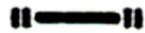


THE MINNESOTA SUPREME COURT
(1913)



STATE OF MINNESOTA

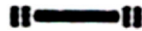


RULES OF PRACTICE

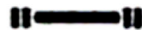
OF THE

Minnesota.

SUPREME COURT.



In force from and after July 1, 1913



Minneapolis, Minn.
SYNDICATE PRINTING COMPANY
1913

✓ JK. 6123
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RULES OF PRACTICE OF THE SUPREME COURT OF MINNESOTA.

RULE I.

20 Nov. 61 John C. Zehnder estate. 2.
Clerk—duties of—notice of argument or note of issue not necessary—calendar. 1. The clerk shall keep a general docket or register, in which he shall enter the title 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.

5. No notice of argument or note of issue shall be necessary to entitle a cause to be heard, and the clerk will enter upon the calendar for each term of court all pending causes in which the notice of appeal or writ of error was served more than thirty days prior to the first day of the term for which the calendar is prepared;—furnishing a copy of the calendar to members of the court and bar. Causes shall be so placed on the calendar in the order and according to the date of service of the notice of appeal or writ of error.

6. Appeals or writs of error served within thirty days of the term, but more than eight days before the first day thereof, the return being on file, may be placed on the calendar by stipulation of the parties; and such appeals, or those taken during term time, may be placed on the calendar by order of the court where an early decision is necessary to the protection of the rights of either party.

RULE II.

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.

RULE III.

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.

RULE IV.

Return—notice to file—dismissal. The appellant or plaintiff in error shall cause a complete return to be made and filed with the clerk of this court, as provided for by Chap. 55 Laws 1913, within ten days after the notice of appeal or writ of error is 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 ten days after the service of such notice, and if the complete 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 notice of appeal or writ of error was served, and the service of such notice, and a certificate of the clerk of this court that no such return has been filed, a justice of this court 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.

(This rule is intended to speed the prosecution of appeals, and it enables the respondent, if he so elects, to secure a dismissal of the appeal, either in vacation or term time. If notice to make the return is not given, it in no manner affects the rights of the respondent to move the court for a dismissal of the appeal or to affirm for a non-compliance with its rules. *Guerin v. Ry. Co.*, 32 Minn. 409; *Plymouth Clothing Co. v. Seymour*, 74 Minn. 425; *West Publishing Co. v. De La Motte*, 104 Minn. 174.)

RULE V.

Defective return—procuring additional papers. If the return made by the clerk of the court below is defective and all papers, exhibits, orders or records necessary to an understanding or decision of the case are not

transmitted, either party may, on an affidavit specifying the defect or omission, apply to a justice of this court for an order requiring the district clerk to make further return and supply the defect or omission without delay.

RULE VI.

Endorsement of return by Clerk of District Court. The clerk of the district court shall endorse upon each return to this court the names and postoffice addresses of the attorneys for the respective parties.

RULE VII.

Original papers—procuring order for transmission to appellate court. Whenever it is deemed necessary to the decision of any cause that any original paper or papers be inspected by this Court, which paper or papers were used on the trial below, but for any reason, whether because copies were substituted for the originals or otherwise, they are not on file, a Justice of this Court may, ex parte, make such order for the transmission, safe keeping and return of such paper or papers as he deems proper.

All exhibits sent to the clerk of this court shall have endorsed thereon the title of the case to which they belong.

All original exhibits, maps and diagrams sent to the clerk of this court by the clerk of the court below, will in all cases be returned with the remittitur, all models will be so returned when necessary on a new trial, but where the decision of the court is final and no new trial is to be had, such models will be destroyed by the clerk of this court, unless called for by the parties within three months after final decision is rendered.

RULE VIII.

Writ of error—giving notice of. On the is-

suance 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 the 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 IX.

Record and briefs—furnishing copies to court and reporter. 1. The appellant, or party removing a cause to this court, shall, at least three days (excluding Sunday) previous to the argument thereof, file ten copies—one for each of the judges, and commissioners, and one for the reporter, clerk and librarian, respectively—of the record, his assignment of errors and brief, and within the same time the respondent shall file ten copies of his brief.

2. The record and briefs must be printed and the folios of the record distinctly numbered in the margin. The record shall consist of the pleadings, the findings or verdict, the order or judgment appealed from, the reasons of the trial court for the decision, if any, the notice of appeal and in cases where the sufficiency of the evidence is not involved, such abridgment of the settled case as will clearly and fully present the questions arising on the appeal. All matters in the return not necessary to a full presentation of the questions raised by the appeal shall be excluded from the printed record, and to that end the material testimony may be printed in narrative form, immaterial parts thereof omitted, and documentary evidence condensed. If the respondent deems the record so printed not sufficiently full to present properly the merits of the appeal, he may print a supplemental record, or instead thereof, in his brief, refer to the folios or pages in the settled case,

the original of which will be on file in this court, which he deems necessary and important.

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. All references to evidence shall distinctly point to the folio and page of the settled case where the same may be found.

4. The brief of appellant shall contain a concise statement of the case so far as necessary to present 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 the brief of the prevailing party or the record or supplemental record contains any unnecessary, irrelevant or immaterial matter, he shall not be allowed any disbursements for preparing or printing such unnecessary matter.

The party entitled to object to the taxation of disbursements in such cases shall point out—specifying the folios—the particular portions of the record, supplemental record or brief for which he claims that the opponent is not entitled to tax disbursements.

RULE X.

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 folio and page of settled case 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 XI.

Record—Printing. Records, assignments of error and briefs shall be neatly and legibly printed in leaded small pica or long primer type with black ink on white writing paper, properly paged at the top. The record shall be properly folioed at the side. All records, assignments of error and briefs shall be printed with a margin on the outer edge of one and one-half inches. The printed page shall be seven inches long and three and one-half inches wide, and the paper page shall be nine inches long and seven inches wide. Each brief shall be signed by the counsel preparing it. Each copy of such brief or record shall be stitched together; and its proper designation, the title of the cause and the names and addresses of the attorneys for the respective parties, shall be printed on the outside thereof. Every record and every brief exceeding fifty pages shall be accompanied with an adequate index; describing exhibits by number or letter and name of document.

Records or briefs which fail to conform to this rule shall not be filed.

RULE XII.

Record and brief—service—reply brief.

1. In all cases where the notice of appeal or writ of error was served more than sixty days before the first day of the term at which the cause is to be heard, the appellant or plaintiff in error shall, twenty-five days before the first day of such term, serve upon

respondent or defendant in error, a copy of the printed record and his points and authorities, and the respondent or defendant in error shall serve his points and authorities on or before the first day of such term.

2. In all cases where the notice of appeal or writ of error was served less than sixty and more than thirty days before the first day of the term at which the cause is to be heard, the appellant or plaintiff in error shall serve his printed record and points and authorities at least thirty days before the day set for the argument of the cause, and respondent or defendant in error shall serve his points and authorities at least five days before the day of argument.

3. Appellant or plaintiff in error may reply in typewritten or printed form on or before the day preceding the argument. The reply shall be limited strictly to a concise answer to new points made by respondent or defendant in error.

RULE XIII.

Default of appellant—affirmance or dismissal. Respondent or defendant in error may apply to the court for judgment of affirmance or dismissal, as the case may be, if the appellant or plaintiff in error shall fail or neglect to serve the record and his points and authorities as required by these rules. But no reversal will be ordered for the failure of the respondent or defendant in error to appear, unless the record presents reversible error.

RULE XIV.

Failure to furnish papers—continuance. In case of the failure of the appellant or plaintiff in error to furnish papers as required by these rules 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 13.

RULE XV.

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, or affirm, 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.

RULE XVI.

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.

RULE XVII.

Oral argument—when allowed. Either party may submit a cause on his part on a printed brief or argument, and when no appearance is made on the day of argument, the printed record and briefs being on file, the cause will be ordered so submitted.

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, 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.

RULE XVIII.

Dismissal—Certifying to court below. In all cases of the dismissal of any appeal or writ or 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 XIX.

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.

RULE XX.

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 of an order made or filed by the court.

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

(Note—As to remittitur on reversal, see Sec. 4354, R. L. 1905.)

RULE XXI.

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.

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

RULE XXII.

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 the prevailing party in this, when the same are to be inserted in the judgment.

RULE XXIII.

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.

RULE XXIV.

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.

RULE XXV.

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.

RULE XXVI.

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

RULE XXVII.

Judgment roll—papers constituting. In all cases the clerk shall attach together the writ of error, if any, the bond and notice of appeal certified and returned by the clerk of the court below, the minutes of argument, and the opinion of the court 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.

RULE XXVIII.

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.

RULE XXIX.

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 offi-

cer. On the return of an execution satisfied, or acknowledgment of satisfaction, in due form of law, by the party who recovered the same, or his representative, or assigns, the clerk shall make an entry thereof upon the record.

RULE XXX.

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.

RULE XXXI.

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.

(Note—The filing of a petition for rehearing stays the entry of judgment in civil cases until the filing of the order of the court thereon, but this does not stay the taxation of costs.)

RULE XXXII.

Continuances may be granted for good cause shown.

RULE XXXIII.

Attorneys—guardians 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.

RULE XXXIV.

Clerks to furnish lists of papers and exhibits. Whenever a clerk of a lower court shall transmit to this court any original papers, files or exhibits as required by Chapter 55, G. L. 1913, he shall include therewith full and complete detailed lists in duplicate of such papers, files and exhibits. The clerk of this court shall, upon receipt of such papers, files and exhibits enter in his records a list of the same and shall receipt to the transmitting clerk therefor. And when they are returned to the lower court the clerk of said court shall receipt to the clerk of this court for the same. Each clerk shall be allowed a fee of ten cents for each paper so transmitted and receipted for.

RULE XXXV.

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.

RULE XXXVI.

Rules—when to take effect. These rules shall take effect on and after July 1, 1913. 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 are pending when these rules take effect. Adopted March, 1913.

Chapter 55, General Laws, 1913.

An Act to amend section 4360, Revised Laws of 1905, relating to returns on appeals to the Supreme Court, in Civil Actions.
Be it enacted by the Legislature of the State of Minnesota:

That Section 4360, Revised Laws of 1905, be and the same is hereby amended so as to read as follows:

Section 4360. Upon an appeal being perfected, the clerk of the district court shall immediately transmit to the clerk of the supreme court a certified copy of the notice and bond upon appeal, and the filing thereof shall vest in the supreme court jurisdiction of the cause, and upon request of either party, the clerk of the district court shall transmit to the clerk of the supreme court the original record, judgment roll, settled case, or bill of exceptions, and such exhibits as may be on file in his office, the same to remain in the supreme court for its use until the case is disposed of and then returned to the clerk of the district court.

Approved March 11, 1913.