STATE OF MINNESOTA

IN SUPREME COURT

C6-84-2134

ORDER PROMULGATING AMENDMENTS TO MINNESOTA RULES OF CIVIL PROCEDURE

Whereas, the Supreme Court Advisory Committee on the Rules of Civil Procedure has proposed amendments to the Rules of Civil Procedure for the District Courts and has submitted the proposed amendments to the Supreme Court, and

Whereas, advance notice was published of a hearing before the Court on June 22, 1988 at 9:00 a.m. for the purpose of hearing proponents and opponents of the proposed amendments, and

Whereas, after such hearing the Court has given due consideration to such amendments, and is fully advised in the premises,

IT IS HEREBY ORDERED that the attached amended Rules be, and the same are, adopted, prescribed and promulgated to be effective on January 1, 1989, for the regulation of the practice and procedure in the District Courts of the State of Minnesota. The inclusion of Advisory Committee notes, if any, is made for convenience and does not reflect court approval of the comments made therein.

Dated: OCT 18, 1988

Chief Justice Douglas K. Amdahl

MEMORANDUM

We wish to point out that most of the amendments were necessary to eliminate gender references and to simplify the language of the rules. These many revisions also prompted the Court to renumber the rules where necessary to achieve consistency and uniformity of citation. We ask the bench and bar to pay particular attention to these renumbered rules, most specifically to the often-cited Rules 59.01 and 60.02. The remaining amendments incorporate several substantive changes, including but not limited to, Rules 5, 28, 30.02, 30.06, 32 and 52.

The Court expresses its appreciation to the following members of the Advisory Committee:

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
Hon. Ann Day Montgomery
Richard D. Quinlivan
Hon. Susanne C. Sedgwick
David F. Herr, Reporter

I. SCOPE OF RULES -- ONE FORM OF ACTION

RULE 1. SCOPE OF RULES

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

RULE 2. ONE FORM OF ACTION

There shall be one form of action to be known as "civil action."

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

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 if 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 is actually served on that defendant or the first publication thereof is made.

Rule 3.02. Service of Complaint

A copy of the complaint shall be served with the summons, except when the service is by publication as provided in Rule 4.04.

RULE 4. PROCESS

Rule 4.01. Summons; Form

The summons shall state the name of the court and the names of the parties, be subscribed by the plaintiff or by 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 an answer, and notify the defendant that if the defendant fails to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

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 the individual personally or by leaving a copy at 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 the individual's father or mother, and if neither is within the state, then a resident guardian if the infant has one known to the plaintiff, and if the infant has none, then the person having control of such defendant, or with whom the infant resides, or by whom the infant is employed.

(b) Upon Partnerships and Associations. Upon a partnership or association which is subject to suit under a common name, by delivering a copy to a member or the managing agent of the partnership or association. If the partnership or association 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.

(c) Upon a Corporation. Upon a domestic or foreign corporation, by delivering a copy to an officer or managing agent, or to any other agent authorized expressly or impliedly or designated by statute to receive service of summons, and if the agent is one authorized or designated under statute to receive service any statutory provision for the manner of such service shall be complied with. In the case of a transportation or express corporation, the summons may be served by delivering a copy to any ticket, freight, or soliciting agent found in the county in which the action is brought, and if such corporation is a foreign corporation and has no such agent in the county in which the plaintiff elects to bring the action, then upon any such agent of the corporation within the state.

(d) Upon the State. Upon the state by delivering a copy to the attorney general, a deputy attorney general or an assistant attorney general.

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

(1) To the 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 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; or

(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

Service by publication shall be sufficient to confer jurisdiction:

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

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

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

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

When quasi in rem jurisdiction has been obtained, a party defending the action thereby submits personally to the jurisdiction of the court. An appearance solely to

contest the validity of quasi in rem jurisdiction is not such a submission.

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

(d) 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 the defendant from any such interest or lien;

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

The summons may be served by three weeks' published notice in any of the cases enumerated herein when the complaint and an affidavit of the plaintiff or the plaintiff's attorney have been filed with the court. The affidavit shall state the existence of one of the enumerated cases, and that the affiant believes the defendant is not a resident of the state or cannot be found therein, and either that the affiant has mailed a copy of the summons to the defendant at the defendant's place of residence or that such residence is not known to the affiant. The service of the summons shall be deemed complete 21 days after the first publication.

Personal service of such summons outside 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 provided for herein.

Rule 4.041. Additional Information to be Published

In all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon, real property is involved or affected or is brought in question, the publication shall also contain a description of the real property involved, affected or brought in question thereby, and a statement of the object of the action. No

other notice of the pendency of the action need be published.

Rule 4.042. Service of the Complaint

If the defendant shall appear within 10 days after the completion of service by publication, the plaintiff, within 5 days after such appearance, shall serve the complaint, by copy, on the defendant or the defendant's attorney. The defendant shall then have at least 10 days in which to answer the same.

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

If the summons is served by publication, and the defendant receives no actual notification of the action, 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 is 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 any interest or lien in or upon lands in the state appoints an agent pursuant to Minn. Stat. § 557.01, service of summons in an action involving such real estate shall be made upon the agent or the principal in accordance with Rule 4.03, and service by publication shall not be made upon the principal.

Rule 4.05. Service by Mail

In any action service may be made by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 22 and a return envelope, postage prepaid, addressed to the sender. If acknowledgment of service under this rule is not received by the sender within the time defendant is required by these rules to serve an answer, service shall be ineffectual.

Unless good cause is shown for not doing so, the court shall order the payment of the costs of personal service by the person served if such person does not complete and return the notice and acknowledgment of receipt of summons within the time allowed by these rules.

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 the printer's designee. 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 4.07. Amendments

The court in its discretion and on such terms as it deems just may at any time allow any summons or other process or proof of service thereof to be amended, unless it clearly appears that substantial rights of the person against whom the process issued would be prejudiced thereby.

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 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 is ordered by the court. Written admission of service by the party or the party's attorney shall be sufficient proof of service. Service upon the attorney or party shall be made by delivering or by mailing a copy to the attorney or party at either's last known address or, if no address is known, by leaving it with the court administrator. Delivery of a copy within this rule means: Handing it to the attorney or party; or leaving it at either's office with 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 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 5.03. Service: Numerous Defendants

If the defendants are numerous, the court, upon motion or upon its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading with the court and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

Rule 5.04. Filing

Upon the filing of any paper with the court, all papers required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter; but unless filing is ordered by the court on motion or upon its own initiative, depositions, interrogatories, requests to admit, and requests for production and answers and responses thereto, shall not be filed.

Rule 5.05. Facsimile Transmission

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

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

(a) a $5 transmission fee; and

(b) the original signed document; and

(c) the applicable filing fee, if any.

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

RULE 6. TIME

Rule 6.01. Computation

In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Rule 6.02. Enlargement

When by statute, by these rules, by a notice given thereunder, or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion, **(1)** with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or **(2)** upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 4.043, 59.03, 59.05, and 60.02 except to the extent and under the conditions stated in them.

Rule 6.03. Unaffected by Expiration of Term

The continued existence or the expiration of a term of court does not affect or limit

the period of time provided for the taking of any action or proceeding, or affect the power of the court to act or take any proceeding in any action which has been pending before it.

Rule 6.04. For Motions; Affidavits

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

Rule 6.05. Additional Time After Service by Mail

Whenever a party has the right or is required to act within a prescribed period after the service of a notice or other paper upon 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.

III. PLEADINGS AND MOTIONS

RULE 7. PLEADINGS ALLOWED; FORM OF MOTIONS

Rule 7.01. Pleadings

There shall be a complaint and an answer (including such pleadings in a third-party proceeding when a third-party claim is asserted); a reply to a counterclaim denominated as such; and an answer to a cross-claim if the answer contains a cross-claim. No other pleading shall be allowed except that the court may order a reply to an answer. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

Rule 7.02. Motions and Other Papers

(a) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. Motions provided in these rules are motions requiring a written notice to the party and a hearing before the order can be issued unless the particular rule under which the motion is made specifically provides that the motion may be made ex parte. The parties may agree to written submission to the court for decision without oral argument unless the court directs otherwise. Upon the request of a party or upon its own initiative, the court may hear any motion by telephone conference.

(b) The rules applicable for captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(c) All motions will be signed in accordance with Rule 11.

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 a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought; if a recovery of money is 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 any defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. A pleader who intends in good faith to deny only a part or to qualify an averment 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, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits. However, a pleader who intends to controvert all its averments may do so by general denial subject to the obligations set forth in Rule 11.

Rule 8.03. Affirmative Defenses

In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, on such terms as justice may require, shall treat the pleading as if there had been a proper designation.

Rule 8.04. Effect of Failure to Deny

Averments in a pleading to which a responsive pleading is required, other than those as to amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

Rule 8.05. Pleading to be Concise and Direct; Consistency

(a) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(b) A party may set forth two or more statements of a claim or 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 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.

Rule 8.06. Construction of Pleadings

All pleadings shall be so construed as to do substantial justice.

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, 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. A party who desires to raise an issue as to the legal existence of any party, 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 shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

Rule 9.02. Fraud, Mistake, Condition of Mind

In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

Rule 9.03. Conditions Precedent

In pleading the performance or occurrence of conditions precedent, it is sufficient

to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

Rule 9.04. Official Document or Act

In pleading an official document or official act, it is sufficient to aver that the document was issued or the act was done in compliance with law; and in pleading any ordinance of a city, village, or borough or any special or local statute or any right derived from either, it is sufficient to refer to the ordinance or statute by its title and the date of its approval.

Rule 9.05. Judgment

In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

Rule 9.06. Time and Place

For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

Rule 9.07. Special Damages

When items of special damage are claimed, they shall be specifically stated.

Rule 9.08. Unknown Party; How Designated

When a party is ignorant of the name of an opposing party and so alleges in the party's pleading, the opposing party may be designated by any name and when 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.

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, and a designation as in Rule 7, and, in the upper right hand corner, 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.

Rule 10.02. Paragraph; Separate Statements

All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

Rule 10.03. Adoption by Reference; Exhibits

Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument

which is an exhibit to a pleading is a part of the statement of claim or defense set forth in the pleading.

Rule 10.04. Failure to Comply

If a pleading, motion or other paper fails to indicate the case type as required by Rule 10.01, it may be stricken by the court unless the appropriate case type indicator is communicated to the court administrator promptly after the omission is called to the attention of the pleader or movant.

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

Every pleading, motion and other paper of a party represented by an attorney shall be personally signed by at least one attorney of record in the attorney's individual name and shall state the attorney's address. A party who is not represented by an attorney shall personally sign the pleading, motion or other paper and state the pleader'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 that the pleading, motion or other paper has been read; that to the best of the signer's knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, 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 reasonable attorney fees.

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 an answer within 20 days after service of the summons upon that defendant unless the court directs otherwise pursuant to Rule 4.043. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve 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 periods 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 of 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:

(a) lack of jurisdiction over the subject matter;

(b) lack of jurisdiction over the person;

(c) insufficiency of process;

(d) insufficiency of service of process;

(e) failure to state a claim upon which relief can be granted; and

(f) failure to join a party pursuant to 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, the adverse party may assert 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.

Rule 12.03. Motion for Judgment on the Pleadings

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on such motion, 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 for in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Rule 12.04. Preliminary Hearing

The defenses and relief enumerated in Rules 12.02 and 12.03, whether made in a pleading or by motion, shall be heard and determined before trial on application of any party unless the court orders that the hearing and determination thereof be deferred until the trial.

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, the party may move for a compliance with Rule 10.02 or for a more definite statement before interposing 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 the party, or upon its 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 pursuant to this rule may join with it other motions then available to the party. If a party makes a motion under this rule but omits therefrom any then available defense or objection which this rule permits to be raised by motion, that party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in Rule 12.08(b) hereof on any of the grounds there stated.

Rule 12.08. Waiver or Preservation of Certain Defenses

(a) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived **(1)** if omitted from a motion in the circumstances described in Rule 12.07, or **(2)** if it is neither made by motion pursuant to this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15.01 to be made as a matter of course.

(b) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered pursuant to Rule 7.01, or by motion for judgment on the pleadings, or at the trial on the merits.

(c) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

RULE 13. COUNTERCLAIM AND CROSS-CLAIM

Rule 13.01. Compulsory Counterclaims

A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, except that such a claim need not be so stated if, at the time the action was commenced, the claim was the subject of another pending action.

Rule 13.02. Permissive Counterclaims

A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction that is the subject matter of the opposing party's claim.

Rule 13.03. Counterclaim Exceeding Opposing Claim

A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

Rule 13.04. Counterclaim Against the State of Minnesota

These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the State of Minnesota or an officer or agency thereof.

Rule 13.05. Counterclaim Maturing or Acquired After Pleading

A claim which either matured or was acquired by the pleader after serving a pleading may, by leave of 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, the pleader may, by leave of court, set up the counterclaim by amendment.

Rule 13.07. Cross-Claim Against Co-Party

A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

Rule 13.08. Joinder of Additional Parties

Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

Rule 13.09. Separate Trials; Separate Judgment

If the court orders separate trials as provided in Rule 42.02, judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54.02 even if the claims of the opposing party have been dismissed or disposed of otherwise.

RULE 14. THIRD-PARTY PRACTICE

Rule 14.01. When Defendant May Bring in Third Party

Within 90 days after service of the summons upon 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 the person is a party to the action, who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against 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 any defenses to the third-party plaintiff's claim as provided in Rule 12 and 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 any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. A third-party defendant may proceed in accordance with this rule against any person who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

Rule 14.02. When Plaintiff May Bring in Third Party

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

Rule 14.03. Orders for Protection of Parties and Prevention of Delay

The court may make such orders to prevent a party from being embarrassed or put to undue expense, or to prevent delay of the trial or other proceeding by the assertion of a third-party claim, and may dismiss the third-party claim, order separate trials, or make other orders to prevent delay or prejudice. Unless otherwise specified in the order, a dismissal pursuant to this rule is without prejudice.

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

Rule 15.01. Amendments

A party may amend a pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend a 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 raised 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 maintenance of the 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 the party, the party to be brought in by amendment **(1)** has received such notice of the institution of the action that the party will not be prejudiced in maintaining 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 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 the party to serve a supplemental pleading setting forth transactions, 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.

RULE 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

Rule 16.01. Pretrial Conferences; Objectives

In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as

(a) expediting the disposition of the action;

(b) establishing early and continuing control so that the case will not be protracted because of lack of management;

(c) discouraging wasteful pretrial activities;

(d) improving the quality of the trial through more thorough preparation; and

(e) facilitating the settlement of the case.

Rule 16.02. Scheduling and Planning

The court may, and upon written request of any party with notice to all parties, shall, after consulting with the attorneys for the parties and any unrepresented parties, by

a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

(a) to join other parties and to amend the pleadings;

(b) to file and hear motions; and

(c) to complete discovery.

The scheduling order also may include

(d) the date or dates for conferences before trial, a final pretrial conference, and trial; and

(e) any other matters appropriate in the circumstances of the case.

A schedule shall not be modified except by leave of court upon a showing of good cause.

Rule 16.03. Subjects to be Discussed at Pretrial Conferences

The participants at any conference held pursuant to this rule may consider and take action with respect to

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

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

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

(d) the avoidance of unnecessary proof and of cumulative evidence;

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

(f) the advisability of referring matters pursuant to Rule 53;

(g) the possibility of settlement or the use of extrajudicial procedures to resolve

the dispute;

(h) the form and substance of the pretrial order;

(i) the disposition of pending motions;

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

(k) such other matters as may aid in the disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

Rule 16.04. Final Pretrial Conference

Any final pretrial conference may be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

Rule 16.05. Pretrial Orders

After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action and shall be modified only to prevent manifest injustice.

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 court, upon motion or upon its own initiative, may make such orders with regard thereto as are just, including any of the orders provided in Rule 37.02(b)(2), (3), (4). In lieu of or in addition to any other sanction, the court shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney fees, unless the court finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

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 that person's own name without joining 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 a consent and oath with the 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 the party's spouse or parents or testamentary or other guardian shall have priority over other applications. If no such appointment is made on behalf of a defendant party before answer or default, the adverse party or 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 the party is a minor, the names and addresses of the parents, and, in the event of their death or the abandonment of the minor, the name and address of the party's custodian or testamentary or other guardian, if any, **(3)** the name and address of the party's spouse, if any, and **(4)** the name, age, address, and occupation of the person whose appointment is sought.

If the appointment is applied for by the party or by a spouse, parent, custodian or testamentary or other guardian of the party, 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, the

party's spouse, parent, custodian and testamentary or other guardian, if any, and if the party is an inmate of a public institution, the chief executive officer thereof. If the party is a nonresident or, after diligent search, cannot be found within the state, notice shall be given to such persons and in such manner as the court may direct.

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 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 that plaintiff, without first having obtained a judgment establishing the claim for money.

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 **(a)** in the person's absence complete relief cannot be accorded among those already parties, or **(b)** the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may **(1)** as a practical matter impair or impede the person's ability to protect that interest or **(2)** leave any one already a party subject to a substantial risk or incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, 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 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:

(a) to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties;

(b) 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;

(c) whether a judgment rendered in the person's absence will be adequate; and

(d) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Rule 19.03. Pleading Reasons for Nonjoinder

A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in Rule 19.01 who are not joined, and the reasons why they are not joined.

Rule 19.04. Exception of Class Actions

This rule is subject to the provisions of Rule 23.

RULE 20. PERMISSIVE JOINDER OF PARTIES

Rule 20.01. Permissive Joinder

All persons may join in one action as plaintiffs if they assert any right to relief, jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of fact or law common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

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 the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

RULE 21. MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or upon the court's own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

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 being subject to liability, 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 the movant'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 denies liability 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.

RULE 23. CLASS ACTIONS

Rule 23.01. Prerequisites to a Class Action

One or more members of a class may sue or be sued as representative parties on behalf of all only if

(a) the class is so numerous that joinder of all members is impracticable;

(b) there are questions of law or fact common to the class;

(c) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(d) the representative parties will fairly and adequately protect the interests of the class.

Rule 23.02. Class Actions Maintainable

An action may be maintained as a class action if the prerequisites of Rule 23.01 are satisfied, and in addition:

(a) the prosecution of separate actions by or against individual members of the class would create a risk of

(1) inconsistent or varying adjudications with respect to individual members

of the class which would establish incompatible standards of conduct for the party opposing the class, or

(2) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(b) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(c) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: **(1)** the interest of members of the class in individually controlling the prosecution or defense of separate actions; **(2)** the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; **(3)** the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and **(4)** the difficulties likely to be encountered in the management of a class action.

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

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

on the merits.

(b) In any class action maintained pursuant to Rule 23.02(c), 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 **(1)** the court will exclude from the class any person who so requests by a specified date; **(2)** the judgment, whether favorable or not, will include all members who do not request exclusion; and **(3)** any member who does not request exclusion may, but need not, enter an appearance through counsel.

(c) The judgment in an action maintained as a class action pursuant to Rule 23.02(a) or (b), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action pursuant to Rule 23.02(c), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in Rule 23.03(b) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

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

Rule 23.04. Orders in Conduct of Action

In the conduct of actions to which this rule applies, the court may make appropriate orders:

(a) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(b) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to enter the action;

(c) imposing conditions on the representative parties or intervenors;

(d) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; or

(e) dealing with similar procedural matters.

The orders may be combined with an order pursuant to Rule 16, and may be altered or amended whenever necessary.

Rule 23.05. Dismissal or Compromise

A class 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 all members of the class in such manner as the court directs.

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 the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with

particularity the efforts, if any, made by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for 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.

Rule 23.07. Actions Relating to Unincorporated Associations

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

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 the applicant is so situated that the disposition of the action

may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Rule 24.02. Permissive Intervention

Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a common question of law or fact. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original 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 30 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 30 days after service upon the party seeking to intervene of a notice of objection to intervention, that party 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 employee 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 the attorney general an opportunity to intervene.

RULE 25. SUBSTITUTION OF PARTIES

Rule 25.01. Death

(a) If a party dies and the claim is not extinguished or barred, the court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of process.

(b) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be indicated upon the record and the action shall proceed in favor of or against the surviving parties.

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 the party's representative.

Rule 25.03. Transfer of Interest

In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of this motion shall be made as provided in Rule 25.01.

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 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 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.

V. DEPOSITIONS AND DISCOVERY

RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY

Rule 26.01. Discovery Methods

Parties may obtain discovery by one or more of the following methods: depositions by oral examination or written questions; written interrogatories; production of

documents or things or permission to enter upon land or other property; for inspection and other purposes; physical (including blood) and mental examinations; and requests for admission.

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:

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

The frequency or extent of use of the discovery methods set forth in Rule 26.01 shall be limited by the court if it determines that:

(1) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is either more convenient, less burdensome, or less expensive;

(2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(3) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

The court may act upon its own initiative after reasonable notice or pursuant to a Rule 26.03 motion.

(b) Insurance Agreements. In any action in which there is an insurance policy which may afford coverage, any party may require any other party to disclose the coverage and limits of such insurance and the amounts paid and payable thereunder and, pursuant to Rule 34, may obtain production of the insurance policy; provided, however, that this provision will not permit such disclosed information to be introduced into evidence unless admissible on other grounds.

(c) Trial Preparation: Materials. Subject to the provisions of Rule 26.02(d) a party may obtain discovery of documents and tangible things otherwise discoverable pursuant to Rule 26.02(a) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including 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 the party's case and that 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.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a party or other person may obtain without the required showing a statement concerning the action or its subject matter previously made by that person who is not a party. If the request is refused, the person may move for a court order. The provisions of Rule 37.01(d) apply to the award of expenses incurred in connection with the motion. For purposes of this

paragraph, a statement previously made is **(1)** a written statement signed or otherwise adopted or approved by the person making it, or **(2)** a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(d) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable pursuant to Rule 26.02(a) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(1)(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. **(B)** Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to Rule 26.02(d)(3), concerning fees and expenses, as the court may deem appropriate.

(2) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35.02 or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) Unless manifest injustice would result, **(A)** the court shall require the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery pursuant to Rules 26.02(d)(1)(B) and 26.02(d)(2); and **(B)** with respect to discovery obtained pursuant to Rule 26.02(d)(1)(B), the court may require,

and with respect to discovery obtained pursuant to Rule 26.02(d)(2) the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

Rule 26.03. Protective Orders

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) that the discovery not be had;

(b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(e) that discovery be conducted with no one present except persons designated by the court;

(f) that a deposition, after being sealed, be opened only by order of the court;

(g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or

(h) that the parties simultaneously file specified documents or information

enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. Rule 37.01(d) applies to the award of expenses incurred in connection with the motion.

Rule 26.04. Sequence and Timing of Discovery

Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

Rule 26.05. Supplementation of Responses

A party whose response to a request for discovery was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(a) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to **(1)** the identity and location of persons having knowledge of discoverable matters, and **(2)** the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony; and

(b) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which **(1)** the party knows that the response was incorrect when made, or **(2)** 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.

(c) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

Rule 26.06. Discovery Conference

At any time after 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:

(a) A statement of the issues as they then appear;

(b) A proposed plan and schedule of discovery;

(c) Any limitations proposed to be placed on discovery;

(d) Any other proposed orders with respect to discovery; and

(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. All parties and attorneys are under a duty to participate in good faith in the framing of any proposed discovery plan.

Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after the service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any, and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

Rule 26.07. Signing of Discovery Requests, Responses and Objections

In addition to the requirements of Rule 33.01(d), 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 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 the party's address. The signature constitutes a certification that the attorney or party has read the request, response, or objection, and that to the best of 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.

If a certification is made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable attorney fees.

RULE 27. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

Rule 27.01. Before Action

(a) Petition. A person who desires to perpetuate testimony 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

(1) that the petitioner expects to be a party to an action but is presently unable to bring it or cause it to be brought;

(2) the subject matter of the expected action and the petitioner's interest therein;

(3) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it;

(4) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known; and

(5) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each.

The petition shall ask for an order authorizing the petitioner to take the deposition of those persons to be examined as named in the petition, for the purpose of perpetuating their testimony.

(b) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing, the notice shall be served either within or outside the state in the manner

provided in Rule 4.03 for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4.03, an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent, the provisions of Rule 17.02 apply.

(c) Order and Examination. If the court is satisfied that the perpetuation of testimony may prevent a failure or delay of justice, it shall make an order designating and describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The deposition may then be taken in accordance with these rules and the court may make orders authorized by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(d) Use of Deposition. If a deposition to perpetuate testimony is taken pursuant to these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in this state, in accordance with the provisions of Rule 32.01.

Rule 27.02. Pending Appeal

If an appeal has been taken from a judgment or order, 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 the names, addresses, the substance of the testimony expected to be elicited from each person to be examined, and 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 authorized 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.

Rule 27.03. Perpetuation by Action

This rule does not limit the power of the court to entertain an action to perpetuate testimony.

RULE 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

Rule 28.01. Within the United States

Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. The term "officer" as used in Rules 28, 30, 31 and 32 includes a person appointed

by the court or designated by the parties pursuant to Rule 29. A person so appointed has power to administer oaths and take testimony.

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 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 pursuant to these rules.

Rule 28.03. Disqualification for Interest

No deposition shall be taken before or reported by any person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee 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.

RULE 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE

The parties may by stipulation **(1)** provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner, and when so taken may be used like other depositions, and **(2)** modify the procedures provided in these rules for other methods of discovery.

RULE 30. DEPOSITIONS UPON ORAL EXAMINATION

Rule 30.01. When Depositions May Be Taken

After 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 pursuant to 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 Rule 30.02(b). 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

(a) 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 the person or the particular class or group to which 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.

(b) Leave of court is not required for the taking of a deposition by plaintiff if the notice states that the person to be examined will be unavailable for examination within the state unless the person's deposition is taken before expiration of the 30-day period, and sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, certifying thereby that to the best of the attorney's knowledge, information, and belief, the statement and supporting facts are true. Rule 11 sanctions are applicable to the certification.

If a party shows that, after being served with notice hereunder, the party was unable through exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against such party.

(c) The court may for cause shown enlarge or shorten the time for taking the deposition.

(d) 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 the party's own expense.

Any deposition pursuant to 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:

(1) 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;

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

(3) The parties may purchase audio or video copies of the recording from the operator, who shall certify that all parties who ordered copies have been charged at the same rate for each copy; and

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

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

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

(e) The notice to a party deponent may include or be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at

the taking of the deposition.

(f) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership, 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 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 provision does not preclude taking a deposition by any other procedure authorized in these rules.

(g) 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(a), 37.02(a) 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.

(h) 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 pursuant to Rule 43.02. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in 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 Rule 30.02(d). 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 that party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

Rule 30.04. Motion to Terminate or Limit Examination

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

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 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, cannot be found, or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to 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 though signed, unless on a motion to suppress pursuant to Rule 32.04(d) 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

(a) The officer shall certify upon the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness, and shall certify that the deposition has been transcribed, that the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies. Unless otherwise ordered by the court or agreed to by the parties, the officer shall securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (herein insert the name of witness)," and shall promptly 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, the person may **(1)** offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or **(2)** offer 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.

(b) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

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

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

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

(b) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon that witness, and the witness because of such failure does not attend, and if another party attends in person or by attorney on the expectation that the

deposition of that witness is to be taken, the court may order the party giving notice to pay to such other party the amount of the reasonable expenses incurred by those individuals in so attending, including reasonable attorney fees.

RULE 31. DEPOSITIONS OF WITNESSES UPON WRITTEN QUESTIONS

Rule 31.01. Serving Questions; Notice

After 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 the person or the particular class or group to which 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, association, or governmental agency in accordance with the provisions of Rule 30.02(f).

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

Rule 31.02. Officers to Take Responses and Prepare Record

A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rules 30.03, 30.05, and 30.06, to take the testimony of the witness in response to the questions and to prepare, certify, and return them to the party taking the deposition. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

Rule 31.03. Notice of Filing

When the deposition is received from the officer, the party taking it shall promptly give notice thereof to all other parties.

RULE 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS

Rule 32.01. Use of Depositions

At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Minnesota 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:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness or for any purpose permitted by the Minnesota Rules of Evidence.

(b) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, employee or managing agent or a person designated pursuant to Rules 30.02(f) or 31.01 to testify on behalf of a public or private corporation, partnership, association, or governmental agency which is a party may be used by an adverse party for any purpose.

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(1) that the witness is dead; or

(2) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or

(4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witness orally in open court, to allow the deposition to be used.

(d) If only part of a deposition is offered in evidence by a party, an adverse party may require 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.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or any state and another action involving the same subject matter is

afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Minnesota Rules of Evidence.

Rule 32.02. Objections to Admissibility

Subject to the provisions of Rules 28.02 and 32.04(c), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of evidence if the witness were then present and testifying.

Rule 32.03. Effect of Taking or Using Depositions

A party does not make a person the party's own witness for any purpose by taking 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 pursuant to Rule 32.01(b). At the trial or hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by that party or by any other party.

Rule 32.04. Effect of Errors and Irregularities in Depositions

(a) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before

the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) As to Taking of Deposition.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written questions submitted pursuant to Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(d) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed, preserved or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer pursuant to Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Rule 32.05. Use of Videotape Depositions

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

RULE 33. INTERROGATORIES TO PARTIES

Rule 33.01. Availability; Procedure for Use

(a) Any party may serve written interrogatories upon any other party. Interrogatories may, without leave of court, be served upon any party after service of the summons and complaint. 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.

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

(c) Objections shall state with particularity the grounds for the objection and may be served either as a part of the document containing the answers or separately. Within 15 days after service of objections to interrogatories, the party proposing the interrogatory shall serve notice of hearing on the objections at the earliest practicable time. Failure to serve said notice shall constitute a waiver of the right to require answers to each interrogatory to which objection has been made. Answers to interrogatories to which objection has been made shall be deferred until the objections are determined.

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

Rule 33.02. Scope; Use at Trial

Interrogatories may relate to any matters which can be inquired into pursuant to Rule 26.02, and the answers may be used to the extent permitted by the Minnesota Rules of Evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because its answer involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed, a pretrial conference has been held, or at another later time.

Rule 33.03. Option to Produce Business Records

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

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

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 the requesting party's behalf, 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 any party with or after service of the summons and complaint. 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, that part shall be specified. The party submitting the request may move for an order pursuant to Rule 37 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A party who produces documents for inspection shall produce them as they are kept in the usual course of 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.

Rule 34.03. Persons Not Parties

This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

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

Rule 35.01. Order of Examinations

In an action in which the physical or mental condition or the blood relationship of a party, or of an agent of a party, or of a person under control of a party, is in controversy, the court in which the action is pending may order the party to submit to, or produce such agent or person for a physical, mental, or blood examination by a physician. The order may be made only on motion for good cause shown and upon notice to the party or person to be examined and to all other parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is made.

Rule 35.02. Report of Findings

(a) If requested by the party against whom an order is made pursuant to Rule 35.01 or by the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of a detailed written report of the examining physician setting out the physician's findings and conclusions, together with like reports of all earlier examinations 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 physical, mental, 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 the physician's testimony if offered at the trial.

(b) 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 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 the party or the person under the party's control with respect to the same physical, mental, 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 that party, a decedent, or a person under that party's control, such party thereby waives any privilege that party may have in that action regarding the testimony of every person who has examined or may thereafter examine that party or the person under that party's control with respect to the same physical, mental, or blood condition.

Rule 35.04. Medical Disclosures and Depositions of Medical Experts

When a party has waived medical privilege pursuant to Rule 35.03, such party within 10 days of a written request by any other party,

(a) shall furnish to the requesting party copies of all medical reports previously or thereafter made by any treating or examining medical expert, and

(b) shall provide written authority signed by the party of whom request is made to permit the inspection of all hospital and other medical records, concerning the physical, mental, or blood condition of such party as to which privilege has been waived.

Disclosures pursuant to this rule shall include the conclusions of such treating or examining medical expert.

Depositions of treating or examining medical experts shall not be taken except upon order of the court for good cause shown upon motion and notice to the parties and upon such terms as the court may provide.

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, opinions of fact, or 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 after service of the summons and complaint.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by 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 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 an answer or deny only a part of the matter of which an admission is requested, 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 the party states that a reasonable inquiry has been made and that the information known or readily obtainable by the party is insufficient to enable 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; the party may, subject to the provisions of Rule 37.03, deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine

that final disposition of the request is to be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37.01(d) apply to the award of expenses incurred in connection with the motion.

Rule 36.02. Effect of Admission

Any matter admitted pursuant to this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to 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 that party in maintaining the action or defense on the merits. Any admission made by a party hereunder is for the purpose of the pending action only and is not an admission by that party for any other purpose nor may it be used against that party in any other proceeding.

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:

(a) Appropriate Court. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deponent's failure to answer questions propounded or submitted pursuant to Rule 30 or Rule 31, to the court in

the county where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the county where the deposition is being taken.

(b) Motion. If a deponent fails to answer a question propounded or submitted pursuant to Rule 30 or Rule 31, or a corporation or other entity fails to make a designation pursuant to Rule 30.02(f) or Rule 31.01, or a party fails to answer an interrogatory submitted pursuant to Rule 33, or if a party, in response to a request for inspection submitted pursuant to 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 an answer, or a designation, or 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 applying for an order.

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

(c) Evasion or Incomplete Answer. For purposes of this rule, an evasive or incomplete answer is to be treated as a failure to answer.

(d) Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both to pay to the party or deponent

who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

Rule 37.02. Failure to Comply with Order

(a) Sanctions by Court in County Where Deposition is Taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

(b) 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 in Rules 30.02(f) or 31.01 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made pursuant to Rules 35 or 37.01, 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:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

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

(3) An order striking pleadings or parts thereof, staying further proceedings

until the order is obeyed, dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(5) Where a party has failed to comply with an order pursuant to Rule 35.01 requiring that party to produce another for examination, such orders as are listed herein in paragraphs (1), (2), and (3), unless the party failing to comply shows that 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 that party or both to pay the reasonable expenses, including attorney 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 pursuant to Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of any such matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney 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 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 in Rules 30.02(f) or 31.01 to testify on behalf of a party fails **(1)** to appear before the officer who is to take the deposition, after being served with a proper notice, or **(2)** to serve answers or objections to interrogatories submitted pursuant to Rule 33, after proper service of the interrogatories, or **(3)** to serve a written response to a request for inspection submitted pursuant to 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, including any action authorized in Rule 37.02(b)(1), (2), and (3). In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney 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.

The failure to act described herein may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26.03.

VI. TRIALS

RULE 38. JURY TRIAL OF RIGHT

Rule 38.01. Right Preserved

In actions for the recovery of money only, or of specific real or personal property, the issues of fact shall be tried by a jury, unless a jury trial is waived or a reference is ordered.

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 by:

(a) failing to appear at the trial;

(b) written consent, by the party or the party's attorney, filed with the court administrator; or

(c) 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, addresses, and telephone numbers of the respective attorneys, and shall serve the same on attorneys representing all parties not in default and file it, with proof of service, with the 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 the attorney for any person who becomes a party to the action subsequent to the initial service.

RULE 39. TRIAL BY JURY OR BY THE COURT

Rule 39.01. By Court

Issues of fact not submitted to a jury as provided in Rule 38 shall be tried by the court.

Rule 39.02. Advisory Jury and Trial by Consent

In all actions not triable of right by a jury, the court, upon motion or upon its own initiative, may try an issue with an advisory jury, or the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

Rule 39.03. Preliminary Instructions in Jury Trials

After the jury has been impaneled and sworn, and before opening statements of counsel, the court may instruct the jury as to the respective claims of the parties and as to such other matters as will aid the jury in comprehending the trial procedure and sequence to be followed. Preliminary instructions may also embrace such matters as burden of proof and preponderance of evidence, the elements which the jury may consider in weighing testimony or determining credibility of witnesses, rules applicable to opinion evidence, and such other rules of law as the court may deem essential to the proper understanding of the evidence.

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

that party's case in chief is opened. Opening statements may be waived by any party to the action without affecting the right of any other party to make such an opening statement.

RULE 40. ASSIGNMENT OF CASES FOR TRIAL

The judges of the court may, by order or by rule of court, provide for the setting of cases for trial upon the calendar, the order in which they shall be heard, and the resetting thereof.

RULE 41. DISMISSAL OF ACTIONS

Rule 41.01. Voluntary Dismissal; Effect Thereof

(a) By Plaintiff by Stipulation. Subject to the provisions of Rules 23.05, 23.06 and 66, an action may be dismissed by the plaintiff without order of court **(1)** 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 **(2)** 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.

(b) By Order of Court. Except as provided in clause (a) of this rule, an action shall not be dismissed at the plaintiff's instance except 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 the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim may remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal herein is without prejudice.

Rule 41.02. Involuntary Dismissal; Effect Thereof

(a) The court may upon its own initiative, or upon motion of a party, and upon such notice as it may prescribe, dismiss an action or claim for failure to prosecute or to comply with these rules or any order of the court.

(b) After the plaintiff has completed the presentation of evidence, the defendant, without waiving 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 the facts 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.

(c) Unless the court specifies otherwise in its order, a dismissal pursuant to this rule and any dismissal not provided for in this rule or in Rule 41.01, other than a dismissal for lack of jurisdiction, for forum non conveniens, or for failure to join a party indispensable pursuant to Rule 19, operates as an adjudication upon the merits.

Rule 41.03. Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim

The provisions of Rules 41.01 and 41.02 apply to the dismissal of any counterclaim, cross-claim, or third-party claim.

Rule 41.04. Costs of Previously Dismissed Action

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

RULE 42. SEPARATE TRIALS

Rule 42.01. Consolidation

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Rule 42.02. Separate Trials

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of one or any number of claims, cross-claims, counterclaims, or third-party claims, or of any separate issues.

RULE 43. EVIDENCE

Rule 43.01. Form and Admissibility

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

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 either by leading questions and contradict and impeach the party or witness on material matters in all respects as if either had been called by the adverse party. A witness who is an adverse party may be examined by the attorney of the witness upon the subject matter of 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 the testimony of the witness. A witness identified with an adverse party 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 of what 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 43.04. Affirmation in Lieu of Oath

Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

Rule 43.05. Evidence and Motions

Whenever a motion is based on facts not appearing of record, the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

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 the plaintiff has introduced specific evidence of negligence or made specific allegations of negligence in the plaintiff's pleadings.

Rule 43.07. Interpreters

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

RULE 44. PROOF OF OFFICIAL RECORD

Rule 44.01. Authentication

(a) Domestic. An official record or an entry therein, 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, 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 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 that office.

(b) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position of the attesting

person, or of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, admit an attested copy without final certification or permit the foreign official record to be evidenced by an attested summary with or without a final certification.

Rule 44.02. Lack of Record

A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in Rule 44.01(a) in the case of a domestic record, or complying with the requirements of Rule 44.01(b) for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

Rule 44.03. Other Proof

This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

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 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 party or admissible pursuant to Rule 43. The court's determination shall be treated as a ruling on a question of law.

RULE 45. SUBPOENA

Rule 45.01. For Attendance of Witnesses; Form; Issuance

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

(b) 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.

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

Rule 45.02. For Production of Documentary Evidence

A subpoena may also command the person to whom it is directed to produce the

books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable or oppressive, or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

Rule 45.03. Service

A subpoena may be served by the sheriff, 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 the person's usual place of abode with some person of suitable age and discretion then residing therein and by tendering to the person the fees for 1 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

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

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

(c) A resident of this state may be required to attend an examination only in the county wherein the resident resides or is employed or transacts business in person, or at such other convenient place as is fixed by order of the 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 court administrator of the district court shall issue subpoenas for witnesses in all civil cases pending before the 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 provisions 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(f)] 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 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(b). 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.

Rule 45.07. Contempt

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

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 the party desires the court to take or any objection to the action of the court and the 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 the party. A minute of the objection to the ruling or order shall be made by the judge or reporter.

RULE 47. JURORS

Rule 47.01. Examination of Jurors

The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper.

Rule 47.02. Alternate Jurors

The court may direct that one or two jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the principal jurors. An alternate juror who does not replace a principal juror shall be discharged after the jury retires to consider its verdict. If one or two alternate jurors are called, each party is entitled to one peremptory challenge in addition to those otherwise allowed by law. The additional peremptory challenge may be used only against an alternate juror, and the other peremptory challenges allowed by law shall not be used against the alternates.

Rule 47.03. Separation of Jury

After the jury has retired for its deliberations, the court, in its discretion, may permit the jury to separate overnight and return to its deliberations the following morning.

RULE 48. JURIES OF LESS THAN TWELVE; MAJORITY VERDICT

The parties may stipulate that the jury shall consist of any number less than 12, or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

RULE 49. SPECIAL VERDICTS AND INTERROGATORIES

Rule 49.01. Special Verdicts

(a) 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 the right to a trial by jury of the issue so omitted unless before the jury retires 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(b), neither the court nor counsel shall inform the jury of the effect of its answers on the outcome of the case.

(b) In actions involving Minn. Stat. c. 604 the court shall inform the jury of the

effect of its answers to the comparative fault 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.

Rule 49.02. General Verdict Accompanied by Answer to Interrogatories

The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other, but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict, or may return the jury for further consideration of its answers and verdict, or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment, but may return the jury for further consideration of its answers and verdict, or may order a new trial.

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

Rule 50.01. Directed Verdict; When Made; Effect

A motion for a directed verdict may be made at the close of the evidence offered by an opponent or at the close of all the evidence. A party who moves for a directed verdict at the close of the evidence offered by an opponent shall, after denial of the motion, have the right to offer evidence as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. If the evidence is sufficient to sustain a verdict for the opponent, the motion shall not be granted. The order of the court granting the motion for a directed verdict is effective without any assent of the jury.

Rule 50.02. Judgment Notwithstanding Verdict

(a) A party may move that judgment be entered notwithstanding the verdict or notwithstanding the jury has disagreed and been discharged, whether or not 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.

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

(c) A motion for judgment notwithstanding the verdict or notwithstanding the jury has disagreed and been discharged shall be made within the time specified in Rule 59 for the making of a motion for a new trial and may be made on the files, exhibits, and minutes of the court. On a motion for judgment notwithstanding the jury has disagreed and been discharged, the date of discharge shall be the equivalent of the date of rendition

of a verdict within the meaning of that rule, but such motion must in any event be made before a retrial of the action is begun.

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

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

(f) If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as respondent, assert grounds entitling 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.

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 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, in 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 that party objects thereto before the jury retires to consider its verdict, stating specifically the matter to which that party objects and the ground of 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 although it was not otherwise called to the attention of the court.

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 for its action. Requests for findings are not necessary for purposes of review. Findings 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 adopted by the court, 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 on motions pursuant to Rules 12 or 56 or any other motion except as provided in Rule 41.02.

Rule 52.02. Amendment

Upon motion of a party made not later than the time allowed for a motion for new trial pursuant to Rule 59.03, the court may amend its findings or make additional findings, and may amend the judgment accordingly if judgment has been entered. The motion may be made with a motion for a new trial and may be made on the files, exhibits, and minutes of the court. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

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's report shall not be retained as security for 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 53.02. Reference

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

Rule 53.03. Powers

The order of reference to the referee may specify or limit the referee's powers and may direct 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 it and to do all acts and take all measures necessary or proper for the efficient performance of the referee's duties specified in the order. The referee may require the production of evidence upon all

matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. Unless otherwise directed by the order of reference, the referee may rule upon the admissibility of evidence, may put witnesses on oath and 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

(a) Meetings. When a reference is made, the 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 the report. If a party fails to appear at the time and place appointed, the referee may proceed ex parte or, in the referee's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

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

(c) Statement of Accounts. When matters of accounting are in issue, 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 of the accounting parties or upon written interrogatories or in such other manner as the referee directs.

Rule 53.05. Report

(a) Contents and Filing. The referee shall prepare a report upon the matters submitted by the order of reference and, if required to make findings of fact and conclusions of law, shall set them forth in the report. The referee shall file the report with the 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 the evidence and the original exhibits. The court administrator shall forthwith mail notice of the filing to all parties.

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

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

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

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

RULE 54. JUDGMENTS; COSTS

Rule 54.01. Definition; Form

Judgment as used in these rules includes a decree and means the final determination of the rights of the parties in an action or proceeding. A judgment shall not contain a recital of pleadings, the report of a referee, or the record of prior proceedings.

Rule 54.02. Judgment upon Multiple Claims

When multiple claims for relief or multiple parties are involved in an action, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order

or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Rule 54.03. Demand for Judgment

A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every other judgment shall grant the relief to which the party in whose favor it is rendered is entitled.

Rule 54.04. Costs

Costs and disbursements shall be allowed as provided by statute. Costs and disbursements may be taxed by the court administrator on 2 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 court administrator may file a notice of appeal with the court administrator who shall forthwith certify the matter to the court. The appeal shall be heard upon 8 days' notice and determined upon the objections so certified.

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 that party as follows:

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

(b) 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, that party shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If the action is 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.

(c) If relief other than the recovery of money is demanded and the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment, it may take or hear the same or order a reference for that purpose, and order judgment accordingly.

(d) When service of the summons has been made by published notice, or by delivery of a copy outside the state, no judgment shall be entered on default until the plaintiff shall have filed a bond, approved by the court, conditioned to abide such order as the court may make concerning restitution of any property collected or obtained by virtue of the judgment in case a defense is thereafter permitted and sustained; provided, that in actions involving the title to real estate or to foreclose mortgages thereon such bond shall not be required.

Rule 55.02. Plaintiffs; Counterclaimants; Cross-Claimants

This rule is applicable whether the party entitled to judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases, a judgment by default is subject to the limitations of Rule 54.03.

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 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 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 the party's favor as to all or any part thereof.

Rule 56.03. Motion and Proceedings Thereon

The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and

admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Rule 56.04. Case not Fully Adjudicated on Motion

If, on motion pursuant to this rule, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing on the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

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 the adverse party's pleading but must present specific facts showing that there is a

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

Rule 56.06. When Affidavits are Unavailable

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present, by affidavit, facts essential to justify 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 order 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 submitting them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits causes the other party to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.

RULE 57. DECLARATORY JUDGMENTS

The procedure for obtaining a declaratory judgment pursuant to Minn. Stat. c. 555, shall be in accordance with these rules, and the right to trial by jury is retained under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

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 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 court administrator in the judgment roll; this entry constitutes the entry of the judgment; and the judgment is not effective before such entry.

Rule 58.02. Stay

The court may order a stay of entry of judgment upon a verdict or decision for a period not exceeding the time required for the hearing and determination of a motion for new trial or for judgment notwithstanding the verdict or to set the verdict aside or to dismiss the action or for amended findings, and after such determination may order a stay of entry of judgment for not more than 30 days. In granting a stay of entry of judgment pursuant to this rule for any period exceeding 30 days after verdict or decision, the court, in its discretion, may impose such conditions for the security of the adverse party as may be deemed proper.

RULE 59. NEW TRIALS

Rule 59.01. Grounds

A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes:

(a) Irregularity in the proceedings of the court, referee, jury, or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair trial;

(b) Misconduct of the jury or prevailing party;

(c) Accident or surprise which could not have been prevented by ordinary prudence;

(d) Material evidence newly discovered, which with reasonable diligence could not have been found and produced at the trial;

(e) Excessive or insufficient damages, appearing to have been given under the influence of passion or prejudice;

(f) Errors of law occurring at the trial, and objected to at the time or, if no objection need have been made pursuant to Rules 46 and 51, plainly assigned in the notice of motion;

(g) The verdict, decision, or report is not justified by the evidence, or is contrary to law; but, unless it be so expressly stated in the order granting a new trial, it shall not be presumed, on appeal, to have been made on the ground that the verdict, decision, or report was not justified by the evidence.

On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct entry of a new judgment.

Rule 59.02. Basis of Motion

A motion made pursuant to Rule 59.01 shall be made and heard on the files, exhibits, and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit. A full or partial transcript of the court reporter's notes may be used on the hearing of the motion.

Rule 59.03. Time for Motion

A notice of motion for a new trial shall be served within 15 days after a general verdict or service of notice by a party of the filing of the decision or order; and the motion shall be heard within 30 days after such general verdict or notice of filing, unless the time for hearing be extended by the court within the 30 day period for good cause shown.

Rule 59.04. Time for Serving Affidavits

When a motion for a new trial is based upon affidavits, they shall be served with the notice of motion. The opposing party shall have 10 days after such service in which to serve opposing affidavits, which period may be extended by the court pursuant to Rule 59.03. The court may permit reply affidavits.

Rule 59.05. On Initiative of Court

Not later than 15 days after a general verdict or the filing of the decision or order, the court upon its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

Rule 59.06. Stay of Entry of Judgment

A stay of entry of judgment pursuant to Rule 58 shall not be construed to extend the time within which a party may serve a motion hereunder.

RULE 60. RELIEF FROM JUDGMENT OR ORDER

Rule 60.01. Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time upon its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the appellate court.

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 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:

(a) Mistake, inadvertence, surprise, or excusable neglect;

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial pursuant to Rule 59.03;

(c) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(d) The judgment is void;

(e) 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

(f) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (a), (b), and (c) not more than 1 year after the judgment, order, or proceeding was entered or taken. A Rule 60.02 motion 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.

RULE 61. HARMLESS ERROR

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

Rule 62.01. Stay on Motions

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

Rule 62.02. Injunction Pending Appeal

When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

Rule 62.03. Stay Upon Appeal

When an appeal is taken, the appellant may obtain a stay only when authorized and in the manner provided in Rules 107 and 108, Rules of Civil Appellate Procedure.

Rule 62.04. Stay in Favor of the State or Agency Thereof

When an appeal is taken by the state or an officer, agency, or governmental subdivision thereof, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

Rule 62.05. Power of Appellate Court Not Limited

The provisions of Rule 62 do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

Rule 62.06. Stay of Judgment Upon Multiple Claims

When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 54.02, the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefits thereof to the party in whose favor the judgment is entered.

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 judicial duties after a verdict is returned or findings of fact and conclusions of law are filed, 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 the duties cannot be performed because that judge did not preside at the trial or for any other reason, that judge may exercise discretion to grant a new trial.

Rule 63.02. Interest or Bias

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

Rule 63.03. Notice to Remove

Any party or attorney may make and serve on the opposing party and file with the court administrator a notice to remove. The notice shall be served and filed within 10 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 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, 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.

Rule 63.04. Assignment of Judge

Upon receiving notice as provided in Rules 63.02 and 63.03, the chief justice shall assign a judge of another district, accepting such assignment, to preside at the trial or hearing, and the trial or hearing shall be postponed until the judge so assigned can be present.

VII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PLEADINGS

RULE 64. SEIZURE OF PERSON OR PROPERTY

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the state.

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 that party's attorney only if **(1)** 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 that party's attorney can be heard in opposition, and **(2)** 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

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 over 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 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 event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Rule 65.02. Temporary Injunction

(a) No temporary injunction shall be granted without notice of motion or an order to show cause to the adverse party.

(b) A temporary injunction may be granted if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefor.

(c) Before or after the commencement of the hearing on a motion for a temporary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing on the motion. Even when this consolidation is not ordered, any evidence received upon a motion for a temporary injunction which would be admissible at the trial on the merits becomes part of the trial record and need not be repeated at trial. This provision shall be so construed and applied as to preserve any rights the parties may have to trial by jury.

Rule 65.03. Security

(a) No temporary restraining order or temporary injunction shall be granted except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

(b) Whenever security is given in the form of a bond or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the court administrator as the surety's agent upon whom any papers affecting liability on the bond or undertaking may be served. 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 court administrator, who shall forthwith mail copies to the sureties if their addresses are known.

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 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 Minn. Stat. 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.

RULE 67. DEPOSIT IN COURT

Rule 67.01. In an Action

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such money or thing.

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 more other persons, and the right thereto as between such claimants is in doubt, the person in possession, though no action is commenced against that person by any of the claimants, may place the property in the custody of the court. 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 rule, 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 prescribed in such order, the petitioner is 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 application 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 the party has possession or control of any money or other thing capable of delivery which, being the subject of the litigation, is held by 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 is 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 pending 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 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 court administrator to give an additional bond, conditioned as the bond authorized in Minn. Stat. § 485.01 in such amount as the judge shall order.

RULE 68. OFFER OF JUDGMENT OR SETTLEMENT

At any time prior to 10 days before the trial begins, any party may serve upon an adverse party an offer to allow judgment to be entered to the effect specified in the offer or to pay or accept a specified sum of money, with costs and disbursements then accrued, either as to the claim of the offering party against the adverse party or as to the claim of the adverse party against the offering party. Acceptance of the offer shall be made by

service of written notice of acceptance within 10 days after service of the offer. If the offer is not accepted within the 10-day period, it is deemed withdrawn. During the 10-day period the offer is irrevocable. If the offer is accepted, either party may file the offer and the notice of acceptance, together with the proof of service thereof, and thereupon the court administrator shall enter judgment. An offer not accepted is not admissible, except in a proceeding to determine costs and disbursements. If the judgment finally entered is not more favorable to the offeree than the offer, the offeree must pay the offeror's costs and disbursements. The fact that an offer is made but not accepted does not preclude a subsequent offer.

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 Minn. Stat. 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 by these rules.

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 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 of 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 or 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 court administrator.

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, 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, that person is liable to the same process for enforcing obedience to the order as if that person were a party.

IX. DISTRICT COURTS AND COURT ADMINISTRATORS

RULE 77. DISTRICT COURTS AND COURT ADMINISTRATORS

Rule 77.01. District Courts Always Open

The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

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 court administrator or other court officials and at any place either within or outside 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. Court Administrator's Office and Orders by Court Administrator

All motions and applications in the 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 court administrator; but the court administrator's action may be suspended, 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 court administrator shall serve a notice of the filing or entry by mail upon every party affected thereby or upon such party's attorney of record, whether or not such party has appeared in the action, at the party or attorney's last known address, and shall make a notice in 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.

RULE 80. STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE

Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by a reading of the transcript thereof duly certified by the person who reported the testimony. Such evidence is rebuttable and not conclusive.

RULE 81. APPLICABILITY; IN GENERAL

Rule 81.01. Statutory and Other Procedures

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

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

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

Rule 81.02. Appeals to District Courts

These rules do not supersede the provisions of statutes relating to appeals to the district courts.

Rule 81.03. Rules Incorporated into Statutes

Where any statute heretofore or hereafter enacted, whether or not listed in Appendix A, provides that any act in a civil proceeding shall be done in the manner provided by law, such act shall be done in accordance with these rules.

RULE 82. JURISDICTION AND VENUE

These rules shall not be construed to extend or limit the jurisdiction of the district courts of Minnesota or the venue of actions therein.

RULE 83. RULES BY DISTRICT COURTS

Any court may adopt rules governing its practice, and the judges of the district courts, pursuant to Minn. Stat. §§ 484.33 and 484.52, may adopt rules, not in conflict with these rules.

RULE 84. APPENDIX OF FORMS

The forms contained in the Appendix of Forms sufficiently reflect the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

RULE 85. TITLE

These rules are known and cited as Rules of Civil Procedure.

RULE 86. EFFECTIVE DATE

Rule 86.01. Effective Date and Application to Pending Proceedings

(a) These rules as originally adopted took effect on January 1, 1952. They govern all proceedings and actions brought after that effective date, and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the action was brought applies.

(b) Unless otherwise specified by the court, all amendments will take effect on either January 1 or July 1 in the year of or the year following their adoption. They govern all proceedings in actions brought after they take effect, and also all further proceedings in actions then pending, except as to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible, or would work injustice, in which event the former procedure applies.