

CHAPTER 748—H. F. No. 650

[Not Coded]

An act relating to courts in Carver county, except the district and probate courts; creating a municipal court and a conciliation court of Carver county.

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

Section 1. **Carver county municipal and conciliation courts; establishment; jurisdiction; powers; appeals.** Subdivision 1. **Establishment.** There is hereby created a municipal court and a conciliation court of Carver county with the jurisdiction and powers hereinafter stated.

Subd. 2. **Court of record.** The court is a court of record with a clerk and a seal.

Subd. 3. **Powers of court.** Except as otherwise provided in this act, the court has all the powers of the district courts of this state. It may issue all civil and criminal process necessary or proper to enforce and effectuate its jurisdiction and determinations.

Subd. 4. **Civil jurisdiction.** Excepting causes involving title to real estate, the court has jurisdiction to hear, try, and determine civil actions at law in which the amount in controversy does not exceed the sum of \$5,000 exclusive of interest and costs.

Subd. 5. **Forcible entry and unlawful detainer.** Whether or not the title to real estate is involved, the court has jurisdiction of actions of forcible entry and unlawful detainer involving land located wholly or in part within Carver county.

Subd. 6. **Criminal jurisdiction.** (a) The court has jurisdiction to hear, try, and determine any charge of violation of:

(1) A criminal law of this state constituting a misdemeanor committed within the county of Carver.

(2) Any ordinance, charter provision, rule or regulation of any subdivision of government in the county of Carver.

(b) The court has jurisdiction to conduct preliminary hearings and to exercise all judicial powers incident to preliminary hearing proceedings on any charge of violation of any criminal law of this state committed within the county of Carver.

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(c) Jurisdiction under clauses (1) and (2) of paragraph (a) and under paragraph (b) of this subdivision is exclusive for any violation committed in the county of Carver.

Subd. 7. Exceptions to jurisdiction. The court does not have jurisdiction:

(a) Of any action where the relief asked for in the complaint is purely equitable in its nature;

(b) Of any action for divorce;

(c) To issue a writ of habeas corpus, quo warranto, ne exeat, mandamus, prohibition or injunction; nor

(d) To issue any order in proceedings supplementary to execution.

Subd. 8. Territorial jurisdiction. The summons in civil and forcible entry and unlawful detainer actions may be served only within the county of Carver except that such summons may be served in Ramsey county on state officials for nonresident individuals and corporations under statutes providing for such service. Garnishment summons, subpoenas and all other civil and criminal process and orders may be served and enforced anywhere within the state of Minnesota.

Subd. 9. Place of holding court. The board of county commissioners of the county of Carver shall provide suitable quarters for the holding of regular terms of court in the city of Chaska.

Subd. 10. Terms. The court shall be open every day, except Saturdays, Sundays and legal holidays. The court shall hold a general term for the trial of civil actions commencing on the first Monday following Labor Day of each year and continuing until the next general term, with such adjournments as the judge may determine to be necessary and proper.

Subd. 11. Removal of causes to supreme court. All causes civil and criminal shall be removed from the municipal court to the supreme court of the state of Minnesota in the same manner, upon like proceedings and with like effect as from district courts.

Subd. 12. Trial of civil actions. All civil actions brought in the municipal court of Carver county shall be tried at the court's quarters in the courthouse in the city of Chaska.

Subd. 13. Trial of criminal actions. All charges of traffic

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and ordinance violations and all other criminal charges shall be tried at the quarters of the court in the courthouse in the city of Chaska.

Sec. 2. Judges. Subdivision 1. Number of judges. There is one judge of the municipal court of the county of Carver.

Subd. 2. Qualifications and oath. The judge shall be a person learned in the law who is admitted and qualified to practice in the supreme court of this state and is a resident of the county of Carver in this state. Before entering upon the duties of office, each judge shall take and subscribe an oath, in the form prescribed by law for judicial officers, and shall file that oath in the office of the county auditor.

Subd. 3. Terms; vacancies; appointments and election.
(a) The elected judge holds office for six years beginning the first Monday in January next succeeding his election.

(b) Whenever there is a vacancy in the office of judge, the governor shall appoint a qualified person to fill the vacancy, to hold office until his successor is elected and qualified. The successor shall be elected for a six year term at the next general election occurring more than one year after such appointment.

(c) At the general election immediately preceding the expiration of his term, the qualified voters of the county of Carver shall elect the successor to any elected or appointed judge.

(d) The judge holds a nonpartisan office.

Subd. 4. Powers. The judge shall have the general powers of judges of courts of record and all powers necessary to effectuate the purposes of this act. The judge may administer oaths and take and certify acknowledgments. The judge is a conservator of the peace and has all powers and authority vested in justices of the peace or magistrates.

Subd. 5. Contempt of court. The judge has the power to punish for contempt of court by a fine not exceeding \$100 or by imprisonment in the county jail not exceeding 90 days.

Subd. 6. Court rules. The judge may promulgate rules of court consistent with this act. Unless the rule forbids, the judge may waive its application.

Subd. 7. Salaries. The judge shall be paid an annual salary of \$18,000 in semimonthly installments out of the treasury of the county of Carver. If the judge dies while in office, the amount of his salary remaining unpaid for the month in which his death occurs shall be paid to his estate.

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Subd. 8. **Practice of law.** The judge shall not practice as an attorney or counselor at law, nor shall he be a partner of any practicing attorney in the business of his profession.

Sec. 3. **Clerks; deputies.** Subdivision 1. **Appointment, term, removal, suspension.** The clerk of the district court of the county of Carver shall be the clerk of the Carver county municipal court and his term shall be coterminous with his office as the clerk of district court.

Subd. 2. **Oath, bond.** (a) The clerk shall take and subscribe an oath to support the Constitution of the United States and the state of Minnesota and to perform faithfully the duties of his office.

(b) The clerk shall execute to the county of Carver a penal bond in such sum and with such surety as the county board directs, conditioned that:

(1) He will account to and pay over to the county treasurer as required by law all money belonging to or to be paid to the county.

(2) He will pay over to all persons on demand all money to which they are entitled which comes into his hands as clerk.

(3) At the expiration of his tenure in office he will forthwith pay to such county all money to which it is entitled and to his successor in office all other money then remaining in his hands which came into his hands as clerk.

(c) The clerk may not enter upon his official duties until his appointment, oath and bonds are filed with the county auditor.

Subd. 3. **Deputy clerks.** (a) The court has one chief deputy clerk and such number of stenographers as the clerk, with the approval of the judge, deems necessary from time to time, but no new or additional positions may be created without the consent of the county board.

(b) With the approval of the judge the clerk shall appoint the chief deputy and stenographers.

(c) Each appointment shall be made under the hand of the clerk and seal of the court and the approval of the judge shall be endorsed thereon.

(d) The deputy shall take and subscribe an oath similar to that prescribed for the clerk and shall execute a bond to the county of Carver for the faithful performance of his duties in such amount and

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with such terms, conditions, and surety as the county board directs. No deputy may enter upon his office and duties before his appointment, oath and bond are filed with the county auditor.

(e) The appointments of the deputy clerk shall be for a term of one year from his date of appointment and shall not expire or be suspended by reason of the suspension, removal, termination of appointment, death, or other incapacity of the clerk. At any time within six months from the date of his initial appointment, the deputy clerk may be removed and his appointment terminated, with or without cause and without prior notice or hearing. At any time the deputy clerk may be suspended without pay for a period not exceeding 30 days, with or without cause, after hearing before the judge. Except as otherwise provided herein, the deputy clerk, during his term, may be removed and his appointment terminated only for cause after notice and a hearing before the judge. Any termination, removal, or suspension provided for in this subdivision shall be made by the judge.

(f) The clerk shall delegate, supervise and expedite the work and accounting of the deputy clerk. He is not personally responsible for their acts beyond his responsibility for proper delegation and supervision.

(g) The deputy may administer oaths and affirmations, and take acknowledgments and shall perform the duties and exercise the powers of the clerk which are delegated to him by the clerk or by the judge in the event of the death or disability of the clerk.

Subd. 4. Powers and duties; supervision of judge. (a) The clerk may administer oaths and affirmations and take acknowledgments. He has all the powers and shall perform all the duties usually incident to the office of a clerk of record or necessary to carry out the purposes of this act.

(b) Under the supervision and approval of the judge the clerk shall procure at the expense of the county all blanks, stationery, books, furniture, furnishings and supplies necessary for the use of the court and its officers and jurors.

(c) In the performance of all his duties the clerk is subject to the control and supervision of the judge.

Subd. 5. Records, process and accounts. The clerk shall make minutes, records and indices of all proceedings; enter all orders, judgments and sentences; issue commitments, execution and all other process; keep proper accounts; have the custody and care of all books, files, accounts, exhibits, papers and records of the court, and tax all costs and disbursements.

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Subd. 6. **Disposition of fines, fees and other moneys; accounts.** (a) Except as otherwise provided in clause (b) and except as otherwise provided by law, the clerk of the court shall pay to the Carver county treasurer all fines and penalties collected by him, all fees collected by him for services of himself, all sums forfeited to the court as hereinafter provided, and all other moneys received by the clerk.

(b) The clerk of court shall provide the county treasurer with the name of the municipality or other subdivision of government where the offense was committed for each fine or penalty and the total amount of fines or penalties collected for each such municipality or other subdivision of government.

(c) At the beginning of the first day of any month the amount owing to any municipality or county in the hands of the clerk shall not exceed \$500.

(d) On or before the last day of each month the county treasurer shall pay over to the treasurer of each municipality or subdivision of government in Carver county all fines or penalties for parking violations and one half of all other fines or penalties collected during the previous month for offenses committed within such municipality or subdivision of government imposed for violation of an ordinance, charter provision, rule or regulation of a city, or village. All other fines and forfeitures and all fees and costs collected by the county municipal court shall be paid to the treasurer of Carver county who shall disburse the same as provided by law.

(e) Amounts represented by checks issued by the clerk or received by the clerk which have not cleared by the end of the month may be shown on the monthly account as having been paid or received, subject to adjustment on later monthly accounts.

(f) The clerk may receive negotiable instruments in payment of fines, penalties, fees or other obligations as conditional payments, and is not held accountable therefor until collection in cash is made and then only to the extent of the net collection after deduction of the necessary expense of collection.

Subd. 7. **Payment of witness fees and mileage.** The clerk shall pay such fees and mileage to witnesses as may be ordered by the judge in any action or proceeding involving a charged violation of a criminal law or municipal ordinance. The clerk shall obtain receipts therefor as vouchers for the sums paid and shall deduct these payments from the amount otherwise due to the county.

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Subd. 8. Abandonment of deposits and bail. (a) All sums deposited with the clerk to cover witness fees, jury fees, clerk's fees or the fees of police officers shall be deemed abandoned and forfeited if the witness fees are not disbursed or the services covered by the fees are not performed and the person entitled to refund thereof does not file a written demand for refund with the clerk within six months from the date of trial, dismissal or striking of the cause as to jury fees and from the date of deposit as to other fees.

(b) Any bail deposited with the clerk and not forfeited by court order shall be deemed abandoned and forfeited if the person entitled to refund does not file a written demand for refund with the clerk within six months from the date when he became entitled to the refund. All such forfeited sums shall be paid over by the clerk to the county treasurer promptly.

(c) The judge may order any sums so forfeited under (a) or (b) to be reinstated for cause and the clerk shall then refund accordingly. The county treasurer shall reimburse the clerk if the clerk refunds the deposit upon such an order and obtains a receipt to be used as a voucher.

Subd. 9. Disposition of forfeited sums. All sums collected on any bail, bond or recognizance forfeited by court order shall be paid to the county of Carver. The receipt of the county treasurer to the clerk shall be a sufficient voucher therefor. Such payments to the county shall be made periodically but not prior to six months from the date of the order for forfeiture. During that six month period, but not thereafter, the judge may set aside the forfeiture order upon proper showing of cause therefor. No obligation to pay to the county sums so ordered forfeited exists unless the forfeiture is not set aside within said six month period.

Subd. 10. Order for prisoner release. When a person is confined to the Carver county jail and a fine is remitted, a sentence stayed or suspended, the person released on parole, or the release of the person secured by payment of the fine in default of which he was committed, the prisoner shall not be released except upon order of the court. A written transcript of such order signed by the clerk and under the court's seal shall be furnished to the sheriff.

Subd. 11. Fees payable to clerk. The fees payable to the clerk for the following services in civil actions are:

(1) \$3, payable by the plaintiff, in addition to any library fee otherwise required, when the action is entered in court or when the first paper on the plaintiff's part is filed.

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(2) \$3, payable by the defendant or other adverse or intervening party, or any one or more of several defendants, or other adverse or intervening parties appearing separately from the others when his or their appearance is entered in the action or when the first paper on his or their part is filed.

(3) No trial fee is payable by any party when trial is by the judge without a jury.

(4) (a) \$5, for trial by a jury of six persons; \$10, for trial by a jury of twelve persons. The fee paid for trial by a jury shall be refunded if the jury panel is never sworn for voir dire in the action.

(b) Except as provided in paragraph (a), the fees payable to the clerk for his services are the same in amount as the fees then payable to the clerk of the district court of Carver county for like services. The fees payable to the clerk for all other services of himself or the court shall be fixed by rules promulgated by the judge.

(c) Fees are payable to the clerk in advance.

(d) The following fees shall be taxed in all cases where applicable: (a) The state of Minnesota and any governmental subdivision within the jurisdictional area of any municipal court herein established may present cases for hearing before said municipal court; (b) In the event the court takes jurisdiction of a prosecution for the violation of a statute or ordinance by the state or a governmental subdivision other than a city, village or town in Carver county, all fines, penalties and forfeitures collected shall be paid over to the treasurer of the governmental subdivision which submitted a case for prosecution under ordinance violation and to the county treasurer in all other cases except where a different disposition is provided by law, in which case payment shall be made to the public official entitled thereto. The following fees shall be taxed to the state or governmental subdivision which would be entitled to payment of the fines, forfeiture or penalties in any case, and shall be paid to the clerk of the court for disposing of the matter:

(1) In all cases where the defendant is brought into court and pleads guilty and is sentenced, or the matter is otherwise disposed of without trial; \$5.

(2) In arraignments where the defendant waives a preliminary examination; \$10.

(3) In all other cases where the defendant stands trial or has a preliminary examination by the court; \$15.

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Subd. 12. **Salaries.** (a) The annual salary of the clerk shall be established by the Carver county board of commissioners.

(b) The classifications and annual salaries of the deputy clerks shall be established by the Carver county board of commissioners.

(c) All of the foregoing salaries are payable out of the treasury of the county of Carver in semimonthly installments.

Subd. 13. **Destruction of records.** (a) Upon order of the judge the clerk may destroy or dispose of all of the following types of files and records of the court which are more than ten years old:

- (1) Garnishment files, uncontested;
- (2) Motion calendars, special term;
- (3) Unlawful detainer calendars, special term;
- (4) Garnishment calendars, special term;
- (5) General term calendars;
- (6) Court reporters notebooks;
- (7) Receipt books for prisoners;
- (8) Old receipt books for probation department;
- (9) Criminal and ordinance violations files;
- (10) Cash books;
- (11) Depositions;
- (12) Traffic tags.

(b) Upon order of the judge and upon ten days' written notice to the president of the Carver county historical society, the clerk may destroy or dispose of all files of civil or garnishment actions and actions of forcible entry or unlawful detainer which were commenced more than 20 years prior to the judges' order and in which no proceedings have occurred within ten years prior to the judges' order.

Sec. 4. **Court reporters.** Subdivision 1. **Appointment; oath; tenure; retirement.** The judge may appoint as court reporter a competent person skilled in the profession. The reporter shall take and subscribe an oath to support the constitutions of the United

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States and the state of Minnesota and to discharge and perform his duties as a court reporter faithfully and honestly. Each reporter shall file his oath with the county auditor before he enters upon the duties of his office. The reporter is an officer of the court and holds his office during the pleasure of the judge notwithstanding any rule or regulation heretofore or hereafter made by any board or commission of the county establishing and fixing a compulsory age for retirement of employees of the county. It is not compulsory for such court reporter who is a member of the public employees' retirement association to become a member of any municipal pension or retirement fund.

Subd. 2. Duties. The reporter shall take or cause to be taken by another skilled court reporter full stenographic notes of all the testimony and other proceedings in all civil actions, all actions for forcible entry and unlawful detainer, all preliminary hearings in criminal actions, and other criminal proceedings when requested by the judge before the judge so appointing him. Unless directed by the judge to do so, he shall not take notes of the opening statements of the judge or counsel, the questioning or selection of the jurors or the arguments of counsel to the court or jury. When requested by the judge, the reporter shall transcribe such notes or any part thereof for the use of the judge or for such other purpose in furtherance of justice as the judge may order, without charge therefor. The reporter shall furnish a transcript of his notes, or any part thereof, at the request of any party to the action or any other person. He shall be entitled to charge therefor at the rates then prescribed by law for court reporters of the district court of Carver county. Whenever a transcript has been filed as required by law, the amount paid by any party for the transcript, if the transcript be used upon a motion for a new trial, appeal, or writ of certiorari, may be taxed and allowed as a disbursement. The reporter shall act in the capacity of a private secretary to the judge so appointing him in the performance of the judge's official duties.

Subd. 3. Court reporter's salary. The annual salary of the reporter shall be established by the Carver county board of commissioners and is payable in semimonthly installments by the county treasurer from any funds in the county treasury not otherwise appropriated.

Sec. 5. Bailiffs. Subdivision 1. **Appointment; duties.** The sheriff with approval of the judge shall assign to the court a deputy sheriff who shall act as bailiff of the court. A bailiff shall be in attendance at all sessions of the court involving traffic or criminal matters, and serve all process and warrants and perform such other duties as may be directed by the judge of the court.

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Subd. 2. Service of papers. No bailiff shall serve or receive for service any summons or other paper in any forcible entry, unlawful detainer or civil action until the complaint has been filed with the clerk. The bailiff to whom a summons or other paper is delivered for service shall make a prompt return to the clerk showing whether or not it has been served and if not served the reason therefor.

Subd. 3. Fees and mileage. The fees and mileage of bailiffs in civil actions and actions of forcible entry and unlawful detainer are the same as those payable to the sheriff of Carver county for like services for district court actions. The fees and mileage for all other services of bailiffs shall be fixed by rules promulgated by the judge. No fees or mileage are payable by the state, county or city to the bailiff for his services, except that the county may pay the bailiff for automobile mileage within the limits provided by law when the bailiff furnishes automobiles for use in the performance of his duties. The bailiff shall make returns showing his fees and mileage after performing such services.

Subd. 4. Compensation; gratuities. Except as provided in subdivision 3 above, such bailiff shall be paid for his services only the compensation payable to him by the county as bailiff. If any fee, gratuity, or reward is paid to any bailiff for his services while on duty as a bailiff of the court, he shall forthwith pay it over to the clerk of court for the use of the county. Failure to do so is a misdemeanor and is punishable by a fine not exceeding \$100, or by imprisonment in the county jail for not more than 30 days.

Subd. 5. Transportation of defendants. The sheriff of Carver county shall transport defendants pursuant to rules promulgated by the court and orders of the court.

Sec. 6. Petit jurors. Subdivision 1. **Mode of selection.** Petit jurors for the trial of all types of actions shall be selected as provided in subdivisions 2 through 6, or as provided in subdivision 7.

Subd. 2. Selection, list. Before the first day of September in each year the judge shall select from the qualified electors of the county of Carver a list of persons properly qualified to serve as petit jurors and certify the list to the clerk of the municipal court. If there be a deficiency of persons on the list, the judge may select from the qualified electors of the county additional persons to cover the deficiency and certify and deliver to the clerk a supplementary list which shall thereafter stand as part of the original list. The validity of the selection is not affected by the fact that any person selected is disqualified from serving as a juror.

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Subd. 3. **Summoning.** Petit jurors shall be drawn from such list and summoned as the judge directs. The clerk shall issue ~~venires~~ for the jurors drawn which shall be returnable on such dates and hours and places as the judges direct. No person shall be drawn as a juror more than once in two years.

Subd. 4. **Failure to attend.** Failure to attend as a juror when duly drawn and summoned is punishable as contempt of court.

Subd. 5. **Special venire.** When necessary the court may issue a special venire.

Subd. 6. **Compensation.** Jurors shall be paid out of the county treasury the same compensation and mileage as jurors in the district court of Carver county. The clerk of the municipal court shall deliver to each juror a certificate showing the number of days of service and the mileage for which he is entitled to receive compensation. This certificate shall be filed with the county auditor who shall issue his warrant on the county treasurer for the amount due. The certificate is a proper and sufficient voucher for the issuance of the warrant. Any juror regularly summoned who actually attends at the time named in such summons is entitled to his per diem and mileage whether or not sworn as a juror.

Subd. 7. **Selection from jurors summoned for service by district court.** (a) If a court rule so providing is adopted by the judges of said district court and also by the judge of the municipal court, all petit jurors to serve in the municipal court of the county of Carver may be selected from the petit jurors summoned for jury service by the district court of Carver county.

(b) The rule may provide the manner in which jurors for the municipal court shall be selected from the jurors summoned by the district court and the period of time during which they shall serve in municipal court.

(c) The rule may be amended by a majority of the judges of the district court and the judge of the municipal court. It may be rescinded entirely at any time by a majority of the judges of either court.

(d) The rule may be made effective on any date and shall then supersede any jury list for municipal court theretofore in effect. If the rule be rescinded the judge of the municipal court may reinstate any jury list drawn for that year by the judge of municipal court or prepare a new jury list.

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(e) The petit jurors summoned for service in both courts shall have the same qualifications and shall be selected by the district court under the same procedure as is now provided by law for selecting jurors for service in the district court.

(f) Jurors shall report to and be excused, governed, instructed and controlled by a judge of either the district court or the municipal court as provided in the court rule.

Sec. 7. Pleading, practice, procedure, and forms in civil actions. Subdivision 1. **General.** Pleading, practice, procedure and forms in civil actions are governed by the rules for municipal courts promulgated from time to time by the supreme court of this state or by the statutes governing in the district court of Carver county insofar as the rules promulgated by the supreme court do not contain any applicable provision. The provisions of this act relating to pleading, practice, and procedure in civil actions shall be effective as rules of court until modified or superseded by a rule hereafter adopted by the supreme court of this state and upon the adoption hereafter of any rule on the same subject by the supreme court, the provisions of this act, insofar as they are in conflict therewith, shall be of no further force or effect.

Subd. 2. **Court rules.** The judge may adopt rules governing pleading, practice, procedure and forms for civil actions which are not inconsistent with the provisions of this act, the rules for municipal courts promulgated from time to time by the supreme court of Minnesota or governing statutes.

Subd. 3. **Note of issue; demand for jury trial; waiver of jury trial.** (a) A party desiring to place a cause upon the calendar for trial after issue is joined shall serve a note of issue on all other parties and file it with the clerk, with proof of service, within ten days after service. The note of issue shall state whether the issues are of law or fact, whether trial by jury is demanded or waived, whether a jury of 12 or six is demanded, and the names and addresses of the respective counsel.

(b) If any other party to the action desires a trial by jury when none is demanded in the note of issue served upon him or if any other party desires trial by a jury of 12 when a jury of six is demanded in the note of issue served upon him, then he shall serve a demand for trial by jury of six or 12 persons on all other parties to the action and file it with the clerk, with proof of service, within ten days after the note of issue was served upon him.

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(c) The party demanding a jury trial shall pay to the clerk a jury fee of \$5 for a jury of six, or \$10 for a jury of 12 at the time of filing his note of issue or demand. If a party demands a jury of 12 when the note of issue previously served demanded a jury of six, he shall pay a fee of \$5 to the clerk at the time of filing his demand.

(d) If a jury of six or 12 persons is not demanded at the time and in the manner provided in this act, all parties waive trial by a jury of six or 12, as the case may be. Jury trial may be waived also in the manner provided by rule 38.02 of the rules for municipal courts promulgated by the supreme court of Minnesota, as amended from time to time.

Subd. 4. Five-sixths verdict. In any civil action, after six hours of deliberation, the agreement of five sixths of any jury is a valid verdict. The deliberation of the jury commences when the officer taking charge of the jury has been sworn. The clerk shall enter the time in his records.

Subd. 5. Costs allowable. Costs shall be allowed in civil actions as follows: (a) To the plaintiff upon a judgment in his favor when an issue of fact or law has been joined:

(1) \$10 when the amount of the judgment or the value of the property recovered in a replevin action, exclusive of costs and disbursements, exceeds \$150;

(2) \$5 in all other cases.

(b) \$5 to the plaintiff upon a judgment in his favor when no issue of fact or law has been joined and the amount of the judgment or the value of the property recovered, exclusive of costs and disbursements, exceeds \$150.

(c) To the defendant upon a judgment in his favor on the merits:

(1) \$10 when the amount claimed in the complaint or the alleged value of the property involved in a replevin complaint exceeds \$150;

(2) \$5 in all other cases.

(d) \$5 to the defendant upon a dismissal or discontinuance other than on the merits, regardless of the amount claimed or the value of the property involved.

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Subd. 6. **New trial or other determination.** In civil actions the court may: (a) Grant a new trial to all or any of the parties and on all or part of the issues;

(b) Grant a motion for judgment notwithstanding the verdict or notwithstanding the jury has disagreed and has been discharged;

(c) Open the judgment if one has been entered;

(d) Take additional testimony in a case tried without a jury;

(e) Amend findings of fact and conclusions of law, make new findings and conclusions, and direct entry of a new judgment;

(f) *Correct clerical mistakes in judgments, orders, or other parts of the record, and errors therein arising from oversight or omission; or*

(g) Relieve a party or his legal representative from a final judgment, order, or other proceeding.

Subd. 7. **Lien of judgment; filing of transcript.** (a) No judgment of the municipal court shall attach as a lien upon real estate unless and until a transcript thereof is filed and docketed in district court.

(b) Any person who holds a judgment for an amount exceeding \$10, exclusive of interest and costs, may obtain from the clerk a certified transcript of such judgment and may file the transcript in the office of the clerk of the district court of Carver county, who shall file and docket it as in case of transcripts of judgments from the courts and justices of the peace.

(c) Upon the filing and docketing of the certified transcript, the judgment becomes a lien upon the real estate of the debtor to the same extent as a judgment of the district court and the judgment thereafter is exclusively under the control of the district court and may be enforced by its process as though originally rendered by the district court.

(d) The clerk of municipal court shall not issue such a certified transcript while a writ of execution is outstanding on the judgment. He shall note on the record of such judgment the fact that such transcript has been given and shall not thereafter issue any writ of execution on the same judgment.

Subd. 8. **Writs of replevin, attachment and execution.** Writs of replevin, attachment and execution may be is-

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sued in accordance with the practice and procedure for such writs in district court, but the judge rather than the sheriff or a police officer shall approve all bonds requiring approval.

Subd. 9. Satisfaction of execution. When a writ of execution has been delivered to an officer for enforcement, any person indebted to the judgment debtor may pay the amount of such debt, or so much thereof as may satisfy the execution, to the officer holding the writ and the receipt of that officer reciting the facts is a sufficient discharge and satisfaction of so much of said debt as is so paid.

Subd. 10. Garnishment. Proceedings against garnishees may be instituted in the same manner as in the district courts of the state. The garnishment summons may be served either by an officer or any person not a party to the action, at any place within the state of Minnesota, and the service shall in all cases be personal. Notwithstanding any other law, such service shall become null and void and ineffective for any purpose unless not later than one day after such service the original or a copy of the summons and complaint in the main action between the parties is filed in the office of the clerk of said court. Any judge may issue an order ex parte dismissing a garnishment and discharging the garnishee upon a showing by certificate of the clerk that the summons and complaint have not been filed within the period of time herein required. The disclosure of the garnishee shall be made and all further proceedings had in the same manner as if the proceedings were in the district court, but the summons shall require disclosure within ten days after service, and service upon the defendant shall be made not later than ten days after the service on the garnishee.

Sec. 8. Pleading, practice, procedure, and forms in criminal proceedings. Subdivision 1. **General.** Save as otherwise provided in this act, pleading, practice, procedure and forms in actions or proceedings charging violation of a criminal law or a municipal ordinance, charter provision, rule or regulation are governed by the statutes and common law rules which govern in a similar action or proceeding in the district court of Carver county (other than those applying peculiarly to felony or gross misdemeanor charges) or by statutes which govern in courts of justices of the peace in the absence of statutes or common law rules governing in said district court.

Subd. 2. Court rules. The judge may adopt rules governing pleading, practice, procedure and forms in actions or proceedings charging violation of a criminal law or a municipal ordinance, charter provision, rule or regulation which are not inconsistent with the provisions of this act or any other statute of this state.

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Subd. 3. **Complaints.** Complaints charging violations of a criminal law of this state or a municipal ordinance shall be sworn to before the judge of the court and shall be filed with the clerk, or deputy clerk.

Subd. 4. **Tab charges.** When a person charged with violating a municipal ordinance, charter provision, rule or regulation is brought or voluntarily appears before the court without process, the clerk shall enter upon the records a brief statement of the offense charged. This brief statement stands in place of a complaint, but if the judge so orders, a formal complaint shall be made and filed.

Subd. 5. **Pleas.** The plea of the defendant shall be "guilty" or "not guilty". In case of a failure to plead, the clerk shall enter a plea of "not guilty". Former acquittal or conviction for the same offense may be proved under a plea of "not guilty".

Subd. 6. **Jury trials.** In a trial upon a charge of violation of any municipal ordinance, charter provision, rule or regulation, the defendant shall have the right to a jury trial on such a charge.

Subd. 7. **Warrants.** The judge may issue warrants.

Subd. 8. **Probation, parole, stay, suspension.** (a) At the time of imposing sentence, the judge, in his discretion, may stay execution of the sentence for a period not exceeding one year upon such terms and conditions, including probation, as he may deem proper or may order release on parole after part of a sentence has been served. The parole shall be for a period not exceeding one year from the date of commitment and on such terms and conditions, including probation, as the judge may deem proper.

(b) At the time of imposing sentence or at any time thereafter, the judge may suspend forever the execution of any sentence or the balance of any sentence which has been executed in part.

(c) When a person has been committed to the county jail, the judge in his discretion, may order the release of such person on parole after part of the sentence is served when satisfied that he will thereafter keep the peace and be of good behavior. The parole shall be for a period not exceeding one year from the date of commitment and on such terms and conditions as the judge deems proper.

(d) If any person violates any terms or conditions of a stay, parole or probation, or commits a subsequent violation of any law, charter provision or ordinance, the judge may revoke the stay, parole or probation and cause such person to be arrested and committed for

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the sentence originally imposed or the balance thereof if a portion of the sentence has been previously served. The revocation may be based on such showing, oral or written, sworn or unsworn, as the judge deems sufficient, and may be made without notice or hearing.

Subd. 9. Bail. The judge may set the amount of bail for any violation of a law of this state or a municipal ordinance, charter provision, rule or regulation for which bail is allowed under the laws of the state. A bail bond in such amount may be posted or the person to give bail, in lieu of bail bond, may deposit with the clerk a sum of money equal to the amount of the bail so fixed.

Subd. 10. Minutes of preliminary hearings. The clerk shall keep minutes of preliminary hearings on indictable offenses and make proper return to the court before which the person charged with the offense may be bound to appear.

Subd. 11. Prosecuting attorneys. Except where the county attorney is specifically designated by law as the prosecutor for the particular violation charged, the attorney of the municipality in which the violation is alleged to have occurred shall have charge of the prosecution of all violations of the state laws and municipal charter provisions, ordinances, rules and regulations triable in the municipal court and shall prepare complaints for said violations.

Subd. 12. Presumption of innocence; conviction of lowest degree. In an action or proceeding charging a violation of an ordinance of any subdivision of government in the county of Carver, if such ordinance is the same or substantially the same as the state law, the provisions of Minnesota Statutes, Section 611.02, shall apply.

Sec. 9. Forcible entry and unlawful detainer actions. **Subdivision 1. Return days.** Return days for forcible entry and unlawful detainer actions may be fixed by rule promulgated by the judge.

Subd. 2. Procedure; forms. Minnesota Statutes, Sections 566.01 through 566.16, apply to the court. The forms therein prescribed, with appropriate modifications, may be used.

Subd. 3. Default judgments. Whenever a duly verified complaint in an action of forcible entry or unlawful detainer shows one of the causes of action set forth in Minnesota Statutes, Section 566.03, and on the return day of the summons the defendant does not appear, the judge, upon proof of the due service of the summons, shall enter an order adjudging the defendant to be in default, and

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thereafter the clerk shall enter judgment for the plaintiff without the introduction of evidence.

Sec. 10. Payment of court expenses. All salaries of the judge of the municipal court of the county of Carver, court reporters, the clerk, deputy clerks and all other employees of said court, and all expenses of said court shall be paid from the treasury of Carver county. The board of county commissioners of Carver county is authorized to levy taxes annually against each dollar of taxable property within the county as may be necessary for the establishment, operation and maintenance of the court.

Sec. 11. Courtrooms. The municipal court of the county of Carver shall occupy the courtrooms in the Carver county courthouse, city of Chaska, or such other place as is designated by the Carver county board of commissioners.

Sec. 12. Courts abolished. All courts in Carver county except district and probate courts are abolished as of July 1, 1969.

Sec. 13. Transfer of cases pending in other courts; transfer of funds from other courts; disposition of appeals from other courts. (a) All cases pending in courts abolished by this act are hereby transferred as of July 1, 1969, to the municipal court of Carver county for trial or other disposition according to law. Any case on appeal to any appellate court from any such abolished court shall be treated by the appellate court as though appealed thereto from the abolished court, except that all affirmances, reversals, mandates or remittiturs shall be addressed to the municipal court of Carver county.

(b) All judges and justices of the peace and all court clerks of such abolished courts shall continue in office after July 1, 1969, solely for the purpose of transmitting to the clerk of the municipal court of Carver county all pleadings, dockets and other records in pending cases in such abolished courts and for the purpose of paying over to the clerk of said court all moneys in the possession of such judges, justices of the peace, and clerks by law payable to the state or any subdivision, with proper detail to enable the clerk of the municipal court of Carver county properly to account to the proper officials for such moneys.

(c) All transmissions of pleadings, dockets, and other records and paying over of moneys referred to shall be completed by the judges, justices of the peace, and clerks of the aforesaid abolished courts within 60 days after the first Monday of July, 1969.

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Sec. 14. **Employees of the municipal court of the county of Carver.** All employees of the municipal court of the county of Carver shall be eligible for membership in the public employees retirement association.

Sec. 15. **Initial judge of the court.** The governor shall appoint the first judge of the municipal court of Carver county. The original term of office of such judge as a judge of the municipal court of the county of Carver shall expire on the day before the first Monday in January, 1973.

Sec. 16. **Establishment; jurisdiction; powers; computation of time.** Subdivision 1. **Establishment.** There is hereby established a conciliation court of the county of Carver with the jurisdiction and powers hereinafter stated.

Subd. 2. **Court of record; seal; separate court.** The conciliation court is a court of record with its own seal. It is separate from the municipal court of the county of Carver.

Subd. 3. **Jurisdiction.** Excepting actions involving title to real estate, the court has jurisdiction to hear, conciliate, try and determine civil actions at law where the amount in controversy does not exceed the sum of \$250. The territorial jurisdiction of the court is coextensive with the geographic boundaries of the county of Carver.

Subd. 4. **Powers, issuance of process.** The court has all powers, and may issue such process, as is necessary or proper to carry out the purposes of this act.

Subd. 5. **Terms of court.** The judge shall hold terms of court from time to time as necessary to hear and dispose of all claims as promptly as feasible after filing.

Subd. 6. **Rules of pleading, practice and procedure.** The judge may promulgate rules governing pleading, practice and procedure which are not inconsistent with the provisions of this act.

Subd. 7. **Computation of time.** In computing any period of time prescribed or allowed by this act, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Sundays and holidays shall be excluded in the computation.

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Sec. 17. Judges; clerk; police officers; reporters; salaries; quarters. Subdivision 1. **Judge of municipal court serve as judge; referees for conciliation court.** (a) The judge of the municipal court of the county of Carver shall serve as judge of the conciliation court. While so serving, he shall act and be known as conciliation judge.

(b) The judge of the municipal court may appoint, with the approval of the county board, one or more suitable persons to act as referees in conciliation court. The judge of municipal court shall establish qualifications for the office, specify the duties and length of service of referees, and fix their compensation not to exceed \$35 per day or any part thereof. This compensation shall be payable by the county treasurer at the same time and in the same manner as salaries of the judge of conciliation court.

Subd. 2. Clerk of conciliation court; duties; records. (a) The clerk of the municipal court shall serve as the clerk of the conciliation court. He shall delegate deputy clerks of the municipal court to assist him in performing his duties under this act. The clerk shall keep such records and accounts and perform such duties as may be prescribed by the judges. He shall account for and pay over to the county of Carver all fees received by him in the same fashion as required in his capacity as clerk of municipal court.

(b) The clerk may, upon the consent of the judge of municipal court of the county of Carver, destroy or dispose of all the following files and records of said court, which have been on file for more than 20 years:

- (1) Complaint files;
- (2) Transcript receipts;
- (3) Cash receipt books;
- (4) Cancelled checks.

Subd. 3. Court reporter, duties. Each court reporter appointed by a judge of municipal court shall assist that judge in performing his duties as conciliation judge, but, unless ordered to do so by that judge he shall not take official notes of any trial or proceeding in conciliation court.

Subd. 4. Salaries; oaths; bonds. The judge, clerk, deputy clerks, and court reporters shall receive only their salaries payable for serving as officers of municipal court while serving in conciliation court. All oaths taken and bonds given by the judge, clerk, deputy

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clerks and court reporters for their respective offices in municipal court include their acts as officers of conciliation court, whether or not so expressed therein.

Subd. 5. Quarters for court, supplies. The county of Carver shall provide suitable quarters for the court, and court shall be held at that place. The clerk shall procure and furnish all necessary blanks, stationery, books, furniture, furnishings and other supplies for the use of the court and the officers thereof at the expense of the county with the consent of the county board and under the supervision and approval of the judge.

Sec. 18. Commencement of action; filing fee; requisites of claim; summons; counterclaim; replevin. Subdivision 1. **Commencement of action.** An action is commenced against each defendant when the complaint is filed with the clerk of conciliation court and a filing fee of \$1 is paid to the clerk or the prescribed affidavit in lieu of filing fee is filed.

Subd. 2. Filing fee, affidavit of inability to pay. If the plaintiff or the defendant signs and files with the clerk an affidavit that he has no money or property and is unable to pay a filing fee, no fee shall be required for the filing of his claim or counterclaim. If the affiant prevails on his claim or counterclaim, the amount of the filing fee which would have been payable by him shall be included in the order for judgment and paid to the clerk of conciliation court by the affiant out of any money recovered by him on the judgment.

Subd. 3. Claim, verification, contents. The claim must be verified by the plaintiff or his attorney and shall contain a brief statement of the amount, date of accrual, and nature of the claim and the name and address of the plaintiff, the plaintiff's attorney (if any) and the defendant. If the plaintiff is not represented by an attorney, the clerk shall draw up the claim on request.

Subd. 4. Hearing, date; summons. When an action has been properly commenced, the clerk shall set a date for court hearing and advise the plaintiff of the date set. The clerk shall promptly summon the defendant by mail or by personal service in the manner then provided for personal service of a summons of said municipal court. The summons shall state the amount and nature of the claim; shall require the defendant to appear at the hearing; shall specify that if he does not appear judgment by default will be entered against him for the relief demanded and shall summarize the requirements for filing a counterclaim. Unless otherwise ordered by a judge, the hearing date shall be not less than ten days from the date of mailing or service of the summons.

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Subd. 5. Counterclaim. (a) The defendant may interpose as a counterclaim any claim within the jurisdiction of the court which he has against the plaintiff whether or not arising out of the transaction or occurrence which is the subject matter of the plaintiff's claim.

(b) The counterclaim shall be interposed by filing with the clerk a brief statement of the amount, date of accrual and nature of the counterclaim, verified by the defendant or his attorney, and paying a filing fee of \$1 to the clerk. If the defendant is not represented by an attorney, the clerk shall draw up the counterclaim on request.

(c) The clerk shall note the filing of the counterclaim on the original claim, promptly notify the plaintiff or his attorney by mail of the filing and set the counterclaim for hearing on the same date as the original claim.

(d) The counterclaim shall be filed not less than five days before the date set for court hearing. The judge, in his discretion, may thereafter allow the filing of a written or oral counterclaim before or after the hearing of the merits of the claim and counterclaim. The judge, in his discretion, may require the payment of absolute or conditional costs up to \$25 by the defendant as a condition of allowing late filing in the event that a continuance is requested by the plaintiff and is granted because of such late filing.

(e) If the defendant has a counterclaim arising out of the same transaction or occurrence which exceeds the jurisdiction of the court and the defendant files an affidavit by himself or his attorney with the clerk not less than five days before the date set for court hearing showing that he has filed with the clerk of a specified other court of competent jurisdiction a complaint seeking recovery from the plaintiff on the counterclaim and stating the nature and amount thereof, the clerk shall strike the action from the calendar and so advise the plaintiff or his attorney by mail. If the plaintiff, not less than 30 days nor more than three years after the filing of such an affidavit, shall file an affidavit showing that he has not been served with a summons in the other action or that the other action has been finally determined, the clerk shall again set the cause for court hearing and summon the defendant in the same manner as for the initial hearing and the court shall proceed to hear and determine plaintiff's claim. If no such counter-affidavit is filed by plaintiff within three years, his original claim is dismissed without prejudice without any further action by the clerk or any judge. Prior to the expiration of this three year period the plaintiff's original claim may be dismissed by plaintiff or by court order at a hearing upon motion of the defendant.

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Subd. 6. **Replevin.** If the controversy concerns the ownership or possession, or both, of personal property the value of which does not exceed the sum of \$150, the judge in his discretion, may direct an officer of the court to take possession of the property immediately and hold it subject to the further order of the court, without the giving of any bond whatever.

Sec. 19. **Hearing; attorneys; evidence; conciliation; determination; default; dismissal; continuance.** Subdivision 1. **Testimony, exhibits.** At the court hearing a conciliation judge shall hear the testimony of the respective parties and consider any exhibits offered by them and may also hear any witnesses introduced by either party.

Subd. 2. **Appearance of parties, attorneys.** Any party may appear in his own behalf without an attorney, or may retain and be represented by a duly admitted attorney who may participate in the hearing to the extent and in the manner that the judge, in his discretion, deems helpful to accomplish the purposes of this act.

Subd. 3. **Evidence admissible.** At the hearing the judge normally shall receive only evidence admissible under the rules of evidence, but in the interests of justice and the summary determination of causes before him he may receive evidence not so admissible.

Subd. 4. **Conciliation.** The judge may attempt to conciliate the parties. If the parties agree on a settlement the judge shall order judgment in accordance with that settlement.

Subd. 5. **Determination, order for judgment.** If the parties do not agree upon a settlement, the judge shall summarily hear and determine the cause and order judgment.

Subd. 6. **Satisfaction of judgment by installment payments.** Any judgment ordered may provide for satisfaction by payments in installments in such amounts and at such times, not exceeding one year for the last installment, as the judge determines to be just and reasonable. If any installment is not paid when due the entire balance of the judgment order becomes immediately due and payable.

Subd. 7. **Defendant, failure to appear.** If the defendant, after being summoned as provided by this act, fails to appear at the time set for hearing, the judge may hear the plaintiff or his attorney and order judgment by default or he may fix a later date for hearing in accordance with what appears just and reasonable. If a later date be set for hearing the clerk shall notify the defendant by mail.

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Subd. 8. **Plaintiff failing to appear, defendant appearing.** (a) If the plaintiff fails to appear at the time set for hearing and the defendant does appear, the judge may hear the defendant and order judgment of dismissal on the merits, order the cause dismissed without prejudice, fix a later date for hearing or make such other disposition as is just and reasonable.

(b) If both parties are present or represented at the hearing, the judge, in his discretion, on motion of the plaintiff, may grant dismissal without prejudice either before or after hearing evidence.

(c) If a later date be set for hearing the clerk shall notify by mail any party not present or represented at the hearing.

Subd. 9. **Continuance, further hearing, resetting.** On proper showing of good cause, a continuance, further hearing or resetting may be ordered on motion of either party. The court may require payments of costs, conditional or absolute, not to exceed \$25 to the other party as a condition of such an order. The clerk shall give notice of any continuance, further hearing or resetting by mail to any party who does not have other notice thereof.

Sec. 20. **Notice of order for judgment; entry of judgment; costs and disbursements; payments; vacating; docketing.** Subdivision 1. **Notice of order.** The clerk shall promptly mail to each party a notice of the order for judgment which the judge enters. The notice shall state the number of days allowed for obtaining an order to vacate where there has been a default or for removing the cause to municipal court.

Subd. 2. **Entry of judgment.** The clerk shall enter judgment forthwith as ordered by the court, dating the judgment entry the same date as notice is mailed to parties. Unless: (1) otherwise ordered by the judge, (2) payment has been made in full, (3) removal to municipal court has been perfected, or (4) an order vacating the prior order has been filed, the judgment so entered by the clerk becomes finally effective ten days after the mailing of notice.

Subd. 3. **Costs and disbursements.** The judge, in his order for judgment, shall include any filing fee paid by the prevailing party, may include any disbursements incurred by the prevailing party covering items taxable in civil actions in the municipal court, and may include or adjust for any sum which he deems proper to cover all or part of conditional costs previously ordered to be paid by either party. No other costs shall be allowed to a prevailing party.

Subd. 4. **Payment of judgment, record.** The losing party

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may pay all or any part of the judgment to the clerk for the benefit of the prevailing party or may pay the prevailing party directly and so advise the clerk. The clerk shall make an appropriate entry on his records when any payment has been made to him or when satisfied that any payment to the prevailing party has been made.

Subd. 5. Vacation of order for judgment within ten days. When a default judgment or a judgment of dismissal on the merits has been ordered for failure to appear, the judge, within ten days after notice thereof was mailed, may vacate the order for judgment *ex parte* and grant a new hearing, if the defaulting party shows lack of notice, mistake, inadvertence, or excusable neglect as the cause of his failure to appear. Absolute or conditional costs not exceeding \$25 to the other party may be ordered as a prerequisite to that relief. The clerk shall notify the other party by mail of the new hearing date.

Subd. 6. Vacation of judgment after ten days. When a defendant shows that he did not receive a summons before the hearing within sufficient time to permit a defense and that he did not receive notice of the order for default judgment within sufficient time to permit him to make application for relief within ten days or shows other good cause, a judge may vacate a default judgment after notice to the plaintiff and grant a new hearing on the merits with or without payment of absolute or conditional costs. The clerk shall notify the parties by mail of the new hearing date.

Subd. 7. Absolute or conditional costs; filing of orders. When a judge orders payment of absolute or conditional costs as a condition of an order under any provision of this act, the amount shall be paid to the clerk before the order becomes effective or is filed. Every such order is invalid unless filed with the clerk within five days after its date. Conditional costs shall be held by the clerk to abide the final order entered in the cause. Absolute costs shall be paid over by the clerk forthwith to the other party as his absolute property.

Subd. 8. Docketing and enforcement in municipal court. When a judgment has become finally effective under subdivision 2 of this section, the judgment creditor may obtain a transcript of the judgment from the clerk of conciliation court on payment of a fee of fifty cents therefor and file it with the clerk of the municipal court of the county of Carver without additional fee. After filing of the transcript, the judgment becomes, and is enforceable as, a judgment of the municipal court. A transcript of a judgment payable in installments may not be so obtained and filed until 20 days after de-

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fault in the payment of an installment. No writ of execution or garnishment summons may be issued out of conciliation court.

Sec. 21. Removal of cause to municipal court. Subdivision 1. **Trial de novo.** Any person aggrieved by an order for judgment entered by a conciliation judge after a contested hearing may remove the cause to the municipal court of the county of Carver for trial de novo.

Subd. 2. **Procedure for removal of cause.** No cause shall be so removed unless all of the following acts are performed by the aggrieved party within ten days after the date the clerk mailed to him notice of the order for judgment:

(a) Serve on the opposing party or his attorney a demand for removal of the cause to the municipal court for trial de novo stating whether trial by a jury of six or 12 persons or by the court without a jury is demanded. Service shall be made upon a party in accordance with the provisions for personal service of a summons in the municipal court or shall be made upon the party's attorney in accordance with the provisions for service of a notice of motion upon an attorney in the municipal court. The demand shall show the office address of the attorney for each party and the residence address of each party who does not have an attorney.

(b) File with the clerk of conciliation court the original demand for removal and 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 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.

(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.

(d) Pay to the clerk of conciliation court \$2 when the demand is for trial by court, plus \$3 additional when the demand is for trial by a jury of six persons or \$5 additional when the demand is for trial by a jury of 12 persons.

Subd. 3. **Limited removal of cause, procedure.** (a) When a motion for vacation of a judgment or an order

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for judgment under subdivision 5 or 6 of section 20 has been denied, the aggrieved party may demand limited removal to the municipal court of the county of Carver 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 2 (a) of this section and the original demand and notice, with proof of service, must be filed with the clerk of 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 2 (b) of this section, must be filed with the clerk of conciliation court 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 to the clerk of 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 days 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 the \$2 fee and shall file in municipal court the removal demand and notice together with all orders, affidavits, and other papers filed in conciliation court. The clerk of municipal court shall then place the cause on the special term calendar of the municipal court for hearing on the date specified in the notice.

(c) A municipal judge shall hear the motion de novo at special term and may deny the motion, without allowance of costs, or grant the motion, with or without the allowance of absolute or conditional costs. At the hearing de novo the municipal judge shall consider the entire file of the conciliation court together with any subsequent affidavits of 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 clerk of conciliation court.

Subd. 4. Demand for trial by jury. If the opposing party desires trial by a jury of six or 12 persons when none or a jury of only six persons is demanded in the demand for removal, he shall (a) serve a demand for trial by jury of six or 12 persons on the aggrieved party, (b) file the demand with proof of service with the clerk of conciliation court within ten days after the demand for removal was served upon him, and (c) pay to the clerk of conciliation court at the

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time of such filing a fee of \$3 if he demands a jury of six persons, \$5 if he demands a jury of 12 persons, or \$2 if he demands a jury of 12 persons instead of the six persons previously demanded by the aggrieved party.

Subd. 5. Waiver of trial by jury. If a jury of six or 12 persons is not demanded within the time limits and in the manner provided in this act, all parties waive trial by a jury of six or 12 persons as the case may be.

Subd. 6. Removal, when perfected; vacation of order for judgment; certificate by judge. When all removal papers have been properly filed and all requisite fees have been paid by the aggrieved party as herein provided, the removal is perfected. Thereupon the conciliation judge shall make and file an order vacating the order for judgment in conciliation court and a certificate setting out in general terms the proceedings had, the issues tried and the order entered.

Subd. 7. Clerk's duties upon removal. After the judge's order and certificate have been filed, the clerk of conciliation court shall pay over to the municipal court the removal and jury fees paid to him hereunder and shall file in municipal court all claims, orders, certificates and other papers filed in conciliation court in connection with the cause and its removal to municipal court.

Subd. 8. Note of issue not necessary. No note of issue for trial in municipal court need be filed. The removed cause shall be brought on for trial in the same manner and substantially the same order as though a note of issue had been filed in municipal court on the date the claim was filed in conciliation court.

Subd. 9. Issues for trial, amendments. The issues for trial in municipal court shall be those in conciliation court as set forth in the judge's certificate, but a party may be allowed to amend the issues in municipal court on motion following the same procedure and subject to the same limitations as would apply if the motion were for amendment of the pleadings after a responsive pleading had been served in an action originally brought in municipal court. The court may grant an amendment which increases the amount claimed by either party to an amount in excess of the jurisdiction of conciliation court but not in excess of the jurisdiction of municipal court. The court may allow pleadings to be amended to add a new cause of action by way of counterclaim or otherwise if the new cause of action has not been barred by a statute of limitation of action before the date when the motion for amendment is heard by the court.

Subd. 10. Costs and disbursements for prevailing

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party. (a) The prevailing party in a removed cause may tax and recover from the other party \$5 as costs together with his disbursements incurred in conciliation and municipal court.

(b) For the purpose of this subdivision, an "aggrieved party" means the party who demands removal to municipal court and means the first party who serves, or files in lieu of serving, a demand for removal if another party also demands removal, and an "opposing party" means any party as to whom the aggrieved party seeks a reversal in whole or in part by removal of the cause to municipal court.

(c) The aggrieved party is the prevailing party in municipal court:

(1) If the aggrieved party recovers any amount or any property in municipal court when the aggrieved party has been denied recovery of any amount or any property by the conciliation judge,

(2) If the opposing party does not recover any amount or any property from the aggrieved party in municipal court when the opposing party had recovered some amount or some property by the order of the conciliation judge,

(3) If the aggrieved party recovers an amount or value of property in municipal court which is at least \$25 in excess of the amount or value of property which the aggrieved party recovered by the order of the conciliation judge, or

(4) If the opposing party recovers from the aggrieved party an amount or value of property in municipal court which is at least \$25 less than the amount or value of property which the opposing party recovered by the order of the conciliation judge.

(d) In all other situations the opposing party shall be deemed to be the prevailing party in municipal court.

(e) Costs or disbursements in the conciliation or municipal court shall not be considered in determining whether there was a recovery by either party in either court or in determining the difference in recovery under this subdivision.

Subd. 11. Pleading, practice, and procedure. Except as otherwise expressly provided in this act, pleading, practice and procedure in a removed cause are the same as in an action originally brought in municipal court.

Subd. 12. Appeal to supreme court. Causes removed to municipal court from conciliation court may be removed from munic-

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

ipal court to the supreme court of Minnesota in the same manner, upon like proceedings, and with the same effect as causes originally brought in the municipal court.

Sec. 22. **Appeal, jury trial.** The provisions of Minnesota Statutes, Section 484.63, shall not apply to the municipal court created by this act.

Sec. 23. **Application.** Ninety days after the effective date of any general law providing for the merger of the probate courts and municipal courts in any county not exempted therefrom, the provisions of this act shall be null and void, and the provisions of such general law shall apply to probate courts and municipal courts in Carver county.

Approved May 26, 1969.

CHAPTER 749—H. F. No. 681

An act relating to old age assistance, aid to families with dependent children, aid to the disabled, and aid to the blind; providing for the reimbursement of administrative funds; amending Minnesota Statutes 1967, Sections 245.35, Subdivision 3; 256.33; 256.67, Subdivision 3; and 256.81.

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

Section 1. Minnesota Statutes 1967, Section 245.35, Subdivision 3, is amended to read:

Subd. 3. **Public welfare; reimbursement of administrative funds; expenses; repayment to counties.** ~~Not exceeding one half of any funds available for administrative purposes shall be used to defray necessary expenses of the state agency in the supervision of the aid to permanently and totally disabled laws of this state, and the balance shall be used to repay the counties pro rata in the proportion the total number of recipients in the county bears to the total number of recipients in the state for the period in question. Federal funds available for administrative purposes shall be distributed between the state and the counties in the same proportion that expenditures were made.~~

Sec. 2. Minnesota Statutes 1967, Section 256.33, is amended to read:

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