

## CHAPTER 366—H. F. No. 824

*An act relating to the municipal court of the city of Duluth; amending Minnesota Statutes 1961, Section 488A.79, Subdivisions 1, 2, and 6.*

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1961, Section 488A.79, Subdivision 1, is amended to read:

488A.79 **Duluth conciliation court; appeals; procedure.**  
Subdivision 1. Any party aggrieved by the judgment rendered by the conciliation judge after a contested hearing at which he has appeared and submitted evidence may have his cause removed to the municipal court for trial de novo, but no cause shall be so removed unless within ten days after such judgment is rendered, and after the clerk shall have delivered or mailed notice of the entry of judgment to each of the parties thereto, which notice shall be delivered or mailed immediately and shall specify the day on which the time for removal of said cause shall expire; the party so removing same shall do the following things, to-wit:

(a) Serve upon the opposite party or his attorney a written demand for trial of the cause in the municipal court, said demand to be served in the same manner now provided by law for the service of a summons in the municipal court and file with the clerk of the conciliation court such original demand with proof of service thereof. If the opposing party or his attorney cannot be found and service of the demand be made within the ten-day period the aggrieved party may file with the clerk within the ten-day period the original and a copy of the demand, together with an affidavit by himself or his attorney showing that due and diligent search has been made and that the opposing party or his attorney cannot be found and the filing of this affidavit shall serve in lieu of making service and filing proof of service. When such an affidavit is filed, the clerk shall mail the copy of the demand to the opposing party at his last known residence address. Such original demand or proof of service shall show the office address of the attorney for each party that has such attorney, and the addresses of all parties to the action.

(b) Pay to the clerk of the conciliation court ~~\$1~~ \$2.

(c) File with the clerk of conciliation court an affidavit by the aggrieved party or his attorney stating that the removal is made in good faith and not for the purpose of delay.

Sec. 2. Minnesota Statutes 1961, Section 488A.79, Subdivision 2, is amended to read:

**Changes or additions indicated by italics, deletions by ~~strikeout~~.**

Subd. 2. Within ten days after compliance with the foregoing provisions of this section the clerk of the conciliation court shall deposit ~~\$1~~ \$2 with the municipal court for the use and benefit of the city of Duluth and shall file with the municipal court all the files in such action together with a copy of such judgment and the cause shall be tried in the municipal court as though originally commenced therein, and the claim of the plaintiff and the answer of the defendant appearing in the files shall stand as the complaint and answer respectively in such action. Provided, however, that any pleading may be amended at the time of the trial in the municipal court at the discretion of the court.

Sec. 3. Minnesota Statutes 1961, Section 488A.79, Subdivision 6, is amended to read:

Subd. 6. (a) When a motion for vacation of a default judgment under subdivisions 3 or 4 of section 488A.77 has been denied, the aggrieved party may demand limited removal to the municipal court for hearing de novo of his motion. The demand for limited removal and notice of the hearing de novo must be served by the aggrieved party on the other party in accordance with the provisions of subdivision 1(a) of this section and the original demand and notice, with proof of service, must be filed with the clerk of the conciliation court within ten days after the motion has been denied, or the original and one copy of the demand and notice, together with an affidavit similar to that required by subdivision 1 (a) hereof must be filed with the clerk within said ten-day period. When such an affidavit is filed, the clerk shall then mail the copy of the demand and notice to the other party at his last known residence address. The aggrieved party shall pay a fee of ~~\$2~~ \$3 to the clerk of the conciliation court for filing the demand and notice and this fee shall not be recoverable as a disbursement. The notice shall set a date for hearing de novo at a special term of the municipal court not less than ten nor more than 30 days subsequent to the date of filing the original demand and notice.

(b) The clerk of conciliation court thereupon shall pay over to the municipal court for the use and benefit of the city of Duluth the ~~\$2~~ \$3 fee and shall file in municipal court the removal demand and notice, together with all orders, affidavits and other papers filed in the cause in the conciliation court. The clerk of municipal court shall then place the cause on the special term calendar for hearing on the date specified in the notice.

(c) The judge who hears the motion de novo at special term may deny the motion, without allowance of costs, or grant the motion with or without the allowance of absolute or conditional costs. At

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the hearing de novo the municipal judge shall consider the entire file of the conciliation court together with any subsequent affidavits or showing made by either party.

(d) The clerk of municipal court shall send a copy of the order made after the de novo hearing to both parties and return the file to the conciliation court.

Approved April 26, 1963.

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CHAPTER 367—H. F. No. 869

[Coded in Part]

*An act relating to the municipal court of the city of Duluth; amending Minnesota Statutes 1961, Section 488A.40, Subdivisions 1 and 2, and adding a new subdivision.*

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1961, Section 488A.40, Subdivision 1, is amended to read:

488A.40 **Duluth municipal court; clerks, deputies, records.** Subdivision 1. **Appointment, oath, bond.** There shall be a clerk of said municipal court, who shall be appointed by the judges of said court, and the said judges shall have the power to remove said clerk at pleasure. Such clerk, before he enters upon the duties of his office, shall take and subscribe an oath to support the constitution of the United States and of the state of Minnesota, and to faithfully and honestly discharge and perform the duties of his office, and shall execute to the city of Duluth a ~~penal~~ bond in such sum and with such sureties as the city council shall direct and approve, conditioned that he will account to and pay over to the treasurer of said city, on each day, all fines, penalties, fees and other money belonging to or to go to said city which may have come into his hands during said day, and that he will at all times pay over to all persons on demand, all money to which they may be entitled which may have come into his hands in virtue or by reason of his office, and that, at the end of his term of office, he will forthwith pay over to the city of Duluth all money to which said city shall then be entitled, and to his successor in office all other money then remaining in his hands by virtue of his office. Such oath and bond shall be filed in the office of the auditor of said city.

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