Certificate

THE STATE OF MINNESOTA.

I, William B. Henderson, Revisor of Statutes, hereby certify that I have compared each of the sections printed in this book with its original section of the statutes, so far as sections printed herein were derived from those statutes; and have compared every other section printed herein with the original section in the enrolled act from which the same was derived; and have compared every section that has been amended, with all amendments thereof; and that all sections herein appear to be correctly printed.

WILLIAM B. HENDERSON,
Revisor.

APPENDICES

APPENDIX 1

SUPREME COURT OF MINNESOTA

Name	Title	Term Expires
Charles Loring	Chief Justice	1951
Julius J. Olson	Associate Justice	1947
Harry H. Peterson	Associate Justice	1951
Luther W. Youngdahl	Associate Justice	1949
Thomas Gallagher	Associate Justice	1949
Clarence R. Magney	Associate Justice	1951
Leroy E. Matson	Associate Justice	1951

COURT OFFICIALS

Grace Kaercher Davis	Clerk	1947
Mae Sherman	Deputy Clerk	
Ethel M. Martin	Court Reporter	

STATE LIBRARY

Josephine Wernicke Smith	State Librarian
Ethel Kommes	Asst. State Librarian

APPENDIX 2

DISTRICT COURTS

JUDGES

Term six years — Expires first Tuesday in January of year stated.

Dist.	Judge	Term	Post-Office	Reporter	Address
1	W. A. Schultz	1949	South St. Paul	Mabel Vanderseen	Hastings
	Charles P. Hall	1947	Red Wing	Mrs. Ethel R. Risse	Red Wing
2	James C. Michael	1947	St. Paul	Paul H. Geer	St. Paul
	John W. Boerner	1947	St. Paul	Andrew Hanson	St. Paul
	Carlton McNally	1951	St. Paul	Roy F. Morgan	St. Paul
	Kenneth Gray Brill	1949	St. Paul	Chas. P. Murray	St. Paul
	Gustavus Loevinger	1951	St. Paul	Virginia Rich	St. Paul
	Clayton Parks	1951	St. Paul	Arthur P. Moore	St. Paul
	Albin S. Pearson	1947	St. Paul	Gates McAllister	St. Paul
	Robert V. Rensch	1949	St. Paul	Eva E. Greer	St. Paul
3	Vernon Gates	1951	Rochester	Harry S. Murphy	Rochester
	Karl Finkelnburg	1951	Winona	Richard Halvorsen	Winona
4	Winfield W. Bardwell	1949	Minneapolis	Clifford H. Ward	Minneapolis
	Edmund A. Montgomery	1951	Minneapolis	William C. Ward	Minneapolis
	Frank E. Reed	1949	Minneapolis	Robert H. Biron	Minneapolis
	Arthur W. Selover	1951	Minneapolis	Frank H. Ford	Minneapolis
	Levi M. Hall	1951	Minneapolis	Frank L. Bowler	Minneapolis
	Lars O. Rue	1951	Minneapolis	P. J. Ahern	Minneapolis
	Paul S. Carroll	1949	Minneapolis	Hugh E. Flynn	Minneapolis
	Fred B. Wright	1949	Minneapolis	Ray J. Lerschen	Minneapolis
	Paul W. Guilford	1949	Minneapolis	Art Shaw	Minneapolis
	William A. Anderson	1949	Minneapolis	Chester A. Jensen	Minneapolis
	John A. Weeks		Minneapolis	Emery Caton	Minneapolis
5	Axel B. Anderson	1949	Owatonna	Frank G. Kiesler	Waseca
6	Harry A. Johnson	1951	Mankato	Alfred E. Knaub	Mankato
7	Don M. Cameron	1947	Little Falls	Eugene Diercks	Little Falls
	Anton Thompson	1951	Fergus Falls	Mrs. Maude E. Carter	Fergus Falls
	Byron R. Wilson	1949	Moorhead	W. A. Grantham	Moorhead
	J. B. Himsl	1951	St. Cloud	William J. Lerschen	St. Cloud
8	Jos. J. Moriarty	1951	Shakopee	Richard E. Brindmore	Shakopee
9	A. B. Gislason	1949	Marshall	Ina Walrath	New Ulm
	Albert H. Enerson	1951	New Ulm	Walter W. White	Marshall
10	Martin A. Nelson	1949	Austin	Julius S. Knievel	Albert Lea
11	Martin Hughes	1947	Hibbing	C. E. Dwyer	Hibbing
	Edward Freeman	1949	Virginia	Roy E. Gordon	Virginia
	Edwin J. Kenny	1949	Duluth	Edward J. Egan	Duluth
	Mark Nolan	1949	Gilbert	Winfield Thunstedt	Duluth
	William J. Archer	1951	Duluth	Lee A. LaBaw	Duluth
	Victor H. Johnson	1951	Duluth	Stanley Gilpin	Duluth
12	G. E. Qvale	1947	Willmar	Mildred Moore	Willmar
	Harold Baker	1947	Renville	O. W. Nordbye	Renville
13	Charles A. Flinn	1951	Windom	Joseph F. Dolan	Windom
14	James E. Montague	1947	Crookston	William H. Montague	Crookston
	Oscar R. Knutson	1949	Warren	Arnold Pearson	Warren
15	Graham M. Torrance	1947	Bemidji	Ferris K. Gordon	Bemidji
	J. J. Hadler		Grand Rapids	E. A. Hall	Grand Rapids
	D. H. Fullerton	1951	Brainerd	Stanley Jenson	Brainerd
16	E. R. Selnes	1949	Glenwood	Chas. McNamara	Morris
17	Julius E. Haycraft	1951	Fairmont	Harold J. Wright	Fairmont
18	Leonard Keys	1947	Columbia Heights	Gordon Griffiths	Anoka
19	Alfred P. Stolberg	1949	Center City	W. E. Maunsell	Stillwater

CLERKS

District	County	Name	Address	Term Expires
1	Dakota	Eugene Casserly	Hastings	1947
	Goodhue	Eliff W. Olson	Red Wing	1947
2	Ramsey	J. J. Fitzgerald	St. Paul	1949
3	Houston	Alvin E. Pieper	Caledonia	1947
	Olmsted	Mrs. George B. Cutting	Rochester	1947
	Wabasha	Luke C. Beaver	Wabasha	1947
	Winona	Joseph C. Page	Winona	1947
4	Hennepin	George H. Hemperley	Minneapolis	1947
5	Dodge	Harry E. Cowles	Mantorville	1947
	Rice	Elmer N. Heck	Faribault	1949
	Steele	S. C. Goff	Owatonna	1949
	Waseca	Frank S. Papke	Waseca	1949
6	Blue Earth	Harry W. Haedt	Mankato	1949
	Watonwan	Ruth S. Hutchins	St. James	1947
7	Becker	C. B. Connell	Detroit Lakes	1949
	Benton	A. J. Bible	Foley	1947
	Clay	B. B. Rusness	Moorhead	1949
	Douglas	Ed. Ormseth	Alexandria	1947
	Mille Lacs	Carl Eckdall	Milaca	1947
	Morrison	R. L. Meyers	Little Falls	1947
	Otter Tail	H. W. Glorvigen	Fergus Falls	1949
	Stearns	Chas. Schmidt	St. Cloud	1947
	Todd	Maude Gutches	Long Prairie	1949
	Wadena	Florence Claydon	Wadena	1947
8	Carver	O. L. Lundstrom	Chaska	1947

CLERKS

District	County	Name	Address	Term Expires
	LeSueur	George J. Krava	LeCenter	1947
	McLeod	Heston Benson	Glencoe	1947
	Scott	Hugo P. Hentges	Shakopee	1947
	Sibley	Grover C. Beatty	Gaylord	1949
9	Brown	Carl A. Witt	New Ulm	1947
	Lincoln	Chris Simonson	Ivanhoe	1947
	Lyon	Harris E. Persons	Marshall	1947
	Nicollet	Bessie Hughes	St. Peter	1947
	Redwood	Frank Baldwin	Redwood Falls	1949
10	Fillmore	Carl G. Johnson	Preston	1949
	Freeborn	Evan K. Wulff	Albert Lea	1949
	Mower	William P. Plzak	Austin	1947
11	Carlton	Joe P. Poirier	Cloquet	1947
	Cook	E. F. Lindquist	Grand Marais	1947
	Lake	W. F. Lawrence	Two Harbors	1949
	St. Louis	Fred D. Ash	Duluth	1949
12	Chippewa	E. H. Nelson	Montevideo	1947
	Kandiyohi	A. A. C. Bloomquist	Willmar	1947
	Lac qui Parle	Samuel O. Jarshaw	Madison	1947
	Meeker	Albert Koerner	Litchfield	1947
	Renville	H. J. Robertson	Olivia	1947
	Swift	K. J. Rodberg	Benson	1947
	Yellow Medicine	Edwy O. Dibble	Granite Falls	1947
13	Cottonwood	M. B. Severson	Windom	1949
	Murray	Fred W. Helweg	Slayton	1947
	Nobles	Stanley E. Nelson	Worthington	1947
	Pipestone	O. T. Johnson	Pipestone	1947
	Rock	Chas. W. Soutar	Luverne	1947
14	Kittson	C. A. Erickson	Hallock	1947
	Mahnomen	Camilla Hardy	Mahnomen	1949
	Marshall	A. C. Swandby	Warren	1947
	Norman	Oscar H. Nordby	Ada	1947
	Pennington	Henry Storhaug	Thief River Falls	1949
	Polk	Raymond H. Espe	Crookston	1947
	Red Lake	Mrs. Hazel Palilen	Red Lake Falls	1947
	Roseau	C. A. Corneliusen	Roseau	1949
15	Aitkin	Paul Huff	Aitkin	1947
	Beltrami	Beatrice Haley	Bemidji	1949
	Cass	Anona Riviere	Walker	1947
	Clearwater	E. H. Reff	Bagley	1949
	Crow Wing	Nellie Nyquist	Brainerd	1947
	Hubbard	W. J. Dahms	Park Rapids	1947
	Itasca	John E. McMahon	Grand Rapids	1949
	Koochiching	J. H. Drummond	International Falls	1949
	Lake of the Woods	Cecil J. Williams	Baudette	1947
16	Big Stone	H. A. Larkin	Ortonville	1949
	Grant	Walter R. Summers	Elbow Lake	1949
	Pope	L. G. Solhaug	Glenwood	1947
	Stevens	Harry Peterson	Morris	1949
	Traverse	Ben Cunningham	Wheaton	1949
	Wilkin	Karl W. Erdmann	Breckenridge	1947
17	Faribault	Paul Belau	Blue Earth	1949
	Jackson	John Seim	Jackson	1947
	Martin	E. H. Flygare	Fairmont	1947
18	Anoka	Theo. A. E. Nelson	Anoka	1949
	Isanti	Mylow V. Peterson	Cambridge	1949
	Sherburne	C. W. Guptil	Elk River	1947
	Wright	F. M. Leahy	Buffalo	1949
19	Chisago	Theodore Johnson	Center City	1947
	Kanabec	Albert E. Anderson	Mora	1949
	Pine	William Mista	Pine City	1949
	Washington	Reuben Peterson	Stillwater	1949

APPENDIX 3

MUNICIPAL COURTS

Municipality	Judge	Practice Is Under
Ada, city	E. J. Herringer	Justice court
Adrian, village	F. J. Prideau	District court
Alexandria, city	Frank A. Weed	Laws 1895, Chapter 229
Anoka, city	J. W. Rogers	District court
Appleton, village	J. G. Anderson	
Austin, city	Clifford E. Enger	District court
Bemidji, city	Thayer C. Bailey	District court (civil) Justice court (criminal)
Benson, city	W. E. Paulson	
Brainerd, city	W. W. Bane	District court
Buhl, village	Dan Kinsman	Justice court
Cambridge, village	R. L. Stone	Justice court
Canby, city	A. C. Severson	Laws 1895, Chapter 229
Chatfield, city	Fred H. Williams	
Chisholm, city	C. K. Trask	
Cloquet, city	J. E. Diesen	District court
Columbia Heights, city	Clyde C. Johnson	District court
Crookston, city	Wm. P. Murphy	
Crosby, village	Elmer G. Anderson	District court
Dawson, city	Frank Willis	Justice court
Detroit Lakes, city	Fred Dennis	Laws 1895, Chapter 229
Duluth, city	Royal C. Bouschor	Laws 1923, Chapter 238, as amended
	C. C. Colton	
	Richard M. Funck	
	Wm. E. Tracy	
E. Grand Forks, city	Charles E. King	Section 488.16 as modified
Edina, village	John D. Nelson	
Ely, city	John Katsch	Special Laws 1891, Chapter 59, as amended
Eveleth, city	Frank H. Raumer	District court
Faribault, city	James H. Caswell	District court (established by Laws 1925, Chap. 120)
Fergus Falls, city	Frank C. Barnes	Justice court
Gaylord, village	R. H. Mathwick	(Established by Laws 1941, Chapter 187)
Gilbert, village	Frank J. Erchul	District court
Glencoe, city	L. H. Patten, Jr.	Laws 1895, Chapter 229, and partly under justice and district court
Granite Falls, city	William E. Lee	District court
Hibbing, village	I. R. Galob	Laws 1929, Chapter 253
Hutchinson, city	Grant W. Dwinnell	Special Statute
International Falls, city	John H. Brown	District court (governed by G. S. 1923, Chap. 5)
Jordan, city	Theo. F. Pekarna	Justice court
Keewatin, village	Sverre Omtvedt	District court
Lake City, city	G. H. Lange	Special Statute
LeSueur, city	Robert H. Florine	
Little Falls, city	Phil S. Randall	District court
Luverne, city	D. M. Main	District court
Madison, city	M. T. Hoff	Justice court
Mahnomen, village	Charles F. Vondra	(Established Extra Session Laws 1937, Chapter 72)
Mankato, city	Leslie H. Morse	Laws 1927, Chapter 61
Marshall, city	A. L. Soucy	Laws 1895, Chapter 229
Melrose, city	Ignatius Lemm	
Minneapolis, city	Wm. C. Larson	
	Earl J. Lyons	
	D. E. La Belle	
	Harold N. Rogers	
	Paul Jaroscak	
Montevideo, city	B. J. Oyen	District court
Montgomery, city	J. L. Marek	Justice court
Moorhead, city	E. U. Wade	
Morris, city	S. S. Flaherty	
Nashwauk, village	Joseph C. Malley	District court
New Prague, city	Frank R. Frolik	Justice court
New Ulm, city	Russell L. Johnson	District court
Northfield, city	T. R. McGuire	Justice court
North Mankato, city	A. J. Berndt	District court
Ortonville, city	Andrew Erickson	Laws 1895, Chapter 229
Owatonna, city	F. A. Alexander	District court
Perham, village	John Kukowske, Jr.	District court
Pipestone, city	T. E. Fellows	Justice court
Proctor, village	E. A. Anderson	Justice court
Red Wing, city	Francis H. Watson	District court
Redwood Falls, city	Robert V. Ochs	District court
Richfield, village	Joseph J. Poitras	
Rochester, city	Irving L. Eckhold	
St. Charles, city	S. H. McElhaney	Laws 1895, Chapter 229
St. Cloud, city	Wendell Y. Henning	District court (Established by Laws 1941, Chap. 223)
St. Paul, city	John W. Finehout	Special Laws 1889, Chapter 351, as amended
	John L. Rounds	
	Royden S. Dane	
Sauk Centre, city	W. M. Parker	Laws 1895, Chapter 229
Shakopee, city	P. J. Schwartz	Laws 1895, Chapter 229
Sleepy Eye, city	Gordon Arndt	Laws 1895, Chapter 229
South St. Paul, city	Lewis C. Shepley	District court
Springfield, city	Leo Berg	Justice court
Staples, city	H. J. Dower	Justice court

Municipality	Judge	Practice Is Under
Stillwater, city	Wm. P. Nolan	Justice court and Special Laws 1876, Chapter 200, and Special Laws 1881, Chap. 92
Thief River Falls, city	H. O. Chommie	Justice court
Tower, city	Fred Johnson	(Established by Laws 1929, Chapter 4)
Tracy, city	Wm. O. Stone	Justice court
Two Harbors, city	Charles Wilkinson	
Virginia, city	James P. Carey	District court
Waseca, city	Leon J. B. Sexton	
Watertown, village	F. L. Williams	
Waterville, city	Arthur F. Scheid	Laws 1895, Chapter 229
Wells, village	Bert Stearn	
Willmar, city	M. A. Wahlstrand	District court
Winona, city	Edward D. Libera	(Established by Special Laws 1895, Chapter 115)
Worthington, city	Oscar A. Kunzman	Laws 1895, Chapter 229

APPENDIX 4

JUDGES OF PROBATE

County	Name	Post-Office Address	Term Expires
Aitkin	L. E. Johnson	Aitkin	1949
Anoka	Lawrence J. Green	Anoka	1947
Becker	Geo. W. Peoples	Detroit Lakes	1949
Beltrami	S. M. Koefod	Bemidji	1947
Benton	Charles W. Walker	Foley	1949
Big Stone	W. T. Utley	Ortonville	1947
Blue Earth	J. R. Klaseus	Mankato	1949
Brown	William B. Mather	New Ulm	1949
Carlton	Ed. J. Johnson	Carlton	1947
Carver	Henry A. Truwe	Chaska	1947
Cass	A. B. Oliver	Walker	1949
Chippewa	Douglas P. Hunt	Montevideo	1949
Chisago	A. M. Bullis	North Branch	1947
Clay	P. F. Fountain	Moorhead	1949
Clearwater	John H. Gordon	Bagley	1947
Cook	James V. Creech	Grand Marais	1949
Cottonwood	J. H. Dudley	Windom	1949
Crow Wing	L. B. Kinder	Brainerd	1949
Dakota	E. J. Hiniker	Hastings	1949
Dodge	Lee R. Rohrer	Mantorville	1949
Douglas	Ben Hallberg	Alexandria	1949
Faribault	Oscar M. Mundale	Blue Earth	1949
Fillmore	Ludvig Gullickson	Preston	1949
Freeborn	Norris O. Peterson	Albert Lea	1949
Goodhue	Wm. M. Ericson	Red Wing	1949
Grant	W. H. Goetzinger	Elbow Lake	1949
Hennepin	Manley L. Fosseen	Minneapolis	1949
Houston	Jas. C. Evans	Caledonia	1949
Hubbard	Peter A. Christoson	Park Rapids	1949
Isanti	Raymond T. Olsen	Cambridge	1949
Itasca	John W. Gardner	Grand Rapids	1949
Jackson	Warren P. Adams	Jackson	1949
Kanabec	Frank M. Ziegler	Mora	1949
Kandiyohi	Vendale W. Lundquist	Willmar	1949
Kittson	Levi E. Johnson	Hallock	1949
Koochiching	John Berg	International Falls	1949
Lac qui Parle	A. J. Olson	Madison	1949
Lake	William E. Scott	Two Harbors	1949
Lake of the Woods			
LeSueur	C. J. Brown	LeCenter	1949
Lincoln	Francis Fennessey	Ivanhoe	1949
Lyon	R. N. Anderson	Marshall	1947
McLeod	J. A. Morrison	Hutchinson	1947
Mahnomen	B. J. Reck	Mahnomen	1949
Marshall	Nels M. Engen	Warren	1949
Martin	A. R. Fancher	Fairmont	1949
Meeker	Reuben C. Erickson	Litchfield	1949
Mille Lacs	D. W. Luchsinger	Milaca	1949
Morrison	A. A. Fueger	Little Falls	1947
Mower	Carl Baudler	Austin	1949
Murray	G. J. Kolander	Slayton	1947
Nicollet	Sam Abrahamson	St. Peter	1947
Nobles	Vincent Hollaren	Worthington	1949
Norman	Oscar H. Bakke	Ada	1949
Olmsted	Bunn T. Willson	Rochester	1947
Otter Tail	J. N. Haagenson	Fergus Falls	1949
Pennington	Herman A. Kjos	Thief River Falls	1949
Pine	Robert Wilcox	Pine City	1949
Pipestone	M. Tedd Evans	Pipestone	1949
Polk	Nels Ben Hanson	Crookston	1947
Pope	Gilman P. Gandrud	Glenwood	1949
Ramsey	Michael F. Kinkead	St. Paul	1949
Red Lake	Glen N. Fellman	Red Lake Falls	1947
Redwood	Robert V. Ochs	Redwood Falls	1949
Renville	Robert Beach Henton	Olivia	1949
Rice	Francis J. Hanzel	Faribault	1949
Rock	Helga Skyberg	Luverne	1947
Roseau	Henry Hagen	Roseau	1949
St. Louis	J. K. Underhill	Duluth	1947
Scott	F. J. Connolly	Shakopee	1949
Sherburne	M. K. Iliff	Elk River	1949
Sibley	Einar A. Rogstad	Gaylord	1949
Stearns	E. J. Ruegemer	St. Cloud	1949
Steele	Benard McGovern	Owatonna	1949
Stevens	E. L. Cress	Morris	1949
Swift	Marion E. Hollenbeck	Benson	1947
Todd	Gust Scharf	Long Prairie	1947
Traverse	Albin C. Hofstedt	Wheaton	1949
Wabasha	Frank C. Goss	Wabasha	1947
Wadena	Lynn H. Pettit	Wadena	1949
Waseca	John R. Bullard	Waseca	1949
Washington	Edward Thelen	Stillwater	1949
Watonwan	George W. Seager	St. James	1949
Wilkin	E. C. Parker	Breckenridge	1949
Winona	Leo F. Murphy	Winona	1947
Wright	O. J. Anderson	Buffalo	1949
Yellow Medicine	Wm. Lee	Granite Falls	1949

APPENDIX 5

UNITED STATES COURTS IN MINNESOTA

UNITED STATES CIRCUIT COURT OF APPEALS (Eighth Circuit)
and
UNITED STATES DISTRICT COURT

CIRCUIT JUSTICE

Wiley Blount Rutledge, Associate Justice, United States Supreme Court, Washington, D. C.

CIRCUIT JUDGES (Eighth Circuit)

Kimbrough Stone, Kansas City, Mo.
Archibald K. Gardner, Huron, S. D.
John B. Sanborn, St. Paul, Minn.
Walter G. Riddick, Little Rock, Ark.
Joseph W. Woodrough, Omaha, Nebr.
Seth Thomas, Fort Dodge, Iowa
Harvey M. Johnsen, Kansas City, Mo.

CLERK OF CIRCUIT COURT

E. E. Koch, St. Louis, Mo.

DISTRICT JUDGES

Gunnar H. Nordbye, Minneapolis, Minn.
Matthew M. Joyce, Minneapolis, Minn.
Robert C. Bell, St. Paul, Minn.

CLERK DISTRICT COURT

Thomas H. Howard, St. Paul, Minn.

DEPUTY CLERKS OF COURT

Chell M. Smith (Chief Deputy), Minneapolis, Minn.
Mamie A. Bredeson, Winona, Minn.
John L. Ketten, Mankato, Minn.
Kathryn F. O'Connor, St. Paul, Minn.
E. Catherine Neff, Duluth, Minn.
Louise W. Smith, Fergus Falls, Minn.

UNITED STATES ATTORNEY

Victor E. Anderson, St. Paul, Minn.

ASSISTANT UNITED STATES ATTORNEYS

James J. Giblin, St. Paul, Minn.
John W. Graff, St. Paul, Minn.
Linus J. Hammond, St. Paul, Minn.
Clifford F. Hansen, St. Paul, Minn.
William P. Murphy, St. Paul, Minn.
Theodore H. Wangensteen, St. Paul, Minn.

SPECIAL ASSISTANT UNITED STATES ATTORNEY

Clarence U. Landrum, Detroit Lakes, Minn.

DEPARTMENT OF JUSTICE, BUREAU OF INVESTIGATION

M. B. Rhodes, Special Agent in Charge, St. Paul, Minn.

UNITED STATES MARSHAL

John J. Farrell, St. Paul, Minn.

CHIEF DEPUTY UNITED STATES MARSHAL

Charles E. Morrison, St. Paul, Minn.

TERMS OF COURT — DISTRICT OF MINNESOTA

First Division (Winona): Fourth Tuesday in January and third Tuesday in June.
Second Division (Mankato): Third Tuesday in January and second Tuesday in June.
Third Division (St. Paul): First Tuesday in April and first Tuesday in November.
Fourth Division (Minneapolis): First Tuesday in March and fourth Tuesday in September.
Fifth Division (Duluth): First Tuesday in May and first Tuesday in December.
Sixth Division (Fergus Falls): First Tuesday in January and fourth Tuesday in May.

COUNTIES IN THE DISTRICT

First Division: Dodge, Fillmore, Houston, Mower, Olmsted, Steele, Wabasha, and Winona.
Second Division: Blue Earth, Brown, Cottonwood, Faribault, Freeborn, Jackson, Lac qui Parle, LeSueur, Lincoln, Lyon, Martin, Murray, Nicollet, Nobles, Pipestone, Redwood, Rock, Sibley, Waseca, Watonwan, and Yellow Medicine.
Third Division: Chisago, Dakota, Goodhue, Ramsey, Rice, Scott, and Washington.
Fourth Division: Anoka, Carver, Chippewa, Hennepin, Isanti, Kandiyohi, McLeod, Meeker, Renville, Sherburne, Swift, and Wright.
Fifth Division: Aitkin, Benton, Carlton, Cass, Cook, Crow Wing, Itasca, Kanabec, Koochiching, Lake, Mille Lacs, Morrison, Pine, and St. Louis.
Sixth Division: Becker, Beltrami, Big Stone, Clay, Clearwater, Douglas, Grant, Hubbard, Kittson, Lake of the Woods, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stearns, Stevens, Todd, Traverse, Wadena, and Wilkin.

REFEREES IN BANKRUPTCY

Herbert M. Bierce.....Winona, Minn.
Horace W. Robert.....Mankato, Minn.
Richard N. Gardner.....St. Paul, Minn.
George A. Helsey.....Minneapolis, Minn.
Nicolai F. Field.....Fergus Falls, Minn.
George A. E. Finlayson.....Duluth, Minn.

MASTERS IN CHANCERY

(Masters appointed by the court when deemed necessary)

UNITED STATES COMMISSIONERS

First Division:
Martin A. Beatty.....Winona, Minn.
Second Division:
E. Raymond Hughes.....Mankato, Minn.
Third Division:
Wm. T. Goddard.....St. Paul, Minn.
Fourth Division:
Harry D. Irwin.....Minneapolis, Minn.
Fifth Division:
John H. Brown.....International Falls, Minn.
Wellington J. Brown.....Duluth, Minn.
Adolph S. Larson.....Sandstone, Minn.
Sixth Division:
Frank C. Barnes.....Fergus Falls, Minn.
Clifford L. Easton.....Humboldt, Minn.
Fred J. Hughes.....St. Cloud, Minn.
John L. Brown.....Bemidji, Minn.

APPENDIX 6

COURT RULES

FEDERAL COURT RULES

SUPREME COURT OF THE UNITED STATES

REVISED RULES ADOPTED FEB. 13, 1939, EFFECTIVE FEB. 27, 1939, AS AMENDED

Rule 1. CLERK. (1) The clerk of this court shall reside and keep the office at the seat of the National Government, and he shall not practice as attorney or counselor in any court, while he continues in office.

(2) The clerk shall not permit any original record or paper to be taken from the office without an order from the court or one of the justices, except as provided by Rule 13, paragraph 4.

2. ATTORNEYS AND COUNSELORS. (1) It shall be requisite to the admission of attorneys or counselors to practice in this court, that they shall have been such for three years past in the highest court of a State, Territory, District, or Insular Possession, and that their private and professional characters shall appear to be good.

(2) Not less than two weeks in advance of application for admission, each applicant shall file with the clerk (1) a certificate from the presiding judge or clerk of the proper court showing that he possesses the foregoing qualifications, (2) his personal statement, on the form approved by the court and furnished by the clerk, and (3) two letters or signed statements of members of the bar of this court, not related to the applicant, who are resident practitioners within the State, Territory, District, or Insular Possession (to which the application refers as provided in paragraph 1 of this rule) stating that the applicant is personally known to them, that he possesses all the qualifications required for admission to the bar of this court, that they have examined his personal statement and that they affirm that his personal and professional character and standing are good.

(3) Admissions will be granted only upon oral motion by a member of the bar in open court, and upon his assurance that he has examined the credentials of the applicant filed in the office of the clerk in accordance with the foregoing requirement and that he is satisfied that the applicant possesses the necessary qualifications.

(4) Upon being admitted, each applicant shall take and subscribe the following oath or affirmation, viz.:

I, ..., ..., do solemnly swear (or affirm) that I will demean myself, as an attorney and counselor of this court, uprightly, and according to law; and that I will support the Constitution of the United States.

(5) Where it is shown to the court that any member of its bar has been disbarred from practice in any State, Territory, District, or Insular Possession, or has been guilty of conduct unbecoming a member of the bar of this court, he will be forthwith suspended from practice before this court, and unless, upon notice mailed to him at the address shown in the clerk's records and to the clerk of the highest court of the State, Territory, District, or Insular Possession, to which he belongs, he shows good cause to the contrary within forty days he will be disbarred. (As amended June 5, 1944.)

3. CLERKS TO JUSTICES NOT TO PRACTICE. No one serving as a law clerk or secretary to a member of this court shall practice as an attorney or counselor in any court while continuing in that position; nor shall he after separating from that position practice as an attorney or counselor in this court, or permit his name to appear on a brief filed in this court, until two years shall have elapsed after such separation.

4. LIBRARY. (1) The library for the bar shall be open to members of the bar of this court; to members of Congress and to law officers of the executive or other departments of the Government, but books may not be removed from the building.

(2) The library shall be open during such times as the reasonable needs of the bar require and be governed by such regulations as the librarian, with the approval of the court, may make effective.

5. ORIGINAL ACTIONS. Cases on the original docket shall be governed, as far as may be, by the rules applicable to cases on the appellate docket.

The initial pleading in any such action may be accompanied by a brief and shall be prefaced by a motion for leave to file, which motion will be presented to the court by the clerk on the first motion day following its lodgment in the clerk's office. If leave to file is granted the case will be placed on the original docket and the parties shall make such cash deposit with the clerk for the payment of his fees as he may require.

Additional pleadings shall be filed as the court directs.

6. PROCESS. (1) All process of this court shall be in the name of the President of the United States, and shall contain the given names, as well as the surnames, of the parties.

(2) When process at common law or in equity shall issue against a state, the same shall be served on the governor, or chief executive magistrate, and attorney general, of such state.

(3) Process of subpoena, issuing out of this court, in any suit in equity, shall be served on the defendant sixty days before the return day of such process; and if the defendant, on such service of the subpoena, shall not appear at the return day, the complainant shall be at liberty to proceed ex parte.

7. MOTIONS, INCLUDING THOSE TO DISMISS OR AFFIRM; SUMMARY DOCKET; MOTION DAY. (1) Every motion to the court shall be printed, and shall state clearly its object and the facts on which it is based.

(2) Oral argument will not be heard on any motion unless the court specially assigns it therefor, when not exceeding one-half hour on each side will be allowed.

(3) No motion by respondent to dismiss a petition for writ of certiorari will be received. Objections to the jurisdiction of the court to grant writs of certiorari may be included in briefs in opposition to petitions therefor.

A motion by appellee to dismiss an appeal will be received in advance of the court's ruling upon the jurisdictional statements only when presented in the manner provided by Rule 12, paragraph 3. When such a motion is made, the appellant shall have 20 days after service upon him within which to file in this court forty printed copies of a brief opposing the motion, except that where his counsel resides in California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming, Montana, or an outlying possession, the time shall be twenty-five days.

A motion by respondent to dismiss a writ of certiorari or by appellee to dismiss an appeal, after the court has ruled upon the jurisdictional statements and accompanying motions, if any (Rule 12, paragraph 5), will be received if not based upon grounds already advanced in opposition to the granting of the writ of certiorari or to the noting of jurisdiction of the appeal. Such motions, together with motions to dismiss certificates in case of questions certified, must be printed and forty copies thereof must be filed with the clerk, accompanied by proof that a copy of the motion, and accompanying brief, if any, have been served upon counsel of record for the opposing party. The opposing party shall have twenty days from the date of such service within which to file a printed brief opposing the motion. When counsel for the opposing party resides in California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming, Montana, or an outlying possession, the time shall be twenty-five days. Upon the filing of the opposing brief, or the expiration of the time allowed therefor, or express waiver of the right to file, the motion and briefs thereon shall be distributed by the clerk to the court for its consideration.

The pendency of a motion to dismiss or affirm shall not preclude the placing of the cause upon the calendar of the court for oral argument or its being called for argument when reached.

(4) The court will receive a motion to affirm on the ground that it is manifest that the appeal was taken for delay only, or that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument. The procedure provided in paragraph 3 of this rule for motions to dismiss shall apply to and control motions to affirm. A motion to affirm may be united in the alternative with a motion to dismiss.

(5) Although the court upon consideration of a motion to dismiss or a motion to affirm may refuse to grant the motion, it may, if it concludes that the case is of such a character as not to justify extended argument, order the cause transferred for hearing to the summary docket. The hearing of causes on such docket will be expedited from time to time as the regular order of business may permit. A cause may be transferred to the summary docket on application, or on the court's own motion.

(6) Monday of each week, when the court is in session, shall be motion day; and motions specially assigned for oral argument shall be entitled to preference over other cases. (As amended May 31, 1932.)

8. BILLS OF EXCEPTION; CHARGE TO JURY; OMISSION OF UNNECESSARY EVIDENCE. The judges of the district courts in allowing bills of exception shall give effect to the following rules:

(1) No bill of exceptions shall be allowed on a general exception to the charge of the court to the jury in trials at common law. The party excepting shall be required before the jury retires to state distinctly the several matters of law in such charge to which he excepts; and no other exceptions to the charge shall be allowed by the court or inserted in a bill of exceptions.

(2) Only so much of the evidence shall be embraced in a bill of exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and such evidence as is embraced therein may be set forth in full or in condensed and narrative form.

9. ASSIGNMENT OF ERRORS. Where an appeal is taken to this court from any court, the appellant shall file with the clerk of the court below, with his petition for appeal, an assignment of errors, which shall set out separately and particularly each error asserted. No appeal shall be allowed unless such an assignment of errors shall accompany the petition.

10. APPEAL; CITATION; RECORD; DESIGNATION OF PARTS TO BE INCLUDED IN TRANSCRIPT. (1) When an appeal is allowed a citation to the appellee shall be signed by the judge or justice allowing the appeal and shall be made returnable not exceeding forty days from the day of signing the citation, whether the return day fall in vacation or in term time, except in appeals from California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming and Montana, when the time shall be sixty days. The citation must be served before the return day.

(2) The clerk of the court from which an appeal to this court may be allowed, shall make and transmit

to this court under his hand and the seal of the court a true copy of the material parts of the record, always including the assignment of errors, and any opinions delivered in the case. The papers comprising the transcript shall be fastened together in one or more volumes of convenient size, paged consecutively and indexed.

To enable the clerk to perform such duty and for the purpose of reducing the size of transcripts and eliminating all papers not necessary to the consideration of the questions to be reviewed, it shall be the duty of the appellant, or his counsel, to file with the clerk of the lower court, promptly after an appeal is taken, together with proof or acknowledgment of service of a copy on the appellee, or his counsel, a praecipe indicating the portions of the record to be incorporated into the transcript. Within ten days thereafter (unless the time be enlarged by a judge of the lower court or a justice of this court), any other party to the appeal may serve and file a designation of additional portions of the record desired to be included. Sections (c), (e), and (h) of Rule 75 and Rule 76 of the Rules of Civil Procedure are incorporated herein by reference and are made applicable to an appeal to this court from a federal district court.

The clerk of the lower court shall transmit to this court as the transcript of the record only the portions of the record covered by such designations.

The parties or their counsel may by written stipulation filed with the clerk of the lower court indicate the portions of the record to be included in the transcript, and the clerk shall then transmit only the parts designated in such stipulation.

In all cases the clerk shall include in the transcript all papers filed under authority of Rule 12.

If this court shall find that any portion of the record unnecessary to a proper presentation of the case has been incorporated into the transcript at the instance of either party, the whole or any part of the cost of printing and the clerk's fee for supervising the printing may be ordered to be paid by the offending party.

(3) No case will be heard until a record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing, shall be filed.

(4) Whenever it shall be necessary or proper, in the opinion of the presiding judge in the court from which the appeal is taken that original papers of any kind should be inspected in this court, such presiding judge may make such rule or order for the safekeeping, transporting, and return of such original papers as to him may seem proper, and this court will receive and consider such original papers along with the usual transcript.

(5) The record in cases of admiralty and maritime jurisdiction, when under the requirements of law the facts have been found in the court below, and the power of review is limited to the determination of questions of law arising on the record, shall be confined to the pleadings, findings of fact and conclusions of law thereon, opinions of the court, final judgment or decree, and such interlocutory orders and decrees as may be necessary to a proper determination of such questions.

11. DOCKETING CASES. (1) It shall be the duty of the appellant to docket the case and file the record thereof with the clerk of this court by or before the return day, whether in vacation or in term time. But, for good cause shown, the justice or judge who signed the citation, or any justice of this court, may enlarge the time, before its expiration, the order of enlargement to be filed with the clerk of this court. If the appellant shall fail to comply with this rule, the appellee may have the cause docketed and the appeal dismissed upon producing a certificate, whether in term or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such appeal has been duly allowed. And in no case shall the appellant be entitled to docket the cause and file the record after the appeal shall have been dismissed under this rule, unless by special leave of the court.

(2) But the appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed by the appellant within the period of time prescribed by this rule, or by the appellee within forty days thereafter, the case shall stand for argument.

(3) Upon the filing of the record brought up by appeal, the appearance of the counsel for the party docketing the case shall be entered.

12. JURISDICTIONAL STATEMENTS. (1) Upon the presentation of a petition for the allowance of an appeal to this court, from any court, to any judge or justice empowered by law to allow it, there shall be presented by the applicant a separate typewritten statement particularly disclosing the basis upon which it is contended that this court has jurisdiction upon appeal to review the judgment or decree in question. The statement shall refer distinctly (a) to the statutory provision believed to sustain the jurisdiction, (b) to the statute of the state, or statute or treaty of the United States, the validity of which is involved (giving the volume and page where the statute or treaty may be found in the official edition), setting it out verbatim or appropriately summarizing its pertinent provisions; and (c) to the date of judgment or decree sought to be reviewed and the date upon which the application for appeal is presented.

The statement shall show that the nature of the case and of the rulings of the court was such as to bring the case within the jurisdictional provisions relied on and shall cite the cases believed to sustain the jurisdiction. It shall also include a statement of the grounds upon which it is contended that the questions involved are substantial.

If the appeal is from a state court, the statements shall, in addition, specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e. g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; with such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears, (e. g., ruling on exception, portion of the court's charge and exception thereto, assignment of error) as will support the assertion that the rulings of the court were of a nature to bring the case within the statutory provision believed to confer jurisdiction on this court. The provisions of this paragraph, with appropriate record page references, must be complied with when review of a state court judgment is sought by petition for writ of certiorari.

The applicant shall append to the statement a copy of any opinions delivered upon the rendering of the judgment or decree sought to be reviewed, including earlier opinions in the same case, or opinions in companion cases, reference to which may be necessary to ascertain the grounds of the judgment or decree.

If the appeal is from an interlocutory decree of a specially constituted district court of the United States, the statement must also include a showing of the matters in which it is claimed that the court has abused its discretion in granting or denying the interlocutory injunction. (Alabama v. United States, 279 U. S. 229.) (As amended April 6, 1942.)

(2) If the appeal is allowed, the appellant shall serve upon the appellee within 5 days after such allowance (a) a copy of the petition for and order allowing the appeal, together with a copy of the assignments of error and of the statement required by paragraph 1 of this rule, and (b) a statement directing attention to the provisions of paragraph 3 of this rule. Proof of service of the papers required by this paragraph to be served shall be filed forthwith with the clerk of the court possessed of the record, and shall be incorporated by him in the transcript of record prepared for this court upon the appeal.

(3) Within 15 days after such service the appellee may file with the clerk of the court possessed of the record, and serve upon the appellant, a typewritten statement disclosing any matter or ground making against the jurisdiction of this court asserted by the appellant. There may be included in, or filed with, such opposing statement, a motion by appellee to dismiss or affirm. Where such a motion is made, it may be opposed as provided in Rule 7, paragraph 3.

(4) The clerk of the court possessed of the record shall include the statements and motions, required and permitted to be filed under the provisions of this rule, in the transcript of record prepared for the use of this court on the appeal, anything in the praecipes or stipulations of the parties (Rule 10, par. 2) to the contrary notwithstanding.

(5) After the case shall have been docketed in this court by the appellant, and the transcript of record filed (Rule 11, par. 1), the clerk of this court shall forthwith print the appellant's statement required by paragraph 1 of this rule and the opposing statement, and motions, if any, permitted by paragraph 3 of this rule, and the clerk shall thereupon distribute such printed papers to the court for its consideration.

At the time of docketing the case the appellant shall make such cash deposit with the clerk, in addition to such deposit as may be required under Rule 13, paragraph 1, as shall be necessary to defray the cost of printing 40 copies of his statement filed pursuant to paragraph 1 of this rule; and the appellee, upon demand, shall forthwith deposit with the clerk a sum sufficient to cover the cost of printing 40 copies of any statement or motions filed under paragraph 3 of this rule.

(6) If either appellant or appellee fails to comply with the provisions of this rule, the clerk of this court shall report such failure to the court immediately so that this court may take such action as it deems proper.

13. PRINTING RECORDS; DESIGNATION OF POINTS INTENDED TO BE RELIED UPON AND OF PARTS OF RECORD TO BE PRINTED. (1) In all cases the appellant, on docketing a case and filing the record, shall make such cash deposit with the clerk for the payment of his fees as he may require, or otherwise satisfy him in that behalf.

(2) Immediately after the designation of the parts of the record to be printed or the expiration of the time allotted therefor (see par. 9 of this rule), the clerk shall make an estimate of the cost of printing the record, his fee for preparing it for the printer and supervising the printing, and other probable fees, and shall furnish the same to the party docketing the case. If such estimated sum be not paid on or before a date designated by the clerk of this court in each case, it shall be the duty of the clerk to report that fact to the court, whereupon the cause will be dismissed, unless good cause to the contrary is shown.

(3) Upon payment of the amount estimated by the clerk, thirty copies of the record shall be printed, under his supervision, for the use of the court and of counsel.

(4) In cases of appellate jurisdiction the original transcript on file shall be delivered by the clerk to the printer. But the clerk shall cause copies to be made for the printer of such original papers, sent up under Rule 10, paragraph 4, as are necessary to be printed; and of the whole record in cases of original jurisdiction.

(5) The clerk shall supervise the printing, and see that the printed copy is properly indexed. He shall distribute the printed copies to the justices and the reporter, from time to time, as required, and a copy to the counsel for the respective parties. He shall also deposit in the law library of Congress to be there carefully preserved, one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions and briefs therein.

(6) If the actual cost of printing the record, together with the fees of the clerk, shall be less than the amount estimated and paid, the difference shall be refunded by the clerk to the party paying it. If the actual cost and clerk's fees shall exceed the estimate, the excess shall be paid to the clerk within forty days after notice thereof, and if it be not paid the matter shall be dealt with as if it were a default under paragraph 2 of this rule, as well as by rendering a judgment against the defaulting party for such excess.

(7) In case of reversal, affirmance, or dismissal, with costs, the cost of printing the record and the clerk's fees shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other process.

(8) Upon the clerk's producing satisfactory evidence, by affidavit or the acknowledgment of a party or his surety, of having served on such party or surety a copy of the bill of fees due by him in this court, and showing that payment has not been made, an attachment shall issue against such party or surety to compel payment of such fees.

(9) When the record is filed, or within fifteen days thereafter, the appellant shall file with the clerk a definite statement of the points on which he intends to rely and a designation of the parts of the record which he thinks necessary for the consideration thereof or a designation of those parts considered unnecessary, whichever is more convenient, with proof of service of the same on the adverse party. The adverse party, within ten days after service of the statement and designation required to be filed by appellant may designate in writing, filed with the clerk, additional parts of the record which he thinks material; and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the appellant. The parts of the record so designated by one or both of the parties, and only those parts, shall be printed by the clerk. The statement of points intended to be relied upon and the designations of the parts of the record to be printed shall be printed by the clerk with the record. He shall, however, omit all duplication, all repetition of titles and all other obviously unimportant matter, and make proper note thereof. The court will consider nothing but the points of law so stated. If at the hearing it shall appear that any material part of the record has not been printed, the appeal may be dismissed or such other order made as the circumstances may appear to the court to require. If either party shall have caused unnecessary parts of the record to be printed, such order as to costs may be made as the court shall think proper.

The fees of the clerk under Rule 32, paragraph 6, shall be computed on the folios in the record as filed, and shall be in full for the performance of his duties in that regard.

14. TRANSLATIONS. Whenever any record transmitted to this court upon appeal shall contain any document, paper, testimony, or other proceedings in a foreign language, without a translation of such document, paper, testimony, or other proceedings, made under the authority of the lower court, or admitted to be correct, the case shall be reported by the clerk, to the end that this court may order that a translation be supplied and printed with the record.

15. FURTHER PROOF. (1) In all cases where further proof is ordered by this court, the depositions which may be taken shall be by a commission, to be issued from this court, or from any district court of the United States.

(2) In all cases of admiralty and maritime jurisdiction, where new evidence shall be admissible in this court, the evidence by testimony of witnesses shall be taken under a commission to be issued from this court, or from any district court of the United States, under the direction of any judge thereof; and no such commission shall issue but upon interrogatories, to be filed by the party applying for the commission, and notice to the opposite party or his agent or attorney, accompanied with a copy of the interrogatories so filed, requiring him to file cross-interrogatories within twenty days from the service of such notice.

16. OBJECTIONS TO EVIDENCE IN RECORD. In all cases of equity or admiralty jurisdiction, heard in this court, no objection to the admissibility of any deposition, deed, grant, or other exhibit found in the record as evidence shall be entertained, unless such objection was taken in the court below and entered of record. Where objection was not so taken the evidence shall be deemed to have been admitted by consent.

17. CERTIORARI TO CORRECT DIMINUTION OF RECORD. No certiorari to correct diminution of the record will be awarded in any case, unless a printed motion therefor shall be made, and the facts on which the same is founded shall be shown, if not admitted by the other party, by affidavit. All such motions must be made not later than the first motion day after the expiration of sixty days from the printing of the record, unless for special cause shown the court receives the motion at a later time.

18. MODELS, DIAGRAMS, AND EXHIBITS OF MATERIAL. (1) Models, diagrams, and exhibits of material forming part of the evidence taken in a case, and brought up to this court for its inspection, shall be placed in the custody of the marshal at least one week before the case is heard or submitted.

(2) All such models, diagrams, and exhibits of material, placed in the custody of the marshal must be taken away by the parties within forty days after the case is decided. When this is not done, it shall be the duty of the marshal to notify counsel to remove the articles forthwith; and if they are not removed within a reasonable time after such notice, the marshal shall destroy them, or make such other disposition of them as to him may seem best.

19. DEATH OF PARTY; REVIVOR; SUBSTITUTION. (1) Whenever, pending an appeal or writ of certiorari in this court, either party shall die, the proper representative in the personalty or realty of the deceased, according to the nature of the case, may voluntarily come in and be admitted as a party

to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representative shall not voluntarily become a party, the other party may suggest the death on the record, and on motion obtain an order that, unless such representative shall become a party within a designated time, the party moving for such order, if appellee or respondent, shall be entitled to have the appeal or writ of certiorari dismissed; and if the party so moving be appellant or petitioner he shall be entitled to open the record, and on hearing have the judgment or decree reversed, if it be erroneous: Provided, That a copy of every such order shall be printed in some newspaper of general circulation within the State, Territory, District or Insular Possession, in which the case originated, for three successive weeks, at least sixty days before the expiration of the time designated for the representative of the deceased party to appear.

(2) When the death of a party is suggested, and the representative of the deceased does not appear by the second day of the term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their [his] appearance, the case shall abate.

(3) When either party to a suit in a court of the United States shall desire to prosecute an appeal or writ of certiorari to this court from any final judgment or decree, rendered in that court, and at the time of applying for such appeal or writ of certiorari the other party to the suit shall be dead and have no proper representative within the jurisdiction of that court, so that the suit can not be revived in that court, but shall have a proper representative in some State, Territory or District of the United States, the party desiring such appeal or writ of certiorari may procure the same, if otherwise entitled thereto, and may have proceedings on such judgment or decree superseded or stayed in the manner allowed by law and shall thereupon proceed with such appeal or writ of certiorari as in other cases. And within thirty days after the time when such appeal or writ of certiorari is returnable, or if the court be not then in session within ten days after it next convenes, the appellant or petitioner shall make a suggestion to the court, supported by affidavit, that such party was dead when the appeal or writ of certiorari was allowed, and had no proper representative within the jurisdiction of the court which rendered such judgment or decree, so that the suit could not be revived in that court, and that such deceased party had a proper representative in some State, Territory, or District of the United States—giving the name and character of such representative, and his place of residence; and, upon such suggestion and a motion therefor, an order may be obtained that, unless such representative shall make himself a party within a designated time the appellant or petitioner shall be entitled to open the record, and, on hearing have the judgment or decree reversed, if the same be erroneous: Provided, That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least sixty days before the expiration of the time designated: And provided, also, That in every such case if the representative of the deceased party does not appear by the second day of the term next succeeding said suggestion, and the measures above provided to compel his appearance have not been taken as above required, by the opposite party, the case shall abate: And provided, also, That the representative may at any time before or after the suggestion, but before such abatement, come in and be made a party and thereupon the case shall be heard and determined as in other cases.

(4) Where a public officer, by or against whom a suit is brought, dies or ceases to hold the office while a suit is pending in a federal court, either of first instance or appellate, the matter of abatement and substitution is covered by section 11 of the Act of February 13, 1925 [Title 28, s. 780]. Under that section a substitution of the successor in office may be effected only where a satisfactory showing is made within six months after the death or separation from office. (a) When the court is in vacation the motion papers may be filed with the clerk but must be presented to the court promptly after it reconvenes.

20. CALL AND ORDER OF THE DOCKET; MOTIONS TO ADVANCE. (1) Unless it otherwise orders, the court, on the second Monday of each term, will commence calling the cases for argument in the order in which they stand on the docket, and proceed from day to day during the term in the same order (except as hereinafter provided); and if the parties, or either of them, shall be ready when the case is called, the same will be heard; and if neither party shall be ready to proceed with the argument, the case shall be continued to the next term or otherwise dealt with as provided in these rules.

(2) Ten cases only shall be subject to call on each day during the term. But on the coming in of the court on each day the entire number of such ten cases will be called, with a view to the disposition of such of them as are not to be argued.

(3) All motions to advance cases must be printed, and must contain a brief statement of the matter involved, with the reasons supporting the motion.

(4) Criminal cases may be advanced by leave of the court on motion of either party.

(5) Cases once adjudicated by this court upon the merits, and again brought up, may be advanced by leave of the court.

(6) Revenue and other cases in which the United States is concerned, which also involve or affect some matter of general public interest, or which may be entitled to precedence under the provisions of any act of Congress, may be advanced by leave of the court on motion of the Attorney General.

(7) Other cases may be advanced for special cause shown. When a case is advanced, under this or any other paragraph, it will be subject to hearing with any other case subsequently advanced and involving a like question, as if they were one case.

(8) Two or more cases, involving the same question, may, by order of the court, be heard together, and argued as one case or on such terms as may be prescribed.

(9) If, after a case has been continued under paragraph 1 of this rule, both parties desire to have it heard at the term of the continuance, they may file with the clerk their joint request to that effect accompanied by their affidavits or those of their counsel giving the reasons why they failed to present their argument when the case was called and why it should be reinstated. Such a request will be granted only when it appears to the court that there was good reason for the previous failure to proceed and that the request can be granted without prejudice to parties in other cases coming on regularly for hearing.

(10) No stipulation to pass a case will be recognized as binding upon the court. A case can only be so passed upon application made and leave granted in open court.

(11) Cases on the summary docket will be heard specially as provided in paragraph 5 of Rule 7.

21. NO APPEARANCE OF APPELLANT OR PETITIONER. Where no counsel appears and no brief has been filed for the appellant or petitioner when the case is called for hearing, the adverse party may have the appellant or petitioner called and the appeal or writ of certiorari dismissed, or may open the record and pray for an affirmance.

22. NO APPEARANCE OF APPELLEE OR RESPONDENT. Where the appellee or respondent fails to appear when the case is called for hearing, the court may hear argument on behalf of the party appearing and give judgment according to the right of the case.

23. NO APPEARANCE OF EITHER PARTY. When a case is reached in the regular call, and there is no brief or appearance for either party, the case shall be dismissed at the cost of the appellant or petitioner.

24. NEITHER PARTY READY AT SECOND TERM. When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to argue it, it shall be dismissed at the cost of the appellant or petitioner, unless strong cause is shown for further postponement.

25. SUBMISSION ON BRIEFS BY ONE OR BOTH PARTIES WITHOUT ORAL ARGUMENT. (1) Any case may be submitted on printed briefs regardless of its place on the docket, if the counsel on both sides choose to submit the same in that manner, before the first Monday in May of any term. After that date cases may be submitted on briefs alone only as they are reached on the regular call.

(2) When a case is reached on the regular call, if a printed brief has been filed for only one of the parties and no counsel appears to present oral argument for either party, the case will be regarded as submitted on that brief.

(3) When a case is reached on the regular call and argued orally in behalf of only one of the parties,

no brief for the opposite party will be received after the oral argument begins, except as provided in the next paragraph of this rule.

(4) No brief will be received through the clerk or otherwise after a case has been argued or submitted, except upon special leave granted in open court after notice to opposing counsel.

26. FORM OF PRINTED RECORDS, PETITIONS, BRIEFS, ETC. All records, petitions, motions and briefs, printed for the use of the court must be in such form and size that they can be conveniently bound together, so as to make an ordinary octavo volume, having pages 6⅛ by 9¼ inches and type matter 4⅛ by 7⅛ inches, except that records in patent cases may be printed in such size as is necessary to utilize copies of patent documents. They and all quotations contained therein, and the matter appearing on the covers, must be printed in clear type (never smaller than small pica or 11-point type) adequately leaded; and the paper must be opaque and unglazed. The clerk shall refuse to receive any petition, motion or brief which has been printed otherwise than in substantial conformity to this rule.

27. BRIEFS. (1) The counsel for appellant or petitioner shall file with the clerk, at least three weeks before the case is called for hearing, forty copies of a printed brief.

(2) This brief shall be printed as prescribed in Rule 26 and shall contain in the order here indicated—

(a) A subject index of the matter in the brief, with page references, and a table of the cases (alphabetically arranged), text books and statutes cited, with references to the pages where they are cited.

(b) A reference to the official report of the opinions delivered in the courts below, if there were such and they have been reported.

(c) A concise statement of the grounds on which the jurisdiction of this court is invoked.

(d) A concise statement of the case containing all that is material to the consideration of the questions presented, with appropriate page references to the printed record, e.g., (R. 12).

(e) A specification of such of the assigned errors as are intended to be urged. (See Rule 38, par. 2.)

(f) The argument (preferably preceded by a summary) exhibiting clearly the points of fact and of law being presented, citing the authorities and statutes relied upon, and quoting the relevant parts of such statutes, federal and state, as are deemed to have an important bearing. If the statutes are long they should be set out in an appendix.

(3) Whenever, in the brief of any party, a reference is made to the record, it must be accompanied by the record page number. When the reference is to a part of the evidence, the page citation must be specific and if the reference is to an exhibit both the page number at which the exhibit appears and at which it was offered in evidence must be indicated.

(4) The counsel for an appellee or respondent shall file with the clerk forty printed copies of his brief, at least one week before the case is called for hearing—such brief to be of like character with that required of the other party, except that no specification of errors need be given, and that no statement of the case need be made beyond what may be deemed necessary in correcting any inaccuracy or omission in the statement of the other side.

(5) Reply briefs will be received up to the time the case is called for hearing.

(6) When there is no assignment of errors, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded, save as the court, at its option, may notice a plain error not assigned or specified.

(7) When, under this rule, an appellant or petitioner is in default, the court may dismiss the cause; and when an appellee or respondent is in default, the court may decline to hear oral argument in his behalf.

(8) No brief, required by this rule, shall be filed by the clerk unless the same shall be accompanied by satisfactory proof of service upon counsel for the adverse party.

(9) A brief of an amicus curiae may be filed when accompanied by written consent of all parties to the case, except that consent need not be had when the brief is presented by the United States or an officer or agency thereof and sponsored by the Solicitor General, or by a State or a political subdivision thereof. Such brief must bear the name of a member of the bar of this court.

28. ORAL ARGUMENT. (1) The appellant or petitioner shall be entitled to open and conclude the argument. But when there are cross-appeals or cross-writs of certiorari they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

(2) When no oral argument is made for one of the parties, only one counsel will be heard for the adverse party.

(3) Two counsel, and no more, will be heard for each party, save that in cases on the summary docket (see Rule 7, paragraph 5) only one counsel will be heard on the same side.

(4) In cases on the regular docket (except where questions have been certified) one hour on each side, and no more, will be allowed for the argument, unless more time be granted before the argument begins. The time allowed may be apportioned between counsel on the same side, at their discretion; but a fair opening of the case shall be made by the party having the opening and closing.

(5) In cases where questions have been certified to this court three-quarters of an hour shall be allowed to each side for oral argument.

(6) In cases on the summary docket one-half hour on each side, and no more, will be allowed for the argument.

29. OPINIONS OF THE COURT. (1) All opinions of the court shall be handed to the clerk immediately upon the delivery thereof. He shall cause the same to be printed and shall deliver a copy to the reporter.

(2) The original opinions shall be filed by the clerk for preservation.

(3) Opinions printed under the supervision of the justices delivering the same need not be copied by the clerk into a book of records; but at the end of each term he shall cause them to be bound in a substantial manner, and when so bound they shall be deemed to have been recorded.

30. INTEREST AND DAMAGES. (1) Where judgments for the payment of money are affirmed, and interest is properly allowable, it shall be calculated from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the state where such judgment was rendered.

(2) In all cases where an appeal delays proceedings on the judgment of the lower court, and appears to have been sued out merely for delay, damages at a rate not exceeding 10 per cent, in addition to interest, may be awarded upon the amount of the judgment.

(3) Paragraphs 1 and 2 of this rule shall be applicable to decrees for the payment of money in cases in equity, unless otherwise specially ordered by this court.

(4) In cases in admiralty, damages and interest may be allowed only if specially directed by the court.

31. PROCEDENDO TO ISSUE ON DISMISSAL. In all cases of the dismissal of any appeal or writ of certiorari in this court, the clerk shall issue a mandate, or other proper process, in the nature of a procedendo, to the court below, so that further proceedings may be had in such court as to law and justice may appertain.

32. COSTS. (1) In all cases where any appeal or writ of certiorari shall be dismissed in this court, costs shall be allowed to the appellee or respondent unless otherwise agreed by the parties, except where the dismissal shall be for want of jurisdiction, when only the costs incident to the motion to dismiss shall be allowed.

(2) In all cases of affirmance of any judgment or decree by this court, costs shall be allowed to the appellee or respondent unless otherwise ordered by the court.

(3) In cases of reversal of any judgment or decree by this court, costs shall be allowed to the appellant or petitioner, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case.

(4) In cases where questions have been certified costs shall be equally divided unless otherwise ordered by the court, but where the entire record has been sent up (Rule 37, par. 2), and a decision is rendered on the whole matter in controversy, costs shall be allowed as provided in paragraphs 2 and 3 of this rule.

(5) No costs shall be allowed in this court either for or against the United States or an officer or

agency thereof, except where specially authorized by statute and directed by the court.

(6) When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

(7) In pursuance of the Act of March 3, 1883, authorizing and empowering this court to prepare a table of fees to be charged by the clerk of this court the following table is adopted:

For docketing a case and filing and indorsing the transcript of the record, twenty-five dollars.

For entering an appearance, twenty-five cents.

For entering a continuance, twenty-five cents.

For filing a motion, order, or other paper, twenty-five cents.

For entering any rule or for making or copying any record or other paper, twenty cents per folio of each one hundred words.

For transferring each case to a subsequent docket and indexing the same, one dollar.

For entering a judgment or decree, one dollar.

For every search of the records of the court, one dollar.

For a certificate and seal, two dollars.

For receiving, keeping, and paying money in pursuance of any statute or order of court, two per cent on the amount so received, kept and paid.

For an admission to the bar and certificate under seal, including filing of preliminary certificate and statements, twenty-five dollars.

For preparing the record or a transcript thereof for the printer, in all cases, including records presented with petitions for certiorari, indexing the same, supervising the printing and distributing the printed copies to the justices, the reporter, the law library, and the parties or their counsel, fifteen cents per folio of each one hundred words; but where the necessary printed copies of the record as printed for the use of the court below are furnished, charges under this item will be limited to any additions printed here under the clerk's supervision.

For making a manuscript copy of the record, when required under Rule 13, fifteen cents per folio of each one hundred words, but nothing in addition for supervising the printing.

For preparing, on filing, for the printer, petitions for writs of certiorari, briefs, jurisdictional statements or motions when required by the rules, or at the request of counsel when, in the opinion of the clerk, circumstances require, indexing the same, changing record references to conform to the pagination of the printed record, and supervising the printing, five dollars for each such petition, brief, jurisdictional statement or motion. Neither the expense of printing nor the clerk's supervising fee shall be allowed as costs in the case.

For a mandate or other process, ten dollars.

For an order on petition for writ of certiorari, five dollars.

For filing briefs, ten dollars for each party appearing.

For every printed copy of any opinion of the court or any justice thereof, certified under seal, two dollars. (As amended May 26, 1941; Feb. 11, 1943.)

33. REHEARING. A petition for rehearing may be filed with the clerk, in term time or in vacation, within twenty-five days after judgment is entered, unless the time is shortened or enlarged by order of the court, or of a justice thereof when the court is not in session; and must be printed, briefly and distinctly state its grounds, and be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay. Such a petition is not subject to oral argument, and will not be granted, unless a justice who concurred in the judgment desires it, and a majority of the court so determines.

34. MANDATES. Mandates shall issue as of course after the expiration of twenty-five days from the day the judgment is entered, irrespective of the filing of a petition for rehearing, unless the time is shortened or enlarged by order of the court, or of a justice thereof when the court is not in session. (See Rules 31 and 35.)

No mandate issues upon the denial of a petition for writ of certiorari. Whenever application for a writ of certiorari to review a decision of any court is denied, the clerk shall enter an order to that effect, and shall forthwith notify the court below and counsel of record.

35. DISMISSING CASES IN VACATION. Whenever the appellant and appellee in an appeal, or the petitioner and respondent in a petition for or writ of certiorari, shall in vacation, by their attorneys of record, file with the clerk an agreement in writing that such appeal, petition for or writ of certiorari shall be dismissed, specifying the terms as respects costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter such dismissal and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue on such dismissal without an order of the court. (See Rules 31 and 34.)

36. APPEALS; BY WHOM ALLOWED; SUPERSEDEAS. 1. An appeal will be out of time unless, within the period fixed by statute, application for allowance is presented to the judge or justice who allows it. A prior timely application to another judge or justice does not extend the statutory period. In cases where an appeal may be had from a district court to this court the same may be allowed, in term time or in vacation, by any judge of the district court, including a circuit judge assigned thereto, or by a justice of this court. In cases where an appeal may be had from a circuit court of appeals to this court the same may be allowed, in term time or in vacation by any judge of the circuit court of appeals or by a justice of this court. In cases where an appeal may be had from a state court of last resort to this court the same may be allowed in term time or in vacation by the chief justice or presiding judge of the state court or by a justice of this court. The judge or justice allowing the appeal shall take the proper security for costs and sign the requisite citation and he may also, on taking the requisite security therefor, grant a supersedeas and stay of execution or of other proceedings under the judgment or decree, pending such appeal.

(2) Supersedeas bonds must be taken, with good and sufficient security, that the appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and suits on mortgages, or where the property is in the custody of the marshal under admiralty process, as in case of capture or seizure, or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, indemnity is only required in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit, and just damages for delay, and costs and interest on the appeal. (As amended Oct. 21, 1940; June 7, 1943.)

37. QUESTIONS CERTIFIED BY A CIRCUIT COURT OF APPEALS OR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA. (1) Where a circuit court of appeals or the United States Court of Appeals for the District of Columbia shall certify to this court a question or proposition of law, concerning which it desires instruction for the proper decision of a cause, the certificate shall contain a statement of the nature of the cause and of the facts on which such question or proposition of law arises. Questions of fact cannot be so certified. Only questions or propositions of law may be certified, and they must be distinct and definite.

(2) If in such a cause it appears that there is special reason therefor, this court may on application, or on its own motion, require that the entire record be sent up so that it may consider and decide the whole matter in controversy as upon appeal.

(3) Where application is made for direction that the entire record be sent up, the application must be accompanied by a certified copy thereof. (As amended May 25, 1936.)

38. REVIEW ON WRIT OF CERTIORARI OF DECISIONS OF STATE COURTS, CIRCUIT COURTS OF APPEALS, AND THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA. (1) A petition for review on writ of certiorari of a decision of a state court of last resort, a circuit court of appeals, or the United States Court of Appeals for the District of Columbia, shall be accompanied by a certified transcript of the record in the case, includ-

ing the proceedings in the court to which the writ is asked to be directed. For printing record see paragraph 7 of this rule.

(2) The petition shall contain a summary and short statement of the matter involved; a statement particularly disclosing the basis upon which it is contended that this court has jurisdiction to review the judgment or decree in question (see Rule 12, par. 1); the questions presented; and the reasons relied on for the allowance of the writ. Only the questions specifically brought forward by the petition for writ of certiorari will be considered. A supporting brief may be annexed to the petition or presented separately, but it must be direct and concise. (See Rules 26 and 27.) A failure to comply with these requirements will be a sufficient reason for denying the petition. See United States v. Rimer, 220 U. S. 547; Furness, Withy & Co. v. Yang Tsze Insurance Assn., 242 U. S. 430; Houston Oil Co. v. Goodrich, 245 U. S. 440; Layne & Bowler Corporation v. Western Well Works, 261 U. S. 387, 392; Magnum Import Co. v. Coty, 262 U. S. 159, 163; Southern Power Co. v. North Carolina Public Service Co., 263 U. S. 508. Forty printed copies of the petition and supporting briefs shall be filed.

The petition will be deemed in time when it, the record, and the supporting brief, are filed with the clerk within the period prescribed by section 8 of the Act of February 13, 1925, except that in cases of petition to this court for writ of certiorari to review a judgment of a circuit court of appeals or of the United States Court of Appeals for the District of Columbia in criminal cases within the provisions of the Act of March 8, 1934, the petition shall be made within the period prescribed pursuant to said Act in Rule XI of the Rules of Practice and Procedure, promulgated May 7, 1934 (292 U. S. 661, 666).

(3) Notice of the filing of the petition, together with a copy of the petition, printed record and supporting brief, shall be served by the petitioner on counsel for the respondent within ten days after the filing (unless enlarged by the court, or a justice thereof when the court is not in session), and due proof of service shall be filed with the clerk. If the United States, or an officer or agency thereof, is respondent, the service of the petition, record and brief shall be made on the Solicitor General at Washington, D. C. Counsel for the respondent shall have twenty days, and where he resides in California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming, Montana, or an outlying possession, shall have twenty-five days (unless enlarged by the court, or a justice thereof when the court is not in session), after notice, within which to file forty printed copies of an opposing brief, conforming to Rules 26 and 27. The brief must bear the name of a member of the bar of this court at the time of filing.

(a) If the date for filing a brief in opposition falls in the summer recess, the brief may be filed within forty days after the service of the notice, but this enlargement shall not extend the time to a later date than September 10th.

(4) Upon the expiration of the period for filing the respondent's brief, or upon an express waiver of the right to file or the actual filing of such brief in a shorter time, the petition, record and briefs shall be distributed by the clerk to the court for its consideration.

(a) Timely reply briefs will be considered but distribution under this rule shall not be delayed pending the filing of such briefs.

(5) A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way probably in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision. (As amended May 31, 1938.)

(c) Where the United States Court of Appeals for the District of Columbia has decided a question of general importance or a question of substance relating to the construction or application of the Constitution, or a treaty or statute, of the United States, which has not been, but should be, settled by this court; or where that court has not given proper effect to an applicable decision of this court.

(6) Section 8 (d) of the Act of February 13, 1925, prescribes the mode of obtaining a stay of the execution and enforcement of a judgment or decree pending an application for review on writ of certiorari. The stay may be granted by a judge of the court rendering the judgment or decree, or by a justice of this court, and may be conditioned on the giving of security as in that section provided. (See Rule 36.)

(7) Upon receipt of the certified transcript of the record the clerk shall make an estimate of the cost of printing the record, his fee for preparing it for the printer and supervising the printing, and other probable fees, and shall furnish the same to the party docketing the case. Upon payment of the amount estimated by the clerk, forty copies of the record shall be printed, under his supervision, for the use of the court and of counsel. But where the record has been printed for the use of the court below and the necessary copies as so printed are furnished, it shall not be necessary to reprint it for this court, but only to print such additions as may be necessary to show the proceedings in that court and the opinions there. When the petition is presented, it will suffice to furnish ten copies of the record as printed below together with the proceedings and opinion in that court; but if the petition is granted the requisite additional printed copies must be promptly supplied, and if not available the record must be reprinted under the supervision of the clerk.

(8) Where it is necessary to print the record for the use of this court counsel should stipulate to omit from the printed record all matter not essential to a consideration of the questions presented by the petition for the writ, and when it is shown that unnecessary parts of the record have been printed although a reasonable effort was made by one of the parties to secure the printing of a proper record, such order as to costs may be made as the court shall deem proper.

39. CERTIORARI TO A CIRCUIT COURT OF APPEALS OR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA BEFORE JUDGMENT. Proceedings to bring up to this court on writ of certiorari a case pending in a circuit court of appeals or the United States Court of Appeals for the District of Columbia, before judgment is given in such court, should conform, as near as may be, to the provisions of Rule 38; and similar reasons for granting or refusing the application will be applied. That the public interest will be promoted by prompt settlement in this court of the questions involved may constitute a sufficient reason.

40. QUESTIONS CERTIFIED BY THE COURT OF CLAIMS. Where the Court of Claims shall certify to this court a question of law, concerning which instructions are desired for the proper disposition of the case, the certificate shall contain a statement of the case and of the facts on which such question arises. Questions of fact cannot be certified. The certification must be confined to definite and distinct questions of law.

41. JUDGMENTS OF THE COURT OF CLAIMS —PETITIONS FOR REVIEW ON CERTIORARI. (1) A petition to this court for a writ of certiorari to review a judgment of the Court of Claims shall be accompanied by a certified transcript of the record in that court, consisting of the pleadings, findings of fact, conclusions of law, judgment and opinion of the court, and such other parts of the record as are material to the errors assigned. The petition shall contain a summary and short statement of the matter involved; the relevant parts of statutes involved (see Rule 27 (f)); the questions presented; and the reasons relied on for the allowance of the writ. Only the questions specifically brought forward by the petition for writ of certiorari will be considered. A supporting brief may be annexed to the petition or presented separately, but it must be direct and concise. (See Rules 26 and 27.) The petition, brief and record shall be filed with the clerk and forty copies shall be printed under his supervision. The record shall be printed in

the same way and upon the same terms that records on appeal are required to be printed. The estimated costs of printing shall be paid within five days after the estimate is furnished by the clerk and if payment is not so made the petition may be summarily dismissed. When the petition, brief and record are printed the petitioner shall forthwith serve copies thereof on the respondent, or his counsel of record, and shall file with the clerk due proof thereof.

(2) Within twenty days after the petition, brief and record are served (unless enlarged by the court or a justice thereof when the court is not in session) the respondent may file with the clerk forty printed copies of an opposing brief, conforming to Rules 26 and 27. Upon the expiration of that period, or upon an express waiver of the right to file or the actual filing of such brief in a shorter time, the petition, briefs and record, shall be distributed by the clerk to the court for its consideration. (See Rule 38, par. 4 (a).)

The provisions of subdivision (a) of paragraph 3 of Rule 38 shall apply to briefs in opposition to petitions for writs of certiorari to review judgments of the Court of Claims.

(3) The same general considerations will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims as are applied to applications for such writs to other courts. (See par. 5 of Rule 38.) (As amended May 31, 1932; March 25, 1940.)

42. JUDGMENTS OF COURT OF CUSTOMS AND PATENT APPEALS OR OF SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES; PETITIONS FOR REVIEW ON CERTIORARI. Proceedings to bring up to this court on writ of certiorari a case from the Court of Customs and Patent Appeals or from the Supreme Court of the Commonwealth of the Philippines should conform, as near as may be, to the provisions of Rule 38. The same general considerations which control when such writs to other courts are sought will be applied to them. (As amended May 25, 1936.)

43. ORDER GRANTING CERTIORARI. Whenever application for a writ of certiorari to review a decision of any court is granted, the clerk shall enter an order to that effect, and shall forthwith notify the court below and counsel of record of the granting of the application. The order shall direct that the certified transcript of record on file here be treated as though sent up in response to a formal writ. A formal writ shall not issue unless specially directed.

44. RULES, COSTS, FEES, AND INTEREST ON CERTIORARI. Where not otherwise specially provided, the rules relating to appeals, including those relating to costs, fees and interest, shall apply, as far as may be, to petitions for, and causes heard on, certiorari.

45. CUSTODY OF PRISONERS PENDING A REVIEW OF PROCEEDINGS IN HABEAS CORPUS. (1) Pending review of a decision refusing a writ of habeas corpus, the custody of the prisoner shall not be disturbed.

(2) Pending review of a decision discharging a writ of habeas corpus after it has been issued, the prisoner may be remanded to the custody from which he was taken by the writ, or detained in other appropriate custody, or enlarged upon recognizance with surety, as to the court or judge rendering the decision may appear fitting in the circumstances of the particular case.

(3) Pending review of a decision discharging a prisoner on habeas corpus, he shall be enlarged upon recognizance, with surety, for his appearance to answer and abide by the judgment in the appellate proceeding; and if in the opinion of the court or judge rendering the decision surety ought not to be required the personal recognizance of the prisoner shall suffice.

(4) The initial order respecting the custody or enlargement of the prisoner pending review, as also any recognizance taken, shall be deemed to cover not only the review in the intermediate appellate court but also the further possible review in this court; and only where special reasons therefor are shown to this court will it disturb that order, or make any independent order in that regard.

46. REVIEW ON APPEAL. (1) Appeals to this court from the district courts and the circuit courts of appeals are not affected by the Act of January 31, 1928, or the amendatory Act of April 26, 1928, both of which are copied in the appendix hereto. Such appeals, where admissible, must be sought, allowed and perfected as provided in other statutes and in the rules of this court. The Act of February 13, 1925, copied in the appendix hereto, shows when an appeal is admissible and when the mode of review is limited to certiorari.

(2) Under the Act of January 31, 1928, as amended by the Act of April 26, 1928 [Title 28, s. 861b], the review which theretofore could be had in this court on writ of error may now be obtained on an appeal. But the appeal thereby substituted for a writ of error must be sought, allowed and perfected in conformity with the statutes theretofore providing for a writ of error. The appeal can be allowed only on the presentation of a petition showing that the case is one in which, under the legislation in force when the Act of January 31, 1928, was passed, a review could be had in this court on writ of error. The petition must be accompanied by an assignment of error (see Rule 9) and statement as to jurisdiction (see Rule 12), and the judge or justice allowing the appeal must take proper security for costs and sign the requisite citation to the appellee. See paragraph 1 of Rule 10 and paragraph 1 of Rule 36. The citation must be served on the appellee or his counsel and filed, with proof of service, with the clerk of the court in which the judgment to be reviewed was entered. The mode of obtaining a supersedeas is pointed out in paragraph 2 of Rule 36. (As amended May 31, 1932, effective Sept. 1, 1932.)

47. APPEALS UNDER ACT OF AUGUST 24, 1937. Appeals to this court under the Act of August 24, 1937 [Title 28, ss. 349a, 380a], shall be governed, as far as may be, by the rules of this court regulating the procedure on appeal in other cases from courts of the United States; provided, however, that when an appeal is taken under s. 2 of the Act [Title 28, s. 349a] the service required by paragraph 2 of Rule 12 shall be made on all parties to the suit other than the party or parties taking the appeal. The record shall be made up and the case docketed in this court within sixty days from the time the appeal is allowed. (Added January 10, 1938.)

48. JOINT OR SEVERAL APPEALS OR PETITIONS FOR WRITS OF CERTIORARI; SUMMONS AND SEVERANCE ABOLISHED. Parties interested jointly, severally, or otherwise in a judgment may join in an appeal or a petition for writ of certiorari therefrom; or, without summons and severance, any one or more of them may appeal or petition separately or any two or more of them may join in an appeal or petition.

49. NO SESSION ON SATURDAY. The court will not hear arguments or hold open sessions on Saturday.

50. ADJOURNMENT OF TERM. The court will at every term announce, at least three weeks in advance, the day on which it will adjourn, and will not take up any case for argument, or receive any case upon briefs or upon petition for certiorari, within two weeks before the adjournment, unless otherwise ordered for special cause shown.

51. ABROGATION OF PRIOR RULES. These rules shall become effective February 27, 1939, and be printed as an appendix to 306 U. S. The rules promulgated June 5, 1928, appearing in 275 U. S., Appendix, and all amendments thereof are rescinded, but this shall not affect any proper action taken under them before these rules become effective.

RULES OF PRACTICE AND PROCEDURE IN CRIMINAL CASES, PROMULGATED BY THE SUPREME COURT OF THE UNITED STATES

1. SENTENCE. After a plea of guilty, or a verdict of guilt by a jury or finding of guilt by the trial court where a jury is waived, and except as provided in the Act of March 4, 1925, c. 521, 43 Stat. 1259 [18 U. S. C. A. 724-727], sentence shall be imposed without delay unless (1) a motion for the withdrawal of a plea of guilty, or in arrest of judgment or for a new trial, is pending, or the trial court is of opinion that there is reasonable ground for such a motion; or (2) the condition or character of the defendant, or other pertinent matters, should be investigated in the interest of justice before sentence is imposed. The judgment setting forth the sentence shall be signed by the judge who imposes the sentence and shall be entered by the clerk.

Pending sentence, the court may commit the defendant or continue or increase the amount of bail.

2. MOTIONS. (1) Motions after verdict or finding of guilt, or to withdraw a plea of guilty, shall be determined promptly.

(2) Save as provided in subdivision (3) of this Rule, motions in arrest of judgment, or for a new trial, shall be made within three (3) days after verdict or finding of guilt.

(3) Except in capital cases a motion for a new trial solely upon the ground of newly-discovered evidence may be made within sixty (60) days after final judgment, without regard to the expiration of the term at which judgment was rendered, unless an appeal has been taken and in that event the trial court may entertain the motion only on remand of the case by the appellate court for that purpose, and such remand may be made at any time before final judgment. In capital cases the motion may be made at any time before execution of the judgment.

(4) A motion to withdraw a plea of guilty shall be made within ten (10) days after entry of such plea and before sentence is imposed.

3. **APPEALS.** An appeal shall be taken within five (5) days after entry of judgment of conviction, except that where a motion for a new trial has been made within the time specified in subdivision (2) of Rule 2, the appeal may be taken within five (5) days after entry of the order denying the motion.

Petitions for allowance of appeal, and citations, in cases governed by these rules are abolished.

Appeals shall be taken by filing with the clerk of the trial court a notice, in duplicate, stating that the defendant appeals from the judgment, and by serving a copy of the notice upon the United States Attorney. The notice of appeal shall set forth the title of the case, the names and addresses of the appellant and appellant's attorney, a general statement of the nature of the offense, the date of the judgment, the sentence imposed, and if the appellant is in custody, the prison where appellant is confined. The notice shall also contain a succinct statement of the grounds of appeal and shall follow substantially the form hereto annexed.

4. **CONTROL BY APPELLATE COURT.** The clerk of the trial court shall immediately forward the duplicate notice of appeal to the clerk of the appellate court, together with a statement from the docket entries in the case substantially as provided in the form hereto annexed.

From the time of the filing with its clerk of the duplicate notice of appeal, the appellate court shall, subject to these rules, have supervision and control of the proceedings on the appeal, including the proceedings relating to the preparation of the record on appeal.

The appellate court may at any time, upon five (5) days' notice, entertain a motion to dismiss the appeal, or for directions to the trial court, or to vacate or modify any order made by the trial court or by any judge in relation to the prosecution of the appeal, including any order for the granting of bail.

5. **SUPERSEDEAS.** An appeal from a judgment of conviction stays the execution of the judgment, unless the defendant pending his appeal shall elect to enter upon the service of his sentence.

The trial court or the circuit court of appeals may stay the execution of any sentence to pay a fine or fine and costs upon such terms as it may deem proper. It may require the defendant pending the appeal to pay to the clerk in escrow the whole or any part of such fine and costs, to submit to an examination as to his assets, or to give a supersedeas bond, and it may likewise make any appropriate order to restrain the defendant from dissipating his assets and thereby preventing the collection of such fine.

6. **BAIL.** The defendant shall not be admitted to bail pending an appeal from a judgment of conviction save as follows: Bail may be granted by the trial judge or by the appellate court, or, where the appellate court is not in session, by any judge thereof or by the circuit justice.

Bail shall not be allowed pending appeal unless it appears that the appeal involves a substantial question which should be determined by the appellate court.

7. **DIRECTIONS FOR PREPARATION OF RECORD ON APPEAL.** The clerk of the trial court shall immediately notify the trial judge of the filing of the notice of appeal, and thereupon the trial judge shall at once direct the appellant or his attorney, and the United States Attorney, to appear before him and shall give such directions as may be appropriate with respect to the preparation of the record on appeal, including directions for the purpose of making promptly available all necessary transcripts of testimony and proceedings. The action and directions contemplated by this Rule may be had and given by the trial judge at any place he may designate within the judicial district where the conviction was had.

8. **RECORD ON APPEAL WITHOUT BILL OF EXCEPTIONS.** When it appears that the appeal is to be prosecuted upon the clerk's record of proceedings, that is, upon the indictment and other pleadings and the orders, opinions, and judgment of the trial court, without a bill of exceptions, the trial judge shall direct the appellant to file with the clerk of the trial court, within a time stated, an assignment of the errors of which he complains (which may amplify or add to the grounds stated in the notice of appeal), and shall direct the clerk to forward promptly, with his certificate, to the appellate court the above-mentioned record and assignment of errors, and upon receipt thereof the appellate court shall at once set the appeal for argument as provided in these rules.

9. **BILL OF EXCEPTIONS.** In cases other than those described in Rule 8, the appellant, within thirty (30) days after the taking of the appeal, or within such further time as within said period of thirty days may be fixed by the trial judge, shall procure to be settled, and shall file with the clerk of the court in which the case was tried, a bill of exceptions setting forth the proceedings upon which the appellant wishes to rely in addition to those shown by the clerk's record as described in Rule 8. Within the same time, the appellant shall file with the clerk of the trial court an assignment of the errors of which appellant complains. The bill of exceptions shall be settled by the trial judge as promptly as possible, and he shall give no extension of time that is not required in the interest of justice.

Bills of exceptions shall conform to the provisions of Rule 8 of the Rules of the Supreme Court of the United States [28 U. S. C. A. following section 354].

Upon the filing of the bill of exceptions and assignment of errors, the clerk of the trial court shall forthwith transmit them, together with such matters of record as are pertinent to the appeal, with his certificate, to the clerk of the appellate court, and the papers so forwarded shall constitute the record on appeal.

The appellate court may at any time, on five (5) days' notice, entertain a motion by either party for the correction, amplification, or reduction of the record filed with the appellate court and may issue such directions to the trial court, or trial judge, in relation thereto, as may be appropriate.

10. **SETTING THE APPEAL FOR ARGUMENT.** Save where good cause is shown for an earlier hearing, the appellate court shall set the appeal for argument on a date not less than thirty (30) days after the filing in that court of the record on appeal and as soon after the expiration of that period as the state of the calendar of the appellate court will permit. Preference shall be given to criminal appeals over appeals in civil cases.

11. **WRITS OF CERTIORARI.** Petition to the Supreme Court of the United States for writ of certiorari to review a judgment of the appellate court shall be made within thirty (30) days after the entry of the judgment of that court. Such petition shall be made as prescribed in Rules 38 and 39 of the Rules of the Supreme Court of the United States. (28 U. S. C. A. following section 354.)

12. **LOCAL RULES.** Each appellate court may prescribe rules, not inconsistent with the foregoing rules, with respect to cost bonds, the procedure on the hearing of appeals, the issue of mandates, and the time and manner in which petitions for rehearing may be presented.

13. In the foregoing rules, the phrase "trial court" shall be deemed to refer to the District Courts of the United States and the Supreme Court of the District of Columbia; the phrase "trial judge" includes the judge before whom the case was tried or brought to judgment and, in case of his absence from the district, or disability, or death, any other judge assigned to hold, or holding, the court in which the case was tried or brought to judgment; the phrase "appellate court" shall be

deemed to refer to the United States Circuit Court of Appeals and the Court of Appeals of the District of Columbia.

For the purpose of computing time as specified in the foregoing rules, Sundays and legal holidays (whether under Federal law or under the law of the State where the case was brought) shall be excluded.

RULES
UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Effective May 31, 1942.
(With Amendments.)

RULE 1. SCOPE OF RULES

These rules shall govern the procedure in this court so far as they are applicable and are not inconsistent with any statute of the United States or any rule or order of the Supreme Court of the United States having the force of law. Procedure with respect to any matter not covered by statute or by a rule of this court or of the Supreme Court shall be such as has heretofore customarily prevailed in this court, or such as this court may direct.

RULE 2. NAME, SEAL, AND PROCESS

(a) Name. The name of this court is "United States Circuit Court of Appeals for the Eighth Circuit."

(b) Seal. The seal is as shown by the following facsimile:

(SEAL)

(c) Process. Process of this court shall be in the name of the President of the United States, and shall be in like form and tested in the same manner as process of the Supreme Court of the United States.

RULE 3. TERMS OF COURT

(a) Times and Places. This court will hold general terms each year at the following places and commencing at the following times:

St. Paul, Minnesota, first Tuesday in September.
St. Louis, Missouri, first Monday in November.
Omaha, Nebraska, first Monday in January.
Kansas City, Missouri, first Monday in March.
St. Paul, Minnesota, first Monday in May.

Any of these terms may, by order of court, be adjourned to another time or place. Other terms may be held at such times and places as the court may designate. The court may sit in separate divisions at the same time and place, or at different places at the same time. If the first day of any term shall fall upon a holiday, the term shall commence on the following day.

(b) Calendar. All cases which are ready for hearing at any term shall, so far as practicable, be heard at that term. The clerk shall, not later than 20 days before the commencement of a term, issue a printed calendar showing all cases which will be heard at the term and the day upon which each case will be called for hearing. In listing cases upon the calendar, the clerk shall give appropriate effect to the order in which the cases were filed in this court, to any preferences accorded by statute or rule, and to any directions of the court.

(c) Order of Business. Unless otherwise ordered, the court will convene at ten o'clock A. M. on the opening day of a term and of each day thereafter upon which cases are set for argument. Before the call of the calendar for the day, the court will entertain motions to admit attorneys to the bar of this court, motions to advance, continue or dismiss cases on the calendar, motions for additional time for argument, and other appropriate motions relative to the cases set for argument. The calendar for the day will then be called, and the cases listed thereon which are ready for oral argument will be heard in the order in which they appear upon the calendar.

(d) Marshal and Bailiffs. The Marshal of the district in which a term of court is held shall attend upon the court when so directed by it. He shall furnish as many bailiffs as the court directs, who shall perform the duties required of them by the court.

RULE 4. THE COURT; QUORUM

(a) How Constituted. The court, for the purpose of hearing and deciding any matter coming before it, shall consist of three judges designated by the senior circuit judge or, in case of his inability to make such designation, by the judge next senior in point of service, or, if no designation shall have been made by either of them, by the judge presiding at the term or session of court at which a matter comes regularly on for hearing. Two judges shall constitute a quorum of the court.

(b) Absence of Quorum; Adjournment. If on the opening day or any other day of any term less than a quorum is present, any judge in attendance may adjourn the court until a later time, or, if no judge is present, the clerk, or if he is absent, a deputy clerk, may adjourn the court from day to day.

(c) Absence of Quorum; Interlocutory Orders. Any judge attending a term when less than a quorum is present may make any necessary interlocutory order relating to any case or proceeding pending in this court, preparatory to the hearing or decision thereof.

(d) Orders Grantable Without Quorum. Motions and applications for orders, if consented to or if unopposed after due notice to all interested parties has been given or waived, or if the orders sought are formal and are such as are ordinarily granted as of course and without notice or hearing, need not be submitted to a quorum of the court. Such motions and applications may be considered and the orders applied for may be granted for the court by the senior circuit judge (within the Circuit) or by any judge of the court (within the Circuit) designated by the court to consider and grant such motions and applications. Orders which properly may be granted under this rule without being submitted to a quorum of the court shall include: An order permitting appeal or defense in forma pauperis; an order for the dismissal, continuance, advancement, or special setting of a case for hearing; an order relating to the printing of records or briefs or to the time within which they are to be filed; an order granting leave to file an enlarged brief; an order dispensing with the printing of exhibits which cannot without unreasonable difficulty or expense be reproduced; an order amending the record if the amendment is agreed to in writing; an order staying mandate pending application for certiorari; and an order to show cause returnable on or before the next regular motion day.

(e) Reconsideration of Non-Quorum Orders. Any interested party adversely affected by an order made for the court by a single judge, under the provisions of subdivision (d) of this rule, shall be entitled to a reconsideration thereof by the court if, within 10 days after the entry of the order, such party shall file with the clerk and serve upon the party who filed the motion or application for the order, a request in writing for the reconsideration, vacation or modification of the order, stating the grounds for such request. The clerk shall thereupon submit to the court the order complained of, the motion or application upon which it was entered, the request for its reconsideration, and any suggestions which may have been filed in support of or in opposition to the request. The court shall reconsider the order and shall take such action with respect thereto as it may deem proper.

RULE 5. CLERK

(a) Location of Office. The Clerk's office shall be at St. Louis, Missouri.

(b) Not to Act as Attorney. Neither the clerk nor any deputy clerk shall act as an attorney.

(c) Oaths and Bonds. The clerk, before entering upon the duties of his office, shall take such oaths and give such bonds as are required by law. A copy of his oaths and of his bonds, with the approval thereof by this court as to amount, form and sureties, shall be entered in the journal of this court. The bonds and oaths shall be deposited as directed by the court for safe-keeping.

(d) Release of Court Records. The clerk shall not permit any original record, paper or exhibit to be taken from his office or from the courtroom without an order from the court or a judge thereof.

(e) Preservation of Records and Briefs. The clerk shall cause to be bound in volumes and shall carefully preserve in his office one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions and briefs filed therein.

(f) Court Personnel Record. In recording orders, judgments and decrees of this court, the clerk shall cause the record to show the names of the judges who constituted the court to which the case or matter was submitted and who ruled upon it.

RULE 6. ADMISSION OF ATTORNEYS

(a) On Motion. Any attorney of good moral and professional character who is a citizen of the United States or of any territory or possession thereof and who has been admitted to practice in any United States Court or in the highest court of any state may, upon motion of a member of the bar of this court, be admitted as an attorney of this court upon taking the following oath:

"I do solemnly swear (or affirm) that I will demean myself as an attorney and counsellor of the United States Circuit Court of Appeals for the Eighth Circuit, uprightly and according to law; and that I will support the Constitution of the United States. So help me, God;"

and subscribing the roll.

(b) On Application. An order of admission to the bar of this court may also be obtained upon a verified application in writing showing that the applicant has the qualifications required in the foregoing paragraph, accompanied by a certificate of a judge or the clerk of a court in which he is admitted to practice that he is a member in good standing of the bar of that court and is of good moral and professional character; and also accompanied by the oath of the applicant in the form prescribed above.

(c) Admission Fee. Before being enrolled as an attorney of this court, each applicant under either subdivision (a) or subdivision (b) of this rule shall pay to the Librarian of this court at St. Louis the sum of $5.00 for the use of the libraries of the court. The Librarian shall receive such monies, shall be the custodian thereof, and shall expend them under the direction of the court.

(d) Disbarment. Any member of the bar of this court who is disbarred or suspended from practice by any court of record shall thereby forfeit his membership in the bar of this court, and his name shall be stricken from the roll of attorneys unless within a time fixed by order of this court, and after notice of such order mailed by the clerk to the attorney at his address as shown upon the roll, he shall show that such disbarment or suspension is no longer in effect.

RULE 7. DOCKETING CASES

(a) Civil Cases. In civil cases the appellant or petitioner shall cause the case to be docketed in this court and shall file the record on appeal or review pursuant to Rule 73 (g) of the Federal Rules of Civil Procedure, 28 U.S.C.A. following section 723c. (See Appendix.)

(b) Criminal Cases. In criminal cases the appeal shall be docketed at the time the duplicate notice of appeal is received by the clerk of this court from the clerk of the trial court, provided the appellant has made the deposit hereinafter required to secure clerk's costs.

(c) Deposit. A deposit of $40.00 shall be made with the clerk of this court to secure his costs before any case is docketed, unless the appellant or petitioner is by law exempted from the payment of costs or clerk's fees. In civil cases this deposit shall be made at the time the record on appeal or review is delivered to the clerk of this court. In criminal cases the deposit shall be made when the duplicate notice of appeal required to be forwarded by the clerk of the trial court to the clerk of this court has been received and filed by the clerk of this court or within 15 days thereafter.

(d) Default. Failure of an appellant or petitioner to docket an appeal or petition for review or enforcement, or to file the record on appeal or review, or to make the required deposit with the clerk of this court, shall constitute a ground for an order that the appeal or petition be docketed and dismissed. Such an order may be entered upon the motion of the appellee or respondent, accompanied by a certificate of the clerk of the court or board which made the order, judgment or decree appealed from, stating the case and certifying that a notice of appeal or a petition for review was duly filed. After an appeal or petition for review or enforcement has been docketed and dismissed, it shall not be reinstated unless this court, for good cause shown and on such conditions as may be just, shall otherwise order.

RULE 8. RECORD ON APPEAL

(a) Civil Actions and Bankruptcy Proceedings. The procedure for the preparation of the record on appeal in civil actions is prescribed by Rules 75 and 76 of the Federal Rules of Civil Procedure, 28 U.S.C.A. following section 723c, which are adopted as rules of this court governing the preparation of the record on appeal from the district courts in all civil actions, including bankruptcy proceedings.

(b) Admiralty Cases. The procedure for the preparation of the record on appeal in admiralty cases is prescribed by Rule 49 of the Admiralty Rules, 28 U.S.C.A. following section 723, promulgated by the Supreme Court, which is adopted as a rule of this court governing the preparation of the record on appeal from the district courts in admiralty cases.

(c) Criminal Cases. The procedure for the preparation of the record on appeal in criminal cases is prescribed by Rules VII, VIII, and IX of the Rules of Practice and Procedure in Criminal Cases, 18 U.S.C.A. following section 688, promulgated by the Supreme Court of the United States.

RULE 9. PHYSICAL EXHIBITS

(a) Custody of Clerk. Models, diagrams and material exhibits in evidence in any case shall be placed in the custody of the clerk at least 10 days before the case is submitted.

(b) Removal by Party. All such exhibits must be removed from the custody of the clerk promptly and not later than one month after the case is finally decided. If this is not done, the clerk, after giving notice to counsel to forthwith remove such exhibits, may 15 days thereafter cause the exhibits to be destroyed or otherwise disposed of.

(c) Use by Court. Original paper exhibits, consisting of maps, plats, sketches, drawings, photographs, blue prints, and other like matters may be transmitted under order of the district court for inspection by this court, but copies thereof must be included in the printed record unless otherwise ordered by this court.

RULE 10. PRINTING OF RECORD

(a) Entire Record Not to Be Printed. Unless ordered by this court, the entire record on appeal, or on petition to review or to enforce an order of an administrative board, agency or commission, shall not be printed. The appellant or petitioner shall serve and file with his brief a separate printed record, carefully indexed, which shall contain a clear, concise and condensed statement or abstract of so much of the entire record on appeal or review as may be essential to show jurisdiction and fully to present to the court the points relied upon in his brief.

(b) Contents of Printed Record. The printed record shall contain all of the essential pleadings, essential docket entries, the judgment or order appealed from or sought to be reviewed or enforced, and the opinion, findings and conclusions of the trial court or administrative agency, and, if the case was tried to a jury, the complete instructions of the trial court and the verdict. The printed record shall also contain so much of the evidence, either in narrative or question and answer form, as may be necessary to enable this court to determine the questions presented for decision. If the printed record contains any matter in a foreign language, it must be accompanied by a correct translation thereof. If the appellant or petitioner in his brief challenges rulings upon evidence, such evidence, the objections interposed thereto, and the rulings questioned shall be quoted in the printed record, and if the question of the sufficiency of the evidence to support a finding, ruling, order, verdict or judgment of the court or board is raised by the appellant or petitioner, he shall include in the printed record all evidence received upon the trial or hearing pertinent to that question.

(c) Supplement to Printed Record by Appellee. In case the appellee or respondent shall be of the opinion that the printed record submitted by the appellant or petitioner is inaccurate or omits essen-

tial portions of the entire record, he may file and serve with his answering brief a separately printed supplement to the printed record, carefully indexed, containing such matter as he deems essential for consideration by the court in deciding the case, or he may move for an order requiring the appellant or petitioner to print such matter as a supplement to the printed record.

(d) Effect of Insufficient Printed Record. If, upon submission of a case, it shall appear that the record printed by the appellant or petitioner is insufficient to enable the court to decide questions presented or argued, the court may treat as waived any question which cannot properly be determined from the record as printed, or it may require that additional portions of the record be printed, or it may make any other appropriate order with respect to the case, including dismissal of the appeal or petition for review or enforcement.

(e) Effect of Unfair and Misleading Printed Record; Correction of Inadvertent Mistakes. In case the court is satisfied that an appellant or petitioner has knowingly presented a printed record which constitutes an unfair or incomplete statement of those portions of the entire record essential to a proper consideration of the questions presented by him for decision, the appeal or petition will be dismissed. Inadvertent omissions or misstatements in the record on appeal or in the printed record may be corrected by stipulation, or by direction of this court on application or of its own motion.

(f) Expense, When Not Taxable as Costs. If an appellant or petitioner shall print the entire record on appeal without an order of this court, the expense of printing it shall not be taxed as costs unless the court for good cause shall order otherwise. The expense of printing portions of the record which are clearly nonessential will not be allowed as costs, and any delay or expense caused by the failure of an appellant or petitioner to print, file and serve an adequate record will be taken into consideration in taxing costs.

(g) Agreed Statement. When the questions presented by an appeal to this court can be determined without an examination of all the pleadings, evidence, and proceedings in the court below, the parties may prepare and sign a statement of the case showing how the questions arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by this court. The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and a concise statement of the points to be relied on by the appellant. If the statement conforms to the truth, it, together with such additions as the district court may consider necessary fully to present the questions raised by the appeal, shall be approved by that court and shall then be certified to this court as the record on appeal.

RULE 11. BRIEFS AND RECORDS

(a) Filing and Serving. The appellant or petitioner shall, within 40 days from the time that the record on appeal or on review has been filed with the clerk, file 20 copies of his printed brief together with 30 copies of his printed record and shall furnish to each of opposing counsel a copy of the printed brief and printed record. The appellee or respondent, within 25 days from the date of the receipt of the appellant's or petitioner's printed brief and printed record, shall file 20 copies of his answering printed brief together with 30 copies of his printed supplement (if any) to the printed record and shall furnish a copy of each thereof to each of opposing counsel. Within 10 days thereafter, the appellant or petitioner may file 20 copies of a printed reply brief and shall serve a copy thereof upon each of opposing counsel.

(b) Contents of Brief. A brief shall contain, in the following order:

First.—A complete detailed index of the entire brief. (Sample index may be procured from the clerk.)

Second.—A complete list of all cases and statutes cited in the brief. The cases shall be first listed and arranged in alphabetical order, giving title, volume and page (citations of United States Supreme Court cases must be to the official reports; citations of State supreme court cases shall be both to the State official reports and to the Reporter System). Statutes shall be listed in chronological order, with date, volume, and page. Each case or statute shall be indexed as to each page in the argument where it is referred to.

Third.—A concise statement of the case in so far as is necessary for the court to understand and decide the points to be argued in the brief or orally.

Fourth.—A separate and particular statement of each assignment of error (in criminal cases), or of each point relied upon (in civil cases), intended to be urged, with the record page thereof. If an error assigned or point relied upon relates to the admission or exclusion of evidence, the statement shall quote the evidence referred to and the pertinent objections or exceptions taken, together with the rulings of the court thereon, giving the pages of the printed record on which the quotations appear. If an error assigned or point relied upon relates to the giving of instructions or the refusal to give instructions requested, the statement shall quote the portions of the instructions or of the requested instructions which are referred to, the exceptions taken to the giving of the instructions or the refusal to give requested instructions and the rulings of the court thereon, and shall give the pages of the printed record on which the quotations appear. When the error asserted is as to a ruling upon the report of a master or referee, the statement shall show the exception to the report and the ruling thereon, giving pages of the printed record where they occur.

Fifth.—A concise statement of each point to be argued, with a complete list of all cases and statutes referred to in the argument covering the point.

Sixth.—A printed argument which shall substantially follow the order of points stated under paragraph "Fifth." The court will disregard any statement in the argument as to what the record contains unless reference is made to the page of the printed record where the statement may be found or verified. When a State statute is cited in the argument, so much thereof as may be necessary to the decision shall be printed in full. Briefs of appellees need not contain the statement of errors or points (paragraph "Fourth"), nor need they contain a statement of the case (paragraph "Third") unless the statement presented in appellant's brief is controverted or deemed insufficient.

(c) Length of Briefs. The appellant's or petitioner's brief shall not exceed 85 pages, and the appellee's or respondent's brief shall not exceed 80 pages. The appellant's or petitioner's reply brief (if any) shall not exceed 15 pages and shall not reargue points covered in his main brief.

(d) Violation of Rule—Effect. A brief not in substantial conformity with this rule will not be accepted or filed by the clerk.

(e) Effect of Default. When according to this rule an appellant in a criminal case is in default, his appeal may be summarily dismissed, and in any case where the appellant or petitioner is in default according to this rule, his appeal may be dismissed on motion. An appellee who is in default for noncompliance with the rule will not be heard in argument except with the consent of opposing counsel or by request of the court.

RULE 12. FORM OF PRINTED RECORDS AND BRIEFS

(a) In Ordinary Case. Records and briefs for the use of this court shall be printed on unglazed paper not less than 6⅛ inches in width by 9¼ inches in length, and type matter shall be 4 1/6 by 7 1/6 inches, as required by the rule of the Supreme Court of the United States, set out in the margin. The amount of matter contained on a page of the printed record of this court shall be at least equal to that contained on a page of a record printed under the supervision of the clerk of the Supreme Court of the United States. The paper shall equal a weight of 80 pounds per ream on basis of size of sheet 25 by 38 inches.

(b) In Patent Case. In patent causes the printing of records and briefs shall comply with subdivision (a) of this rule as to size of type and type matter to a page, but the size of such records and briefs shall be not less than 7½ inches wide by 9½ inches long so that copies of letters patent as furnished by the patent office may be inserted therein without folding.

(c) Covers of Records. All covers for records shall be printed in a neat and workmanlike manner on substantial paper equal to a weight of 96 pounds per ream on the basis of a sheet 25 by 40 inches, and shall contain in conspicuous type the following matter, viz.:

First.—"ABSTRACT OF RECORD."

Second.—"UNITED STATES CIRCUIT COURT OF APPEALS EIGHTH CIRCUIT."

Third.—The abbreviation for number, "No.", followed by the number assigned to the case in this court.

Fourth.—The words "Civil," "Criminal," "In Bankruptcy," "Tax Review," or other appropriate designation, as the case may require, on a separate line.

Fifth.—The title of the cause as it will be docketed in this court, viz.: ————, Appellant (or Petitioner, as the case may be), vs. ————, Appellee (or Respondent).

Sixth.—The words "Appeal from" or "Petition to Review Decision of," or "Petition to Enforce Order of," as the nature of the case may require, followed by the correct title of the trial tribunal.

(d) Body of Records. Unless otherwise expressly directed by counsel, the full titles of the tribunal and cause once correctly shown in the printed record shall not be repeated when unchanged. There shall be placed at the head of each subsequent pleading, etc., a brief designation of its character.

Unless otherwise expressly directed by counsel, the indorsements on pleadings, etc., shall not be printed in full; it shall be sufficient to print: "Filed in the ———— on ————," giving the name of the court or other tribunal and the correct date.

The date of all orders and decrees and the name of the judge or judges making them shall always appear.

In printing records, the pleadings, orders, testimony of witnesses, etc., shall be separated by a face rule 3 inches long.

When inserts are folded several times to conform to the size of the printed record, stubs should be inserted at the binding side of the record to equalize the space occupied by the folds. Unmounted photographs should be used when copies of them are required in printed records.

(e) Effect of Improper Form. Records and briefs not printed in substantial conformity with the provisions of this rule will not be accepted or filed.

RULE 13. ORAL ARGUMENTS

(a) Opening and Closing. The appellant or petitioner in this court shall be entitled to open and conclude the argument of a case. When there are cross appeals, they shall be argued as one case, and the party who was the plaintiff below shall open and conclude the argument.

(b) Number of Counsel. Not more than two counsel for each party will be heard in argument, and only one will be heard when but one side is represented.

(c) Time Allowed. One hour for each side will be allowed for oral argument, except that in the following cases each side will be limited to one-half hour: (1) Appeals from orders granting or refusing a preliminary injunction or the appointment of a receiver; (2) appeals involving solely questions of jurisdiction; (3) appeals in bankruptcy; (4) appeals in cases involving less than $500; and (5) appeals from orders granting or denying applications for habeas corpus.

(d) Enlargement of Time. No more time for oral argument than as above provided will be allowed without special leave of court granted before argument begins.

(e) Non-Appearance of Appellant or Petitioner. If there is no appearance for the appellant or petitioner when the case is called for argument, and no brief has been filed on his behalf, the appeal or petition may be dismissed on motion of the appellee or respondent. If a brief has been filed by the appellant or petitioner, the court will hear oral argument on behalf of the appellee or respondent.

(f) Non-Appearance of Appellee or Respondent. If the appellee or respondent fails to appear when the case is called for argument, the court will hear argument on behalf of the appellant or petitioner.

(g) Non-Appearance of Parties. Where there is no appearance by or on behalf of either side when a case is called for argument, the case will be taken on briefs if briefs have been filed; otherwise it may be dismissed at the cost of the appellant or petitioner.

(h) When One Judge Disqualified. When a case is reached upon a regular call of the calendar, and one of the judges sitting is disqualified, the case may be heard by the qualified judges at the request of the parties. If the two qualified judges are unable to agree, they may call in a third qualified judge, to whom the briefs and record may be submitted for examination and decision of the case.

RULE 14. OPINIONS OF THE COURT

(a) Filing, Printing, and Preserving. Every opinion of this court, as soon as it is delivered, shall be filed with the clerk, who shall cause it to be printed under the supervision of the judge who prepared it. At the end of each term, the clerk shall cause the original or the printed opinions filed by the court during the term to be bound into one or more volumes and preserved as records of the court.

(b) Basis for Judgment. When an opinion has been filed with the clerk, he shall, unless otherwise directed by the court or by the judge who prepared the opinion, enter the judgment or decree required by the opinion, without submitting the form of the judgment or decree to the court or to a member thereof for approval, and such judgment or decree, when so entered in conformity with the opinion, shall be the judgment and decree of the court.

(c) Clerk to Furnish Copies. The clerk, upon the filing of an opinion, shall mail a copy thereof to counsel for each of the parties who appeared in the case, for which a charge of $1.00 shall be made, which charge shall be taxed as part of the costs of the appeal. For a certified or uncertified printed copy of an opinion, a charge of $2.00 shall be made by the clerk.

RULE 15. PETITIONS FOR REHEARING

(a) Time for Filing. A petition for rehearing may be filed within 15 days after the date of the judgment or decree, and jurisdiction to decide the questions presented is reserved, notwithstanding the lapse of the term within the 15 days. No response or opposition to such petition is permissible unless specifically requested by the court.

(b) Form, Content, and Presentation. The petition for rehearing must be printed and 20 copies thereof filed with the clerk and must briefly and distinctly state the grounds upon which a rehearing is sought and be supported by a certificate of counsel that the petition is filed in good faith and believed to be meritorious. The petition will not be granted nor may it be argued orally unless a majority of the court which heard the case so determines.

(c) Purpose; Effect of Noncompliance. The sole purpose of a petition for rehearing is to call attention to material matters of law or fact inadvertently overlooked by the court, as shown by its opinion. Mere reargument of issues determined by the opinion will be disregarded. If the petition be found to be wholly without merit, vexatious, and for delay, the court may assess a sum not exceeding $100 against the petitioner, or against any counsel signing or certifying to the petition, in favor of the adversary, to be collected with the costs in the case.

RULE 16. MANDATE

(a) When to Be Issued. In all cases finally determined in this court, a mandate or other proper process shall be issued by the clerk at the expiration of 15 days after the date of the judgment or decree, unless otherwise provided by this rule or ordered by this court.

(b) Effect of Petition for Rehearing. No mandate shall, without order of court, issue pending disposition of a timely petition for rehearing, but shall issue 10 days after the denial thereof.

(c) Effect of Petition for Certiorari. If a stay of mandate be granted pending application to the Supreme Court for certiorari, such stay shall not exceed 30 days: Provided, that if, within such stay, there is filed with the clerk of this court the certificate of the clerk of the Supreme Court that the petition for certiorari, record, and brief have been filed, such stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of that Court denying the writ, the mandate shall issue forthwith.

RULE 17. COSTS

(a) To Whom Allowed. Costs shall be allowed, unless otherwise ordered, as follows: (1) Upon a dismissal, to the appellee, unless otherwise agreed by the parties; (2) upon an affirmance, to the appellee; (3) upon a reversal, to the appellant; (4) in all other cases, as the court may direct.

(b) Expense of Record Included. If the appellant has printed the record or an abstract thereof in this court, he shall, upon a reversal, unless otherwise ordered by the court, be entitled to have taxed

as costs the actual expense of printing 30 copies thereof, not exceeding the schedule of prices for printing fixed by the court and on file with the clerk, but no allowance shall be made for the amount paid to the clerk of the court below for furnishing the typewritten record.

(c) Not Allowed For or Against United States. The provisions of this rule are not applicable to cases in which the United States is a party, and no costs shall be allowed in this court, in such cases, for or against the United States.

(d) Inserted in Mandate. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate sent to the court below, and to annex to the mandate the bill of items taxed in detail.

(e) In Cases Taken to Supreme Court. In all cases certified to the Supreme Court or removed thereto by certiorari or otherwise, the fees of the clerk of this court shall be paid before a record shall be transmitted to the Supreme Court.

RULE 18. MOTIONS; MOTION DAYS

(a) Content and Filing. Every motion shall be in writing and shall contain a brief statement of the factual basis for and the grounds and objects of the motion. The original motion papers, together with 3 copies thereof and 4 copies of any supporting briefs, shall be filed with the clerk.

(b) Notice. Motions (except such as are noncontroversial and require no hearing) will not be heard except upon reasonable notice (accompanied by a copy of the motion and all papers filed therewith) to the adverse party or his counsel.

(c) Hearing or Submission. Motions (except such as are consented to or those which require no hearing) will be heard only upon regular motion days unless the court or the senior judge or a judge designated by the court under Rule 4 (d) shall, upon a written petition and for good cause shown, otherwise order. Motions which require no notice or hearing may be submitted to the court through the clerk at any time.

(d) Motion Days. Regular sessions for the hearing of motions will be held at ten o'clock A. M. on the second and fourth Mondays of each month from October to May, inclusive, and on the fourth Monday of each month during the months of June to September, inclusive. In case any session for the hearing of motions shall fall upon a legal holiday, the matters returnable at such session shall be heard the following day.

(e) Entry of Orders. When a motion has been ruled upon by the court, and the clerk has been advised in writing of the court's ruling by the judge presiding or by any member of the court to which the motion was submitted, the clerk shall, unless otherwise directed, enter the order required by the ruling, without submitting the form of order to the court or a member thereof for approval, and such order, when entered in conformity with the ruling, shall be the order of the court.

RULE 19. NOTICE OF CHALLENGE OF FEDERAL STATUTE

If the constitutionality of an Act or of a Resolution of Congress is questioned in any case or proceeding in this court to which the United States, any agency, officer or employee thereof, as such, is not a party, it shall be the duty of the party raising the question, or of his counsel, to give written notice thereof to the clerk of this court at the time such appeal or other proceeding is filed or when such question is first raised in this court. Upon receipt of such notice, the clerk shall forthwith send a copy thereof to the Attorney General of the United States with a statement that such question is present.

RULE 20. BONDS ON APPEAL

Bonds on appeal and supersedeas bonds shall conform to Rule 73 (c), (d), (e) and (f) of the Federal Rules of Civil Procedure, 28 U.S.C.A. following section 723c.

RULE 21. INTEREST; DAMAGES

(a) Interest Allowed on Money Judgment. When a judgment for the payment of money is affirmed, and interest is properly allowable, it shall be computed from the date of the judgment below until the same is paid, at the rate that similar judgments bear interest in the State where the judgment was rendered.

(b) Damages Allowed Where Appeal Taken for Delay. In any case where an appeal has delayed proceedings on a judgment appealed from and shall appear to have been taken merely for delay, damages, not exceeding 10 per cent of the amount of the judgment, in addition to interest, may be awarded and added to the judgment.

(c) Admiralty Cases. In cases in admiralty, damages and interest may be allowed if specially directed by the court.

RULE 22. DEATH OR INCOMPETENCY OF A PARTY

Whenever, pending an appeal, a party shall die or become incompetent, the representative of the deceased or incompetent may voluntarily substitute himself as a party to the appeal; or any party to the appeal may suggest the death or incompetency in the record, and such proceedings shall thereupon be had as the court may direct.

RULE 23. HABEAS CORPUS, CUSTODY PENDING APPEAL

(a) On Denial of Application. Pending an appeal from the final decision of any court or judge declining to grant a writ of habeas corpus, the custody of the prisoner shall not be disturbed.

(b) After Discharge of Writ. Pending an appeal from the final decision of any court or judge discharging a writ of habeas corpus after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be enlarged upon recognizance, as hereinafter provided, or may be committed by order to other safe custody pending appeal.

(c) After Discharge of Prisoner. Pending an appeal from the final decision of any court or judge discharging the prisoner in a habeas corpus proceeding, he may be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

RULE 24. CRIMINAL CASES

(a) Rules Promulgated by Supreme Court Applicable. The practice and procedure on appeals in criminal cases shall conform to the Rules of Practice and Procedure in Criminal Cases as now or hereafter promulgated by the Supreme Court of the United States.

(b) Preference as to Hearing and Disposition. Preference shall be given the hearing and disposition of criminal cases. The court may at any time advance a criminal case for hearing in furtherance of justice or to avoid unnecessary delay, and may make such orders relative to the filing of briefs and the hearing of oral argument as may be appropriate.

(c) Court Rules Applicable. Except as otherwise provided in the Rules of Practice and Procedure in Criminal Cases as now or hereafter promulgated by the Supreme Court and in this rule, appeals in criminal cases shall be governed by the rules of this court relating to other appeals.

RULE 25. PETITIONS FOR ALLOWANCE OF APPEALS IN BANKRUPTCY

(a) Requirements for Filing. A petition in this court for the allowance of an appeal from an order of a district court in a bankruptcy matter shall be docketed upon the petitioner's making the required deposit for costs with the clerk of this court and filing an original and 3 copies of the petition and of the statement of points to be relied upon, and 4 copies of the order complained of and of the brief, if any, in support of the petition, together with proof of service on the respondent of a copy of the petition and of the supporting brief and documents, and of a notice stating when the petition was filed and the date when it will be brought on for hearing.

(b) Filing and Hearing. The petition for allowance of appeal, the statement of points to be relied upon, the brief in support, if any, the notice of filing, and the proof of service must be filed within the time allowed by statute for the taking of an appeal in such matters; and the hearing on the petition shall be had, if possible, on the next regular motion day of this court.

(c) Transcript Filed After Allowance of Appeal. Certified transcript of record from the district court shall be filed in this court within 40 days from date of allowance of appeal, unless the time be extended by this court or one of the judges thereof.

RULE 26. TAX REVIEWS

(a) Requisites for Review of Decision of Board of Tax Appeals. The requisites for the review of a decision of the Board of Tax Appeals are compliance with the following requirements:

(1) A timely petition for review, together with 2 copies thereof, shall be filed with the clerk of the Board.

(2) The petition for review must be addressed to this court and signed by the petitioner or his attorney of record, and shall show the parties seeking the review and the taxable period or periods involved, and shall contain a brief description of the controversy and a concise statement of the points, separately numbered, upon which the petitioner intends to rely.

(3) The time for docketing the review and filing the record in this court shall be the same as that prescribed by Rule 73 (g) of the Federal Rules of Civil Procedure, 28 U. S. C. A. following section 723c, for the docketing of an appeal and filing the record on appeal, but the time may be extended by a member of the Board or by this court or any judge thereof, with or without notice, by a written order filed with the clerk of the Board, a duplicate or certified copy of which shall be filed with the clerk of this court.

(4) The record on review shall be prepared in substantial compliance with the provisions of Rules 75 and 76 of the Federal Rules of Civil Procedure and Rules 10 and 12 of this court relating to records on appeal.

(b) Requisites for Review of Decision of United States Processing Tax Board of Review. The requisites for the review by this court of a decision of the United States Processing Tax Board of Review are compliance with subdivision (a) of this rule and with Section 906 (g) of the Revenue Act of 1936, 7 U.S.C.A. s. 648 (g).

(c) Other Rules Applicable. The rules of this court relating to other appeals shall, so far as appropriate, apply to proceedings to review decisions and orders of the Board of Tax Appeals and of the United States Processing Tax Board of Review.

RULE 27. REVIEW OR ENFORCEMENT OF ORDERS OF AN ADMINISTRATIVE AGENCY, BOARD, OR COMMISSION (OTHER THAN THE BOARD OF TAX APPEALS AND THE BOARD OF PROCESSING TAX REVIEW)

(a) Petition for Review or Enforcement. A petition for review or enforcement of an order of an administrative agency, board or commission other than the United States Board of Tax Appeals and the United States Processing Tax Board of Review shall be addressed to this court and shall contain a concise statement of (a) the nature of the proceedings as to which review or enforcement is sought; (b) the facts and statutes upon which venue is based; (c) the relief prayed; and (d) in the case of a petition for review, the points on which the petitioner intends to rely. The petition, together with a copy thereof for each respondent, shall be filed with the clerk of this court and, unless otherwise provided by statute, shall be served by the clerk in the manner prescribed by subdivision (b) of Rule 73 of the Federal Rules of Civil Procedure, 28 U.S.C.A. following section 723c.

(b) Joint and Several Petitions and Consolidated Records. If the interests of any two or more persons entitled by the applicable statutes to petition this court for review of the same order of an administrative agency, board or commission, are of such a nature as to make joinder practicable, they may file a joint and several petition for review, following the procedure prescribed by the applicable statute and by this rule for a single petitioner. Where two or more persons petition for review of the same order, whether on a joint and several petition or not, a single record on review shall be prepared containing all the matter designated by the parties without duplication.

(c) Answer to Petition for Enforcement. When a petition for enforcement of an order of an administrative agency, board or commission is filed, the respondent shall, within 20 days after the service of the petition upon him, file with the clerk of this court his answer to the petition, together with a copy thereof for the petitioner. The answer shall be served by the clerk in the manner prescribed by subdivision (b) of Rule 73 of the Federal Rules of Civil Procedure. If the respondent fails to file an answer within the time prescribed, the court may, by reason of the default, enter a decree granting the relief prayed.

(d) Cross-Petition for Enforcement. When a petition for the review of an order of an administrative agency, board or commission is filed, the agency, board or commission may, if this court has jurisdiction to enforce the order, file a cross-petition for its enforcement, together with a copy thereof for the petitioner for review, or may in its answer seek such enforcement. Any cross-petition shall be served by the clerk in the manner prescribed by subdivision (b) of Rule 73 of the Federal Rules of Civil Procedure. No answer need be filed thereto.

(e) Intervention. A person desiring to intervene in a case where the applicable statute does not provide for intervention shall file with the court and serve upon all parties a motion for leave to intervene. The motion shall contain a concise statement of the nature of the moving party's interest and the grounds upon which intervention is sought. An intervener will not be permitted to participate in the designation of the record unless he shall have filed his motion to intervene within 10 days after the filing of the petition for review or enforcement.

(f) Time for Filing Transcript. Where no definite time is prescribed by the applicable statute for filing the transcript of the record in a review proceeding, such transcript shall be filed within 40 days after service of the petition for review upon the agency, board or commission.

(g) Omissions from or Misstatements in Transcript. If anything material is omitted from the transcript by error or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation or this court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental transcript be certified or a supplemental record be prepared and filed.

(h) Order as to Original Papers or Exhibits. Upon the suggestion of any party that original papers or exhibits should be inspected by the court or filed with the court in lieu of copies, the court may make such order therefor and for the safekeeping, transportation, and return thereof as it deems proper.

(i) Extensions of Time. The time for taking any action under this rule (except where the time is fixed by statute) may be enlarged by this court upon motion and for good cause shown; and if any action is not taken within the time prescribed or as enlarged by order, the court on its own motion or that of a party may enter such order as shall to the court seem appropriate.

(j) Party Challenging Order to File Initial Brief. The initial brief or briefs shall be filed by the party or parties (whether petitioners or respondents) challenging the order the review or enforcement of which is sought. Unless otherwise ordered by the court, the form of briefs and the time within which they may be filed and served are governed by Rules 11 and 12.

(k) Preparation of Decrees Enforcing Orders—Settlement—Entry. When an opinion of this court is filed directing the entry of a decree enforcing the order of an administrative agency, board or commission, the agency, board or commission concerned shall within 10 days serve upon the adverse party and file with the clerk of this court a proposed decree in conformity with the opinion. If the adverse party objects to the proposed decree as not being in conformity with the opinion, he shall within 5 days after receiving a copy of the decree proposed, serve upon the agency, board or commission concerned and file with the clerk of this court a suggested decree deemed to be in conformity with the opinion. The court will thereupon settle and enter the decree without further hearing or argument.

(l) National Labor Relations Board Cases. Upon the filing of a petition for enforcement or review of an order of the National Labor Relations Board, the Board shall certify to this court the entire record of the proceeding before the Board and the clerk shall notify the parties of such filing. Within 15 days after date of such notice the party challenging the Board's order shall file and serve a designation indicating the portions of the record which he proposes to print in a separate volume as an appendix to his brief. The appendix shall contain only such portions of the record material to the questions presented as the party filing the brief desires the court to read. Testimony must be printed in question and answer form. Asterisks or other appropriate

means shall be used to indicate omissions in the testimony of witnesses. Reference shall be made to the pages of the typewritten transcript and the names of witnesses shall be indexed. Within 20 days after date of such notice of the filing of the certified record, the petitioner shall cause to be printed, in a separate volume, the pleadings in the case before the Board, together with the Board's decision and order and the petition for review or enforcement and the answer thereto. Such printing shall be by a printer who is upon the list of printers approved by this court. Thirty copies shall be filed with the clerk and five copies served upon each opposing party. Within 25 days after receipt thereof, the party challenging the Board's order shall file 20 copies of a brief and 30 copies of appendix and serve 5 copies upon the Board. Within 20 days after receipt thereof, the Board shall file 20 copies of its brief and 30 copies of appendix and serve five copies upon each of the other parties. The appendix shall contain such additional parts of the record as the Board desires the court to read and as have not been previously printed. Within 10 days after receipt of the Board's brief, the party challenging the Board's order may in a like manner file and serve a reply brief and may set forth in an appendix thereto (a separate volume) such parts of the record as he may wish the court to read in view of the parts previously printed.

(m) Rules of Court Applicable. Except as otherwise provided by this rule, petitions for review or enforcement of orders of administrative agencies shall be governed by the rules of this court relating to other appeals.

RULE 28. EFFECTIVE DATE OF RULES

These rules shall become effective on May 31, 1942. They shall apply to all cases commenced in this court on and after that date and, so far as practicable, to further proceedings in cases then pending in this court. To the extent that the application of these rules to further proceedings in cases pending in this court on May 31, 1942, is not feasible or would be unjust, the former rules of this court shall apply.

CIVIL PROCEDURE FOR THE DISTRICT COURTS OF THE UNITED STATES

ADOPTED BY THE SUPREME COURT OF THE UNITED STATES PURSUANT TO THE ACT OF JUNE 19, 1934, Ch. 651

I. SCOPE OF RULES—ONE FORM OF ACTION

I. SCOPE OF RULES—ONE FORM OF ACTION

Rule 1. SCOPE OF RULES. These rules govern the procedure in the district courts of the United States in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

2. ONE FORM OF ACTION. There shall be one form of action to be known as "civil action."

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

3. COMMENCEMENT OF ACTION. A civil action is commenced by filing a complaint with the court.

4. **PROCESS.** (a) **Summons; Issuance.** Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it for service to the marshal or to a person specially appointed to serve it. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

(b) **Same; Form.** The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.

(c) **By Whom Served.** Service of all process shall be made by a United States marshal, by his deputy, or by some person specially appointed by the court for that purpose, except that a subpoena may be served as provided in Rule 45. Special appointments to serve process shall be made freely when substantial savings in travel fees will result.

(d) **Summons; Personal Service.** The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion when residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) Upon an infant or an incompetent person, by serving the summons and complaint in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court and by sending a copy of the summons and of the complaint by registered mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered mail to such officer or agency.

(5) Upon an officer or agency of the United States, by serving the United States and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by any statute of the United States or in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

(e) **Same; Other Service.** Whenever a statute of the United States or an order of court provides for service of summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, service shall be made under the circumstances and in the manner prescribed by the statute, rule, or order.

(f) **Territorial Limits of Effective Service.** All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held and, when a statute of the United States so provides, beyond the territorial limits of that state. A subpoena may be served within the territorial limits provided in Rule 45.

(g) **Return.** The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than a United States marshal or his deputy, he shall make affidavit thereof. Failure to make proof of service does not affect the validity of the service.

(h) **Amendment.** At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

5. **SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS.**

(a) **Service; When Required.** Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties affected thereby, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(b) **Same; How Made.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(c) **Same; Numerous Defendants.** In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matters constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) **Filing.** All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter.

(e) **Filing With the Court Defined.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

6. **TIME.**

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

be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

(b) **Enlargement.** When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion (1) with or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion permit the act to be done after the expiration of the specified period where the failure to act was the result of excusable neglect; but it may not enlarge the period for taking any action under Rule 59, except as stated in subdivision (c) thereof, or the period for taking an appeal as provided by law.

(c) **Unaffected By Expiration of Term.** The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the expiration of a term of court. The expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

(d) **For Motions—Affidavits.** A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59 (c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

(e) **Additional Time After Service By Mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

III. PLEADINGS AND MOTIONS

7. PLEADINGS ALLOWED; FORM OF MOTIONS. (a) **Pleadings.** There shall be a complaint and an answer; and there shall be a reply, if the answer contains a counter-claim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if leave is given under Rule 14 to summon a person who was not an original party; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) **Motions and Other Papers.** (1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(c) **Demurrers, Pleas, Etc., Abolished.** Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

8. GENERAL RULES OF PLEADING. (a) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counter-claim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) **Defenses; Form of Denials.** A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) **Affirmative Defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality injury by fellow servant laches license payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counter-claim or a counter-claim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) **Effect of Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) **Pleading to Be Concise and Direct; Consistency.** (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) **Construction of Pleadings.** All pleadings shall be so construed as to do substantial justice.

9. PLEADING SPECIAL MATTERS. (a) **Capacity.** It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) **Fraud, Mistake, Condition of the Mind.** In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) **Conditions Precedent.** In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) **Official Document Or Act.** In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) **Judgment.** In pleading a judgment or decision of a domestic or a foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) **Time and Place.** For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) **Special Damage.** When items of special damage are claimed, they shall be specifically stated.

10. FORM OF PLEADINGS. (a) **Caption; Names of Parties.** Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule

7 (a). In the complaint the title of the action shall include the names of all parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) **Paragraphs; Separate Statements.** All averments of claim or defense shall be made in numbered paragraphs, the contents of each shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) **Adoption By Reference; Exhibits.** Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

11. SIGNING OF PLEADINGS. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

12. DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED; BY PLEADING OR MOTION; MOTION FOR JUDGMENT ON PLEADINGS. (a) **When Presented.** A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, unless the court directs otherwise when service of process is made pursuant to Rule 4 (e). A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counter-claim in the answer within 20 days after service if the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counter-claim, within 60 days after the service upon the United States attorney of the pleading in which the claim is asserted. The service of any motion provided for in this rule alters the time fixed by these rules for serving any required responsive pleading; as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading may be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement or for a bill of particulars, the responsive pleading may be served within ten days after the service of the more definite statement or bill of particulars. In either case the time for service of the responsive pleading shall be not less than remains of the time which would have been allowed under these rules if the motion had not been made.

(b) **How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counter-claim, cross-claim or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief.

(c) **Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.

(d) **Preliminary Hearings.** The defenses specifically enumerated (1)-(6) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule, shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) **Motion for More Definite Statement Or for Bill of Particulars.** Before responding to a pleading or, if no responsive pleading is permitted by these rules, within 20 days after the service of the pleading upon him, a party may move for a more definite statement or for a bill of particulars of any matter which is not averred with sufficient definitenesss or particularity to enable him properly to prepare his responsive pleading or to prepare for trial. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just. A bill of particulars becomes a part of the pleading which it supplements.

(f) **Motion to Strike.** Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading.

(g) **Consolidation of Motions.** A party who makes a motion under this rule may join with it the other motions herein provided for and then available to him. If a party makes a motion under this rule and does not include therein all defenses and objections then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on any of the defenses or objections so omitted, except that prior to making any other motions under this rule he may make a motion in which are joined all the defenses numbered (1) to (5) in subdivision (b) of this rule which he cares to assert.

(h) **Waiver of Defenses.** A party waives all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall then be disposed of as provided in Rule 15 (b) in the light of any evidence that may have been received.

13. COUNTER-CLAIM AND CROSS-CLAIM. (a) **Compulsory Counter-claims.** A pleading shall state as a counter-claim any claim, not the subject of a pending action, which at the time of filing the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third-parties of whom the court cannot acquire jurisdiction.

(b) **Permissive Counter-claims.** A pleading may state as a counter-claim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) **Counter-claim Exceeding Opposing Claim.** A counter-claim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) **Counter-claim Against the United States.** These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert coun-

ter-claims or to claim credits against the United States or an officer or agency thereof.

(e) **Counter-claim Maturing Or Acquired After Pleading.** A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counter-claim by supplemental pleading.

(f) **Omitted Counter-claim.** When a pleader fails to set up a counter-claim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counter-claim by amendment.

(g) **Cross-Claim Against Co-Party.** A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counter-claim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) **Additional Parties May Be Brought In.** When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counter-claim or cross-claim, the court shall order them to be brought in as defendants as provided in these rules, if jurisdiction of them can be obtained and their joinder will not deprive the court of jurisdiction of the action.

(i) **Separate Trials; Separate Judgments.** If the court orders separate trials as provided in Rule 42 (b), judgment on a counter-claim or cross-claim may be rendered when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

14. THIRD-PARTY PRACTICE. (a) **When Defendant May Bring In Third Party.** Before the service of his answer a defendant may move ex parte or, after the service of his answer, on notice to the plaintiff, for leave as a third-party plaintiff to serve a summons and complaint upon a person not a party to the action who is or may be liable to him or to the plaintiff for all or part of the plaintiff's claim against him. If the motion is granted and the summons and complaint are served, the person so served, hereinafter called the third-party defendant, shall make his defenses as provided in Rule 12 and his counter-claims and cross-claims against the plaintiff, the third-party plaintiff, or any other party as provided in Rule 13. The third-party defendant may assert any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant is bound by the adjudication of the third-party plaintiff's liability to the plaintiff, as well as of his own to the plaintiff or to the third-party plaintiff. The plaintiff may amend his pleadings to assert against the third-party defendant any claim which the plaintiff might have asserted against the third-party defendant had he been joined originally as a defendant. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him or to the third-party plaintiff for all or part of the claim made in the action against the third-party defendant.

(b) **When Plaintiff May Bring In Third Party.** When a counter-claim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

15. AMENDED AND SUPPLEMENTAL PLEADINGS. (a) **Amendments.** A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) **Amendments to Conform to the Evidence.** When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) **Relation Back of Amendments.** Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

(d) **Supplemental Pleadings.** Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

16. PRE-TRIAL PROCEDURE; FORMULATING ISSUES. In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

(1) The simplification of the issues;
(2) The necessity or desirability of amendments to the pleadings;
(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
(4) The limitation of the number of expert witnesses;
(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
(6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

IV. PARTIES

17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY. (a) **Real Party in Interest.** Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States.

(b) **Capacity to Sue Or Be Sued.** The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held; except that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States.

(c) **Infants Or Incompetent Persons.** Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in

an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

18. JOINDER OF CLAIMS AND REMEDIES. (a) **Joinder of Claims.** The plaintiff in his complaint or in a counter-claim and the defendant in an answer setting forth a counter-claim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party. There may be a like joinder of claims when there are multiple parties if the requirements of Rules 19, 20, and 22 are satisfied. There may be a like joinder of cross-claims or third-party claims if the requirements of Rules 13 and 14 respectively are satisfied.

(b) **Joinder of Remedies; Fraudulent Conveyances.** Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

19. NECESSARY JOINDER OF PARTIES. (a) **Necessary Joinder.** Subject to the provisions of Rule 23 and of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant or, in proper cases, an involuntary plaintiff.

(b) **Effect of Failure to Join.** When persons who are not indispensable, but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue and can be made parties without depriving the court of jurisdiction of the parties before it, the court shall order them summoned to appear in the action. The court in its discretion may proceed in the action without making such persons parties, if its jurisdiction over them as to either service of process or venue can be acquired only by their consent or voluntary appearance or if, though they are subject to its jurisdiction, their joinder would deprive the court of jurisdiction of the parties before it; but the judgment rendered therein does not affect the rights or liabilities of absent persons.

(c) **Same; Names of Omitted Persons and Reasons for Nonjoinder to Be Pleaded.** In any pleading in which relief is asked, the pleader shall set forth the names, if known to him, of persons who ought to be parties if complete relief is to be accorded between those already parties, but who are not joined, and shall state why they are omitted.

20. PERMISSIVE JOINDER OF PARTIES. (a) **Permissive Joinder.** All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) **Separate Trials.** The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

21. MISJOINDER AND NONJOINDER OF PARTIES. Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

22. INTERPLEADER. (1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counter-claim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(2) The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by Section 24 (26) of the Judicial Code, as amended, Title 28, s. 41 (26). Actions under that section shall be conducted in accordance with these rules.

23. CLASS ACTIONS. (a) **Representation.** If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is

(1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it;

(2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or

(3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought.

(b) **Secondary Action By Shareholders.** In an action brought to enforce a secondary right on the part of one or more shareholders in an association, incorporated or unincorporated, because the association refuses to enforce rights which may properly be asserted by it, the complaint shall be verified by oath and shall aver (1) that the plaintiff was a shareholder at the time of the transaction of which he complains or that his share thereafter devolved on him by operation of law and (2) that the action is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction. The complaint shall also set forth with particularity the efforts of the plaintiff to secure from the managing directors or trustees and, if necessary, from the shareholders such action as he desires, and the reasons for his failure to obtain such action or the reasons for not making such effort.

(c) **Dismissal or Compromise.** A class action shall not be dismissed or compromised without the approval of the court. If the right sought to be enforced is one defined in paragraph (1) of subdivision (a) of this rule notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs. If the right is one defined in paragraphs (2) or (3) of subdivision (a) notice shall be given only if the court requires it.

24. INTERVENTION. (a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: (1) When a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof.

(b) **Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action: (1) When a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) **Procedure.** A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in

question in any action to which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in the Act of August 24, 1937, c. 754, s. 1.

25. **SUBSTITUTION OF PARTIES.** (a) **Death.** (1) If a party dies and the claim is not thereby extinguished, the court within 2 years after the death may order substitution of the proper parties. If substitution is not so made, the action shall be dismissed as to the deceased party. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) **Incompetency.** If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against his representative.

(c) **Transfer of Interest.** In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) **Public Officers; Death or Separation from Office.** When an officer of the United States, the District of Columbia, a state, county, city, or other governmental agency, or any other officer specified in the Act of February 13, 1925, c. 229, s. 11 (43 Stat. 941), Title 28, s. 780, is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor, if within 6 months after the successor takes office it is satisfactorily shown to the court that there is a substantial need for so continuing and maintaining it. Substitution pursuant to this rule may be made when it is shown by supplemental pleading that the successor of an officer adopts or continues or threatens to adopt or continue the action of his predecessor in enforcing a law averred to be in violation of the Constitution of the United States. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to object.

V. DEPOSITIONS AND DISCOVERY

26. **DEPOSITIONS PENDING ACTION.** (a) **When Depositions May Be Taken.** By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action or without such leave after an answer has been served, the testimony of any person, whether a party or not, may be taken at the instance of any party by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. Depositions shall be taken only in accordance with these rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) **Scope of Examination.** Unless otherwise ordered by the court as provided by Rule 30 (b) or (d), the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether relating to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts.

(c) **Examination and Cross-Examination.** Examination and cross-examination of deponents may proceed as permitted at the trial under the provisions of Rule 43 (b).

(d) **Use of Depositions.** At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: 1, that the witness is dead; or 2, that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or 3, that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or 4, that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or 5, upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(e) **Objections to Admissibility.** Subject to the provisions of Rule 32 (c), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(f) **Effect of Taking or Using Depositions.** A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition as described in paragraph (2) of subdivision (d) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

27. **DEPOSITIONS BEFORE ACTION OR PENDING APPEAL.** (a) **Before Action.** (1) **Petition.** A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court of the United States may file a verified petition in the district court of the United States in the district of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: 1, that the petitioner expects to be a party to an action cognizable in a court of the United States but is presently unable to bring it or cause it to be brought, 2, the subject matter of the expected action and his interest therein, 3, the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it, 4, the names or a description of the persons he expects will be adverse parties and their addresses so far as known, and 5, the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) **Notice and Service.** The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the district or state

in the manner provided in Rule 4 (d) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4 (d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17 (c) apply.

(3) **Order and Examination.** If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) **Use of Deposition.** If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a district court of the United States, in accordance with the provisions of Rule 26 (d).

(b) **Pending Appeal.** If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show (1) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.

(c) **Perpetuation By Action.** This rule does not limit the power of a court to entertain an action to perpetuate testimony.

28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN. (a) **Within the United States.** Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(b) **In Foreign Countries.** In a foreign state or country depositions shall be taken (1) on notice before a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or (2) before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in [here name the country]."

(c) **Disqualification for Interest.** No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

29. STIPULATIONS REGARDING THE TAKING OF DEPOSITIONS. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

30. DEPOSITIONS UPON ORAL EXAMINATION (a) **Notice of Examination; Time and Place.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time.

(b) **Orders for the Protection of Parties and Deponents.** After notice is served for taking deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

(c) **Record of Examination; Oath; Objections.** The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by some one acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(d) **Motion to Terminate or Limit Examination.** At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subdivision (b). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. In granting or refusing such order the court may impose upon either party or upon the witness the requirement to pay such costs or expenses as the court may deem reasonable.

(e) **Submission to Witness; Changes; Signing.** When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 32 (d) the court holds

that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) **Certification and Filing By Officer; Copies; Notice of Filing.** (1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file with the court in which the action is pending or send it by registered mail to the clerk thereof for filing.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) **Failure to Attend or to Serve Subpoena; Expenses.** (1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

31. DEPOSITIONS OF WITNESSES UPON WRITTEN INTERROGATORIES. (a) **Serving Interrogatories; Notice.** A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within 10 days thereafter a party so served may serve cross interrogatories upon the party proposing to take the deposition. Within 5 days thereafter the latter may serve redirect interrogatories upon a party who has served cross interrogatories. Within 3 days after being served with redirect interrogatories upon the party proposing to take the deposition.

(b) **Officer to Take Responses and Prepare Record.** A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30 (c), (e), and (f), to take the testimony of the witnesses in response to the interrogatories and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him.

(c) **Notice of Filing.** When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

(d) **Orders for the Protection of Parties and Deponents.** After the service of interrogatories and prior to the taking of the testimony of the deponent, the court in which the action is pending, on motion promptly made by a party or a deponent, upon notice and good cause shown, may make any order specified in Rule 30 which is appropriate and just or an order that the deposition shall not be taken before the officer designated in the notice or that it shall not be taken except upon oral examination.

32. EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS. (a) **As to Notice.** All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served on the party giving the notice.

(b) **As to Disqualification of Officer.** Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) **As to Taking of Deposition.** (1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written interrogatories submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other interrogatories and within 3 days after service of the last interrogatories authorized.

(d) **As to Completion and Return of Deposition.** Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

33. INTERROGATORIES TO PARTIES. Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer thereof competent to testify in its behalf. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within 15 days after the delivery of the interrogatories, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Objections to any interrogatories may be presented to the court within 10 days after service thereof, with notice as in case of a motion; and answers shall be deferred until the objections are determined, which shall be at as early a time as is practicable. No party may, without leave of court, serve more than one set of interrogatories to be answered by the same party.

34. DISCOVERY AND PRODUCTION OF DOCUMENTS AND THINGS FOR INSPECTION, COPYING, OR PHOTOGRAPHING. Upon motion of any party showing good cause therefor and upon notice to all other parties, the court in which an action is pending may (1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody, or control; or (2) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS. (a) **Order for Examination.** In an action in which the mental or physical condition of a party is in controversy, the court in which the action is pending may order him to submit to a physical or mental examination by a physician. The order may be made only on motion for good cause shown and upon notice to the party to be examined and to all other parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) **Report of Findings.** (1) If requested by the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings and conclusions. After such request and delivery the party causing the examination to be made shall be entitled upon request to receive from the party examined a like report of any examination, previously or thereafter made, of the same mental or physical condition. If the party examined refuses to deliver such report the court on motion and notice may make an order requiring delivery on such terms as are just, and if a physician fails or refuses to make such a report the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any

privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

36. ADMISSION OF FACTS AND OF GENUINENESS OF DOCUMENTS. (a) **Request for Admission.** At any time after the pleadings are closed, a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth therein. Copies of the documents shall be delivered with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 10 days after service thereof or within such further time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

(b) **Effect of Admission.** Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

37. REFUSAL TO MAKE DISCOVERY; CONSEQUENCES. (a) **Refusal to Answer.** If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to the court in the district where the deposition is taken for an order compelling an answer. Upon the refusal of a deponent to answer any interrogatory submitted under Rule 31 or upon the refusal of a party to answer any interrogatory submitted under Rule 33, the proponent of the question may on like notice make like application for such an order. If the motion is granted and if the court finds that the refusal was without substantial justification the court shall require the refusing party or deponent and the party or attorney advising the refusal or either of them to pay to the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without substantial justification, the court shall require the examining party or the attorney advising the motion or both of them to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

(b) **Failure to Comply with Order.** (1) Contempt. If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the court in the district in which the deposition is being taken, the refusal may be considered a contempt of that court.

(2) Other Consequences. If any party or an officer or managing agent of a party refuses to obey an order made under subdivision (a) of this rule requiring him to answer designated questions, or an order made under Rule 34 to produce any document or other thing for inspection, copying, or photographing or to permit it to be done, or to permit entry upon land or other property, or an order made under Rule 35 requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

(i) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition;

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(iv) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental examination.

(c) **Expenses on Refusal to Admit.** If a party, after being served with a request under Rule 36 to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made.

(d) **Failure of Party to Attend or Serve Answers.** If a party or an officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 33, after proper service of such interrogatories, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party.

(e) **Failure to Respond to Letters Rogatory.** A subpoena may be issued as provided in the Act of July 3, 1926, c. 762, s. 1 **(44 Stat. 835), U.S.C., Title** 28, s. 711, under the circumstances and conditions therein stated.

(f) **Expenses Against United States.** Expenses and attorney's fees are not to be imposed upon the United States under this rule.

VI. TRIALS

38. JURY TRIAL OF RIGHT. (a) **Right Preserved.** The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

(b) **Demand.** Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party.

(c) **Same; Specification or Issues.** In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) **Waiver.** The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5 (d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

39. TRIAL BY JURY OR BY THE COURT. (a) **By Jury.** When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States.

(b) **By the Court.** Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) **Advisory Jury and Trial By Consent.** In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or, except in actions against the United States when a statute of the United States provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

40. ASSIGNMENT OF CASES FOR TRIAL. The district courts shall provide by rule for the placing of actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the courts deem expedient. Precedence shall be given to actions entitled thereto by any statute of the United States.

41. DISMISSAL OF ACTIONS. (a) **Voluntary Dismissal; Effect Thereof.** (1) By Plaintiff; By Stipulation. Subject to the provisions of Rule 23 (c) and of any statute of the United States, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service of the answer or (ii) by filing a stipulation of dismissal signed by all the parties who have appeared generally in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) By Order of Court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) **Involuntary Dismissal; Effect Thereof.** For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits.

(c) **Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim.** The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) **Costs of Previously-Dismissed Action.** If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

42. CONSOLIDATED; SEPARATE TRIALS. (a) **Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) **Separate Trials.** The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

43. EVIDENCE. (a) **Form and Admissibility.** In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules. All evidence shall be admitted which is admissible under the statutes of the United States, or under the rules of evidence heretofore applied in the courts of the United States on the hearing of suits in equity, or under the rules of evidence applied in the courts of general jurisdiction of the state in which the United States court is held. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.

(b) **Scope of Examination and Cross-Examination.** A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his examination in chief.

(c) **Record of Excluded Evidence.** In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. The court may require the offer to be made out of the hearing of the jury. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. In actions tried without a jury the same procedure may be followed, except that the court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

(d) **Affirmation in Lieu of Oath.** Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) **Evidence on Motions.** When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

44. PROOF OF OFFICIAL RECORD. (a) **Authentication of Copy.** An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office.

(b) **Proof of Lack of Record.** A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.

(c) **Other Proof.** This rule does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute or by the rules of evidence at common law.

45. SUBPOENA. (a) **For Attendance of Witnesses; Form; Issuance.** Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed, and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) **For Production Or Documentary Evidence.** A subpoena may also command the person to whom it is directed to produce the books, papers, or documents designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the

subpoena is issued of the reasonable cost of producing the books, papers, or documents.

(c) **Service.** A subpoena may be served by the marshal, by his deputy, or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered.

(d) **Subpoena for Taking Depositions; Place of Examination.** (1) Proof of service of a notice to take a deposition as provided in Rules 30 (a) and 31 (a) constitutes a sufficient authorization for the issuance by the clerk of the district court for the district in which the deposition is to be taken of subpoenas for the persons named or described therein. A subpoena commanding the production of documentary evidence on the taking of a deposition shall not be used without an order of the court.

(2) A resident of the district in which the deposition is to be taken may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person. A nonresident of the district may be required to attend only in the county wherein he is served with a subpoena, or within 40 miles from the place of service, or at such other place as is fixed by an order of court.

(e) **Subpoena for a Hearing or Trial.** (1) At the request of any party subpoenas for attendance at a hearing or trial shall be issued by the clerk of the district court for the district in which the hearing or trial is held. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the district, or at any place without the district that is within 100 miles of the place of the hearing or trial specified in the subpoena; and, when a statute of the United States provides therefor, the court upon proper application and cause shown may authorize the service of a subpoena at any other place.

(2) A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner and be served as provided in the Act of July 3, 1926, c. 762, ss. 1, 3 (44 Stat. 835), Title 28, ss. 711, 713.

(f) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

46. EXCEPTIONS UNNECESSARY. Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

47. JURORS. (a) **Examination of Jurors.** The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

(b) **Alternate Jurors.** The court may direct that one or two jurors in addition to the regular panel be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the principal jurors. An alternate juror who does not replace a principal juror shall be discharged after the jury retires to consider its verdict. If one or two alternate jurors are called each party is entitled to one peremptory challenge in addition to those otherwise allowed by law. The additional peremptory challenge may be used only against an alternate juror, and the other peremptory challenges allowed by law shall not be used against the alternates.

48. JURIES OF LESS THAN TWELVE; MAJORITY VERDICT. The parties may stipulate that the jury shall consist of any number less than twelve or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

49. SPECIAL VERDICTS AND INTERROGATORIES. (a) **Special Verdicts.** The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleading or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) **General Verdict Accompanied By Answer to Interrogatories.** The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict or may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers and verdict or may order a new trial.

50. MOTION FOR A DIRECTED VERDICT. (a) **When Made; Effect.** A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor.

(b) **Reservation of Decision on Motion.** Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Within 10 days after the reception of a verdict, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within 10 days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

51. INSTRUCTIONS TO JURY; OBJECTION. At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon

the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

52. FINDINGS BY THE COURT. (a) **Effect.** In all actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court.

(b) **Amendment.** Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

53. MASTERS. (a) **Appointment and Compensation.** Each district court with the concurrence of a majority of all the judges thereof may appoint one or more standing masters for its district, and the court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, an auditor, and an examiner. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) **Reference.** A reference to a master shall be *the exception and not the rule. In actions to be tried* by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) **Powers.** The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 43 (c) for a court sitting without a jury.

(d) **Proceedings.** (1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) Statement of Accounts. When matters of accounting are in issue before the master, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

(e) **Report.** (1) Contents and Filing. The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) In Non-Jury Actions. In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6 (d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) In Jury Actions. In an action to be tried by a jury the master shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found *and may be read to the jury, subject to the ruling of* the court upon any objections in point of law which may be made to the report.

(4) Stipulation as to Findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) Draft Report. Before filing his report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

VII. JUDGMENT

54. JUDGMENTS; COSTS. (a) **Definition; Form.** "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) **Judgment At Various Stages.** When more than one claim for relief is presented in an action, the court at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may enter a judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims. In case a separate judgment is so entered, the court by order may stay its enforcement until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(c) **Demand for Judgment.** A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judg-

ment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

(d) **Costs.** Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.

55. DEFAULT. (a) **Entry.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b) **Judgment.** Judgment by default may be entered as follows:

(1) By the Clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

(c) **Setting Aside Default.** For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60 (b).

(d) **Plaintiffs, Counterclaimants, Cross-Claimants.** The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54 (c).

(e) **Judgment Against the United States.** No judgment by default shall be entered against the United States or an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.

56. SUMMARY JUDGMENT. (a) **For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the pleading in answer thereto has been served, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) **For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) **Motion and Proceedings Thereon.** The motion shall be served at least 10 days before the time specified for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(d) **Case Not Fully Adjudicated on Motion.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) **Form of Affidavits; Further Testimony.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits.

(f) **When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) **Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

57. DECLARATORY JUDGMENTS. The procedure for obtaining a declaratory judgment pursuant to Section 274 (d) of the Judicial Code, as amended, Title 28, s. 400, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

58. ENTRY OF JUDGMENT. Unless the court otherwise directs, judgment upon the verdict of a jury shall be entered forthwith by the clerk; but the court shall direct the appropriate judgment to be entered upon a special verdict or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49. When the court directs the entry of a judgment that a party recover only money or costs or that there be no recovery, the clerk shall enter judgment forthwith upon receipt by him of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk. The notation of a judgment in the civil docket as provided by Rule 79 (a) constitutes the entry of the judgment; and the judgment is not effective before such entry.

59. NEW TRIALS. (a) **Grounds.** A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) **Time for Motion.** A motion for a new trial shall be served not later than 10 days after the entry of the judgment, except that a motion for a new trial on the ground of newly discovered evidence may be made after the expiration of such period and before the expiration of the time for appeal, with leave of court obtained on notice and hearing and on a showing of due diligence.

(c) **Time for Serving Affidavits.** When a motion for a new trial is based upon affidavits they shall be

served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) **On Initiative of Court.** Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds therefor.

60. RELIEF FROM JUDGMENT OR ORDER. (a) **Clerical Mistakes.** Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

(b) **Mistake; Inadvertence; Surprise; Excusable Neglect.** On motion the court, upon such terms as are just, may relieve a party or his legal representative from a judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. The motion shall be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court (1) to entertain an action to relieve a party from a judgment, order, or proceeding, or (2) to set aside within one year, as provided in Section 57 of the Judicial Code, Title 28, s. 118, a judgment obtained against a defendant not actually personally notified.

61. HARMLESS ERROR. No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT. (a) **Automatic Stay; Exceptions, Injunctions, Receiverships, and Patent Accountings.** Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting in an action for infringement of letters patent, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunctions during the pendency of an appeal.

(b) **Stay on Motion for New Trial or for Judgment.** In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52 (b).

(c) **Injunction Pending Appeal.** When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party. If the judgment appealed from is rendered by a district court of three judges specially constituted pursuant to a statute of the United States, no such order shall be made except (1) by such court sitting in open court or (2) by the assent of all the judges of such court evidenced by their signatures to the order.

(d) **Stay Upon Appeal.** When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) **Stay in Favor of the United States or Agency Thereof.** When an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) **Stay According to State Law.** In any state in which a judgment is a lien upon the property of the judgment debtor and in which the judgment debtor is entitled to a stay of execution, a judgment debtor is entitled, in the district court held therein, to such stay as would be accorded him had the action been maintained in the courts of that state.

(g) **Power of Appellate Court Not Limited.** The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered; and these rules do not supersede the provisions of Section 210 of the Judicial Code, as amended, Title 28, s. 47a, or of other statutes of the United States to the effect that stays pending appeals to the Supreme Court may be granted only by that court or a justice thereof.

63. DISABILITY OF A JUDGE. If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

64. SEIZURE OF PERSON OR PROPERTY. At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the state in which the district court is held, existing at the time the remedy is sought, subject to the following qualifications: (1) any existing statute of the United States governs to the extent to which it is applicable; (2) the action in which any of the foregoing remedies is used shall be commenced and prosecuted or, if removed from a state court, shall be prosecuted after removal, pursuant to these rules. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether by state procedure the remedy is ancillary to an action or must be obtained by an independent action.

65. INJUNCTIONS. (a) **Preliminary; Notice.** No preliminary injunction shall be issued without notice to the adverse party.

(b) **Temporary Restraining Order; Notice; Hearing; Duration.** No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and

takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) **Security.** No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof.

(d) **Form and Scope of Injunction or Restraining Order.** Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) **Employer and Employee; Interpleader; Constitutional cases.** These rules do not modify the Act of October 15, 1914, c. 323, ss. 1 and 20 (38 Stat. 730), Title 29, ss. 52 and 53, or the Act of March 23, 1932, c. 90 (47 Stat. 70), Title 29, c. 6, relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee; or the provisions of Section 24 (26) of the Judicial Code as amended, Title 28, s. 41 (26), relating to preliminary injunctions in actions of interpleader or in the nature of interpleader; or the Act of August 24, 1937, c. 754, s. 3, relating to actions to enjoin the enforcement of acts of Congress.

66. RECEIVERS. The practice in the administration of estates by receivers or by other similar officers appointed by the court shall be in accordance with the practice heretofore followed in the courts of the United States or as provided in rules promulgated by the district courts, but all appeals in receivership proceedings are subject to these rules.

67. DEPOSIT IN COURT. In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of Sections 995 and 996, Revised Statutes, as amended, Title 28, ss. 851, 852; the Act of June 26, 1934, c. 756, s. 23 (48 Stat. 1236), Title 31, s. 725v; or any like statute.

68. OFFER OF JUDGMENT. At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. If the offer is not so accepted it shall be deemed withdrawn and evidence thereof is not admissible. If the adverse party fails to obtain a judgment more favorable than that offered, he shall not recover costs in the district court from the time of the offer but shall pay costs from that time.

69. EXECUTION. (a) **In General.** Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions or in the manner provided by the practice of the state in which the district court is held.

(b) **Against Certain Public Officers.** When a judgment has been entered against a collector or other officer of revenue under the circumstances stated in Section 989, Revised Statutes, Title 28, s. 842, or against an officer of Congress in an action mentioned in the Act of March 3, 1875, c. 130, s. 8 (18 Stat. 401), Title 2, s. 118, and when the court has given the certificate of probable cause for his act as provided in those statutes, execution shall not issue against the officer or his property but the final judgment shall be satisfied as provided in such statutes.

70. JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE. If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the district, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

71. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES. When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

IX. APPEALS

72. APPEAL FROM A DISTRICT COURT TO THE SUPREME COURT. When an appeal is permitted by law from a district court to the Supreme Court of the United States, an appeal shall be taken by petition for appeal accompanied by an assignment of errors. The appeal shall be allowed, a citation issued, a jurisdictional statement filed, a bond on appeal and supersedeas bond taken, and the record on appeal made and certified as prescribed by law and the Rules of the Supreme Court of the United States governing such an appeal.

73. APPEAL TO A CIRCUIT COURT OF APPEALS. (a) **How Taken.** When an appeal is permitted by law from a district court to a circuit court of appeals and within the time prescribed, a party may appeal from a judgment by filing with the district court a notice of appeal. Failure of the appellant to take any of the further steps to secure the review of the judgment appealed from does not affect the validity of the appeal, but is ground only for such remedies as are specified in this rule or, when no remedy is specified, for such action as the appellate court deems appropriate, which may include dismissal of the appeal.

(b) **Notice of Appeal.** The notice of appeal shall specify the parties taking the appeal; shall designate the judgment or part thereof appealed from; and shall name the court to which the appeal is taken. Notification of the filing of the notice of appeal shall be given by the clerk by mailing copies thereof to all the parties to the judgment other than the party or parties taking the appeal, but his failure so to do does not affect the validity of the appeal. The notification to a party shall be given by mailing a copy of the notice of appeal to his attorney of record or, if the party is not represented by an attorney, then to the party at his last known address, and such notification is sufficient notwithstanding the death of the party or of his attorney prior to the giving of the notification. The clerk shall note in the civil docket the names of parties to whom he mails the copies, with date of mailing.

(c) **Bond on Appeal.** Whenever a bond for costs on appeal is required by law, the bond shall be filed with the notice of appeal. The bond shall be in the sum of two hundred and fifty dollars, unless the court fixes a different amount or unless a supersedeas bond is filed, in which event no separate bond on appeal is required. The bond on appeal shall have sufficient surety and shall be conditioned to secure the payment of costs if the appeal is dismissed or the judgment affirmed, or of such costs as the appellate court may award if the judgment is modified. If a bond on appeal in the sum of two hundred and fifty dollars is given, no approval thereof is necessary. After a bond on appeal is filed an appellee may raise objections to the form of the bond or to the sufficiency of the surety for determination by the clerk.

(d) **Supersedeas Bond.** Whenever an appellant entitled thereto desires a stay on appeal, he may present to the court for its approval a supersedeas bond which shall have surety or sureties as the court requires. The bond shall be conditioned for the satisfaction of the judgment in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages as the appellate court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the marshal or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay.

(e) **Failure to File or Insufficiency of Bond.** If a bond on appeal or a supersedeas bond is not filed within the time specified, or if the bond filed is found insufficient, and if the action is not yet docketed with the appellate court, a bond may be filed at such time before the action is so docketed as may be fixed by the district court. After the action is so docketed, application for leave to file a bond may be made only in the appellate court.

(f) **Judgment Against Surety.** By entering into an appeal or supersedeas bond given pursuant to subdivisions (c) and (d) of this rule, the surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the surety if his address is known.

(g) **Docketing and Record on Appeal.** The record on appeal as provided for in Rules 75 and 76 shall be filed with the appellate court and the action there docketed within 40 days from the date of the notice of appeal; except that, when more than one appeal is taken from the same judgment to the same appellate court, the district court may prescribe the time for filing and docketing, which in no event shall be less than 40 days from the date of the first notice of appeal. In all cases the district court in its discretion and with or without motion or notice may extend the time for filing the record on appeal and docketing the action, if its order for extension is made before the expiration of the period for filing and docketing as originally prescribed or as extended by a previous order; but the district court shall not extend the time to a day more than 90 days from the date of the first notice of appeal.

74. JOINT OR SEVERAL APPEALS TO THE SUPREME COURT OR TO A CIRCUIT COURT OF APPEALS; SUMMONS AND SEVERANCE ABOLISHED. Parties interested jointly, severally, or otherwise in a judgment may join in an appeal therefrom; or, without summons and severance, any one or more of them may appeal separately or any two or more of them may join in an appeal.

75. RECORD ON APPEAL TO A CIRCUIT COURT OF APPEALS. (a) **Designation of Contents of Record on Appeal.** Promptly after an appeal to a circuit court of appeals is taken, the appellant shall serve upon the appellee and file with the district court a designation of the portions of the record, proceedings, and evidence to be contained in the record on appeal. Within 10 days thereafter any other party to the appeal may serve and file a designation of additional portions of the record, proceedings, and evidence to be included.

(b) **Transcript.** If there be designated for inclusion any evidence or proceedings at a trial or hearing which was stenographically reported, the appellant shall file with his designation two copies of the reporter's transcript of the evidence or proceedings included in his designation. If the designation includes only part of the reporter's transcript, the appellant shall file two copies of such additional parts thereof as the appellee may need to enable him to designate and file the parts he desires to have added, and if the appellant fails to do so the court on motion may require him to furnish the additional parts needed. One of the copies so filed by the appellant shall be available for the use of the other parties and for use in the appellate court in printing the record.

(c) **Form of Testimony.** Testimony of witnesses designated for inclusion need not be in narrative form, but may be in question and answer form. A party may prepare and file with his designation a condensed statement in narrative form of all or part of the testimony, and any other party to the appeal, if dissatisfied with the narrative statement, may require testimony in question and answer form to be substituted for all or part thereof.

(d) **Statement of Points.** If the appellant does not designate for inclusion the complete record and all the proceedings and evidence in the action, he shall serve with his designation a concise statement of the points on which he intends to rely on the appeal.

(e) **Record to Be Abbreviated.** All matter not essential to the decision of the questions presented by the appeal shall be omitted. Formal parts of all exhibits and more than one copy of any document shall be excluded. Documents shall be abridged by omitting all irrelevant and formal portions thereof. For any infraction of this rule or for the unnecessary substitution by one party of evidence in question and answer form for a fair narrative statement proposed by another, the appellate court may withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require; and costs may be imposed upon offending attorneys or parties.

(f) **Stipulation As to Record.** Instead of serving designations as above provided, the parties by written stipulation filed with the clerk of the district court may designate the parts of the record, proceedings, and evidence to be included in the record on appeal.

(g) **Record to Be Prepared By Clerk—Necessary Parts.** The clerk of the district court, under his hand and the seal of the court, shall transmit to the appellate court a true copy of the matter designated by the parties, but shall always include, whether or not designated, copies of the following: the material pleadings without unnecessary duplication; the verdict or the findings of fact and conclusions of law together with the direction for the entry of judgment thereon; in an action tried without a jury, the master's report, if any; the opinion; the judgment or part thereof appealed from; the notice of appeal with date of filing; the designations or stipulations of the parties as to matter to be included in the record; and any statement by the appellant of the points on which he intends to rely. The matter so certified and transmitted constitutes the record on appeal. The clerk shall transmit with the record on appeal a copy thereof for use in printing the record, if a copy is required by the rules of the circuit court of appeals.

(h) **Power of Court to Correct Record.** It is not necessary for the record on appeal to be approved by the district court or judge thereof, but, if any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the appellate court, or the appellate court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary that a supplemental record shall be certified and transmitted by the clerk of the district court.

(i) **Order As to Original Papers Or Exhibits.** Whenever the district court is of opinion that original papers or exhibits should be inspected by the appellate

court or sent to the appellate court in lieu of copies, it may make such order therefor and for the safekeeping, transportation, and return thereof as it deems proper.

(j) **Record for Preliminary Hearing in Appellate Court.** If, prior to the time the complete record on appeal is settled and certified as herein provided, a party desires to docket the appeal in order to make in the appellate court a motion for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on the supersedeas bond, or for any intermediate order, the clerk of the district court at his request shall certify and transmit to the appellate court a copy of such portion of the record or proceedings below as is needed for that purpose.

(k) **Several Appeals.** When more than one appeal is taken to the same court from the same judgment, a single record on appeal shall be prepared containing all the matter designated or agreed upon by the parties, without duplication.

(l) **Printing.** What part of the record on appeal filed in the appellate court shall be printed and the manner of the printing and the supervision thereof shall be as prescribed in the rules of the court to which the appeal is taken; but the type, paper, and dimensions of printed matter in the circuit court of appeals shall conform to the rules of the Supreme Court relating to records on appeals to that court.

76. RECORD ON APPEAL TO A CIRCUIT COURT OF APPEALS; AGREED STATEMENT. When the questions presented by an appeal to a circuit court of appeals can be determined without an examination of all the pleadings, evidence, and proceedings in the court below, the parties may prepare and sign a statement of the case showing how the questions arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by the appellate court. The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and a concise statement of the points to be relied on by the appellant. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the questions raised by the appeal, shall be approved by the district court and shall then be certified to the appellate court as the record on appeal.

X. DISTRICT COURTS AND CLERKS

77. DISTRICT COURTS AND CLERKS. (a) **District Courts Always Open.** The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) **Trials and Hearings; Orders in Chambers.** All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

(c) **Clerk's Office and Orders By Clerk.** The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Sundays and legal holidays. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but his action may be suspended or altered or rescinded by the court upon cause shown.

(d) **Notice of Orders Or Judgments.** Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon every party affected thereby who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers.

78. MOTION DAY. Unless local conditions make it impractical, each district court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as he considers reasonable may make orders for the advancement, conduct, and hearing of actions.

To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

79. BOOKS KEPT BY THE CLERK AND ENTRIES THEREIN. (a) **Civil Docket.** The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the Attorney General under the authority of the Act of June 30, 1906, c. 3914, s. 1 (34 Stat. 754), as amended, Title 28, s. 568, or other statutory authority, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be noted chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The notation of an order or judgment shall show the date the notation is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

(b) **Civil Order Book.** The clerk shall also keep a book for civil actions entitled "civil order book" in which shall be kept in the sequence of their making exact copies of all final judgments and orders, all orders affecting title to or lien upon real or personal property, all appealable orders, and such other orders as the court may direct.

(c) **Indices; Calendars.** Separate and suitable indices of the civil docket and of the civil order book shall be kept by the clerk under the direction of the court. There shall be prepared under the direction of the court calendars of all actions ready for trial, which shall distinguish "jury actions" from "court actions."

80. STENOGRAPHER; STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE. (a) **Stenographer.** A court or master may direct that evidence be taken stenographically and may appoint a stenographer for that purpose. His fees shall be fixed by the court and may be taxed ultimately as costs, in the discretion of the court. The cost of a transcript shall be paid in the first instance by the party ordering the transcript.

(b) **Official Stenographers.** Each district court may designate one or more official court stenographers for the district and fix by rule of court the compensation which such stenographers shall be entitled to charge for their services, with provision that amounts properly paid by parties for the service of such stenographers be taxable as costs in the case in the discretion of the trial judge. The work of the stenographers shall be so arranged as to avoid delay in furnishing transcripts ordered for the purposes of motions for new trial, for amended findings, or for appeals.

(c) **Stenographic Report Or Transcript As Evidence.** Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

XI. GENERAL PROVISIONS

81. APPLICABILITY IN GENERAL. (a) **To What Proceedings Applicable.** (1) These rules do not apply to proceedings in admiralty. They do not apply to proceedings in bankruptcy or proceedings in copyright under the Act of March 4, 1909, c. 320, s. 25 (35 Stat. 1081), as amended, Title 17, s. 25, except in so far as they may be made applicable thereto by rules promulgated by the Supreme Court of the United States. They do not apply to probate, adoption, or lunacy proceedings in the District Court of the United States for the District of Columbia except to appeals therein.

(2) In the following proceedings appeals are governed by these rules, but they are not applicable otherwise than on appeal except to the extent that the practice in such proceedings is not set forth in

statutes of the United States and has heretofore conformed to the practice in actions at law or suits in equity: admission to citizenship, habeas corpus, quo warranto, and forfeiture of property for violation of a statute of the United States.

(3) In proceedings under the Act of February 12, 1925, c. 213 (43 Stat. 883), Title 9, relating to arbitration, or under the Act of May 20, 1926, c. 347, s. 9 (44 Stat. 585), Title 45, s. 159, relating to boards of arbitration of railway labor disputes, these rules apply to appeals, but otherwise only to the extent that matters of procedure are not provided for in those statutes.

(4) These rules do not alter the method prescribed by the Act of February 18, 1922, c. 57, s. 2 (42 Stat. 388), Title 7, s. 292; or by the Act of June 10, 1930, c. 436, s. 7 (46 Stat. 534), as amended, Title 7, s. 499g(c), for instituting proceedings in the district courts of the United States to review orders of the Secretary of Agriculture; or prescribed by the Act of June 25, 1934, c. 742, s. 2 (48 Stat. 1214), Title 15, s. 522, for instituting proceedings to review orders of the Secretary of Commerce; or prescribed by the Act of February 22, 1935, c. 18, s. 5 (49 Stat. 31), Title 15, s. 715d(c), as extended for instituting proceedings to review orders of petroleum control boards; but the conduct of such proceedings in the district courts shall be made to conform to these rules so far as applicable.

(5) These rules do not alter the practice in the district courts of the United States prescribed in the Act of July 5, 1935, c. 372, ss. 9 and 10 (49 Stat. 453), Title 29, ss. 159 and 160 (e), (g), and (l), for beginning and conducting proceedings to enforce orders of the National Labor Relations Board; and in respects not covered by those statutes, the practice in the district courts shall conform to these rules so far as applicable.

(6) These rules do not apply to proceedings under the Act of September 13, 1888, c. 1015, s. 13 (25 Stat. 479), as amended, Title 8, s. 282, relating to deportation of Chinese, or to proceedings for review of compensation orders under the Longshoremen's and Harbor Workers' Compensation Act, Act of March 4, 1927, c. 509, s. 21 (44 Stat. 1436), Title 33, s. 921. The provisions for service by publication and allowing the defendant 60 days within which to answer in proceedings to cancel certificates of citizenship under the Act of June 29, 1906, c. 3592, s. 15 (34 Stat. 601), as amended, Title 8, s. 405, remain in effect.

(7) In proceedings for condemnation of property under the power of eminent domain, these rules govern appeals but are not otherwise applicable.

(b) **Scire Facias and Mandamus.** The writs of scire facias and mandamus are abolished. Relief heretofore available by mandamus or scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules.

(c) **Removed Actions.** These rules apply to civil actions removed to the district courts of the United States from the state courts and govern all procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, he shall answer or present the other defenses or objections available to him under these rules within the time allowed for answer by the law of the state or within 5 days after the filing of the transcript of the record in the district court of the United States, whichever period is longer. If at the time of removal all necessary pleadings have been filed, a party entitled to trial by jury under Rule 38 and who has not already waived his right to such trial shall be accorded it, if his demand therefor is served within 10 days after the record of the action is filed in the district court of the United States.

(d) **District of Columbia; Courts and Judges.** Whenever in these rules reference is made to a district court or to a district judge, the reference includes the District Court of the United States for the District of Columbia or a justice thereof; and whenever reference is made to a circuit court of appeals or to a judge thereof, the reference includes the United States Court of Appeals for the District of Columbia or a justice thereof.

(e) **Law Applicable.** Whenever in these rules the law of the state in which the district court is held is made applicable, the law applied in the District of Columbia governs proceedings in the District Court of the United States for the District of Columbia. When the word "state" is used, it includes, if appropriate, the District of Columbia. When the term "statute of the United States" is used, it includes, so far as concerns proceedings in the District Court of the United States for the District of Columbia, any Act of Congress locally applicable to and in force in the District of Columbia. When the law of a state is referred to, the word "law" includes the statutes of that state and the state judicial decisions construing them.

82. JURISDICTION AND VENUE UNAFFECTED. These rules shall not be construed to extend or limit the jurisdiction of the district courts of the United States or the venue of actions therein.

83. RULES BY DISTRICT COURTS. Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing its practice not inconsistent with these rules. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the Supreme Court of the United States. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.

84. FORMS. These forms contained in the Appendix of Forms are intended to indicate, subject to the provisions of these rules, the simplicity and brevity of statement which the rules contemplate.

85. TITLE. The rules may be known and cited as the Federal Rules of Civil Procedure.

86. EFFECTIVE DATE. These rules will take effect on the day which is 3 months subsequent to the adjournment of the second regular session of the 75th Congress, but if that day is prior to September 1, 1938, then these rules will take effect on September 1, 1938. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

RULES OF PRACTICE OF THE SUPREME COURT OF MINNESOTA

EFFECTIVE JULY 1, 1942

RULE I

CLERK—DUTIES OF. 1. The clerk shall keep a general docket or register in which he shall enter the title of all actions and proceedings including the names of the parties and the attorneys by whom they prosecute or defend, brief notes of all papers filed and all proceedings had therein, the issuing of writs and other process and the return thereof, and all orders and judgments.

2. He shall also keep a judgment book in which he shall enter all judgments, the names of the parties thereto, the date of the judgment, its number, the amount thereof if the recovery of money or damages is included therein, and the amount of costs and disbursements, which record shall be properly indexed.

3. He shall keep a court journal in which he shall enter from day to day brief minutes of all proceedings in court.

4. He shall file all papers presented to him; endorse thereon the style of the action, its number, the character of the paper and date of filing; and after filing no paper shall be taken from his office unless by order of the court or a judge thereof.

RULE II

CERTIORARI—MANDAMUS—TITLE. In this court the title of all cases under review shall be as in the court below. Writs shall issue in the name of the state upon the relation of the petitioner and the title shall be in the form indicated by the following example:

John Jones,
Plaintiff and Relator,
vs. **WRIT**
Johnson Canning Co.,
Defendant and Respondent.

State upon the relation of John Jones to the.....
Court of.....County, Minnesota, and to the Honorable....., one of the judges thereof:

The petition shall definitely and briefly state the judgment, order, or proceeding which is sought to be reviewed and the errors which the relator claims and the writ shall direct a return of the proceedings. Upon receipt of a $10.00 filing fee the clerk shall file the original petition and order for the writ. The original writ, together with copies of the petition and

order shall be served upon the court or judge to whom it is directed and upon the adverse party in interest. The court or judge shall make return thereto. The attendance of counsel on return day is unnecessary.

In certiorari records and briefs shall be printed and served as prescribed by Rule VIII unless the order directing the writ or a subsequent order otherwise provides.

In mandamus Rule VIII shall not apply and only three typewritten copies of the petition and briefs *shall be required to be filed on or before the return* day, and no oral argument shall be permitted.

Costs and disbursements may be taxed for or against the adversary parties but not for or against any court or judge thereof.

RULE III

CERTIORARI TO INDUSTRIAL COMMISSION—FORMS—SETTLED CASE. (The following rule shall also apply to CERTIORARI TO THE DIVISION OF EMPLOYMENT AND SECURITY. The proposed settled case or the stipulation for settled case shall be approved by the Director or an Assistant Director of the Division of Employment and Security.)

In applying to this court for a writ of certiorari to review a decision of the Industrial Commission the petitioner may use forms substantially as follows:

STATE OF MINNESOTA
IN SUPREME COURT

John Jones,
Respondent,

vs. **PETITION FOR WRIT OF CERTIORARI**

Johnson Canning Co., et al,
Relators.

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The relators above named hereby petition the Supreme Court for a writ of certiorari to review a decision of the Industrial Commission filed....(date).... upon the grounds that it is not in conformity with the terms of the Workmens Compensation Act and is unwarranted by the evidence.

Dated.....

(signed).....
Attorneys for relators.
(Address)

ORDER FOR WRIT OF CERTIORARI

Upon the filing of the foregoing petition, let a writ of certiorari issue as therein prayed for, returnable within 30 days of the issuance thereof.

Dated.....

(signed).....
Chief Justice Supreme Court

(Put the writ of certiorari under a separate cover)

TITLE **WRIT OF CERTIORARI**

TO THE INDUSTRIAL COMMISSION OF MINNESOTA:

You are hereby ordered to return to this court within 30 days from date hereof the record, exhibits and proceedings in the above entitled matter to the end that the decision of the Industrial Commission filed.....(date).....may be reviewed by this court.

Let service of this writ and of the petition herein be made by delivering the original writ and copy of the petition to the secretary of the Industrial Commission and by delivering copies of the writ and petition herein to.....(names and addresses)....., attorneys for respondents.

WITNESS the Honorable Henry M. Gallagher, Chief Justice of the Supreme Court of the State of Minnesota, and the seal thereof, this.....(date).....

(signed).....
Clerk of Supreme Court

Upon the issuance of a writ the relator, unless otherwise ordered by this court, shall prepare and submit to the adverse parties a proposed settled case for their approval. If approved, a stipulation to that effect shall be entered into by all interested parties. A case, so stipulated to, when approved by the commission shall constitute a settled case. If the parties are unable to agree the relator shall, on not less than five days' notice, apply to the commission for an order settling the case. The party served may in like manner propose amendments thereto within three days thereafter. In either event, the stipulation with the commission's approval or the order of the commission settling the case shall be contained in the printed record. Such record shall be delivered to the commission within the time provided by Sec. 4320 Mason Minn. St. 1927; Sec. 176.61 Minn. St. 1941, and such printed record, settled in the manner aforesaid, shall constitute the return to this court. All proceedings for the procurement and approval of a settled case shall be as nearly as may be, similar to proceedings on appeal from the district court.

Printed records and briefs shall in all respects conform to Rule VIII of this court except that the printed record shall be served and filed within 30 days from the issuance of the writ.

RULE IV

MOTIONS—EIGHT DAYS' NOTICE. Motions for special relief will be heard only upon eight days' notice given the adverse party, and when not based upon the records and files shall be accompanied by the papers upon which they are founded. No oral argument shall be permitted. The original and three typewritten copies of motion papers and briefs in support of or in opposition to the motion shall be filed on or before the return day. All papers, including briefs, which the moving party intends to submit to the court in support of the motion shall be served on opposing counsel at the time of service of the motion papers. All papers, including briefs, in opposition to the motion shall be served on counsel for the moving party within five days thereafter; and if counsel for the moving party wishes he may serve a reply thereto within two days thereafter.

ORDERS TO SHOW CAUSE. A $10.00 filing fee is required for an order to show cause except when issued in a pending case where the statutory fee has been paid. The order to show cause shall fix a return day and shall specify the time for the service and filing of affidavits, counter affidavits and briefs. The original and three copies of the petition, affidavits, and briefs shall be filed. The order to show cause shall be filed immediately after issued and before it is taken out for service. The title of the case shall be as in the court below. No oral argument shall be permitted. The attendance of counsel on the return day is unnecessary.

RULE V

APPELLANT TO FILE ESSENTIAL PARTS OF ORIGINAL RECORD TEN DAYS BEFORE ARGUMENT—PLATS—EXHIBITS—CLERKS TO FURNISH LISTS OF PAPERS AND EXHIBITS—DEFECTIVE RETURN—PROCURING ADDITIONAL PAPERS. Appellant shall designate in writing to the clerk of the lower court what part of the original record he deems essential to the consideration of questions presented on the appeal, and cause return thereof to be made as required by Sec. 9493, Mason Minn. St. 1927; Sec. 605.04 Minn. St. 1941, ten days before the day set for the argument of the cause in this court. When original papers have been prematurely sent to this court they will be returned to the lower court upon the written request of either party.

In cases involving accidents or tracts of land and other cases where a plat of the locus will facilitate an understanding of the facts or of the issues involved, counsel should assume personal responsibility for having in this court for the purpose of clarifying the oral argument a plat or diagram of sufficient size and distinctness to be visible to all members of this court when placed upon the court's easel.

Counsel will also see that photographic exhibits shall be in court for the oral argument.

All exhibits sent to the clerk of this court shall have endorsed thereon the title of the case to which they belong. All exhibits will be returned to the clerk of the court below with the remittitur. All models will be so returned when necessary on a new trial, but where the decision of this court is final and no new trial is to be had, such models will be destroyed by the clerk of this court unless called for by the parties within 30 days after final decision is rendered.

Whenever a clerk of a lower court shall transmit to this court any original papers, files or exhibits as required by Sec. 9493 Mason Minn. St. 1927; Sec. 605.04 Minn. St. 1941, he shall include therewith full and complete, detailed lists in duplicate of such papers, files and exhibits. The clerk of this court shall, upon receipt of such papers, files and exhibits, receipt to the transmitting clerk therefor. And when they are returned to the lower court the clerk of said court shall receipt to the clerk of this court for the same.

If the return made by the clerk of the court below is defective and all papers, exhibits, orders or records necessary to an understanding and decision of the case are not transmitted, either party may, on an

affidavit specifying the defect or omission, apply to a justice of this court for an order requiring the clerk of the lower court to make further return and supply the defect or omission without delay.

(Note—Lower court does not lose jurisdiction to settle case when appeal has been perfected. See State ex rel Kelly v. Childress, 172 Minn. 533, 149 N. W. 550.)

RULE VI

ENDORSEMENT OF RETURN BY CLERK OF THE COURT BELOW. The clerk of the court below shall endorse upon each return to this court the name and post office address of the judge presiding in the lower court and of the attorneys for the respective parties.

RULE VII

ATTORNEYS—GUARDIANS AD LITEM—CONTINUE SUCH ON APPEAL. The attorneys and guardians ad litem of the respective parties in the court below shall be deemed the attorneys and guardians of the same parties, respectively, in this court, until others are retained or appointed and notice thereof served on the adverse party.

RULE VIII

PRINTING, SERVICE AND FILING RECORDS AND BRIEFS—PENALTY. 1. The appellant or party removing a cause to this court (including the defendant in a criminal case where the trial court certifies a question to this court under the provisions of Sec. 10756, Mason Minn. St. 1927; Sec. 632.10 Minn. St. 1941 shall, within 60 days from the date of service of the notice of appeal upon opposing counsel, serve upon the opposite party the printed record and his assignments of error and brief, and file with the clerk of this court 12 copies of each thereof; and within 30 days from such service upon him the respondent shall serve his brief and file with the clerk 12 copies thereof; except that in all appeals from municipal courts the appellant or party removing a cause to this court shall have only 30 days from the date of the service of the notice of appeal upon opposing counsel within which to serve upon the opposite party and file the printed record and assignments of error and brief, and the respondent shall have only 20 days from such service upon him within which to serve and file his brief. Appellant may reply in typewritten or printed form within ten days thereafter. The reply shall be limited strictly to a concise answer to new points made by respondents. As to form and size typewritten records and briefs shall comply with these rules. The failure of appellant to comply with this rule in respect to printing and serving the record and his brief and filing the same with the clerk of this court within the time stated—which time cannot be extended by stipulation—will be deemed an abandonment of the appeal, and the order or judgment appealed from will be affirmed or the appeal dismissed, as the court may deem proper.

2. The record and briefs must be printed and the folios of the record numbered in the margin. The record shall consist of the pleadings, the findings or verdict, the order or judgment appealed from, the reasons of the trial court for the decision, if any, the notice of appeal and in cases where the sufficiency of the evidence is not involved, such abridgment of the settled case as will clearly and fully present the questions arising on the appeal. Even in cases where the sufficiency of the evidence is involved, only that pertinent to the issues to be presented need be printed. (For example, in personal injury cases where the amount of the recovery, if any, is not questioned, the medical and other testimony going only to the nature and extent of the injury should be omitted.) All matters in the return not necessary to a full presentation of the questions raised by the appeal shall be excluded from the printed record, and to that end the material testimony may be printed in narrative form, immaterial parts thereof omitted, and documentary evidence condensed. If the respondent deems the record so printed not sufficiently full to present properly the merits of the appeal, he may print a supplemental record, or instead in his brief refer to the folios or pages in the settled case, the original of which will be on file in this court, which he deems necessary and important.

3. The brief of appellant shall contain:

(a) A subject index of the contents of the brief, with page references; and a table of the cases (alphabetically arranged), text books, and statutes cited, with references to the pages where they are cited, all of which may be omitted if the brief contains no more than 15 pages.

(b) A summary of the nature and procedural history of the case stating the relief sought, the date of commencement of the action or proceeding, date of trial or hearing, the date and form of the order or judgment sought to be reviewed, the date of service of the notice of appeal, and in cases of appeal, that the order sought to be reviewed is appealable.

(b-1) A concise general statement of the question or questions involved omitting unnecessary details. Each question shall be followed by a concise statement as to how the court below answered it, or modified the answer asserted by appellant to be the correct answer.

The questions and statements shall not ordinarily exceed 20 lines, must never exceed one page, and must be printed in type as large as 10 point, without other matter appearing on the page.

(c) A concise statement of facts shown by the record so far as relevant to the grounds urged for reversal, modification or other relief. Where it is claimed that a verdict, finding or decision is not sustained by the evidence, the evidence, if any, tending directly or by reasonable inference, to sustain such verdict, finding or decision, shall be summarized. All references to the evidence shall indicate the folio and page of the printed record or settled case where same may be found.

(d) Assignments of error each shall be separately and concisely stated and numbered, without repetition. Where a finding of fact is attacked as not sustained by the evidence, it shall be particularly specified.

(e) In appellant's brief, the points urged for reversal, modification or relief, shall be separately stated and numbered, and each point so stated and numbered shall be followed by the argument thereon. The law and facts presented on each point shall be clearly stated, with citation of the authorities and statutes relied upon. Quotations must be confined to what is presently relevant. Useless repetition is to be avoided. For example, if, on a given point, one authority is quoted, the others in accord should ordinarily be cited only, without further quotation.

4. It is the duty of counsel for appellant or moving party, in both brief and oral argument, to state the case and facts fairly, with complete candor, and as fully as necessary for consideration of the issues to be presented. In the oral argument of causes it will be well if the appellant precede his statement of facts with a summary of the questions to be raised so that as the facts are stated their relation to the questions presented may at once be obvious. Normally, no restatement of facts by respondent should be needed. In both written and oral argument such statement for respondent should be limited to such correction or supplement of appellant's statement as the case may require, and clearly indicate wherein it differs from the statement by appellant, and why. Subject to the foregoing, the arrangement of the brief for respondent, and of the reply and supplemental briefs, if any, should so far as possible conform to that prescribed hereby for the brief of the appellant.

5. When the brief of the prevailing party or the record or supplemental record contains any unnecessary, irrelevant or immaterial matter, he shall not be allowed any disbursements for preparing or printing such unnecessary matter.

The party entitled to object to the taxation of disbursements in such case shall point out—specifying the pages or folios—the particular portions of the record, supplemental record or brief for which he claims the opponent is not entitled to tax disbursements.

RULE IX

SETTING OF CASES AND NOTICE—RESETTING. Upon the filing of the printed record and appellant's brief each case will be placed on the calendar for argument or submission on briefs, as the case may be, and the clerk will give prompt notice of the date thereof to the respective attorneys. A case may be reset by the court upon a showing of good reasons therefor.

RULE X

RECORD—PRINTING. Records, assignments of error and briefs shall be neatly and legibly printed in leaded small pica or long primer type with black ink on white or cream, opaque, unglazed paper, properly paged at the top and properly folioed at the side, with a margin on the outer edge of the printed page of 1½ inches. The printed page shall be 7 inches long and 3½ inches wide, and the paper page shall be 9 inches long and 7 inches wide. Each brief shall be over the name of the counsel preparing it. Each copy of such brief or record shall be stitched together

and there shall be printed on the outside thereof its proper designation, the title of the cause, and on the record the names and addresses of the attorneys for all of the parties and on the brief only the names and addresses of attorneys preparing the same. Every record shall be accompanied by an adequate index of its contents, with particular reference to exhibits, which shall be so designated as to facilitate quick reference thereto.

One-half inch from the top of the cover page of each brief and printed record shall be printed the file number of the case in this court, in black-faced 18 point figures.

The prevailing party shall be allowed as a disbursement the reasonable amount which he has actually paid for printing record or brief.

RULE XI

DEFAULT OF APPELLANT—AFFIRMANCE OR DISMISSAL—CERTIFYING TO COURT BELOW. Respondent may apply to the court for judgment of affirmance or dismissal if the appellant shall fail or neglect to serve and file the printed record and his brief as required by these rules. No reversal will be ordered for the failure of the respondent to appear, unless the record presents reversible error. If appellant is in default for 30 days and respondent does not move for dismissal or affirmance this court will dismiss the appeal without notice and without the allowance of costs and disbursements. In all cases of dismissal of any appeal in this court the clerk shall issue a certified copy of the order of dismissal to the court below.

RULE XII

CERTIFYING RECORD—TEMPORARY INJUNCTION IN "LABOR DISPUTE." Upon the certification of a record to this court for review under the provisions of Sec. 9, c. 416, Laws 1933; Sec. 185.15 Minn. St. 1941 the case shall be set for hearing in this court on the first available date and the proceedings in the case shall be given precedence over all other matters except older matters of the same character; and the rules of this court requiring the printing of record and briefs shall not apply to such cases, but typewritten records and briefs of a like number and size as required for printed records may be filed in lieu thereof.

RULE XIII

ORAL ARGUMENT—WHEN ALLOWED. On oral argument the appellant shall open and be entitled to reply. In actions for the recovery of money only, or of specific personal property, where the amount or the value of the property involved in the appeal shall not exceed $500; in appeals from orders involving only questions of practice, or forms or rules of pleading; in appeals from the clerk's taxation of costs; and in appeals from municipal courts, no oral argument will be allowed.

In actions for the recovery of money only, or for specific personal property, where the amount or value of the property involved in the appeal is more than $500, but does not exceed $1000, and in cases reviewing decisions of the Industrial Commission, and in cases to determine settlement for poor relief purposes, appellant shall be entitled to 30 minutes in all and respondent to 20 minutes.

In all other cases appellant shall be entitled to one hour in all and respondent to 45 minutes.

Application for leave to argue a case orally when oral argument is not otherwise permitted, or for an extension of the time allowed for oral argument as prescribed by this rule, may be made in writing at the time of filing the briefs.

Either party may submit a case on his part on his brief, and when no appearance is made on the day of argument, the printed record and briefs being on file, the case will be ordered so submitted.

When any member of the court is not present at the oral argument of a case, such case shall be deemed submitted to such member of the court on the record and briefs therein and when during the consideration of a case there is a change in the personnel of the court the case shall be deemed submitted to the new member or members on the record and briefs.

RULE XIV

REMITTITUR AS MATTER OF COURSE—MAILING COPY OF DECISION OR ORDER—ENTRY OF JUDGMENT—TRANSMITTING REMITTITUR. Upon the reversal, affirmance, or modification of any order or judgment of a lower court by this court, there will be a remittitur to the lower court unless otherwise ordered. A remittitur shall contain a certified copy of the judgment of this court, sealed with the seal thereof, and signed by the clerk.

When a decision is filed or an order entered determining the cause, the clerk shall mail a copy thereof to the attorneys of the parties, and no judgment shall be entered until the expiration of 10 days thereafter, except that in criminal cases judgment may be entered immediately. The mailing of such copy shall constitute notice of the filing of the decision.

The remittitur shall be transmitted to the clerk of the court below when judgment is entered, unless written objection under Sec. 9487, Mason Minn. St. 1927; Sec. 607.02 Minn. St. 1941 is made by the prevailing party and filed with the clerk of this court on or before the day set for the taxation of costs and disbursements.

RULE XV

COSTS AND DISBURSEMENTS — PREVAILING PARTY. Unless otherwise ordered the prevailing party shall recover costs as follows: 1. Upon a judgment in his favor on the merits, $25.00; 2. Upon dismissal, $10.00. (Who is prevailing party. See Sanborn v. Webster, 2 Minn. 277 (323); Allen v. Jones, 8 Minn. 172 (202).)

Costs and disbursements in all cases shall be taxed in the first instance by the clerk upon two days' notice, subject to review by the court, and inserted in the judgment. Costs and disbursements shall be taxed within 15 days after the filing of the decision.

Objections to taxation of costs and disbursements must be made in writing and filed. Appeals from the clerk's taxation of costs and disbursements must be served on opposing counsel and filed within six days from the date of the taxation by the clerk.

RULE XVI

JUDGMENT—ENTRY BY LOSING PARTY OR THE CLERK. In case the prevailing party shall neglect to have judgment entered within 15 days after notice of the filing of the opinion or order of the court, the adverse party, or the clerk of this court, may without notice, cause the same to be entered without inserting therein any allowance for costs and disbursements.

RULE XVII

JUDGMENT ROLL—PAPERS CONSTITUTING. In all cases the clerk shall attach together the bond and notice of appeal certified and returned by the clerk of the court below and a certified copy of the judgment of this court, signed by him; and these papers shall constitute the judgment roll.

RULE XVIII

EXECUTIONS—ISSUANCE AND SATISFACTION. Executions to enforce any judgment of this court may issue to the sheriff of any county in which a transcript of the judgment is filed and docketed. Such executions shall be returnable within 60 days from the receipt thereof by the officer. On the return of an execution satisfied in due form of law the clerk shall make an entry thereof upon the record.

RULE XIX

PROCESS AND WRITS OTHER THAN EXECUTIONS. All other writs and process issuing out of this court shall be signed by the clerk, sealed with the seal of the court, tested of the day when the same issued, and made returnable in accordance with the order of the court.

RULE XX

REHEARING—FILING APPLICATION. Applications for rehearing shall be made on petition setting forth the grounds on which they are made, and filed within ten days after the filing of the decision. They shall be served on the opposing party, who may answer within five days thereafter. A fee of $5.00 shall accompany all petitions for rehearing.

Nine copies shall be filed. They may be either typewritten or printed, and whether typewritten or printed shall comply with the rules for printed briefs as to size.

The filing of a petition for rehearing stays the entry of judgment in civil cases until the filing of the order of the court thereon. It does not stay the taxation of costs.

RULE XXI

DISCIPLINE OF ATTORNEYS—ACCUSATION—SERVICE—ANSWER — DEFAULT — REFEREE—

SETTLED CASE. When a member of the bar of this state is charged with misconduct and a verified accusation and petition praying that he be disciplined is submitted to this court and an order is filed directing respondent to answer, such order and accusation shall be served on respondent by delivering copies thereof to him personally, and if he have a resident guardian appointed for such purpose, to him also; or to a person of suitable age and discretion residing at the house of the usual abode of respondent, whether within or without this state. Such service may be made by the sheriff of the county in which respondent is found; or by any person not a party to, or a complaining witness in such disciplinary proceeding. When respondent is served without the state he shall have 20 days exclusive of the day of service to comply with the order of this court.

When respondent cannot be found, and his place of residence is unknown, and the sheriff of the county in which respondent last resided or practiced law makes a return to that effect, a member of the State Board of Law Examiners shall file in this court an affidavit setting forth such facts. After the lapse of 30 days the board may apply to this court for an order suspending respondent from the practice of law. A copy of such order when made and filed shall be mailed to every district judge in this state. Within a reasonable time thereafter respondent may petition this court for vacation of such order and show cause why he should be allowed to answer the accusation.

After service of the accusation and order is made on respondent he shall file in duplicate in this court a plea of not guilty or an answer. The answer may contain:

1. A denial of each allegation of the accusation controverted by respondent, or an averment that he has not knowledge or information thereof sufficient to form a belief;
2. A brief statement of any new matter constituting a defense, or any matter in mitigation of discipline.

If the respondent fails to plead or file an answer, upon proof of such facts, he shall be found in default, and an order of discipline will be entered upon the assumption that he is guilty as charged.

When this court appoints a district judge as referee with directions to hear and report the evidence, the referee shall have his official court reporter (appointed pursuant to Sec. 201 Mason Minn. St. 1927; Sec. 486.01 Minn. St. 1941) make a stenographic report of all testimony given and all proceedings had before him as in civil cases. The reporter shall be paid his necessary expense, but no compensation except as hereinafter provided. Upon request of any person interested and payment or tender of his fees therefor, the reporter shall furnish a transcript of such record as in civil cases, pursuant to Sec. 203 Mason Minn. St. 1927; Sec. 486.03 Minn. St. 1941, and shall be paid therefor the fee provided for in Sec. 206 Mason Minn. St. 1927; Sec. 486.06 Minn. St. 1941. The transcript of testimony shall be made upon paper nine inches long and seven inches wide to conform to the size of printed records and briefs in this court. It shall be the duty of the person ordering the transcript to see that the court reporter complies with this rule.

The referee shall make findings of fact which shall be conclusive, unless a case shall be settled in accordance with and within the time limited in Secs. 9328 and 9329 Mason Minn. St. 1927; Secs. 547.04 and 547.05 Minn. St. 1941. The party proposing such settled case shall first obtain and pay for a transcript of the testimony or the relevant portions thereof, and deliver the original to the referee and a copy to the adverse party.

All petitions for reinstatement to practice law of attorneys suspended or disbarred shall be served upon the Secretary of the State Board of Law Examiners, the President of the District Bar Association of the district in which respondent resides, and the President of the State Bar Association. The original petition with proof of service and one copy shall then be filed with the clerk of this court. Objections to the petition, if any, shall be served upon the respondent and filed in duplicate within 20 days after service of the petition.

RULE XXII

MODIFICATION AND SUSPENSION OF RULES. Any of these rules may be relaxed or suspended by the court in term or a judge thereof in vacation, in particular cases, as justice may require.

MEMO. 1. Rules do not apply in habeas corpus appeals. See Sec. 9768, Mason Minn. St. 1927; Sec. 589.30 Minn. St. 1941.

2. The use of the supreme court file number of the case on all papers, and when communicating with the court or clerk, will aid greatly in giving prompt service.

3. Rules governing applications for admission to bail when application to trial court is denied, see State v. Russell, 159 Minn. 290, 199 N. W. 750.

CODE OF RULES
for the
DISTRICT COURTS OF MINNESOTA

As revised and adopted by the District Judges at a Meeting duly called for that purpose in the city of Minneapolis on July 10, 1928, pursuant to section 484.33, as amended.

PART I
General Rules

RULE 1

ACTIONS BY REPRESENTATIVES; ATTORNEY'S FEES. In actions for personal injury or death by wrongful act, brought by persons acting in a representative capacity, contracts for attorney's fees shall not be regarded as determinative of fees to be allowed by the court.

RULE 2

ACTIONS FOR DEATH BY WRONGFUL ACT; DISTRIBUTION. Applications by representatives for the distributions of funds recovered under section 573.02, or pursuant to any federal act, shall be by verified petition. The petition shall set forth the amount received; a detailed statement of expenditures, if any; the amount, if any, claimed for services of the representative or of an attorney, together with the nature and extent of such service. It shall recite the names and places of residence of all persons claiming an interest or the right to share in the fund to be distributed, so far as known to the petitioner, specifying claimants who are minors or under legal disability; the amount of the funeral expenses and of any demand for the support of the decedent duly allowed by the probate court, if unpaid, and whether the time set for such allowance has expired. If such time has not expired, the hearing upon the petition shall be postponed until such expiration, or until provision satisfactory to the court has been made for the payment of such items.

The petition shall be heard at a time and place to be fixed by order of court. The order shall recite briefly the facts stated in the petition and shall be served by registered mail upon all interested persons whose places of residence are known to the petitioner or can be ascertained. The court may direct the giving of further or other notice. Persons under guardianship shall be represented by the guardian; and where no guardian has been appointed, the court may provide for such representation by a guardian ad litem.

Applications for determining kinship and for distribution of funds recovered on account of wrongful death shall be heard in open court, and no order of distribution shall be made except as it is supported by evidence produced on such hearing. (Adopted at annual meeting of district court judges held in Minneapolis on July 9, 10, 1940.)

RULE 3

ACTION ON BEHALF OF MINORS; SETTLEMENT. (a) In making application for the approval of a settlement of any action brought on behalf of a minor child, the parent or guardian ad litem shall present to the court:

(1) A verified petition, stating the age of the minor, the nature of the action, if for personal injuries to what extent the minor has recovered therefrom, the reasons justifying the proposed settlement, the expenses which it is proposed to pay out of the amount to be received, the nature and extent of the services rendered by the attorney representing the minor, whether or not an action has been commenced on behalf of the parent or guardian, and, if so, what settlement, if any, has been made in that action, with itemized expenses incurred on behalf of the minor;

(2) Satisfactory evidence that the settlement is for the best interest of the minor;

(3) If the action be for personal injuries, an affidavit of the attending physician showing the nature, extent, and probable duration of the injuries caused by the accident, and the extent of the recovery which has been made therefrom at the time of the presentation of the application.

The minor shall appear before the court at the time the application is made, and no order approving any settlement shall be made where the action is one for personal injuries until the court has seen and had an opportunity to examine the minor.

Before any parent or guardian ad litem in any such action shall receive any money, he shall file a bond in an amount and with such sureties as shall be approved by the court, running to the minor as obligee, and conditioned that he will duly account for and pay over the sum received for the benefit of such minor to said minor upon his coming of age, or to his general guardian during his minority, if one shall be appointed; provided, that upon petition of said parent, the court may, in its discretion, order that in lieu of such bond any money so received shall be deposited as a savings account in a banking institution or trust company, together with a copy of the court's order, and the deposit book filed with the clerk of court, subject to the order of the court; and no settlement or compromise of any such action shall be valid unless the same shall be approved by a judge of the court in which such action is pending.

Unless otherwise ordered, application for approval of such settlement may be made ex parte.

(b) In application for approval of settlement of an action brought under section 540.06 or section 540.08, on behalf of a minor child or ward, when settlement is approved by the court, attorney's fees will not be allowed in any amount in excess of 25 per cent of the recovery. No other deductions may be made from the amount of the settlement.

(c) Stipulations for judgment shall be deemed settlements within the meaning of this rule. (Adopted at annual meeting of district court judges held in Minneapolis on July 5-6, 1932.)

RULE 4

ATTORNEYS AS SURETIES. No practicing attorney shall be accepted as surety on a bond or undertaking required by law.

RULE 5

BANKS IN LIQUIDATION, SALE OF ASSETS, FINAL DIVIDENDS. Petitions for orders approving the sale or compounding of doubtful debts, or the sale of real or personal property, or authorizing a final dividend, of any bank, state or national, in liquidation, shall be heard after notice of all interested persons given as herein provided.

Upon the filing of the petition, the court shall enter an order reciting the substance of the petition and the time and place for hearing thereon, and advising all interested persons of their right to be heard.

A copy of the order shall be published once in a legal newspaper published near the location of the bank in liquidation, which publication shall be made at least ten days prior to the time fixed for the hearing; or the court may direct notice to be given by such other method as it shall deem proper. If it shall appear to the court that delay may prejudice the rights of those interested, the giving of notice may be dispensed with.

RULE 6

CONTINUANCE. No civil case on the general term calendar shall be continued by consent of counsel only, or otherwise than by order of the court for cause shown; provided that in counties having an assignment clerk the special rules of such county shall govern.

RULE 7

COSTS ON DEMURRER OR MOTION. On sustaining or overruling a demurrer or granting or denying a motion, the court may award costs, not exceeding $10.00, which, in the discretion of the court, may be absolute or to abide the event of the action.

RULE 8

DEPOSITIONS. Commissions to take testimony without the state may be issued on notice and application to the court either in term time or in vacation. Within five days after the entry of the order for a commission the party applying therefor shall serve a copy of the interrogatories proposed by him on the opposite party. Within five days thereafter the opposite party may serve cross-interrogatories. After the expiration of the time for serving cross-interrogatories, either party may within five days give five days' notice of settlement of interrogatories before the court. If no such notice be given within five days, the interrogatories and cross-interrogatories, if any have been served, shall be settled by the court. When a commission is applied for and the other party wishes to join therein, interrogatories and cross-interrogatories to be propounded to his witnesses may be served and settled or adopted within the same time and in the same manner as those to the witnesses of the party applying. After the interrogatories are settled, they shall be engrossed and numbered by the party proposing the interrogatories in chief; and the engrossed copy or copies shall be signed by the officer settling the same, annexed to the commission and forwarded to the commissioner. If the interrogatories and cross-interrogatories are adopted without settlement, engrossed copies need not be made, but the originals or copies served may be annexed and forwarded immediately with the commission.

RULE 9

DIVORCE ACTIONS. (a) (Repealed at annual meeting of district court judges in Duluth on July 11, 12, 1938.)

(b) No action for divorce based upon incurable insanity shall be heard until a general guardian of the person of the defendant (or a guardian ad litem when the appointment of a general guardian appears impracticable) shall have been appointed, and service of the summons and notice of the pendency of the action shall have been made upon such guardian, upon defendant's nearest blood relative, and upon the superintendent of the institution in which the defendant is confined. If from the sheriff's return and the proofs submitted it shall appear to the satisfaction of the court that personal service cannot be made upon the nearest blood relative of the defendant, then upon order of the court the summons and notice of the pendency of the action shall be served upon such nearest blood relative in the manner and as directed by the court; and no hearing in any such case shall be had until after the lapse of 30 days from the time of such service.

(c) Orders for publication of summons in actions for divorce will be granted only upon an affidavit of the plaintiff made as provided by statute and showing specifically what efforts have been made to ascertain the residence of the defendant for the purpose of making personal service.

RULE 10

EX PARTE ORDERS. No order shall be made ex parte unless there shall be presented with the application therefor an affidavit showing whether any previous application has been made for the order requested, or for a similar order; and if there has been a previous application, to what court or judge it was made, and the determination made thereof, and what new facts, if any, are shown upon such subsequent application that were not previously shown. For a failure to comply with the provisions of this rule, the order made on subsequent application may be vacated.

RULE 11

EXPERT WITNESS FEES. In taxation of costs in civil cases a fee not exceeding $10.00 per day may be allowed for expert witnesses. Under special circumstances such fee may be increased, but not to exceed $25.00 per day.

RULE 12

FILING PAPERS. (a) All affidavits, notices, and other papers designed to be used in any cause shall be filed with the clerk prior to the hearing of the cause unless otherwise directed by the court.

(b) All orders, together with the affidavits and other papers upon which the same are based, which orders are not required to be served, shall be filed forthwith in the office of the clerk. Orders required to be served shall be so filed within three days after the service thereof, and, unless seasonably served and filed, may be vacated.

(c) All orders and findings, whether prepared by the judge or by counsel by direction of the judge, shall be typewritten in manifold; and when the original is filed a copy shall be furnished to each attorney

or firm of attorneys appearing in the case. The observance of this rule shall not be deemed a substitute for statutory notice of the filing of a decision or order.

(d) No papers on file in a cause shall be taken from the custody of the clerk otherwise than upon order of the court.

(e) When judgment is entered in an action upon a promissory note, draft, or bill of exchange under the provisions of section 544.07 such promissory note, draft, or bill of exchange shall be filed with the clerk and made a part of the files of the action.

RULE 13

FORM OF PAPERS. (a) On process or papers to be served the attorney or a party appearing in person, besides subscribing or indorsing his name, shall add thereto the name of the city, town, or village in which he resides, and the particular location of his place of business by street, number, or otherwise; and if he shall neglect to do so, papers may be served on him through the mail, by directing them according to the best information concerning his residence conveniently available.

(b) The attorney or other officer of the court who prepares any pleading, affidavit, case, bill of exceptions, or report, decree, or judgment, exceeding two folios in length, shall distinctly number and mark each folio of 100 words in the margin thereof, or shall number the pages and the lines upon each page; and all copies either for the parties or the court shall be numbered and marked so as to conform to the originals. All typewritten matter shall be carefully and legibly typed on plain, unglazed, white paper of good texture, made with well inked ribbon and carbon, and shall be double spaced. Any pleading, affidavit, bill of exceptions, or case not thus prepared may be returned by the party on whom the same is served or by the court.

(c) All pleadings and other papers filed shall be plainly endorsed on the outside thereof with the title of the case, matter, or proceedings in which they are so filed; and the name or character of the paper shall be endorsed thereon below the title, so that the same may be clearly identified without opening; and the clerk may refuse to receive for filing any paper not so endorsed.

(d) When a summons is served with the complaint, the summons shall be so placed and arranged that it will be the first paper seen upon opening and inspecting the face of the papers served. A failure to comply with this rule may be deemed by the court a prima facie showing upon an application for extension of time to answer, or for relief from default, under the provision of section 544.32.

RULE 14

FRAMING ISSUES. In cases where the trial of issues of fact by a jury is not required by section 546.03, if either party shall desire a trial by jury, such party shall, within ten days after issue joined, give notice of a motion to be made upon the pleadings that the whole issue, or any specific question of fact involved therein, be tried by a jury. With the notice of motion shall be served a distinct and brief statement of the questions of fact proposed to be submitted to the jury for trial, in proper form to be incorporated in the order, and the judge may settle the issues, or may appoint a referee to settle the same. The judge, in his discretion, may thereupon make an order for trial by jury, setting forth the questions of fact as settled, and such questions only shall be tried by the jury, subject to the right of the court to allow an amendment of such issues upon the trial in like manner as pleadings may be amended upon trial.

RULE 15

GARNISHMENTS. (a) Garnishments or attachments shall not be discharged through a personal bond under section 571.30 without one day's written notice of the application therefor to the adverse party; but if a surety company's bond is given, notice shall not be required.

(b) Judgment against a garnishee shall be entered only upon notice to the garnishee and the defendant, if known to be within the jurisdiction of the court, showing the date and amount of the judgment against the defendant, and the amount for which plaintiff proposes to enter judgment against the garnishee after deducting such fees and allowances as the garnishee is entitled to receive. If the garnishee appears and secures a reduction of the proposed judgment, the court may make an appropriate allowance for fees and expense incident to such appearance.

RULE 16

ILLEGITIMACY PROCEEDINGS. Upon certification to and filing of record in the district court of any proceeding to determine the paternity of an illegitimate child, the clerk shall immediately notify by mail the director of social welfare of the pendency of the proceedings.

RULE 17

JUDGMENT, ENTRY BY ADVERSE PARTY. When a party is entitled to have judgment entered in his favor upon the verdict of a jury, report of a referee, or decision or finding of the court, and neglects to enter the same for ten days after the rendition of the verdict or notice of the filing of the report, decision, or finding; or, in case a stay has been ordered, for ten days after the expiration of such stay, the opposite party may cause judgment to be entered on five days' notice to the party entitled thereto.

RULE 18.

MECHANIC'S LIEN, INTERVENTION. Leave to intervene in an action to foreclose a mechanic's lien shall be granted only on motion and notice to the owner of the land sought to be charged.

RULE 19

NE EXEAT. Upon the allowance of a writ of ne exeat the court shall require an undertaking or bond in the penal sum of not less than $250.00, to be approved by the court. Such bond shall be conditioned upon payment to the party detained of such damages as he may sustain by reason of the writ, if the court shall eventually decide that the party applying was not entitled thereto.

RULE 20

NOTICE OF MOTION. Notices of motion shall be accompanied with copies of the affidavits and other papers on which the motions are made, provided that papers in the action of which copies shall have therefore been served, and papers other than such affidavits which have theretofore been filed, may be referred to in such notice and read upon the hearing without attaching copies thereof. When the notice is for irregularity it shall set forth particularly the irregularity complained of. In other cases it shall not be necessary to make a specification of points, but it shall be sufficient if the notice state generally the grounds of the motion.

RULE 21

ORDER TO SHOW CAUSE. When a motion can be made upon notice, an order to show cause will not be granted, except upon showing of some exigency whereby delay for the time prescribed for the notice of motion will cause injury, or render the relief sought ineffectual.

Such exigency must also be stated in the order as ground for shortening the notice; and if on the hearing it appears that there was no such ground, the order may be discharged.

Such order must be accompanied by notice of motion setting forth the grounds on which the relief asked is sought, and substantially in the ordinary form of such notices, except that the time of hearing, if mentioned in the notice otherwise than by reference to the order, shall be the time fixed by the order, the only scope of the order in such case being to shorten and fix the time for hearing the motion.

RULE 22

PLEADINGS. (a) In all cases where application is made for leave to amend a pleading or for leave to answer or reply after the time limited by statute, or to open a judgment and for leave to answer and defend, such application shall be accompanied with a copy of the proposed amendment, answer, or reply, as the case may be, and an affidavit of merits and be served on the opposite party.

(b) In an affidavit of merits made by the party the affiant shall state that he has fully and fairly stated the facts in the case to his counsel, that he has a good and substantial defense or cause of action on the merits, as he is advised by his counsel after such statement and verily believes true; and he shall give the name and place of residence of such counsel.

An affidavit shall be made by counsel, who shall

state therein that from the showing of the facts made to him by the party he verily believes that such party has a good and substantial defense or cause of action on the merits.

(c) When a demurrer is overruled with leave to answer or reply, the party demurring shall have 20 days after notice of the order, if no time is specified therein, to file and serve an answer or reply, as the case may be.

(d) Different causes of action, defenses, counterclaims, and distinct matters alleged in reply shall be separately stated and plainly numbered. All pleadings not conforming to this rule may be stricken out on motion.

RULE 23

RECEIVERS. (a) All actions or proceedings for the sequestration of the property of corporations or for the appointment of receivers thereof, except actions or proceedings instituted by the attorney general in behalf of the state, shall be instituted in the county in which the principal place of business of said corporation is situated; provided, that if the action is not instituted in the proper county, for the convenience of witnesses and to promote the ends of justice, the venue may be changed by order of court.

(b) Receivers, trustees, guardians, and others appointed by the court to aid in the administration of justice shall be wholly impartial and indifferent to all parties in interest, and selected with a view solely to their character and fitness. Except by consent of all parties interested, or where it clearly appears that prejudice will otherwise result, no person who is or has been during the preceding year a stockholder, director, or officer of a corporation shall be appointed as receiver for such corporation. Receivers shall be appointed only upon notice to interested parties, such notice to be given in the manner ordered by the court; but if it shall be clearly shown that an emergency exists requiring the immediate appointment of a temporary receiver, such appointment may be made ex parte.

(c) Every receiver after his appointment shall give a bond to be approved by the court in such sum and conditioned as the court shall direct, and shall make and file with the clerk an inventory and estimated valuation of the assets of the estate in his hands; and, unless otherwise ordered, appraisers shall then be appointed and their compensation fixed by order of the court.

(d) Claims of creditors of corporations, the subject of sequestration or receivership proceedings, shall be duly verified and filed in the office of the clerk of court. The court, by order, shall fix the time for presentation, examination, and adjustment of claims and the time for objecting thereto, and the order shall be published as therein directed. Written objection to the allowance of any claim may be made by any party to the proceeding by serving a copy of such objection upon the claimant or his attorney. Where no objection is made within the time fixed by said order, the claim may stand admitted and be allowed without proof. Issues of law and fact shall be tried as in other cases.

(e) Every receiver shall file an annual inventory and report showing the condition of the estate in his hands and a summary of his proceedings to date. The clerk shall keep a list of receiverships and notify such receiver and the court when such reports are due.

(f) When an attorney has been appointed receiver, no attorney for such receiver shall be employed except upon the order of the court, which shall be granted only upon the petition of the receiver, stating the name of counsel whom he wishes to employ and showing the necessity for such employment.

(g) No receiver shall employ more than one counsel, except under special circumstances requiring the employment of additional counsel; and in such case only after an order of court made on a petition showing such circumstance, and on notice to the party or person on whose behalf or application the receiver was appointed. No allowance shall be made to any receiver for expenses paid or incurred in violation of this rule.

(h) No receiver or other trustee appointed by the court, nor any attorney acting for such receiver or trustee, shall withdraw or use any trust funds to apply on his compensation for services except on written order of court, duly made after such notice as the court may direct, and filed in the proceeding.

(i) All applications for the allowance of fees to receivers and their attorneys shall be accompanied by an itemized statement of the services performed and the amount charged for each item shown.

Compensation of receivers and their attorneys shall be allowed only upon the order of the court after such notice to creditors and others interested as the court shall direct, of the amounts claimed as compensation and of the time and place of hearing the application for their allowance.

(j) Every receiver shall take a receipt for all disbursements made by him in excess of $1.00, shall file the same with his final account, and shall recite such filing in his verified petition for the allowance of such account.

RULE 24

RESTRAINING ORDER, BOND. Before any restraining order shall be issued, except in aid of writs of execution or replevin, or in actions for divorce, the applicant shall give a bond in the penal sum of at least $250.00, executed by him or by some person for him as a principal, approved by the court and conditioned for the payment to the party restrained of such damages as he shall sustain by reason of the order, if the court finally decides that the applicant was not entitled thereto.

RULE 25

SERVICE, ADMISSION OF ATTORNEY. Written admission of service by the attorney of record in any action or proceeding shall be sufficient proof of service, except in case of service of summons, or of an order in contempt proceedings.

RULE 26

STAY. Upon the filing of a verdict, or of a decision if the trial be by the court or referee, the court or referee may order a stay of all proceedings for not to exceed 40 days, which stay may be extended only upon notice and showing made that a transcript of the testimony was ordered from the court reporter within a reasonable time after the filing of the verdict or decision.

RULE 27

TRIALS. (a) The presiding judge shall examine jurors in civil cases; his examination to be followed by such further inquiry by counsel as the judge may deem proper.

(b) In civil cases called for trial by jury the court at the request of any party to the action may direct the clerk to draw 18 names from the jury box in the first instance, and the said 18 shall then be examined as to their qualifications to sit as jurors in the action; and if any of them be excused another shall be called in his place until there shall be 18 jurors in the box qualified to sit in the action; and the parties shall have the right to exercise their peremptory challenges as to those 18. When the peremptory challenges have been exercised, of those remaining the 12 first called into the jury box shall constitute the jury. In appropriate cases this rule may be modified in accordance with sections 546.10 and 593.15.

(c) Counsel on each side, in opening his case to the jury, shall confine himself to stating the facts which he proposes to prove.

(d) On the trial of actions but one counsel on each side shall examine or cross-examine a witness, and one counsel only on each side shall sum up the case to the jury, unless the judge shall otherwise order.

(e) In criminal trials involving sex offenses or in which the evidence is likely to be of a scandalous nature the court may, with the consent of the defendant, exclude the general public from the court room.

(f) Exceptions to remarks by counsel either in the opening statement to the jury or in the closing argument shall be taken while such statement or argument is in progress unless the same is being taken down in full by the court reporter, in which case exceptions taken at the close of the statement or argument shall be deemed seasonable. The services of the court reporter shall be at the expense of the party desiring it, which shall not be taxable as costs. (Adopted at annual meeting of district court judges held in Minneapolis on July 5-6, 1932.)

RULE 28

TRUSTEES, ANNUAL ACCOUNT. Every trustee subject to the jurisdiction of the district court shall file an annual account, duly verified, of his trusteeship. Such account shall contain an itemized statement of all trust property in the hands or under the

control of the trustee since the beginning of the trusteeship or since the time of last settlement; also a statement of all expenditures and investments and a statement in detail of what remains in the hands or under the control of the trustee, with the estimated value of each item thereof. There shall also be filed proof of mailing of such account or of the service thereof upon all beneficiaries or their natural or legal guardians.

The clerk shall keep a list of trusteeships and notify each trustee and the court when such annual accounts are overdue for more than 90 days.

Hearings upon annual accounts may be ordered upon the request of any interested party.

Upon the filing of a final account the court shall fix a time and place for the hearing and auditing thereof, and notice of such hearing shall be given to all interested parties in conformity with Sec. 8100-13, Mason's 1940 Supplement. Like notice shall be given of hearings on annual or interim accounts. (Adopted at annual meeting of district court judges held in Minneapolis on July 9, 10, 1940.)

RULE 29

VENUE, CHANGE. A change of venue shall not be granted under the provisions of section 542.11 unless the party applying therefor uses due diligence to procure the same within a reasonable time after issue has been joined in the action and the ground for the change has come to the knowledge of the applicant. Nor shall a change be granted where the other party will lose the benefit of a term, unless the party asking for such change shall move therefor at the earliest reasonable opportunity after issue has been joined and he has information of the ground of such change.

PART II

RULES FOR REGISTRATION OF LAND TITLES

PROCEEDINGS FOR INITIAL REGISTRATION

RULE 1

APPLICATION, INDORSEMENTS. Applications, approved as to form by the examiner, shall be presented in duplicate. There shall be indorsed thereon the name and address of the applicant's attorney, or of the applicant if he appears in person.

RULE 2

ABSTRACTS OF TITLE. The abstract when filed shall show the record of the patent or other conveyance from the United States, the record of the certified copy of the application, and all judgments, federal and state, taxes, assessments, and tax sales.

RULE 3

TITLE BASED UPON AN ADJUDICATION NOT FINAL, OR UPON ESTOPPEL. When the title of the applicant or the release or discharge of any encumbrance thereon, is based upon an adjudication not final, or upon estoppel, and there remains a right of appeal or contest, all parties having such right of appeal or contest shall be made parties defendant.

RULE 4

TITLE DERIVED THROUGH DECREE OR ADJUDICATED TAX SALE. Title based upon a judgment or decree of court in an action, or upon an adjudicated tax or local assessment sale, shall be registered only after the expiration of six months from the date of the judgment or decree; but this shall not apply to cases where in the action in which the judgment or decree was entered, or in the proceeding to register the title, the summons was served personally upon the parties who could alienate the fee title.

RULE 5

EXAMINER'S REPORT; PETITION AND ORDER FOR SUMMONS. The examiner's report shall specify the names of all parties he deems necessary parties defendant. Petitions for summons shall set forth such names and the names of such other parties as the applicant deems to be necessary, and the names, if known to the applicant, or ascertainable by him upon reasonable inquiry, of the successors in interest of such persons known to the applicant to be deceased. Where the place of residence of a defendant is unknown to the applicant, the petition shall so recite and shall set out the facts relating to the search for such defendant by the applicant.

RULE 6

PAPERS TO BE FILED, EFFECT OF NOTICE AND APPEARANCE. If a defendant, in addition to appearing or filing his answer, as by statute required, shall serve a copy thereof upon the applicant or his attorney, he shall be entitled to notice of all subsequent proceedings.

RULE 7

AFFIDAVIT OF NO ANSWER AND CLERK'S CERTIFICATE OF DEFAULT. The default of defendants who fail to appear and answer shall be shown by the certificate of the clerk entitled and filed in the action, and by the affidavit of the applicant's attorney, if he appears by attorney; otherwise by the applicant's affidavit.

RULE 8

HEARINGS IN DEFAULT CASES, FILING NOTE OF ISSUE AND PAPERS. Initial applications, where no issue has been joined, shall be heard by the court at any special term, unless by local rules adopted for any particular county or district, or by special order, other days have been designated for such hearings; or they may be heard by an examiner, to whom the matter has been specially referred, as referee. In counties where the examiner checks the proceedings in advance of the hearings, the note of issue and all papers necessary to complete the files shall be filed and all documentary evidence proposed to be used by the applicant or petitioner shall be delivered to the examiner at least three days before the hearing, together with the proposed order for judgment and decree.

RULE 9

ISSUES RAISED BY ANSWER, REPLY. All facts alleged in an answer, which are not in accordance with the allegations of the application, shall be considered at issue without reply by the applicant. If the answer sets up rights admitted in the application, or in a reply of the applicant, the hearing may proceed as in case of a default, and the registration shall be subject to such rights.

RULE 10

TRIAL OF CONTESTED ISSUES. In all cases where the answer raises an issue which is undisposed of by stipulation or otherwise, the matter shall be noted for trial at the general term. The procedure and the method of determination shall be the same as in the trial of similar issues in civil actions or proceedings.

RULE 11

INTERLOCUTORY DECREE ESTABLISHING BOUNDARIES. When the applicant seeks to fix and establish the boundary lines of the land, he shall have the premises surveyed by a competent surveyor and shall cause to be filed in the proceeding a plat of the survey showing the correct boundaries of the premises. He shall furnish the examiner with such abstracts of title of adjoining lands as the latter shall require in determining the necessary parties defendant in the fixing and establishing of such boundaries. The hearing upon such application may be separate from or in connection with the hearing upon the application to register, but before any final adjudication of registration, the court by order shall fix and establish such boundaries and direct the establishment of "Judicial Landmarks" in the manner provided by section 559.25. In the decree of registration thereafter entered, and in certificates of title thereafter issued, the description of the land shall contain appropriate reference to such "Judicial Landmarks."

RULE 12

PROTECTION OF INTERESTS ACQUIRED PENDENTE LITE; PROVISION FOR IMMEDIATE REGISTRATION AFTER HEARING. At the time of the hearing of the application for judgment, the applicant shall satisfy the court by continuation of abstract and other proper proof, of changes, if any, in the title, or in the encumbrances thereon arising since the filing of the application. When the decree is signed, the applicant shall forthwith file the same with the clerk, together with a receipt of the registrar showing payment of all sums due him for the registration of the decree, and the issuance of a certificate of title in pursuance to said decree, and thereupon the clerk shall certify a copy of the decree and file the same for registration with the registrar.

PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION

RULE 13

TITLE OF PROCEEDINGS. Proceedings subsequent to the initial registration under sections 508.44, 508.45, 508.58, 508.59, 508.61, 508.67, 508.68, 508.69, 508.70, 508.71, and 508.73 shall be commenced by filing with the clerk a verified petition by a party in interest, which shall be entitled:

"In the Matter of the Petition of..... In Relation to (description of property) registered in Certificate of Title No.....for (relief sought)."

The petition shall allege the facts justifying the relief sought, the names of all interested parties as shown by the certificate of title, and their interests therein.

RULE 14

TRIAL AND HEARING. In proceedings where no notice is required and in proceedings where the required process of notice has been served and the time for appearance has expired without any issue having been raised, the proceedings shall be noted for trial and heard the same as in proceedings upon default for initial registration. Issues raised in these proceedings shall be noted for trial and disposed of the same as similar issues in other civil proceedings.

RULE 15

NEW CERTIFICATES, AMENDMENTS, ETC. In proceedings under sections 508.44, 508.45, 508.58, 508.59, 508.61, 508.67, 508.68, 508.69, 508.70, 508.71, and 508.73, the petition for relief, duly verified, before being presented, shall be approved as to form by the examiner of titles. The examiner shall make such examination as to the truth of the allegations contained in the petition as to him may seem necessary, or as directed by the court. In all cases where notice is necessary and the manner thereof is not prescribed by statute, it shall be by an order to show cause, which shall designate the respondents, the manner of service, and the time within which service shall be made. Any final order or decree directed in such proceeding shall be approved as to form by the examiner before presentation to the court.

RULE 16

NEW DUPLICATE CERTIFICATE. Every petition for a new duplicate shall be filed with the clerk and show by a receipt of the registrar of titles indorsed thereon that a duplicate original has been delivered to him. Thereupon the court shall issue a citation addressed "To Whom It May Concern," fixing a time and place of hearing and prescribing the mode of service. No order shall be made for a new duplicate except upon hearing and due proof that the duplicate theretofore issued has been lost or destroyed or cannot be produced. If it shall appear at the hearing that there are any known parties in interest to whom notice should be given, the hearing shall be continued and an order entered accordingly.

SPECIAL RULES APPLICABLE TO PARTICULAR DISTRICTS

FIRST JUDICIAL DISTRICT

Special terms are held in Dakota county on the first and third Saturdays of each month except the months of July and August; and in Goodhue county on the first and third Tuesdays of each month except the months of July and August. During July and August special matters are heard in both counties on dates set by the court.

SPECIAL RULES OF PRACTICE
For the Second Judicial District, Minnesota
(Adopted August 31, 1928)

RULE 1

RESETTING OF CASES. Application for the resetting of any case shall be made to the court not less than eight days prior to the date set for trial, except for reasons arising within said period of eight days. Such application shall be made upon affidavit and written notice, served upon opposing counsel at least two days prior to the hearing. When the reason for the application arises within the period of eight days, an order to show cause shall be applied for with reasonable promptness. Applications for resettings will be granted only upon a legal showing which would, under the practice heretofore existing, have entitled the moving party to a continuance.

RULE 2

SETTING OF CASES FOR TRIAL BY COURT. The clerk of court shall set for trial all causes triable by the court without a jury. Such causes shall be set in the order of the time of the filing of the notes of issue and in accordance with the requirements of section 546.05.

RULE 3

CRIMINAL CASES. TRANSCRIPT IN NARRATIVE FORM. NO CHARGE AGAINST COUNTY FOR TRANSCRIPTS FURNISHED COUNSEL. The synopsis required under sections 640.10 and 640.11 shall be furnished in condensed narrative form by the stenographer acting on the trial. Carbon copies thereof shall be furnished without charge to the court acting on the trial and the county attorney. No charge of any kind against the county shall be permitted for copies of transcripts of the testimony of witnesses furnished by the stenographer to counsel for either side during or after trial and attached for convenience of the stenographer as a part of the synopsis required by statute.

RULE 4

DIVORCE CASES. DEFAULT. SETTING. Divorce cases in which the time for answering has expired and default has been made and in which the summons and complaint with proof of service have been filed with the clerk, shall upon filing a note of issue containing the title of the cause, a statement of the foregoing facts, and the address of counsel, be placed upon the court calendar in their order and set for trial for Monday of each week, but at a time not earlier than 30 days after the filing of the note of issue.

RULE 5

EXHIBITS. (a) **Custody.** Unless otherwise directed by the court, the exhibits used upon the trial of causes shall be placed in the custody of the court reporter.

When a jury agrees upon a verdict and the verdict is sealed, the bailiff in charge shall before the jury separates take possession of the exhibits sent out with the jury, and immediately upon the reception of the verdict by the court he shall deliver them to the reporter; in case the verdict is not sealed, the bailiff immediately upon the reception of the verdict shall take possession of the exhibits and deliver them to the reporter.

(b) **Disposition.** At the expiration of a period of six months from and after the final determination of any cause tried in this court, the court reporter shall, in writing and by mail, notify and require attorneys who have engaged in such cause forthwith to remove from his office and custody, and from the custody of the court, any exhibits (not a part of the permanent record) offered in such cause by and on behalf of and belonging to the parties for whom they have appeared respectively therein; and unless such exhibits are so removed within 30 days from and after such giving of such notice, the court reporter may and shall destroy or otherwise dispose of them, as he may see fit.

All exhibits offered in any cause tried in this court shall be offered and received conditionally and subject to the right of destruction or other disposition, in accordance with the terms of this rule.

RULE 6

JUVENILE COURT; WOMAN ASSISTANT; PROBATION OFFICER; REFEREE; DUTIES. A woman assistant of the probation officer shall be designated as a referee by the judges of this court to investigate all cases involving immorality or improper conduct on the part of girls coming before the juvenile branch of this court. She shall examine any such girl brought before the court and shall appear with her before the judge thereof and shall make such report to him and perform such other duties as the court may require.

RULE 7

NATURALIZATION; HEARINGS. The following days are hereby fixed as the stated days on which final action shall be had upon all petitions for naturalization:

The third Wednesday of each month (except July, August, and September), in each odd-numbered year.

The third Wednesday in each of the months of January, February, March, May, June, November, and December, and the last Wednesday in the month of July in each even-numbered year.

When any of such days falls on a legal holiday, the final action shall be had on the following day. The date of hearing may be changed by order of court. In no case shall final action be had upon such petitions until at least 90 days have elapsed after filing and posting the notice of such petition. (Amended September 28, 1928.)

RULE 8

SPECIAL TERMS. A special term of this court shall be held each Friday that is not a legal holiday, at two o'clock in the afternoon, except during the time the court is in recess or vacation. (Effective Oct. 8, 1943.)

RULE 9

TRIAL; TIME FOR ARGUMENT. In the argument of any case, neither counsel will be allowed more than one hour.

RULE 10

REGISTRATION OF LAND TITLES

(a) **Manner of Service.** Upon defendants residing or found within the state, the summons shall be served by the sheriff of the county wherein the defendants reside or are found.

(b) **Summons; Manner of Service Without the State.** When the sheriff has duly returned that the defendant cannot be found within his county, the applicant shall cause the summons to be personally served on the defendant without the state, if such personal service is practicable. Such service and proof thereof shall be made in the manner and as provided by statute for service of a summons upon defendants within the state, and such service without the state shall be in addition to the service by publication and mailing required by law. When personal service is impracticable, as made to appear to the satisfaction of the court by the affidavit of the applicant or his attorney showing the facts in that regard, the court by order may dispense with such personal service.

(c) **Decrees Shall Specify Liens for Tax or Local Assessments.** Decrees in registration proceedings by which the title of the applicant to such land is adjudged to be subject to certain liens arising from tax or local assessment sales shall specify such liens. The decree shall provide that upon the filing with the registrar of the official receipt showing the redemption from or payment of any such lien or liens, the registrar shall cancel the memorial or memorials thereof.

(d) **Storing Duplicate Certificates.** The registrar is authorized to place in storage in a suitable place in the court house at St. Paul, Minnesota, all duplicate certificates of title which have been canceled five years or more.

(e) **Hearings; Note of Issue; Filing Papers.** Initial applications and proceedings subsequent to the initial application where no issue has been raised, shall be heard by the court at special term. All such matters shall be upon a special calendar, which shall be called at ten o'clock in the morning. In the months of July, August, and September such hearings shall be had at such times as the court may determine. During the term time, notes of issue and all necessary moving papers shall be filed at least three days before the hearing. The examiner shall attend and participate in all hearings. He shall advise the court and approve all orders and decrees as requested.

RULE 11

ASSIGNMENT CLERK. (a) The clerk shall assign a duly appointed deputy clerk from his office to have charge of the assignment of civil jury cases to the several judges for trial. Such deputy shall be designated as the assignment clerk and shall act under the general instructions of the judge presiding at jury call.

(b) It shall be the duty of the assignment clerk to set for trial each day that the court is in session a sufficient number of cases to keep the courts occupied, and shall be required to have mailed to all attorneys postal cards notifying them as to the days their cases are set for trial at least 15 days in advance.

(c) The clerk shall assign deputy clerks to assist the assignment clerk in such number as from time to time the work may require.

(d) Attorneys shall be required to answer the call of the calendar on the morning of the day their cases are set for trial.

(e) Application for resetting of any cause shall be made to the court in chambers, as per Rule 1.

(f) All cases reported ready for trial shall be placed on the active list, and when the case next in order on such active list is about to be assigned to a court room for trial the assignment clerk shall notify the attorneys by telephone to report at once to the court to whom such case has been assigned for trial.

(g) Attorneys shall be required to keep the assignment clerk informed of their telephone number, and when they have cases on the active list they shall be required to hold themselves within telephone call of their offices, and report to the trial court within 15 minutes after such notification, in person or by representative.

(h) The time at which the assignment clerk has notified the attorneys shall be indicated on the records of the assignment clerk.

(i) Each case in its order shall be assigned by the assignment clerk to the trial court next ready for a case and thereupon shall be tried, dismissed, or stricken, unless for good cause, arising after the closing of court on the preceding day, the case is continued or returned to the assignment clerk. The cause for continuance under this rule must be entered on the records of the assignment clerk together with the names of the parties seeking and obtaining such continuance. In subsequent applications for continuance such records shall be examined as to former proceedings and no case shall be continued or reset for trial more than three times.

(j) In all cases the party filing a note of issue shall at the same time file such of his pleadings and other papers as have been served by him in the cause as have not been theretofore filed. All other parties to the cause shall file their pleadings and other papers served by them forthwith upon receipt of the notice of the date of trial. All pleadings must be on file in the office of the clerk of the district court before any case is assigned for trial under penalty of dismissal, continuance, striking from the calendar, or such other terms as the court may see fit to impose. If defendant has failed to comply with this rule by the time the case reaches the clerk for assignment, it shall be assigned and tried as a default case.

(k) Cases will not be assigned when any attorney therein is actually engaged in another court in a trial.

(l) When an attorney has a case on the active list and is personally engaged in actual trial in another court, he shall notify the assignment clerk, and cases in which he is such attorney shall be taken from the active list and held in order until such attorney is released from the case in which he is then engaged. Immediately upon becoming released from such case the attorney shall notify the assignment clerk and such cases as are held and ready for trial shall then be placed again on the active list and sent to the court for trial in regular order.

(m) When a case is assigned for trial it must be ready for immediate trial. All motions, demurrers, or other proceedings as to pleadings shall be heard prior to the time of trial, at special term.

(n) When a trial is for good reason interrupted and the case is to be returned to the assignment clerk, he shall make such record of its return and forthwith place such case upon the calendar for trial, for such date as the court may direct.

(o) When the parties to any suit which has reached the active list have settled or dismissed the same, the attorneys shall at once notify the assignment clerk and cause an entry of such settlement or dismissal to be made and entered upon the records.

THIRD JUDICIAL DISTRICT

Special terms are held in Olmsted county on the second Monday in September and March; and in Wabasha county on the second Monday in February and July.

Winona and Houston counties have no fixed special term days.

FOURTH JUDICIAL DISTRICT

(Revised and amended, effective October 1, 1928)

RULE 1

FILING OF PLEADINGS. In all cases the party filing a note of issue shall at the same time file such of his pleadings and other papers as have been served by him in the cause and have not been theretofore filed. All parties to the cause shall file their pleadings and other papers served by them before the date of trial, and not later than five days after receipt of notice of such date. For failure to observe this rule, the clerk shall assess $1.00 as special costs against each delinquent party. (Amended January 5, 1940.)

RULE 2

SETTING OF CASES. The clerk of this court shall, for each general term thereof, prepare a calendar of civil causes, court and jury, and enter upon such calendar:

(1) All causes which shall have been continued to such term, in the order in which the same shall have appeared upon the calendar of the term from which the continuance was had;

(2) All other civil causes, originally commenced in the district court, in which the notes of issue shall have been filed with the clerk, prior to such term, or during the continuance thereof, as provided by section 546.05, the same to be so entered in the order of the *dates of filing of the notes of issue; and*

(3) All other actions and proceedings, originally commenced in the district court, or appealed or transferred thereto and required by law to be placed upon this calendar, the same to be entered thereon at the time and in the manner prescribed by law, upon compliance being had with the provisions of the respective statutes, relating thereto, as modified by section 546.05.

The clerk shall also, for each general term thereof, prepare a calendar, which shall be known as the default divorce calendar, and enter therein:

(1) Default divorce cases, which shall have been continued to such term, in the order in which the same shall have appeared upon the calendar of the term from which the continuance was had;

(2) All other default divorce cases, in which notes of issue shall have been filed, prior to such term, or during the continuance thereof.

No default divorce case shall be entered for trial at an earlier date than 90 days after note of issue is filed.

RULE 3

RESETTING OF CASES. Application for the resetting of any cause shall be made to the court not less than eight days prior to the date of trial except for reasons arising within the period of eight days. This application shall be made upon affidavit and written notice, served upon opposing counsel at least two days prior to the hearing. When the reason for the application arises within the period of eight days an order to show cause shall be applied for with reasonable promptness. Applications for resettings will be granted only upon a legal showing which would, under the practice heretofore existing, have entitled the moving party to a continuance.

RULE 4

SPECIAL TERM. Special terms shall be held every Saturday (except on holidays), at ten o'clock in the forenoon, but matters ordinarily returnable at special term may be noticed for hearing on any court day before the judge in chambers. The preliminary call of the calendar will be followed at once by the peremptory call, at which hearing will be had and causes finally disposed of as reached. No hearing will be set down for the afternoon, nor continued beyond the morning session, unless for urgent reasons. Only cases properly on the calendar when the court opens will be heard, unless they shall have been omitted by mistake or inadvertence of the clerk. All pleadings, orders, notices, affidavits, and other papers proper to be filed must be, to entitle them to be read, filed with the clerk before the day on which the special term is held, unless for some reason other than neglect, the paper could not have been sooner filed, or unless the occasion for the use of the paper arises at the hearing from some cause not previously apparent. The strict enforcement of the provisions of this rule may be relaxed in favor of attorneys from other counties.

RULE 5

ASSIGNMENT OF CASES. (a) The clerk shall assign a duly appointed deputy clerk from his office who shall be designated as the assignment clerk and he shall act under the general instructions of the judge presiding in chambers in connection with the assignment of civil cases to the several judges for trial. (Amended October 17, 1928; January 3, 1938.)

(b) It shall be the duty of the assignment clerk to set for trial each day that the court is in session a sufficient number of cases to keep the courts occupied, and he shall mail to all attorneys postal cards notifying them as to the day their cases are set for trial, 15 days in advance. Attorneys so notified shall at once inform the clerk whether such case or cases are for trial, and unless so informed within five days after the mailing of such notice it shall be deemed that the case has been settled or abandoned, and the clerk shall then omit it from the calendar and may substitute another case in lieu thereof. (Amended October 17, 1928.)

(c) The clerk shall assign to each trial court room a deputy clerk who shall be in constant attendance during the sessions of the court, and whose first duty shall be the clerical details or/and pertaining to the trial work. (Amended October 17, 1928.)

(d) The clerk shall assign deputy clerks to assist the assignment clerk in such number as from time to time the work may require. (Amended October 17, 1928.)

(e) In all cases where there is more than one attorney of record for a party, or where an attorney other than the attorney of record will try the case, the name of the attorney who will try the case for any such party shall be stated to the court at the time of the call of the calendar, unless the clerk has been previously notified in writing of the name of such attorney and, in either event, the name of such attorney shall be entered upon the records of the court. (Amended October 17, 1928; January 3, 1938.)

(f) Except as provided in subdivision (g) hereof, a case may be reset or continued only upon stipulation filed by 12 o'clock of the day prior to the date when the case is set for trial or upon application to the judge in chambers, as set forth in rule 3. No such application shall be made later than the date when the case is set for trial and shall be based either upon notice of motion or order to show cause, stating the grounds for such application. If the judge is satisfied that there is just cause for granting the application for the resetting or continuance, such application shall be decided forthwith by the court. Not more than three resettings or continuances of any case shall be granted, except as provided in subdivision (g) herein or upon stipulation of the parties. (Amended October 17, 1928; January 3, 1938.)

(g) After a case has been assigned to a judge for trial, an application for resetting or continuance may be based only on an emergency arising since the case was called on the calendar. Such motion or application shall be made immediately upon the discovery of such emergency and shall be heard and determined forthwith by the judge in chambers. (Amended October 17, 1928; January 3, 1938.)

(h) All cases reported ready for trial shall be placed on the active list and assigned by the judge in chambers to a court room for trial in the order in which they appear on such list. The assignment clerk shall notify the attorneys by telephone to report at once to the court to which such case has been assigned. (Amended October 17, 1928; January 3, 1938.)

(i) Attorneys shall be required to keep the assignment clerk informed of their telephone number and when they have cases on the active list they shall be required to hold themselves within telephone call of their offices, and report to the trial court within 15 minutes after such notification in person or by representative. (Amended October 17, 1928.)

(j) The time at which the assignment clerk has notified the attorneys shall be indicated on the records of the assignment clerk. (Amended October 17, 1928.)

(k) Each case in its order shall be assigned by the judge in chambers to the first judge available and thereupon it shall be tried, dismissed, or stricken, unless it is reset or continued because of an emergency arising since the case was called on the calendar.

No case shall be kept on the active list more than 30 days after it has been called for trial on the calendar. It must be tried, dismissed, or stricken within the 30 days.

Without any exception, save as herein specified, cases shall be assigned to the judge trying civil cases who first reports to the assignment clerk that he is ready for a new case. To fill time not otherwise occupied default divorce cases may be assigned out of their regular order to any judge on his request, such cases always retaining their calendar order relative to each other. The judge having the juvenile court assignment may select cases of such probable length as not to interfere with his juvenile court work. (Amended October 17, 1928; January 3, 1938.)

(l) All pleading must be on file in the office of the clerk of the district court as provided in rule 1 before any case is assigned for trial, under penalty of dismissal, continuance, striking from the calendar, or such other terms as the court may see fit to impose. (Amended October 17, 1928.)

(m) Cases will not be assigned when any attorney therein is actually engaged in another court. (Amended October 17, 1928.)

(n) When an attorney who is going to try a case or cases on the active list is actually engaged in another court he shall file a statement with the assignment clerk setting forth the court wherein he is engaged and his cases shall be held until he is released from the case in which he is then engaged. Immediately upon becoming released from such case the attorney shall notify the assignment clerk, who shall forthwith notify the judge in chambers and such cases as are held shall then be assigned to a judge for trial in regular order. (Amended October 17, 1928; January 3, 1938.)

(o) When a case is reached for trial and a jury is not available the assignment clerk may assign a court case. When juries are available jury cases shall be given such preference as shall be deemed expedient. (Amended October 17, 1928.)

(p) When a case is assigned for trial it must be ready for immediate trial. All motions, demurrers, or other proceedings as to pleadings shall be heard prior to the time of trial by the court in chambers. (Amended October 17, 1928.)

(q) When a trial is for good reason interrupted and the case is to be returned to the assignment clerk, he shall make such record of its return and forthwith place such case again upon the calendar for trial, for such date as the court may direct. (Amended October 17, 1928.)

(r) When the parties to any suit which has reached the active list have settled or dismissed the same, the attorneys shall at once notify the assignment clerk and cause an entry of such assignment or dismissal to be made and entered upon the records. Failure to comply with this rule may be treated as a contempt of court. (Amended October 17, 1928.)

RULE 6

ADOPTION MATTERS. Adoption matters shall be referred to and heard by the judge of the juvenile court.

RULE 7

DEFAULTS. (a) Divorce cases, in which the time for answering has expired, and default has been made, and in which the summons and complaint, with proof of service thereof, have been filed with the clerk, shall, upon filing with the clerk a note of issue, containing the title of the cause, a statement of the foregoing requisites, and the address of counsel, be placed upon the calendar and set for trial as provided for in rule 2.

(b) All causes, other than divorce and tax cases, requiring the taking of testimony, in which the time for answering has expired and default has been made, and in which the summons and complaint, with proof of service, have been filed with the clerk, shall, upon filing with the clerk a note of issue containing the title of the cause, a statement of the foregoing requisites, and the address of counsel, be placed upon a special calendar and set for trial at chambers or special term for such date as may be specified by the party filing the note of issue.

RULE 8

CLERK'S FEE. All clerk and trial fees must be paid before the jury is sworn.

RULE 9

EXHIBITS. All exhibits offered in evidence shall be placed in the custody of the clerk of the court who shall be responsible for their care and production and delivery to the party to whom the same may belong for a period of 48 hours following a verdict in cases of trial by jury or rendition of decision by the court without a jury. After the expiration of the 48 hours the care and responsibility for such exhibits shall be upon the parties themselves. Upon surrendering the custody of any such exhibits, the clerk shall take a receipt therefor from the party to whom delivered.

Exhibits in criminal cases shall be kept by the clerk for six months after verdict of the jury, unless surrender of the same shall be directed by written order of the judge before whom the case was tried. (Amended May 13, 1932.)

RULE 10

FINDINGS IN DIVORCE CASES. In divorce cases, upon signing the findings the judge so signing shall deliver the same to the clerk for filing.

RULE 11

EXPERT WITNESS FEES. In taxation of costs in all civil cases a fee not exceeding $10.00 per day may be allowed for expert witnesses except under special circumstances such fee may be increased, but not to exceed $25.00 per day.

In criminal cases a fee not exceeding $25.00 per day may be allowed for expert witnesses; provided that under special circumstances such fee may be increased, but not to exceed $50.00 per day.

RULE 12

FEES IN CONDEMNATION PROCEEDINGS. Each commissioner in condemnation proceedings shall be allowed a fee not to exceed the sum of $15.00 per day.

RULE 13

ORDERS IN SUPPLEMENTARY PROCEEDINGS. Orders in supplementary proceedings shall provide that in the examination of the judgment debtor the referee shall not grant more than two continuances.

RULE 14

RECEIVERS AND TRUSTEES. (a) All applications for allowance of fees to assignees, receivers, and attorneys, which allowance is asked to be made from the funds of any insolvent estate or estate in the hands of any receiver for settlement, shall be heard by the full bench, or a division thereof consisting of at least three judges, on the last Saturday of each month. Four copies of the account shall be delivered to the clerk together with the application.

(b) In any case where an order for compensation to a receiver, or attorneys, would appear necessary or expedient, in the exercise of sound discretion, for the preservation of the estate, pending the next full bench meeting when the matter may be presented, the judge to whom the application is made, may by written order make such interim allowance.

(c) In receivership matters all interlocutory motions and orders shall be referred to and considered by the judge who appointed the receiver in the first instance.

(d) Every receiver or trustee in submitting his final account shall disclose to the court as a part thereof the status of the property of the estate as to unpaid or delinquent taxes, both personal and real, and the same shall be paid by him to the extent that the funds in his hands permit over and above the costs and expenses of the receivership and debts due to the United States. (Amended February 7, 1936.)

RULE 15

DISMISSAL; REINSTATEMENT OF BAIL; CRIMINAL CASES. (a) Motions to dismiss or nolle criminal cases in which there has been a mistrial or in which a new trial has been granted shall be made before the judge who presided at the former trial.

(b) Motions to reinstate defaulted bail shall be made before the judge who ordered the default.

RULE 16

PROBATION RULE. In all cases where persons are placed on probation after conviction for crime, such persons shall not be permitted to leave the state of Minnesota without express leave of the court, and leave shall in no case be granted within six months after date of conviction.

RULE 17

JURY SERVICE. (a) Applications for excuse from jury duty shall be made or referred to the judge to whom the juror has been ordered to report.

(b) No petit juror shall be required to serve more than once in two years, and where it appears that any petit juror is summoned for jury service after having served as a petit juror the year previous he shall be forthwith excused.

RULE 18

CRIMINAL PROCEDURE. 1. Every person in custody charged with crime shall be arraigned in district court within 48 hours after the filing of the information or indictment against him.

2. When juries are in attendance, the trial of every person charged with crime shall be set for not later than eight days after arraignment.

3. No case on the calendar for trial shall be continued except upon an order of the court, based on an affidavit showing substantial cause.

4. All cases shall be tried in the order in which they stand on the calendar, except for good cause shown.

5. When upon a trial the jury disagrees, the case, unless otherwise disposed of, shall be reset for trial not more than 14 days after such disagreement.

6. When a bail bond has been defaulted it shall not be reinstated without personal appearance of the defendant within ten days, unless it is shown by affidavit that the defendant had a sufficient excuse for his non-appearance, and the court is satisfied that the state has not been deprived of material evidence by reason of the delay.

7. Except for the formal approval of bail bonds, orders in pending criminal cases shall be made only by the judge in charge of the criminal calendar. (Adopted December 19, 1930.)

RULE 18A

BAIL BONDS, CRIMINAL CASES. In all criminal cases where bonds with personal sureties are presented for approval the judge in charge of the criminal calendar shall require that said sureties personally appear before him and justify before approval of any such bond. (Passed Dec. 11, 1942.)

RULE 19

MORATORIUM CASES. In moratorium cases applications to determine default or waste shall not be heard or granted except upon due notice of motion or order to show cause. (Adopted January 27, 1936.)

RULE 20

ACTIONS ON BEHALF OF MINORS; SETTLEMENT. Where Rule 3 (a) (1) of the general rules of the district court of Minnesota, as amended in 1932, refers to actions brought on behalf of a minor or to actions brought by a parent or guardian, it shall also be understood as applying to claims made on behalf of a minor and to claims made by a parent or guardian where no action has been commenced. In any proceeding for a settlement of a minor's claim, the petition shall be filed before an order is made, and the order made therein shall be filed forthwith. (Adopted 1936.)

RULE 21

NOTICE. Before service of notice shall be made pursuant to section 543.17 or section 481.12 on the clerk of court or by mail, the relevant facts must be shown by affidavit and an order of the court procured and filed authorizing such service. (Adopted November 20, 1936.)

RULE 22

PRELIMINARY EXAMINATION OF VENIREMEN. (a) A questionnaire in the form provided in paragraph (d) hereof shall be delivered to each venireman with his summons for jury service.

(b) These questionnaires when executed and returned shall be delivered forthwith by the clerk to the judge to whom the veniremen are required to report, who will promptly examine them, and whenever a statutory disqualification appears will notify the venireman that he is excused from jury service.

(c) When a jury is drawn and examined on his voir dire, his executed questionnaire shall be in the hands of the judge for inspection by counsel on either side.

(d) The questionnaire shall be in the following form:

QUESTIONNAIRE FOR PETIT JURORS

Q. What is your name? (Print plainly)
A. .....
Q. When and where were you born?
A. .....
(Give exact date)
Q. Where do you now live?
A. ..... Tel.....
(Give street address, if any)
Q. Are you a citizen of the United States?
A. .....
Q. What is your occupation, trade, or profession?
A. .....
Q. If employed, state name of employer?
A. .....
Q. Are you single, married, widowed, or divorced?
A. .....
Q. If married, what is your spouse's occupation or profession?
A. .....
Q. Are you now a qualified voter in this state?
A. .....
Q. How long have you lived in Hennepin county?
A. .....
Q. Have you made or has there been made in your behalf any application to be selected and returned as a juror?
A. .....
Q. Have you ever been convicted of a felony?
A. .....
Q. If so, have your civil rights been restored?
A. .....
Q. Are you now under indictment in any court?
A. .....
Q. Have you defects in your hearing?
A. .....
Q. Have you any defects in your vision?
A. .....
Q. When were you last a juror and in what court?
A. .....
Q. Have you ever been discharged (not excused) from jury service?
A. .....
Q. If so, for what cause?
A. .....

Subscribed and sworn to before me
This.....day of....., 19.... Sign here
....

(Adopted May 27, 1937.)

REGISTRATION OF LAND TITLE RULES

(a) **Manner of Service, Defendants Within the State.** Upon defendants residing or found within the state, the summons shall be served as in the manner provided for service in other civil actions except that, when practicable, the service shall be made by personally handing to and leaving with the defendant a true copy thereof.

(b) **Manner of Service, Non-Resident Defendants.** The recitals of the order for summons, to the effect that a defendant's address is outside the state or that his address is unknown shall constitute prima facie evidence that the defendant is not a resident of the state and cannot be found therein, and service shall be made accordingly as provided by statute for service upon non-residents, except as to any such defendants upon whom personal service is secured within the state.

(c) **Liens for Tax Or Local Assessment Sales.** Decrees in either initial or subsequent proceedings in which the title of the applicant is adjudged to be subject to certain liens arising from tax or local assessment sales shall specify such liens and shall provide that upon the filing with the registrar of the official receipt showing redemption from or payment of any such lien, the registrar shall cancel the memorial thereof. When the auditor's certificate upon any deed thereafter presented for registration shall show taxes to have been "paid by sale," any registration shall be made subject to the sales outstanding against the premises conveyed. The registrar shall note upon any residue certificate a statement that the premises therein described are subject to any taxes which may have accrued subsequent to the date of the original registration.

(d) **Hearings.** All hearings where no issue has been joined shall be had before the court at special term thereof on Wednesday of each week, and note of issue, together with all other papers relating to such registration, shall be filed with the clerk on or before the preceding Monday. In all cases where an answer is filed and not otherwise disposed of by order of the court, notice of trial shall be served and note of issue filed for the general term of court as in civil actions.

(e) **Cases in Which the Registrar May Act Without Special Order of Court.** In the following cases the special order of court need not be required unless it shall be requested by the registrar or examiner:

When the inchoate interest of a spouse of the registered owner has been terminated by death, the registrar may receive and enter as a memorial a duly certified copy of the official death certificate and an affidavit of identity of such deceased spouse; and in case such deceased spouse is a joint tenant, the registrar may issue a new certificate to the survivor or survivors in joint tenancy;

When the registered owner has married since the issuance of the certificate, the registrar may receive and enter as a memorial a duly certified copy of the marriage license and return;

When the interest of a life tenant has been terminated by death the registrar may receive and enter a memorial of a duly certified copy of the official death certificate and an affidavit of identity of the decedent with the life tenant named in the certificate of title; and in such case the memorial of the certificate and affidavit shall be treated as evidence of the discharge of the life tenancy.

Also, the provisions of rule (e) relative to accepting an official death certificate and an affidavit of identity as authority for entry of a new certificate in favor of the survivor or survivors in joint tenancy is declared to include joint tenancies consisting of persons other than husband and wife.

(f) **Practice in Relation to State Tax Deeds.** Excepting those cases where a certificate of title is outstanding in favor of the State of Minnesota, when a deed from the State of Minnesota in favor of the registered owner is offered for registration, it shall be registered as a memorial upon the certificate of title as evidence of discharge of any claim of title by the State of Minnesota evidenced by the prior memorial of an auditor's certificate of forfeiture to the state; and the same practice shall be followed in those cases where subsequent to or concurrent with a repurchase from the State of Minnesota by the registered owner, the latter shall have conveyed either by quitclaim deed or warranty deed the affected premises and the deed from the State of Minnesota in favor of the registered owner is dated subsequent to the date of conveyance of the registered owner or subsequent to the entry of the certificate in favor of the registered owner's grantee, in which case the fact that the repurchase from the State of Minnesota was concurrent with or prior to the date of the deed by the registered owner making such purchase shall be evidenced by an endorsement to that effect upon the state deed made by the county auditor, one of his deputies, or the county land commissioner.

(g) **Amendment to Rule 16 of District Court Rules.** Rule 16 in the Minnesota District Court rules pertaining to registration of land titles is amended as to proceedings in Hennepin county by omission of the provision that petitions for a new duplicate certificate shall show by a receipt of the registrar of titles endorsed thereon that duplicate of the petition has been delivered to him.

(h) **Deeds From Federal Housing Administrator.** In the registration of deeds or other instruments hereinafter listed for titles or interests registered in the name of an individual as Federal Housing Administrator, the registrar of titles shall be guided by Section 204 (g) of the National Housing Act as amended by the act of June 3, 1939, which confers upon any assistant administrator the power to convey and to execute in the name of the administrator deeds of conveyance, deeds of release, assignments of mortgages, satisfactions of mortgages, and any other written instrument relating to real property or any interest therein which has been acquired by the administrator; and that the registrar of titles shall accept the statement of the certificate of acknowledgment attached to any such instrument as evidence of the official character of the administrator or the assistant administrator executing the instrument. (Amended September 24, 1941.)

SIXTH JUDICIAL DISTRICT

RULE 1

SPECIAL TERMS. Special terms are held for the hearing of issues of law, applications, motions, orders to show cause, and all matters except the trial of issues of fact, as follows, unless the day indicated is a legal holiday, in which case the special term is held on the day next following:

For Blue Earth county, at the court house in the city of Mankato, at two p. m. on the first and third Mondays in January, March, and April, the fourth Monday in May, the first and third Mondays in July and September, the fourth Monday in October, the first Monday in November, and the first and third Mondays in December;

For Watonwan county, at the court house in the city of St. James, at one p. m. on the second and fourth Mondays in January, the fourth Monday in February, the second and fourth Mondays in March and April, the fourth Monday in June, the second and fourth Mondays in July and September, the second Monday in November, and the second and fourth Mondays in December.

RULE 2

CALL OF THE CALENDAR. The preliminary call of the calendar at special term will be followed at once by a formal call, at which hearing will be had in cases in their order in which both parties are ready; and the formal call will be followed at once by a peremptory call, at which hearing will be had and cases finally disposed of as reached.

RULE 3

NO TRIALS OR HEARINGS OUT OF TERM. No action will be tried or motion or order to show cause heard out of term.

RULE 4

ISSUES OF FACT TRIABLE BY JURY. All issues of fact triable by jury will be so tried.

RULE 5

DIVORCE ACTIONS. Divorce cases in which the defendant does not appear will be placed upon the general term calendar, upon filing notes of issue with the clerk as in other cases.

RULE 6

DEFAULT CASES. Other default cases may be placed upon the special term calendar in the proper county for trial.

RULE 7

STAY. Upon rendition of a verdict or a decision by the court in any case, no stay of proceedings after the first will be granted without consent of the adverse party, except upon affidavits showing the necessity for such stay and notice to the adverse party.

RULE 8

EXHIBITS. All exhibits introduced in evidence upon the trial of actions shall be marked by and left in the custody of the reporter until the close of the trial; and when the trial is completed the reporter shall deliver such exhibits to the clerk of the court. The clerk shall cause the same to be filed and kept in a proper and safe place and shall make and keep a proper index book in which shall be kept a list of all such exhibits and a reference to their place of deposit. All attorneys and interested parties in said actions shall have an opportunity to examine the same in the office of the clerk at all proper times.

SEVENTH JUDICIAL DISTRICT

Special terms for the following counties are held at nine a. m. at the court house on the days indicated:

Stearns county at the city of St. Cloud, on the last Saturday in February, March, September, and October;

Morrison county at the city of Little Falls, on the last Tuesday in January and August;

Clay county at the city of Moorhead, on the third Tuesday in February and the second Tuesday in August;

Otter Tail county at the city of Fergus Falls, on the third Tuesday in February and the last Tuesday in August.

EIGHTH JUDICIAL DISTRICT

TERMS OF COURT

SPECIAL TERMS

SCOTT COUNTY at SHAKOPEE—
2nd Monday in January
3rd Monday in June

McLEOD COUNTY at GLENCOE—
3rd Monday in January
4th Monday in June

LE SUEUR COUNTY at LE CENTER—
4th Monday in January
1st Monday in July

CARVER COUNTY at CHASKA—
1st Monday in February
2nd Monday in July

SIBLEY COUNTY at GAYLORD—
2nd Monday in February
3rd Monday in July

EXTRA SPECIAL TERMS FOR THE HEARING OF ALL MATTERS EXCEPT ISSUES OF FACT

CARVER COUNTY at CHASKA—
1st Saturday of each month at 9:00 A. M.

McLEOD COUNTY at GLENCOE—
2nd Saturday of each month

LE SUEUR COUNTY at LE CENTER—
3rd Saturday of each month

SIBLEY COUNTY at GAYLORD—
4th Saturday of each month

SCOTT COUNTY at SHAKOPEE—
4th Tuesday of each month

RULE 1

TRIAL OF CASES. All court and jury cases are set for trial on the first day of the general term. The trial of all jury cases shall begin on the third day of a general term of court, and the trial of court cases shall immediately follow the completion of the trial of all jury cases. Trial of all cases begins at 10:00 o'clock A. M.

RULE 2

CALL OF CALENDAR. The call of the calendar shall be had at the hour of ten o'clock A. M. on the opening day of each general and special term. There shall be a preliminary and a final call of the cases. On the preliminary call, counsel shall announce the nature of the disposition to be made of the case including motions to dismiss, strike, change the order on the calendar or such other motions as are proper to be noticed at said time. On the final call of the calendar all motions and requests shall be disposed of by the court in the order made on the preliminary call. All calendars shall be printed.

RULE 3

FILING OF PLEADINGS. This court deems the timely filing of pleadings an essential factor to the prompt and proper trial of cases. And mindful of the provision of section 9244 of Mason's Minnesota Statutes for 1927, this court directs that at least seven days before the term all pleadings shall be filed with the clerk.

RULE 4

OUT OF TERM TRIALS. No action will be tried out of term unless in extraordinary situations. This rule may be relaxed in favor of attorneys from without the district.

RULE 5

1. **All exhibits** introduced in evidence upon the trial of a cause shall, after being marked for identification by the court reporter, be delivered to the clerk, who shall file the same.

2. Models, diagrams, and exhibits of material forming a part of the evidence in any case pending or tried in this court shall, after being marked for identification, be placed in the custody of the clerk.

3. All models, diagrams, and exhibits of material placed in the custody of the clerk shall be taken away by the parties within seven months after the case is decided, unless an appeal is taken. In all cases in which an appeal is taken they shall be taken away within 30 days after the filing and recording of the mandate of the appellate court.

4. When models, diagrams, and exhibits of materials placed in the custody of the clerk and not taken away within the time specified in paragraph 3 of this rule, it shall be the duty of the clerk to notify counsel in the case, by mail or otherwise, of the requirements of this rule, and, if the articles are not removed within 30 days after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

RULE 6

STAY OF PROCEEDINGS. Upon the filing of a verdict or a decision, the court or referee may order a stay of all proceedings for a period not to exceed 40 days, provided that within 20 days the moving party shall order from the reporter a transcript of the evidence, unless a motion is made on the minutes of the court.

The court reporter shall, upon receiving an order for such transcript, immediately notify the clerk of the receipt of such order and upon such notice to the clerk a further stay of all proceedings shall be in effect until 30 days after said reporter notifies the clerk and requesting party in writing that such transcript has been completed and is ready for delivery. It shall be the duty of said reporter to transcribe and prepare transcripts of evidence, taken in all trials and proceedings, in the order requested and with reasonable dispatch.

Within said 30 days said requesting party shall bring on for hearing before the court such motion or proceedings as it deems advisable and necessary preparatory to an appeal to the supreme court. Provided, however, in extraordinary cases, said 30-day period may be extended by application of either party to the court. Upon submission of such motion or proceeding to the court all proceedings shall be stayed up to and including the filing of the decision by the court. The foregoing provisions apply to civil proceedings only.

NOTE. Neither the district or supreme court can give a party the right to appeal after the time for appeal, prescribed by the statute, has expired. 53-431.

RULE 7

SPECIAL TERM CALENDAR. In each county in the district, the clerk of court shall keep a special term calendar on which he shall enter all actions or proceedings noticed for such special term according to the date of issue or service of motion. Notes of issue of all matters to be heard at a special term shall be filed with the clerk one (1) day before the term. This rule shall not apply to cases noticed for a general term or continued for trial to a special term which shall be placed on the special term calendar without further notice.

RULE 8

SURETIES ON BOND, RECOGNIZANCE OR UNDERTAKING—AFFIDAVITS OF—Every personal bond or undertaking required by the statute in any court proceedings of this court, before same is submitted for approval to either the judge, clerk of the district court, sheriff or any court commissioner, shall be accompanied by an affidavit to be attached to such bond stating the full name, residence, and post office address of each surety; also setting forth the legal description of all real property owned by such surety and specifying as to each parcel thereof its fair market value, what liens or encumbrances, if any, exist thereon, and whether or not the same is his homestead or is otherwise exempt from execution and whether he is a surety upon other bond, recognizance or undertaking and the extent of the stated obligation under such bond, recognizance or undertaking.

RULE 9

FILING PAPERS. (a) All affidavits, notices and other papers designed to be used in any cause, shall be filed with the clerk prior to the hearing of the cause unless otherwise directed by the court.

(b) All orders, together with the affidavits and other papers upon which the same are based, which orders are not required to be served, shall be filed forthwith in the office of the clerk. Orders required to be served shall be so filed within three days after the service thereof, and, unless seasonably served and filed may be vacated.

(c) All orders and findings, whether prepared by the judge or by counsel by direction of the judge, shall be typewritten in manifold and when the original is filed a copy shall be furnished to each attorney or firm of attorneys appearing in the case. The observance of this rule shall not be deemed a substitute for statutory notice of the filing of a decision or order.

(d) No papers on file in any case in the office of the clerk of court shall be taken from the custody of the clerk, except by the district judge for his own use, or by a referee appointed to try the action, or by attorneys appearing of record in the case for the purpose of delivering to the court at the time of trial. Before the referee or attorney shall take any files in said action the clerk shall require a receipt therefor filed by the referee or attorney specifying each paper so taken.

(e) When judgment is entered in an action upon a promissory note, draft or bill of exchange under the provisions of section 9256, Mason's Statutes 1927, such promissory note, draft or bill of exchange shall be filed with the clerk and made a part of the files of the action.

RULE 10

SERVICE OF THE BRIEFS. In all cases tried to the court without a jury, if submitted on briefs, the party having the burden of proof shall have fifteen (15) days within which to serve his brief after the submission of the case, and the other party shall have fifteen (15) days within which to serve his brief from and after the service of the brief on him, and the party serving the first brief shall have ten (10) days in which to reply to the answer brief on him. At the expiration of forty (40) days the

case will be considered as submitted to the court for its decision whether briefs have been served or not, provided that where a transcript of the evidence is to be furnished, the time for serving briefs shall commence to run from the date of delivery of the transcript by the court reporter.

RULE 11

REPORTS OF TRUSTEE AND RECEIVERS. The following dates are hereby set, in the respective counties, for hearing on the accounts of all trustees, receivers and other persons in the court charged with the administration of any trust: Shakopee, the second Monday in January; Glencoe, the third Monday in January; Le Center, the fourth Monday in January; Chaska, the first Monday in February; and Gaylord, the second Monday in February; each being the county seat of the respective counties of Scott, McLeod, Le Sueur, Carver, and Sibley.

It will be the duty of the clerk to notify, in each county, all trustees and receivers as soon as possible after receiving this notice and failure of a trustee or a receiver or other fiduciary to report on said day and annually thereafter will be sufficient justification for removal by this court.

1. Receivers, trustees, and others appointed by the court to aid in the administration of justice shall be wholly impartial and indifferent to all parties in interest and shall be selected by the court with a view solely to their character and fitness. Except by consent of all parties interested, or where it clearly appears that it is for the best interests of all parties, no person who is or has been during the preceding year a stockholder, director, or officer of a corporation shall be appointed as receiver for such corporation. Receivers shall be appointed only upon notice to interested parties, such notice to be given in the manner ordered by the court, but if it shall be clearly shown that an emergency exists requiring immediate appointment of a receiver, such appointment may be made ex parte.

2. Compensation of receivers and of their attorneys shall be allowed only upon special order of this court.

RULE 12

CLERK'S FEES TO BE PAID. No case will be placed upon the calendar by the clerk of this court unless the deposit fee of three dollars is first paid, and no case will be finally disposed of by this court until the court is first satisfied that the clerk's fees are paid in full.

RULE 13

THE CONFERRING OF CITIZENSHIP is deemed by this court to be one of its most solemn powers, and it is hereby made the duty of the clerk of this court to arrange suitable and proper patriotic ceremony to accompany the conferring of such citizenship.

RULE 14

SPECIAL RULE IN TORRENS TITLES. Pursuant to chapter 160, Session Laws of Minnesota for the year 1933, the following rule is promulgated in relation to registration of land titles in the County of Scott, in addition to the general rules of district court as published in 175 Minnesota Reports, page XLIX, to-wit:

Where a certificate of title is outstanding in favor of two or more joint tenants and when there is filed for registration a certified copy of a certificate of death showing death of one of said joint tenants survived by the other or others, together with an affidavit identifying the party named in the said death certificate with one of the joint tenants as named in the certificate of title, the registrar of titles may without an order of court, other than this rule, cancel the outstanding certificate of title, and enter a new certificate for the land therein described in favor of the joint tenants surviving, or in favor of the sole survivor, as the case may be. However, "when said certificate of death and affidavit shall show that the decedent died on or after the 29th day of April, 1935, the registrar shall refrain from taking the foregoing action, until there is also filed with him a certificate from the attorney general of the state of Minnesota, showing either that the inheritance tax due under the provisions of the laws of 1935, chapter 334, has been paid or that there is no tax due."

RULE 15

CONDUCT. 1. The regular convening hours of the court shall be 10 o'clock a. m. and 1:30 o'clock p. m. The court will recess at 12:00 noon each day, and adjourn for the day at 5 o'clock p. m. Regular convening, recessing, and adjourning hours may be varied by special directions of the court.

2. The court crier, bailiffs, and the clerk, or one of his deputies, shall be in their places in the court room promptly at the time for convening of court.

3. When the court is about to convene, the crier will by a stroke of the gavel command attention and announce the approach of the judge. Thereupon the members of the bar present and spectators will promptly and quietly arise and remain standing until the crier shall have, by appropriate proclamation, convened the court, and the judge shall have taken his seat.

4. At the close of each session as announced by the presiding judge, the crier will by a stroke of the gavel command attention and announce the recess or adjournment, and all persons in the court room will remain seated until the crier shall have completed his announcement.

5. All persons entering the court room while court is in session shall immediately be seated and shall conduct themselves in a quiet and orderly manner. The reading of newspapers, books, or magazines in the court room shall not be permitted while court is in session.

6. Counsel, when addressing the court, shall arise, and all statements and communications by counsel to the court shall be clearly and audibly made from the counsel's table, and counsel shall not approach the judge's desk, while court is in session, for inaudible communications, unless requested so to do by the judge.

7. The examination of witnesses shall be conducted from the counsel's table, except when necessary to approach the witness or the reporter's table for the purpose of presenting or examining exhibits. When examining witnesses counsel shall remain seated in the chairs provided for them at the counsel's table, or, if they prefer, may stand immediately in front of their chairs during such examination. But one counsel on each side shall be permitted to examine witnesses unless by permission of the court.

8. Counsel will observe the assignment of cases and keep advised of the progress of business in court and be ready when cases are reached. No arrangement as to time or order of trial will be recognized unless approved by the court.

RULE 16

RIGHT RESERVED. The court shall reserve the right to relax the provisions of any of the foregoing rules in the interest of justice.

IT IS HEREBY ORDERED That the foregoing sixteen special rules and hereby adopted and approved this 27th day of December, 1939, as the special rules of this court in addition to the rules which are applicable generally to district courts throughout this state. All special rules heretofore made in said district are hereby annulled.

NATURALIZATION PROCEEDINGS AND PETITIONS

ORDER OF SEPT. 11, 1941

Until the further order of this court all naturalization proceedings and petitions to become citizens of the United States of America will be held and heard in the district court of the Eighth Judicial District at the times and places as follows:

In the county of Scott, on the fourth Monday in March and the fourth Monday in October of each year.

In the county of Carver, on the first Monday in March and the second Monday in October of each year.

In the county of McLeod, on the second Monday in May and the second Monday in November of each year.

In the county of Sibley, on the first Monday in June and the first Monday in December of each year.

In the county of LeSueur, on the third Monday in April and the third Monday in September of each year.

Said dates being the opening day of the regular general terms of court held in and for each of said counties at the court house at the county seat of each of said counties.

NINTH JUDICIAL DISTRICT

RULE 1

Bonds in attachment shall be in an amount at least equal to the amount of the claim upon which suit is brought, unless special circumstances are shown which satisfy the judge that a smaller bond is sufficient.

RULE 2

Judgment against a garnishee shall be ordered only upon five days' notice to the garnishee, and like notice to the defendant if the defendant has appeared in the action or at the garnishee disclosure.

Hereafter and until the further order of this court, the petit jury be summoned to appear at 10:00 o'clock in the forenoon of the third day of each general term.

That the call of the calendar be had as heretofore on the first day of the term.

That all motions made on the call of the calendar be heard on the first day of the term, and that motions made upon notice for hearing at the term be set for the first day when reasonably possible; all motions shall be heard in the order in which they appear.

After hearing of motions, default cases shall immediately be taken up and disposed of in their order.

That hereafter and until the further order of this court, at all regular jury terms held in this district, court shall open at 9:30 o'clock in the forenoon and close at 5:00 o'clock in the afternoon with an intermission of one hour and thirty minutes at noon and a ten minute recess in the forenoon and afternoon of each day, subject, however, to the right of the presiding judge to change the time of opening and closing as conditions may require or as such judge may deem feasible under the circumstances.

No court shall be held on Saturdays unless the presiding judge deem it necessary or expedient. Dated this 30th day of September, 1941.

TENTH JUDICIAL DISTRICT

RULE 1

FILES. No papers on file in a case shall be taken from the custody of the clerk, except by the judge, for his own use, or by a referee appointed to try the action. Before the referee shall take any files in the action the clerk shall require a receipt therefor signed by the referee, specifying each paper so taken.

RULE 2

CALL OF THE CALENDAR. At general terms there shall be two calls of the calendar. The first shall be preliminary, and the second shall be peremptory. All preliminary motions, except motions of continuance, shall be made on the first call. The cases shall be finally disposed of in their order upon the calendar on the second call. Substitution of cases may be made on the second call by consent of all the attorneys in the cases transposed.

RULE 3

MOTIONS FOR CONTINUANCE. All motions for continuance shall be made on the first day of the term, unless the cause for such continuance shall have arisen or come to the knowledge of the party subsequent to that day. In all affidavits for continuance on account of the absence of a material witness, the deponent shall set forth particularly what he expects and believes the witness would testify to were he present and orally examined in court.

No counter affidavits shall be received on a motion for continuance.

ELEVENTH JUDICIAL DISTRICT

(Revised and amended, Effective October 23, 1928)

RULE 1

SPECIAL TERMS. Special terms will be held in Duluth every Saturday, except on holidays and during the months of July and August, at 9:30 a. m. for the hearing of issues of law, applications, motions, and all matters except the trial of issues of fact.

Special terms will be held at Virginia on the fourth Saturday of each month, except the month of August, at 9:30 a. m.

Special terms will be held at Hibbing on the first Saturday of each month, except the month of August, at 9:30 a. m.

RULE 2

DIVORCE CASES. Divorce cases in which the defendant does not appear will be placed upon the general term calendar upon filing notes of issue with the clerk as in other cases.

RULE 3

DESIGNATION OF CASE ON NOTE OF ISSUE. Attorneys are hereby required to designate upon each note of issue filed in the office of the clerk of the court whether the case mentioned therein is triable by the court or by the jury.

RULE 4

PETIT JURY; CALL OF CALENDAR. The petit jury will be summoned to appear at Duluth at 9:30 a. m. on the first Monday after the first day of the term, and the first and second days of the term will be devoted to the calling of the calendar, hearing calendar motions, and trying default divorce cases.

The petit jury will be summoned to appear at Virginia at nine a. m. on the first Monday after the first day of the term.

The petit jury will be summoned to appear at Hibbing and Ely at 1:30 p. m. the first day of the term.

RULE 5

EXHIBITS. All exhibits introduced in evidence by any party in the trial of an action shall be marked by the stenographer and left in the custody of the stenographer until the close of the trial of the cause; and when the trial of any cause is completed, the stenographer shall deliver all exhibits as evidence in the case to the clerk of the court, and the clerk shall cause the same to be filed and kept in a proper and safe place, and shall cause to be made and shall keep a proper index or reference book wherein shall be kept a list of all such exhibits, with reference to their place of deposit, so that they can be readily found by any parties interested therein; and no person shall be permitted to remove any of the exhibits from this depository except upon the written order of the court, provided that all attorneys and interested parties shall have an opportunity to examine the same in the office of the clerk under reasonable provisions to be provided therefor.

RULE 6

JUDGMENT, FILING OF EXECUTION. All persons other than the person in whose favor a judgment is entered in any action or proceeding, or his successor in interest, or his attorney of record therein, who shall apply for the issuing of an execution on such judgment within the period of two years after the entry thereof, and all persons other than the person in whose favor a judgment is entered, or his successor in interest, applying for such execution after the expiration of such period, shall file with the clerk of court where such judgment is entered, at the time of making such application, written authority from the owner of such judgment, duly executed and acknowledged by him, and authorizing the person so making the application to appear and act in the matter. No execution shall issue in such case until this authority shall be filed as herein provided.

APPENDIX 7

ANALYSIS OF THE STATE GOVERNMENTAL STRUCTURE

Officials elected

- Attorney General, term two years, Const. Art. 5 s. 5
- Auditor, term four years, Const. Art. 5 s. 5
- Governor, term two years, Const. Art. 5 ss. 1, 2, 3, 4
- Judicial
  - Clerk of Supreme Court, term four years, Const. Art. 6 s. 2
  - District Court, Const. Art. 6 ss. 1, 4, 5
    - Districts, 19 in number, territorial limits, 2.72
    - Judges, 51 in number, terms six years
  - Supreme Court, consists of a Chief Justice and six Associate Justices, terms six years, Const. Art. 6 ss. 2, 3
    - Appoints
      - Court Reporter, 480.11
      - Revisor of Statutes, 482.01, 482.02
    - Supervises
      - Board of Law Examiners, of seven members, terms three years, 481.01
      - Court Reporter, 480.11
      - Revisor of Statutes, 482.01, 482.02
      - State Library, 480.09
- Legislature, consists of a House of Representatives, 131 members, terms two years; and a Senate, 67 members, terms four years, Const. Art. 4 ss. 24, 25; meets in a Joint Convention to elect the 12 members of the Board of Regents, University of Minnesota, terms six years, Const. Art. 8 s. 4
- Lieutenant Governor, term two years, Const. Art. 5 s. 3
- Railroad and Warehouse Commission, consists of three commissioners, terms six years, 216.01, 216.02
- Secretary of State, term two years, Const. Art. 5 s. 5
- Treasurer, term two years, Const. Art. 5 s. 5

Departments and agencies, whose heads are appointed by governor, advice and consent of Senate

- Adjutant General, 190.07
- Administration, Department of; commissioner, term two years, 16.01
- Aeronautics, Department of; commissioner, term four years, 360.014
- Agriculture, Dairy, and Food; Department of; commissioner, term four years, 17.01
- Civil Service, Department of; civil service board of three members, terms six years, 43.03; director appointed by the board, 43.03
- Commerce, Department of; commission composed of commissioner of banks, commissioner of insurance, and commissioner of securities, 45.01
  - Banking, Division of; commissioner, term six years, 45.02
  - Insurance, Division of; commissioner, term six years, 45.02
  - Securities, Division of; commissioner, term six years, 45.02
- Conciliation, Division of; labor conciliator, term four years, 179.02
- Conservation, Department of; commissioner, term six years, 84.025
  - Bureau of Information
  - Forestry, Division of, 84.081
  - Game and fish, Division of, 84.081
  - Lands and Minerals, Division of, 84.081
  - State Parks, Division of, 84.081
  - Tourist Bureau, 84.081
  - Water Resources and Engineering, Division of, 84.081
- Criminal Apprehension, Bureau of; superintendent, term two years, 626.32, 626.33
  - Supervised by attorney general, 626.32
- Education, Department of; board of education of five members, terms five years, 120.01
- Health, Department of; state board of health of nine members, terms three years, 144.01
- Highways, Department of; commissioner, term four years, 161.02
- Labor and Industry, Department of; Industrial Commission composed of three commissioners, terms six years, 175.01, 175.02
- Liquor Control Commissioner, term four years, 340.08
- Public Examiner, Department of; public examiner, term six years, 215.01, 215.02
- Rural Credit, Conservator of; conservator, term six years, 41.02
- Social Security, Department of, 245.01
  - Employment and Security, Division of; director, term four years, 245.01
  - Public Institutions, Division of; director, term four years, 245.01
  - Social Welfare, Division of; director, term four years, 245.01
- Soldiers' Home; Soldiers' Home Board of seven trustees, terms six years, 198.01, 198.06
- State Teachers Colleges; State Teachers College Board of eight directors and commissioner of education, terms of directors four years, 136.02, 136.12
- Surveyor General of Logs and Lumber, term two years, 91.01
- Taxation, Department of; commissioner, term six years, 270.02
- Veterans Affairs, Department of; commissioner, term four years, 196.01, 196.02

Boards and Commissions whose members are appointed by the governor, with advice and consent of the Senate

- Athletic Commission; five commissioners, terms three years, 341.01, 341.02
- Civil Service Board; three members, terms six years, 43.03
- Education, Board of; five members, terms five years, 120.01
- Grain Appeals, Board of; three members, terms three years, 233.135, 233.136
- Great Lakes-St. Lawrence-Tidewater Commission; three members, Laws 1919, Res. No. 11
- Health, Board of; nine members, terms three years, 144.01
- Industrial Commission; three commissioners, terms six years, 175.02
- Live Stock Sanitary Board; five members, terms five years, 35.02
- Minnesota Resources Commission; ten members and commissioner of administration, terms of members four years, 362.01, 362.04
- Parole, Board of; chairman and two other members, terms six years, 637.02
- Soldiers' Home Board; seven trustees, terms six years, 198.01, 198.06
- Tax Appeals, Board of; three members, terms six years, 271.01
- Teachers College Board; eight directors and commissioner of education, terms of directors four years, 136.02, 136.12
- Upper Mississippi and St. Croix River Improvement Commission; five citizens of state, Laws 1927, Res. No. 14
- Veterans Service Building Commission; one member from each congressional district and two members at large, Laws 1945, c. 315 s. 2

Examining boards whose members are appointed by the governor

- Accountancy; three members, terms three years, 326.17
- Architects, Engineers, and Land Surveyors, registration for; seven members, three registered architects, surveyor; terms four years, 326.04
- Barber Examiners; three members, terms three years, 154.22
- Basic Sciences, of examiners in the; two full-time professors, one doctor of medicine and surgery, one doctor of osteopathy, one doctor of chiropractic, terms six years, 146.03, 146.04
- Chiropody Examiners and Registration; five members, terms five years, 153.02
- Chiropractic Examiners; five resident chiropractors, terms five years, 148.02, 148.03
- Dental Examiners; five qualified resident dentists, terms three years, 150.01
- Electricity; five members, two master electricians, two journeymen electricians, one consulting electrical engineer or electrical inspector of a city of first class, terms five years, 326.24
- Hairdressing and Beauty Culture Examiners; three members, terms three years, 155.04, 155.05
- Medical Examiners; seven qualified resident physicians, terms seven years, 147.01
- Nurses, Examiners of; seven members, terms five years, 148.181
- Optometry; five qualified optometrists, terms three years, 148.52
- Osteopathy; five osteopathic physicians, terms five years, 148.11

Pharmacy; five pharmacists, terms five years, 151.02, 151.03

Veterinary Examining Board, five qualified veterinarians, terms five years, 156.01

Watchmaking, Examiners in; five members, terms four years, 326.541

Boards and commissions partly or wholly ex officio

Armory Building Commission, Minnesota state; corporation with adjutant general and general officers of the line of the national guard, 193.13

Compensation Insurance Board; commissioner of insurance, one member of industrial commission, a person to be appointed by the governor, 70.02

Executive Council; governor, attorney general, state auditor, state treasurer, secretary of state; 9.01

Geographic Board; commissioner of conservation, commissioner of highways, superintendent of Minnesota Historical Society, 354.01

Historic Sites and Markers Commission; director of state parks, commissioner of highways, superintendent of Minnesota Historical Society, 138.08

Interstate Cooperation, Minnesota Commission on; 15 members, senate committee on interstate cooperation, house committee on interstate cooperation, governor's committee on interstate cooperation, 355.04

Investment, Board of; governor, treasurer, auditor, attorney general, a commissioner appointed by board of regents of University of Minnesota from its members.

Iron Range Resources and Rehabilitation Commission; seven members, three state senators, three state representatives, commissioner of conservation, 298.22

Judicial Council; one justice or former justice of supreme court, two judges or former judges of district court, one judge or former judge of probate, seven persons appointed by governor, one of whom to be a municipal court judge and four of other six to be attorneys at law, terms of appointed members three years, 483.01, 483.02

Land Exchange Commission; governor, attorney general, state auditor, Const. Art. 8 s. 8, 92.38

Land Use Committee; governor, commissioner of conservation, commissioner of agriculture, dairy, and food, commissioner of education, commissioner of highways, commissioner of taxation, 92.33

Legislative Advisory Committee; chairman of senate committee on taxes and tax laws, chairman of senate committee on finance, chairman of house committee on taxes and tax laws, chairman of house committee on appropriations, Laws 1943 c. 594 s. 1

Pardons, Board of; governor, chief justice of supreme court, attorney general, 638.01

Poultry Improvement Board; commissioner of agriculture, dairy, and food, chief of the poultry division of the college of agriculture, University of Minnesota, secretary and executive officer of the state live stock sanitary board, two poultrymen who own and operate commercial poultry hatcheries to be appointed by governor for terms of three years, 36.01

Publication Board; commissioner of administration, secretary of state, attorney general, 15.046

Public Employees Retirement Board; auditor, insurance commissioner, treasurer, six public employees elected by members of public employees retirement association for terms of three years, 353.03

Retirement Board, State Employees; auditor, treasurer, insurance commissioner, four state employees elected by members of state employees retirement association for terms of four years, 352.03

Soil Conservation Committee; director of the agricultural extension service of University of Minnesota, dean of the department of agriculture of University of Minnesota, commissioner of conservation, commissioner of agriculture, dairy, and food, one person to be appointed by U. S. secretary of agriculture or, if none so appointed, by the governor, 40.03

South-Dakota-Minnesota Boundary Waters Commission; director of game and fish commission of South Dakota, commissioner of conservation of Minnesota, engineer appointed by governors of two states for four years, 114.01

Stallion Registration Board; president of Minnesota Horse Breeders' Association, veterinarian of Minnesota experiment station, professor of animal husbandry of department of agriculture, University of Minnesota, 39.02

Teachers Retirement Fund, Board of Trustees of; commissioner of education, auditor, commissioner of insurance, two members of fund elected for two years, 135.03

Tri-state Waters Commission; nine members, three each from North Dakota, South Dakota, Minnesota, 114.09

Uniform State Laws in the Several States, Commission on; three persons to be appointed by governor, attorney general, chief justice of supreme court for two years, 3.251

Voting Machine Commission; attorney general, two master mechanics or graduates of school of mechanical engineering one to be appointed by governor and other by attorney general for four years, 209.07

Water Pollution Control Commission; secretary and executive officer of state board of health, commissioner of conservation, commissioner of agriculture, dairy, and food, secretary and executive officer of state live stock sanitary board, a member at large appointed by governor for four years, 144.372

Independent state agencies

Sibley House Association; formed in 1910 by Minnesota D. A. R., 10.08

Society for the Prevention of Cruelty; formed in 1869; constitutes state bureau of child and animal protection, 343.01, 343.04

State Agricultural Society; State Fair Board, 37.01, 37.04

State Art Society; governor, president of state university, seven members appointed by governor for four years, 139.01, 139.02

State Historical Society; formed in 1849; executive council of 36 members, 30 elected every three years, and attorney general, auditor, governor, lieutenant governor, secretary of state, treasurer ex officio, 10.08, 138.03