

RULES OF PRACTICE

OF THE

MINNESOTA SUPREME COURT

July 24, 1867

From the Territorial period to the first decades of Twentieth Century, Minnesota Courts operated under the thumb of the Legislature. Article 6, Sec. 14, of the 1857 Constitution made this explicit:

Legal pleadings and proceedings in the courts of this state shall be under the direction of the legislature. The style of all process shall be “The State of Minnesota,” and all indictments shall conclude “against the peace and dignity of the state of Minnesota.”

The Fourth Legislature granted the Supreme Court authority to adopt its own Rules of Practice in March 1862.¹ The law provided:

The supreme court shall be vested with full power and authority necessary for carrying into complete execution

¹ The Territorial Legislative Assembly granted the Territorial Supreme Court this authority on three separate occasions. See my “Foreword” to “The First Rules of Practice of the Courts of the Territory of Minnesota, Adopted by the Supreme Court January 16, 1850.” (MLHP, 2016). The 1858 Compiled Statutes, worded as applicable to the Territory, provided:

The supreme court shall be vested with full power and authority necessary for carrying into complete execution all its judgments, decrees and determinations in the matters aforesaid, and for the exercise of its jurisdiction, as the supreme judicial tribunal of the territory; and may by order from time to time, make and prescribe such general rules of practice, both at law and in equity, and regulations prescribe rules of for the said supreme court and the government of the several district courts, not inconsistent with the provisions of this act, as it may deem proper.

Stat., c. 56, §6, at 475 (1858).

all its judgments, decrees and determinations in the matters aforesaid, and for the exercise of jurisdiction as the supreme judicial tribunal of the State; and shall, by order made at general or special term, from time to time make and prescribe such general rules of practice in civil actions, and regulations for the said supreme court, not inconsistent with the statute law of the State, as the said supreme court of the State may deem proper; and the said supreme court shall by order, made at general or special term, prescribe the manner of publication, at the expense of the State, of such rules and regulations, and the same shall not be in force until thirty days after the publication thereof, in accordance with said last mentioned order. And the judges of the supreme court may at any time in vacation file decisions in cases by them heard at a general term, and judgment may be entered thereon in vacation, in pursuance of the finding and order of the court to the same effect as upon decisions made and filed in term.

Sec. 2. This act shall take effect and be in force from and after its passage.²

Pursuant to this law, the Minnesota Supreme Court adopted Rules of Practice effective July 24, 1867. They follow.

² 1862 Laws, c. 17, §6, at 70 (effective March 1, 1862); codified in Stat., c. 68, §2, at 494 (1863).

RULES
OF PRACTICE IN THE
Minnesota
SUPREME COURT
OF MINNESOTA,
ADOPTED JULY 24, 1867.

RULE 1.

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, endorse 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.

RULE II.

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.

RULE III.

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 each 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.

RULE IV.

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 an affidavit proving when the appeal was perfected or writ of error served, and the service of such notice, and a 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.

RULE V.

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.

RULE VI.

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.

RULE VII.

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.

RULE VIII.

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.

RULE IX.

The appellant or plaintiff in error shall, at least one day previous to the argument, furnish each member of the court and the reporter with a case or paper book, which shall consist of so much of the return as will clearly and fully present the questions arising on such review, with the reasons of the court below for its decision, if any were filed.

The folios of the case or paper book shall be distinctly numbered in the margin and the numbering of the copies shall correspond. To the copies of the case furnished as above required, shall be appended a concise statement of the case so far as necessary to present the questions involved, and a note of the points relied on for a reversal of the order or judgment of the court below, with a list of the authorities to be cited in support of the same.

On the opening of the argument on his part, the other party shall furnish the members of the court and the reporter with copies of his points and authorities.

RULE X.

Alternate speaking will not be allowed. Counsel for the appellant or plaintiff in error, in bringing on any motion, shall open and be entitled to reply but no counsel can be permitted to speak on the argument of any case more than an hour, without special leave of the court, granted before the argument begins.

RULE XI.

At least twenty days before the first term of this Court commencing more than eight 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 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.

RULE XII.

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.

RULE XIII.

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.

RULE XIV.

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.

RULE XV.

Causes may be submitted on printed briefs or arguments.

Either party may submit a cause on his part on a printed brief or argument.

RULE XVI.

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 of 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.

RULE XVII.

A *remittitur* shall contain a certified copy of the judgment of this court, sealed with the seal thereof, and signed by the clerk, and shall be transmitted to the clerk of the court below as soon as may be, after the final adjournment of this court.

RULE XVIII.

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.

RULE XIX.

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.

RULE XX.

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.

RULE XXI

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.

RULE XXII.

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*.

RULE XXIII.

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

RULE XXIV

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 annexed thereto a copy of the judgment of this Court signed by him, and the papers thus annexed shall constitute the judgment roll.

RULE XXV.

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.

RULE XXVI

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.

RULE XXVII.

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.

RULE XXVIII.

The case or paper-book points, and authorities and brief or argument provided for in the rules of this court, shall be printed.

RULE XXIX.

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.

RULE XXX.

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 with 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.

RULE XXXI.

Any of the foregoing rules may be relaxed, modified or suspended by the Court in term time, or by a judge thereof in vacation, in particular cases, as justice may require.

RULE XXXII.

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.

I certify the above to be true copies of the originals remaining of Record in my office.

SHERWOOD HOUGH,

Clerk of Supreme Court, Minn.

RELATED ARTICLES

“The Minnesota Supreme Court’s First Rules of Practice.” (MLHP, 2016) (published first, 1850).

Douglas A. Hedin: “Chief Justice Jerome Fuller (1808-1880).” (MLHP, 2016). The Territorial Court’s second set of Rules of Practice, adopted by the Fuller Court in July 1852, are reproduced in the Appendix to this biographical profile.



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