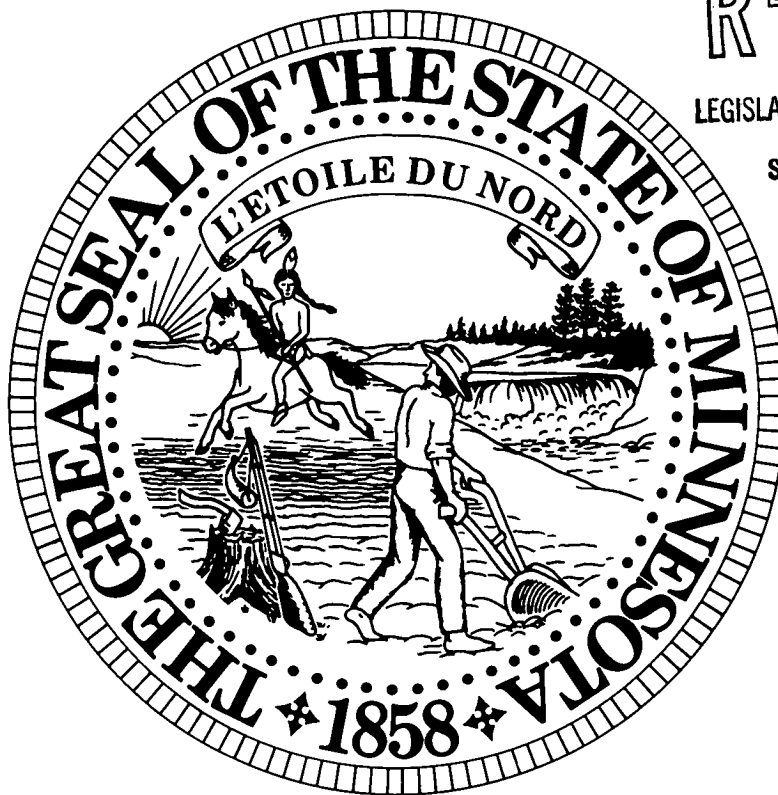


87, January 19

STATE OF MINNESOTA

# STATE REGISTER

DEPARTMENT OF ADMINISTRATION—DOCUMENTS DIVISION



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VOLUME 11, NUMBER 29

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# STATE REGISTER

## Judicial Notice Shall Be Taken of Material Published in the State Register

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, official notices to the public, state and non-state public contracts, grants, supreme court and tax court decisions, and a monthly calendar of cases to be heard by the state supreme court.

## Volume 11 Printing Schedule and Submission Deadlines

Vol. 11 Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
29	Monday 5 January	Monday 12 January	Monday 19 January
30	Monday 12 January	Friday 16 January	Monday 26 January
31	Friday 16 January	Monday 26 January	Monday 2 February
32	Monday 26 January	Monday 2 February	Monday 9 February

\*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

\*\*Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the State Register editorial offices, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

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Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

**Governor:** Rudy Perpich

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## FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

### SENATE

**Briefly-Preview**—Senate news and committee calendar; published weekly during legislative sessions.

**Perspectives**—Publication about the Senate.

**Session Review**—Summarizes actions of the Minnesota Senate.

Contact: Senate Public Information Office  
Room 231 State Capitol, St. Paul, MN 55155  
(612) 296-0504

### HOUSE

**Session Weekly**—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

**This Week**—weekly interim bulletin of the House.

**Session Summary**—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office  
Room 175 State Office Building, St. Paul, MN 55155  
(612) 296-2146

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**NOTICE**

**How to Follow State Agency Rulemaking Action in the State Register**

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION** also.

**The PROPOSED RULES section contains:**

- Proposed new rules (including notice of hearing and/or notice of intent to adopt rules without a hearing).
- Proposed amendments to rules already in existence in the Minnesota Rules.
- Proposed emergency rules.
- Withdrawal of proposed rules (option; not required).

**The ADOPTED RULES section contains:**

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the *State Register* unless requested by an agency.)
- Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
- Notice of adoption of emergency rules.
- Adopted amendments to emergency rules (changes made since the proposed version was published).
- Extensions of emergency rules beyond their original effective date.

**The OFFICIAL NOTICES section includes (but is not limited to):**

- Notice of intent to solicit outside opinion before promulgating rules.
- Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before April 8, 1985 are published in the *Minnesota Rules 1985*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after April 8, 1985 are included in a supplement published in Spring, 1986. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the *State Register* but are generally not published in the *Minnesota Rules* due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

The *State Register* publishes partial and cumulative listings of rule in the MINNESOTA RULES AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
Issues 27-38, inclusive	

# MINNESOTA RULES

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## Amendments and Additions

NOTE: This listing includes all proposed and adopted rules printed in this issue except emergency rules and errata for this issue. Please see those sections for the appropriate rule numbers.

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# EXECUTIVE ORDERS

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## Order No. 86-15 Amending Executive Order No. 85-7 Providing for the Continuation of the Issuance of Proclamations for Recurring Events on Established Dates

I, RUDY PERPICH, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

WHEREAS, Executive Order No. 85-7 was issued on February 19, 1985, providing for issuance of proclamations for recurring events on established dates; and

WHEREAS, it is necessary to amend Executive Order No. 85-7 by amending the expiration date;

NOW, THEREFORE, I hereby order that:

Executive Order No. 85-7 shall remain in effect until rescinded by proper authority or it expires in accordance with Minnesota Statutes, Section 4.035, Subdivision 3.

Pursuant to Minnesota Statutes, Section 4.035, this Amendment shall be effective fifteen (15) days after publication in the *State Register* and filing with the Secretary of State and shall remain in effect until rescinded by proper authority or it expires in accordance with Minnesota Statutes, Section 4.035, Subdivision 3.

IN TESTIMONY WHEREOF I have set my hand this twenty-second day of December, 1986.



Rudy Perpich  
Governor

# PROPOSED RULES

Pursuant to Minn. Stat. of 1984, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

## Department of Administration

### Proposed Permanent Rules Relating to Competitive Bidding

#### Notice of Intent to Adopt a Rule without a Public Hearing

Notice is hereby given that the State Department of Administration intends to adopt the above entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is M.S. 16B.07, Subd. 3.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Carol Zazubek  
Dept. of Administration  
Materials Management Division  
G-4 Administration Bldg.  
phone: 296-9109

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Carol Zazubek upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of these materials to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Carol Zazubek.

Sandra J. Hale  
Commissioner  
Department of Administration

#### Rules as Proposed

##### 1230.0300 SOLICITING BIDS.

Subpart 1. **Publication.** Any purchase estimated to exceed ~~\$5,000~~ \$15,000 shall be purchased on sealed bids, notice of solicitation of bid to be inserted once in a newspaper of general circulation at least seven days prior to the bid opening date. Bids shall also be

solicited by sending bid invitations to all prospective bidders registered with the Division of Procurement pursuant to subpart 3 and by posting notice on a public bulletin board in the Division of Procurement Office at least five days prior to the bid opening date.

Subp. 2. **Open market.** Any purchase estimated to be ~~\$5,000~~ \$15,000 or less may be made upon competitive bids or in the open market, but in either case will be based on three competitive bids, so far as practicable.

Subd. 3. [Unchanged.]

## ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

## Board of Nursing

### Adopted Permanent Rules Relating to Fees

The rules proposed and published at *State Register*, Volume 11, Number 10, pages 429-431, September 8, 1986 (11 S.R. 429) and Volume 11, Number 18, page 842, November 3, 1986 (11 S.R. 842) are adopted with the following modifications:

#### Rules as Adopted

##### 6310.2800 REGISTRATION RENEWAL REQUIREMENTS.

Subp. 3. **Renewal fee.** The renewal fee shall be \$20 per renewal period, effective ~~November 1, 1986~~ January 1, 1987.

Subp. 5. **Penalty fee.** An applicant for registration renewal shall pay a penalty fee of \$15, effective ~~November 1, 1986~~ January 1, 1987, as well as the renewal fee for the current renewal period if the application, evidence form, or renewal fee is postmarked after May 31 of the year in which it was due.

##### 6310.3400 DUPLICATE AND REPLACEMENT DOCUMENTS.

Subpart 1. **License.** A duplicate license shall not be issued. A replacement license may be issued when the licensee notifies the board, by certified statement, that the original license was lost, stolen, or destroyed. The replacement license shall be marked "Replacement" and the date of issuance indicated. The fee for a replacement license is \$10, effective ~~November 1, 1986~~ January 1, 1987.

Subp. 2. **Renewal certificate.** A duplicate renewal certificate shall not be issued. If a renewal certificate is lost, stolen, or destroyed, the licensee shall submit written evidence of the situation. Upon written request of the licensee, a verification of current registration shall be issued for a fee of \$10, effective ~~November 1, 1986~~ January 1, 1987.

If a licensee does not receive a renewal certificate which has been issued and notifies the board office within 90 days of date of issuance, a verification of current registration may be issued without a fee.

##### 6310.3500 VERIFICATION OF MINNESOTA LICENSE.

Subpart 1. **Verification.** A registered nurse wishing to be licensed in another United States jurisdiction or foreign country may, upon written request, have a certified statement of Minnesota licensure issued to the Board of Nursing or other official agency empowered to issue nursing licenses in the other jurisdiction or country.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## ADOPTED RULES

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The fee for verification of a license shall be \$15 effective ~~November 1, 1986~~ January 1, 1987, for each verification.

Subp. 2. **Transcript.** If a transcript is provided from the board files for a nursing program which is no longer currently in operation, an additional fee of \$10 effective ~~November 1, 1986~~ January 1, 1987, may be charged.

### 6310.7700 PENALTY FEE.

An applicant for renewal of registration shall pay a late penalty fee of \$15 effective ~~April~~ January 1, 1987, as well as the renewal fee if the request for renewal is postmarked after the end of the renewal period.

### 6310.8000 DUPLICATE AND REPLACEMENT DOCUMENTS.

Subpart 1. **License.** A duplicate license shall not be issued.

A replacement license may be issued when the licensee notifies the board, by certified statement, that the original license was lost, stolen, or destroyed. The replacement license shall be marked "Replacement" and the date of issuance indicated. The fee for a replacement license is \$10, effective ~~November 1, 1986~~ January 1, 1987.

Subp. 2. **Renewal certificate.** A duplicate renewal certificate shall not be issued.

If a renewal certificate is lost, stolen, or destroyed, the licensee shall submit written evidence of the situation.

Upon written request of the licensee, a verification of current registration shall be issued for a fee of \$10, effective ~~November 1, 1986~~ January 1, 1987.

If a licensee does not receive a renewal certificate which has been issued and notifies the board office within 90 days of date of issuance, a verification of current registration may be issued without a fee.

### 6310.8100 VERIFICATION OF MINNESOTA LICENSE.

Subpart 1. **Verification.** A licensed practical nurse wishing to be licensed in another United States jurisdiction or foreign country may, upon written request, have a certified statement of Minnesota licensure issued to the Board of Nursing or another official agency empowered to issue nursing licenses in the other jurisdiction or country.

The fee for verification of a license shall be \$15 effective ~~November 1, 1986~~ January 1, 1987, for each verification.

Subp. 2. **Transcript.** If a transcript is provided from the board files for a nursing program which is no longer currently in operation, an additional fee of \$10 effective ~~November 1, 1986~~ January 1, 1987, may be charged.

### 6315.0400 REQUIREMENTS FOR LICENSURE BY EXAMINATION.

Subp. 10. **Fees.** The board shall charge the following fees.

A. The licensure fee is \$75 for an applicant for registered nurse licensure and \$50 for an applicant for licensed practical nurse licensure, effective ~~November 1, 1986~~ January 1, 1987. This fee must be paid to the board and must be received prior to evaluation of an applicant's qualifications for examination and licensure.

C. The reexamination fee is \$50 for an applicant for registered nurse licensure and \$40 for an applicant for licensed practical nurse licensure, effective ~~November 1, 1986~~ January 1, 1987. The fee must be paid to the board.

D. Effective ~~November 1, 1986~~ January 1, 1987, a late filing fee of \$50 must be remitted to the board if one or more of the following materials is not properly postmarked or delivered by the deadline:

### 6315.0500 REQUIREMENTS FOR LICENSURE WITHOUT EXAMINATION.

Subp. 3. **Fee.** The fee for licensure is \$55 for registered nurse applicants and \$55 for licensed practical nurse applicants, effective ~~November 1, 1986~~ January 1, 1987. This fee must be paid to the board and must be received prior to evaluation of an applicant's qualifications for licensure. Personal checks are not accepted. Remittance must be in the form of United States currency, cashier's check, or money order. If for any reason a license is not issued, the fee is not refundable.

## ANNOUNCEMENTS

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**ENVIRONMENTAL QUALITY BOARD Environmental Assessment Worksheets (EAWs)** due Jan. 28, 1987: Valley Glen; Redwood River Overflow Channel; Dutch Haven; CR 43—CR 28 to 1.75 miles south; Mantorville Wastewater Facility; Browns Valley Wastewater Facility; Bischoff Mining Permit; **EAWs** due Feb. 11, 1987: Lake Prairie Egg Company; Polk Wildlife Management Area-Dugout Excavation; Crystal Foods, Inc., Golden Egg Farms remodeling; Monticello-Chelsea Road Sewer Extension.

**Final Environmental Impact Statement:** Elm Creek PUD. No Environmental Impact Statements are required for the following projects: Oak Shore, Jackson's First, and Rolling Oaks South, Lakeville; LeSueur Wastewater Facility, MPCA; Perham Wastewater Facility, MPCA; Lake Park Wastewater Facility, MPCA.



The Minnesota Department of Agriculture has issued a **Notice of Special Local Need Registration** for "Sevin XLR plus," "Seven 80S," "Methyl Parathion 4E," and "Furdan CR-10." The department is not considering holding public hearings at this time on these registration requests.

The Pollution Control Agency proposes to issue 5-year **Certifications of Exemption** for PCB. The certificates will allow continued use of PCB with various controls, inspections, and removal schedules.

For more information on the above, contact Greg Downing, editor, EQB Monitor at 296-8253.

**HEALTH DEPARTMENT** Examinations for state journeyman and master plumber's licenses, and water conditioning installer and contractor licenses, will be conducted during March at four locations: Albert Lea Vocational-Technical School, Detroit Lakes Area Vocational-Technical School, Duluth Area Vocational-Technical School and North Hennepin Community College, Brooklyn Park.

Applications may be obtained by phone at (612) 623-5375 or by writing to the Minnesota Department of Health, Plumbing Unit, 717 Delaware Street S.E., Box 9441, Minneapolis 55440. Applications must be returned by February 15, 1987, to be eligible for the March examinations.

The next scheduled examinations will be given in September 1987.

**NATURAL RESOURCES DEPARTMENT** The department's strategic plan for Minnesota fish, wildlife and native plants is available for public review in most public libraries and DNR area and regional offices.

The planning document includes a comment sheet. Requests for copies of the plan or comments should be sent to the Division of Fish and Wildlife, DNR, 500 Lafayette Rd., St. Paul, MN 55155. The deadline for comments is Mar. 1.

The strategic plan describes the Division's mission, management philosophy and direction for the next 20 years. It is part of an overall comprehensive planning process that began in 1985 and also includes a long-range plan and operation plan. This new effort is being funded by the Legislative Commission on Minnesota Resources.

Long-range planning covers a six-year period and focuses on a species or ecological community. The Division's long-range plans will be available for public review in July.

**TRANSPORTATION DEPARTMENT** Truckers will be allowed to haul up to 10% additional weight on Minnesota's trunk highways until March 7 or until such time as spring weight limits are posted. A special permit, however, is required on Interstate routes. Contact Darrell Schierman, manager, Emergency Operations, 296-0843.

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## OFFICIAL NOTICES

Pursuant to the provisions of Minnesota Statutes 2 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

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### Department of Commerce

#### Notice of Activation of the Minnesota Joint Underwriting Association to Insure Specified Classes of Business and Public Hearing

Notice is hereby given that, pursuant to Minnesota Statutes, section 621.21, the Minnesota Joint Underwriting Association (MJUA) and the Market Assistance Plan (MAP) are activated to provide assistance to the following classes of business unable to obtain insurance from private insurers:

1. Structural engineers
2. Surety bonds for self-insurance of workers' compensation liability as required by M.S. 176.81, subd. 2

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## OFFICIAL NOTICES

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3. Real estate developers
4. Maternal & child health care coordinator
5. Community support program providers for chronically mentally ill
6. Tree service and landscaping
7. Mechanical contractors
8. System analysis/software design and program services.

The MJUA and MAP are activated to provide assistance to the above classes of business for a period of 180 days following publication of this notice. A public hearing will be held, for the purpose of determining whether activation should continue beyond 180 days, in the Large Hearing Room, Metro Square Building on February 24, 1987 at 9:00 A.M. and continuing until all interested persons and groups have had an opportunity to be heard. The hearing shall be governed by Minnesota Statute Section 14.57-14.69 and by Minnesota Rules Parts 1400.5100-1400.8400, (1985). Questions regarding procedure may be directed to Administrative Law Judge, Peter Erickson, 310 4th Avenue South, 4th Floor Summit Bank Building, Minneapolis, MN 55415, telephone (612) 341-7606. The authority for this proceeding is found in Chapter 455 Laws of Minnesota 1986 codified as Chapter 62I of Minnesota Statutes specifically sections 40 and 41 of Chapter 455 codified as Minnesota Statutes 62I.21 and 62I.22. (A copy of those sections follows this notice.)

Prior to the hearing a pre-hearing conference will be held at 1:00 p.m. on February 4, 1987, at the Office of Administrative Hearings, 310 4th Avenue South, 4th Floor Summit Bank Building, Minneapolis, MN 55415.

Chapter 455 Laws of Minnesota 1986 which created the Minnesota Joint Underwriting Association provides for temporary activation for 180 days by the Commissioner of Commerce. To extend the Minnesota Joint Underwriting Association's authority beyond the 180 day period a hearing must be held. Those classes of business for which the Minnesota Joint Underwriting Association was temporarily activated, by this notice and by previously published notices, must prove, at that hearing, that they meet the statutory requirements for coverage by the Minnesota Joint Underwriting Association.

Among those requirements are:

- (1) That members of those classes are unable to obtain insurance through ordinary means;
- (2) That the insurance being sought is required by statute ordinance, or otherwise required by law, and is necessary to earn a livelihood or conduct a business; and
- (3) That the classes of business serve a public purpose.

The classes of business specified in this notice and previously published notices must be shown to meet the statutory requirements or the Minnesota Joint Underwriting Association's authority to provide coverage to them will end after 180 days from the date the notice of activation was published in the *State Register*.

The Department strongly suggests that any persons affected by this hearing or otherwise interested in the proceedings familiarize themselves with the requirements of Chapter 455 and the contested case procedures prior to the hearing, that they take such other steps as are appropriate to protect their interests and that any questions they may have as to how to proceed or how to participate at the hearing be directed to the Administrative Law Judge prior to the hearing.

All interested or affected persons will have an opportunity to participate at the hearing. Questioning of agency representatives or witnesses, and of interested persons making oral statements will be allowed in the manner set forth in the Rules pertaining to contested cases (Minnesota Rules 1400.5100-1400.8400).

Minnesota Statutes chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statute Section 10A.01, subdivision 11 as an individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155 telephone (612) 296-5615.

Dated: 6 January 1987

Michael A. Hatch  
Commissioner of Commerce

**Activation of Market Assistance Plan and Joint Underwriting Association**

At any time the commissioner of commerce deems it necessary to provide assistance with respect to the placement of general liability insurance coverage on Minnesota risks for a class of business, the commissioner shall by notice in the *State Register* activate the market assistance plan and the joint underwriting association. The plan and association are activated for a period of 180 days from publication of the notice. At the same time the notice is published, the commissioner shall prepare a written petition requesting that a hearing be held to determine whether activation of the market assistance plan and the joint underwriting association is necessary beyond the 180-day period. The hearing must be held in accordance with section 41. The commissioner by order shall deactivate a market assistance program and the joint underwriting association at any time the commissioner finds that the market assistance program and the joint underwriting association are not necessary.

**62I.22 HEARING**

Subdivision 1. **ADMINISTRATIVE LAW JUDGE.** The commissioner shall forward a copy of the petition to activate the market assistance plan and the joint underwriting association with respect to a class of business to the chief administrative law judge. The chief administrative law judge shall, within three business days of receipt of the copy of the petition, set a hearing date, assign an administrative law judge to hear the matter, and notify the commissioner of the hearing date and administrative law judge assigned to the matter. The hearing date must be no less than 60 days nor more than 90 days from the date of receipt of the petition by the chief administrative law judge.

Subd. 2. **NOTICE.** The commissioner of commerce shall publish notice of the hearing in the *State Register* at least 30 days before the hearing date. The notice should be that used for rulemaking under chapter 14. Approval by the administrative law judge of the notice prior to publication is not required.

Subd. 3. **CONTESTED CASE; REPORT.** The hearing and all matters after the hearing are a contested case under chapter 14. Within 45 days from the commencement of the hearing and within 15 days of the completion of the hearing the administrative law judge shall submit a report to the commissioner of commerce. The parties, or the administrative law judge, if the parties cannot agree, shall adjust all time requirements under the contested case procedure to conform with the 45-day requirement.

Subd. 4. **DECISION.** The commissioner shall make a decision within ten days of the receipt of the administrative law judge's report.

Subd. 5. **WAIVER OR MODIFICATION.** If all parties to the proceeding agree, any of the requirements of this section may be waived or modified.

**Department of Commerce****Supplemental Notice on Activation to Insure Specified Classes of Business and Public Hearing**

On December 15, 1986 at 11 S.R. 1076, on December 22, 1986 at 11 S.R. 1115 and on December 29, 1986 at 11 S.R. 1276 Notice of Activation to Insure Specified Classes of Business and Public Hearing were published regarding the following classes of business:

- Apartment building
- Attorney
- Boiler service, repair and parts sales
- Cargo insurance
- Chimney sweeps
- Civil engineers
- Climbing school
- Design engineers
- Engineering support firms
- LP gas sales
- Machine shop
- Manufacture/sale of grain products
- Medical equipment sales & rental
- Outfitter and guide service
- Psychotherapist
- Public health professionals
- Retail enforcement products

## OFFICIAL NOTICES

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Ski jumps  
Steel erection  
Technical personnel temporary services  
Water resources engineers  
Wholesale industrial chemicals  
Wholesale welding supply  
Cargo insurance for interstate transportation  
Industrial safety and health consultants  
Grain bank bond as required by M.S. 236.02  
Lake improvement districts  
Auto body and service garages  
Electrology clinics

Those Notices of Activation and Public Hearing failed to include copies of Minnesota Statutes Section 62I.21 and 62I.22. Accordingly those sections are attached and published as part of this Supplemental Notice.

Michael A. Hatch  
Commissioner of Commerce

## Department of Commerce

### Order for Deactivation of the Activation of the Minnesota Joint Underwriting Association to Insure Specified Classes of Business

Pursuant to Chapter 455, Laws of Minnesota 1986, codified as Chapter 62I of Minnesota Statutes; specifically sections 40 and 41 of Chapter 455, codified as Minnesota Statutes § 62I.21 and § 62I.22 Notice of Activation and Notice of Hearing were published in the *State Register* on January 5, 1987 activating the Minnesota Joint Underwriting Association for various classes of business. Subsequently it has been determined that activating the authority of Minnesota Joint Underwriting Association for all of those classes of business is no longer necessary; that certain classes of business do not at this time any longer require the assistance of the Minnesota Joint Underwriting Association. Accordingly it is ordered that the authority of the Minnesota Joint Underwriting Association to offer insurance coverage for the following groups is hereby terminated effective January 9, 1987.

electrolysis clinics

Accordingly it is ordered that the hearing scheduled for noted in the *State Register* on the above cited days will not deal with these classes of business.

Michael A. Hatch  
Commissioner of Commerce

## Department of Finance

### Maximum Interest Rate for Municipal Obligations in January

Pursuant to Minnesota Statutes, Section 475.55, Subdivision 4, Commissioner of Finance, Jay Kiedrowski, announced today that the maximum interest rate for municipal obligations in the month of January would be eight (8) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by General Obligations of the municipality may bear an interest rate of up to nine (9) percent per annum.

Dated: 5 January 1987

Peter Sausen, Assistant Commissioner  
Cash and Debt Management  
Department of Finance

**Department of Transportation**

**Petition of the City of Stillwater for a Variance from State Aid Standards for Right-of-Way Width**

Notice is hereby given that the City Council of the City of Stillwater has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for construction projects on Churchill Street (MSAS 111) from South Greely Street to South Holcombe Street and on Pine Street (MSAS 102) from South Holcombe Street to South Third Street.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.2500 adopted pursuant to Minnesota Statutes 161 and 162, so as to permit a right-of-way width of 55 feet on Churchill Street and a right-of-way width of 50 feet on Pine Street instead of the required minimum width of 60 feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated: 7 January 1987

Leonard W. Levine  
Commissioner of Transportation

**STATE CONTRACTS**

Pursuant to the Provisions of Minn. Stat. § 15.0412, subd. 6, an agency must make reasonable effort to publicize the availability of any services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-6152. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

**Department of Administration: Procurement Division**

**Contracts and Requisitions Open for Bid**

**Call 296-6152 for Referral to Specific Buyers.**

Commodity for Bid	Bid Closing Date at 2 pm	Department or Division	Delivery Point	Requisition #
Moving Services	Jan. 20, 1987	Human Services	St. Paul	02-310-15218
Sort Bins	Jan. 20, 1987	Revenue	St. Paul	67-120-02537
Sun Computer	Jan. 20, 1987	Health	Minneapolis	12-500-99079
DOT Matrix Printer	Jan. 20, 1987	Energy & Economic Development	St. Paul	22-400-01436
Traffic Barriers	Jan. 20, 1987	Transportation	Golden Valley	79-500-03070
Adaptive Equip. for Ford Van	Jan. 21, 1987	Jobs & Training	Minneapolis	21-607-45322
Vacuum Cleaners	Jan. 21, 1987	Regional Treatment Center	Faribault	02-310-15202
Computer Furniture—Rebid	Jan. 21, 1987	State University	Rochester	02-310-15128
Lateral Files	Jan. 21, 1987	Correctional Facility	Shakopee	02-310-15258
Gasoline & Diesel Fuel	Jan. 21, 1987	Various	Various	Sch. 92-TW Rebid
IBM Equip.	Jan. 21, 1987	Revenue	St. Paul	67-520-02535
Cam Corder	Jan. 21, 1987	State University	Bemidji	26-070-12173

# STATE CONTRACTS

Commodity for Bid	Bid Closing Date at 2 pm	Department or Division	Delivery Point	Requisition #
Design System for TI	Jan. 21, 1987	State University	Mankato	26-071-17144
IBM Enhancement	Jan. 21, 1987	Academy for Deaf	Faribault	55-000-95575
Trucks	Jan. 21, 1987	Various	Various	Sch. 113E
Continuous Data Processing Forms—Carbonless	Jan. 21, 1987	Various	Various	Price-Contract
Painting in Metro Area	Jan. 21, 1987	Various	Various	Price-Contract
Lumber Cut per Drawings	Jan. 21, 1987	Correctional Facility	Stillwater	78-620-00103
Elevator Maintenance Service	Jan. 22, 1987	Community College	Minneapolis	27-000-48475
Zenith Computers	Jan. 22, 1987	State University	Mankato	26-071-17145
Automated Power File	Jan. 22, 1987	State University	St. Cloud	26-073-19339
Duplicating Master Sets	Jan. 22, 1987	Central Stores	St. Paul	Price-Contract
VHF Radio Communications Equip.	Jan. 22, 1987	Transportation	Various	79-000-73664
Adaptive Equip. for Ford Van	Jan. 23, 1987	Jobs & Training	Minneapolis	21-607-45322
IBM Terminals	Jan. 23, 1987	Natural Resources	St. Paul	29-000-45290
IBM System Enhancement	Jan. 23, 1987	Natural Resources	St. Paul	29-000-45289
IBM Equip.	Jan. 23, 1987	Natural Resources	St. Paul	29-000-45293
IBM Modems	Jan. 23, 1987	Natural Resources	St. Paul	29-000-45291
IBM System 36 Upgrade	Jan. 23, 1987	Natural Resources	St. Paul	29-000-45292
IBM Equip.	Jan. 23, 1987	Natural Resources	St. Paul	29-000-45281
IBM Upgrade	Jan. 23, 1987	Natural Resources	St. Paul	29-000-45287
IBM System 38 Upgrade	Jan. 23, 1987	Natural Resources	St. Paul	29-000-45285
Elevator Maintenance Contract	Jan. 23, 1987	Duluth Gov. Service Ctr.	Duluth	Price-Contract
Sony Computer Equip.	Jan. 23, 1987	Revenue	St. Paul	67-520-02532
Barrister Upgrade—Rebid	Jan. 23, 1987	Public Safety	St. Paul	07-200-41707
Carpeting & Flooring Installation	Jan. 26, 1987	Regional Treatment Center	Faribault	02-310-15203 & 15204
Computers & Accessories	Jan. 26, 1987	Human Services	St. Paul	55-000-95553
IBM Display Stations	Jan. 26, 1987	Natural Resources	St. Paul	29-000-45294
Codex Equip.	Jan. 26, 1987	Transportation	St. Paul	79-000-73515
IBM Upgrade	Jan. 26, 1987	Transportation	St. Paul	79-000-73685
Electronic Switch	Jan. 26, 1987	Transportation	St. Paul	79-050-19028
Braille Supplies	Jan. 26, 1987	Jobs & Training	St. Paul	Price-Contract
Silica Sand	Jan. 26, 1987	Transportation	Rochester	79-600-03696
Lumber	Jan. 26, 1987	Transportation	St. Paul, Marshall	79-000-73670
Portland Cement	Jan. 26, 1987	Transportation	Mankato	79-700-PC
Urine Specimen Kits	Jan. 26, 1987	Public Safety	St. Paul	07-300-41909
Apple Equip.	Jan. 27, 1987	Public Service	St. Paul	80-100-03508
Batteries—Ni-Cad, Alkaline, Mercury	Jan. 27, 1987	Various	Various	Price-Contract
Plant Mix Bituminous—Owatonna	Jan. 27, 1987	Transportation	Owatonna	79-650-B
Plant Mix Bituminous—Mankato	Jan. 27, 1987	Transportation	Mankato	79-700-B
Incubator	Jan. 27, 1987	State University	Winona	26-074-11242
Telephone Equip.	Jan. 27, 1987	Various	Various	Price-Contract
Furnish & Install	Jan. 27, 1987	State University	St. Cloud	26-073-19337
Oscilloscopes	Jan. 27, 1987	Community College	Virginia	27-158-49632
Spectrophotometer	Jan. 27, 1987	Transportation	St. Paul	79-000-73658
Beam Tester & Platten Assembly	Jan. 27, 1987	Transportation	Mankato	79-000-73659
Solar Trainer	Jan. 27, 1987	State University	Moorhead	26-072-10049
Gonozyme Test Kits	Jan. 27, 1987	Health	Minneapolis	12-400-99144
Preventative Maint. Contract for Trane Chiller	Jan. 27, 1987	Administration	Various	02-307-51294

<u>Commodity for Bid</u>	<u>Bid Closing Date at 2 pm</u>	<u>Department or Division</u>	<u>Delivery Point</u>	<u>Requisition #</u>
Flatbed Truck	Jan. 27, 1987	Administration	St. Paul	02-307-51282
Forklift	Jan. 27, 1987	Natural Resources	Grand Rapids	29-000-45016
Tractor with loader	Jan. 27, 1987	Natural Resources	St. Paul	29-000-45229
Sealing Compound	Jan. 27, 1987	Transportation	Willmar	79-800-03051
Misc. Household Furniture	Jan. 27, 1987	DNR Lake Itasca St. Park	Lake Itasca	29-001-10964, 29-001-10819, 29-001-10812
Hydrothermal Synthesis Apparatus (DK)	Jan. 27, 1987	Moorhead St. University	Moorhead	26-072-10035

## Department of Human Services Chemical Dependency Program Division

### Requests for Proposals (RFP) for Specialized Treatment Services for Hearing Impaired Persons Experiencing Chemical Abuse or Dependency Problems

The Chemical Dependency Program Division (CDPD) of the Department of Human Services is soliciting proposals for the provision of demonstration chemical abuse/dependency services for hearing impaired individuals who are presently not able to receive such services. A total of \$30,000 is available for one or more grantees. The funded service would begin on or about May 1, 1987 and continue for a minimum of 12 months.

All requests for further information or copies of the complete RFP should be addressed to Dorrie Hennagir at 612/296-4617.

Proposals in response to this RFP must be submitted on the CDPD grant application form. Eight copies of the proposal must be in the CDPD office, 6th floor, Space Center Office Building, 444 Lafayette Road, St. Paul, Minnesota 55155, no later than 4:20 p.m. on March 1, 1987.

## Department of Transportation

### Request for Proposal for Consultant to Develop Effective Public Transit Marketing Techniques

Notice is hereby given that a Request for Proposal is available from the Minnesota Department of Transportation, which seeks the services of a qualified consultant to assist in the development of effective public transit marketing techniques for use by local transit operators outside the Twin Cities Metropolitan Area. This marketing project seeks to develop key market planning and promotional concepts that will lead to increased public use of these services. Additionally the marketing plans and promotional concepts developed will be used by the consultant to train designated system representatives so that a working level of marketing expertise is established for the purpose of on-going peer to peer technology exchange.

The Department of Transportation estimates that the project will cost \$50,000. Funding will be provided through Section 8 of the Urban Mass Transportation Act. The submission date for completed proposals is February 17, 1987. This Request for Proposal does not obligate the State to complete the project and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

## STATE CONTRACTS

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A copy of the Request for Proposal may be received by contacting Robert M. Works, Office of Transit, 815 Transportation Building, St. Paul, Minnesota 55155, telephone (612) 296-2533.

## Department of Transportation

### Amended Request for Proposal for Map Skills Packet and Teaching Aids

This amended Request for Proposal is to give notice to all prospective providers that the Minnesota Department of Transportation has amended the scope of its elementary map skills packet and teaching aids curriculum materials project announced at 11 *State Register* 1317, dated Monday 12 January 1987.

Proposals should not include the provision of manufactured printed matter or audio visual materials.

Therefore, the Request for Proposal of January 12, 1987, is amended as follows:

1) As a final product to this project, the proposer will provide the Minnesota Department of Transportation with a "sample" packet, suitable for high-quality reproduction. (The specific packet items are listed in the January 1, 1987 announcement, listed on page 1318 as Tasks/Products.) Therefore, the final product shall include all elements necessary to reproduce the enclosures in the packet and the packaging of the packet.

2) The tasks/products (listed on page 1318) shall include an additional item: packaging/container to hold the Map Skills Packet.

3) The cost of the contract for the map skills packet must not exceed \$8,000.

All bids must be postmarked by no later than February 16, 1987.

These changes plus other, lesser changes, and the amended Request for Proposal in its entirety are available from Marie E. Kachelmyer, 408 Transportation Building, St. Paul, Minnesota, 55155, (612) 296-4134.

## SUPREME COURT CALENDAR

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Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning dates, locations, cases, etc., should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155 612-296-2581.

### February 1987

#### Compiled by Charles A. Beckjord, (612) 297-4050

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by Charles A. Beckjord of the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning the time and location of hearings should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155 (612) 296-2581.

#### Monday 7 February 1987 9:00 AM

Roger P. Marose, Relator, Respondent,

Collins, Buckley, Sauntry & Haugh, Thomas J. Gernscheid

C1-86-1476 and C9-86-1483 vs.

Maislin Transport, Gateway Transportation and Carriers Insurance Company/Minnesota Insurance Guaranty Respondents, Relators and Minnesota Department of Public Welfare and Economic Security, Intervenors.

Order Worker's Compensation Court of Appeals

Jardine, Logan & O'Brien Charles E. Gillian and Kirk C. Thompson

Whether the worker's compensation court of appeals was clearly and manifestly in error in determining that the compensation judge's finding of a *Gillette* injury and issuance of an award of compensation thereon lacked substantial evidentiary support?



Whether the employee is entitled to his claimed permanent partial disability and temporary disability benefits at either his 1981 compensation rate or his 1976 compensation rate?

**State of Minnesota, Respondent,**

**Hubert H. Humphrey, III, Robert W. Kelly, and Mark Nathan Lystig**

**C6-86-968 vs.**

**Robert G. Kasper, Appellant.**

**Robert Q. Dickie**

**Certified Question Washington County**

The state dismissed a prosecution based on citations after the trial court denied the state's motion for a continuance because a crucial witness was unavailable on the date set for trial. The state immediately issued a formal complaint and reinitiated the prosecution, in effect gaining an ex parte continuance. Was appellant denied a speedy trial?

**Tuesday 3 February 1987**

**Attorney General Hubert H. Humphrey, III, Attorney General of the State of Minnesota, o.b.o. the State of Minnesota and the Public Employees Retirement Fund, Respondent.**

**Hubert H. Humphrey, III, and Mark B. Levinger.**

**C4-86-1150 vs.**

**C. Michael McLaren, defendant and third party plaintiff, Petitioner, and Morris J. Anderson, et al, Third Party Defendants.**

**Collins, Buckley, Sauntry & Hoag  
John R. Schulz**

**Petition for Discretionary Review Ramsey County**

Should the entire Office of the Attorney General be disqualified from representing the state of Minnesota and the Public Employees Retirement Association in this action on the basis that C. Michael McLaren, as Executive Director of the PERA, was a client of the Attorney General?

Should the entire Office of the Attorney General be disqualified from representing the State of Minnesota and the Public Employees Union Retirement Association in this action on the basis of claims by defendant McLaren that members of the Attorney General's staff will be necessary witnesses?

Did the Attorney General have authority to institute this action?

**In the Matter of the Application for the Discipline of Paris DonRay Getty, an Attorney at Law of the State of Minnesota.**

**William J. Wernz, Candice M. Hojan, and Kenneth L. Jorgensen**

**C8-85-2372**

**Petition for Disciplinary Action**

**Meshbesher, Singer & Spence and Jack Nordby.**

Whether the challenged referee's findings were supported by clear and convincing evidence?

If the referee's findings were supported by clear and convincing evidence that respondent in three separate proceedings engaged in interrupting the court and unduly continued argument, disrespectful conduct and criticism of the court system, and generally unprofessional behavior, resulting in 20 separate disciplinary rule violations, is suspension of respondent for two months appropriate?

Whether the findings can support conclusions that disciplinary rules, construed so as not to be unconstitutionally vague, overbroad, and chilling, were violated?

Whether the severe sanctions of a sixty-day suspension, costs, and public reprimand are justified by any legitimate and reasonable goal of lawyer discipline in the circumstances of this case?

**Wednesday 4 February 1987 5:30 PM at William Mitchell College of Law**

**Robert Kallio, Respondent, C4-85-2126 vs. Ford Motor Company, petitioner, Appellant, Tomahawk Ford, Inc., Defendant.**

**Robert R. Johnson**

**Bowman & Brooke and Hildy Bowbeer  
John M. Thomas of Counsel**

**Opinion Court of Appeals**

Did the trial court properly submit Plaintiff's claim of design defect to the jury?

Did the trial court properly instruct the jury on the issue of design defect?

Did the trial court properly submit Plaintiff's failure to warn claim to the jury?

Did the trial court properly instruct the jury on the issue of failure to warn?

# SUPREME COURT CALENDAR

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Did the trial court properly admit evidence of post-accident design modifications and warnings?

## Thursday 5 February 1987 9:00 AM

**Cara Wesala, Respondent C7-86-218 vs. City of Virginia, petitioner, Appellant, Opinion Court of Appeals**

**Trenti Law Firm and Robert F. Berger  
Cope & Peterson, Gary J. Pagliaccetti**

Whether the city of Virginia has waived its governmental immunities through its membership in the League of Minnesota Cities Insurance Trust?

Whether the city of Virginia was negligent in maintaining the street where this incident occurred?

Whether summary judgment was appropriate in this case?

**In the Matter of the Application for the Discipline of Paul L. Simonson, an Attorney at Law of the State of Minnesota.**

**William J. Wernz and Thomas C. Vasaly  
Edward Lynch**

**C0-82-1654 Petition for Disciplinary Action.**

What discipline is appropriate for an attorney who engages in extensive misappropriation of client funds before, during, and after a prior disciplinary proceeding?

Is there clear and convincing evidence that respondent's misconduct was caused by alcoholism and psychological problems?

## Monday 9 February 1987 9:00 AM

**Grant Gjovik, Respondent, C4-86-371 vs. Lawrence Strope, petitioner, Appellant, Lawrence McKee, Respondent, Martin Gubb, et al, Defendants. Opinion Court of Appeals**

**Charlson & Marben**

**Dickel, Johannson, Wall, Taylor, Rust & Schmitz, Lawrence McKee**

Does Minnesota Statute 323.35 (1984) permit the finder of fact in this case to infer from the course of dealing between the partnership creditor and the continuing partner that the parties had agreed to discharge the resigning partner from existing liabilities?

Under Minn. Stat. 323.35, must a creditor have actual knowledge that a continuing partner has assumed the partnership debts before a resigning partner is discharged from liabilities to the creditor where the creditor has consented to material alterations in the nature and time for payments of the obligations?

**In the Matter of the Application for the discipline of Douglas E. Schmidt, an Attorney at Law of the State of Minnesota. C8-86-177 Petition for Disciplinary Action**

**William J. Wernz and Candace M. Hojan  
Meshbesher, Singer, and Spence. Jack S. Nordby**

Where the referee's findings, supported by clear and convincing evidence, are that respondent made misrepresentations to the court in an effort to exculpate himself and inculcate his client for neglect of a legal matter and failure to voluntarily dismiss a lawsuit, in addition to other disciplinary rule violations, is suspension of respondent for six months, as recommended by referee, warranted?

## Tuesday 10 February 1987 9:00 AM

**David John Little, a minor child, by Robin Nash, his mother and natural guardian, and Robin Nash, individually, Respondent, C0-85-1212 vs. Joan Mikla petitioner, Appellant.**

**Gerald R. Keating**

**Albers & Associates and Mark C. Vandelist**

**Opinion Court of Appeals**

Can a trial court impose sanctions on an attorney or client for a client failing to attend an independent medical examination which had been stipulated to under Rule 29 of the Minnesota Rules of Civil Procedure?

Should that portion of the *Wood vs. Chicago, Milwaukee, St. Paul & Pacific R.R.*, 353 N.W. 2d 195 Minn. App. 1984), decision addressing sanctions for failing to attend an independent medical examination, be modified or overruled by the Minnesota Supreme Court?

**State of Minnesota, Plaintiff, C0-86-1730 vs. Chang Inthavong, Defendant**

**Hubert H. Humphrey, III and Thomas L. Johnson**

**William R. Kennedy, Ann Remington, and James Krieger**

**Certified Question Hennepin County**

Can accurate instructions given to the grand jury by the county attorney rectify or correct erroneous instructions given to the grand jury by the court?

Does the law allow the executive branch of government to perform the duties of the judicial branch of government?

Must the indictment charging appellant with two counts of murder in the second degree be dismissed where the impaneling judge erroneously instructed the grand jury to the prejudice of the substantial rights of appellant?

Was there any violation of the "separation of powers" doctrine in the county attorneys' giving legal advice to the grand jury?

**Wednesday 11 February 1987 9:00 AM**

**In Re: Omar A. Tveten, Debtor**

**C7-86-1580**

**Certified Question United States Bankruptcy Court  
District of Minnesota**

**Faegre & Benson, Gordon B. Conn, Jr. and James M.  
Phau for Appellants Norwest**

**Peterson, Franke & Raich and Cass S. Weil and Motty T.  
Shields for Respondent Tveten**

Are a debtor's rights to receive payments under or a debtor's interest in annuities, life insurance contracts, or similar plans or contracts purchased for cash from fraternal benefit societies such as Lutheran Brotherhood, exempt under Minn. Stat. 550.37 subd. 11 or 64B.18?

May a debtor liquidate non-exempt assets and purchase annuities, life insurance contracts from a fraternal benefit association such as Lutheran Brotherhood and then successfully claim those investments as exempt under Minn. Stat. 550.37 or 64B.18?

Do Minn. Stat. 550.37 subd. 11 and 64B.18 violate Article 1, sect. 12 or Article 12, sect. 1 of the Minnesota Constitution?

**Production Credit Association of Worthington, Minnesota,  
Appellant, C3-86-667 vs. Spring Water Dairy Farm, Inc.,  
et al, Respondents.**

**Opinion Court of Appeals**

**Gislason, Dosland, Hunter, & Malecki, Robert M.  
Halverson**

**Nicklaus & Fahey**

Does the Farm Lender Mediation Act apply to all farmers and their lenders, notwithstanding the time the loan was taken?

Should the statutory right to mediation be contingent upon prior conduct of the farmers and their lenders?

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## **SUPREME COURT DECISIONS**

**Decisions Filed Friday 9 January 1987**

**Compiled by Wayne O. Tschimperle, Clerk**

**C6-85-2273 Coley (NMN) Gates v. State of Minnesota, petitioner, Appellant. Court of Appeals.**

Generally in order to obtain a new trial on the ground of ineffective assistance of counsel, a criminal defendant must affirmatively prove that his counsel's representation "fell below an objective standard of reasonableness" and "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." In this case, since defendant clearly did not meet his burden of proving prejudice, we need not and do not decide whether defendant proved that his trial counsel's performance was deficient.

Reversed and judgment of conviction reinstated. Amdahl, C.J.

**C1-86-1106 State of Minnesota, petitioner, Appellant v. Debra L. Combs and Cindy A. Werden. Court of Appeals.**

Police officers' observation of passenger of motor vehicle in bar parking lot at 10:00 p.m. on a Friday night drinking from translucent cup that officers believed was the type of cup used in the bar gave officers particular and objective basis for suspecting that driver and passenger were in violation of open bottle law and for making limited investigatory stop to determine if in fact that was the case.

Reversed in part and remanded for trial. Amdahl, C.J.

**C7-85-1259 Michael Balder and Zita Balder v. Thomas W. Haley and Republic Water Heater Company and Honeywell, Inc., petitioner, Appellant v. Josephine Pirkel, third party defendant. Court of Appeals.**

Where a party's failure to brief an argument before the court of appeals results in irremedial prejudice to the opposing party then that argument must be deemed waived.

The existence of a duty to warn is a legal question to be decided by the court, not the jury.

There was sufficient evidence to support the jury's finding that Honeywell was not negligent.

As a matter of law, there was no casual relationship between Honeywell's alleged failure to warn and the respondent's injuries.

Reversed. Yetka, J.

## SUPREME COURT DECISIONS

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### **C3-86-37 Thomas J. Jorissen v. Barbara J. Miller and Susan J. Cranston, petitioners, Appellants. Court of Appeals.**

Respondent was not barred from bringing a personal injury claim by reason of a previous conciliation court judgment.

The trial court had the jurisdiction to vacate a satisfied conciliation court judgment.

Affirmed. Yetka, J.

Dissenting, Kelley, J.

### **C2-86-336 Regie de l'assurance Automobile du Quebec, individually and as Trustee for the Heirs of Marguerite Grapes, deceased v. Lauritz Jensen, petitioner, Appellant. Court of Appeals.**

A foreign reparation obligor who has paid or incurred the obligation to pay benefits to a surviving spouse and next of kin of a person killed in a Minnesota automobile accident may not maintain an equitable subrogation action against a negligent third party to recover such payments.

The rights of the surviving spouse and next of kin pursuant to Minn. Stat. § 573.01, et seq. (1984) to recover damages sustained as a result of the death of the decedent are not assignable.

A person is competent to be appointed trustee pursuant to Minn. Stat. § 573.02, subd. 3 (1986) notwithstanding the person may have an interest in the recovery of the damages.

Unless a cause of action has been legally asserted by a duly appointed trustee prior to the expiration of the three-year commencement of suit limitation of Minn. Stat. § 573.02, subd. 2 (1986), any subsequent attempted amendment after the expiration of the limitation period to cure the defect will not "relate back" so as to revive the action.

Reversed. Kelley, J.

### **Opinion released Wednesday, December 31, 1986 at 2:00 p.m.**

### **C5-86-2176 Honorable Gaylord A. Saetre, Appellant v. State of Minnesota, Rudy Perpich, et al. Ramsey County.**

Minn. Stat. §§ 490.121, subd. 12 and 490.125 (1986), providing for the mandatory retirement of judges at the end of the calendar month in which one attains the age of 70 is a reasonable exercise of the legislature's authority under Minn. Const. Art. 6, § 9 to establish a comprehensive judicial retirement system.

Affirmed. Amdahl, C.J.

Concurring specially, Kelley, J.

## ERRATA

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### **Department of Commerce**

#### **Correction of Date in Previous Notice of Activation to Insure Specified Classes of Business and Public Hearing**

On December 15, 1986 at 11 S.R. 1076, on December 22, 1986 at 11 S.R. 1115 and on January 5, 1987 at 11 S.R. 1276 Notices of Activation to Insure Specified Classes of Business and Public Hearing were published and had the date of February 4, 1986 and February 24, 1986 for the pre-hearing conference and hearing. Those dates are correct except it should be 1987 for the year in both cases.

Michael A. Hatch  
Commissioner of Commerce

### **Department of Transportation**

#### **Correction to Request for Proposal for Consultant Services for Public Transit Marketing Techniques**

The word "Public" should be substituted for "Pupil" in the title for the Request for Proposal by the Department of Transportation appearing in the *State Register*, Volume 11 #28, 12 January 1987 on page 1317 (cite 11 S.R. 1317). The corrected title should read: Request for Proposal for Consultant to Develop Effective Public Transit Marketing Techniques.

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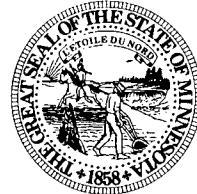


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