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STATE REGISTER

STATE OF MINNESOTA

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August 2, 1982

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Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 7			
6	Monday July 26	Monday Aug 2	Monday Aug 9
7	Monday Aug 2	Monday Aug 9	Monday Aug 16
8	Monday Aug 9	Monday Aug 16	Monday Aug 23
9	Monday Aug 16	Monday Aug 23	Monday Aug 30

*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 Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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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, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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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. Such notices are published in the OFFICIAL NOTICES section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
• 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 Code of Agency Rules (MCAR).
• Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
• Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
• Notice of adoption of temporary rules.
• Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the State Register will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the State Register but are not published in the MCAR due to the short-term nature of their legal effectiveness.

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

Table with 2 columns: Issue/Section and Cumulative/Inclusive range. Includes rows for Issues 1-13, 14-25, 26, 27-38, 39, 40-51, and 52.

The listings are arranged in the same order as the table of contents of the MCAR.

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PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, 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 seven 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 modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven 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 § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Public Safety Bureau of Criminal Apprehension

Notice of Withdrawal of Rules Governing the Issuance of Permits for the Use of Police Communications Equipment in Motor Vehicles

The rules proposed and published at *State Register*, Volume 6, Number 51, p. 2308, June 21, 1982 (6 S.R. 2308) are withdrawn in their entirety by the Department of Public Safety. As a result of public comment, the department intends to propose to the Legislature amendments to Minn. Stat. § 299C.37 prior to any subsequent rulemaking.

Department of Public Welfare Social Services Bureau

Proposed Rule Governing Services to Pregnant Women and Mothers Who Are Minors (12 MCAR § 2.222)

Notice of Intent to Adopt a Rule without a Public Hearing

Notice is hereby given that the State Department of Public Welfare proposes to adopt the above-entitled rule without a public hearing. The commissioner has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes § 15.0412, subd. 4h (1980).

Persons interested in this rule shall have 30 days to submit comment on the proposed rule. The proposed rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes § 15.0412, subds. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

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.

PROPOSED RULES

Clayton Hagen
Department of Public Welfare
Social Services Division
4th Floor, Centennial Building
St. Paul, Minnesota 55155

Comments or requests for public hearing must be submitted by September 1, 1982, which is the expiration date for the 30-day comment period.

Authority for the adoption of this rule is contained in Minnesota Statutes § 257.33 (1981). Additionally, 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 Clayton Hagen, Department of Public Welfare, upon request.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written statement of such request to Clayton Hagen, Department of Public Welfare.

Rule 222 will govern the offer and provision of services to pregnant women and mothers. The rule contains the eligibility criteria for women to meet to obtain these services. The rule also contains the local agency responsibilities in the administering of these services.

Copies of this notice and the proposed rule are available and may be obtained by contacting Clayton Hagen, Department of Public Welfare.

The adoption of this rule should not require the expenditure of additional public monies by local public bodies.

July 14, 1982

Arthur E. Moot
Commissioner of Public Welfare

Rule as Proposed (all new material)

12 MCAR § 2.222 Services to pregnant women and mothers who are minors.

A. Applicability; purpose. This rule governs the offer and provision of services to pregnant women and to mothers. The purpose of this rule is to define the types of pregnant women and mothers who shall be offered services and the responsibility of local agencies to offer services to them as required by Minn. Stat. § 257.33.

B. Definition. As used in 12 MCAR § 2.222, "local agency" means the agency under the authority of the board of county commissioners or human services board.

C. Eligibility criteria for women. The local agency shall offer the services required under D. to women who meet the following criteria:

1. women who are minors and are either pregnant or already have a child;
2. mothers who are referred to the agency because they did not have prenatal care;
3. mothers who request assistance in establishing paternity for their children;
4. women who request assistance in deciding if they want to parent their child; and
5. mothers who are referred to the agency because they have physical, mental, or emotional problems which limit the care that they are able to provide for their children.

D. Local agency responsibilities. The local agency shall:

1. Contact each minor mother who is reported by a hospital as having given birth to a child and offer appropriate social services to her; and
2. Offer appropriate social services to women who meet one of the criteria of C.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *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 strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Natural Resources

Commissioner's Order No. 2121 Designating Certain Areas as State Duck Refuges and Prohibiting Trespass Therein from September 1 through the End of the Open Duck Season, Superseding Commissioner's Order No. 1903

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, do hereby designate the following areas as State Duck Refuges and prohibit trespass therein from September 1 through the end of the open duck season:

STATE WILDLIFE MANAGEMENT AREAS

<u>Name of Unit</u>	<u>County</u>	<u>Location</u>
Cromwell	Clay	T. 140; R. 45; S. 1
Highland Grove	Clay	T. 140; R. 44; S. 22
Janssen	Clay	T. 138; R. 45; S. 34
Kensington	Douglas	T. 127; R. 40; S. 28
Red Rock	Douglas	T. 128; R. 40; S. 20, 29
Bergerud*	Grant	T. 130; R. 43; S. 8
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Nycklemoe	Otter Tail	T. 131; R. 40; S. 34

FEDERAL WATERFOWL PRODUCTION AREAS

<u>Name of Unit</u>	<u>County</u>	<u>Location</u>
Stowe Lake	Douglas	T. 129; R. 39; S. 18
Bah	Grant	T. 130; R. 41; S. 36 and T. 129; R. 41; S. 1
Bailey Slough	Grant	T. 128; R. 43; S. 6
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Pomme de Terre	Grant	T. 129; R. 41; S. 6 and T. 129; R. 42; S. 1
Horstman	Otter Tail	T. 132; R. 44; S. 21
Nicholson	Otter Tail	T. 131; R. 42; S. 5, 6, 7, 8, 9

* Only part of area closed as posted.

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ADOPTED RULES

The prohibitions of this order do not apply to persons having lawful duties or responsibilities relating to the maintenance and operation of the posted areas.

Commissioner's Order No. 1903 is hereby superseded.

Dated at Saint Paul, Minnesota, this 1st day of July, 1982.

Joseph N. Alexander, Commissioner
Department of Natural Resources

Department of Natural Resources

Commissioner's Order No. 2122 Amending Commissioner's Order No. 2099, Establishment and Description of Deer and Bear Registration Blocks

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby prescribe the following amendments to Commissioner Order No. 2099, establishing and describing deer and bear registration blocks.

Section 1. The deer and bear registration blocks numbered 111, 113, and 125 as described in Section I of Commissioner's Order No. 2099 are amended to read as follows:

Registration Block 111

Beginning at the intersection of the west boundary of the state and U.S. Highway 12; thence along U.S. Highway 12 to the Minnesota River; thence along the northerly shore of the Minnesota River to the boundary of the Lac qui Parle Wildlife Area; thence along the westerly boundary of Lac qui Parle Wildlife Area to the northerly shore of the Minnesota River; thence along the northerly shore of the Minnesota River to U.S. Highway 212 in Granite Falls, thence along U.S. 212 to STH 67; thence along STH 67 to County State Aid Highway (CSAH) 9, Yellow Medicine County; thence along CSAH 9 to CSAH 29, Lac qui Parle County; thence along CSAH 29 to STH 275; thence along STH 275 to U.S. Highway 212; thence along U.S. Highway 212 to U.S. Highway 75; thence along U.S. Highway 75 to STH 40; thence along STH 40 to the west boundary of the state; thence along the west boundary of the state to the point of beginning.

Registration Block 113

Beginning at the intersection of U.S. Highway 212 and the Minnesota River at Granite Falls; thence along the northerly bank of the Minnesota River to U.S. Highway 71; thence along U.S. Highway 71 to State Trunk Highway (STH) 67; thence along STH 67 to County State Aid Highway (CSAH) 46, Redwood County; thence along CSAH 46 to CSAH 22, Lyon County; thence along CSAH 22 to CSAH 9, Lyon County; thence along CSAH 9 to STH 23; thence along STH 23 to CSAH 43, Yellow Medicine County; thence along CSAH 43 to STH 67, thence along STH 67 to U.S. Highway 212; thence along U.S. 212 to the point of beginning.

Registration Block 125

Beginning at the intersection of U.S. Highway 212 and U.S. Highway 75; thence along U.S. Highway 75 to the southern boundary of Yellow Medicine County; thence along the southern boundary of Yellow Medicine County to State Trunk Highway (STH) 23; thence along STH 23 to CSAH 43, Yellow Medicine County; thence along CSAH 43 to STH 67; thence along STH 67 to County State Aid Highway (CSAH) 9, Yellow Medicine County; thence along CSAH 9 to CSAH 29, Lac qui Parle County; thence along CSAH 29 to STH 275; thence along STH 275 to U.S. Highway 212; thence along U.S. Highway 212 to the point of beginning.

Except as provided herein, all provisions of Commissioner's Order 2099 shall remain in full force and effect.

Dated at Saint Paul, Minnesota, this 1st day of July, 1982.

Joseph N. Alexander, Commissioner
Department of Natural Resources

Department of Natural Resources

Commissioner's Order No. 2123 Amending Commissioner's Order Nos. 2066 and 1828 Regulating State Owned and Operated Access Areas and National Wildlife Refuge Access Areas to Public Waters

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby prescribe the following amendments to Commissioner's Order Nos. 2066 and 1828, regulating state owned and operated access areas and national wildlife refuge access areas to public waters.

Section 1. Commissioner's Order Nos. 1828 and 2066 are amended by adding a section numbered 11C. to read as follows:

Notwithstanding any section to the contrary in Commissioner's Order No. 1828 as amended by Commissioner's Order No. 2066, no person shall use the public access sites on North Long Lake and Round Lake, both located in Township 135, Range 31, Crow Wing County, for any purpose other than loading or unloading a watercraft and parking the vehicle and trailer used for transporting said watercraft.

Except as provided by this order, all provisions of Commissioner's Order Nos. 1828 and 2066 shall remain in full force and effect.

Dated at Saint Paul, Minnesota, this 15th day of July, 1982.

Joseph N. Alexander, Commissioner
By Steven C. Thorne, Deputy Commissioner

Board of Psychology

Adopted Rules Relating to Rules of Conduct and Licensure of Psychologists

The rules proposed and published at *State Register*, Volume 6, Number 34, pages 1480-1491, February 22, 1982 (6 S.R. 1480) are adopted with the following modifications:

Rules as Adopted

7 MCAR § 10.001 Licensure of psychologists; general definitions. For the purposes of ~~6~~ 7 MCAR §§ 10.001-10.009, the following terms have the meanings given them.

G. Professional relationship. "Professional relationship" means the association between a psychologist and a person or entity ~~for whom psychological services are sought~~ which exists when the psychologist performs for that person or entity any of the functions described in Minn. Stat. § 148.89, subd. 1.

I. Supervision. "Supervision" means taking full professional responsibility for training, work experience, and performance in the practice of psychology of a supervisee, including planning for and evaluation of the work product of the supervisee, and including face-to-face contact between the supervisor and ~~supervisee~~ supervisees in at least ten separate hourly sessions per quarter.

J. Test. "Test" means any instrument, device, survey, questionnaire, technique, scale, inventory, or other process which is designed or constructed for the purpose of measuring, evaluating, assessing or describing personality, behavior, traits, ~~intelligence~~ cognitive functioning, aptitudes, attitudes, skills, values, interests, ability, or other psychological or emotional characteristics of individuals.

7 MCAR § 10.002 General requirements for licensure.

E. Requirements for licensure. To be eligible for licensure the applicant must meet the following requirements in addition to those in B.:

~~3. state at least one area of competence and have written endorsements from at least two qualified persons, as stated in H., for each area of competence stated;~~

~~4.~~ have performed satisfactorily on both parts of the examination listed in 7 MCAR § 10.005;

~~5. be of good moral character~~ 4. provide evidence of having met the requirements of Minn. Stat. § 148.91, subd. 4, cl. (2) and of not have having engaged in conduct prohibited by 7 MCAR § 10.008, by means of endorsements from at least two people with the qualifications stated in H.; and

~~6.~~ 5. for an application for licensure as a licensed psychologist, file an agreement to collaborate signed by a licensed consulting psychologist.

G. Supervised employment. The application for licensure shall include the setting, nature and extent of the supervised employment, the time period involved, the number of hours per week engaged in professional duties, ~~and~~ the name and qualifications of each supervisor, and ~~the areas of competence in which proficiency has been gained.~~ The application may

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ADOPTED RULES

include areas of competence in which proficiency has been gained through experience, such as internships or practica, which is not counted toward the employment requirement of Minn. Stat. § 148.91, subs. 4 and 5.

H. Requirements for endorsement. To qualify as an endorser a person listed on the application for licensure must be a licensee of the board, a person who is licensed to practice psychology by another state whose licensure standards are similar to the standards of this state, or a person whose education and experience meet the licensure standards of Minn. Stat. § 148.91 and 7 MCAR §§ 10.001-10.009. An employee of an applicant may not be an endorser of that applicant. ~~An endorser must have firsthand knowledge of the area of competency endorsed~~ A person who has not observed the work of the applicant in the professional environment of the applicant may not be an endorser of the applicant. A current member of the board may not be an endorser.

An applicant who has not received sufficient endorsements ~~on a stated area of competence~~ may submit the names of additional endorsers ~~or an amended application with the area of competence deleted.~~

I. Adding areas of competence. At any time, a licensee may add an area of competence at any time if the added area of competence is documented as required in the application for licensure in which proficiency has been gained by submitting to the board a written statement of the area of competence which is accompanied by a notarized affirmation that the statement is true and correct to the best knowledge and belief of the licensee.

J. Inquiries regarding applicants. The board may make inquiries when there is a question as to whether an applicant meets the requirement of E.54.

7 MCAR § 10.003 Educational requirements for licensure.

A. Educational requirement for licensed consulting psychologists. The educational requirement for licensure as a licensed consulting psychologist is a doctorate obtained in an institution accredited by a regional accrediting association to grant a doctorate; ~~offered through~~ with a major in psychology. The major must be:

1. offered through a department of psychology; ~~or~~

2. ~~an academic department or unit other than a department of psychology, with~~ be a major such as in educational psychology, child psychology, counseling psychology, or industrial psychology-

~~B. Other doctorates accepted. The board shall accept a doctorate other than those listed in A. if:~~

~~1. the doctorate is obtained from an institution accredited by a regional accrediting association to grant the doctorate; or~~

~~2. 3. if the major is offered through an academic department or unit other than a department of psychology and its title is not listed in 2., the dissertation for the degree is must be psychological in topic and method according to the following criteria in a. and b., and the coursework leading to the degree must meet the criteria in c.:~~

~~a. The topic shall must fall within the list of psychological topics included in the table of contents of all editions of the "Annual Review of Psychology," up to and including the 1981 edition, and shall must have the potential to directly impact upon the body of knowledge in the field of psychology; and.~~

~~b. The method shall include at least one of the following: experimental manipulation of psychological variables; correlational or statistical method, using data collected by observations made by oneself or other persons; case study; creation of theory based on analysis of data obtained by oneself or other persons, including conceptual analysis; introspection; or psychohistory; and.~~

~~3. c. For a person seeking licensure on the basis of a doctorate earned before January 1, 1984, at least half of the number of credits completed for the degree, excluding dissertation credits, must have been successfully earned in graduate courses which are predominantly psychological in content. For any other person, at least two-thirds of the number of credits completed for the degree, excluding dissertation credits, must have been successfully earned in graduate courses which are predominantly psychological in content. Credits for postdoctoral course work earned within five years after receiving the doctorate may be used in part to meet the requirements in 3 this requirement.~~

~~C. B. Educational requirement for licensed psychologists. The educational requirement for licensure as a licensed psychologist is a master of arts or science degree, including a master equivalent in a doctoral program, obtained in an institution accredited by a regional accrediting association to grant a doctorate or a master of arts or science degree; offered through with a major in psychology. The major must be:~~

1. offered through a department of psychology; ~~or~~

2. ~~an academic department or unit other than a department of psychology, with~~ be a major such as in educational psychology, child psychology, counseling psychology or industrial psychology; or

~~D. Other degrees accepted. The board shall accept a master of arts or science degree other than those listed in C. if:~~

1- ~~the degree is obtained from an institution accredited by a regional accrediting association to grant a doctorate or a master of arts or science degree;~~

2- ~~3. if the major is offered through a department or unit other than a department of psychology and its title is not listed in 2., the thesis, if it is a degree requirement, is~~ must be psychological in topic and method according to the criteria listed in B-2, A.3.a. and A.3.b.; and

3- ~~at least two-thirds of the number of credits required for the degree, excluding thesis credits, must have been successfully earned in graduate courses which are predominantly psychological in content. Credits for post-master course work earned within five years after receiving the degree may be used in part to meet the requirements in 3 this requirement.~~

~~E. C. Accreditation. For a degree to meet the standards for licensure, the institution must be accredited at the time the degree is granted.~~

~~F. D. Degrees from foreign institutions. A degree from a foreign institution shall be accepted if the institution meets standards required for accreditation of a domestic institution.~~

7 MCAR § 10.004 Professional employment.

A. Employment requirements. To meet the requirements for professional employment, the employment of the applicant, which may include voluntary service, must:

1. involve the application of psychological principles in the description, prediction and modification of human behavior and emotional adjustment, including but not restricted to such practices as: psychological assessment, including such functions as intelligence, personality, aptitude, and attitude appraisal; psychological treatment of persons who have adjustment problems; psychological counseling and guidance; conducting behavioral research; and teaching of psychology;

2. be under the supervision of a licensee of the board or a person whose education and experience meet the standards for licensure imposed by Minn. Stat. § 148.91 and 7 MCAR §§ 10.001-10.009 and who ~~shall be~~ is competent in the areas of practice in which supervision is provided. The private practice of psychology for a fee in this state is not allowed prior to licensure and shall not be credited, except that a licensed psychologist seeking licensure as a licensed consulting psychologist may engage in the private practice of psychology for a fee and need not require supervision ~~unless the licensee is gaining competence in an area other than those already documented.~~ The private practice of psychology in another state shall be credited only if engaged in after licensure by that state; and

3. be performed competently as judged by the supervisor.

D. Degree requirement experiences. Experiences which are required as preparation for the master or doctoral degree, such as ~~pre-degree~~ internships, assistantships, associateships, clerkships and practica, may not be offered to satisfy the employment requirement for either level of licensure.

G. Part-time employment credited. Part-time employment shall be credited by the board on a pro-rated basis, if the part-time employment consists of at least ~~a three-month, quarter-time~~ ten hours per week for a period of 12 consecutive weeks at any particular the same agency or facility.

7 MCAR § 10.008 Rules of conduct.

A. Scope and purpose.

4. ~~The rules of conduct are not all inclusive and do not specify all grounds for disciplinary action or denial of licensure. The 1981 revision of 'The Ethical Principles of Psychologists' published by the American Psychological Association may shall be used as an aid in resolving any ambiguity which may arise in the interpretation of the rules of conduct. However, in a conflict between the rules of conduct and the ethical principles, the rules of conduct shall prevail.~~

B. Competence.

1. A psychologist shall limit practice to the areas of competence ~~for~~ in which proficiency has been gained through

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education and training or experience ~~have been gained~~ and which have been stated in writing to the board by the psychologist ~~and accepted by the board as stated in 7 MCAR § 10.002 E.3.~~

3. In cases in which a new service, technique, or specialty is developing ~~and in which supervision is not available~~, a psychologist shall engage in ongoing consultation with other psychologists or similar professionals as skills are developed in the new area and shall seek continuing education which corresponds to the new area. A client whose treatment involves the use of a newly developing service, technique, or specialty shall be informed of its innovative nature and of known risks associated with it.

4. A psychologist shall recognize ~~the that there are other~~ professional, technical, and administrative resources available ~~to the client clients and refer the client to them~~ make referrals to those resources when it is in the best interests of ~~the client clients~~ to be provided with alternative or complementary services.

C. Protecting the privacy of clients.

3. In any situation in which a ~~person requests that the~~ services of a psychologist ~~be provided to a third~~ are requested by one party for another party, the psychologist shall inform both the requester and the ~~third party~~ receiver of the services of the responsibility of the psychologist regarding the privacy of any information gained in the course of rendering the services.

4. At the beginning of a professional relationship, a psychologist shall inform a client who is a minor ~~shall be informed at the beginning of the professional relationship concerning~~ of the limitation limit the law imposes on the right of privacy of a minor with respect to communications of a minor with a psychologist.

6. A psychologist shall instruct the staff to inquire of clients and to comply with the request wishes of a client clients regarding ~~the individual~~ to whom and where statements for services are to be sent.

9. A psychologist shall continue to maintain as private information the records of a client ~~as private information~~ after the professional relationship between the psychologist and the client has ceased.

11. In the course of professional practice, a psychologist shall not violate any law; ~~the violation of which involves the practice of psychology~~, concerning the reporting of abuse of children and vulnerable adults.

D. Impaired objectivity.

1. A psychologist ~~may~~ must not undertake or continue a professional relationship with a client in which the objectivity of the psychologist ~~may~~ is or would be impaired because of an interpersonal relationship such as due to a familial, social, emotional, economic, supervisory, or political interpersonal relationship. A psychologist whose objectivity becomes impaired because of the development of ~~an~~ a listed interpersonal relationship during a professional relationship with a client shall notify the client orally and in writing that the psychologist shall no longer see the client professionally, ~~take steps to terminate~~ begin termination of the professional relationship, and assist the client in obtaining services from another professional.

2. A psychologist ~~may~~ must not undertake or continue a professional relationship with a client in which objectivity or effectiveness is or would be impaired because of a personal problem of the psychologist such as due to the divorce, grief reaction, severe health problem, or chemical abuse or dependency of the psychologist. A psychologist whose objectivity or effectiveness becomes impaired during a professional relationship with a client because of such a personal problem shall notify the client orally and in writing that the psychologist shall no longer see the client professionally, ~~take steps to terminate~~ begin termination of the relationship, and assist the client in obtaining services from another professional.

E. Client welfare.

1. A client has the right to have and a psychologist has the responsibility to provide, on request, a nontechnical explanation of the nature and purpose of the psychological procedures to be used and the results of tests administered to the client. The psychologist shall establish procedures to be followed if the explanation is to be provided by another person under the direction of the psychologist.

2. A psychologist shall display prominently on the premises ~~of the primary location~~ of the professional practice or make available as a handout the statement of areas of competence submitted to the board and the bill of rights of clients, including a statement that consumers of psychological services offered by psychologists licensed by the State of Minnesota have the right:

- a. to expect that a psychologist has met the minimal qualifications of training and experience required by state law;
- b. to examine public records maintained by the board of psychology which contain the credentials of a psychologist;
- c. to obtain a copy of the rules of conduct from the Document Section State Register and Public Documents Division of the Department of Administration, 117 University Avenue, St. Paul, MN 55155;
- d. to report complaints to the board of psychology, 717 Delaware Street, S.E., Room 343, Minneapolis, MN 55414;

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3. A psychologist shall consider the client as an individual and shall not impose on the client any stereotypes of behavior, values or roles related to age, gender, religion, race, disability, nationality or sexual preference which would interfere with the objective provision of psychological services to the client.

4. A psychologist shall disclose to the client ~~value~~ preferences of the psychologist for choice of treatment or outcome and shall present other ~~available~~ options for the consideration or choice of the client.

5. A psychologist who becomes aware of ~~such~~ a divergence of interests, values, attitudes or biases between a client and the psychologist ~~that~~ sufficient to impair their professional relationship ~~may be impaired~~ shall so inform the client ~~and shall have the right to~~. Either the client or the psychologist may terminate the relationship.

6. A psychologist shall ~~inform in writing~~ terminate a professional relationship with a client ~~who~~ when the client is not benefiting likely to benefit from continued professional services, take steps to terminate the professional relationship or the services are unneeded. The psychologist shall inform the client orally and in writing of the termination and assist the client in obtaining services from another professional.

7. ~~When requested by a client,~~ A psychologist shall make a prompt and appropriate referral of the client to another professional when requested to do so by the client.

8. A psychologist shall not engage in sexual intercourse or other physical intimacies with a client, nor in any verbal or physical behavior which is sexually seductive or sexually demeaning to ~~a~~ the client. Physical intimacies include handling of the breasts or genital areas of either sex by either the psychologist or the client.

9. A psychologist shall ~~make an attempt to determine~~ ask a client whether a ~~the~~ the client has had or continues to have a professional relationship with another ~~psychologist~~ psychologist mental health professional. If it is determined that the client had or has a professional relationship with another ~~psychologist~~ psychologist mental health professional, the psychologist shall ~~attempt,~~ to the extent possible and consistent with the wishes and best interests of the client, ~~to coordinate psychological services for that client with the other psychologist mental health professional.~~

10. A psychologist shall file a complaint with the board when the psychologist has reason to believe that another psychologist is or has been engaged in conduct which violates C.11., failure to report suspected abuse of children or vulnerable adults, or E.8., sexual contact with a client. This rule shall requirement to file a complaint does not apply when the belief is based on information obtained in the course of a professional relationship with a client who is the other psychologist. Nothing in this rule relieves a psychologist from the duty to file a report as required by Minn. Stat. § 626.556 or 626.557, reporting abuse of children and vulnerable adults.

F. Tests.

2. A psychologist ~~may~~ must not offer psychological tests for commercial publication ~~only~~ to publishers who have presented tests in a ~~professional~~ an unprofessional manner and who have distributed them ~~only~~ to other than qualified professional users.

3. A report of the results of a test shall include ~~any~~ relevant reservations or qualifications regarding validity or reliability which a psychologist may have because of the testing circumstances or any deficiencies of the test norms for the individual tested, and how the psychologist has applied those reservations and qualifications to the score of the individual.

H. Fees and statements.

1. ~~A client has the right to ask about and be informed by a psychologist about the cost of professional services before the services are provided~~ A psychologist shall, when asked by a client about the cost of professional services, disclose the cost of services provided.

3. A psychologist shall not directly or by implication misrepresent to the client or to a third party billed for services the nature of the services, the extent to which the psychologist has provided the services, or the person who is professionally responsible for ~~directing~~ the services provided ~~by the psychologist.~~

4. A psychologist shall not claim a fee for services unless the psychologist is either the direct provider of the services or the person who is professionally responsible for the provision of the services and under whose direction the ~~psychologist provides the services~~ were provided.

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I. Practicing without a license. A psychologist shall not aid or abet an unlicensed person in engaging in the private practice of psychology. A psychologist who supervises a person preparing for the professional practice of psychology according to Minn. Stat. § 148.97, subd. 3, clause (2), is not ~~aiding or abetting an unlicensed~~ in violation of this rule if the person is not engaging in the private practice of psychology.

J. Welfare of students and research subjects. A psychologist shall protect the welfare of psychology students and research subjects and shall accord the students and human research subjects the client rights listed in C. and E., except for C.4., C.6., E.4., E.6., and E.9.

K. Violation of law. A psychologist shall not violate any law in which the facts giving rise to the violation involve the provision of psychological services. In determining whether a violation involves the provision of psychological services the board shall consider:

1. the nature and seriousness of the violation the psychologist is alleged to have committed;
2. the relationship of the alleged violation to the purposes of regulating the practice of psychology; and
3. the relationship of the violation to the ability, capacity, fitness or integrity of the psychologist in rendering psychological services.

In any board proceeding alleging a violation of this rule the proof of a conviction of a crime shall constitute proof of the underlying factual elements needed to constitute a violation of this rule necessarily underlying that conviction.

7 MCAR § 10.009 Waivers and variances.

A. Waivers; application. A licensee or applicant for licensure may apply to the board for a time-limited waiver of any rule except for any part of a rule which incorporates a statutory requirement. The waiver may shall be granted if the licensee or applicant provides evidence that:

1. the rule in question does not address a problem of significance to the public in relation to the practice of the licensee or application of the applicant;
2. adherence to the rule would impose an undue burden on the licensee or applicant; and
3. the granting of a waiver will not adversely affect the public welfare.

B. Waivers; renewal, reporting and revocation. A waiver may shall be renewed upon reapplication according to the procedure described in A. if the circumstances justifying its granting continue to exist. Any licensee who is granted a waiver shall immediately notify the board in writing of any material change in the circumstances which justify its granting. A waiver may shall be revoked if a material change in the circumstances which justify its granting occurs.

C. Variances; application. A licensee or applicant may apply to the board for a time-limited variance from any rule except for any part of a rule which incorporates a statutory requirement. A variance may shall be granted if the licensee or applicant specifies alternative practices or measures equivalent to or superior to those prescribed in the rule in question and provides evidence that:

1. the rationale for the rule in question can be met or exceeded by the specified alternative practices or measures;
2. adherence to the rule would impose an undue burden on the licensee or applicant; and
3. the granting of the variance will not adversely affect the public welfare.

E. Variance; renewal, reporting, and revocation. A variance may shall be renewed upon reapplication according to the procedure described in C. if the circumstances justifying its granting continue to exist. Any licensee or applicant who has been granted a variance shall immediately notify the board of any material change in circumstances which justify the granting of the variance. A variance may shall be revoked if a material change in the circumstances which justify its granting occurs.

G. Statement of reasons. The minutes of any meeting at which a waiver or variance is granted, denied, renewed or revoked shall include the reason for the action.

Department of Public Welfare Income Maintenance Bureau

Adopted Rule Governing the Administration and Provision of Preadmission Screening and Long-term Care and Alternative Care Grants (12 MCAR § 2.065)

The rule proposed and published at *State Register*, Volume 6, Number 19, pages 884-888, November 9, 1981, (6 S.R. 884) is adopted with the following modifications:

Rule as Adopted

12 MCAR § 2.065 Preadmission screening for persons entering long term care facilities and alternative care grant services.

A. Responsibility for the program. The county agency responsible for administering the medical assistance program in each participating county shall be responsible for complying with requirements of the preadmission screening program.

B. Program scope. In counties participating in the program, screening teams shall review and make recommendations for nursing home applicants who are eligible for medical assistance and those who will be eligible within 90 days of admission to a nursing home. If an applicant or recipient's county of financial responsibility is included in the screening program, such applicant or recipient must be screened by the county of financial responsibility for admission to any nursing home. The procedures and criteria used by the screening team shall be in accordance with D.-H. Participating counties shall be eligible for the alternative care grant program described in H.

C. Notification about program.

1. Notice to eligible persons. The county agency responsible for the screening program shall refer to a screening team all persons eligible for the screening as described in B. When possible, ~~these persons~~ medical assistance recipients shall be notified of the screening requirement ~~by~~ through a direct mail mailing by the local welfare agency. At the time of the referral, with the consent of the applicant, the local welfare agency shall notify a responsible party or appropriate relative that the person has been referred, and the pre-admission screening is a condition of medical assistance coverage.

2. Public notice. The county agency responsible for the screening program shall provide public notification of the screening requirement. The methods of public notification shall include publication in available appropriate newsletters, display and dissemination of information leaflets in a readable form and in ~~an~~ accessible location locations, and promotion through other local media sources. The public notification shall include information on how to contact the screening team, implications of the screening team's recommendations, and the individuals' rights to appeal the screening team's recommendations.

3. Notice to officials and health care professionals. The Department of Public Welfare shall provide formal notification about the screening program to county commissioners, local health and welfare agencies, state hospitals, nursing homes, and physicians. The department shall assist participating counties in providing information sessions and materials to further explain the program.

D. Resource material for screening programs.

1. Screening tool. The department shall recommend a screening tool to be used as a guide in conducting the screening interview. The screening tool recommended by the department shall obtain consistent categories of information and ensure that persons are receiving uniform screening. The assessment tool used by the county screening teams shall require information related to the following criteria:

- a. present medical conditions;
- b. present unmet needs;
- c. informal and formal service available or being provided to the person;
- d. the recipient's preferences;
- e. persons consulted in the screening process;

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f. observations of the screening team during the onsite visit;

g. assessment of functional capacity; and

h. a preliminary service care plan.

The state agency shall allow counties flexibility in using the recommended tool or a comparable one which includes the information related to the criteria in a.-h. and has been approved by the state agency.

2. Technical assistance. Department staff shall be available to provide technical assistance in conducting the screenings, including special training sessions.

3. Directory of services. The county agency shall develop a resource directory of available institutional and noninstitutional services to be used by the screening team in determining how well an applicant's needs can be met by existing community services.

E. Screening procedures requirements.

1. Screening team. Minn. Stat. § 256B.091, subd. 2, shall govern the composition of the screening team. The screening team must include a public health nurse from the local public health nursing service, a social worker from the local community welfare agency, a physician available for consultation when necessary, and the individual's physician if the physician chooses to participate. The screening team shall utilize the individual's attending physicians' assessment forms if available.

2. Screening procedures. The screening team shall notify the individual's attending physician that the screening is a condition of medical assistance and that the physician has the right to participate in the screening procedure. The screening team shall begin the screening process within five working days after receiving the request, and it shall issue a recommendation within ten working days after receiving the request. The screening team shall notify the applicant or appropriate relative or responsible party of the decision. The team shall also notify the referring physician, the referring local welfare department if the applicant is a medical assistance recipient, and the nursing home if placement is recommended.

3. Rescreening procedures. Reconsideration of a previously denied application shall be given when there has been a change in circumstances. The application shall be resubmitted to the screening team with a written explanation of the change in circumstances. Time requirements for initial applications shall apply.

F. Criteria for screening team recommendations.

1. Nursing home admission. The screening team shall recommend admission to a nursing home when it is determined that the individual requires care or services which are not available to the recipient outside of the nursing home and cannot be provided through the alternative care grants program. In assessing the individual's need for service, the screening team may use reliable information gathered by others.

2. Use of community services. The screening team shall not recommend admission to a nursing home when it is determined that the individual can remain in the community and that care and services are available and accessible to the individual in his or her own community.

3. Choice of care. The recipient or his or her representative shall be informed of all feasible alternatives and allowed to choose among them where the cost of home and community-based services are not expected to exceed the cost of the appropriate level of nursing home care. This choice shall be recorded and maintained in the individual's plan of care.

G. Plan of care required. A recommendation for the applicant to remain in the community shall be accompanied by a plan of care including referral to service providers and assignment of responsibility for implementing the plan.

1. Development of the plan. The plan of care shall be developed by the screening team in consultation with the individual, the treating physician, and appropriate family members or responsible parties. The resource directory described in D.3. shall be used in determining what services are available.

2. Availability of Services provided in the plan of care. Where the plan of care includes services that are not available at that time through other public assistance sources, the services shall be provided through an alternative care grant described in H.

3. Responsibility for the plan of care. The plan of care shall include the name of the person responsible for ensuring compliance, the method of monitoring the recipient's acceptance of and adjustment to the services provided under the plan, the date for reevaluation, and any temporary measures that might be required immediately in order to ensure the safety of the person. When needed services become unavailable, the assigned person shall be responsible for recommending a reevaluation by the screening team.

4. Cost-effective alternatives. The plan of care shall include documentation that the most cost-effective alternatives available have been offered to the individual.

H. Alternative care grant.

1. Use of grant. The grant shall be used to provide services to ~~those persons~~ medical assistance recipients who have been screened and found appropriate for home or community care. Services that may be provided through this grant are day care, case management, homemaker, home health aide, personal care, respite care, foster care, and others for which federal participation is provided under the Social Security Act, section 1915, as added by Public Law 97-35, as amended through December 31, 1981. The grant shall supplement but not supplant services available through other public assistance or service programs. The grant shall not be used to establish new programs for which public money is available through other sources.

2. Service provision. The services shall be provided by a licensed health care provider; a home health service eligible for reimbursement under 42 United States Code, Subchapters XVIII or XIX, as amended through December 31, 1981, and Code of Federal Regulations, title 42, sections 405.1201-405.1230 (1981); or by persons employed by, or under contract to, the county board or the local welfare agency.

3. Reimbursement of services. Services shall be reimbursed at a level no greater than that which is allowed under 42 United States Code, Subchapters XIX and XX, as amended through December 31, 1981, and Code of Federal Regulations, title 42, sections 405.201-405.252 (1981), unless lower rates are negotiated with providers at a level sufficient to insure the availability of such services in the community.

4. Assurances. The county shall provide the Commissioner of Public Welfare with assurances that the alternative care grant is used for purposes specified in Minn. Stat. § 256B.091, subd. 8 and in Public Law 97-35, Section 2176 relating to community-based services.

I. Reimbursement of nursing home costs.

~~1. Nonemergencies; unscreened applicants. When an individual covered by the mandatory screening requirement is admitted to a nursing home on a nonemergency basis and has not obtained the required pre-admission screening, the nursing home shall notify the screening team within two working days. The screening team shall make a decision on the case within five working days of being contacted by the nursing home. If the screening team fails to review the case within five working days or recommends that institutionalization is necessary, medical assistance shall cover the cost of the care. If the screening team determines that the individual does not require institutionalization, the admitting facility shall not be reimbursed for any costs incurred, and patient days resulting from that stay must be counted in the facility's patient day statistics for the purposes of rate calculation under 12 MCAR § 2.049.~~

~~2. Emergencies; unscreened applicants. When an individual covered by the mandatory screening requirement is admitted to a nursing home on an emergency basis and has not obtained the required pre-admission screening, the nursing home shall notify the screening team within two working days. The screening team shall make a decision on the case within five working days of being contacted by the nursing home. If the screening team fails to review the case within five working days or recommends that institutionalization is necessary, the costs of nursing home care shall be covered by medical assistance. If the screening team reviews the admission within five working days and determines that the individual does not require institutionalization, medical assistance shall cover the costs only for the period through the date the screening team notified the nursing home of its decision, and until a plan for alternative care can be implemented. If the admitting facility fails to contact the screening team within the prescribed period, the facility shall not be reimbursed for any costs incurred, and patient days resulting from that stay must be counted in the facility's patient day statistics for the purposes of rate calculation under 12 MCAR § 2.049. Reimbursement for emergencies of unscreened persons shall be allowed for medical emergencies only, as certified by the attending physician.~~

~~3. Screened applicants. Medical assistance shall not be available to reimburse the nursing home in instances when an individual is admitted to a nursing home after the screening team has determined that institutionalization is not necessary. The individual has the right to notification and a fair hearing on such denial of payment in accordance with K.~~

1. Notification of admission of unscreened applicants. When an individual covered by the mandatory screening requirement is admitted to a nursing home on an emergency or nonemergency basis and has not obtained the required preadmission screening, the nursing home shall notify the screening team within two working days. If the admitting facility fails

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to contact the screening team within the prescribed period, the facility shall not be reimbursed for any costs incurred until the decision is made and the recipient and the nursing home are notified. Patient days resulting from that stay must be counted in the facility's patient day statistics for the purposes of rate calculation under 12 MCAR § 2.049.

2. Screening team review. When an unscreened applicant has been admitted to the nursing home, the screening team shall make a decision on the case within five working days of being contacted by the nursing home. If the person prefers to return to the community, medical assistance shall cover the costs only for the period through the date the screening team notified the nursing home of this decision and until a plan for alternative care can be implemented.

4- 3. Persons not screened. Nursing home applicants who have not been screened and are not medical assistance recipients shall be asked by the nursing home if they have sufficient funds to cover 90 days of nursing home care or whether they will be applying for medical assistance within that time period. If, based on the information given and recorded, the nursing home determines that the person is not subject to the screening requirement the applicant may be admitted without screening. The nursing home shall maintain documentation of the basis for this decision in the patient's file. If the patient's statement concerning proposed eligibility is inaccurate, the health care facility shall not be denied reimbursement because of the inaccuracy of this statement.

J. Reimbursement for screening costs.

1. Persons eligible for medical assistance. The Department of Public Welfare shall reimburse the county agency for the preadmission screening required for persons who are eligible for medical assistance and those who will be eligible for medical assistance within 90 days of admission to a nursing home. Reimbursement shall be in a manner agreed upon by both parties.

2. Persons not receiving assistance. The Department of Public Welfare shall reimburse the county agency for all or a portion of the cost of screening for a person whose costs are not reimbursed under 1. The percentage rate of reimbursement by the department shall be determined according to the schedule in Exhibit 12 MCAR § 2.065 J.2.-1., except that the maximum amount of reimbursement from the department for a screening shall not exceed the maximum reimbursement available to a county agency for the cost of a screening reimbursed under 1. The county agency may assess the person who is screened for the part of the screening cost not reimbursed by the department.

Exhibit 12 MCAR § 2.065 J.2.-1.

Annual Gross Income per Individual	Screening Fee Reimbursement for Applicants not Eligible for Medical Assistance
under — 13,000	100%
13,001 — 13,500	90
13,501 — 14,000	80
14,001 — 14,500	70
14,501 — 15,000	60
15,001 — 15,500	50
15,501 — 16,000	40
16,001 — 16,500	30
16,501 — 17,000	20
17,001 — 17,500	10
17,501 — and over	0

K. Right to appeal.

1. Appeal procedures. Persons who are recipients of or applying for medical assistance have the right to a fair hearing pursuant to Minn. Stat. § 256.045 to challenge the decision of the screening team if they are not informed of and allowed to choose among alternatives available to them as set forth in F.3., or if the plan of care is not satisfactory. The hearing shall be conducted in accordance with appeal procedures set forth in Minn. Stat. § 256.045. An appeal must be made within 30 days after receiving written notice of the screening team's recommendation. If it appears at the hearing that circumstances are different than they were at the time the initial recommendation was made plan of care was established, the referee may refer the case back to the screening team for reevaluation reconsideration.

2. Appeal by the physician. When the treating physician disagrees with the outcome of the screening team's decision, the physician shall notify the screening team and request in order to initiate an appeal on behalf of the individual. The appeal may be withdrawn with the consent of the individual and the treating physician.

3- Persons not receiving assistance. ~~Persons who are not applying for or receiving medical assistance shall consider the recommendation by the screening team to be advisory, unless the person applies for medical assistance within 90 days following admission to a nursing home.~~

L. County reports. The county agency shall submit a report to the Department of Public Welfare according to a schedule agreed upon by the department and the county agency. The report shall be submitted on forms provided by the commissioner and include the number of persons screened, results of each screening, and the rationale for each screening recommendation. The county agency shall retain the plan of care for persons who are to remain in the community and shall make it available to the department on request. The county agency shall also provide information as requested by the commissioner for ongoing evaluation of the program.

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Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota

Tax Court

Berth C. Ness, and Berth C. Ness
as the duly appointed personal
representative of the Estate of
Louise Ness, deceased,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER FOR JUDGMENT**

Appellants,

v.

The Commissioner of Revenue,

Docket No. 3215
Order dated July 19, 1982.

Appellee.

This is an appeal from an Order of the Commissioner of Revenue dated September 15, 1980, relating to the income tax liability of Appellants for the taxable years 1974 through 1978.

The matter came on for hearing before the Honorable Earl B. Gustafson, Judge of the Minnesota Tax Court, at St. Paul, Minnesota, on December 14-15, 1981 and was submitted to the Court for decision on post-trial briefs on April 26, 1982.

William R. Busch, Attorney at Law, appeared for Appellants.

Paul R. Kempainen, Special Assistant Attorney General, appeared for Appellee.

One issue is whether Appellants were residents and domiciliaries of Minnesota for income tax purposes during the years 1974 through 1978. Other issues are whether certain interest income is assignable to Minnesota under Minn. Stat. § 290.17 and whether certain business expenses and losses are deductible from income.

Findings of Fact

1. The Appellants herein, Berth C. and Louise Ness, were cash-basis, calendar year taxpayers during each of the taxable years at issue herein: 1974, 1975, 1976, 1977 and 1978. For each of these years the Appellants timely filed a joint Minnesota Individual Income Tax Return as residents of the State of Minnesota. On each year's return the Appellants reported a state income tax liability of "none". The issues in this case relate entirely to the income and deductions of Berth C. Ness (hereinafter "Ness").

2. As a result of audit reports the Commissioner of Revenue issued his Order dated September 15, 1980, assessing additional income tax and interest against the Appellants in the following amounts:

	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
1974	\$2,956.47	\$ 961.78	\$ 3,918.25
1975	1,213.94	429.16	1,643.10
1976	7,652.81	2,094.98	9,747.79
1977	6,769.19	1,311.55	8,080.74
1978	7,635.50	868.56	8,504.06
		Total	<u>\$ 31,893.94</u>

3. Ness, on his own behalf and as personal representative of his deceased wife's estate, has taken this appeal from the Commissioner's Order.

Domicile Issue

4. One of the contentions made by Ness is that he and his wife were residents of Arizona and not Minnesota during part or all of the years at issue.

5. Until 1973, the Appellants owned a home in Mahnomen, Minnesota, which they homesteaded for property tax purposes. It is conceded they had been legal residents and domiciliaries of Minnesota for many years prior thereto.

6. In 1973, they sold that home and moved into an apartment over a store in a two-story commercial building (the Robinson Building) owned by Ness in Mahnomen, Minnesota, and lived in this apartment whenever they were in Minnesota.

7. Starting as early as 1952, Ness and his wife began spending a portion of each winter in Arizona. Initially these visits lasted a week or two and gradually increased in length during the late 1950's and throughout the 1960's. During the 1960's, Ness purchased a mobile home in Arizona. This same mobile home, or another one owned by him, has continued to be his living quarters in Arizona up to the present time.

8. During the years 1974 and 1975, Ness and his wife spent three or four months a year in Arizona. Beginning in 1976 and continuing through 1977 and 1978, they spent approximately seven months a year in Arizona.

9. Throughout the years in issue, Ness maintained his Minnesota driver's license and drove cars registered in Minnesota under the name of Wild Rice Motor Company, a company owned by Ness. While in Arizona, Ness used rented cars.

10. Ness did not maintain his voter registration in any state during the years in issue but last voted in Minnesota.

11. During the years in issue, Mrs. Ness maintained her membership in certain social groups in Mahnomen, Minnesota, such as Eastern Star and Ladies Aid. The Appellants also continued to maintain their membership in the First Lutheran Church in Mahnomen, Minnesota. In Arizona the Appellants joined only the clubs in their mobile home park and attended St. Peter's Church in Mesa, Arizona.

12. On all of his federal tax returns, Ness continued to report Mahnomen, Minnesota, as his residence.

13. All Minnesota tax returns indicate Mahnomen, Minnesota, as his residence except his 1978 return.

14. Ness never filed any Arizona income tax returns (either resident or non-resident) for any of the years at issue herein. Nor did he file individual income tax returns with any other state beside Minnesota.

Interest Income On Out-of-State Intangibles

15. Prior to the years in question, Ness was involved in a variety of businesses and investments. Among the Minnesota corporations owned by Ness was an automotive and farm implement business known as the Wild Rice Motor Company in Mahnomen and a Minnesota finance business known as Ness Finance Company.

16. During the years in question, Ness owned considerable property in his own name, both real and personal, including substantial intangible personal property such as notes, mortgages and contracts.

17. Interest income received by Ness on out-of-state intangibles such as notes, mortgages and contracts constituted income from intangible property assignable to Minnesota under Minn. Stat. § 290.17(2) (1976) during 1974-1977 and under Minn. Stat. § 290.17, subd. 1 (1978) during 1978.

W. W. Creighton Bad Debt Loss

18. In 1959 Ness purchased approximately 4½ sections of land in Arizona and in 1962, with a W. W. Creighton, formed an Arizona corporation, Ness Investment Company, to develop this land.

19. Under an agreement between Ness and W. W. Creighton, the Ness Investment Company, an Arizona corporation, was to be owned 55% by Ness and 45% by W. W. Creighton.

20. Through fraud and manipulations, W. W. Creighton concealed from Ness the fact that he made no contribution to the venture for his 45% ownership interest. Ness did not become aware of this until 1969.

21. Likewise, Ness did not learn until 1969 that Creighton became entitled to real estate commissions totaling some \$200,000 from sellers of properties to Ness Investment Co., a clear conflict of interest.

22. In 1964 Ness agreed to buy out W. W. Creighton's 45% interest in Ness Investment Co. and on the basis of erroneous book values he signed a promissory note payable to W. W. Creighton and his wife in the sum of \$79,223.40.

23. Unaware of Creighton's deceptions and assuming he owed Creighton money on this promissory note for buying his interest in Ness Investment Co., Ness paid a total of \$78,989.41 on various debts of Creighton in 1964, 1965 and 1966.

24. Later in his 1977 tax returns, Ness claimed that this \$78,989.41 represented loans to Creighton that had become worthless. This deduction for a bad debt business loss was eventually allowed by the I.R.S.

25. The \$78,989.41 item is a bad debt business loss properly assigned to the taxpayer's Minnesota income for 1977.

W. A. Colpa Bad Debt Loss

26. In 1977 Ness incurred a loss in connection with a loan he made to one W. A. Colpa, and Ness claimed it on his return as a business bad debt. Upon audit, the Commissioner determined that the loss was entitled only to non-business bad debt status, and thus treatable only as a short term capital loss. However, at trial Ness presented evidence that on November 25, 1981, the Appellate Division of the Internal Revenue Service had determined that the W. A. Colpa loss was a business bad debt loss. This evidence was unavailable at the time of audit. Accordingly, the Commissioner has decided to no longer contest this point.

Zimpel Bad Debt Loss

27. During 1972, Ness was approached by a Russell Zimpel, an earth moving contractor, to sign as a guarantor on a public construction contract bond. Ness had previously known Zimpel for five or six years and agreed to guarantee the bond for a fee. Ness then wrote and guaranteed a bond for Zimpel with Western Surety Company. Ness had been an agent with Western Surety Company and from time to time had guaranteed other bonds on a fee basis, which he then reported on his income tax returns as other income.

28. Zimpel was unable to complete the job which was bonded, and Ness had to spend \$20,675.30 in hiring third parties to complete the work. On June 14, 1974, Zimpel gave Ness a promissory note promising to repay the \$20,675.30 sometime after October 1, 1975.

29. During 1974, Ness made an investigation into the assets of Zimpel and by the end of that year had concluded that the Zimpel note was uncollectible. The note, however, was not due until October 1, 1975.

30. Ness did not suffer a business bad debt loss in 1974 but did suffer a business bad debt loss in 1975 when the Zimpel note became due and was uncollectible.

Greater Arizona Realty Brokerage Fee

31. In 1969 Ness entered into an exchange agreement with David D. Hvidsten. Pursuant to this agreement, Ness conveyed his Apache Junction shopping center property and some 2,500 acres of his Arizona land to Hvidsten in return for various real estate parcels and other business assets in North Dakota plus a promissory note from Hvidsten. This transaction was considered by Ness to be an even exchange with no capital gain realized.

32. As part of the 1969 exchange agreement between Ness and Hvidsten, Ness agreed to pay his broker, Greater Arizona Realty, a brokerage commission of \$25,000, which he later declined to pay. After litigation, Greater Arizona Realty obtained a judgment against Ness for this \$25,000 brokerage commission, together with interest.

33. In 1978 Ness made payments of \$39,011.24 to Greater Arizona in partial satisfaction of the judgment against him for brokerage commissions.

34. Ness is not entitled to a business expense deduction for the \$39,011.24, paid to Greater Arizona Realty in 1978 as partial satisfaction of a judgment for unpaid brokerage commissions, because such commissions must be added to the basis of the land received in the 1969 exchange for which the commissions were paid.

Discount on Maiello Contract

35. In December 1978, Ness bought from the Hvidsten group a Maiello land contract on which the then unpaid principal balance was \$69,317.94. The purchase price that Ness paid for this land contract was \$57,578.61, a discount of \$11,739.33 from the face amount balance of that contract.

36. Ness collected no payments in 1978 from the obligors on this Maiello land contract, and no part of this \$11,739.33 purchase price discount was received by Ness in 1978.

37. Through error, Ness included this purchase price discount of \$11,739.33 as being an item of his gross income for 1978 in computing and reporting Appellants' federal adjusted gross income for that year.

38. No part of this \$11,739.33 land contract purchase discount is includable in Ness's income for 1978.

Payments Of Interest On Hvidsten Note

39. In the 1969 exchange agreement with David D. Hvidsten, Ness took a promissory note for \$467,717.

40. The Hvidsten note provided for the payment of interest only on an annual basis during the seven year period ending February 28, 1977. Thereafter, annual principal payments of \$43,162.90 plus interest were required. Under the terms of the

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Hvidsten note, the annual interest and principal installments were payable, at the option of the Hvidsten group, in the form of land contracts or mortgage notes which, if utilized, were to be applied as payments to the extent of their full unpaid face value.

41. During the years 1974 through 1978, all the interest payments received by Ness on the Hvidsten note were in the form of land contracts or mortgages.

42. The fair market value of the land contracts and mortgages that the Hvidsten group annually transferred to Ness as payments on this note was less than their unpaid face value.

43. For each of the years 1974 through 1978, the then unpaid face value and the then fair market value of the land contracts and mortgages that the Hvidsten group transferred to Ness in payment of the annual interest on the Hvidsten note were as follows:

<u>Year</u>	<u>Total Amount of Interest Paid by Land Contracts and Mortgages at Full Unpaid Face Value</u>	<u>Fair Market Value at Time of Transfer to Ness of Land Contracts and Mortgages Applied to Interest</u>	<u>Excess of Unpaid Face Value over Fair Market Value of Land Contracts and Mortgages Applied in Payment of Accrued Interest</u>
1974	\$21,802.20	\$16,351.65	\$ 5,450.55
1975	21,702.20	16,276.65	5,425.55
1976	41,530.48	31,147.86	10,382.62
1977	20,624.80	15,468.60	5,156.20
1978	18,415.71	13,811.78	4,603.93

44. In determining and reporting their federal adjusted gross income for each of the years 1974 through 1978, Appellants erroneously included as interest income received on the Hvidsten note the full unpaid face value of the land contracts and mortgages received from Hvidsten's group in payment of the interest due on the note.

45. As a result, Appellants' federal adjusted gross income was overstated by them in the respective amounts of \$5,450.55 for 1974, \$5,425.55 for 1975, \$10,382.62 for 1976, \$5,156.20 for 1977 and \$4,603.93 for 1978.

Federal Income Tax Deduction

46. In 1976 Ness paid to the Internal Revenue Service additional federal income taxes of \$39,289.64 assessed for the years 1962-1971.

47. On his 1976 Minnesota Income Tax Return, Ness failed to list this \$39,289.64 item as a federal income tax deduction and the issue was not raised during the Commissioner's audit. However, since evidence has now been presented at trial which does establish this deduction item, the Commissioner agrees that Ness is entitled to a federal income tax deduction of \$39,289.64 in arriving at his 1976 Minnesota taxable income.

Business Expense—Attorney's Fees

48. Throughout each of the years 1974 through 1978, Ness incurred attorney's fees and associated costs for legal work incurred in connection with his various investments in Arizona. The total attorney's fees and court costs paid by Ness in connection with his Arizona investments are as follows:

1974	\$23,995.00
1975	6,696.43
1976	13,309.98
1977	8,664.02
1978	3,782.76

49. All these attorney and court fees paid by Ness in 1974-1978 in connection with his Arizona business investments have been allowed in full as ordinary deductions in determining Appellants' federal taxable net income for these respective years.

50. These attorney and court fees paid by Ness in 1974-1978 constitute ordinary and necessary business expenses of his business investments in Arizona for these respective years.

Business Expense—Travel

51. During the years 1974 through 1978, there was no one in Arizona to handle Ness's investments in that state while he was in Minnesota; nor was there anyone in Minnesota to handle his business operations and investments in that state while he was in Arizona.

52. During the months of November through May in 1974 through 1978, Ness averaged about one business trip a month from Arizona to Minnesota. During June through September in each of these years, he averaged one business trip a month back to Arizona from Minnesota. His wife did not accompany him on any of these trips.

53. Ness did not include in his business travel expense any of his costs in going from Arizona to Minnesota in May and in returning to Arizona from Minnesota in October of each year.

54. The total of the business travel expenses thus incurred and paid by Ness in each of the years 1974 through 1978 is as follows:

<u>Year</u>	<u>Total of B. C. Ness's Business Travel Expense</u>
1974	\$3,406.29
1975	2,752.71
1976	2,447.50
1977	1,976.90
1978	1,342.90

55. These business travel expenses of Ness for 1974-1978 have been allowed in full in determining Appellants' federal taxable net income for those respective years.

56. One-half of these business travel expenses of Ness during each of the years 1974 through 1978 is an ordinary and necessary business expense of his business investments in Arizona, and the other half is an ordinary and necessary business expense of his business investments and operations in Minnesota.

Conclusions of Law

1. The Appellants were residents and domiciliaries of Minnesota for income tax purposes during the years 1974 through 1978.
2. The items of interest income derived by Ness from out-of-state notes and contracts receivable during the years 1974-1977, are assignable to Minnesota under Minn. Stat. Section 290.17(2) (1976), as either income from intangibles not employed in the business of Ness, or as income from intangibles employed in a business consisting principally of the holding of such intangibles and the collection of income and gains therefrom.
3. The items of interest income derived by Ness from out-of-state intangibles during 1978 are assignable to Minnesota under Minn. Stat. § 290.17, subd. 1 (1978).
4. The \$78,989.41 loss incurred by Ness in 1977 on payments previously made by Ness to others on behalf of one W. W. Creighton, is assignable to Minnesota and should be allowed as a deduction.
5. Appellants are entitled to a business bad debt deduction on the 1977 return for the loss of \$24,000 in connection with a loan to W. A. Colpa.
6. Appellants are entitled to a business bad debt loss for the year 1975 on the R. Zimple construction bond guarantee and promissory note.
7. Appellants are not entitled to a business expense deduction for the \$39,001.24, paid to Great Arizona Realty in 1978 as partial satisfaction of a judgment for unpaid brokerage commissions, because such commissions must be added to the basis of the land received in the 1969 exchange for which the commissions were paid.
8. Appellants are entitled to an adjustment to his 1978 income for the \$11,739.33 purchase price discount received on the purchase of the Maiello land contract.
9. Appellants are entitled to adjustments to the interest income received from Hvidsten and Universal Equities as reported on their returns, by reason of the difference between the face value and fair market value of the contracts and notes received as follows:

1974	\$5,450.55
1975	5,425.55
1976	10,382.62
1977	5,156.20
1978	4,603.93

10. Appellants are entitled to a federal income tax deduction of \$39,289.64 in arriving at the 1976 Minnesota taxable income.

11. Appellants are entitled to business expense deductions for attorney's fees and costs as follows:

1974	\$23,995.00
1975	6,696.43
1976	13,309.98
1977	8,664.02
1978	3,782.76

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12. Appellants are entitled to business expense deductions for travel as follows:

1974	\$ 3,406.29
1975	2,752.71
1976	2,447.50
1977	1,976.90
1978	1,342.90

13. The Commissioner's Order dated September 15, 1980 should be modified consistent with these Findings of Fact and Conclusions of Law.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

Dated: July 19, 1982.

By the Court
Earl B. Gustafson, Judge
Minnesota Tax Court

Memorandum

The Taxpayer, Berth C. Ness, a successful businessman from Mahanomen, Minnesota, is appealing an Order of the Commissioner of Revenue assessing income taxes against Ness and his wife's estate for the years 1974, 1975, 1976, 1977 and 1978. All questions relate to Mr. Ness's income.

A number of issues have been raised. The one issue that affects most others is whether Ness and his wife were residents and domiciliaries of Minnesota or Arizona during the years in question. The Court finds that Appellants were in fact Minnesota residents.

Residence or domicile for tax purposes is a matter of intent. To prevail on this issue, Appellants must persuade the Court that during 1974 through 1978 Mr. and Mrs. Ness were not only physically present in Arizona but intended to make Arizona their permanent home. Intent is proven by both declarations and acts.

During 1974-1975, Ness and his wife (now deceased) spent most of their time in Minnesota and the winter months in Arizona. During 1976, 1977 and 1978, they spent approximately seven months in Arizona and five months in Minnesota. Ness never filed income tax returns in Arizona and always gave Mahanomen, Minnesota, as his residence address on all federal tax returns. No serious attempt was made, during this period, to establish residency in Arizona such as obtaining an Arizona drivers license or voter registration. Neither Mr. Ness's acts nor his declarations indicate an intention to make Arizona his permanent home during this period.

The significance of our finding that Minnesota remained Ness's domicile is that both income and losses on his out-of-state investments are assigned to Minnesota under Minn. Stat. § 290.17 (2) (1976) which reads in pertinent part as follows:

Items of gross income shall be assigned to this state or other states or counties in accordance with the following principles: . . .

(2) . . . Income or gains from intangible personal property not employed in the business of the recipient of such income or gains, and from intangible personal property employed in the business of such recipient if such business consists principally of the holding of such property and the collection of the income and gains therefrom, wherever held, whether in trust, or otherwise, shall be assigned to this state if the recipient thereof is domiciled within this state; income or gains from intangible personal property wherever held, whether in trust or otherwise shall be assigned to this state if the recipient of such income or gains is domiciled within this state

Even though this statute refers only to the assignability of income and gains, its rules govern the assignability of losses as well. *Schoenfelder v. Commissioner of Taxation*, Minnesota Tax Court Docket Nos. 1531 and 1569, January 27, 1972, affirmed in 294 Minn. 547, 201 N.W. 2d 822 (1972).

Effective for the tax year 1978, Minn. Stat. 290.17 was amended to assign the entire income of Minnesota residents to Minnesota regardless of its source. Minn. Stat. 290.17, Subd. 1 (1978).

Our finding that Ness was a Minnesota resident during the years in question (1974-1978) leads us to conclude that all income he received from his various investments in the form of notes, mortgages, contracts and corporate stock is assignable to Minnesota under Minn. Stat. 290.17(2) as income from intangible personal property employed in the business of the recipient where "such business consists principally of the holding of such property and the collection of the income and gains therefrom."

Appellants' counsel characterizes Ness's business dealings in Arizona during the period in question as operating a

“proprietorship finance business.” We have no particular quarrel with his description. As we have said, however, finding that Minnesota was Ness’s residence or domicile for tax purposes during this time means that interest income derived from Arizona or Colorado notes, mortgages or contracts is properly assignable to Minnesota. This is true whether Ness was operating some kind of “proprietorship finance business” or not because another clause in Minn. Stat. § 290.17(2) (1976) requires all income or gains from intangible personal property to be assigned to Minnesota if the recipient “is domiciled within this state.”

The next item to consider is the so-called bad debt loss of W. W. Creighton. These payments were actually paid by mistake and became a chose in action Ness had against Creighton. After he learned of Creighton’s fraud, Ness attempted to collect against Creighton’s estate and against Creighton’s wife without success. The debt became worthless in 1977.

The Commissioner does not deny that this \$78,989.41 was a bad debt business loss as allowed by the Federal IRS, but rather claims it cannot be deducted as an expense against Minnesota income because it arose out of a business (Ness Investment Co.) conducted wholly outside of the State of Minnesota. We disagree. This is not a loss arising out of the business operations of the Arizona corporation, Ness Investment Co. If it were, it would be a loss to that corporation. The only connection these “loans” have to Ness Investment Co., an Arizona corporation, is that they arose out of the tangled business affairs of Ness and Creighton. We see this as did the IRS, as a personal business loan from Ness to Creighton that became worthless in 1977 and properly a loss to be offset against Ness’s personal income for that year.

The Commissioner no longer contests Appellant’s claim that a loan made to W. A. Colpa became a \$24,000 business bad debt loss in 1977.

The \$20,675.30 loan made to Russell Zimpel, evidenced by a promissory note, became due and uncollectible in 1975. The loss deduction should therefore be taken in 1975, not 1974, as claimed by Appellant.

After litigation in Arizona courts, it was determined that Ness owed Greater Arizona Realty a brokerage commission of \$25,000 plus interest arising out of a 1969 land exchange agreement with Daid Hvidsten. In 1978, nine years later, Ness paid \$39,001.24 to Greater Arizona Realty as partial satisfaction of a judgment for this brokerage commission. The interest portion of this payment is deductible, but the principal portion should be added to the basis of the land received in the 1969 exchange.

As part of the land exchange agreement between Ness and David C. Hvidsten and companies owned by Hvidsten, Ness received a Promissory note for \$467,717 dated February 28, 1969. Under the terms of the note, Ness agreed that the annual interest and principal installments could be paid in the form of land contracts or mortgage notes which were to be applied as payments to the extent of their full unpaid face value. All of the payments received by Ness on the Hvidsten note during 1974 through 1978 were in the form of land contracts and mortgage notes. Although Ness had to give full face value credit to Hvidsten for these contracts and mortgage notes, they actually had a lesser market value.

Ness now argues that the interest he received and reported as income on this note during 1974 through 1978 was too high and should be reduced to the actual market value of the property, i.e. contracts and mortgages, received and applied to interest. We agree. This is consistent with the federal income tax rule that property other than cash received in payment for services should be taxed as income only to the extent of its fair market value. Internal Revenue Code Sec. 83; Reg § 1.61-2(d). Presumably this will lower the basis of these contracts for capital gains or losses but that issue is not before us at this time. To hold otherwise would be to tax Ness on interest income not actually received either in cash or its equivalent.

We also find that during this period Ness was actively engaged in handling his various investments which in Arizona and Colorado consisted of intangible assets such as interest bearing notes, mortgages and contracts. Attorneys fees and travel related to this income producing activity are properly deductible as reasonable and necessary business expenses. Business travel to Minnesota primarily to handle his business operations and investments in this state should also be allowed as a business expense.

The Commissioner’s Order of September 15, 1980 should be amended accordingly.

E.B.G.

SUPREME COURT

Decisions Filed Friday, July 23, 1982

Compiled by John McCarthy, Clerk

81-713 *State of Minnesota v. Elio Miguel Rivera Marquetti, Appellant. Hennepin County.*

Defendant, charged with aggravated robbery, was not denied a fair trial by (a) admission of evidence that he was arrested a year earlier for possession of a gun which was different from but similar to the gun used in the robbery or (b) by certain statements made by the prosecutor in closing argument.

State failed to meet its burden of proving that foreign conviction could be used in computing defendant's criminal history score.

Convictions affirmed; sentence reduced. Otis, J.

81-1021 *Ralph Kern, et al., v. Steele County, Steele County Department of Social Services, and Western Casualty and Surety Company, Appellant, Christine Ann Born, et al. Steele County.*

Foster parents are not county employees for purposes of a county liability policy covering the county and "any employee."

Reversed. Otis, J. Dissenting, Wahl, J., Todd, J., and Yetka, J.

81-1052 *Richard Cardenas, Appellant, v. Ramsey County and Special Care Associates, Inc., Defendants, David O'Connor, intervenor. Ramsey County.*

In the absence of an explicit agreement, in writing or entered on the record before the trial court at the time a structured settlement is completed, providing that an attorney shall receive his entire compensation for his services in procuring the settlement from the front money paid thereunder, a contingent fee contract which provides that his fees are to be one-third "of the total amount recovered" will be construed to provide that the attorney will receive one-third of each payment received by his client under the settlement as and when he receives it.

Affirmed in part; reversed in part. Otis, J.

81-1075, 81-1092 *Bruce A. Brown, et al., Relators, 81-1075 Commissioner of Revenue, Thomas J. Pollock, Relator, 81-1092 v. Commissioner of Revenue. Tax Court.*

The statute of limitations set out in Minn. Stat. § 297A.34, subd. 1 (1980) does not bar collection of a use tax from a consumer beyond the three year time limit provided therein when the consumer did not pay a use tax on the item at the time of purchase and did not file a consumer's use tax return.

When the original Tax Court judge has retired from the bench another judge regularly sitting in or assigned to the court has the power to review and amend conclusions of law.

Affirmed. Otis, J.

81-773 *State of Minnesota v. James Edward Lee, Appellant. Washington County.*

Trial court in murder prosecution did not prejudicially err in denying motion to prohibit impeachment use of defendant's prior conviction for murder.

Trial court did not err in admitting evidence that murder victim had been honorably discharged from the military service, had obtained college credits, and was a father.

Affirmed. Peterson, J.

81-991 *Dorothy Kurrell v. National Con Rod, Inc., et al., Relators. Workers' Compensation Court of Appeals.*

Workers' Compensation Court of Appeals correctly held that voluntarily relocated employee is eligible for rehabilitation benefits under Minn. Stat. § 176.102 (1980), despite employee's refusal of offer of reemployment, where employee's relocation was not part of plan to retire from labor market.

Affirmed and remanded. Peterson, J.

81-745 *Wallace C. Halverson v. Larrivy Plumbing & Heating Co., et al. Relators, and A. G. O'Brien Plumbing & Heating Co., et al., and Travelers Insurance Co., intervenor. Workers' Compensation Court of Appeals.*

In occupational disease cases, for the last employer to be held liable for compensation benefits, the employment must have been a substantial contributing cause of the disease.

The record supports a finding that the second-to-the-last employer was liable for compensation benefits for employee suffering from asbestosis where the last employment was not a substantial contributing cause of the disease.

Affirmed. Todd, J. Took no part, Peterson, J.

81-768 *Grace M. Busse, etc., v. Quality Insulation Company, et al., Relators, Quality Insulation Company, et al., McArthur Insulation Company, et al., Hickory Insulation Company, et al., Armstrong Cork & Supply Co., et al., Paul W. Abbott Insulation Company and unknown, Federal Army Cartridge Corp., et al., Asbestos Products Company, et al., Edward H. Anderson Insulation Co., et al., Brand Insulation Company, et al., Defendants, and Equitable Life Assurance Society, intervenor, and State Treasurer, Custodian of the Special Compensation Fund. Workers' Compensation Court of Appeals.*

Evidence is insufficient to support finding that employee's exposure to asbestos during a two-month period was a substantial contributing cause of his death from lung cancer and therefore the employer for whom he worked at that time is not liable for compensation benefits.

Reversed and remanded. Todd, J. Took no part, Peterson, J.

46830, 81-815 *State of Minnesota v. George Hatcher, Appellant. Hennepin County.*

Where exigent circumstances exist, a warrantless arrest in a felony suspect's home is not illegal.

The failure of the trial court to instruct the jury on Minn. Stat. § 611.02 under the facts and procedural circumstances of this case is not reversible error.

Nor did the trial court err in refusing to submit the charge of second-degree murder to the jury when the evidence would not support such a charge.

Affirmed. Scott, J. Took no part, Peterson, J.

81-1088 *David H. Blattner, et al., Appellants, v. Gerald Forster, et al., Janet M. Van Keulen, Defendant. Stearns County.*

Summary judgment was appropriate where contract was unambiguous.

Trial court did not abuse its discretion in awarding attorneys' fees under Minn. Stat. § 549.21 (1980).

Affirmed. Scott, J. Dissenting, Yetka, J.

81-1362 *State of Minnesota v. Michael Allen Jensen, Appellant. Hennepin County.*

Evidence of defendant's guilt of criminal sexual conduct in the first degree, Minn. Stat. § 609.342(c) (1980), was sufficient.

Affirmed. Scott, J.

81-249 *State of Minnesota v. Ronald Vincent Johnson, Appellant. Crow Wing County.*

Trial court did not err in admitting other-crime evidence.

Evidence was sufficient to establish attempted second-degree murder.

Defendant's sentence for attempted second-degree murder is reduced.

Convictions affirmed; sentence reduced. Wahl, J.

81-1110 *State of Minnesota v. Walter Douglas Heinkel, Appellant. Hennepin County.*

Identification procedures used by police did not create very substantial likelihood of irreparable misidentification; by failing to raise issue until after trial, defendant forfeited right to have this court consider his claim on appeal that lineup was conducted in violation of his right to counsel.

Record on appeal does not support defendant's contention that trial counsel failed to adequately and effectively represent him.

Particularly cruel way in which defendant committed offenses justifies doubling of length of presumptive sentence.

Convictions affirmed; remanded for resentencing. Wahl, J.

81-955 *In the Matter of the Petition for Disciplinary Action against Harold D. Kimmel, Jr., a Minnesota Lawyer. Supreme Court.*

Per Curiam. Concurring Specially, Peterson, J.

Decision Filed Wednesday, July 14, 1982

82-175 *State of Minnesota v. Francis J. Cain, Appellant. Ramsey County.*

Postconviction court properly denied petition seeking resentencing according to the Minnesota Sentencing Guidelines.

Affirmed. Amdahl, C. J.

SUPREME COURT

Decisions Filed Friday, July 16, 1982

82-217 Elmer Lee Rupert, Appellant, v. State of Minnesota. Itasca County.

Postconviction court properly denied petition seeking resentencing according to the Minnesota Sentencing Guidelines.

Affirmed. Amdahl, C. J.

82-378 Wallace E. Hamling, petitioner, Appellant, v. State of Minnesota. Ramsey County.

District court properly denied postconviction petition for resentencing according to the Minnesota Sentencing Guidelines where petitioner failed to meet his burden of proving that his early release from sentences would not present a danger to the public and would not be incompatible with the welfare of society.

Affirmed. Amdahl, C. J.

82-414 State of Minnesota v. Richard Keith King, petitioner, Appellant. St. Louis County.

Postconviction court properly denied petition seeking resentencing according to the Minnesota Sentencing Guidelines.

Affirmed. Amdahl, C. J.

82-443 Gordon R. Jones, petitioner, Appellant, v. State of Minnesota. Hennepin County.

District court properly denied postconviction petition for resentencing according to the Minnesota Sentencing Guidelines.

Affirmed. Amdahl, C. J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant 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.

Department of Corrections

Notice of Request for Proposals to Provide Advocacy and Education for Battered Women in the Native American Community

Notice is hereby given that the Department of Corrections intends to engage the services of grantees to provide direct advocacy for battered women, education on issues of battering, violent partner programs, and/or development of a system of advocates in the Native American Community.

A maximum of \$58,000 will be available in the form of grants. Most likely three or four projects will be funded at approximately \$15,000-\$20,000 each. However, organizations are encouraged to ask for less or more up to the entire amount depending on the budget necessary for the type of project proposed. Proposals must be received by September 10, 1982.

Direct inquiries to:

Maggie Arzdorf-Schubbe, Director
Battered Women's Program
Minnesota Department of Corrections
430 Metro Square Building
St. Paul, Minnesota 55101
612/296-6463

Department of Education Vocational-Technical Division

Notice of Request for Proposals for Data Processing Services

The Operational Services Section of the Division of Vocational-Technical Education is seeking proposals to complete the development of a postsecondary vocational student system. The system covers the areas of application, enrollment, attendance, maintenance and general, and history. Work that remains to be completed includes approximately 25% of the programming, 25% of the administrative and computer procedures, system test, and pilot test. The project should be completed by April 1, 1983.

The formal RFP may be requested and inquiries should be directed to:

Ronald C. Dreyer, Management Information Specialist
Operational Services Section
Vocational-Technical Education Division
Department of Education
Room 551, Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2421

It is anticipated that the cost of services to be provided including expenses will be approximately \$90,000. The deadline for the submission of completed proposals will be the end of the working day on August 24, 1982.

A meeting to answer any questions which prospective responders may have will be held during the first week of August.

Department of Public Welfare Income Maintenance Bureau

Notice of Request for Proposals for Project Management Services

The Minnesota Department of Public Welfare, Income Maintenance Bureau, requests contract proposals for Project Management for the Medicaid Voucher Demonstration Project. This project is designed to test the impact of a competitive health care system on the cost and utilization of a publically financed program for welfare recipients in Minnesota.

Projected dates for the contract extend from October 1, 1982 through July 31, 1984. The estimated amount of the contract will not exceed \$200,000.

The guidelines to be used in the preparation of a proposal and a detailed description of the project are available from the Income Maintenance Bureau, Department of Public Welfare. Deadline for receipt of proposals is 4:30 p.m., Wednesday, August 25, 1982. To obtain a copy of the detailed proposal, write or call

Robert G. Meyer
Department of Public Welfare
Income Maintenance Bureau
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 297-2670

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, 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.

Department of Commerce Banking Division

Bulletin No. 2625: Maximum Lawful Rate of Interest for Mortgages and Contracts for Deed for the Month of August 1982

Notice is hereby given that pursuant to Minnesota Statutes § 47.20, subd. 4a (1980), the maximum lawful rate of interest for conventional home mortgages for the month of August 1982 is sixteen and three-quarters (16.75) percentage points. Further, pursuant to Minnesota Statutes § 47.20, the maximum lawful rate of interest for contracts for deed for the month of August 1982 is sixteen and three-quarters (16.75) percentage points.

It is important to note that this maximum lawful interest rate does not apply to all real estate loans and contracts for deed. Under Minnesota's interest rate moratorium, which is identical to the Federal Usury Preemption, in most instances any rate may be charged on real estate mortgages and contracts for deed that constitute first liens.

This is based on the Federal National Mortgage Association (FNMA) July 19, 1982, auction results and an average yield for conventional mortgage commitments of 16.527%. Current rates regarding the monthly publication are available by telephoning the Banking Division's 24-hour information number (612) 297-2751.

July 21, 1982

Michael J. Pint
Commissioner of Banks

Department of Economic Security Training and Community Services Division

Notice of Public Comment Period and Hearing on Proposed State Plan for the Minnesota Energy Assistance Program—1983

Notice is hereby given that a public comment period on the above-entitled matter will begin upon publication of this notice and will close after thirty (30) days at 4:30 p.m., Wednesday, September 1, 1982.

All interested or affected persons will have an opportunity to comment concerning the proposed State Plan for the Minnesota Energy Assistance Program—1983. Copies of the State Plan will be available at public libraries; a single copy may be obtained by writing to:

R. Jane Brown, Director
Minnesota Energy Assistance Program
690 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Notice is hereby given that public hearings on the above-entitled matter will be held at:

City	Hearing Site & Address	Time	Date
Duluth	Duluth Public Library, 520 W Superior St., Green Room	7-9 p.m.	8/23
Marshall	Southwest State University, Room L.C. 217	7-9 p.m.	8/23
Virginia	Arrowhead Economic Opport. Agency, 6th St & 3rd Ave. S.	7-9 p.m.	8/24
Mankato	Regional Library, 100 E. Main	7-9 p.m.	8/24
Bemidji	J.W. Smith Elementary School Aud., 18th & Minnesota	7-9 p.m.	8/25
Rochester	Salvation Army, 20 First Avenue N.E.	7-9 p.m.	8/25
Brainerd	Crow Wing Cty. Service Bldg., 326 Laurel, Mtg. Room 1	7-9 p.m.	8/26

Mora	Kanabec County Museum, West Forest Avenue	7-9 p.m.	8/26
Montevideo	Chippewa Cty. Court House, Assem. Rm, 11th & Washington	7-9 p.m.	8/26
Crookston	1st National Bank, 201 N. Broadway	7-9 p.m.	8/30
Willmar	Municipal Utilities Aud., 700 W. Litchfield Ave.	7-9 p.m.	8/30
Fergus Falls	Ottertail Cty. Govt. Service Bldg., 505 South Court	7-9 p.m.	8/31
St. Cloud	St. Cloud City Hall Annex, Downtown	7-9 p.m.	8/31
St. Paul	State Office Bldg., Auditorium, 435 Park Street	2-4 & 7-9 p.m.	8/31

Oral and written testimony may be submitted at the hearing. In addition, written testimony will be accepted at the above address until 4:30 p.m., Wednesday, September 1, 1982. All comments will be considered by the Department of Economic Security, Office of Energy Assistance.

Department of Energy, Planning and Development Energy Division

Recertification of the Sherburne County Generating Unit No. 3 as Proposed by Northern States Power Company, Southern Minnesota Municipal Power Agency, and United Minnesota Municipal Power Agency, Joint Applicants

Notice of Deadline for Public Comments

The hearing examiner has designated August 13, 1982, as the last day for the public to submit comments regarding the need for the Sherco 3 power plant. (Comments must be received by the hearing examiner on or before that date.) Comments should be sent to Phyllis Reha, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415.

July 19, 1982

David L. Jacobson, Manager
Certificate of Need Program

Department of Finance

Notice of Maximum Interest Rates for Municipal Obligations

Pursuant to Laws of Minnesota 1982, Chapter 523, Commissioner of Finance, Allan L. Rudell, announced today that the maximum interest rate for municipal obligations in the month of August will be fourteen (14) 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 fifteen (15) percent per annum.

The maximum interest rate for obligations authorized by resolution prior to April 1, 1982 shall be twelve (12) percent per annum.

Department of Public Safety Fire Marshal Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Markings on Vehicles Carrying Compressed Gas in a Concealed Tank

Notice is hereby given that the State Department of Public Safety is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing the vehicle identification and marking of the location of concealed tanks containing liquefied petroleum gas or natural gas fuel.

The promulgation of these rules is authorized by Laws of 1982, Chapter 617, § 8, which requires the agency to specify requirements for the symbol or letters to be used to identify the location of concealed tank.

The State Department of Public Safety requests information and comments concerning the subject matter of these rules.

OFFICIAL NOTICES

Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Wes Werner
State Fire Marshal
1246 University Ave.
St. Paul, MN 55155

Oral statements will be received during regular business hours over the telephone at 296-7641 and in person at the above address.

All statements of information and comment shall be accepted until August 23, 1982. Any written material received by the State Department of Public Safety shall become part of the record in the event that the rules are promulgated.

John P. Sopsic
Commissioner of Public Safety

Department of Transportation

Amended Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under Minn. Stat. § 169.832

Order No. 66920

Whereas, the Commissioner of Transportation has made his Order No. 66400, as amended by Orders Nos. 66446, 66550, 66628, 66690, 66768, and 66807 designating and permitting certain street and highway routes, or segments of those routes, to carry the gross weights allowed under Minnesota Statutes § 169.832, and

Whereas, the Commissioner has determined that the additional following routes, or segment of routes, should either be designated or no longer permitted to carry the gross weights allowed under Minnesota Statutes § 169.832.

IT IS HEREBY ORDERED that Commissioner of Transportation Order No. 66400 is amended effective the dates shown below by adding or removing as shown the following designated streets and highway routes, or segment of routes, as follows:

TRUNK HIGHWAYS

T.H. 14 — Remove from Jct. T.H. 74 (St. Charles) to Jct. T.H. 61 (Winona). (Effective August 9, 1982.)

COUNTY ROADS

Washington County — County Road 19A (Chemolite Road South) between T.H. 61 and the right of way and track of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in Cottage Grove. (Effective August 1, 1982.) (Twelve months.)

Winona — C.S.A.H. 54 from Jct. T.H. 61 to C.S.A.H. 32 in Goodview. (Twelve months.) (Effective August 1, 1982.)

July 26, 1982

Richard P. Braun
Commissioner of Transportation

STATE OF MINNESOTA

State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

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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:

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

Legislative Reference Library
Room 111 Capitol

Interoffice