

84 Feb. 27

STATE REGISTER

STATE OF MINNESOTA

RECEIVED

FEB 24 1984

LEGISLATIVE REFERENCE LIBRARY

STATE CAPITOL

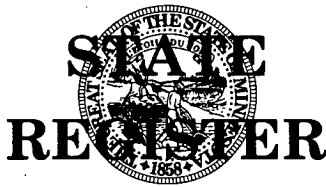
ST. PAUL, MINN. 55155



VOLUME 8, NUMBER 35

February 27, 1984

Pages 1913-1940



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 8			
36	Friday Feb 17	Monday Feb 27	Monday Mar 5
37	Monday Feb 27	Monday Mar 5	Monday Mar 12
38	Monday Mar 5	Monday Mar 12	Monday Mar 19
39	Monday Mar 12	Monday Mar 19	Monday Mar 26

*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.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 14.46. Publication is weekly, on Mondays, with an index issue in September. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$130.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$3.25 per copy.

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

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*.

Rudy Perpich
Governor

Marsha Storck
Editor

Sandra J. Hale
Commissioner
Department of Administration

Robin PanLener
Editorial Staff

Stephen A. Ordahl
Director
State Register and
Public Documents Division

Margaret Connelly
State Register Index Editor

Debbie Kobold
Circulation Manager

CONTENTS

MCAR AMENDMENTS AND ADDITIONS

Issues 27-38, inclusive 1916

EXECUTIVE ORDERS

Executive Order No. 84-2 Providing for the
Establishment of a Governor's Council on
Environmental Resources Development:
Amending Executive Order No. 83-38 1917

PROPOSED RULES

Revenue Department
Income Tax Division
Proposed Rules Relating to Income Tax:
Reciprocity with Michigan (notice of intent to
amend rule without a public hearing) 1919

ADOPTED RULES

Natural Resources Department
Fish and Wildlife Division
Adopted Rules Designating Species of Wild
Animals and Plants as Endangered, Threatened
or of Special Concern 1921

OFFICIAL NOTICES

Commerce Department
**Board of Architecture, Engineering, Land
Surveying and Landscape Architecture**
Notice of Special Meeting of Board 1922

Investment Board
Investment Advisory Council
Notice of Regular Meeting 1922

County Law Libraries
Joint Notice of Filing Fees 1922

Education Department
Division of Instruction
Availability of Federal Funds for Adult Education 1923
Availability of Federal Funds for Adult Education
Special Experimental Demonstration Projects
and Teacher Training 1924

Labor & Industry Department
Workers' Compensation Division
Outside Opinion Sought on New Rules Governing
Independent Contractor Status Criteria 1924

Public Welfare Department
Income Maintenance Bureau
Notice of Hospital Cost Index 1925

Public Welfare Department
Division of Services for the Blind
Outside Opinion Sought Concerning the Provision
of Rehabilitation Services to Blind Persons 1925

Revenue Department
Property Equalization Division
Outside Opinion Sought Regarding Proposed
Rules Governing Valuation and Assessment of
Electric, Gas Distribution, and Pipeline
Companies (Utility Companies) 1926

Transportation Department
Petition of Cottonwood County for a Variance
from State Aid Standards for Street Width 1926
Petition of the County of Clay for a Variance from
State Aid Standards for Bridge Width 1926

STATE CONTRACTS

Administration Department
Request for Proposals for Rental of Office Space 1927

Administration Department
Procurement Division
Commodities Contracts and Requisitions
Currently Open for Bidding 1927

Hennepin County
Request for Proposals for Comprehensive
Recycling Study 1929

Public Welfare Department
Chemical Dependency Program Division
Request for Proposals for Chemical Abuse and
Dependency Services in Jails 1929

Transportation Department
Aeronautics Division
**Enforcement, Inspection, Safety—Weather
Observation Program**
Request for Proposals for Weather Observation
Training 1929

SUPREME COURT

Decisions of the Court of Appeals Filed
Wednesday, February 15, 1984 1930
Decisions of the Supreme Court Filed Friday,
February 17, 1984 1930

TAX COURT

Tax Court Decisions Filed February, 1984 1932

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* and filed with the Secretary of State before September 15, 1982, are published in the *Minnesota Code of Agency Rules 1982 Reprint*. **ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES** filed after September 15, 1982, will be included in a new publication, *Minnesota Rules*, scheduled for publication in spring of 1984. In the **MCAR AMENDMENT AND ADDITIONS** listing below, the rules published in the *MCAR 1982 Reprint* are identified with an asterisk. Proposed and adopted **TEMPORARY RULES** appear in the *State Register* but are not published in the *1982 Reprint* 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:

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

The listings are arranged in the same order as the table of contents of the *MCAR 1982 Reprint*.

MCAR AMENDMENTS AND ADDITIONS

TITLE 3 AGRICULTURE

Part 1 Agriculture Department

3 MCAR §§ 1.0090-1.0100 (adopted)	1858
3 MCAR §§ 1.0129-1.0130, 1.0132-1.0133, 1.0135 [Amend] (Adopted)	1659
3 MCAR §§ 1.0389, 1.0400 [Amend] (proposed)	1561
3 MCAR §§ 1.1340-1.1348 [Temp] (adopted)	1776
3 MCAR §§ 1.4060-1.4070 [Temp] (adopted)	1857
3 MCAR §§ 2.001, L.SB 43, 3 MCAR § 2.044 (adopted)	1659
3 MCAR § 2.011 [Amend] (adopted)	1659

Part 2 Animal Health Board

3 MCAR § 2.026 (proposed)	1704
---------------------------	------

TITLE 4 COMMERCE

Part 1 Commerce Department

4 MCAR §§ 1.9140-1.9141, 1.9143-1.9147 (proposed)	1711
4 MCAR §§ 1.9260-1.9269 [Temp] (proposed)	1821
4 MCAR §§ 1.9420-1.9442 (proposed)	1568
4 MCAR §§ 1.9801-1.9810 (proposed)	1562

Part 4 Cable Communications Board

4 MCAR §§ 4.260-4.263 (proposed)	1807
----------------------------------	------

Part 7 Architecture, Engineering, Land Surveying & Landscape Architecture

4 MCAR § 7.004 (adopted)	1777
--------------------------	------

Racing Commission

4 MCAR §§ 15.001-15.050 (adopted)	1823
-----------------------------------	------

TITLE 5 EDUCATION

Part 1 Education Department

5 MCAR § 1.0790 (proposed)	1715
Part 2 Higher Education Coordinating Board	
5 MCAR §§ 2.210-2.2106, 2.2204 (proposed)	1812

TITLE 6 ENVIRONMENT

Part 1 Natural Resources Department

6 MCAR § 1.0057 [Amend] (adopted)	1858
6 MCAR § 1.2200 [Amend] (proposed)	1674
6 MCAR §§ 1.5600-1.5603 (adopted)	1921

Part 2 Energy and Economic Development

6 MCAR § 2.2501-2.2510 [Amend] (proposed)	1717
---	------

Part 4 Pollution Control Agency

6 MCAR § 4.00291 [Amend] (adopted)	1675
6 MCAR §§ 4.9100, 4.9102, 4.9104, 4.9128-4.9129, 4.9132, 4.9134-4.9135, 4.9210, 4.9214-4.9217, 4.9254-4.9255, 4.9285, 4.9289, 4.9296-4.9297, 4.9392, 4.9307-4.9308, 4.9310, 4.9314, 4.9317-4.9318, 4.9321, 4.9389, 4.9396, 4.9401, 4.9493, 4.9409, 4.9411, 4.9560 [Amend] (proposed)	1576
6 MCAR §§ 4.9701-4.9706 (adopted)	1781

Part 8 Waste Management Board

6 MCAR §§ 8.403-8.404, 8.408 [Amend] (adopted)	1876
--	------

TITLE 7 HEALTH

Part 1 Health Department

7 MCAR §§ 1.210, 1.212, 1.216 (adopted)	1625
---	------

EXECUTIVE ORDERS

7 MCAR §§ 1.651, 1.654 [Amend] (adopted).....	1821	12 MCAR §§ 2.04601-2.04606 [Temp] (proposed)	1817
7 MCAR § 1.801 [Temp] (proposed).....	1809	12 MCAR §§ 2.0481-2.0484 [Temp] (proposed)	1743
Part 5 Nursing Board		12 MCAR §§ 2.05301-2.05315 [Temp] (adopted).....	1858
7 MCAR §§ 5.4000-5.4006 (proposed).....	1731	12 MCAR §§ 2.05401-2.05403 [Temp] (extended).....	1822
TITLE 8 LABOR		12 MCAR §§ 2.05501-2.05509 [Temp], 2.04422 [Temp] (extended).....	1822
Part 1 Labor and Industry		12 MCAR § 2.164 [Temp] (extended)	1823
8 MCAR § 1.7001 (adopted)	1738	12 MCAR § 2.200 [Amend] (proposed)	1589
8 MCAR §§ 1.7220, 1.7240, 1.7243, 1.7245 (proposed)	1814	Part 3 Housing Finance Agency	
8 MCAR §§ 1.8003-1.8004, 1.8006-1.8007 [Amend] (proposed).....	1657	12 MCAR §§ 3.002 [Temp], 3.055 [Temp]-3.057 [Temp] (extended).....	1659
8 MCAR §§ 1.9001-1.9010 [renumbered 1.9050-1.9059]	1898	12 MCAR §§ 3.058-3.061 [Temp] (extended).....	1858
8 MCAR §§ 1.9001-1.9025 [Amend] [Temp] (adopted).....	1821	12 MCAR §§ 3.160-3.165 [Temp] (extended).....	1858
8 MCAR §§ 1.9050-1.9059 (adopted).....	1898	TITLE 13 TAXATION	
RS 1, 14, 15, 17-19 (adopted).....	1777	Part 1 Revenue Department	
TITLE 11 PUBLIC SAFETY		13 MCAR § 1.2220 (proposed)	1896
Part 1 Public Safety Department		13 MCAR § 1.6004 [Amend] (proposed)	1919
11 MCAR §§ 1.8025, 1.8058, 1.8084 (proposed)	1893	TITLE 14 TRANSPORTATION	
TITLE 12 SOCIAL SCIENCE		Part 1 Transportation Department	
Part 2 Public Welfare Department		14 MCAR § 1.5032 (adopted)	1603
12 MCAR §§ 2.0300-2.0304 [Temp] (adopted).....	1858		

EXECUTIVE ORDERS**Executive Order No. 84-2****Providing for the Establishment of a Governor's Council on Environmental Resources
Development; Amending Executive Order No. 83-38**

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

WHEREAS, Minnesotans take pride in their state and have an active concern for maintaining and improving its ecological and economic environment; and

WHEREAS, it is recognized that quality environment and a genuine commitment to sound resource utilization will provide a more favorable climate for business enterprise in the state; and

WHEREAS, there is an increasing awareness on the part of individuals and organizations of the need to take greater responsibility for their environment; and

WHEREAS, an organized program of resource recycling and community revitalization would greatly enhance efforts already underway that emphasize our quality of life; and

WHEREAS, efforts to facilitate and encourage public and private initiatives in these areas are both promising and beneficial; and

WHEREAS, many of the activities dealing with the environment by the Governor's Quality Environment Program are directly or indirectly related with the goals of the Department of Energy and Economic Development;

EXECUTIVE ORDERS

NOW, THEREFORE, I order:

1. The transfer of the personnel and activities of the Governor's Quality Environment Program to the Department of Energy and Economic Development, pursuant to Minnesota Statutes 15.0593 and other applicable statutes.

2. The establishment of the Governor's Council on Environmental Resources Development, pursuant to Minnesota Statutes 15.0593 and other applicable statutes.

a. The Council shall be composed of fifteen (15) members appointed by the Governor who shall be experienced or interested in resource recycling, community revitalization, or any other activities compatible with the aims of this Executive Order.

b. The chairperson of the Council shall be appointed by the Governor from among the members.

c. The Commissioners of Agriculture, Education, Natural Resources, Transportation, Energy and Economic Development, and State Planning, and the Executive Director of the Pollution Control Agency, or their designees, are hereby instructed to work with the Council to accomplish its aims set forth below.

d. Members of the Council shall not receive per diem, but may be reimbursed for travel and other ordinary and necessary expenses.

2. The appointment of an Executive Director, to serve at the pleasure of the Governor, to coordinate the activities of this Council.

3. The Executive Director, with the Council as advisors, is charged as follows:

a. To identify and find ways to coordinate and make more effective existing and proposed programs for recycling.

b. To identify and find ways to coordinate and make more effective existing and proposed programs for community revitalization.

c. To identify and find ways to coordinate and make more effective existing and proposed programs of public information and awareness in these areas.

d. Where necessary to meet identified needs in these areas, to recommend additional programs to augment those already existing or proposed.

e. To coordinate and encourage efforts in both the public and private sector to plant trees, for aesthetic enjoyment and for economic benefit, by maintaining and increasing the urban forest.

f. To plan, organize, coordinate, and direct a Keep Minnesota Beautiful Program, and to recommend steps to make this program a continuing effort.

g. To implement the recommendations in the Report to the Governor and Legislature issued February 1, 1984.

4. The Executive Director, with the Council as advisors, is authorized to solicit, receive, and disburse, on behalf of the state, funds to further the purposes for which it is established. These funds shall be transferred to the State Department of Energy and Economic Development's Gift Fund Account and/or Seminar Account.

5. The Executive Director and/or chairperson, may appoint advisory committees composed of individuals who have interest or expertise to assist in its work. Such appointees shall receive no reimbursement.

PROPOSED RULES

6. The Executive Director may, subject to the availability of funds, contract with such individuals and organizations as may be able to assist in carrying out the duties of the Council.

Pursuant to Minnesota Statutes 1982, Section 4.035, this Order shall be effective 15 days after publication in the *State Register* and filing with the Secretary of State and shall remain in effect until rescinded by proper authority or it expires in accordance with Section 4.035, Subdivision 3.

IN TESTIMONY WHEREOF I have set my hand this 3rd day of February, 1984.



PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, 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 §§ 14.13-14.20 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. § 14.29, 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 Revenue
Income Tax Division****Proposed Rules Relating to Income Tax; Reciprocity with Michigan****Notice of Intent to Amend a Rule without a Public Hearing**

Notice is hereby given that the Department of Revenue proposes to amend 13 MCAR Section 1.6004, Minnesota Gross Income for Individuals Who Are Part-Year Residents or Nonresidents of Minnesota (Federal Adjusted Gross Income), without

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

a public hearing. The commissioner of revenue has determined that the proposed amendment of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.21 to 14.28.

13 MCAR Section 1.6004 deals with Minnesota gross income for individuals who are part-year residents or nonresidents of Minnesota. Minnesota Statutes, Section 290.081(a) excludes from gross income the compensation received for the performance of personal or professional services within this state by an individual who resides and has his place of abode and place to which he customarily returns at least once a month in another state to the extent such compensation is subject to an income tax imposed by the state of his residence; provided that such state allows a similar exclusion of compensation received by residents of Minnesota for services performed in that other state. Under Minnesota Statutes, Section 290.081(c) the commissioner of revenue of the State of Minnesota has entered into a reciprocal tax agreement with the commissioner of revenue of the State of Michigan. This agreement was made applicable with respect to the taxation of net income for taxable years beginning on or after January 1, 1984 and with respect to withholding tax, effective January 1, 1984. Pursuant to the agreement, Michigan will forego taxation of compensation from personal services performed in Michigan, by natural persons domiciled in Minnesota who customarily return to their place of abode in Minnesota at least once a month and Minnesota will forego taxation of compensation from personal services performed in Minnesota, by natural persons domiciled in Michigan who customarily return to their place of abode in Michigan at least once a month. The commissioner is therefore proposing an amendment to 13 MCAR Section 1.6004 F. to include the State of Michigan.

Persons interested in this amended rule shall have 30 days to submit comments on the proposed amended rule. The proposed amended 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 amended rule.

Unless seven or more persons submit written requests for a public hearing on the proposed amended 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, Sections 14.13 to 14.20.

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

Mr. John P. Malach, Jr.
Attorney, Income Tax Administration
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
(612) 296-3439

Authority for the amending of this rule is contained in Minnesota Statutes, Sections 290.52 and 290.081(c). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of the amended rule and identifies the data and information relied upon, to support the proposed amended rule, has been prepared and is available from Mr. Malach upon request.

Upon adoption of the final rule without public hearing, the proposed amended rule, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final amended 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 amended rule, as proposed for adoption, should submit a written statement of such request to Mr. Malach.

The entire text of the proposed amended rule is attached to this Notice.

February 13, 1984

Arthur C. Roemer
Commissioner of Revenue

Rules as Proposed

13 MCAR § 1.6004 Minnesota gross income for individuals who are part-year residents or nonresidents of Minnesota (Federal Adjusted Gross Income).

A.-E. [Unchanged.]

F. Minnesota gross income does not include personal or professional service income earned in Minnesota by a resident of Wisconsin ~~or~~, North Dakota ~~who~~, or Michigan. A resident of North Dakota or Michigan can use this provision only if the resident customarily returns at least once a month to their residence in that state. Wisconsin ~~and~~, North Dakota, and Michigan are the only ~~two~~ three states that have reciprocity exclusion agreements with the State of Minnesota. The income subject to

reciprocity exclusion is compensation for the performance of personal or professional services which the taxpayer personally renders. It is not enough to employ others to render these services.

I.-e. [Unchanged.]

G.-H. [Unchanged.]

Effective date. This rule is effective for taxable years beginning after December 31, 1983.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 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. Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

**Department of Natural Resources
Fish and Wildlife Division****Adopted Rules Designating Species of Wild Animals and Plants as Endangered,
Threatened or of Special Concern**

The rules proposed and published at *State Register*, Volume 8, Number 18, pages 995-1004, October 31, 1983 (8 S.R. 995) are adopted as proposed.

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

OFFICIAL NOTICES

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 Board of Architecture, Engineering, Land Surveying and Landscape Architecture

Notice of Special Meeting of Board

The Board of Architecture, Engineering, Land Surveying and Landscape Architecture will meet Friday, March 2, 1984 at 9:30 A.M. in Hearing Room A, Department of Commerce, Fifth Floor, Metro Square, St. Paul.

State Board of Investment Investment Advisory Council

Notice of Regular Meeting

The State Board of Investment will meet on Wednesday, March 7, 1984 at 9:00 A.M. in Room 118, State Capitol.

The Investment Advisory Council will meet at 7:30 A.M. on Tuesday, March 6, 1984 in the MEA Building Conference Room, 41 Sherburne, Saint Paul.

County Law Libraries

Joint Notice of Filing Fees

Pursuant to Minn. Stat. 140.422 (140.421 for Hennepin and Ramsey Counties) the following County Law Libraries announce the Law Library fees to be collected in the district, county, municipal, probate and conciliation courts of their respective counties.

Pursuant to Minn. Stat. 140.422 subd. 4, for counties other than Hennepin and Ramsey, fees shall be in effect until July 1, 1985.

COUNTY	Civil Suits		Probate Petitioner	Conciliation		Criminal Conviction	Misd./Traffic Conviction
	Pl.	Def.		Pet.	Resp.		
Aitkin	\$ 5	\$ 5	\$ 5	\$ 5	\$ 5	\$—	\$—
Beltrami	5	5	5 ¹	5	5	3	3
Big Stone	5	5	—	—	—	5	5
Brown	5	5	5	5	5	—	—
Cass	5	5	5	5	5	—	—
Clay	10	10	10	5	5	10	5
Clearwater	5	5	5	1	1	3	3
Cook	5	5	5	5	5	2	2
Cottonwood	5	5	5	5	5	—	—
Crow Wing	5	5	5	5	5	—	—
Dakota	5	5	5	—	—	—	—
Fillmore	5	5	5	5	5	—	—
Freeborn	10	10	10	5	5	10	10
Goodhue	5	5	5	5	5	—	—
Grant	5	5	5	5	5	5	5

COUNTY	Civil Suits		Probate Petitioner	Conciliation		Criminal Conviction	Misd./Traffic Conviction
	Pl.	Def.		Pet.	Resp.		
Hubbard	\$ 5	\$ 5	\$ 5	\$ 5	\$ 5	\$ 5	\$ 5
Isanti	5	5	5	3	3	—	—
Jackson	5	5	5	5	5	—	—
Kittson	5	5	5	5	5	5	5
Koochiching	5	5	5	5	5	5	5
Lake of the Woods	5	5	5	5	5	—	—
Lyon	5	5	5	5	5	—	—
Mahnomen	5	5	5	1	1	—	—
Martin	5	5	5	5	5	—	—
Mille Lacs	7	7	7	2	2	2	2
Mower	5	5	5	5	5	—	—
Nicollet	5	5	5	5	5	1	1
Nobles	5	5	5	1	1	1	1
Norman	5	5	5	—	—	—	—
Otter Tail	5	5	5	—	—	—	—
Pennington	5	5	5	5	5	5	5
Pipestone	5	5	5	1	1	—	—
Ramsey ²	7	7	7 ³	—	—	—	—
Red Lake	5	5	5	5	5	5 ⁴	5 ⁴
Scott	5	5	5	—	—	—	—
Sherburne	5	5	5	3	3	—	—
Sibley	7	7	7	7	7	—	—
Swift	7	7	7	7	7	2	2
Todd	10	10	10	5	5	10 ⁵	3 ⁷
Traverse	5	5	—	—	—	5	5
Washington	5	5	5	—	—	—	—
Watonwan	5	5	5	—	—	—	—
Wilkin	5	5	5	1	1	5	5
Wright	5	5	5	3	3	—	—

- NOTES: ¹ Beltrami County Law Library probate fees are charged only on formal proceedings and determination of descent.
² Ramsey County Law Library fees were increased effective January 1, 1984.
³ No Ramsey County Law Library fee on guardianship or conservatorship petitions.
⁴ Red Lake County Law Library fees do not apply to petty misdemeanors.
⁵ Todd County Law Library fee for gross misdemeanors and felonies.
⁶ Todd County Law Library fee for misdemeanors.
⁷ Todd County Law Library fee for petty misdemeanors.

**Department of Education
 Division of Instruction**

Availability of Federal Funds for Adult Education

The Minnesota Department of Education announces the availability of funds to conduct Adult Education under Public Law 91-230, as amended.

The purpose of Public Law 91-230 is to expand educational opportunities for adults and to encourage the establishment of programs of adult education that will:

- “(1) enable all adults to acquire basic skills necessary to function in society,
- (2) enable adults who so desire to continue their education to at least the level of completion of secondary school, and
- (3) to make available to adults the means to secure training that will enable them to become more employable, productive, and responsible citizens.”

OFFICIAL NOTICES

Applications for grants to carry out the purposes of this Act may be submitted by local educational agencies and by public or private non-profit agencies, organizations and institutions.

Application procedures and forms may be obtained after March 1, 1984 by writing to: Community and Adult Education Section, State of Minnesota, 639 Capitol Square Building, St. Paul, MN 55101.

All applications must be delivered to the Department of Education, Community Education Section, or be postmarked, on or before June 1, 1984.

Department of Education Division of Instruction

Availability of Federal Funds for Adult Education Special Experimental Demonstration Projects and Teacher Training

The Minnesota Department of Education announces the availability of funds to conduct Special Experimental Demonstration Projects and Teacher Training under Section 310 of Public Law 91-230, whose purpose is to provide funds for:

“(1) Special projects which will be carried out in furtherance of the title and which:

(A) Involve the use of innovative methods, including methods of teaching persons of limited English speaking ability, systems, materials, or programs which may have national significance or be of special value in promoting effective programs under this title; or,

(B) Involve programs of adult education, including education of persons of limited English speaking ability, which are part of community school programs, carried out in cooperation with other federal, federally assisted, state, or local programs which have unusual promise in promoting a comprehensive or coordinated approach to the problems or people with educational deficiencies; and

(2) Training persons engaged, or preparing to engage, as personnel in program designed to carry out the purpose of this title.”

Applications for grants to carry out the purposes of this Act may be submitted by local education agencies and by public or private non-profit agencies, organizations and institutions.

Application procedures and forms may be obtained after March 1, 1984 by writing to: Community and Adult Education Section, State of Minnesota, 639 Capitol Square Building, St. Paul, MN 55101.

All applications must be delivered to the Department of Education, Community Education Section, or be postmarked, on or before June 1, 1984.

Department of Labor and Industry Workers' Compensation Division

Outside Opinion Sought on New Rules Governing Independent Contractor Status Criteria

Notice is hereby given that the Minnesota Department of Labor and Industry, Workers' Compensation Division, is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing the criteria to be used by the division in the determination of independent contractor status. The promulgation of these rules is authorized by Minn. Stat. §§ 176.012 (e), 176.041, subd. 1, and 176.83 (j) (Supp. 1983) which permit the agency to adopt rules defining independent contractors.

The Minnesota Department of Labor and Industry, Workers' Compensation Division, requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit written or oral information. Written statements should be addressed to:

Steve Keefe, Commissioner
Department of Labor and Industry
444 Lafayette Road
St. Paul, Minnesota 55101.

Any written material received by the Minnesota Department of Labor and Industry, Workers' Compensation Division, shall become part of the record in the event that the rules are promulgated.

Oral statements will be received during regular business hours over the telephone at (612) 296-2342 and in person at the above address.

Information will be accepted until April 15, 1984.

Steve Keefe
Commissioner of Labor and Industry

Department of Public Welfare Income Maintenance Bureau

Notice of Hospital Cost Index

Pursuant to 12 MCAR § 2.05401, D. 1. (Temporary) hospitals participating in the Medical Assistance and General Assistance Medical Care programs are subject to a Health Cost Index (HCI) that is to be used in the calculation of prospective inpatient hospital rates. Each hospital whose fiscal year starts during a given calendar quarter shall be notified of the HCI to be used 30 days prior to the start of that quarter. It has been determined that the HCI is 7.1% according to an independent source, Data Resources, Inc. for Health Care Costs. However, pursuant to Senate File 1234, Article 5, Section 9 (1983), the HCI is subjected to the legislatively imposed limit of 5%. Consequently the HCI is 5% for hospitals whose fiscal years begin during the calendar quarter beginning April 1, 1984.

Department of Public Welfare Division of Services for the Blind

Outside Opinion Sought Concerning the Provision of Rehabilitation Services to Blind Persons

Notice is hereby given that the Minnesota Department of Public Welfare is considering a draft rule governing the provision of rehabilitation services to blind persons, 12 MCAR § 2.176. Authority for this rule is contained in Minnesota Statute 248.07.

The rule will govern the provision of direct rehabilitative services to blind and visually handicapped persons, including program eligibility requirements, services provided, financial eligibility participation, the provision of Communication Center services, minimum standards for the completion of services, and hearings. The Business Enterprise Program is governed by rule 12 MCAR § 2.079 and is not covered by this action.

The purpose of this notice is to provide the opportunity for input from all organizations and individuals regarding this proposed draft of 12 MCAR § 2.176. Statements of information, suggestions or comments may be made orally or in writing.

Copies of the draft of the proposed rule may be obtained from and written statements of information and comment may be addressed to:

Karl W. Nitardy
Services for the Blind
1745 University Ave.
St. Paul, MN 55104

Oral statements of information and comment will be received over the telephone at (612) 296-6086 between 9:00 a.m. and 4:00 p.m. Monday through Fridays.

Statements of information and comment will be accepted until May 15, 1984. Any written material received by the Department shall become part of the hearing record. Oral statements will be considered but will not become part of the hearing record.

OFFICIAL NOTICES

Department of Revenue Property Equalization Division

Outside Opinion Sought Regarding Proposed Rules Governing Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

Notice is hereby given that the State Department of Revenue is seeking information or opinions from sources outside the agency in preparing to promulgate revised rules governing the valuation and assessment of utility companies. The promulgation of these rules is authorized by Minnesota Statutes section 270.06 (14), which permits the agency to make rules and regulations for the administration and enforcement of the property tax law.

The State Department of Revenue requests information and comments concerning the subject matter of these revised rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Ronald Cook
Property Equalization Division
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145

Oral statements will be received during regular business hours over the telephone at 612-296-5137 and in person at the above address.

All statements of information and comment shall be accepted until March 15, 1984. Any written material received by the State Department of Revenue shall become part of the record in the event that the rules are promulgated.

February 15, 1984

Lyle H. Ask, Director
Property Equalization Division

Department of Transportation

Petition of Cottonwood County for a Variance from State Aid Standards for Street Width

Notice is hereby given that the County Board of Cottonwood County has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width for a reconstruction project on CSAH 13 (13th Street) from River Road to Fourth Avenue in Windom.

The request is for a variance from 14 MCAR § 1.5032, H., 1., c., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a minimum street width of 36 feet with parking on one side instead of 46 feet with parking on two sides.

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

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

February 17, 1984

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the County of Clay for a Variance from State Aid Standards for Bridge Width

Notice is hereby given that the County Board of Clay County has made a written request to the Commissioner of Transportation for a variance from minimum design standards for bridge width on CSAH 22 over the Red River of the North approximately 4.0 miles north of Moorhead.

STATE CONTRACTS

The request is for a variance from 14 MCAR § 1.5032, H. 1. a., Rules for State Aid Operations under Minnesota Statutes, Chapters 161 and 162 (1978) as amended, so as to permit a minimum bridge width of 28 feet instead of a bridge width of 30 feet.

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

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

February 17, 1984

Richard P. Braun
Commissioner of Transportation

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.

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

Department of Administration

Request for Proposals for Rental of Office Space

The Department of Administration desires proposals for the rental of approximately 8,200 usable square feet of space comprising 2,000 square feet of office space, 3,400 square feet of lab space, 2,800 square feet of shipping, receiving, garage and storage space for the Department of Public Service; Weights and Measures Division, to be located within a designated part of the Metro area.

Contact:

Department of Administration
Real Estate Management Division
50 Sherburne Avenue, Room G-22
St. Paul, Minnesota 55155
Telephone: (612) 296-6674

Proposals must be submitted by 4:30 p.m. (CST) on Thursday, March 22, 1984.

Department of Administration Procurement Division

Commodities Contracts and Requisitions Currently Open for Bidding

Contract #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount	Contact Person
26-071-13730	Power Amplifier	Mankato Univ.	Mankato MN	Contact buyer	Don 296-3777
07-200-29166	Dosimeters	Public Safety	St. Paul MN	Contact buyer	Don 296-3777
79-600-B	Hot Plant Bituminous— Rochester	Transportation	Rochester	Contact buyer	Jim Kinzie 296-3778

STATE CONTRACTS

Contract #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount	Contact Person
79-800-B	Hot Plant Bituminous—Willmar Nursery Stock	Transportation Various	Willmar DOT	Contact buyer	Jim Kinzie 296-3778
Contract SCH.95	Wheel Bolts Bituminous Road Materials	MCF Dept. of Transportation	Stillwater MN Various	Contact buyer	Cy 296-2621
Contract 02-307-43346	Air Compressor	Admin-Plant Mgmt	St. Paul MN	Contact buyer	Dale 296-3773
79-000-41020-41013	Landscape Rakes & Disks	Transportation	Various	Contact buyer	Dale 296-3773
27-143-39712	Purchase of Word Processing System	Hibbing CC	Hibbing MN	Contact buyer	Bernadette 296-2546
Contract 79-000-41307	Air Conditioners, Window Mounted Traffic Signal Pedestal Bases	Various Transportation	Various St. Paul MN	40,000-45,000 Contact buyer	Maurie 296-3772 Jim Kinzie 296-3778
79-100-B 29-003-07044	Plant Mix Bituminous Seeds	Transportation Natural Res.	Duluth Akeley MN 56433	Contact buyer	Jim Kinzie 296-3778
Price Contract 78-550-04360 #775269	Film Transparencies Bldg Materials	Various MCF	Various Lino Lakes MN	49,000-50,000 Contact buyer	Bernadette 296-2546 Jim Kinzie 296-3778
07-700-29152 775417	Title App.	Public Safety	St. Paul MN	Contact buyer	Art 296-3742
29-000-35431 775418	1984 Summer State Park Maps	Natural Resources	St. Paul MN	Contact buyer	Art 296-3742
29-000-35430 79-000-39751	Law Enforcement Manual Addendum #1	Natural Resources Dept. of Transportation	St. Paul MN St. Paul MN	Contact buyer	Art 296-3742
79-000-41306	Soil Drilling Machine Fiberoptic Traffic Sign	Dept. of Transportation	St. Paul MN	Contact buyer	Dale 296-3773
79-000-41306	Snack Shop showcase, can pop vender, Bill changer	Dept. of Public Welfare—Services for the Blind	St. Paul MN	Contact buyer	Jim Kinzie 296-3778
55-000-87321-11-23		Various	St. Cloud MN	Contact buyer	Cy 296-3778
Contract 79-650-B 79-250-B	Cont. Data Processing Forms Brake Shoes, Drums & other Supplies Plant Mix Bituminous Hot Mix Bituminous	Various Prison & Transportation Dept. Transportation Dept. Owatonna Transportation Dept. Crookston Mn DOT Crookston	Various	830,000-850,000	Bernadette 296-2546
Contract 79-200-B 79-400-B 79-150-B 79-450-B 79-300-B	TOLUOL Hot Mix Bituminous Plant Mix Bituminous Plant Mix Bituminous Plant Mix Bituminous Plant Mix Bituminous	Transportation Transportation Transportation Transportation Transportation	Various Bemidji Detroit Lakes Virginia Morris Brainerd	23,000-25,000	Harvey 296-3779
Contract SCH.-95A 79-750-B	Joint Sealer Crackfiller Plant Mix Bituminous	Transportation Transportation Transportation	Various Various Windom	15,000-20,000	Jim Kinzie 296-3778

Hennepin County

Request for Proposals for Comprehensive Recycling Study

Hennepin County requests qualifications and proposals from source-separation consultants to conduct a comprehensive recycling study. Statements of qualifications and proposals are due on March 16, 1984. The RFQ/RFP is available from: David G. Winter, Senior Planner, Dept. of Environment and Energy, 320 Washington Avenue South, Hopkins MN 55343 (612) 935-3381.

Department of Public Welfare Chemical Dependency Program Division

Request for Proposals for Chemical Abuse and Dependency Services in Jails

The Chemical Dependency Program Division (CDPD) of the Department of Public Welfare is soliciting proposals for the provision of demonstration programs in jails approved to hold prisoners up to one year that will offer chemical abuse and dependency services to incarcerated individuals. A total of \$45,000 is available for three (3) or more grantees; no more than \$20,000 will be granted to any one individual or county. There will be no continuation or second year funding. The funded programs will begin on or about July 1, 1984 and continue for a maximum of 18 months.

All requests for further information or copies of the complete RFP form can be obtained by contacting Dorrie Hennagir at 612/296-4617.

Proposals in response to this RFP must be submitted on the CDPD grant application form. A copy of the application form can be obtained by contacting Dorrie Hennagir at the above phone number. Six copies of the proposal must be in the CDPD office, 4th Floor, Centennial Office Building, 658 Cedar, St. Paul, MN 55155, no later than 4:20PM on March 26, 1984.

Department of Transportation Aeronautics Division Enforcement, Inspection, Safety—Weather Observation Program

Request for Proposals for Weather Observation Training

This is a contract whereby the selected vendor provides aviation weather observer training to 30-35 individuals to prepare them to pass the National Weather Service exam and to make aviation weather observations at Minnesota airports. Training class dates will be at the direction of the department. A maximum of three classes will be held. Vendors must be experienced and certified aviation weather observers or meteorologists and be familiar with all aspects of the operation of Supplementary Aviation Weather Reporting Stations.

The estimated contract value is \$4,500.00.

The contact person is Roman Buettner. The telephone number is 612-296-8057.

The response deadline is March 9, 1984.

February 17, 1984

Richard B. Keinz
Assistant Commissioner
Minnesota Dept. of Transportation
Aeronautics Division

SUPREME COURT

Decisions of the Court of Appeals Filed Wednesday, February 15, 1984

Compiled by Wayne O. Tschimperle, Clerk

C9-83-1386 Gordon Petrick, Respondent, v. Transport Insurance Company, Appellant. District Court, Hennepin County.

An injury sustained by a truck driver when he slipped on oil on the trailer floor while entering the trailer to unload it resulted from the use of the truck as a motor vehicle within the meaning of Minn. Stat. § 65B.43, subd. 3 (1982), and is therefore compensable within the no-fault statute.

Affirmed. Lansing, J.

C1-83-1169 Bruce Wohlfeil and Gail Wohlfeil, Plaintiffs-Appellants, v. Murray Machinery, Inc., Defendant, Third-Party Plaintiff-Respondent. District Court, Hennepin County.

1. Viewing the evidence in the light most favorable to plaintiff, the trial court erred in directing a verdict and dismissing the action at the end of plaintiff's case since there was sufficient evidence to create a jury question on the cause of his injuries.

2. Given the broad discretion afforded trial courts on questions of expert testimony, the opinion of plaintiff's expert could be excluded for lack of foundation but not because it addressed the ultimate issue.

Reversed and remanded for a new trial on all issues.

Popovich, C.J.

C3-83-1612 Irene Fillmore and Richard Fillmore; City of St. Paul, a municipal corporation; Joan C. O'Brien, Special Representative of the Estate of John J. O'Brien, deceased; and Shelly Ann Woller, Appellants, v. Iowa National Mutual Ins. Co., Respondent. District Court, Ramsey County.

There is no duty under a homeowner's policy to defend or indemnify victims of an automobile accident, based upon negligent entrustment, supervision, or control of the driver, a minor son of the insureds.

Claims of negligent supervision and negligent entrustment are all within the ambit of the language "arising out of the use" of a motor vehicle and therefore fall within the exclusionary language of the policy.

Negligent entrustment is part of the tort of negligent use and operation of the entrusted automobile, and in this case there is no independent act that was not auto-related.

Affirmed. Wozniak, J.

C5-83-1367 Verdell Gulbranson, Respondent, v. Keith Gulbranson, Appellant. District Court, Hubbard County.

The trial court's division of the marital property was not an abuse of discretion. The record fully supported the property valuation of the trial court and its transfer of stock in a closely held corporation to the wife.

Affirmed. Lansing, J.

C5-83-1479 Frederick Marvin Hanson, petitioner, Appellant, v. State of Minnesota, Respondent. District Court, Becker County.

1. The affidavit supporting the search warrant enabled the reviewing judge to make the practical, common sense decision that there was a fair probability that the articles sought would be found in defendant's house and car.

2. Circumstantial evidence was sufficient to corroborate accomplice's testimony.

3. Where defense counsel initiates questioning concerning a prior trial of defendant, he is barred from asserting prejudice from state's questions about the trial.

Affirmed. Sedgwick, J.

Decisions of the Supreme Court Filed Friday, February 17, 1984

Compiled by Wayne O. Tschimperle, Clerk

C9-82-1507 State of Minnesota, Respondent, v. Richard Dean Wiplinger, Appellant. District Court, Crow Wing County.

Unauthorized implied admission of defendant's guilt by his trial counsel, which defendant objected to at trial, requires granting defendant a new trial.

Reversed and remanded for new trial. Amdahl, C.J.

Dissenting: Kelley, J., Peterson, J., Yetka, J., Wahl, J.

C0-83-207 County of Hennepin, Respondent, v. Leonard Levine, etc., Petitioner, and Cora Sheppo, et al., Respondents. District Court, Hennepin County.

Department of Public Welfare pass program for patients committed as mentally ill and dangerous to the public is a method of treatment rather than a type of commitment status.

Reversed. Amdahl, C.J.

C1-83-975 Mark Kayo Bixby, petitioner, Appellant, v. State of Minnesota, Respondent. District Court, Nobles County.

1. Court sentencing petitioner in 1982 for offense of receiving stolen property erred in refusing to decide whether two 1977 convictions for criminal sexual conduct in the third degree, for which petitioner was given two criminal history points, were based on a single behavioral incident; post-conviction court also erred in refusing to decide the issue.

2. Petitioner's two 1977 convictions were based on a single behavioral incident, and therefore sentencing court erred in computing petitioner's criminal history score and post-conviction court erred in refusing to correct the error.

Reversed. Amdahl, C.J.

C0-83-384 State of Minnesota, Respondent, v. David Zane Dietz, Appellant. District Court, Cottonwood County.

Trial court properly decided that aggravating circumstances were present justifying a departure as to consecutive service.

Affirmed. Amdahl, C.J.

C9-83-853 State of Minnesota, Respondent, v. Jay Wentz, Appellant. District Court, Brown County.

Trial court, in sentencing defendant for theft, had to choose between imprisoning defendant and placing him on probation; since the court chose to imprison defendant, court could not order restitution, absent an agreement by defendant to make restitution, but court could impose a fine.

Affirmed as modified. Amdahl, C.J.

C1-82-478 State of Minnesota, Respondent, v. John Cermak, Appellant. District Court, Olmsted County.

Trial court did not err in departing durationally in sentencing defendant to a total of 480 months or 40 years in prison for six convictions of criminal sexual conduct in the first degree committed on six different children.

Affirmed. Amdahl, C.J.

C2-82-361, C0-83-112 Terry Joseph Kilcoyne, petitioner, Appellant, v. State of Minnesota, Respondent. District Court, Dakota County.

Sentencing court did not err in departing durationally from the presumptive sentence.

Affirmed. Amdahl, C.J.

C4-83-646 Robin Kay Updegraff, petitioner, Respondent, v. Commissioner of Public Safety, Appellant. District Court, Hennepin County.

At hearing on petition seeking rescission of order revoking driver's license for violating Implied Consent Law, municipal court did not err in concluding that state met its burden of establishing that arrest was lawful.

Reversed and remanded. Todd, J.

C5-82-1648 James S. Krause and Stuart Krause, Respondents, v. James A. Merickel, Respondent, Clarence R. Paulson, Respondent, Otto Leader and James Davis, Respondents, James E. Ahlfs, Respondent, Mildren R. Thompson, et al., Defendants, Arthur E. Noot, Commissioner of Public Welfare, intervenor, Appellant. District Court, Otter Tail County.

1. A medical assistance lien filed by a county welfare department pursuant to Minn. Stat. § 393.10 (1982) was validly executed and filed.

2. Medical assistance payments made prior to August 1, 1975, the effective date of Act of June 2, 1975, ch. 247, § 5, 1975 Minn. Laws 699, 700, were not recoverable by the county under a lien filed in 1977.

3. In allocating the proceeds of the settlement of a tort case between joint plaintiffs, when one plaintiff's recovery is subject to a medical assistance lien, the court is required to examine the proposed allocation on an ad hoc basis and consider all of the facts and circumstances existing to determine whether the proposed allocation is unreasonable or patently arbitrary, or whether it is designed to defeat a lien for medical assistance, or whether under all of the circumstances it is reasonable and fair to all parties.

Affirmed. Kelley, J.

SUPREME COURT

C9-82-1488 State of Minnesota, Respondent, v. Ben Gissendanner, Appellant. District Court, Ramsey County.

1. Trial court did not err in refusing to let defendant represent himself, in denying motion to bar use of defendant's prior conviction to impeach him if he testified, or in refusing to submit the lesser included offense of criminal sexual conduct in the third degree.
2. Trial court was justified in departing from presumptive sentence but scope of departure was excessive.

Affirmed as modified. Scott, J.

C9-83-125 Norman Perl, Richard Hunegs, and DeParcq, Anderson, Perl, Hunegs & Rudquist, P.A., Respondents, v. St. Paul Fire and Marine Insurance Company, Appellant, and Cecelia E. Rice and Margaret R. Dunlevy, Defendants. District Court, Hennepin County.

1. Forfeiture of attorney fees to a client is an award of "money damages" against the attorney within the meaning of the attorney's liability policy.
2. A coverage exclusion in an attorney's liability policy for a "fraudulent" act or omission of the attorney does not apply to constructive fraud for breach of a fiduciary duty.
3. A coverage exclusion in an attorney's liability policy for "exemplary or punitive damages" does not apply to forfeiture of attorney fees for breach of a fiduciary duty.
4. Provisions of an attorney's liability policy, to the extent they purport to insure an attorney for forfeiture of his or her attorney fees for breach of a fiduciary duty, are contrary to public policy and of no validity; however, insofar as they afford coverage to the offending attorney's employer or partnership for vicarious liability, such provisions are not contrary to public policy and do afford valid coverage for the vicarious liability.

Affirmed in part and reversed in part. Simonett, J.

Took no part, Kelley, J., and Coyne, J.

C6-82-315 In the Matter of the Petition for Disciplinary Action against Duane Franke, a Minnesota Lawyer. Supreme Court.

Disbarred. Per Curiam.

Took no part, Coyne, J.

C2-75-46037 In the Matter of the Application of Carl Sigurd Swanson for Reinstatement as a Member of the Bar of the State of Minnesota. Supreme Court.

Petition denied. Per Curiam.

TAX COURT

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

Howard & Patricia Saaski, Appellants, v. the Commissioner of Revenue, Appellee,
Docket No. 3896

Findings of Fact, Conclusions of Law, and Order

The above entitled matter was submitted to the Honorable Carl Jensen, Judge of the Minnesota Tax Court, on a Stipulation of Facts filed on November 10, 1983. The issue in this case is whether the Appellants were entitled to claim Anselm Saaski as their

dependent and to deduct their payments of Anselm Saaski's nursing home and medical expenses on their Minnesota income tax returns for the tax years 1978, 1979, 1980 and 1981.

Donna M. Gustafson, attorney at law, appeared for Appellants.

Michele M. Mielke, Special Assistant Attorney General, appeared for Appellee.

SYLLABUS

A taxpayer cannot claim a parent as a dependent when the parent has income and assets sufficient to support himself.

FINDINGS OF FACT

1. The Appellants, Howard and Patricia Saaski, were cash-basis, calendar year taxpayers and residents of Minnesota for the 1978, 1979, 1980 and 1981 tax years.

2. On their 1978, 1979, 1980 and 1981 Minnesota income tax returns, the Appellants, Howard and Patricia Saaski, claimed dependent status and deducted medical expenses for Appellant Howard Saaski's aged father, Anselm J. Saaski. True and correct copies of Appellants' 1978, 1979, 1980 and 1981 Minnesota income tax returns are contained in the Commissioner of Revenue's return and answer on file with the Court in this case.

3. Anselm Saaski was born on April 23, 1906. He died on April 21, 1982, in Duluth, Minnesota.

4. Anselm Saaski suffered a stroke and heart attack in August, 1977. For the period from August, 1977 through April, 1982, Anselm Saaski resided at the Surf and Sands Nursing Home in Duluth, Minnesota.

5. During the year 1978 Anselm Saaski incurred nursing home and medical expenses of \$13,517.73.

6. During the year 1979 Anselm Saaski incurred nursing home and medical expenses of \$16,030.99.

7. During the year 1980 Anselm Saaski incurred nursing home and medical expenses of \$15,689.56.

8. During the year 1981 Anselm Saaski incurred nursing home and medical expenses of \$20,436.98.

9. During the years 1978 through 1981 the above nursing home and medical expenses incurred by Anselm Saaski were paid by the Appellants Howard and Patricia Saaski.

10. Anselm Saaski incurred some personal living expenses for items such as clothing or haircuts during the years 1978 through 1981 which amounted to no more than \$1,000.00 a year. These expenses were paid by Anselm Saaski.

11. Anselm Saaski's 1978 Minnesota gross income as reported on line 1 of his Minnesota income tax return was \$10,388.96.

12. Anselm Saaski's 1979 Minnesota gross income as reported on line 1 of his Minnesota income tax return was \$11,276.85.

13. Anselm Saaski's 1980 Minnesota gross income as reported on line 1 of his Minnesota income tax return was \$11,204.04.

14. Anselm Saaski's 1981 Minnesota gross income as reported on line 1 of his Minnesota income tax return was \$11,337.21.

15. During the years 1978, 1979, 1980 and 1981, Anselm Saaski made several cash loans to Appellant Howard Saaski on the following dates and in the following amounts:

<u>Date</u>	<u>Amount Loaned</u>	<u>Interest Rate</u>
April 1, 1978	\$14,100.00	8%
April 1, 1978	18,000.00	8%
April 1, 1978	20,000.00	8%
August 1, 1978	10,000.00	8%
January 1, 1979	5,000.00	8%
February 15, 1979	10,000.00	8%
March 1, 1979	1,500.00	8%
December 1, 1979	4,000.00	8%
March 1, 1980	4,000.00	8%

16. The above loans (listed in paragraph 15) from Anselm Saaski to Appellant Howard Saaski were evidenced by demand notes. Interest payments on all the notes were made at least on a yearly basis. The income listed on Anselm Saaski's 1978, 1979, 1980 and 1981 Minnesota income tax returns includes the interest payments received by him from Appellant Howard Saaski. All of these loans were made to help Appellants Howard and Patricia Saaski build a new home.

17. During the years from 1978 through 1981, Anselm Saaski made the following cash gifts to the following persons:

TAX COURT

<u>Amount of Gift</u>	<u>Recipient</u>	<u>Year Gift Given</u>	<u>Relationship of Recipient to Anselm Saaski</u>
\$3,000.00	Bruce Saaski	1978	grandson
\$3,000.00	Lynn Saaski	1978	granddaughter
\$3,000.00	Judy Saaski	1978	granddaughter
\$3,000.00	Bruce Saaski	1979	grandson
\$3,000.00	Lynn Saaski	1979	granddaughter
\$3,000.00	Judy Saaski	1979	granddaughter
\$3,000.00	Bruce Saaski	1980	grandson
\$2,000.00	Lynn Saaski	1980	granddaughter
\$3,000.00	Judy Saaski	1980	granddaughter
\$3,000.00	Bruce Saaski	1981	grandson
\$2,000.00	Lynn Saaski	1981	granddaughter
\$3,000.00	Judy Saaski	1981	granddaughter

18. Bruce Saaski, Appellants Howard and Patricia Saaski's son, lived rent-free in a house jointly owned by Anselm Saaski and Appellant Howard Saaski located at 913 East Sixth Street, Duluth, Minnesota, during 1978 through 1981 with Anselm Saaski's knowledge and consent.

19. Edwin and Esther Dahlberg, Appellant Patricia Saaski's parents, lived rent-free in a house jointly owned by Anselm Saaski and Appellant Howard Saaski located at 913 East Sixth Street, Duluth, Minnesota, during 1978 through 1981 with Anselm Saaski's knowledge and consent.

20. By orders dated April 15, 1983, the Minnesota Commissioner of Revenue disallowed the dependent status for Anselm Saaski claimed by Appellants Howard and Patricia Saaski on their 1978 through 1981 Minnesota income tax returns. By the same orders, the Commissioner of Revenue also disallowed the medical expense deductions taken by Appellants Howard and Patricia Saaski on their 1978 through 1981 Minnesota income tax returns based on their payment of Anselm Saaski's nursing home and medical expenses for those years. True and correct copies of these orders are contained in the Commissioner of Revenue's return and answer on file with the Court in this case.

21. Anselm J. Saaski was not dependent upon Appellants for the taxable years in question.

CONCLUSIONS OF LAW

1. Appellants are not entitled to claim dependent status for Anselm J. Saaski for taxable years 1978 through 1981.
2. Appellants are not entitled to a medical expense deduction for the nursing home and medical expenses of Anselm J. Saaski for the taxable years 1978 through 1981.
3. The Commissioner of Revenue's Order dated April 15, 1983, relating to taxable years 1978, 1979, 1980 and 1981 is affirmed in all respects.

IT IS SO ORDERED. A STAY OF 15 DAYS IS HEREBY ORDERED.

By the Court,

February 14, 1984

Carl A. Jensen, Judge
Minnesota Tax Court

State of Minnesota, Tax Court County of Stearns, Regular Division

Gary Messer, Appellant, v. Commissioner of Revenue, Appellee, Docket Nos. 3887, 3921

Findings of Fact, Conclusions of Law, and Order

Appeal in docket number 3887 is an appeal from the order of the Commissioner dated March 28, 1983 assessing income tax against the appellant for the years 1979 and 1981. Appeal in docket number 3921 is an appeal of the order of the Commissioner dated June 7, 1983 assessing additional income tax for 1980. The appeals in docket numbers 3887 and 3921 were consolidated for

hearing and held before the Honorable John Knapp, Chief Judge of Minnesota Tax Court on October 31, 1983 at the Stearns County Courthouse in St. Cloud, Minnesota.

Gary Messer, appeared pro se.

Neil F. Scott, Special Assistant Attorney General, appeared for the appellee.

SYLLABUS

The issue is whether payments received by the appellant in exchange for his labor or personal services is includable in Minnesota gross income under Minn. Stat. 290.01 subd. 20 and subject to Minnesota income tax.

FINDINGS OF FACT

1. The appellant is a cash basis calendar year taxpayer who resided in Minnesota during 1979 through 1981, the years in question.
2. During the years 1979 through 1981 the appellant was paid for performing personal services for Modern Farm Equipment, Inc. as follows:

1979	\$11,500
1980	\$13,021
1981	\$11,568
3. Modern Farm Equipment supplied form 1099 "non-employee compensation" to the appellant and the Commissioner of Revenue verifying the income recited in paragraph 2 above.
4. Modern Farm Equipment, Inc. withheld \$36.64 state income tax for the appellant in 1979. No state income tax was withheld in 1980 or 1981.
5. The appellant failed to file state income tax returns for 1979 through 1981.
6. On February 3, 1983 the Department of Revenue demanded the appellant file 1979 and 1981 income tax returns within 30 days. On March 28, 1983 the Department of Revenue demanded the appellant file a 1980 income tax return within 30 days.
7. The appellant failed to file his returns and on March 28, 1983 an assessment of income taxes was made for 1979 and 1981 and a return filed on his behalf under Minn. Stat. 290.47. On June 7, 1983 an assessment was made for 1980 and a return filed on behalf of the appellant under Minn. Stat. 290.47.
8. The tax assessed by the Commissioner of Revenue was as follows:

	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1979	752.00	188.00	360.18	1300.18
1980	908.00	227.00	375.26	1510.26
1981	709.00	177.25	176.71	1062.96

9. At the hearing the appellant presented no evidence to dispute the assessment and presented no evidence of allowable deductions.

CONCLUSIONS OF LAW

1. The compensation earned by the appellant in exchange for his personal services or labor performed from Modern Farm Equipment Inc. during the years 1979 through 1981 is Minnesota gross income under Minn. Stat. 290.01 subd. 20 and subject to Minnesota income tax.
2. The Commissioner's order dated June 7, 1983 assessing income tax, penalty and interest for 1980 is hereby affirmed in all respects.
3. The Commissioner's order dated March 28, 1983 assessing income tax, penalty and interest for 1979 and 1981 is hereby affirmed in all respects except that the appellant shall be allowed a credit against tax for the \$36.64 withheld by his employer in 1979.
4. Judgment shall be entered by the Clerk of District Court based upon the Order of the court together with an affidavit of the Commissioner reciting the correct tax, penalty and statutory interest computed through the date of the entry of judgment.

LET JUDGMENT BE ENTERED ACCORDINGLY.

By the Court,

February 13, 1984

John Knapp, Chief Judge
Minnesota Tax Court

**State of Minnesota, Tax Court
County of Hennepin, Regular Division**

James A. McGinley, Appellant, v. Commissioner of Revenue, Appellee, Docket No. 3882

Findings of Fact, Conclusions of Law, and Order

This is an appeal from an Order of the Commissioner dated March 21, 1983 assessing income tax for 1981. The hearing was held November 2, 1983 before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court at the Space Center in St. Paul.

James A. McGinley appeared pro se.

Neil F. Scott, Special Assistant Attorney General appeared for the appellee.

SYLLABUS

The issue in this case is whether payments received by the appellant in exchange for his labor or personal services is includable in Minnesota gross income under Minn. Stat. 290.01 subd. 20 and subject to Minnesota income tax.

FINDINGS OF FACT

1. Appellant is a cash basis calendar year taxpayer who resided in Minnesota during 1981.
2. During the year 1981 appellant was an employee of CPT Corporation. By reason of his employment appellant was paid \$26,205.00 in compensation for the taxable year 1981.
3. The appellant did not timely file a state income tax return for 1981 or apply for an extension.
4. The Department of Revenue conducted a program called "fair share" to determine the names of individuals with Minnesota addresses who had filed federal returns, but not state returns. The appellant's name appeared on the list and he was contacted in writing on February 11, 1983.
5. On March 11, 1983 appellant then filed an unsigned tax return form showing zero tax due. He also attached a letter stating that he did not believe he was subject to tax.
6. On March 21, 1983 the Department of Revenue filed a 1981 individual income tax return on behalf of the appellant showing \$1802.00 tax, \$450.50 penalty and \$441.86 interest through March 21, 1983.
7. The tax assessed by the Commissioner was based on information from the federal government and has since been verified by reviewing the W-2 statement from the appellant's employer.
8. Appellant's W-2 statement also indicates that \$1511.31 was withheld from the appellant's wages in 1981 for state income tax.
9. At the hearing the appellant did not present any evidence of itemized deductions or other changes to the assessment.

CONCLUSIONS OF LAW

1. The compensation earned by the appellant in exchange for his personal services or labor performed for CPT Corporation during 1981 is includable gross income in Minnesota under Minn. Stat. 290.01, subd. 20 and subject to Minnesota income tax law.
2. The Commissioner's order is validly computed in light of both the evidence presented at trial and the failure of appellant to introduce any proof that the assessment was incorrect.
3. The Commissioner's order herein dated March 21, 1983 is correct and proper and is affirmed in all respects, except that appellant is entitled to credit for the \$1511.31 state income tax withheld by his employer in 1981.
4. Judgment shall be entered against the appellant on the basis of this Order together with an affidavit of the Commissioner of the correct tax, penalty and interest due after allowing credit for the \$1511.31 state income tax withheld by the appellant's employer in 1981.

LET JUDGMENT BE ENTERED ACCORDINGLY.

February 13, 1984

By the Court,

John Knapp, Chief Judge
Minnesota Tax Court

STATE OF MINNESOTA

State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155
297-3000

ORDER FORM

State Register. Minnesota's official weekly publication for agency rules and notices, executive orders of the Governor, state contracts, Supreme Court and Tax Court decisions.

- _____ Annual subscription \$130.00
- _____ Trial subscription (13 weeks) \$40.00
- _____ Single copies \$3.25 each

Minnesota Guidebook to State Agency Services 1982-83 A 750-page reference guide to services provided by Minnesota agencies.

- _____ Single copy now \$4.50 + \$.27 sales tax = \$4.77* each

Minnesota Statutes Supplement—1983. Pocket inserts for Minnesota Statutes 1982 10-volume set. \$23.00 + \$1.38 sales tax = \$24.38. No handling charge.

Session Laws of Minnesota—1983. Two volumes. Laws enacted during the 1982 legislative session. Inquire about back volumes. \$34 + \$2.04 (sales tax) = \$36.04.* No handling charge.

State Register Binder. Durable 3½ inch, forest green binders imprinted with the *State Register* logo.

- _____ **State Register Binder** \$6.50 + \$.39 (sales tax) = \$6.89* each

State Register Index. Contains cumulative findings aids to Volume 7 of the *State Register*, including MCAR Amendments and Additions, Executive Orders List, Executive Orders Index, Agency Index, Subject Matter Index.

- _____ Single copy \$5.00

Worker's Compensation Decisions. Volume 36. Selected landmark decisions of the Worker's Compensation Court of Appeals. Available by annual subscription, with quarterly update service.

- _____ Annual subscription \$80.00

Minnesota Outdoors Catalog—1983. Complete listing of material on the Minnesota outdoor activities. Bikeways, canoeing, county, lake and other maps. Books, charts, rules, laws, posters and more.

- _____ **FREE COPY**

*To avoid Minnesota sales tax, please include your Certificate of Exempt Status issued by the Minnesota Department of Revenue. Please enclose full amount for items ordered. Make check or money order payable to "State of Minnesota." All orders must be paid in advance, either in person, by mail, or by phone. To order by phone, call 297-3000. Phone orders are taken only with a Mastercard or Visa charge number.

EACH ORDER MUST INCLUDE ADDITIONAL \$1.50 FOR POSTAGE AND HANDLING.

Name _____

Attention of: _____

Street _____

City _____ State _____ Zip _____

Telephone _____

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.

Session Monthly—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