SELF-HELP CENTER
PUBLIC EDUCATION BOOKLET

What to Expect as a Self-Represented Plaintiff or Defendant…

CIVIL TRIAL (without a jury)

Contents

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Introduction

This booklet is intended for self-represented parties preparing for trial in a civil case. **Trials are complicated.** This booklet is meant to make the trial more *understandable*, but we can't make it less complicated. Most civil case trials do not involve a jury. Instead, the Judge decides what facts are proven. A jury is used only if a party requests a jury, pays the jury fee, and if a jury is allowed for that type of case. This booklet does **not** cover issues related to juries. A trial is not the same as a court appearance or motion hearing. The trial is the final phase of a civil case, where witnesses and evidence are presented. Many other hearings may occur before the trial or instead of a trial. This booklet does **not** explain what happens at other court appearances. Carefully read all orders and letters from the Court to understand what is expected at each court appearance. If you are unsure, you can call the Court for clarification.

¶ In addition to reading this booklet, we encourage you to:

- **Watch a trial** at the courthouse. Most trials are open to the public.
- **Get advice from a lawyer.** You can hire a lawyer for a one-time consultation, or for ongoing coaching as you move ahead in the case. **"Limited scope services"** is an alternative to having a lawyer represent you fully. For information on finding a lawyer: www.mncourts.gov/selfhelp/?page=252.
- **Go to a law library** for more information about Civil Trials. Lawyers study this, and so can you. For a list of libraries: www.mncourts.gov/selfhelp/?page=253
- **Watch a video of a simple trial** at www.mncourts.gov/selfhelp/?page=1913. This video shows a Conciliation Court trial (case under $7,500). A case for a larger amount will be more complicated, but the video helps with basic concepts.
- **Visit the court's online Self-Help Center** for general information about civil cases and for lawyer referral information: www.mncourts.gov/selfhelp/.

Settlement

Many cases settle the day of trial – sometimes before, and sometimes after testimony is given. "Settle" means that the parties involved reach an agreement and the Judge approves the agreement.

You may be asked several times at different stages of the case to try to settle your dispute. The Judge may require both parties to meet or attend mediation to try to reach a settlement before the trial starts. The Judge may also schedule a "Pre-Trial Conference" to talk with the parties about the trial issues and evidence and take steps to speed up the actual trial. You should come to the Pre-Trial Conference prepared to offer a solution to settle the case, and be ready to consider settlement offers from the other side. Each time you come to court, including at the final trial, you can expect the Judge to ask you and the other party what you have done to try to settle the case.

A settlement allows the parties to find creative solutions that fit their needs, and also allows parties to have a "known" result. Going to trial and letting the Judge or jury decide is always a gamble. If you and the other party reach an agreement before the trial day, call your judicial officer's clerk right away.

If there is a trial, things will happen in this order:

1. Opening statements
2. Plaintiff's case-in-chief (witnesses and exhibits)
3. Defendant's case-in-chief (witnesses and exhibits)
4. Final arguments

These stages of the trial are explained further starting on page 10.

Role of the Judicial Officer (Judge or Referee)

The Judge's role is to assure that the trial proceeds in an orderly manner, and that both sides have as full an opportunity to be heard as the rules of procedure and evidence allow. In a Civil Trial without a jury, the Judge also decides if the plaintiff has proven his case, and what the award or outcome will be. The Judge will give you general guidance on what is expected and how the trial will go. Within the scope of the issues raised in the Complaint and Answer, you decide what topics to cover, what evidence is important, and what questions to ask of witnesses.

The Judge must be neutral and fair to both sides. He or she is the umpire, not the coach. The Judge may ask a question of a witness to clarify something but will not take over and ask all the questions he or she thinks are important. It is your case, and you decide what you want the Judge to hear and see.

Rules of Evidence and Rules of Civil Procedure

The Judge will conduct the trial using the *Minnesota Rules of Civil Procedure* and the *Minnesota Rules of Evidence*. You can find these rules in county law libraries and online at www.mncourts.gov/default.aspx?page=511. Law Libraries also have books that explain more about the *Rules of Civil Procedure* and *Rules of Evidence*, and include excerpts from court cases that have interpreted the Rules.

No one can predict in advance exactly which rules will come into play, but some of the rules that most frequently apply are found at the end of this booklet. The Judge is required to follow these rules, and so are you and all other trial participants.

The basic idea of the *Rules of Evidence* is to insure that the evidence is trustworthy. It would be unfair to everyone if the Judge relied on questionable evidence in making a decision. In nearly all trials, testimony from witnesses is used as evidence. How does the Court know that a

statement is truthful? The protections are: 1) the witness is given an oath and promises to tell the truth and 2) the witness is in the courtroom and can be asked questions (cross-examined) by the other side. The "Hearsay" rule of evidence requires that the person who made a statement be present in court to testify. Generally, you can't testify about what someone else told you. There are important exceptions to this rule, spelled out in the *Rules of Evidence*, Rule 801, Hearsay.

The *Rules of Evidence,* Rule 901 addresses what is needed for a document, photograph, telephone and computer record, or physical object to be reliable and allowed as evidence. Usually, for evidence of this type to be admitted as evidence, you need a witness to explain how the document or information was created and to testify that the information really is what it appears to be (that it is authentic.) Questions are asked of the witness to lay a "foundation" to cover what the item is, who created it, when, where, and why. Some documents can be admitted into evidence without a witness, such as a certified copy of a public record. See *Rules of Evidence*, Rule 902.

Another important concept in the *Rules of Evidence* is relevancy. If evidence is not relevant to the case, it is generally not allowed. Relevant evidence helps the Judge decide if your story is true. If your witness is testifying and you hear "Objection your honor, that testimony is irrelevant" you need to be prepared to explain why the testimony is important in deciding the case. If the Judge is persuaded that the line of questioning will help her make a decision in the case, the Judge will state "Objection overruled. Witness, you may continue answering the question." Even relevant evidence may be kept out. A Judge may refuse evidence if it is repetitive and merely slowing down the trial. For example, a Judge may admit one or two photos showing the condition of the roof, rather than allowing 20 photos showing basically the same thing.

Arranging for Witnesses

Plan ahead. The Judge will not delay the trial to let you arrange for witnesses you could have contacted earlier. You should contact your witnesses as soon as the Court schedules your trial date.

Witnesses must be present the day of the trial. Not all witnesses will necessarily be allowed to testify. They must be able to offer admissible evidence, and the basic rule is that a witness must have first-hand knowledge. Even if the testimony is admissible, if multiple witnesses are repeating the same information, the Judge may not allow them all to testify due to time restrictions.

The idea of first-hand knowledge (also called personal knowledge) is illustrated by this example: Your witness Mary testifies that the blue truck ran a red light. An objection is made. "I object, your Honor. Lack of personal knowledge." You then ask Mary how she knows the blue truck ran the red light. If she responds "My friend was there and told me about it," Mary's statement will not be allowed into evidence. She is repeating what someone else saw, and does not have first-hand knowledge. However, if Mary saw the truck run the light, you should begin questioning Mary by asking where she was at the time of the accident, and establish that she was present and actually saw the truck run the red light.

Sometimes a party will call an "expert witness" to testify in his case. An expert is someone with scientific, technical or other special knowledge about a certain topic (e.g., a roofing contractor, medical doctor, engineer, chemist, etc.). Experts are often called to give their opinion about a fact of the case, such as the speed of impact of a car crash or the side effects of using a prescription drug. Rule 702 of the *Rules of Evidence* requires that reliability of the expert's testimony be established laying the foundation of the expert's qualifications on the topic area,

including their education and professional experience. As with all evidence, the expert's testimony is also subject to the hearsay rule and other *Rules of Evidence* .

Subpoenas and Witness Fees

The only way to guarantee that a witness will come to court to testify or bring documents to court is to use a subpoena (a court order directing someone to appear in court and/or bring documents, or face arrest). The law in Minnesota regarding subpoenas in civil cases is found in Rule 45 of the *Minnesota Rules of Civil Procedure*. If your witness agrees to come to court, you do not need a subpoena. If you need to subpoena a witness, do not delay.

At your request, Court Administration prepares the subpoena, and charges you a fee. Next, you arrange for someone 18 or older (not you) to serve the subpoena on the witness, along with the witness fee (you pay the witness fee).

If you subpoena a witness, you will need to pay that witness $20 per day, plus mileage from the witness' home to the courthouse and back. The fee for mileage is set by state law and is stated in Minn. Stat. § 357.22 (1994). A witness that you have subpoenaed does not have to come to court unless she received one day's witness fee and mileage expenses in advance. Some witnesses served with a subpoena may also be entitled to reasonable compensation for their time, in addition to mileage and the $20 witness fee. Read *Minnesota Rules of Civil Procedures*, Rule 45.03(d) for specific details.

If you got an Order waiving the court filing fees (*in forma pauperis*) and you cannot afford to pay the witness fees, you can ask the court to pay the witness fees for you. To do this, fill out a *Supplemental Affidavit for Proceeding In Forma Pauperis* (IFP103); available online at http://www.mncourts.gov/default.aspx?page=513&item=182&itemType=formDetails), and give it to Court Administration. A Judge will decide who pays the witness fees - you or the Court.

Witness fees and mileage apply only to witnesses who are subpoenaed. To put it simply:

SUBPOENA → you have to pay witness fees and mileage

NO SUBPOENA → you DO NOT have to pay witness fees and mileage

Preparing Evidence

Evidence includes witness testimony, your testimony, and documents, pictures, or other objects. Evidence must be presented the day of trial. It cannot be submitted after the trial (except by order of the Judge in some cases about child support or unusual situations). Judges often send the parties a "Trial Scheduling Order" requiring them to exchange "Exhibit Lists" and "Witness Lists" by a certain date. The Judge may also require parties to show each other their exhibits before the day of trial. This allows both sides to better prepare for trial.

The Judge cannot investigate or gather evidence. Non-attorneys who don't understand this will say things to the Judge like:

- "Here is Witness Joe's phone number. You can call him and ask him yourself."
- "Here is the address. You can drive by and see for yourself that the building was never finished."

A Judge is not allowed to seek out evidence. It is your responsibility to bring all the evidence to court and present it during trial.

"Marking" Exhibits"

Documents are "marked" by placing a sticker on the document or object with consecutive numbers (for example, "Exh 1," which is an abbreviation for "Exhibit 1," "Exh 2," "Exh 3," etc.). The exhibit sticker should be white with black writing. Sometimes, documents and exhibits are "marked" before the trial day. Some Judges prefer that the court clerk or court reporter mark the exhibit when it is offered at trial.

Exhibit List

You should create an "Exhibit List." This is just a listing of all the documents and objects you have marked, in order, with a brief description of what the exhibit is. For example:

Plaintiff's Exhibit List

Exhibit	Description
1	Contract between Jones and Smith
2	Bank statement of Smith

On the day of trial (or before, if the Trial Scheduling Order requires this before the day of trial), you must bring the original document or object, and 3 copies of any documents. One copy is for the Judge, one copy is for you, and one copy is for the other party. Whenever you refer to a document during the trial, you, the other party, and the Judge should have a copy. The witness will be looking at the original document, and the original will be offered and admitted into evidence and become part of the record of the trial.

Before the trial starts, the Judge might ask if you and the other party have **stipulated** to the admissibility of any of the documents or objects. Stipulating to admissibility means that both sides agree that a document or object should be considered as evidence in the trial. It is common to stipulate to the admissibility of evidence if there is no dispute that the document or object is authentic. For example, both sides might stipulate to the admissibility of a photograph of the roof of your house taken on June 1, 2009. Even though the photograph is admitted into evidence, you still need to explain to the Judge the significance of the photo. How does the photo support your claim? Likewise, the other side can use the photo to support their version of what happened.

"Trial Notebook"

Attorneys often create what is called a "trial notebook," and you can too. This helps you organize into one binder with tabbed sort-pages all of the parts of your case (Opening Statement, Witness List, Exhibit List, copies of Exhibits, questions you plan to ask each witness, Final Argument). Before creating your Trial Notebook, think about what you need to prove. A two column chart can be helpful. On the left, list each fact that supports your case. On the right, list the evidence that will prove each fact. Use this chart as you decide what evidence (documents, objects, testimony) you will need, and as you create a list of questions for each witness.

The Trial Begins

Trials are scheduled for a set period of time. If the Trial Scheduling Order does not tell you the length of the trial, call the Court to see how much time is scheduled. You can assume that you will have ½ the allotted time to present your case, and the other side will have the remainder of the time. Knowing how long you have will help you prepare. You need to be organized, and plan out how long you can spend with each witness and topic.

Be on time for your court date. Allow yourself extra time in case you run into bad traffic or weather, and to allow time to find parking and go through security when you enter the courthouse. If you are not in the courtroom when the clerk calls the case, you can lose the case by "default." If you have an emergency or are delayed, call the Court. Calling does not necessarily protect you from losing by default.

Be prepared to stay at the courthouse longer than expected. If possible, take a bus or park in a ramp instead of at a meter to avoid worrying about an expired meter. Make adequate arrangements for care of children. Explain to an employer that you might be delayed. There is a

possibility that unanticipated or emergency situations will come up that your Judge has to handle. This means your trial may be delayed or interrupted.

Courtroom Behavior

Wear conservative clothing. Shorts, T-shirts, low necklines and torn clothing are not appropriate. Lawyers are required to wear suits or dresses. You do not have to buy new clothing for court, but remember it is a formal place and you want to be conservative and respectful in dress and behavior.

Do not bring children. Unless the Judge has told you to bring your children to the hearing or trial, make arrangements for someone to take care of your children.

Certain behaviors are not allowed because they are noisy, distracting or disrespectful. You cannot: chew gum, eat, read a newspaper, sleep, wear a hat, listen to earphones, carry a cell phone or pager unless it's turned off, have a camera or camera phone, or carry a weapon.

During the trial, you should listen carefully. Ask the Judge for permission to speak. You should talk directly to the Judge – not to the other party. When you talk to the Judge, start by saying, "Your Honor." Speak loudly and clearly, and remember that **only one person can speak at a time**. A court reporter is taking down everything said in the courtroom and can only record one speaker at a time. Avoid arguing with or interrupting another person, and control your emotions.

Opening Statement

Opening statements are the first part of a trial. For your opening statement, be prepared to briefly summarize what the case is about, what outcome you will ask for, and what evidence you will present that relates to the case. The evidence consists of witness testimony, exhibits received in evidence, and any facts you and the other party formally agree to.

As part of the pre-trial work, you and the other side might create a list of facts you agree on. This is referred to as "Stipulated Facts." Agreeing that certain facts are true will shorten the time it takes to try the case, and can help limit the number of witnesses needed.

The opening statement is not your testimony. Testimony is given later, under oath. The opening statement is not a time for making your arguments. That comes later in the Final Arguments. In some cases, the Judge may not allow the parties to make opening statements, especially if the case is simple and the time allotted for the trial is short.

Plaintiff and Defendant's Case-in-Chief

After the opening statements, the plaintiff presents her evidence. This is called the plaintiff's *case-in-chief*. When the plaintiff is done with all of her witnesses and evidence, it is then the defendant's turn to present his case-in-chief.

Your case-in-chief may consist only of your testimony under oath, or it may include testimony of other witnesses. If you have other witnesses, tell your Judge the order in which you want to present your evidence: who will testify first, second, third, and so on. This will help keep the trial moving in a timely and orderly fashion. The Judge may also ask you to summarize what the witness will say, before the witness is called. Be prepared to explain in a few sentences how the witness' testimony is important to your case.

When you call a witness to testify, you must ask questions for the witness to answer. This is called *direct examination*. You should have a list of questions for each of your witnesses. You can also tell your witness prior to the trial what you plan to ask, so your witness is prepared. During direct examination, you should ask one question at a time. Do not wrap several questions into one – it's difficult for the witness to respond to complex questions. Also, keep in mind that YOU cannot testify while asking your witness questions. Often, the context or the whole story

does not come out until several witnesses have testified. The Judge will make notes to remember the testimony of each witness, and in your Final Argument you can explain how all the evidence fits together.

For example, if you were hurt in a car accident because a truck ran a red light and struck your car, you might ask a witness to explain what she saw at time and place of the accident. You would NOT say: Isn't it true that I was seriously injured and couldn't work for 5 months because the defendant ran a red light and struck my car?

The witness can only testify from first-hand knowledge – things she saw or heard herself. She may have seen the defendant run a red light and can testify about that, but she doesn't know about the injuries and lost work time. Information about the extent of your injuries must be proven through other witnesses or records.

Sometimes a witness is hostile or not answering as you expected. Do not argue with a witness. Just ask questions.

When you are done with your questioning of your witness, tell the Judge. The other party (or their lawyer) will then ask questions of the witness. This is called *cross-examination*. The questions asked during cross-examination must be related to the testimony the witness just gave. Cross-examination is used to clarify the witness' testimony, and can also be used to undermine or discredit the testimony. For example, if a witness testified that the roof leaked 3 days after the contractor put on a new roof, you might ask in cross-examination if it is true that a storm blew a large tree over and broke a hole in the roof three days after the contractor did the roof.

Cross-examining a witness can be difficult. Non-lawyers often have trouble asking questions of the witness instead of making their own statements or arguments. In that case, the Judge may

give you another chance to get it right, but then may say “you can testify when you sit on the stand as a witness”, and end the cross-examination.

After the other party cross-examines your witness, you may ask the witness more questions in what is called *redirect examination*, or *rebuttal*, but those questions must be related to something discussed on cross-examination. Do not feel that you must cross-examine a witness or ask questions on redirect examination. It is fine to say that you have no further questions.

If you testify as a witness in your case, you will be given an oath and will usually be asked to sit in the witness box. You won’t have to ask questions of yourself. After you are sworn in, the Judge will let you testify in a narrative fashion (tell the facts of the case as a story). You should pause in your story to tell the Judge when you are changing topics. For example, “Now I’m going to talk about when I saw the doctor.” This gives the other side an opportunity to object to a topic. When you are finished with your testimony, the lawyer or other party will be able to ask you questions on cross-examination. The Judge will tell you to “step down” when all questions are done.

In addition to witness testimony, you may have documents or objects you want to use as evidence. It is important to know that papers you may have filed with the court before the trial are **not** evidence. If you want the court to use something as evidence, list it as an exhibit in your Exhibit List and offer it into evidence at the trial. If you filed the original document with the court, you can ask the Judge to return the document to you, get it marked as an Exhibit, and offer it as evidence. The Judge will have the file on the bench.

To offer an exhibit into evidence, you usually need a witness who can tell the court what the exhibit is. For example, if you have photos, the person who took the photos should testify about

them, if possible, to explain when and where the photos were taken. You can be the witness if you have sufficient knowledge about the exhibit.

Objections

Objections are challenges. Usually, objections are made because a party believes the evidence is not admissible according to the *Rules of Evidence*. You (and the other party) can object to questions, witness testimony or exhibits that you believe do not comply with the rules of evidence and procedure. If you wish to object, you should tell the Judge very clearly, "Objection." The Judge will ask you to explain why you object, and then the other party will get to respond. If either side objects to something, all questioning should stop immediately (if a witness is testifying, the witness should stop talking immediately). You must have a valid reason to object, according to the *Rules of Evidence*. "He's lying" is not a valid objection.

If the Judge **sustains** the objection, the witness can't talk about whatever was objected to. If the Judge **overrules** the objection, the witness can go ahead and talk about whatever was objected to. If you don't understand the Judge's ruling on an objection, ask him to explain.

If you have a key piece of evidence and the attorney for the other side objects to it, the Judge will decide if that evidence is admissible and becomes part of the record. If the Judge rules against you, you might be able to correct the problem. If the evidence is not relevant, you can't fix that. If the objection was based on "lack of foundation" for a document, you might be able to ask the witness questions to explain what the document is and show it is authentic, and get the document admitted into evidence. Do not expect the Judge to tell you what to do or say to correct the problem. It is your job to make the legal arguments, and the Judge's job to make a ruling. You should study the *Rules of Evidence* before the trial, and get advice from a lawyer if

you are unsure about how to get key evidence into the record. Success at trial is largely a result of preparation.

Final Argument (also called Closing Statement)

After all the evidence is complete, you and the other party will be allowed to make final arguments. During your final argument, be prepared to explain what you are asking the Court to do, and how the evidence presented supports your request. If you want a money judgment, tell the Judge how much money you want, and summarize the evidence to show why you are entitled to that amount. You may comment on any evidence that was presented at the trial (yours and your opponent's) and tell the Judge what you think that evidence means. You are not allowed to tell the Judge any new facts about the case during final argument – the evidence is over by this point.

You may also tell the Judge what you are asking the Court to do. If you are asking for money damages, you should explain that.

The plaintiff has the burden of convincing the court (the "burden of proof"), and will have the right to open the final arguments and to close them. This means that the plaintiff will speak first, then the defense will speak, and then the plaintiff may speak again to respond to what the defense said. The Judge may put a time limit on the final arguments.

Burden of Proof

The party who started the lawsuit has the "**burden of proof**."

In most civil cases, the petitioner/plaintiff has to prove his case by a "**preponderance of the evidence**." Using the scales as an example, a preponderance of the evidence would be tipping the balance of the scales, even a tiny bit, in petitioner/plaintiff's favor.

If the Defendant counter-sued, the Defendant has the burden of proof for her requests. **If you have the burden of proof:** if the evidence weighs in favor of the other party, or if the balance is equal, you have not met your burden of proof, and the Court will not be able to give you what you asked for in your pleadings. To put it another way, if after listening to all the evidence the Judge thinks it's a toss-up, the Plaintiff loses and did not meet her burden of proof.

Decision

The Judge decides the outcome of a case when there is no jury. He or she will listen to all the testimony presented in the trial and review all of the exhibits. The Judge will decide what facts were proven, and whether you are entitled to the relief you seek.

Sometimes parties ask permission to file a "legal brief" after the trial is over, or a Judge may request briefs. A legal brief is a written paper in which a party or his lawyer cites the law, and attempts to persuade the Judge that the law supports the outcome the party has requested. Briefs typically cite statutes and "case law." A law librarian may be able to show you sample legal briefs and explain the basics of legal research.

The Judge will decide if legal briefs can be submitted. If legal briefs are to be submitted, he or she will set a due date. A legal brief cannot contain new evidence.

After the trial is over, and after legal briefs (if any) are submitted, the Judge has 90 days in which to make a decision. If you win the case and get a money judgment against the other party, they should pay you directly. If payment is not made, you must take steps to collect the money. The Court does not collect it for you. Once the money is received by you, you must file a "Satisfaction of Judgment" with Court Administration.

Rules that Commonly Come into Play in Civil Trials

Minnesota Rule of Civil Procedure 45.03 ("Protection of Persons Subject to Subpoena")

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

(b) Subpoena for Document Production Without Deposition.

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

(2) Subject to Rule 45.04(b), a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises – or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(c) Motion to Quash or Modify Subpoena.

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

(A) fails to allow reasonable time for compliance;

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

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

(D) subjects a person to undue burden.

(2) If a subpoena

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

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

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

(d) Compensation of Certain Non-Party Witnesses. 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.

Minnesota Rule of Evidence 401 ("Definition of Relevant Evidence") – "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Minnesota Rule of Evidence 402 ("Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible") – All relevant evidence is admissible, except as otherwise provided by the United States Constitution, the State Constitution, statute, by these rules, or by other rules applicable in the courts of this state. Evidence which is not relevant is not admissible.

Minnesota Rule of Evidence 403 ("Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time") – Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Minnesota Rule of Evidence 602 ("Lack of Personal Knowledge") – A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses.

Minnesota Rule of Evidence 609 ("Impeachment by Evidence of Conviction of Crime")

(a) General rule. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect, or (2) involved dishonesty or false statement, regardless of the punishment.

(b) Time limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of pardon, annulment, vacation or certificate of rehabilitation. Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, vacation or certificate of rehabilitation or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, vacation or other equivalent procedure based on a finding of innocence.

(d) Juvenile adjudications. Evidence of juvenile adjudications is not admissible under this rule unless permitted by statute or required by the state or federal constitution.

(e) Pendency of appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Minnesota Rule of Evidence 611 ("Mode and Order of Interrogation and Presentation")

(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination. An accused who testifies in a criminal case may be cross-examined on any matter relevant to any issue in the case, including credibility.

(c) Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness,

an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

Minnesota Rule of Evidence 701 ("Opinion Testimony by Lay Witness")

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Minnesota Rule of Evidence 702 ("Testimony by Experts")

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. The opinion must have foundational reliability. In addition, if the opinion or evidence involves novel scientific theory, the proponent must establish that the underlying scientific evidence is generally accepted in the relevant scientific community.

Minnesota Rule of Evidence 801 ("Definitions")

The following definitions apply under this article:

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. A statement is not hearsay if:

(1) *Prior statement by witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and helpful to the trier of fact in evaluating the declarant's credibility as a witness, or (C) one of identification of a person made after perceiving the person, if the court is satisfied that the circumstances of the prior identification demonstrate the reliability of the prior identification, or (D) a statement describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter.

(2) *Statement by party-opponent.* The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship,

or (E) a statement by a coconspirator of the party. In order to have a coconspirator's declaration admitted, there must be a showing, by a preponderance of the evidence, (i) that there was a conspiracy involving both the declarant and the party against whom the statement is offered, and (ii) that the statement was made in the course of and in furtherance of the conspiracy. In determining whether the required showing has been made, the Court may consider the declarant's statement; provided, however, the declarant's statement alone shall not be sufficient to establish the existence of a conspiracy for purposes of this rule. The statement may be admitted, in the discretion of the Court, before the required showing has been made. In the event the statement is admitted and the required showing is not made, however, the Court shall grant a mistrial, or give curative instructions, or grant the party such relief as is just in the circumstances.

Minnesota Rule of Evidence 802 ("Hearsay Rule") – Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court or by the Legislature.