

Rules of Practice
of the
Minnesota Supreme Court
(1895)
and the
Code of Rules
of the
District Courts of Minnesota
(1893)

In or after 1895, a 17 page pamphlet containing the Rules of Practice of the District Courts and the Supreme Court of Minnesota was published by the Law College of the University of Minnesota. It was small (6³/₄" x 4") and printed on colored paper. It was printed after February 1, 1895, as that is the date of revised Rule IX of the Supreme Court

The Code of Rules of the District Courts applies only to civil actions. In 1875, the 17th Legislature instructed the District Court Judges to meet and adopt Rules of Practice for civil proceedings.¹ The first set was adopted on July 7, 1875, and are posted in the "Rules of Practice of the Minnesota Supreme Court, the District Courts of Minnesota and the United States Circuit Court for the District of Minnesota" (1875). On August 24, 1893, the Judges met again and adopted revised rules, posted below.

Members of the bench and bar had copies of the pamphlet of the Rules for District Courts and the Supreme Court printed for the Law College. Judge Hascal Brill of the Ramsey County District Court donated his copy to the Minnesota Historical Society.

¹ 1875 Laws, c. 44, at 77 (effective March 6, 1875). The text of this law is posted on page 12 of the "Rules of Practice of the Minnesota Supreme Court, the District Courts of Minnesota and the United States Circuit Court for the District of Minnesota" (MLHP, 2017)(published first, 1875).

The pamphlet was used by students at the Law College who took a course in trial and appellate practice—that is, moot court. The first three pages of one version of the pamphlet have instructions to those students, and they are posted in the Appendix.

The complete texts of the Code of Rules of the District Courts, effective August 24, 1893, and the Rules of Practice of the Minnesota Supreme Court in effect in 1895 follow. The type is slightly enlarged. Originals are filed at the Minnesota Historical Society.

Hascal A. Brill Jr.

CODE OF RULES

FOR THE

DISTRICT COURT

AND

RULES OF PRACTICE

OF THE

SUPREME COURT

OF

MINNESOTA

LAW COLLEGE
UNIVERSITY OF MINNESOTA

MINNESOTA
HISTORICAL SOCIETY

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CODE OF RULES

FOR THE

District Courts of Minnesota.

Adopted by the District Judges at a meeting duly called for that purpose— at the Capitol, in the City of St. Paul, on the twenty-fourth day of August, A. D., 1893, in accordance with the terms of Chapter Forty-four of the General Laws of 1875.

PART I, GENERAL RULES OF PRACTICE.

PART II, RULES IN INSOLVENCY PROCEEDINGS.

PART I.

GENERAL RULES OF PRACTICE.

RULE I.

All bonds shall be duly proved or acknowledged in like manner as deeds of real estate, before the same shall be received or filed.

No practicing attorney or counselor at law shall be received as a surety on any bond or undertaking required in an action, whether he be the attorney of record in the action or not, except where such bond or undertaking shall be executed on behalf of a non-resident party.

RULE II.

The qualifications of sureties must be as follows:

Each must be a resident and free holder of this state, and worth the amount specified in the bond or undertaking above his debts and liabilities, and exclusive of his property exempt from execution, except where the statute otherwise provides. Whenever a judge or other officer approves the security to be given in any case, or reports upon its sufficiency, he must require the sureties to justify by affidavit.

RULE III.

Garnishments shall not be discharged under section 198, chapter 66, General Statutes 1878, nor attachments under section 157 of the same chapter, without notice of the application therefor to the adverse party.

RULE IV.

On process or papers to be served, the attorney, besides subscribing or endorsing his name, shall add thereto his place of residence and the particular location of his place of business by street, number, or otherwise; and if he shall neglect to do so, papers may be served on him through the mail, by directing them according to the best information that can conveniently be obtained concerning his residence.

This rule shall apply to a party who prosecutes or defends in person, whether he be an attorney or not.

RULE V.

All copies of papers served shall be legible, and if not legible may be returned within twenty-four hours after service thereof, and the service of an illegible paper so returned shall be deemed of no force or effect.

RULE VI.

In all cases of more than one distinct cause of action, defense, counter claim, or reply, the same shall not only be separately stated, but plainly numbered; and all pleadings not in conformity with this rule may be stricken out on motion.

RULE VII.

The attorney or other officer of court who draws any pleading, affidavit, case, bill of exceptions or report, decree or judgment, exceeding two folios in length, shall distinctly number and mark each folio of one hundred words in the margin thereof or shall number the pages and the lines upon each page, and all copies, either for the parties or court, shall be numbered and marked, so as to conform to the originals. And if not so marked and numbered, any pleading, affidavit, bill of exceptions, or case, may be returned by the party on whom the same is served.

RULE VIII.

Notices of motion shall be accompanied with copies of the affidavits and other papers on which the motions are made, provided that papers in the action of which copies shall have theretofore been served and papers other than such affidavits which have theretofore been filed, may be referred to in such notice and read upon the hearing without attaching copies thereof. When the notice is for irregularity, the notice shall set forth particularly the irregularity complained of; in other cases it shall not be necessary to make a specification of points, but it shall be sufficient if the notice state generally the grounds of the motion.

RULE IX.

Whenever notice of a motion shall be given, or an order to show cause served, and no one shall appear to oppose the motion or application the moving party shall be entitled, on filing proof or admission of service, to the relief or order sought, unless the court shall otherwise direct. If the moving party shall not appear or shall decline to proceed, the opposite party, upon filing like proof of service, shall be entitled to an order of dismissal.

RULE X.

Upon motion or order to show cause, the moving party shall have the opening and the closing of the argument. Before the argument shall commence, the moving party shall introduce his evidence to support the application; the adverse party shall then introduce his evidence in opposition; and the moving party may then introduce evidence in rebuttal or avoidance of the new matter offered by the adverse party. On hearing such motion or order to show cause, no oral testimony shall be received.

RULE XI.

Orders to show cause will only be granted when a restraining order is necessary, or some exigency is shown which would cause injury or render the relief sought ineffectual if the moving party were required to give the statutory notice of motion. If on the hearing it appear that there was no such ground for the order, it may be discharged or the hearing continued in the discretion of the court. Such order must be accompanied by a notice setting forth the grounds on which the relief asked is sought as in other notices of motion.

RULE XII.

Motions to strike out or correct any pleading under section 107 of chapter 66, General Statutes 1878, must be heard before

demurring to or answering such pleading, and before the time for demurring to or answering such pleading expires, unless the court, for good cause shown, shall extend the time for demurring to or answering such pleading to permit such motion to strike out or correct such pleading to be heard.

RULE XIII.

SPECIAL TERM CALENDAR.—The clerk in each county shall keep a special term calendar, on which he shall enter all actions or proceedings noticed for special term according to the date of issue or service of notice of motion. Notes of issue of all matters for special term shall be filed with the clerk one day before the term. And no case shall be entered upon the calendar unless such note of issue shall have been filed.

RULE XIV.

FILING PAPERS FOR SPECIAL TERM.—All affidavits, notices, and other papers, designed to be used in any cause at special term, shall be filed with the clerk at or before the hearing of the cause unless otherwise directed by the court.

RULE XV.

All orders, together with the affidavits and other papers upon which the same are based, which orders are not required to be served, shall within one day after the making thereof be filed in the office of the clerk, by the party applying for such orders. Orders required to be served shall be so filed within five days after the service thereof.

RULE XVI.

Whenever any party to an action fails to file any pleading therein as required by section 80 of chapter 66, General Statutes 1878, the action shall, upon the application of the adverse party, be continued to the next general term of said court, and if both parties fail to so file their pleadings, the action shall be stricken from the calendar.

RULE XVII.

APPLICATION FOR ORDER WITHOUT NOTICE.—Any party applying to any judge or court commissioner for any order to be granted without notice, except an order to show cause, shall state in his affidavit whether he has made any previous application for such order, and if such previous application has been made upon the same state of facts, every subsequent application shall be refused. When an application made to any judge for the approval of any bond or undertaking, or for an order to show cause, or any *ex parte* order, is refused, the application shall not be renewed before another judge without leave.

RULE XVIII.

No order extending the time to answer or reply shall be granted, unless the party applying for such order shall present to the judge to whom the application shall be made an affidavit of merits, or an affidavit of his attorney or council that from the statement of the case made to him by such party he verily believes that he has a good and substantial defense, upon the merits to the pleading or some part thereof.

RULE XIX.

In an affidavit of merits, the affiant shall state that he has fully and fairly stated the case and facts in the case to his counsel, and that he has a good and substantial defense or cause of action on the merits, as he is advised by his counsel after such statement, and verily believes true, and shall also give the name and place of residence of such counsel.

RULE XX.

In all cases where an application is made for leave to amend a pleading or for leave to answer or reply after the time limited by statute or to open a judgment and for leave to answer and defend, such application shall be accompanied with a copy of the proposed amendment, answer or reply as the case may be, and an affidavit of merits and be served upon the opposite party.

RULE XXI.

In cases where service of any order or notice is required to be made, if the party directed to make the service and the person upon whom service is to be made, reside in the same city, village or town, the service shall be personal. In all other cases such service shall be by mail, or in such other manner as the court may direct.

RULE XXII.

Proof of personal service shall be made by the affidavit of the person making the service. The affidavit shall fully set forth the time, place and manner of service, and that the person upon whom the service was made was to the affiant well known to be the person, co-partnership, or corporation, agent or attorney upon whom such service was directed to be made.

If such service be made by mail, the proof thereof shall be (substantially) in the following form, to-wit:

STATE OF MINNESOTA, } ss.
County of _____
I, _____, of (street and No., if any) _____
in the _____ of _____ in said county, of
lawful age, being first duly sworn, on my said oath say, that at
said _____ on the _____ day of _____ 18____, I did then
and there deposit in the post office within and for said _____
_____ a true copy (or in case more than one service was made,
true copies) of the _____ hereto attached, which, copy
was (or, which copies were) properly enveloped, sealed, postage
paid thereon and directed to the following named persons, co-
partnerships, or corporations respectively in said order named, at
the places respectively as follows, to-wit:
One to _____ at No. _____ Street, in the _____ of _____
_____ in the State of _____
One to _____ at No. _____ Street, in the _____ of _____
_____ in the State of _____,"

Proof of service shall in all cases be filed in the office of the clerk within five days after the making thereof.

Provided that the written admission of service by the attorney of record in any action or proceeding shall be sufficient proof of service.

RULE XXIII.

Orders for publication of summons in actions for divorce will only be granted upon an affidavit of the plaintiff stating facts showing that personal service cannot well be made.

RULE XXIV.

All divorce cases shall be tried at general term in all counties wherein three or more general terms of court are appointed to be held during any one year.

RULE XXV.

In cases where a sale of real estate upon execution or foreclosure by advertisement is sought to be enjoined, the application for an injunction shall be heard and determined upon notice to the adverse party either by motion or order to show cause.

The application shall be made immediately on receiving notice of the publication of the notice of sale. And no injunction in such case shall be allowed *ex parte*, unless the rights of the applicant would otherwise be prejudiced, nor unless a satisfactory excuse is furnished, showing why the application was not made in time to allow the same to be heard and determined upon notice before the day of sale.

And in all other cases, if the court or judge deem it proper that the defendant or any of several defendants be heard before granting the injunction, an order may be made requiring cause to be shown at a specified time and place why the injunction should not be granted.

RULE XXVI.

In every case where no special provision is made by law as to security, the court or officer allowing a writ of injunction or

ne exeat, shall require an undertaking or bond on behalf of the party applying for such writ, in not less than two hundred and fifty dollars, executed by him or some person on his behalf, as principal, together with one or more sufficient sureties, to be approved by the court or officer allowing the writ, and to the effect that the party applying for the writ will pay the party enjoined or detained such damages as he may sustain by reason of the writ, if the court shall eventually decide that the party was not entitled to the same.

RULE XXVII.

When a demurrer is overruled with leave to answer or reply, the party demurring shall have twenty days after notice of the order, if no time is specified therein, to file and serve an answer or reply as the case may be.

RULE XXVIII.

A change of venue or place of trial will not be granted unless the party applying therefor use due diligence to procure the same within a reasonable time after issue joined in the action and the ground for the change shall have come to the knowledge of the applicant. Nor will a change be granted where the other party will lose the benefit of a term unless the party asking for such change shall move therefore at the earliest reasonable opportunity after issue joined, and he shall have information of the ground of such change. In addition to what has usually been stated in affidavits concerning venue, either party may state the nature of the controversy, and show how his witnesses are material; and may also show where the cause of action or defense or both of them arose; and these facts will be taken into consideration by the court in fixing the place of trial.

RULE XXIX.

In cases where the trial of issues of facts is not provided for by section 216, of chapter 66, of General Statutes of Minnesota, if either party shall desire a trial by jury, such party shall, within ten days after issue joined, give notice of a motion to be made upon the pleadings, that the whole issue, or any specific question of fact involved therein, be tried by a jury. With the notice of motion shall be served a distinct and brief statement of the questions of fact proposed to be submitted to the jury for trial, in proper form, to be incorporated in the order, and the court or judge may settle the issues, or may refer it to a referee to settle the same. The court or judge may, in his discretion, thereupon make an order for trial by jury, setting forth the question of fact as settled, and such questions only shall be tried by the jury, subject however to the right of the court to allow an amendment of such issues upon the trial in like manner as pleadings may be amended upon trial.

RULE XXX.

Commissions to take testimony without this State may be issued on notice, and application to the court, or judge thereof, either in term time or in vacation. Within five days after the entry of the order for a commission, the party applying therefor shall serve a copy of the interrogatories proposed by him, on the opposite party. Within five days thereafter the opposite party may serve cross interrogatories. After the expiration of the time for serving cross interrogatories, either party may within five days give five days' notice of settlement of the interrogatories before the court, or judge thereof. If no such notice be given within five days, the interrogatories and cross interrogatories, if any served, shall be considered adopted. Whenever a commission is applied for, and the other party wishes to join therein, interrogatories and cross interrogatories to be administered to his witnesses may be served and settled or adopted within the same times and in the same manner as those to the witnesses of the party applying. After the interrogatories are settled, they must be engrossed by the party proposing the interrogatories in chief, and the engrossed copy or copies be signed by the officer settling the same, and must be annexed to the commission and forwarded to the commissioners. If the interrogatories and cross interro-

atories are adopted without settlement, engrossed copies need not be made, but the originals or copies served may be annexed and forwarded with the commission.

RULE XXXI.

Should any or either of the commissioners fail to attend at the time and place for taking testimony, after being notified thereof, any one or more of the commissioners named in the commission may proceed to execute the same.

RULE XXXII.

In taking the deposition of a witness when the deposition is completed, the witness shall sign his name or make his mark at the end thereof as well as upon each piece of paper on which any portion of his deposition is written and the commissioner or commissioners shall annex to the commission a certificate, showing the time or times and place of executing it, which certificate may be substantially in the following form:

I, commissioner named in the within and above written commission, do certify that the said commission was executed, and the testimony of was taken before me at in on the day of 18....., at o'clock in the noon and was reduced to writing by myself, (or by deponent, or by a disinterested person, in my presence and under my direction.)

That the said testimony was taken by, and pursuant to the authority and requirements of the said commission, upon the interrogatories annexed and herewith returned. The said witness, before examination was sworn to testify the whole truth, and nothing but the truth, relative to the cause specified in said commission, and that the testimony of said witness was carefully read to (or by) said witness (by me) and then by him subscribed in my presence. A. B. Commissioner.

And shall also state whether any commissioner not attending was notified of the time and place of the taking of the deposition. The commissioner or commissioners shall annex the deposition, with such certificate, to the commission, seal them up in an envelope, and direct to the clerk of the court of the county in which the action is pending. They may be transmitted by mail or private conveyance. The clerk, on receipt of the same, shall open the envelope, and file it with the commission and deposition, marking thereon the time. They cannot be taken from his custody except upon the order of the court, or of a referee appointed to take proofs or try any issues in the cause. The clerk shall produce them in court to be used upon the trial of the cause, upon the request of either party.

RULE XXXIII.

All objections to the manner of taking, or certifying, or returning depositions shall be deemed to have been forever waived unless the party objecting thereto shall make it appear, to the satisfaction of the court, that the officer taking such depositions was not authorized to administer an oath then and there, or that such party was, by such informality, error or defect, precluded from appearing and cross examining the witness; and every objection to the sufficiency of a notice, or to the manner of taking, or certifying, or returning such deposition, shall be deemed to have been forever waived, unless such objections are taken by motion to suppress such deposition, which motion shall be made within ten days after service of such notice, in writing, of the return thereof.

RULE XXXIV.

PAPERS ON FILE WITH THE CLERK.—RECEIPT FOR.—No papers on file in a cause shall be taken from the custody of the clerk, except by the judge for his own use, or a referee appointed to try the action. Before a referee shall take any files in said action, the clerk shall require a receipt therefor, signed by the referee, specifying each paper so taken.

RULE XXXV.

DISMISSAL BEFORE REFEREES.—On a hearing before referees, the plaintiff may dismiss his action, or his action may be dis-

missed, in like manner as upon a trial, at any time before the cause has been finally submitted to the referees for their decision, in which case the referees shall report according to the fact, and judgment may thereupon be perfected by the defendant.

RULE XXXVI.

REFEREES' REPORT.—WHEN FILED.—Upon a trial of issues by a referee, such referee shall file his report in the clerk's office, upon his fees being paid or tendered by either party.

RULE XXXVII.

There shall be two calls of the calendar. The first shall be preliminary, the second peremptory. All preliminary motions, except motions for continuance, shall be made on the first call. The cases shall be finally disposed of in their order upon the calendar on the second call. Where, upon the preliminary call, or at any time afterwards, no response is made by either party to a case, the case shall be stricken from the calendar unless otherwise directed by the Court.

RULE XXXVIII.

MOTIONS FOR CONTINUANCE.—All motions for continuance shall be made on the first day of the term, unless the cause for such continuance shall have arisen or come to the knowledge of the party subsequent to that day. And in all affidavits for continuance on account of the absence of a material witness, the deponent shall set forth particularly what he expects and believes the witness would testify to were he present and orally examined in court.

RULE XXXIX.

In jury trials of civil actions where a full panel is called in the first instance, challenges shall be made alternately, first by the defendant and then by the plaintiff.

RULE XL.

On the trial of actions before the court but one counsel on each side shall examine or cross-examine a witness, and one counsel only on each side shall sum up the case to the jury, unless the judge who holds the court shall otherwise order.

Upon interlocutory questions, the party moving the court, or objecting to the testimony, shall be heard first; the respondent may then reply by one counsel, and the mover rejoin, confining his remarks to the points first stated and a pertinent answer to the respondent's argument.

Discussion on the question shall then be closed, unless the court requests further argument.

At the hearing of causes before the court, no more than one counsel shall be heard on each side, unless by permission of the court.

The defendant, in opening his case to the jury, shall confine himself to stating the facts which he proposes to prove.

In cases where the affirmative of the issue to be tried is upon the defendant, the defendant's counsel shall open the case to the jury and have the closing argument, as though his client were the plaintiff.

RULE XLI.

The points on which either party desire the jury to be instructed must be furnished in writing to the court before the argument to the jury is begun or the same may be disregarded. All exceptions to the charge and refusals to charge, shall be taken before the jury retires.

RULE XLII.

It shall not be necessary to call either party, or that either party be present or represented when the jury returns to the bar to deliver their verdict.

RULE XLIII.

Upon the rendering of a verdict of a jury or the filing of a decision by the court in any case, no stay of proceedings, after the first, will be granted without notice to the counsel or consent of counsel for the opposite party.

RULE XLIV.

Costs and charges to be inserted in a judgment, shall be taxed in the first instance by the clerk upon two days' notice. And an appeal therefrom may be taken to the court within ten days after such taxation by the clerk, but not afterwards. Such appeal shall be taken by notice in writing, signed by the appellant, directed to and served upon the adverse party and the clerk, and shall specify the items from which the appeal is taken. When such appeal is taken, either party may bring the same on for determination before the court on notice, or by an order to show cause. On such appeal the court will only review the items objected to, and upon the grounds specified before the clerk.

RULE XLV.

Judgments, and copies to annex to the judgment roll, shall in all cases be signed by the clerk, and no other signature thereto shall be required.

RULE XLVI.

Where a party is entitled to have judgment entered in his favor by the clerk, upon the verdict of a jury, report of referee, or decision or finding of the court, and neglects to enter the same for the space of ten days after the rendition of the verdict, or notice of the filing of the report, decision or finding, (or in case the same has been stayed, for the space of ten days after the expiration of such stay), the opposite party may cause the same to be entered by the clerk upon five days' notice to the adverse party of the application therefor.

RULE XLVII.

In case of trials by the court or by referees, the time for serving a case or bill of exceptions shall be computed from the date of service of notice of filing the report, decision or finding. The party procuring a case or bill of exceptions, shall cause the same to be filed within ten days after the case shall be settled, or the same, or the amendments thereto shall have been adopted, otherwise it shall be deemed abandoned.

RULE XLVIII.

Transcripts of the stenographic reporter's minutes shall be made in the exact words and in the form of the original minutes. The proposed case shall not be made in narrative form, but shall be in the form of question and answer as at the trial. The party procuring the transcript shall, at or before the time of serving the proposed case or bill of exceptions, file the same with the clerk for the use of parties and the court, and the failure so to file said transcript shall be deemed good and sufficient reason for extending the time within which proposed amendments may be served by the opposite party. After the settled case or bill of exceptions has been filed in the clerk's office, the stenographer's transcript may be withdrawn.

RULE XLIX.

If during the progress of the term a juror does not appear and answer when called by the court the clerk shall make an entry of the default of such juror, and deduct from his time of service the day upon which such default shall have occurred, unless the court for good cause shall excuse such absence.

RULE L.

In cases where no provision is made by statute or by these rules, the proceeding shall be according to the customary practice, as it has heretofore existed in the several District Courts of the State.

RULES OF PRACTICE
OF THE
Supreme Court of Minnesota.

RULE I.

Clerk—duties of—calendar. 1. The clerk shall keep a general docket or register, in which he shall enter the titles of all actions and proceedings, including the names of the parties, and the attorneys or solicitors by whom they prosecute or defend, and he shall enter thereunder, from time to time, of the proper dates, brief notes of all papers filed and all proceedings had therein; the issuing of writs and other process, and the return thereof; the court or officer to whom directed; the return of any court, officer, or other person thereto; the filing of any bond or other security, and the issuing of a certificate of *supersedeas*, and of all orders and judgments in any action or proceeding, whether of course or on motion; also, proper references to the number and term of all papers and proceedings.

2. He shall also keep a judgment book, in which he shall enter all judgments; the names of the parties thereto, plaintiff and defendant; the date of the judgment, its number and term, the amount thereof, if the recovery of money or damages is included therein, and the amount of costs, which record shall be properly indexed.

3. He shall keep a court journal, in which he shall enter, from day to day, brief minutes of all proceedings in court.

4. He shall file all papers presented to him; indorse thereon the style of the action, its number and term, the character of the paper, and date of filing; and after filing, no paper shall be taken from the office, unless by order of the court or a judge thereof.

At the commencement of each term he shall furnish the court and bar with separate lists of all causes pending therein which have been noticed for argument, and of which a note of issue has been filed six days before the commencement of the term. Causes shall be placed upon the list according to the date of the notice of appeal or writ of error.

Adopted July 24, 1867.

RULE II.

Motions—bringing on for hearing—motion papers. Motions, except for orders of course, shall be brought on upon notice, and when not made upon the records or files of the court, shall be accompanied with the papers on which the same are founded.

Adopted July 24, 1867.

RULE III.

Clerk of district court—certifying additional papers. Upon an appeal from a judgment or order, the clerk of the district court, in addition to the copies of the notice of appeal and judgment roll or order, shall, upon the request of

either party to such appeal, and at the expense of the party applying, certify and transmit to this court copies of any papers, affidavits, or documents on file, in the district court, in the action in which the appeal is taken, which such party may deem necessary to or proper for the elucidation and determination of any question expected or intended to be raised on the hearing of the appeal.

Adopted July 24, 1867.

RULE IV.

Return on appeal—notice to file—dismissal for failure. The appellant or plaintiff in error shall cause the proper return to be made and filed with the clerk of this court within sixty days after the appeal is perfected or the writ of error served. If he fails to do so, the respondent or defendant in error may, by notice in writing, require such return to be filed within twenty days after the service of such notice, and, if the return is not filed in pursuance of such notice, the appellant or plaintiff in error shall be deemed to have abandoned the appeal or writ of error, and on affidavit proving when the appeal was perfected or writ of error served, and the service of such notice, and the certificate of the clerk of this court that no return has been filed, the respondent or defendant in error may enter an order with the clerk dismissing the appeal or writ of error for want of prosecution, with costs, and the court below may thereupon proceed as though there had been no appeal or writ of error.

Adopted July 24, 1867.

RULE V.

Defective return—procuring additional return. If the return made by the clerk of the court below is defective, or full copies of all the orders, papers, or records necessary to the understanding or decision of the case in this court are not certified or transmitted, either party may, on an affidavit specifying the defect or omission, apply to one of the judges of this court for an order that such clerk make a further return and supply the omission or defect without delay.

Adopted July 24, 1867.

RULE VI.

Original papers—procuring order for transmission to appellate court. Whenever it is necessary or proper, in the opinion of any judge of this court, that original papers of any kind should be inspected in this court on appeal, such judge may make such order for the transmission, safe-keeping, and return of such original papers as to him may seem proper, and the court may receive and consider such original papers in connection with the transcript of the proceedings.

Adopted July 24, 1867.

RULE VII.

Attorneys—guardian ad litem—continue such on appeal. The attorneys and guardians *ad litem* of the respective

parties in the court below, shall be deemed the attorneys and guardians of the same parties respectively in this court, until others are retained or appointed, and notice thereof served on the adverse party.

Adopted July 24, 1867.

RULE VIII.

Notice of argument—filing note of issue. Causes shall be noticed for the first day of the term, and may be noticed for argument by either party. Criminal cases shall have a preference, and may be moved on behalf of the state out of their order on the calendar. Cases shall be noticed for argument at least ten days before the first day of the term; and at least six days before the commencement of the term, the party giving the notice of argument shall furnish the clerk with a note of the issue, containing the title of the action, specifying which party is appellant and which respondent or plaintiff in error and defendant in error, as the case may be; the names of the attorneys of the parties respectively, and the date of the notice of appeal or writ of error.

As amended February 10, 1868.

[In computing ten-day period, the day of service and first day of the term must be excluded. See *Greve v. St. P., S. & T. F. R. Co.*, 25 Minn., 327.]

RULE IX.

Paper book—filing copies—brief—assignment of errors—disbursements—taxation.

1. The appellant, or party removing a cause to this court, shall, at least three days (excluding Sunday) previous to the argument thereof, file eight copies—one for each of the judges, and one for the reporter, clerk, and librarian, respectively—of the paper book, his assignment of errors, points and authorities; and within the same time the respondent shall file eight copies of his points and authorities. Any party failing to do so shall not be entitled to statutory costs in case he prevails.

2. The paper book and briefs must be printed, and the folios of the paper book distinctly numbered in the margin. The paper book shall consist of so much of the return as will clearly and fully present the questions arising on the review, with the reasons of the court below for its decision, if any were filed; also the notice of appeal, verdict, or finding, and judgment, if there be one.

3. Prefixed to the brief of the appellant, but stated separately, shall be an assignment of errors intended to be urged. Each specification of error shall be separately, distinctly, and concisely stated, without repetition, and they shall be numbered consecutively. When the error specified is that the finding of the court below or referee is not sustained by the evidence, it shall specify particularly the finding complained of. No error not affecting the jurisdiction over the subject-matter will be considered, unless stated in the assignment of errors.

4. The points and authorities of appellant shall contain a concise statement of the case, so far as necessary to pre-

sent the questions involved, and shall state separately the several points relied on for a reversal of the order or judgment of the court below, with a list of authorities to be cited in support of the same.

5. Whenever either the settled case or the paper book contains any unnecessary, irrelevant, or immaterial matter, and the appellant prevails, he shall not be allowed any disbursements for preparing, certifying, or printing such unnecessary matter.

If the settled case contains all the evidence, but the appellant does not prevail on any error which required the bringing up of all of the evidence, but does prevail on an error which could have been raised without the evidence or by a bill of exceptions, he shall not be entitled to tax disbursements for preparing, certifying, or printing any matter not reasonably necessary to present the points on which he prevailed.

The respondent's objection to the taxation of disbursements in such cases shall point out—specifying the folios—the particular portions of the record or paper book for which he claims that the appellant is not entitled to tax disbursements.

Adopted February 1, 1895.

RULE X.

Call of calendar—setting causes for argument—motions.

On the first day of the term the court will proceed to call the calendar in order to set causes for oral argument or for submission on briefs, and will continue the call until there shall be as many causes so set as the court shall believe can be disposed of during the term. On such day motions in causes on the calendar, to strike from the calendar, or to dismiss, affirm, or reverse, may be orally noticed in open court and will be heard during the first week of the term.

On the call of the calendar, if neither party to a cause called shall have it set for oral argument or submission on briefs, or if neither party shall move a cause or submit it when it is called on the day on which it is set for oral argument, or, if it be set for submission on briefs, if neither party shall have filed his brief by the day appointed for the briefs to be filed, or, if no day be appointed, neither party shall file his brief during the term, the cause shall be continued to the next term.

As amended January 24, 1890.

RULE XI.

Paper Books and Briefs—Furnishing copy to adverse party. At least twenty days before the term of this court at which a cause is noticed for trial by the appellant or plaintiff in error, and in all cases at least twenty days before the first term of this court commencing more than sixty days after the appeal is perfected or writ of error served, the appellant or plaintiff in error shall deliver to the adverse party a copy of the paper book, and of the assignment of errors, and of his points and authorities; and on or before

the first day of the term at which the cause is noticed for trial the respondent or defendant in error shall furnish the adverse party a copy of his points and authorities.

As amended April 7, 1896.

RULE XII.

Noticing cause for a term commencing within eighty days—continuance. When the respondent, or defendant in error, notices a cause for trial at a term commencing within the time allowed to the appellant, or plaintiff in error, to serve his points and authorities, the appellant, or plaintiff in error, shall be entitled to a continuance on a suggestion that he cannot conveniently proceed with the trial at such term.

Adopted July 24, 1867.

RULE XIII.

Examination of evidence—stating points in facts claimed to be established—argument of question of fact. In cases where it may be necessary for the court to go into an extended examination of evidence, each party shall add to the copies of his points furnished the court the leading facts which he deems established, with reference to the portions of the evidence where he deems the proof of such facts may be found. And the court will not hear an extended discussion upon a mere question of fact.

Adopted July 24, 1867.

RULE XIV.

Failure to serve points and paper book or to argue cause. Either party may apply to the court for judgment of affirmance or reversal, or for a dismissal, as the case may be, if the other party shall neglect to appear and argue the cause, or shall neglect to furnish and deliver cases and points as required by these rules.

Adopted July 24, 1867.

RULE XV.

Oral argument—when allowed. Either party may submit a cause on his part on a printed brief or argument.

In actions for the recovery of money only, or of specific personal property, where the amount, or the value of the property, involved in the appeal, shall not exceed one hundred dollars, and in appeals from orders involving only questions of practice, or forms or rules of pleading, and in appeals from the clerk's taxation of costs, the parties may submit on briefs but no oral argument will be allowed.

On oral arguments the appellant or plaintiff in error, or on a motion the moving party, or party procuring the order to show cause, shall open and be entitled to reply. Each party shall be entitled to one hour in all, except that in actions for the recovery of money only, or of specific personal property, where the amount, or the value of the property, involved in the appeal, shall not exceed five hundred dollars, they shall be entitled to only thirty minutes each, and on motions and orders to show cause to only fifteen minutes each.

Leave to argue a cause orally, when not entitled to such oral argument under this rule, may be given, on application therefor, at the time of calling the calendar. And the time allowed for oral argument as prescribed by this rule may be extended, on application therefor, at the commencement of the argument, notice of intention to apply therefor being given at the time of calling the cause on the call of the calendar, and on motions and orders to show cause on application when brought to a hearing.

As amended January 24, 1890.

RULE XVI.

Dismissal—certifying to court below. In all cases of the dismissal of any appeal or writ of error in this court, it shall be the duty of the clerk to issue a certified copy of the order or dismissal to the court below, so that further proceedings may be had in such court as if no writ of error or appeal had been brought.

Adopted July 24, 1867.

RULE XVII.

Remittitur—mailing notice of decision—clerk's fee—entry of judgment—transmitting remittitur. A remittitur shall contain a certified copy of the judgment of this court, sealed with the seal thereof, and signed by the clerk.

When a decision is filed or an order entered determining the cause, the clerk shall mail notice thereof to the attorneys of the parties, and no judgment shall be entered until the expiration of ten days thereafter.

The clerk shall receive a fee of twenty-five cents for each notice aforesaid.

The remittitur shall be transmitted to the clerk of the court below as soon as may be, after judgment is entered.

As amended by rule 33, October 31, 1872.

RULE XVIII.

Remittitur as matter of course. Upon the reversal, affirmance, or modification of any order or judgment of the district court by this court, there will be a remittitur to the district court unless otherwise ordered.

Adopted July 24, 1867.

RULE XIX.

Reversal—final judgment without remittitur. On reversal of a judgment of the district court, rendered on a judgment removed into it from an inferior court, when there is no remittitur, this court will render such judgment as ought to have been given in the court below, including the costs of that court, and also for the costs of this court; and the plaintiff in error or appellant may have execution thereupon.

Adopted July 24, 1867.

RULE XX.

Judgment for money only—affirmance—final judgment in this court. In all cases where a judgment of the district court, for the recovery of money only, is affirmed, and there

is no *remittitur*, judgment may be entered in this court for the amount thereof, with interest and costs, and damages, if any are awarded, to be added thereto by the clerk; and the party in whose favor the same was rendered may have execution thereupon from this court.

Adopted July 24, 1867.

RULE XXI.

Reversal—no remittitur—costs of prevailing party. In case of a reversal of a judgment, order, or decree of a district court, rendered or made in a cause commenced therein, if there is no *remittitur*, the prevailing party shall have judgment in this court for the costs of reversal, and the costs of the court below, and execution therefor.

Adopted July 24, 1867.

RULE XXII.

Remittitur—costs notwithstanding remittitur. In all cases in which a *remittitur* is ordered, the party prevailing shall have judgment in this court, for his costs, and execution thereon, notwithstanding the *remittitur*.

Adopted July 24, 1867.

RULE XXIII.

Costs—taxation of. Costs in all cases shall be taxed in the first instance by the clerk upon two days' notice, and inserted in the judgment, subject to the review of the court, and the clerk of the court below may tax the costs of prevailing party in this, when the same are to be inserted in the judgment.

As amended June 10, 1875.

RULE XXIV.

Judgment roll—papers constituting. In all cases, the clerk shall attach together the writ of error, if any, the transcript and papers certified and returned by the clerk of the court below, a copy of the minutes of argument and order for judgment, and annex thereto a copy of the judgment of this court signed by him; and the papers thus annexed shall constitute the judgment roll.

Adopted July 24, 1867.

RULE XXV.

Executions—issuance and satisfaction. Executions to enforce any judgment of this court may issue to the sheriff of any county in which a transcript of the judgment is filed and docketed. Such executions shall be returnable in sixty days from the receipt thereof by the officer. On the return of an execution satisfied, or acknowledgement of satisfaction, in due form of law, by the party who recovered the same, or his representatives or assigns, the clerk shall make an entry thereof upon the record.

Adopted July 24, 1867.

RULE XXVI.

Process and writs other than executions. All other writs and process issuing from or out of the court shall be

signed by the clerk, sealed with the seal of the court, tested of the day when the same issued, and made returnable on any day in the next term, or in the same term when issued in term time, and a judge may, by an endorsement thereon, order process to be made returnable on any day in vacation when, in his opinion, the exigency of the case requires it.

Adopted July 24, 1867.

RULE XXVII.

Writ of error—giving notice of. On the issuance from this court of a writ of error, the plaintiff in error in such writ shall give notice in writing to the attorney general and county attorney of the county in which the action is triable, within ten days after the issuing of such writ, that such writ has been sued out.

Adopted July 24, 1867.

RULE XXVIII.

Paper books—printing. Paper books, the assignment of errors, and briefs shall be neatly and legibly printed with black ink on white writing paper, properly paged at the top, with a margin on the outer edge of one inch and a half. The printed page shall be seven inches long, and three and a half inches wide, and the paper page shall not be more than nine inches long or seven inches wide. Each brief shall be signed by counsel preparing it, and each paper book and brief shall be stitched together, with its proper designation and the title of the cause printed on the outside.

As amended December 24, 1885.

RULE XXIX.

Costs—amount allowed prevailing party. Unless otherwise ordered, the prevailing party shall recover costs as follows: 1. Upon a judgment in his favor on the merits, twenty-five dollars; 2. Upon dismissal, ten dollars.

Adopted July 24, 1867.

[Who is prevailing party. See *Sanborn v. Webster*, 2 Minn. 323, Gil. 277; *Allen v. Jones*, 8 Minn. 202, Gil. 172.]

RULE XXX.

Judgment—entry by losing party. In case the prevailing party shall neglect to have judgment entered up within twenty days after notice of the filing of the opinion or order of court, the adverse party may, without notice, cause the same to be entered by the clerk without inserting therein any allowance for costs or disbursements, except the clerk's fees in this court.

Adopted July 24, 1867.

RULE XXXI.

Attorneys and counselors—examination of applicants. The examination of applicants for admission as attorneys counselors will be held on the second Friday of the term, and at nine and a half o'clock a. m.

As amended January 24, 1890.

RULE XXXII.

Rules—when to take effect. These rules shall take effect at the expiration of thirty days after the publication thereof. All former rules of this court are abrogated, except so far as it may be necessary to follow them upon appeals and writs of error which shall be pending when these rules take effect.

Adopted July 24, 1867.

RULE XXXIII.

Amendment of rule 17, which see.

RULE XXXIV.

Entering cause on calendar during term—duty of clerk.

When the clerk shall be directed to enter a cause upon the calendar during term, he shall transcribe the same into the copies of the calendar furnished to the judges, for which service he shall be entitled to a fee of one dollar, to be paid by the party upon whose motion such entry is ordered.

Adopted October 31, 1872.

RULE XXXV.

Calling calendar—motions—setting cases for hearing.

On the first day of the term the calendar will be called for the purpose of entering motions, and of ascertaining what cases are for oral argument, and of setting down the same.

Motions, and such cases as counsel may desire to argue, may be heard during the first week of the term.

Such cases as, upon the call of the calendar, are found to be for oral argument, and as shall not be set down for the first week of the term shall be heard in their order upon the calendar, at the rate of two per day, commencing upon the first Monday of the term, unless otherwise directed by the court for special reasons, or unless substitutions shall be made by agreement of counsel and with the consent of court.

Adopted October 31, 1872.

RULE XXXVI.

Failure to furnish papers—continuance. In case of the failure of the appellant or plaintiff in error to furnish papers as required by Rule 9, the action will be continued by the court upon its own motion, unless an affirmance or dismissal is ordered on application of the other party under Rule 14.

Adopted June 10, 1875.

RULE XXXVII.

Rehearing—filing application. Applications for rehearing shall be made *ex parte*, on petition setting forth the grounds on which they are made, and filed within ten days after notice of the decision.

As amended January 24, 1890.

RULE XXXVIII.

Modification and suspension of rules. Any of these rules may be relaxed or suspended by the court in term or a judge thereof in vacation, in particular cases, as justice may require.

As amended January 24, 1890.

Appendix

Special Rules for Law College Students

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### RULES OF DISTRICT COURT.

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I.

So far as practicable, the practice of this court shall conform to that of the District Courts of the State of Minnesota, and the Minnesota Statutes, and the rules of the said District Courts shall govern the practice of this Court, except as herein otherwise provided.

II.

All regular members of the Senior class without conditions and all special students who are members of such class and who desire to take the practice work shall be deemed attorneys of this Court, but no one shall be excused from being called on any jury, nor be refused as surety on any bond because of being considered such attorney.

III.

Each of such attorneys shall have at least one case on the Calendar for trial at each general term of Court, which case shall be prosecuted to judgment unless an appeal is taken before judgment can be entered.

IV.

The prevailing party shall cause judgment to be entered within five days after a verdict or decision has been rendered, unless a stay of proceedings has been granted, and where stay has been granted within two days after such stay has expired unless an appeal has been taken and a supercedas bond filed therein. If the prevailing party shall fail to have judgment entered as above provided the opposite party may have the judgment entered on two days' notice to the adverse party and without costs except fees of clerk and sheriff.

V.

The time for service of pleadings, notice of motion and of trial, filing notes of issue, and for all other proceedings shall be one-third of that allowed in the District Courts of the State, but each fractional part of a day on such computation shall be allowed as a full day, and where the whole time is less than seven days, Sundays and legal holidays shall be excluded.

VI.

General terms of the court shall be held on the Monday next after the holiday vacation and each month thereafter until the close of the school year, on such day as the court or a judge thereof shall fix. Special term on every Saturday in the month of January and of each succeeding month of the school year. Both the general and special terms shall be held at such hour as the court or a judge thereof shall direct.

VII.

The office of the Clerk of Court shall be open and the Clerk or his deputy in attendance on every week day during the Department terms from 1:45 p. m. to 2 p. m. and from 7:00 p. m. to 7:15 p. m., as well as during all terms of Court. All pleadings to be used at the trial or hearing of any matter shall be filed on or before the first day of the term at which it is so tried or heard or they may be disregarded.

VIII.

When the pleadings are closed either party may serve notice of trial, and as soon as such notice is served either party may file note of issue, and he shall at the same time file his pleadings and the notice of trial, or his copy thereof. The clerk shall place causes on the calendar in the order in which the notes of issue have been filed in accordance with this rule.

IX.

The summons, with proof of service thereof, shall be filed as soon as may be after such service.

X.

The attorney shall provide himself with an office copy of each of his pleadings and thus avoid the necessity of consulting the files.

XI.

Actions in the district court shall be entitled as follows:

UNIVERSITY OF MINNESOTA,	}	College District Court.
County of		
.....Plff	}	Complaint (or answer, demurrer, reply, affidavitt, etc.
.....Def.t		

XII.

The sheriff or his deputy shall be in attendance at all terms of Court.

XIII.

No stipulation extending the time for any act more than five days beyond its original length shall be recognized unless the consent of the Court, or a judge thereof, be endorsed thereon or entered on the minutes. No continuance can be had except by order of the Court upon a showing of sufficient reason therefor. No formalities shall be waived unless by consent of the Court or a judge thereof.

XIV.

The time allowed for oral argument of any case by counsel shall be thirty minutes on each side, unless additional time shall be allowed by the Court before the argument begins.

RULES OF SUPREME COURT.

I.

So far as practicable, the practice of this Court shall conform to that of the Supreme Court of the State of Minnesota, and the Minnesota Statutes, and the rules of the said Supreme Court shall govern the practice of this Court, except as herein otherwise provided.

II.

Each member of the Senior class who is a candidate for a degree shall have at least one cause on the Calendar for argument in this Court.

III.

Causes shall be entitled as follows:

UNIVERSITY OF MINNESOTA. }

Supreme Court. }

....., Appellant (or Respondent).

against

....., Respondent (or Appellant).

IV.

In lieu of the first paragraph of Rule IX of the State Supreme Court rules the following will be required, to wit: On or before April 20th the appellant shall cause the return of the District Clerk to be filed with the Clerk of this Court and shall file his points and authorities with the clerk and shall serve a copy of the same and also the paper book on respondent's counsel.

Within seven days thereafter respondent shall file his points and authorities with the clerk and serve a copy thereof on appellant's counsel. All papers not so filed and served shall be disregarded.

V.

Paper books and briefs shall be typewritten.

W. S. PATTEE,
Dean.