~his~~ the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which ~~he~~ the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone. For the purposes of this rule and Rules 28.01, 37.01(1), 37.02(1) and 45.04, a deposition taken by telephone is taken in the district and at the place where the deponent is to answer questions propounded.

(8) Whenever a total of three depositions on oral examination have been noticed or taken in any pending action by a party, that party shall not notice additional oral depositions until a discovery conference pursuant to Rule 26.06 has been held.

**Rule 30.03. Examination and Cross Examination; Record of Examination; Oath; Objections**

Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 43.02. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by some one acting under ~~his~~ the officer's direction and in ~~his~~ the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision 30.02(4) of this rule. If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objection. In lieu of participating in the oral examination, a party may serve written questions in a sealed envelope on the party taking the deposition and ~~he~~ that party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

* * *

**Rule 30.05. Submission to Witness; Changes; Signing**

When the testimony is stenographically transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by ~~him~~ the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then by signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to ~~him~~ the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness, or the fact of the refusal to sign, together with the reason, if any, given therefor; and the deposition may then be used as fully as through signed, unless on a motion to suppress under Rule 32.04(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

**Rule 30.06. Certification; Copies**

(1) The officer shall certify on the deposition that the witness was duly sworn by ~~him~~ 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 notices the deposition, and that all parties who ordered copies have been charged at the same rate for such copies. Unless otherwise ordered by the court or agreed to by the parties, the officer shall securely sealed the deposition in an envelope endorsed with the title of the action and marked "Deposition of

(herein insert the name of witness)," and shall promptly send it to the party taking the deposition, who shall be identified on the record.

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

* * *

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

(1) 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 ~~him~~ the other party and ~~his~~ the other party's attorney in so attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon ~~him~~ the witness, and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the

deposition of that witness 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 ~~him~~ that other party and ~~his~~ that other party's attorney in so attending, including reasonable attorney's fees.

## Notes of Advisory Committee

**Rule 30.01**

The Advisory Committee recommends that Rule 30.01 be amended to provide for the taking of depositions at or after service of the summons rather than after commencement of the action. Although this change is necessary if Rule 3 is amended to permit commencement of actions by filing, the Committee believes this is a change that should be made regardless of the action taken on commencement of actions. This change is intended to continue the present timing rules for depositions and to make the language of the rules uniform. Depositions may be taken by or of any parties to the action, allowing notices for taking depositions to be served by plaintiffs with or after the summons is served or by defendants after they are served. Although a plaintiff might serve a deposition notice on one defendant after that party had been served but before service was achieved on other defendants, normally the deposition should not be taken until all defendants have been served. This practice will minimize the need for multiple depositions of the same witnesses.

**Rule 30.02**

The Advisory Committee recommends that Rule 30.02(4) be amended by adding language permitting depositions to be taken by simultaneous audio and visual electronic recording (videotape depositions) without necessity of court order or agreement of the

parties if the deposition is taken according to the specific guidelines set forth in the rule. This amendment reflects the increasing acceptance of videotaped depositions as a routine and appropriate, and frequently effective and valuable, part of the discovery process. The Advisory Committee believes it should be unnecessary to require parties who cannot obtain agreement on taking depositions by videotape to subject the courts to motions which would be routinely granted. The court can continue to set any guidelines, either more restrictive or less restrictive, on the use of video depositions or any other manner of non-stenographic recording under the existing provisions of Rule 30.02(4). The court can also address this subject in protective orders entered under Rule 26.03 or in orders issued at discovery conferences under Rule 26.06 or pretrial conferences under Rule 16. The amendment allows videotape depositions without agreement or order. The parties may enter into stipulations under Rule 29 to provide additional ground rules.

The amendment to Rule 30.02(7) to allow telephone depositions follows an identical change made to Fed. R. Civ. P. 30(b)(7) in 1980. That amendment has worked in federal litigation without undue difficulty and has resulted in savings of litigation expense and time. The Advisory Committee believes that the rule should specifically provide for telephonic deposition. The rule identifies the location of the deposition as where the deponent is, rather than where the attorneys may be, in order to obviate any disputes over where motions affecting a non-party witness should be heard. The rule follows the federal rule in this regard, and deems the deposition taken where the witness is located in order to minimize the burden on non-party witnesses.

The recommended changes to Rule 30.02(8) address the issue of abusive discovery practices without placing arbitrary limits on the extent of discovery or altering the basic philosophy of free and open discovery. The Committee perceives that abusive discovery practices persist in part because of the underuse of the case management provisions of these rules which were put into place by previous amendments.

Rule 30.02 (8) requires a party to trigger the involvement of the court in the discovery process at an early point in the litigation. The involvement of the court sill tend to discourage parties from engaging in unjustifiable discovery conduct which has previously concerned the committee and has been the precipitating cause of prior amendments to the rules.

The parties could, expressly, or tacitly, waive the provisions of this rule as provided in Rule 29. The requirement of Rule 5.04 that notices of depositions be filed ensures that the court will have ultimate control over the implementation of this rule and can, on its own motion, provide sanctions for its violation.

The committee affirms its stand that the philosophy of the rules should allow free and open discovery, and believes the discovery practices of most Minnesota attorneys presently comply with the spirit and purpose of the rule. The committee considers the change appropriate however to discourage those attorneys who abuse discovery, thereby increasing the cost of litigation and imposing an unnecessary burden on the court system. The change also encourages earlier involvement of the courts in managing cases, particularly those likely to benefit from case management.

The Committee believes that non-stenographic recording by videotape depositions should be routinely allowed in any case where the party seeking the deposition desires to take it by videotape. Although the taking of video depositions remains subject to the protections offered by Rule 26.03 (protective orders), the Committee believes that videotape depositions should be allowed by the courts except in unusual circumstances. Accordingly, it appears appropriate to establish clear ground rules for the use of video depositions to standardize the practice in Minnesota and obviate unnecessary motions dealing with what are essentially ministerial aspects of handling video depositions.

**Rules 30.03, 30.05, 30.06 and 30.07**

These amendments are not intended to substantively change the rule. Their sole purpose is to make the language of the rule gender-neutral.

The additional language added to Rule 30.06(1) adds a further certification requirement. The purpose of this amendment is to assure that parties to litigation are treated fairly with respect to the cost of obtaining deposition transcripts. The Committee has been advised of isolated circumstances where a party may shift the cost of depositions to other parties either by not ordering or paying for the transcription of the original of a deposition noticed by that party or by entering into a contract whereby deposition copies are not priced equally to all parties. The amendment makes it clear that the party noticing the deposition has the burden, unless the court orders or the parties agree otherwise, to have the deposition transcribed and to pay for the cost of the court reporter's appearance at the deposition. The Committee believes this rule essentially only clarifies the practice intended historically. Rule 30.06(2) implicitly requires that the reporter provide a copy to any party or the deponent upon payment of "reasonable charges." This amendment makes it clear that it is presumptively unreasonable to charge different costs for different copies. With the widespread availability of photocopying equipment there is no basis for charging parties different prices for copies of deposition transcripts, regardless of when they are ordered.

The remaining amendments are not intended to substantively change the rule. Their sole purpose is to make the language of the rule gender-neutral.

## RULE 31. DEPOSITIONS OF WITNESSES UPON WRITTEN QUESTIONS

### Rule 31.01. Serving Questions; Notice

After ~~commencement of the action~~ service of the summons, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45.

A party desiring to take the deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify ~~him~~ the person or the particular class or group to which ~~he~~ the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30.02(6).

* * *

### Notes of Advisory Committee

The Advisory Committee recommends that Rule 31.01 be amended to provide for the taking of depositions on written questions at the time of or after service of the summons rather than after commencement of the action. Although this change is necessary if Rule 3 is amended to permit commencement of actions by filing, the Committee believes this is a change that should be made regardless of the action taken on commencement of actions. This change follows a paralled recommendation for amendment of Rule 30.01 and is intended to continue the present timing rules for

depositions and to make the language of the rules uniform. Depositions may be taken by or of any parties to the action, allowing notices for taking depositions to be served by plaintiffs with or after the summons is served or by defendants after they are served. Although a plaintiff might serve a deposition notice on one defendant after that party had been served but before service was achieved on other defendants, normally the deposition should not be taken until all defendants have been served. This practice will minimize the need for multiple depositions of the same witnesses.

The remaining amendments are not intended to substantively change the rule. Their sole purpose is to make the language of the rule gender-neutral.

## RULE 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS

### Rule 32.01. Use of Depositions

At the trial or upon the hearing or a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, and subject to the provisions of Rule 32.02, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof in accordance with any one of the following provisions:

* * *

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require ~~him~~ the offering party to introduce any other part which ought in fairness to be considered with the part introduced and any party may introduce any other parts.

* * *

### Rule 32.03. Effect of Taking or Using Depositions

A party does not make a person ~~his~~ the party's own witness for any purpose by taking ~~his~~ that person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision 32.01(2) of this rule. At the trial or hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by ~~him~~ that party or by any other party.

* * *

**Rule 32.05. Use of Videotape Depositions**

Video depositions may be used in court proceedings to the same extent as stenographically recorded depositions.

**Notes of Advisory Committee**

**Rule 32.01 and 32.03**

The amendments are not intended to substantively change the rule. Their sole purpose is to make the language of the rule gender-neutral.

**Rule 32.05**

This new rule makes it clear that video depositions, as allowed under the current rules and made more readily available in the proposed amendment Rule 30.02(4), may be used in court proceedings to the same extent as any stenographically recorded depositions. It is the view of the Advisory Committee that a transcript is a dramatically more manageable way to use deposition testimony in most pretrial proceedings, but depositions may be used in their video form. The party seeking to use them should be responsible for making arrangements for their convenient use by the fact finder or judge in pretrial proceedings.

## RULE 33. INTERROGATORIES TO PARTIES

### Rule 33.01. Availability; Procedure for Use

(1) Any party may serve upon any other party written interrogatories. Interrogatories may, without leave of court, be served upon ~~the plaintiffs after commencement of the action, and upon any other party with or~~ any party after service of the summons and complaint ~~upon that party~~. No party may serve more than a total of 50 interrogatories upon any other party unless permitted to do so by the court upon motion, notice and a showing of good cause. In computing the total number of interrogatories each subdivision of separate questions shall be counted as an interrogatory.

* * *

### Notes of Advisory Committee

The Advisory Committee recommends that Rule 33.01 be amended to provide for the use of interrogatories at the time of or after service of the summons rather than commencement of the action. Although this change is necessary if Rule 3 is amended to permit commencement of actions by filing, the Committee believes this is a change that should be made regardless of the action taken on commencement of actions. This change is intended to continue the present timing rules for interrogatories and to make the language of the rules uniform. Interrogatories may be served by or on any parties to the action, allowing them to be served by plaintiffs with the summons or after the summons is served or by defendants after they are served.

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

### Rule 34.01. Scope

Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on ~~his~~ behalf of the party making the request, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26.02 and which are in the possession, custody or control of the party upon whom the request is served, or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26.02.

### Rule 34.02. Procedure

The request may, without leave of court, be served upon ~~the plaintiff after commencement of the action and upon~~ any ~~other~~ party with or after services of the summons and complaint ~~upon that party~~. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within

45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the party shall be specified. The party submitting the request may move for an order under Rule 37 with respect to any objection to or other failure to respond to the request or any party thereof, or any failure to permit inspection as requested. A party who produces documents for inspection shall produce them as they are kept in the usual course of business at the time of the request or, at the option of the producing party, shall organize them to correspond with the categories in the request.

* * *

**Notes of Advisory Committee**

**Rule 34.01**

The Advisory Committee recommends that Rule 34.01 be amended to provide for the service of document production requests with or after service of the summons rather than commencement of the action. Although this change is necessary if Rule 3 is amended to permit commencement of actions by filing, the Committee believes this is a change that should be made regardless of the action taken on commencement of actions. This change is intended to continue the present timing rules for interrogatories and to make the language of the rules uniform. Rule 34 requests for production may be served by any party to the action, allowing service by plaintiffs with the summons or after the summons is served or by defendants after they are served.

**Rule 34.02**

The remaining amendments are not intended to substantively change the rule. Their sole purpose is to make the language of the rule gender-neutral.

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

* * *

**Rule 35.02. Report of Findings**

(1) If requested by the party against whom an order is made under Rule 35.01 or by the person examined, the party causing the examination to be made shall deliver to ~~him~~ the requesting party a copy of a detailed written report of the examining physician setting out ~~his~~ the physician's findings and conclusions, together with like reports of all earlier examination of the same condition. After such request and delivery, the party causing the examination to be made shall be entitled, upon request, to receive from the party or person examined a like report of any examination, previously or thereafter made, of the same mental or physical or blood condition. If the party or person examined refuses to deliver such report, the court, on motion and notice, may make an order requiring delivery on such terms as are just, and, if a physician fails or refuses to make such a report, the court may exclude ~~his~~ the physician's testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the adverse party waives any privilege ~~he~~ the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine ~~him~~ the party or the person under ~~his~~ the party's control in respect of the same mental or physical or blood condition.

**Rule 35.03. Waiver of Medical Privilege**

If at any stage of an action a party voluntarily places in controversy the physical, mental or blood condition of ~~himself~~ that party, of a decedent, or a person under ~~his~~ that

party's control, such party thereby waives any privilege ~~he~~ that party may have in that action regarding the testimony of every person who has examined or may thereafter examine ~~him~~ that party or the person under ~~his~~ that party's control in respect of the same mental, physical or blood condition.

* * *

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 36. REQUESTS FOR ADMISSION

### Rule 36.01. Request for Admission

A party may serve upon any other party a written request for the admission for purposes of the pending action, only, of the truth of any matters within the scope of Rule 26.02 set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request, unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served ~~upon the plaintiff after commencement of the action and upon any other party with or~~ after service of the summons and complaint ~~upon that party~~.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless within 30 days after service the request, or within such shorter or longer time as the court may allow the party to whom the request if directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by ~~his~~ the party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon ~~him~~ that defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and, when good faith requires that a party qualify ~~his~~ an answer or deny only a part of the matter of which an admission is requested, ~~he~~ the party shall specify so much of it as is true and qualify or deny the remainder. An answering party

may not give lack of information or knowledge as a reason for failure to admit or deny unless ~~he~~ the party states that ~~he~~ the party has made reasonable inquiry and that the information known or readily obtainable by ~~him~~ the party is insufficient to enable ~~him~~ the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; ~~he~~ the party may, subject to the provisions of Rule 37.03, deny the matter or set forth reasons why ~~he~~ the party cannot admit or deny it.

* * *

**Rule 36.02. Effect of Admission**

Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice ~~him~~ that party in maintaining ~~his~~ the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by ~~him~~ that party for any other purpose nor may be used against ~~him~~ that party in any other proceeding.

**Notes of Advisory Committee**

**Rule 36.01**

The Advisory Committee recommends that Rule 36.01 be amended to provide for the service of requests for admissions with the summons or after service of the summons

rather than after commencement of the action. Although this change is necessary if Rule 3 is amended to permit commencement of actions by filing, the Committee believes this is a change that should be made regardless of the action taken on commencement of actions. This change is intended to continue the present timing rules for interrogatories and to make the language of the rules uniform. Requests for admissions may be served by any party to the action, allowing service by plaintiffs with the summons or after the summons is served or by defendants after they are served.

The remaining amendments are not intended to substantively change the rule. Their sole purpose is to make the language of the rule gender-neutral.

## RULE 37. FAILURE TO MAKE DISCOVERY; SANCTIONS

### Rule 37.01. Motion for Order Compelling Discovery

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

* * *

(2) **Motion.** If a deponent fails to answer a question propounded or submitted under Rule 30 or Rule 31, or a corporation or other entity fails to make a designation under Rule 30.02(6) or Rule 31.01, or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before ~~he applies~~ applying for an order.

* * *

### Rule 37.02. Failure to Comply with Order

* * *

(2) **Sanctions by Court in Which Action is Pending.** If a party or an officer, director, employee or managing agent of a party or a person designated under Rule

30.02(6) or Rule 31.01 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision 37.01 of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

* * *

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting ~~him~~ that party from introducing designated matters in evidence;

* * *

(e) Where a party has failed to comply with an order under Rule 35.01 requiring ~~him~~ that party to produce another for examination, such orders as are listed in paragraphs (a), (b), and (c) of this subdivision, unless the party failing to comply shows that ~~he~~ that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising ~~him~~ that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

**Rule 37.03. Expenses on Failure to Admit**

If a party fails to admit the genuineness of any documents or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the geniuneness of the document or the truth of any such matter, ~~he~~ the requesting party may apply to the court for an order requiring the other party to pay ~~him~~ the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36.01, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that ~~he~~ the party might prevail on the matter, or (4) there was other good reason for the failure to admit.

**Rule 37.04. Failure of a Party to Attend at Own Deposition or Serve Answers**

If a party or an officer, director, employee or managing agent of a party or a person designated under Rule 30.02(6) or Rule 31.01 to testify on behalf of a party fails (1) to appear before the officer who is to take ~~his~~ the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (a), (b) and (c) of subdivision 37.02(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising ~~him~~ that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

* * *

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## VI. TRIALS

### RULE 38. JURY TRIAL OF RIGHT

* * *

**Rule 38.02. Waiver**

In actions arising on contract, and by permission of the court in other actions, any party thereto may waive a jury trial in the manner following:

(1) By failing to appear at the trial;

(2) By written consent, by the party or ~~his~~ the party's attorney, filed with the ~~clerk~~ court administrator;

(3) By oral consent in open court, entered in the minutes.

**Rule 38.03. Placing Action on Calendar**

A party desiring to have an action placed on the calendar for trial shall, after issue is joined, prepare a note of issue setting forth the title of the action, whether the issue is one of fact or of law, and if an issue of fact, whether it is triable by court or by jury, and the names and addresses and the telephone numbers of the respective counsel, and shall serve the same on counsel for all parties not in default and file it, with proof of service, with the ~~clerk~~ court administrator within 10 days after such service in all districts where but one term of court is held annually and in all other districts at least 28 days before the beginning of a general term; and thereupon the action shall be placed on the calendar for trial and shall remain thereon from term to term until tried or stricken therefrom. The party serving a note of issue shall, and any other party may, serve a note of issue upon

counsel for any person who becomes a party to the action subsequent to the initial service.

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

This amendment is intended to conform the rule to the statute creating the position of Court Administrator to replace the former Clerk of Court, Minn. Stat. § 645.44, subd. 2 (1986).

## RULE 39. TRIAL BY JURY OR BY THE COURT

* * *

### Rule 39.04. Opening Statements by Counsel

Before any evidence is introduced, plaintiff may make an opening statement, whereupon any other party may make an opening statement or may reserve the same until ~~his~~ that party's case in chief is opened. Opening statements may be waived by any party to the action without affecting the right or any other party to make such an opening statement.

### Notes of Advisory Committee

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 41. DISMISSAL OF ACTIONS

### Rule 41.01. Voluntary Dismissal; Effect Thereof

(1) **By Plaintiff by Stipulation.** Subject to the provisions of Rules ~~23.03~~ 23.05, 23.06 and ~~of~~ Rule 66, an action may be dismissed by the plaintiff and without order of court (a) by filing a notice of dismissal not less than 10 days before the opening of the term of court at which the action is noted for trial or, in counties having continuous terms of court, not less than 10 days before the day on which the action is first set for trial, if a provisional remedy has not been allowed or a counterclaim made or other affirmative relief demanded in the answer, or (b) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) **By Order of Court.** Except as provided in paragraph (1) of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon ~~him~~ the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

**Rule 41.02. Involuntary Dismissal; Effect Thereof**

* * *

(2) After the plaintiff has completed the presentation of ~~his~~ evidence, the defendant, without waiving ~~his~~ the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. In an action tried by the court without a jury the court as trier of the fact may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52.01.

* * *

**Notes of Advisory Committee**

The other amendments are not intended to substantively change the rule. Their sole purpose is to make the language of the rule gender-neutral.

## RULE 43. EVIDENCE

* * *

### Rule 43.02. Examination of Hostile Witnesses and Adverse Parties

A party may interrogate an unwilling or hostile witness by leading questions. A party may call an adverse party or a witness identified with an adverse party, and interrogate ~~him~~ the party or witness by leading questions and contradict and impeach ~~him~~ the party or witness on material matters in all respects as if ~~he~~ the party or witness had been called by the adverse party. Where ~~the~~ A witness who is an adverse party ~~he~~ may be examined by ~~his~~ the witness's counsel upon the subject matter of ~~his~~ examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted and impeached by any other party adversely affected by ~~his~~ the witness's testimony. Where the witness is a witness identified with the an adverse party ~~he~~ the witness may be cross-examined, contradicted and impeached by any party to the action.

### Rule 43.03. Record of Excluded Evidence

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

* * *

**Rule 43.06. Res Ipsa Loquitur**

Res ipsa loquitur shall be regarded as nothing more than one form of circumstantial evidence creating a permissive inference of negligence. The plaintiff shall be given the benefit of its natural probative force existing at the close of all the evidence even though ~~he~~ the plaintiff has introduced specific evidence of negligence or made specific allegations of negligence in his pleadings.

**Rule 43.07. Interpreters**

The court may appoint an interpreter of its own selection and may fix ~~his~~ the interpreter's 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 costs, in the discretion of the court.

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 44. PROOF OF OFFICIAL RECORD

### Rule 44.01. Authentication

(1) **Domestic.** An official record kept within the United States, or any state, district, commonwealth, territory, or insular possession thereof or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by ~~his~~ the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of ~~his~~ the officer's office.

* * *

### Rule 44.04. Determination of Foreign Law

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

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 45. SUBPOENA

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

(1) Every subpoena shall be issued by the ~~clerk~~ 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 ~~clerk~~ 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.

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

(3) Every subpoena shall contain a notice to the person to whom it is directed advising that person of ~~his~~ that person's right to reimbursement for certain expenses under Rule 45.06, and ~~his~~ the right to have the amount of those expenses determined prior to compliance with the subpoena.

* * *

### Rule 45.03. Service

A subpoena may be served by the sheriff, ~~by his~~ a deputy sheriff, or any other person who is not a party. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person or by leaving a copy at ~~his~~ the person's usual

place of abode with some person or suitable age and discretion then residing therein and by tendering to ~~him~~ the person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the state of Minnesota or an officer or agency thereof, fees and mileage need not be tendered.

**Rule 45.04. Subpoena for Taking Depositions; Place of Examination**

* * *

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

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

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

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

Subject to the provision of Rules 26.02 and 26.03, a witness who is not a party to the action or an employee of a party [except a person appointed pursuant to Rule 30.02(6)] and who is required to give testimony or produce documents relating to a profession, business

or trade, or relating to knowledge, information or facts obtained as a result of ~~his~~ activities in such profession, business or trade, is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents.

The party serving the subpoena shall make arrangements for such reasonable compensation prior to the time of the taking of such testimony. If such reasonable arrangements are not made the person subpoenaed may proceed under Rule 45.02 or 45.04(2). The party serving the subpoena may, if objection has been made, move upon notice to the deponent and all parties for an order directing the amount of such compensation at any time before the taking of the deposition. Any amounts paid shall be subject to the provisions of Rule 54.04.

**Notes of Advisory Committee**

**Rules 45.01 and 45.05**

These amendments are intended to conform the rule to the statute creating the position of Court Administrator to replace the former Clerk of Court, Minn. Stat. § 645.44, subd. 2 (1986).

**Rules 45.03, 45.04 and 45.06**

These amendments are not intended to substantively change the rule. Their sole purpose is to make the language of the rule gender-neutral.

**RULE 46. EXCEPTIONS UNNECESSARY**

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been taken it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which ~~he~~ the party desires the court to take or ~~his~~ the party's objection to the action of the court and ~~his~~ the party's grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice ~~him~~ the party. A minute of the objection to the ruling or order shall be made by the judge or reporter.

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 49. SPECIAL VERDICTS AND INTERROGATORIES

### Rule 49.01. Special Verdicts

(1) The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and require written findings thereon as it deems most appropriate. The court shall give to the jury such explanations and instructions concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives ~~his~~ the right to a trial by jury of the issue so omitted unless before the jury retires ~~he~~ the party demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict. Except as provided in Rule 49.01(2), neither the court nor counsel shall inform the jury of the effect of its answers on the outcome of the case.

(2) In actions involving Minn. Stat. 1971, Sec. 604.01, the court shall inform the jury of the effect of its answers to the percentage of negligence question and shall permit counsel to comment thereon, unless the court is of the opinion that doubtful or unresolved questions of law, or complex issues of law or fact are involved, which may render such instruction or comment erroneous, misleading or confusing to the jury.

* * *

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

**RULE 50. MOTION FOR A DIRECTED VERDICT; JUDGMENT NOTWITHSTANDING VERDICT; ALTERNATIVE MOTION**

* * *

**Rule 50.02. Judgment Notwithstanding Verdict**

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

* * *

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

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

**RULE 51. INSTRUCTIONS TO THE JURY; OBJECTIONS**

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform the counsel of its proposed action upon the requests prior to their arguments to the jury, and such action shall be made a part of the record. The court shall instruct the jury before or after closing arguments of counsel except, at the discretion of the court, preliminary instructions need not be repeated. The instructions may be in writing and, in the discretion of the court, one complete copy may be taken to the jury room when the jury retires to deliberate. No party may assign as error unintentional misstatements and verbal errors, or omissions in the charge, unless ~~he~~ that party objects thereto before the jury retires to consider its verdict, stating specifically the matter to which ~~he~~ that party objects and the ground of ~~his~~ the objections. An error in the instructions with respect to fundamental law or controlling principle may be assigned in a motion for a new trial though it was not otherwise called to the attention of the court.

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 52. FINDINGS BY THE COURT

### Rule 52.01. Effect

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Finding of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a referee, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court or in an accompanying memorandum. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41.02.

#### Notes of Advisory Committee

This amendment follows the identical amendment made to its federal counterpart, Fed. R. Civ. P. 52(a). The purpose of the amendment is to conform the rules to the decision of the United States Supreme Court in Anderson v. City of Bessemer City, 470 U.S. 564 (1985). The federal rule had been amended at the time Bessemer City was decided. The Advisory Committee believes that the standard of review aught to be the same in state and federal cases. Aside from the benefits from having a state practice

mirror the federal practice, the Advisory Committee gave careful consideration to the proper standard for review of findings based on documentary evidence. It ultimately concluded that the amended rule is preferable.

The Supreme Court decision in Bessemer City followed a long debate on the proper scope of appellate review in the federal courts. Compare Marcum v. United States, 621 F.2d 142 (5th Cir. 1980) (applying expanded scope of review); Swanson v. Baker Indus., Inc., 615 F.2d 479 (8th Cir. 1980); (same); with Maxwell v. Summer, 673 F.2d 1031 (9th Cir.) cert. denied, 459 U.S. 976 (1982) (applying "clearly erroneous" standard to all findings); Case v. Morrisette, 475 F.2d 1300 (D.C. Cir. 1973) (same).

Minnesota has followed the rule allowing appellate court review of findings based solely on documentary evidence without requiring any deference to the trial court's view of the evidence. See In re Trust Known as Great Northern Iron Ore Properties, 308 Minn. 221, 243 N.W.2d 302, cert. denied, 429 U.S. 1001 (1976). The proposed amendment would curtail the further applicability of the Great Northern Iron Ore Trust decision and would require appellate courts to review findings based on documentary and oral evidence the same way. The amended rule still would permit full appellate review of any trial court findings that were clearly erroneous. It is undoubtedly easier for an appellate court to reach a conclusion that a mistaken finding drawn from documentary evidence is "clearly erroneous" and therefore reversible. The committee believes, however, that a party should not be entitled to a trial de novo only because the findings were based on documentary evidence.

## RULE 53. REFEREES

### Rule 53.01. Appointment and Compensation

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

* * *

### Rule 53.03. Powers

The order of reference to the referee may specify or limit ~~his~~ the referee's powers and may direct ~~him~~ the referee to report only upon particular issues, or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the referee's report. Subject to the specifications and limitations stated in the order, the referee has and shall exercise the power to regulate all proceedings in every hearing before ~~him~~ the referee and to do all acts and take all measures necessary or proper for the efficient performance of ~~his~~ the

referee's duties under the order. ~~He~~ The referee may require the production before ~~him~~ the referee of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. ~~He~~ The referee may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may ~~himself~~ examine them and may call the parties to the action and examine them upon oath. When a party so requests, the referee shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 43.03 for a court sitting without a jury.

**Rule 53.04. Proceedings**

(1) **Meetings.** When a reference is made, the ~~clerk~~ court administrator shall forthwith furnish the referee with a copy of the order of reference. Upon receipt thereof, unless the order of reference otherwise provides, the referee shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the referee to proceed with all reasonable diligence. Either party, on notice to the parties and referee, may apply to the court for an order requiring the referee to speed the proceedings and make ~~his~~ the report. If a party fails to appear at the time and place appointed, the referee may proceed ex parte or, in ~~his~~ the referee's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) **Witnesses.** The parties may procure the attendance of witnesses before the referee by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, ~~he~~ the witness may be

punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

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

**Rule 53.05. Report**

(1) **Contents and Filing.** The referee shall prepare a report upon the matters submitted to ~~him~~ the referee by the order of reference and, if required to make findings of fact and conclusions of law, ~~he~~ the referee shall set them forth in the report. ~~He~~ The referee shall file the report with the ~~clerk of the court~~ court administrator and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The ~~clerk~~ court administrator shall forthwith mail to all parties notice of the filing.

* * *

(3) **In Jury Actions.** In an action to be tried by a jury the referee shall not be directed to report the evidence. ~~His~~ The referee's findings upon the issues submitted to

~~him~~ the referee are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

* * *

(5) **Draft Report.** Before filing ~~his~~ the referee's report, a referee may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

This amendment is intended to conform the rule to the statute creating the position of Court Administrator to replace the former Clerk of Court, Minn. Stat. § 645.44, subd. 2 (1986).

**RULE 54. JUDGMENT COSTS**

* * *

**Rule 54.04. Costs**

Costs and disbursements shall be allowed as provided by statute. Costs and disbursements may be taxed by the ~~clerk~~ court administrator on two days' notice, and inserted in the judgment. The disbursements shall be stated in detail and verified by affidavit, which shall be filed, and a copy of such statement and affidavit shall be served with the notice. The party objecting to any item shall specify in writing the ground thereof; a party aggrieved by the action of the ~~clerk~~ court administrator may file a notice of appeal with the ~~clerk~~ court administrator who shall forthwith certify the matter to the court. The appeal shall be heard upon eight days' notice and determined upon the objections so certified.

**Notes of Advisory Committee**

This amendment is intended to conform the rule to the statute creating the position of Court Administrator to replace the former Clerk of Court, Minn. Stat. § 645.44, subd. 2 (1986).

## RULE 55. DEFAULT

### Rule 55.01. Judgment

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed therefor by these rules or by statute, and that fact is made to appear by affidavit, judgment by default shall be entered against ~~him~~ that party as follows:

(1) When the plaintiff's claim against a defendant is upon a contract for the payment of money only, or for the payment of taxes and penalties and interest thereon owing to the state, the ~~clerk~~ court administrator, upon request of the plaintiff and upon affidavit of the amount due, which may not exceed the amount demanded in the complaint, shall enter judgment for the amount due and costs against the defendant.

(2) In all other cases, the party entitled to a judgment by default shall apply to the court therefor. If a party against whom judgment is sought has appeared in the action, ~~he~~ that party shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If the action be one for the recovery of money only, the court shall ascertain, by a reference or otherwise, the amount to which the plaintiff is entitled, and order judgment therefor.

* * *

**Notes of Advisory Committee**

This amendment is intended to conform the rule to the statute creating the position of Court Administrator to replace the former Clerk of Court, Minn. Stat. § 645.44, subd. 2 (1986). This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 56. SUMMARY JUDGMENT

**Rule 56.01. For Claimant**

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the ~~commencement of the action~~ service of the summons or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in ~~his~~ the party's favor upon all or any part thereof.

**Rule 56.02. For Defending Party**

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in ~~his~~ the party's favor as to all or any part thereof.

* * *

**Rule 56.05. Form of Affidavits; Further Testimony; Defense Required**

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. When a motion for summary judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere averments or denials of ~~his~~ the adverse party's pleading but must present specific facts showing that there is a

genuine issue for trial. If ~~he~~ the adverse party does not so respond, summary judgment, if appropriate, shall be entered against ~~him~~ the adverse party.

**Rule 56.06. When Affidavits are Unavailable**

Should it appear from the affidavits of a party opposing the motion that ~~he~~ the party cannot for reasons stated present, by affidavit, facts essential to justify ~~his~~ the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other orders as is just.

**Rule 56.07. Affidavits Made in Bad Faith**

Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits cause ~~him~~ the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

**Notes of Advisory Committee**

The Advisory Committee recommends that Rule 56.01 be amended to provide for the bringing of a motion for summary judgment 20 days after service of the summons rather than 20 days after commencement of the action. Although this change is necessary if Rule 3 is amended to permit commencement of actions by filing, the Committee believes this is a change that should be made regardless of the action taken on commencement of actions. This change is intended to continue the present timing rules for summary judgment motions and to make the language of the rules uniform.

The remaining amendments are not intended to substantively change the rule. Their sole purpose is to make the language of the rule gender-neutral.

## RULE 58. ENTRY OF JUDGMENT; STAY

### Rule 58.01. Entry

Unless the court otherwise directs, and subject to the provisions of Rule 54.02, judgment upon the verdict of a jury, or upon an order of the court for the recovery of money only or for costs or that all relief be denied, shall be entered forthwith by the ~~clerk~~ court administrator; but the court shall direct the appropriate judgment to be entered upon a special verdict or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49 or upon an order of the court for relief other than money or costs. Entry of judgment shall not be delayed for the taxation of costs, and the omission of costs shall not affect the finality of the judgment. The judgment in all cases shall be entered and signed by the ~~clerk~~ court administrator in the judgment roll; this entry constitutes the entry of the judgment; and the judgment is not effective before such entry.

* * *

**Notes of Advisory Committee**

This amendment is intended to conform the rule to the statute creating the position of Court Administrator to replace the former Clerk of Court, Minn. Stat. § 645.44, subd. 2 (1986).

## RULE 60. RELIEF FROM JUDGMENT OR ORDER

* * *

### Rule 60.02. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or ~~his~~ the party's legal representative from a final judgment (other than a divorce decree), order, or proceeding and may order a new trial or grant such other relief as may be just for the following reasons: (1) Mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.03; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct or an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this Rule 60.02 does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Rule 4.043, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 63. DISABILITY OR DISQUALIFICATION OF JUDGE; NOTICE TO REMOVE; ASSIGNMENT OF A JUDGE

### Rule 63.01. Disability of Judge

If by reason of death, sickness, or other disability a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned of findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that ~~he~~ such other judge cannot perform those duties because ~~he~~ that judge did not preside at the trial or for any other reason, he that judge may in ~~his~~ that judge's discretion grant a new trial.

### Rule 63.02. Interest or Bias

No judge shall sit in any case if ~~he~~ that judge be interested in its determination or if ~~he~~ that judge might be excluded for bias from acting therein as a juror. If there be no other judge of the district who is qualified, or if there be only one judge of the district, such judge shall forthwith notify the chief justice of the supreme court of ~~his~~ that judge's disqualification.

### Rule 63.03. Notice to Remove

Any party or ~~his~~ attorney may make and serve on the opposing party and file with the ~~clerk~~ court administrator a notice to remove. The notice shall be served and filed within ten days after the party receives notice of which judge is to preside at the trial or hearing, but not later than the commencement of the trial or hearing.

No such notice may be filed by a party or ~~his~~ attorney against a judge who has presided at a motion or any other proceeding of which the party had notice. A judge who

has presided at a motion or other proceeding may not be removed except upon an affirmative showing of prejudice on the part of the judge.

After a litigant has once disqualified a presiding judge as a matter of right, he that party may disqualify the substitute judge, but only by making an affirmative showing of prejudice. A showing that the judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice.

Upon the filing of a notice to remove or if a litigant makes an affirmative showing of prejudice against a substitute judge, the chief judge of the judicial district shall assign any other judge of any court within the district to hear the cause.

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**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## VII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PLEADINGS

### RULE 65. INJUNCTIONS

**Rule 65.01. Temporary Restraining Order; Notice; Hearing; Duration**

A temporary restraining order may be granted without written or oral notice to the adverse party or ~~his~~ that party's attorney only if (a) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or ~~his~~ that party's attorney can be heard in opposition, and (b) the applicant's attorney states to the court in writing the efforts, if any, which have been made to give notice or the reasons supporting ~~his~~ the claim that notice should not be required. In the event that a temporary restraining order is based upon any affidavit, a copy of such affidavit must be served with the temporary restraining order. In case a temporary restraining order is granted without notice, the motion for a temporary injunction shall be set down for hearing at the earliest practicable time and shall take precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction, and, if ~~he~~ the party does not do so, the court shall dissolve the temporary restraining order. On written or oral notice to the party who obtained the ex parte temporary restraining order, the adverse party may appear and move its dissolution or modification, and in that even the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

* * *

**Rule 65.03. Security**

* * *

(2) Whenever security is given in the form of a bond or other undertaking with one or more sureties, each surety submits ~~himself~~ to the jurisdiction of the court and irrevocably appoints the ~~clerk of the court~~ court administrator as ~~his~~ the surety's agent upon whom any papers affecting ~~his~~ the surety's liability on the bond or undertaking may be served. ~~His~~ The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the ~~clerk of the court~~ court administrator, who shall forthwith mail copies of the sureties if their addresses are known.

**Notes of Advisory Committee**

This amendment is intended to conform the rule to the statute creating the position of Court Administrator to replace the former Clerk of Court, Minn. Stat. § 645.44, subd. 2 (1986). This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

**RULE 66. RECEIVERS**

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. A foreign receiver shall have capacity to sue in any district court, but ~~his~~ the receiver's rights are subordinate to those of local creditors. The practice in the administration of estates by the court shall be in accordance with M.S.A.1949, c. 576, and with the practice heretofore followed in the courts of this state or as provided in rules promulgated by the district courts. In all other respects, the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

**Notes of Advisory Committee**

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 67. DEPOSIT IN COURT

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### Rule 67.02. When No Action is Brought

When money or other personal property in the possession of any person, as bailee or otherwise, is claimed adversely by two or ore other persons, and the right thereto as between such claimants is in doubt, the person so in possession, though no action be commenced against ~~him~~ that person by any of the claimants, may place the property in the custody of the court. He The person in possession shall apply to the court of the county in which the property is situated, setting forth by petition the facts which bring the case within the provisions of this section, and the names and places of residence of all known claimants of such property. If satisfied of the truth of such showing, the court, by order, shall accept custody of the money or other property, and direct that upon delivery, and upon giving notice thereof to all persons interested, personally or by registered mail, as in such order prescribed, the petitioner be relieved from further liability on account thereof. This rule shall apply to cases where property held under like conditions is garnished in the hands of the possessor; but in such cases the applications shall be made to the court in which the garnishment proceedings are pending.

### Rule 67.03. Court May Order Deposit or Seizure of Property

When it is admitted by the pleading or examination of a party that ~~he~~ the party has ~~in his~~ possession or control of any money or other thing capable of delivery which, being the subject of the litigation, is held by ~~him~~ that party as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in

court or delivered to such other party, with or without security, subject to further direction. If such order by disobeyed, the court may punish the disobedience as a contempt, and may also require the sheriff or other proper officer to take the money or property and deposit or deliver it in accordance with the direction given.

**Rule 67.04. Money Paid into Court**

Where money is paid into the court to abide the result of any legal proceedings, the judge may order it deposited in a designated state or national bank or savings bank. In the absence of such order, the ~~clerk of court~~ court administrator is the official custodian of all moneys, and the judge, on application of any person paying such money into court, may require the ~~clerk~~ court administrator to give an additional bond, with like condition as the bond provided for in M.S.A.1949 § 485.01, in such sum as the judge shall order.

**Notes of Advisory Committee**

This amendment is intended to conform the rule to the statute creating the position of Court Administrator to replace the former Clerk of Court, Minn. Stat. § 645.44, subd. 2 (1986). This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 69. EXECUTION

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with M.S.A.1971, c. 550. In aid of the judgment or execution, the judgment creditor, or successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

### Notes of Advisory Committee

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

**RULE 70. JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE**

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court, and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the ~~clerk~~ court administrator shall issue a writ of attachment against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title or any party and vesting it in others; and such judgment has the effect of a conveyance executed in due form of law. When any order of judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution upon application to the ~~clerk~~ court administrator.

**Notes of Advisory Committee**

This amendment is intended to conform the rule to the statute creating the position of Court Administrator to replace the former Clerk of Court, Minn. Stat. § 645.44, subd. 2 (1986). This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## RULE 71. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES

When an order is made in favor of a person who is not a party to the action, ~~he~~ that person may enforce obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, ~~he~~ that person is liable to the same process for enforcing obedience to the order as if ~~he~~ that person were a party.

### Notes of Advisory Committee

This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

## IX. DISTRICT COURTS AND ~~CLERKS~~ COURT ADMINISTRATORS

### RULE 77. DISTRICT COURTS AND ~~CLERKS~~ COURT ADMINISTRATORS

* * *

**Rule 77.02. Trials and Hearings; Orders in Chambers**

All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the ~~clerk~~ court administrator or other court officials and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

**Rule 77.03. ~~Clerk's~~ Court Administrator's Office and Orders by ~~Clerk~~ Court Administrator**

All motions and applications in the ~~clerk's~~ court administrator's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the ~~clerk~~ court administrator; but ~~his~~ the court administrator's action may be suspended or altered or rescinded by the court upon cause shown.

**Rule 77.04. Notice of Orders or Judgments**

Immediately upon the filing of an order or decision or entry of a judgment, the ~~clerk~~ court administrator shall serve a notice of the filing or entry by mail upon every party

affected thereby or ~~his~~ such party's attorney of record, whether or not such party has appeared in the action, at ~~his~~ the party or attorney's last known address, and shall make a notice in ~~his~~ the court records of the mailing, but such notice shall not limit the time for taking an appeal or other proceeding on such order, decision or judgment.

**Notes of Advisory Committee**

This amendment is intended to conform the rule to the statute creating the position of Court Administrator to replace the former Clerk of Court, Minn. Stat. § 645.44, subd. 2 (1986). This amendment is not intended to substantively change the rule. Its sole purpose is to make the language of the rule gender-neutral.

**FORM 1 SUMMONS**

**Notes of Advisory Committee**

The Committee recommends the following form be adopted for state-wide use in all civil actions. This form was drafted with the assistance of the State Court Administrator.

**STATE OF MINNESOTA** **DISTRICT COURT**

**COUNTY OF** _____ _____ **JUDICIAL DISTRICT**

SUBJECT MATTER* _____

CASE NUMBER _____

Plaintiff,

**SUMMONS**

Defendant.

**THE STATE OF MINNESOTA TO THE ABOVE NAMED DEFENDANT:**

You are hereby summoned and required to serve upon plaintiff's attorney (name and address)

Attorney ID Number _____

an answer to the complaint which is herewith served upon you within 20 days after service of this summons upon you exclusive of the day of service. If you fail to do so Judgment will be taken against you for the relief demanded in the complaint without further notice to you.

THE ABOVE IS A LEGAL NOTICE THAT YOU ARE BEING SUED BY PLAINTIFF. You have **20 calendar days** after this summons is served on you to serve a copy of a typewritten response on the plaintiff's attorney. The original must be filed with this court. A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not serve and file your response on time, you may lose your wages, money or property.

There are other legal requirements. You may want to call an attorney.

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Filed prior to service in the above named court on:

_____
Date

_____
Administrator

By _____
Deputy

Court Seal

*See Form 23, Rules of Civil Procedure, District Courts