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CHAPTER 488A

MUNICIPAL COURTS; HENNEPIN COUNTY, SAINT PAUL, AND DULUTH

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NOTE: The Municipal Court Rules of Civil Procedure are published in Minnesota Reports, Volumes 255 and 279, as a supplement thereto.

MUNICIPAL COURT, HENNEPIN COUNTY

488A.01 ESTABLISHMENT; JURISDICTION; POWERS; APPEALS. Subdivision 1. **Establishment.** There is hereby created a municipal court of Hennepin county with the jurisdiction and powers hereinafter stated.

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

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

Subd. 4. **Civil jurisdiction.** Excepting causes involving title to real estate, the court has jurisdiction to hear, try and determine civil actions at law in which the amount in controversy does not exceed the sum of \$6,000, exclusive of interest and costs.

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

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

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

(2) Any ordinance, charter provision, rule or regulation of any subdivision of government in the county of Hennepin, including all of the village of St. Anthony or

(3) Any ordinance, charter provision, rule or regulation of the Minneapolis-St. Paul Metropolitan Airports commission.

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

(c) Jurisdiction under sub-paragraphs (1) and (2) of paragraph (a) and under paragraph (b) of this subdivision is exclusive for any violation committed in the county of Hennepin, or for any violation committed outside of Hennepin county but within the boundaries of the village of St. Anthony.

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

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

(b) Of an action for divorce,

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

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

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

Subd. 9. **Place of holding court.** (a) The municipal building commission, or the county of Hennepin, or both, shall provide suitable quarters for the holding of regular terms of court in Minneapolis, Bloomington, St. Louis Park, Wayzata, and Crystal, and at such other places in the county as may be designated by a majority of the judges of the court. At the places of holding regular terms of court established pursuant to this clause, all functions of the court may be discharged, including both court and jury trials of civil and criminal matters.

(b) In addition to the regular places of holding court set forth in clause (a) of this subdivision, trials of traffic and criminal violations before the court without jury shall be held in the municipalities of Golden Valley, Richfield, Excelsior, Edina, Minnetonka, Hopkins, Mound, Maple Plain, Plymouth, Brooklyn Center, St. Anthony, Osseo, Robbinsdale, Brooklyn Park, Eden Prairie, and Orono, if not so designated in clause (a) above and such additional locations as may be designated by a majority of the judges of the court. The county of Hennepin shall provide suitable quarters for the holding of court in such locations as may be designated under this clause.

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

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

Subd. 12. **Trial of civil actions.** (a) All civil actions brought in the municipal court of Hennepin county shall be tried at the place of holding court specified in writing on the summons issued therein. If no place of trial is specified on the summons by the plaintiff or plaintiffs, the action shall be tried at the Hennepin county courthouse.

(b) A defendant residing in Hennepin county outside of the city of Minneapolis and the village of St. Anthony may change the place of trial of a civil action to the place of holding court set forth in Minnesota Statutes, Section 488A.01, Subdivision 9, which is nearest the municipality of his residence in the manner provided herein. A defendant residing in Hennepin county within the city of Minneapolis or the village of St. Anthony may change the place of trial of a civil action to the city of Minneapolis in the same manner. If there are several defendants residing in different municipalities or in the city of Minneapolis or the village of St. Anthony, the trial shall be held in the city of Minneapolis or in the place of holding court set forth in Minnesota Statutes, Section 488A.01, Subdivision 9, upon which a majority of them shall unite in demanding or, if the number be equal, at the city of Minneapolis or in the place of holding court set forth in Minnesota Statutes, Section 488A.01, Subdivision 9, which place of holding court is nearest to the place where such action would have been tried in the absence of such demand.

(c) If the place of court determined by the summons is not the place of residence of the defendant or defendants, the action may notwithstanding be tried therein unless, within 20 days after the summons is served, the defendant demands in writing that it be tried in the proper place of holding court. This demand shall be accompanied by the affidavit of the defendant, or his agent or attorney, setting forth the municipality of defendant's residence at the time of the commencement of the action. This demand and affidavit, with proof of service thereof upon the plaintiff's attorney, shall be filed with the clerk within 30 days from the date of its service and thereupon the place of trial shall be changed to the proper place of holding court without any other proceedings.

When the place of trial is changed all other proceedings shall be had in the place to which the change is made, unless otherwise provided by consent of the parties filed with the clerk or by order of the court.

(d) For the purpose of determining the place of residence of a domestic corporation, such corporation shall be considered as residing at any place where it has an office, resident agent or business place.

(e) If none of the parties shall reside or be found in the county of Hennepin or the defendant be a foreign corporation, the action may be tried at any place of holding court designated in the summons.

(f) The provisions of this subdivision 12 shall be subject to the provisions of Minnesota Statutes, Section 488A.01, Subdivision 9.

Subd. 13. **Trial of criminal actions.** All charges of traffic and ordinance violations shall be tried in the municipality where the alleged violation occurred subject to provisions of section 488A.01, subdivision 9. If there is no designated place of holding court as provided in section 488A.01, subdivision 9, in such municipality, the alleged violation shall be tried in the municipality designated by rule of the court.

[1955 c 215 s 1; 1957 c 357 s 1; 1963 c 877 s 1-6, 52; 1965 c 339 s 1; 1965 c 858 s 1-4; Ex-1967 c 50 s 1]

NOTE: Laws 1959, Chapter 575, as amended by Laws 1963, Chapter 275, permits the Minneapolis city council, by ordinance, to authorize the municipal court to establish an ordinance violation bureau.

As to prosecution of violations under the Metropolitan Airports Act, see also section 360.107, subdivision 17.

488A.02 [Repealed, 1965 c 847 s 2]

488A.021 **JUDGES.** Subdivision 1. **Number of judges.** There are 16 judges of the municipal court of the county of Hennepin.

Subd. 2. **Qualifications and oath.** Each judge shall be a person learned in the law who is admitted and qualified to practice in the supreme court of this state and is a resident of the county of Hennepin in this state. Before entering upon the duties of office, each judge shall take and subscribe an oath, in the form prescribed

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by law for judicial officers, and shall file that oath in the office of the county auditor.

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

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

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

(d) Each judge holds a separate non-partisan office.

(e) When one or more judges of the court are to be nominated or elected at an election, the notice of election shall state the name of each judge whose successor is to be nominated or elected. The official ballot shall contain the names of all candidates for each such office, state the number of judges to be elected and the number of candidates for whom an elector may vote, and designate each candidacy as "For the office of Judge of the Municipal Court of the county of Hennepin to which _____ was elected for the regular term", or: "For the office

(name of judge)

of Judge of the Municipal Court of the county of Hennepin to which _____ (name of judge)

was appointed," as the case may be. The official ballots shall show in the spaces for the purpose the name of the judge whose successor is to be elected. When any judge is a candidate to succeed himself, the word "incumbent" shall be printed after his name where it appears among the names of the candidates for the office. When voting machines are used and such statements cannot be inserted in full, the designation shall be "Successor to _____ (elected)", or "Successor to _____ (name of judge)

_____ (appointed)", as the case may be.
(name of judge)

(f) Each person desiring to have his name placed upon the primary ballot as a candidate for judge shall state in his affidavit of candidacy the office of the particular judge for which he is a candidate. The filing of this affidavit with the county auditor and a compliance with all other requirements constitutes such person a candidate for that office, and for that office only. No person shall at any election be a candidate for more than one such office.

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

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

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

Subd. 7. District court judges. Upon a request of a majority of the judges of the municipal court, any one or more district court judges of this state may, while serving pursuant to such request, perform all the duties and exercise all the powers and functions of a judge of the municipal court. Each district court judge so acting shall be additional to the number of municipal judges provided for elsewhere in this act, but shall receive no additional salary for so acting.

Subd. 8. Salaries. Each judge shall be paid an annual salary of \$20,000 in semi-monthly installments out of the treasury of the county of Hennepin. If a judge dies while in office, the amount of his salary remaining unpaid for the month in which his death occurs shall be paid to his estate.

[1965 c 847 s 1; 1967 c 735 s 1; Ex1967 c 50 s 2]

488A.03 CLERKS, DEPUTIES. Subdivision 1. **Appointment, term, removal, suspension.** A majority of the judges shall appoint the clerk of the court for a term of six years from the date of appointment. At any time within six months

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from the date of his initial appointment the clerk may be removed and his appointment terminated, with or without cause and without prior notice or hearing. At any time the clerk may be suspended without pay for a period not exceeding 30 days with or without cause, after hearing before a majority of the judges. Except as otherwise provided herein, the clerk, during his term, may be removed and his appointment terminated only for cause after notice and a hearing before a majority of the judges. Any termination, removal or suspension provided for in this subdivision shall be made by a majority of the judges.

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

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

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

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

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

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

Subd. 3. [Repealed, 1965 c 845 s 4]

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

(b) With the approval of a majority of the judges the clerk shall appoint deputy clerks.

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

(d) Each deputy shall take and subscribe an oath similar to that prescribed for the clerk and shall execute a bond to the county of Hennepin for the faithful performance of his duties in such amount and with such terms, conditions, and surety as the county board directs. No deputy may enter upon his office and duties before his appointment, oath, and bond are filed with the county auditor.

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

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

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

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

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

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

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

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

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

(c) At the beginning of the first day of any month the amount owing to any municipality or county in the hands of the clerk shall not exceed \$5,000.

(d) On or before the last day of each month the county treasurer shall pay over to the treasurer of each municipality or subdivision of government in Hennepin county all fines or penalties collected during the previous month for offenses committed within such municipality or subdivision of government, except that all such fines and penalties attributable to cases in which the county attorney had charge of the prosecution shall be retained by the county treasurer and credited to the county general revenue fund.

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

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

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

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

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

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

Subd. 9. **Disposition of forfeited sums.** All sums collected on any bail, bond, or recognizance forfeited by court order shall be paid to the county of Hennepin to be applied to the support of the law library of the county. The receipt of the county treasurer to the clerk shall be a sufficient voucher therefor. When the sums so forfeited, minus refunds, during any calendar year equal \$2,500, all sums in excess thereof shall be paid to the county treasurer who shall remit said sums to the municipality or subdivision of government in which the violation occurred in accordance with the provisions of this act. Such payments to the county shall be made periodically but not prior to six months from the date of the order for for-

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feiture. During that six month period, but not thereafter, any judge may set aside the forfeiture order upon proper showing of cause therefor. No obligation to pay to the county sums so ordered forfeited exists unless the forfeiture is not set aside within said six-month period. For the purpose of determining when said \$2,500 shall have accrued to the county law library the final forfeiture shall be deemed to occur at the end of the six-month period.

Subd. 10. **Order for prisoner release.** When a person is confined to the Minneapolis workhouse and a fine is remitted, a sentence stayed or suspended, the person released on parole, or the release of the person secured by payment of the fine in default of which he was committed, the prisoner shall not be released except upon order of the court. A written transcript of such order signed by the clerk and under the court's seal shall be furnished to the superintendent of the Minneapolis workhouse. All costs of confinement or imprisonment in any jail or workhouse shall be paid by the municipality or subdivision of government in Hennepin county in which the violation occurred.

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

1. \$2 payable by the plaintiff, in addition to any library fee otherwise required, when the action is entered in court or when the first paper on the plaintiff's part is filed.

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

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

4. \$3 for trial by a jury of six persons, \$5 for trial by a jury of 12 persons. The fee paid for trial by a jury shall be refunded if a jury panel is never sworn for voir dire in the action.

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

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

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

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

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

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

Subd. 11a. **Governmental units; fee exclusions.** Any provision of law relating to the municipal court of Hennepin county to the contrary notwithstanding, no fees shall be charged by the clerk of said municipal court to any governmental unit of the state of Minnesota or any agency thereof, located in whole or in part within the county of Hennepin when said governmental unit or any agency thereof transacts any business in, or they are a party to any action or proceeding in, the Hennepin county municipal court.

Subd. 12. [Repealed, 1965 c 845 s 4]

Subd. 12a. **Salaries.** (a) The annual salary of the clerk is \$11,000 per year.

(b) The classifications and annual salaries of the deputy clerks are:

(1) Chief deputy clerk, \$9,000.

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- (2) Assistant chief deputy clerks, Grade II, \$8,500.
- (3) Assistant chief deputy clerks, Grade I, \$8,000.
- (4) Deputy clerks, from \$4,800 to \$7,800.
- (c) Stenographers, from \$3,600 to \$4,400 annually.
- (d) All of the foregoing salaries are payable out of the treasury of the county of Hennepin in semimonthly installments.

(e) Each deputy clerk shall serve in his classification for one year at the minimum salary for that classification, and his salary shall be increased at the end of each year's service by \$300 until such salaries reach the maximum salaries for such classification. Laws 1965, Chapter 845, shall not be construed to reduce the present salary of any deputy clerk. Deputy clerks returning from active service in the armed forces of the United States shall receive automatic salary increases in the same fashion as though the time spent in said active service had been spent as a deputy clerk.

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

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

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

[1955 c 215 s 3; 1963 c 877 s 8-17; 1965 c 845 s 1, 2; 1965 c 858 s 5; 1967 c 250 s 1; 1967 c 772 s 1]

488A.035 DEPUTY CLERKS; DATE OF EMPLOYMENT. All persons previously employed as clerks of a municipal court in the county of Hennepin but outside the city of Minneapolis, who on March 1, 1965, were employed as deputy clerks of the municipal court of Hennepin county pursuant to section 488A.116, shall be considered for salary purposes to have commenced their employment on the date they commenced their employment as clerk of a municipal court outside the city of Minneapolis.

[1965 c 539 s 1]

488A.04 PROBATION OFFICERS. Subdivision 1. **Appointment; term; removal; suspension.** A majority of the judges shall appoint a chief probation officer. With the approval of a majority of the judges, the chief probation officer shall appoint a chief deputy probation officer, a case-work supervisor, and such number of deputy probation officers, clerks and stenographers as a majority of the judges may from time to time deem necessary, but no new or additional positions may be created without the consent of the board of county commissioners. Each appointment shall be for a term of four years from the respective date of appointment and shall not expire or be suspended by reason of the suspension, removal, termination of appointment, death or other incapacity of the chief probation officer. At any time within six months from the date of his initial appointment, the chief probation officer, the chief deputy probation officer, the case-work supervisor, a deputy probation officer, a clerk or a stenographer, may be removed and his appointment terminated, with or without cause and without prior notice or hearing. At any time the chief probation officer, the chief deputy probation officer, the case-work supervisor, a deputy probation officer, a clerk or a stenographer may be suspended without pay for a period not exceeding 30 days, with or without cause, after hearing before a majority of the judges. Except as otherwise provided herein, the chief probation officer, the chief deputy probation officer, the case-work

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supervisor, a deputy probation officer, a clerk or a stenographer, during his term, may be removed and his appointment terminated only for cause after notice and a hearing before a majority of the judges. Any termination, removal or suspension provided for in this subdivision shall be made by a majority of the judges.

Subd. 2. **Duties and powers.** Probation officers shall be present at such sessions of the court as the judge presiding may direct. The probation officers shall take charge of all persons placed on probation or parole and committed to their care during a probation or parole period and supervise them as the court directs. They are not regular members of any police force, but in the execution of their official duties, they have all the powers of police officers. The chief probation officer shall supervise the other probation officers and may delegate duties and powers to them.

Subd. 3. **Reports to court.** The probation officers shall report to the court verbally or in writing, as the court may direct, regarding the condition, disposition, and other pertinent facts relative to the persons under their care.

Subd. 4. **Offices and supplies.** The board of county commissioners shall provide the probation officers, the case-work supervisor, clerks, and stenographers with suitable furnished offices in the building where the court is held, and with record books, blanks, stationery, postage, and funds required for the performance of their duties.

Subd. 5. **Salaries.** The judges shall fix the amount of compensation to be paid the probation officers, the case-work supervisor, clerks and stenographers. The annual compensation of each shall not exceed:

- Chief probation officer, \$10,000;
- Chief deputy probation officer, \$9,000;
- Case-work supervisor, \$8,250;
- Deputy probation officers, \$7,500;
- Clerks and stenographers, \$4,900;

Their compensation is payable in equal semimonthly installments out of the county treasury.

[1955 c 215 s 4; 1963 c 783 s 1-3; 1963 c 877 s 18-20; 1965 c 851 s 1-3]

488A.05 COURT REPORTERS. Subdivision 1. **Appointment; oath; tenure; retirement.** Each judge may appoint as his court reporter a competent person skilled in that profession. Each reporter shall take and subscribe an oath to support the Constitutions of the United States and the state of Minnesota and to discharge and perform his duties as a court reporter faithfully and honestly. Each reporter shall file his oath with the county auditor before he enters upon the duties of his office. Each reporter is an officer of the court and holds his office during the pleasure of the judge appointing him and until the judge's successor appoints a court reporter to succeed him, notwithstanding any rule or regulation heretofore or hereafter made by any board or commission of the county establishing and fixing a compulsory age for retirement of employees of the county. It is not compulsory for any such court reporter who is a member of the public employees' retirement association, to become a member of any municipal pension or retirement fund.

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

Subd. 3. **Court reporter's salary.** The annual salary of each reporter is \$8,500

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and is payable in semimonthly installments by the county treasurer from any funds in the county treasury not otherwise appropriated.

[1955 c 215 s 5; 1963 c 746 s 1; 1963 c 877 s 21, 22; 1965 c 846 s 1]

488A.06 BAILIFFS. Subdivision 1. **Appointment; duties.** The sheriff with approval of a majority of the judges shall assign to the court a sufficient number of deputy sheriffs who shall act as bailiffs of the court. A bailiff shall be in attendance at all sessions of the court involving traffic or criminal matters, and serve all process and warrants and perform such other duties as may be directed by the judges of the court. The county board may with the approval of a majority of the judges contract with any municipality upon such terms as agreed upon for the services of police officers of the municipality to act as bailiffs at all sessions of the court in the municipality.

NOTE: Subdivision 1 was also amended by Laws 1965, Chapter 494, Section 1 to read as follows:

"Subdivision 1. **Appointment; duties.** The sheriff with approval of a majority of the judges shall assign to the court a sufficient number of deputy sheriffs who shall act as bailiffs of the court. A bailiff shall be in attendance at all sessions of the court involving traffic or criminal matters, and serve all process and warrants and perform such other duties as may be directed by the judges of the court. Provided, however, and notwithstanding the provisions of any law to the contrary, the county board and the governing body of any town, city or village within the county shall have authority to contract for the service of such process and warrants by the police officers of such town, city or village within their respective boundaries upon such terms and conditions as may be agreed upon between the parties and approved by a majority of the judges of the court. Upon execution of such agreements, a copy thereof shall be delivered to the sheriff who may thereafter deliver for service the process and warrants to the local police officers for service pursuant to the terms of such agreement."

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

Subd. 3. **Fees and mileage.** The fees and mileage of bailiffs in civil actions and actions of forcible entry and unlawful detainer are the same as those payable to the sheriff of Hennepin county for like services for district court actions. The fees and mileage for all other services of bailiffs shall be fixed by rules promulgated by a majority of the judges. The fee provided for by Chapter 349 of the Laws of 1953 is not payable. No fees or mileage are payable by the state, county or city to bailiffs for their services, except that the county may pay bailiffs for automobile mileage within the limits provided by law when the bailiffs furnish automobiles for use in the performance of their duties. Bailiffs shall make returns showing their fees and mileage after performing such services. The amount of the bailiffs' fees and mileage is payable to the sheriff in advance.

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

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

[1955 c 215 s 6; 1963 c 877 s 23-26; 1965 c 494 s 1; 1965 c 858 s 6, 7]

488A.07 PETIT JURORS. Subdivision 1. **Mode of selection.** Petit jurors for the trial of all types of actions shall be selected as provided in subdivisions 2 through 6, or as provided in subdivision 7.

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

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

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

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

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

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

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

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

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

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

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

[1955 c 215 s 7; 1963 c 877 s 27-29]

488A.08 TRAFFIC AND ORDINANCE VIOLATIONS BUREAU. Subdivision 1. **Establishment.** Traffic and ordinance violation bureaus shall be established at Bloomington, St. Louis Park, Wayzata, and Crystal and at such additional places as a majority of the judges of the court may establish.

Subd. 2. **Supervision; personnel; rules; fines; traffic tags.** (a) The clerk of municipal court shall supervise the traffic violations bureaus. Subject to approval by a majority of the judges the clerk shall assign one or more deputy clerks to discharge and perform the duties of the bureaus.

(b) A majority of the judges shall issue rules governing the duties and operation of the bureaus. These rules shall specify the violations for which fines may be paid to the bureaus without appearance before a judge and shall set the fine for each such violation.

(c) The traffic violations bureaus shall process all traffic tags, accept all fines payable on traffic tags at the bureaus pursuant to the judges' rules, set dates for arraignment on traffic tag charges to be heard in court, arrange for the issuance of warrants where there is a failure to respond to traffic tags, keep proper records and accounts and perform such other and further duties as the judges or the clerks may prescribe.

Subd. 3. **Traffic tag defined.** The term "traffic tag" means a written or printed notice served upon a person charged with the violation of a traffic law or municipal ordinance, charter provision, rule or regulation or affixed conspicuously to a motor vehicle operated, parked or standing in violation thereof, which requires appearance before a traffic violations bureau within a specified time. The county board of Hennepin county may alter by deletion or addition the uniform traffic ticket, provided in Minnesota Statutes, Section 169.99, in such manner as it deems advisable for use in Hennepin county.

Subd. 4. **Procedure by person receiving traffic tag.** A person who receives a traffic tag shall proceed as follows:

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(a) If a fine for the violation may be paid at the bureau without appearance before a judge, the person charged may pay the fine in person or by mail to the bureau within the time specified in the tag. Such a payment of the fine shall be deemed to be the entry of a plea of guilty to the violation charged and a consent to the imposition of a sentence for the violation in the amount of the fine paid. A receipt shall be issued to evidence the payment and the receipt so issued shall be complete satisfaction for the violation charged in that traffic tag.

(b) When a fine is not so paid, the person charged must appear at a bureau within the time specified in the tag, state whether he desires to enter a plea of guilty or not guilty, arrange for a date for arraignment in court and appear in court for arraignment on the date set by the bureau.

[1955 c 215 s 8; 1963 c 877 s 30-33; 1965 c 858 s 8, 9]

488A.09 PLEADING, PRACTICE, PROCEDURE, AND FORMS IN CIVIL ACTIONS. Subdivision 1. **General.** Pleading, practice, procedure, and forms in civil actions are governed by the rules for municipal courts promulgated from time to time by the supreme court of this state or by the statutes governing in the district court of Hennepin county insofar as the rules promulgated by the supreme court do not contain any applicable provision. The provisions of this act relating to pleading, practice, and procedure in civil actions shall be effective as rules of court until modified or superseded by a rule hereafter adopted by the supreme court of this state and upon the adoption hereafter of any rule on the same subject by the supreme court, the provisions of this act, insofar as they are in conflict therewith, shall be of no further force or effect.

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

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

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

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

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

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

Subd. 5. **Costs allowable.** Costs shall be allowed in civil actions as follows:

(a) To the plaintiff upon a judgment in his favor when an issue of fact or law has been joined;

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

(2) \$5 in all other cases.

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

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- (c) To the defendant upon a judgment in his favor on the merits:
- (1) \$10 when the amount claimed in the complaint or the alleged value of the property involved in a replevin complaint exceeds \$150;
- (2) \$5 in all other cases.
- (d) \$5 to the defendant upon a dismissal or discontinuance other than on the merits, regardless of the amount claimed or the value of the property involved.

Subd. 6. New trial or other determination. In civil actions the court may:

- (a) Grant a new trial to all or any of the parties and on all or part of the issues,
- (b) Grant a motion for judgment notwithstanding the verdict or notwithstanding the jury has disagreed and been discharged,
- (c) Open the judgment if one has been entered,
- (d) Take additional testimony in a case tried without a jury,
- (e) Amend findings of fact and conclusions of law, make new findings and conclusions, and direct entry of a new judgment,
- (f) Correct clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission, or
- (g) Relieve a party or his legal representative from a final judgment, order or other proceeding.

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

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

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

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

Subd. 8. Writs of replevin, attachment and execution. Writs of replevin, attachment and execution may be issued in accordance with the practice and procedure for such writs in district court, but a judge rather than a sheriff or police officer shall approve all bonds requiring approval.

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

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

[1955 c 215 s 9; 1967 c 734 s 1]

488A.10 PLEADING, PRACTICE, PROCEDURE, AND FORMS IN CRIMINAL PROCEEDINGS. Subdivision 1. **General.** Save as otherwise provided in this act, pleading, practice, procedure and forms in actions or proceedings charging viola-

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tion of a criminal law or a municipal ordinance, charter provision, rule or regulation are governed by the statutes and common law rules which govern in a similar action or proceeding in the district court of Hennepin county (other than those applying peculiarly to felony or gross misdemeanor charges) or by statutes which govern in courts of justices of the peace in the absence of statutes or common law rules governing in said district court.

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

Subd. 3. Complaints. Complaints charging violations of a criminal law of this state or a municipal ordinance shall be sworn to before the clerk, deputy clerk, or any judge of the court and shall be filed with the clerk, or deputy clerk. The court may deputize additional deputy clerks for the purpose of receiving sworn complaints and may establish reasonable compensation therefor. Each town or municipality of Hennepin county shall have at least one resident deputy clerk authorized to receive sworn complaints.

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

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

Subd. 6. Trials by judge without jury. A charge of a violation of any municipal ordinance, charter provision, rule or regulation, other than a violation dealing with driving while under the influence of an alcoholic beverage or narcotic drug, speeding that is a third or further offense occurring in one year, or careless or reckless driving where a personal injury is involved, shall be heard, tried and determined by a judge without a jury, and the defendant shall have no right to a jury trial on such a charge, except as otherwise required by law. In the event of such trial without jury, there shall be a right of appeal as provided in section 488.20; and provided further that where there has been a conviction in a trial without jury as provided above, the commissioner of highways shall not by reason thereof revoke or suspend the defendant's driver's license.

Subd. 7. Warrants. The clerk or any judge of the court may issue warrants.

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

(b) At the time of imposing sentence or at any time thereafter, the sentencing judge, or any other judge when the sentencing judge is not available, may suspend forever the execution of any sentence or the balance of any sentence which has been executed in part.

(c) When a person has been committed to the city workhouse or county jail, the sentencing judge, or any other judge when the sentencing judge is not available, in his discretion, may order the release of such person on parole after part of the sentence is served when satisfied that he will thereafter keep the peace and be of good behavior. The parole shall be for a period not exceeding one year from the date of commitment and on such terms and conditions as the judge deems proper. If a request for parole is denied by the sentencing judge, or any other judge when the sentencing judge is not available, in his discretion, then parole of that person may be granted thereafter only by order of a majority of all the judges.

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

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

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

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

Subd. 11. Prosecuting attorneys. Except as otherwise provided in this subdivision, the attorney of the municipality in which the violation is alleged to have occurred shall have charge of the prosecution of all violations of the state laws and municipal charter provisions, ordinances, rules and regulations triable in the municipal court and shall prepare complaints for said violations. The county attorney shall have charge of the prosecution of a violation triable in municipal court and shall prepare a complaint for said violation:

(a) if he is specifically designated by law as the prosecutor for the particular violation charged; or

(b) if the alleged violation is of state law and is alleged to have occurred in a municipality or other subdivision of government whose population according to the most recent federal census is less than 2500 and whose governing body (in the case of a town, the town board) has accepted this paragraph by majority vote, and if the defendant is cited or arrested by a member of the staff of the sheriff of Hennepin county or by a member of the state highway patrol.

Paragraph (b) shall not apply to a municipality or other subdivision of government whose population according to the most recent federal decennial census is 2500 or more, regardless of whether or not it has previously accepted the paragraph.

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

[1955 c 215 s 10; 1963 c 877 s 34-36; 1965 c 858 s 10, 11; 1967 c 734 s 2; 1967 c 772 s 2; 1967 c 846 s 1; Ex1967 c 50 s 3]

488A.101 COUNTY ATTORNEY AS PROSECUTOR, NOTICE TO COUNTY. A municipality or other subdivision of government seeking to use the county attorney for violations enumerated in section 488A.10, subdivision 11 shall notify the county board of its intention to use the services of the county attorney at least 60 days prior to the adoption of board's annual budget each year.

[1967 c 772 s 3]

488A.11 FORCIBLE ENTRY AND UNLAWFUL DETAINER ACTIONS. Subdivision 1. **Return days.** Return days for forcible entry and unlawful detainer actions may be fixed by rule promulgated by a majority of the judges.

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

Subd. 3. Default judgments. Whenever a duly verified complaint in an action of forcible entry or unlawful detainer shows one of the causes of action set forth in Minnesota Statutes, Section 566.03 and on the return day of the summons the defendant does not appear, the judge, upon proof of the due service of the summons, shall enter an order adjudging the defendant to be in default, and thereafter the clerk shall enter judgment for the plaintiff without the introduction of evidence.

[1955 c 215 s 11]

488A.111 PAYMENT OF COURT EXPENSES. All salaries of the judges of the municipal court of the county of Hennepin, court reporters, the clerk, deputy clerks and all other employees of said court, and all expenses of said court shall be paid from the treasury of Hennepin county. The board of county commissioners of Hennepin county is authorized to levy taxes annually against each dollar of

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taxable property within the county as may be necessary for the establishment, operation and maintenance of the court.

[1963 c 877 s 43]

488A.112 COURT ROOMS. The municipal court of the county of Hennepin and its probation office shall occupy the court rooms and offices presently occupied by the municipal court of the city of Minneapolis until such time as the judges of the court may determine that this space is no longer necessary. The city of Minneapolis shall sell to the county of Hennepin the furniture and supplies in these court rooms and offices at their fair value.

[1963 c 877 s 44]

488A.113 COURTS ABOLISHED. All courts in Hennepin county except district and probate courts are abolished as of January 1, 1965, including municipal courts established but not organized under the provisions of Minnesota Statutes, Section 488.03. The municipal court of the city of Minneapolis is merged into the municipal court of the county of Hennepin as hereinafter provided, as of January 1, 1965.

[1963 c 877 s 45]

488A.114 TRANSFER OF CASES PENDING IN OTHER COURTS; TRANSFER OF FUNDS FROM OTHER COURTS; DISPOSITION OF APPEALS FROM OTHER COURTS. (a) All cases pending in courts abolished by Laws 1963, Chapter 877, are hereby transferred as of January 1, 1965, to the municipal court of Hennepin county for trial or other disposition according to law. Any case on appeal to any appellate court from any such abolished court shall be treated by the appellate court as though appealed thereto from the abolished court, except that all affirmances, reversals, mandates or remittiturs shall be addressed to the municipal court of Hennepin county.

(b) All judges and justices of the peace and all court clerks of such abolished courts shall continue in office after January 1, 1965, solely for the purpose of transmitting to the clerk of the municipal court of Hennepin county all pleadings, dockets and other records in pending cases in such abolished courts and for the purpose of paying over to the clerk of said court all moneys in the possession of such judges, justices of the peace and clerks by law payable to the state or any subdivision with proper detail to enable the clerk of the municipal court of Hennepin county to properly account to the proper officials for such moneys.

(c) All transmissions of pleadings, dockets and other records and paying over of moneys referred to shall be completed by the judges, justices of the peace and clerks of the aforesaid abolished courts within 60 days after the first Monday of January, 1965.

[1963 c 877 s 46]

488A.115 EMPLOYEES OF THE MUNICIPAL COURT OF THE CITY OF MINNEAPOLIS. Except as otherwise provided in Laws 1963, Chapter 877, the judges and employees of the municipal court of the city of Minneapolis, including court reporters and the employees in the probation office, on December 31, 1964, shall become employees of the municipal court of Hennepin county in the same positions for the same terms and at the same salaries. The judges, court reporters, employees of the probation office and other employees of the municipal court of the city of Minneapolis who become employees of the county court may elect to remain members of the Minneapolis Employee's Retirement association and the county shall pay the employer's contribution to the Minneapolis Employee's Retirement association. Such person desiring to remain a member of the Minneapolis Employee's Retirement association shall notify the clerk of the municipal court in writing of his election within six months after the effective date of this section.

[1963 c 877 s 47]

488A.116 EMPLOYEES OF MUNICIPAL COURTS OUTSIDE THE CITY OF MINNEAPOLIS. All persons who on May 1, 1963, were full time clerks of municipal courts outside of the city of Minneapolis shall be given preference in the hiring of clerks or deputy clerks under Laws 1963, Chapter 877.

[1963 c 877 s 48]

488A.117 INITIAL JUDGES OF THE COURT. Subdivision 1. The judges of the municipal court of the city of Minneapolis as of December 31, 1964, shall continue as judges of the municipal court of the county of Hennepin. The original terms of office of such judges as judges of the municipal court of the county of Hennepin shall expire on the day before the first Monday in January of the second

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year following the year in which their terms of office as judges of the municipal court of the city of Minneapolis would otherwise have expired.

Subd. 2. The additional four judges of the municipal court of the county of Hennepin shall take office on the first Monday in January, 1965, and shall be selected as follows: One each shall be elected at the next general election following the effective date of this subdivision from among and by the qualified residents of present state senatorial districts numbered 30, 31, 32, 33, lying outside the city of Minneapolis. The applicable provisions of section 488A.02, except subdivision 3, clauses (e) and (f) shall apply to the election; provided, however, that any of the incumbent municipal judges holding office on the effective date of this subdivision shall be entitled to place after his name on the ballot the words "incumbent judge of " (inserting therein the name of the municipality in which the judge then serves.) At such election, the official ballot shall contain the names of all candidates for each such office, state the number of judges to be elected, and the number of candidates for whom an elector may vote.

Each person desiring to have his name placed upon the primary ballot as a candidate for judge shall state in his affidavit of candidacy the office for which he is a candidate. The filing of this affidavit with the county auditor and a compliance with all other requirements constitutes such person a candidate for that office, and for that office only. No person shall at any election be a candidate for more than one such office.

[1963 c 877 s 49]

488A.118 EXTENSION OF TERMS. Notwithstanding any provisions of law to the contrary, the term of office of any judge, or special judge, or justice of the peace of any court to be abolished hereunder, which would otherwise expire between the passage of Laws 1963, Chapter 877, and January 1, 1965, shall be extended through and include the day before the first Monday of January, 1965.

[1963 c 877 s 51]

488A.119 BAILIFFS, DEPUTY CLERKS AND LAW CLERKS; APPOINTMENT, TENURE; OATH AND BOND; SALARIES. A majority of the judges may appoint an individual or individuals to perform the function of court room bailiff, deputy clerk and law clerk or any combination thereof. The appointment may be terminated by a majority of the judges without hearing or notice. A majority of the judges may establish requirements as to oath and bond. The salary or salaries of said individual or individuals shall be set by the Hennepin county board of commissioners and shall be paid by the Hennepin county treasurer.

[1965 c 858 s 13]

CONCILIATION COURT, HENNEPIN COUNTY

488A.12 ESTABLISHMENT; JURISDICTION; POWERS; COMPUTATION OF TIME. Subdivision 1. **Establishment.** There is hereby established a conciliation court of the county of Hennepin with the jurisdiction and powers hereinafter stated.

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

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

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

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

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

Subd. 7. **Computation of time.** In computing any period of time prescribed or allowed by this act, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which

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event the period runs until the end of the next day which is neither a Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Sundays and holidays shall be excluded in the computation.

[1955 c 129 s 1; Ex1961 c 83 s 1; 1963 c 877 s 37, 38]

488A.13 JUDGES; CLERK; REPORTERS; SALARIES; QUARTERS. Subdivision 1. **Judges of municipal court serve as judges; referees for conciliation court.** (a) The judges of the municipal court of the county of Hennepin shall serve as judges of the conciliation court for such periods and in such rotation as the judges may determine. While so serving they shall act and be known as conciliation judges.

(b) The municipal judge who conducts the conciliation court hearing shall act upon any applications to vacate a judgment or an order for judgment whatever the grounds may be and shall sign the certificate upon a removed cause, but any other municipal judge may act upon such an application or sign such a certificate in the event that the judge who conducted the hearing has not previously denied the application promptly or sign the certificate due to expiration of his term, death, disability, absence from the courthouse or any other cause.

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

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

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

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

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

Subd. 4. Salaries; oaths; bonds. The judges, clerk, deputy clerks, and court reporters shall receive only their salaries payable for serving as officers of municipal court while serving in conciliation court. All oaths taken and bonds given by the judges, clerk, deputy clerks and court reporters for their respective offices in municipal court include their acts as officers of conciliation court, whether or not so expressed therein.

Subd. 5. Quarters for court, supplies. The county of Hennepin shall provide suitable quarters for the court, and court may be held at any of the regular places of holding court set forth in section 488A.01, subdivision 9, clause (a), as may be designated by a majority of the judges of the court, and the applicable provisions of said section 488A.01, subdivision 12, shall apply. The clerk shall procure and furnish all necessary blanks, stationery, books, furniture, furnishings and other supplies for the use of the court and the officers thereof at the expense of the county with the consent of the county board and under the supervision and approval of a majority of the judges.

[1955 c 129 s 2; 1961 c 426 s 1; 1961 c 486 s 1; Ex1961 c 83 s 2; 1963 c 877 s 39; 1967 c 842 s 1]

488A.14 COMMENCEMENT OF ACTION; FILING FEE; REQUISITES OF CLAIM; SUMMONS; COUNTERCLAIM; REPLEVIN. Subdivision 1. **Commencement of action.** An action is commenced against each defendant when the com-

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plaint is filed with the clerk of conciliation court and a filing fee of \$2 is paid to the clerk or the prescribed affidavit in lieu of filing fee is filed.

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

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

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

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

(b) The counterclaim shall be interposed by filing with the clerk a brief statement of the amount, date of accrual and nature of the counterclaim, verified by the defendant or his attorney, and paying a filing fee of \$2 to the clerk. If the defendant is not represented by an attorney the clerk shall draw up the counterclaim on request.

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

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

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

Subd. 6. Replevin. If the controversy concerns the ownership or possession, or both, of personal property the value of which does not exceed the sum of \$150, the judge in his discretion, may direct an officer of the court to take possession of

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the property immediately and hold it subject to the further order of the court, without the giving of any bond whatever.

[1955 c 129 s 3; 1967 c 734 s 3, 4]

488A.15 HEARING; ATTORNEYS; EVIDENCE; CONCILIATION; DETERMINATION; DEFAULT; DISMISSAL; CONTINUANCE. Subdivision 1. **Testimony, exhibits.** At the court hearing a conciliation judge shall hear the testimony of the respective parties and consider any exhibits offered by them and may also hear any witnesses introduced by either party.

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

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

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

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

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

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

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

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

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

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

[1955 c 129 s 4]

488A.16 NOTICE OF ORDER FOR JUDGMENT; ENTRY OF JUDGMENT; COSTS AND DISBURSEMENTS; PAYMENTS; VACATING; DOCKETING. Subdivision 1. **Notice of order.** The clerk shall promptly mail to each party a notice of the order for judgment which the judge enters. The notice shall state the number of days allowed for obtaining an order to vacate where there has been a default or for removing the cause to municipal court.

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

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

Subd. 4. **Payment of judgment, record.** The losing party may pay all or any part of the judgment to the clerk for the benefit of the prevailing party or may pay the prevailing party directly and so advise the clerk. The clerk shall make an appropriate entry on his records when any payment has been made to him or when satisfied that any payment to the prevailing party has been made.

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

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

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

Subd. 8. **Docketing and enforcement in municipal court.** When a judgment has become finally effective under subdivision 2 of this section, the judgment creditor may obtain a transcript of the judgment from the clerk of conciliation court on payment of a fee of fifty cents therefor and file it with the clerk of the municipal court of the county of Hennepin without additional fee. After filing of the transcript, the judgment becomes, and is enforceable as, a judgment of the municipal court. A transcript of a judgment payable in installments may not be so obtained and filed until 20 days after default in the payment of an installment. No writ of execution or garnishment summons may be issued out of conciliation court.

[1955 c 129 s 5; 1963 c 877 s 40]

488A.17 REMOVAL OF CAUSE TO MUNICIPAL COURT. Subdivision 1. **Trial de novo.** Any person aggrieved by an order for judgment entered by a conciliation judge after a contested hearing may remove the cause to the municipal court of the county of Hennepin for trial de novo.

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

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

(b) File with the clerk of conciliation court the original demand for removal and proof of service thereof. If the opposing party or his attorney cannot be found and service of the demand be made within the ten day period, the aggrieved party

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may file with the clerk within the ten day period the original and a copy of the demand, together with an affidavit by himself or his attorney showing that due and diligent search has been made and that the opposing party or his attorney cannot be found and the filing of this affidavit shall serve in lieu of making service and filing proof of service. When such an affidavit is filed, the clerk shall mail the copy of the demand to the opposing party at his last known residence address.

(c) File with the clerk of conciliation court an affidavit by the aggrieved party or his attorney stating that the removal is made in good faith and not for the purpose of delay.

(d) Pay to the clerk of conciliation court \$2 when the demand is for trial by court, plus \$5 additional when the demand is for trial by a jury of six persons or \$10 additional when the demand is for trial by a jury of 12 persons.

Subd. 3. Limited removal of cause, procedure. (a) When a motion for vacation of a judgment or an order for judgment under subdivision 5 or 6 of section 488A.16 has been denied, the aggrieved party may demand limited removal to the municipal court of the county of Hennepin for hearing de novo of his motion. The demand for limited removal and notice of the hearing de novo must be served by the aggrieved party on the other party in accordance with the provisions of subdivision 2(a) of this section and the original demand and notice, with proof of service, must be filed with the clerk of conciliation court within ten days after the motion has been denied, or the original and one copy of the demand and notice, together with an affidavit similar to that required by subdivision 2(b) of this section must be filed with the clerk of conciliation court within said ten-day period. When such an affidavit is filed, the clerk shall then mail the copy of the demand and notice to the other party at his last known residence address. The aggrieved party shall pay a fee of \$2 to the clerk of conciliation court for filing the demand and notice and this fee shall not be recoverable as a disbursement. The notice shall set a date for hearing de novo at a special term of the municipal court not less than ten days nor more than thirty days subsequent to the date of filing the original demand and notice.

(b) The clerk of conciliation court thereupon shall pay over to the municipal court the \$2 fee and shall file in municipal court the removal demand and notice together with all orders, affidavits, and other papers filed in conciliation court. The clerk of municipal court shall then place the cause on the special term calendar of the municipal court for hearing on the date specified in the notice.

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

(d) The clerk of municipal court shall send a copy of the order made after the de novo hearing to both parties and return the file to the clerk of conciliation court.

Subd. 4. Demand for trial by jury. If the opposing party desires trial by a jury of six or twelve persons when none or a jury of only six persons is demanded in the demand for removal, he shall: (a) serve a demand for trial by a jury of six or twelve persons on the aggrieved party, (b) file the demand with proof of service with the clerk of conciliation court within ten days after the demand for removal was served upon him, and (c) pay to the clerk of conciliation court at the time of such filing a fee of \$5 if he demands a jury of six persons, \$10 if he demands a jury of twelve persons or \$5 if he demands a jury of twelve persons instead of the six persons previously demanded by the aggrieved party.

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

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

Subd. 7. Clerk's duties upon removal. After the judge's order and certificate

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have been filed, the clerk of conciliation court shall pay over to the municipal court the removal and jury fees paid to him hereunder and shall file in municipal court all claims, orders, certificates and other papers filed in conciliation court in connection with the cause and its removal to municipal court.

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

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

Subd. 10. **Costs and disbursements for prevailing party.** (a) The prevailing party in a removed cause may tax and recover from the other party \$5 as costs together with his disbursements incurred in conciliation and municipal court; except that if the prevailing party, on appeal, is not the aggrieved party in the original action, the court may, in its discretion, allow such prevailing party to tax and recover from the aggrieved party an amount not to exceed \$25 as costs.

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

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

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

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

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

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

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

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

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

Subd. 12. **Appeal to supreme court.** Causes removed to municipal court from conciliation court may be removed from municipal court to the supreme court of Minnesota in the same manner, upon like proceedings and with the same effect as causes originally brought in the municipal court.

[1955 c 129 s 6; 1963 c 877 s 41, 42; 1967 c 734 s 5-7]

MUNICIPAL COURT, ST. PAUL

488A.18 ESTABLISHMENT; JURISDICTION; POWERS; APPEALS. Subdivision 1. **Establishment confirmed.** The establishment of the existing municipal

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court of the city of Saint Paul is confirmed and the court is continued with the jurisdiction and powers hereinafter stated.

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

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

Subd. 4. Civil jurisdiction. (a) Excepting cases involving title to real estate, the court has jurisdiction to hear, try and determine civil actions at law in which the amount in controversy does not exceed the sum of \$6,000, exclusive of interest and costs. The territorial jurisdiction of the court is coextensive with the geographic boundaries of the county of Ramsey.

(b) The court also has jurisdiction, within the limitations provided in this subdivision, to hear, try and determine civil actions commenced by a plaintiff, resident of Ramsey county, where the action arose out of alleged negligent operation of a motor vehicle in Ramsey county, notwithstanding that the defendant or defendants are not residents of the county. Notwithstanding any law or rule of civil procedure to the contrary, the summons in any such action may be served anywhere within the state of Minnesota.

Subd. 5. Appeals from justice courts. All appeals from judgments of justices of the peace in the city of Saint Paul shall be taken to this court, and this court shall have the same powers in such cases now possessed by the district court of this state; and all laws applicable to the appeals to the district court are made applicable to this court.

Subd. 6. Forcible entry and unlawful detainer. Whether or not the title to real estate is involved, the court has jurisdiction of actions of forcible entry and unlawful detainer involving land located wholly or in part within Ramsey county.

Subd. 7. Criminal jurisdiction. (a) The court has jurisdiction to hear, try and determine any charge of violation within Ramsey county of:

- (1) A criminal law of this state constituting a misdemeanor,
- (2) Any ordinance, charter provision, rule or regulation of the city of Saint Paul, or
- (3) Any ordinance, charter provision, rule or regulation of the Minneapolis-Saint Paul Metropolitan Airports Commission,
- (4) Any ordinance, rule or regulation of the regents of the University of Minnesota.

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

(c) Jurisdiction under sub-paragraphs (1) and (2) of paragraph (a) and under paragraph (b) of this subdivision is exclusive for any violation committed within the city of Saint Paul.

Subd. 8. Exceptions to jurisdiction. The court does not have jurisdiction:

- (a) Of any action where the relief asked for is purely equitable in its nature,
- (b) Of an action for divorce,
- (c) To issue any extraordinary writ, nor
- (d) To issue any order in proceedings supplementary to execution.

Subd. 9. Territorial jurisdiction. The summons in civil and forcible entry and unlawful detainer actions may be served only within the county of Ramsey. Garnishment summons, subpoenas and all other civil and criminal process and orders may be served and enforced anywhere within the state of Minnesota.

Subd. 10. Place of holding court. The city of Saint Paul shall provide suitable quarters for the court within the city hall and courthouse, and court shall be held at that place or at a place immediately adjacent thereto.

Subd. 11. Terms. The court shall be open every day, except Sundays and legal holidays. The court shall hold a general term for the trial of civil actions commencing on the first Monday following Labor Day of each year and continuing until the next general term, with such adjournments as the judges may determine to be necessary and proper.

Subd. 12. Removal of causes to Supreme Court. All causes may be removed from the municipal court to the supreme court of the state of Minnesota in the same manner, upon like proceedings and with like effect as from district court. However, in the case of a conviction for violation of an ordinance, appeal may be

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made to the district court whereupon the defendant shall be entitled to a trial de novo therein, with or without a jury, but otherwise with all the rights and subject to the procedures prescribed by Minnesota Statutes, Section 488.20.

[1961 c 436 s 1; 1965 c 695 s 1; 1967 c 747 s 1]

488A.19 JUDGES. Subdivision 1. **Number of judges.** There are five judges of the municipal court of the city of Saint Paul.

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

Subd. 3. **Term; vacancies; appointments and election.** (a) Each elected judge holds office for six years beginning the first Monday in June next succeeding his election.

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

(c) At the general city election immediately preceding the expiration of his term the qualified voters of the city of Saint Paul shall elect the successor to any elected judge.

(d) Each judge holds a separate nonpartisan office.

(e) When one or more judges of the court are to be nominated or elected at a city election, the notice of election shall state the name of each judge whose successor is to be nominated or elected. The official ballot shall contain the names of all candidates for each such office, state the number of judges to be elected and the number of candidates for whom an elector may vote, and designate each candidacy as "For the office of Judge of the Municipal Court of the City of Saint Paul to which.....was elected for the regular term," or

Name of Judge ..

"For the office of Judge of the Municipal Court of the City of Saint Paul to which.....was appointed," as the case may be. The official ballots shall

Name of Judge

show in the spaces for the purpose the name of the judge whose successor is to be elected. When any judge is a candidate to succeed himself, the word "incumbent" shall be printed after his name where it appears among the names of the candidates for the office. When voting machines are used and such statements cannot be inserted in full, the designation shall be "Successor to.....(elected)",

Name of Judge

or "Successor to.....(appointed)", as the case may be

Name of Judge

(f) Each person desiring to have his name placed upon the primary ballot as a candidate for judge shall state in his affidavit of candidacy the office of the particular judge for which he is a candidate. The filing of this affidavit with the city clerk and a compliance with all other requirements constitutes such person a candidate for that office, and for that office only. No person shall at any election be a candidate for more than one such office.

Subd. 4. **Confirmation of present judges.** The present judges of the municipal court of the city of Saint Paul are hereby confirmed and continued in office. Each such judge shall serve for the balance of his present term.

Subd. 5. **Powers.** The judges have the general powers of judges of courts of record and all powers necessary to effectuate the purposes of this act. Each judge may administer oaths and take and certify acknowledgments. Each judge is a conservator of the peace and has all powers and authority vested in justices of the peace or magistrates.

Subd. 6. **Contempt of court.** Any judge has the power to punish for contempt of court by a fine not exceeding \$100 or by imprisonment in the county jail or city workhouse not exceeding 90 days.

Subd. 7. **Court rules.** A majority of the judges may promulgate rules of court consistent with this act. Unless the rule forbids, a judge may waive its application.

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Subd. 8. **District court judges.** Upon a request of a majority of the judges of this court, any one or more district court judges of this state, active or retired, may, while serving pursuant to such request, perform all the duties and exercise all the powers and functions of a judge of this court. Each district court judge so acting shall be additional to the number of municipal judges provided for elsewhere in this act, but shall receive no additional salary or compensation for so acting.

Subd. 9. **Chief judge.** The judges shall meet annually and elect one of their number to be presiding judge, who shall be designated as the chief judge of the court. In the event of a tie vote the judge who is senior in service shall be the chief judge. Said judge shall preside at all meetings of the judges. The business of the court may be divided between the judges, and the chief judge shall assign and designate what duties each judge shall perform.

Subd. 10. **Salaries.** Each judge shall be paid an annual salary of \$18,000 in semimonthly installments out of the treasury of the city of Saint Paul. If a judge dies, the amount of his salary remaining unpaid for the month in which his death occurs shall be paid to his estate.

[1961 c 436 s 2; 1963 c 736 s 1; 1963 c 878 s 1; 1965 c 695 s 2; 1967 c 747 s 2, 3]

488A.20 CLERK; DEPUTIES; ASSISTANT CLERKS; BAILIFFS. Subdivision 1. **Appointment, term, removal, suspension.** (a) A majority of the judges shall appoint a clerk of the court.

(b) The court shall have four deputy clerks, 13 assistant clerks and five bailiffs, each appointed by the clerk with the approval of a majority of the judges.

(c) Additional deputy clerks, assistant clerks and bailiffs may be appointed by the clerk, with the approval of a majority of the judges, when the city council consents to the creation of such new positions.

(d) The clerk and deputy clerks shall each be appointed for a term of six years from the date of appointment. At any time within six months from the date of initial appointment, each may be removed and his appointment terminated, with or without cause and without notice or hearing, by the appointing official or officials. At any time, each may be suspended by the appointing official or officials without pay for a period not to exceed 30 days with or without cause pending a hearing for removal and termination of appointment for cause before the appointing official or officials.

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

(b) The clerk and deputy clerks shall each give bond to the city of Saint Paul in such sum and with such surety as the city council directs, conditioned upon the faithful discharge of his official duties and for payment as required by law or order of the court of all moneys coming into his hands.

(c) Neither the clerk nor deputy clerks shall enter upon their official duties until their respective appointment, oath, and bond are filed with the city clerk.

Subd. 3. **Powers and duties.** (a) The clerk, deputy clerks, assistant clerks and bailiffs may each administer oaths and affirmations and take acknowledgments.

(b) The clerk shall delegate and supervise the work of the deputy clerks, assistant clerks and bailiffs. He shall have all the powers and duties incident to the office of a clerk of a court of record or necessary to carry out the purposes of this act.

(c) The clerk shall make minutes, records and indices of all proceedings; enter all orders, judgments or sentences; issue all process; keep proper accounts; have custody of all court records; and tax all costs and disbursements.

Subd. 4. **Disposition of fines, fees and other moneys.** (a) Except as otherwise provided by law, the clerk shall pay to the proper officer of the city of Saint Paul daily all moneys received by him required by law to be paid to the city. Such sums shall be credited to the general fund of the city.

(b) Each such payment shall be accompanied by a daily report in writing to the proper officer of the city of Saint Paul, showing the name of each defendant after date of the clerk's preceding report upon whom any fine has been imposed or confinement ordered, the date thereof, the nature of the offense, the amount of money received from each such person and the final disposition. Said report shall

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further show the aggregate amount of money and the sources thereof due the city received by the clerk since his last report.

(c) The clerk shall promptly pay all other moneys to the other public officers entitled thereto by law and shall inform the proper officer of the city of Saint Paul of all moneys remaining in his hands pursuant to law or court order.

Subd. 5. **Bail.** (a) Any bail deposited with the clerk and not forfeited by court order shall be deemed abandoned and forfeited if the person entitled to refund does not file a written demand therefor within six months from the date of entitlement to refund.

(b) All sums collected by bail, bond or recognizance forfeited by court order or by abandonment shall be forthwith paid by the clerk to the city of Saint Paul.

Subd. 6. **Salaries.** (a) The clerk shall be paid an annual salary of \$13,000 a year.

(b) The bailiffs shall be paid the same salary as a patrolman in the bureau of police of the city of Saint Paul.

(c) The salaries of the deputy clerks and assistant clerks shall be set by the city council; however, the present salary of any employee of this court shall not be reduced by virtue of this act. The fact that the city council may, for payroll purposes or otherwise, designate the assistant clerks of this court by a different title shall not affect their acting as assistant clerks of this court.

(d) All salaries under this act shall be payable out of the city treasury in semi-monthly installments.

Subd. 7. **Destruction of records.** (a) Upon order of all the judges, the clerk may destroy or dispose of all of the following files and records of the court which have been on file for more than ten years:

- (1) Garnishment files,
- (2) Special and general term calendars,
- (3) Court reporters' notebooks or machine tapes,
- (4) Traffic tags, calendars, complaints and warrants,
- (5) Bail receipts,
- (6) Criminal and ordinance violation files,
- (7) Cash books,
- (8) Depositions,
- (9) Conciliation court files and records.

(b) Upon order of all the judges, and with consent of the president of the Ramsey County Historical Society, the clerk may destroy or dispose of any and all civil, garnishment or unlawful detainer files which have been on file for more than 20 years and in which no proceedings have occurred within ten years prior to said order and consent.

[1961 c 436 s 3; 1963 c 469 s 1; 1967 c 747 s 4]

488A.21 PROBATION AND REGULATED SERVICES. Subdivision 1. **Probation office.** The Ramsey county probation office shall supply all probation services for this court.

Subd. 2. **Psychiatric, psychological and medical services.** The judges of this court shall be and are hereby authorized to expend a sum not to exceed \$7,500 in any one year to secure such psychiatric, psychological and medical services as shall be deemed advisable by said judges in making disposition of such misdemeanants as shall come before the court. If the judges of this court so direct, the city council shall appropriate whatever sums are necessary to secure such services, not exceeding \$7,500 in any one year.

[1961 c 436 s 4]

488A.22 COURT REPORTERS. Subdivision 1. **Appointment; oath; tenure.** Each judge shall have as his court reporter a competent person skilled in that profession appointed by the clerk of this court at the direction of said judge. Each reporter shall take and subscribe an oath to support the Constitutions of the United States and the state of Minnesota and to discharge and perform his duties as a court reporter faithfully and honestly. Each reporter shall file his oath with the city clerk before he enters upon the duties of his office. Each reporter is an officer of the court and holds his office during the pleasure of the judge directing his appointment and until the judge directs a court reporter to succeed him.

Subd. 2. **Duties.** Each reporter shall take or cause to be taken by another skilled court reporter full stenographic notes of all the testimony and other pro-

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ceedings in all civil actions, all actions for forcible entry and unlawful detainer and all preliminary hearings in criminal actions before the judge so directing his appointment. When requested by the judge, each reporter shall transcribe such notes or any part thereof for the use of the judge or for such other purpose in furtherance of justice as the judge may order, without charge therefor. Each reporter shall furnish a transcript of his notes, or any part thereof, at the request of any party to the action or any other person. He shall be entitled to charge therefor at the rates then prescribed by law for court reporters of the district court for Ramsey county. Each reporter shall act in the capacity of a private secretary to the judge so directing his appointment in the performance of the judge's official duties.

Subd. 3. **Salaries.** The annual salary of each reporter shall be set by the city council, payable in semimonthly installments.

[1961 c 436 s 5]

488A.23 FEES PAYABLE TO THE CLERK. Subdivision 1. **Filing fees in civil actions.** The fees payable to the clerk of the following services in civil actions shall be:

(a) \$6 payable by the plaintiff, in addition to any library fee otherwise required, when the action is entered in court or when the first paper on the plaintiff's part is entered:

(b) \$4 payable by the defendant or other adverse or intervening party, or any one or more of several defendants, or other adverse or intervening parties appearing separately from the others, when his or their appearance is entered in the action or when the first paper on his or their part is filed.

Subd. 2. **Appeals from justice courts.** Upon appeal from any justice of the peace court in the city of Saint Paul, the appealing party shall pay \$8 where the appeal is to be heard by the court without a jury, \$14 where a jury of six is demanded and \$20 where a jury of twelve is demanded. Out of this fee paid for perfecting such appeal the clerk of this court shall return to the appropriate justice of the peace the sum of \$2 as compensation for said justice making his return to this court.

Subd. 3. **Trial fees in civil actions.** In all civil actions at the time trial is demanded, the following fees shall be paid to the clerk by the party making such demand:

(a) \$6 for demand of trial by a jury of six,

(b) \$12 for demand of trial by a jury of twelve.

(c) No trial fee shall be payable by any party when trial by the court without a jury is demanded.

Subd. 4. **Court rules.** Except as provided in subdivisions 1, 2 and 3 above, the fees payable to the clerk for his services shall be no more in amount than the fees then payable to the clerk of Ramsey county district court for like services. The fees payable to the clerk for all other services of himself or the court shall be fixed by rules promulgated by a majority of the judges.

Subd. 5. **Fees in advance.** All fees payable to the clerk shall be paid in advance.

Subd. 6. **Exemptions from fees; no trial fees.** No filing fees, trial fees or fees for other services are payable by the state, county or city.

[1961 c 436 s 6; 1967 c 747 s 5-7]

488A.24 PETIT JURORS. Subdivision 1. **Selection; list.** Before the first day of June in each year, the judges shall select from the electors of the county of Ramsey a list of persons properly qualified to serve as petit jurors and certify the list to the clerk of this court. If there be a deficiency of persons on the list, the judges may select from the electors of the county of Ramsey additional persons to cover the deficiency and certify and deliver to the clerk a supplementary list which shall thereafter stand as part of the original list. The validity of the selection is not affected by the fact that any person is disqualified from serving as a juror.

Subd. 2. **Summoning.** Petit jurors shall be drawn from such list and summoned as the judges direct. The clerk shall issue venires for the jurors drawn which shall be returnable on such dates and hours as the judges direct, and such venires shall be served by the sheriff of Ramsey county as jurors are served in the district court of Ramsey county.

Subd. 3. **Failure to attend.** Failure to attend as a juror when duly drawn and summoned is punishable as contempt of court.

Subd. 4. **Special venire.** When necessary, the court may issue a special venire.

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Subd. 5. Compensation. Any juror so summoned, attending as aforesaid and accepted as a juror in this court, shall be entitled to receive as compensation the same amount as jurors in the district court, which shall be paid out of the county treasury of the county of Ramsey. The clerk of this court shall deliver to each juror a certificate showing the number of days in attendance and the mileage for which he is entitled to receive compensation. This certificate of the clerk shall be filed with the county auditor, who shall issue his warrant on the treasurer of the county for the amount due, which certificate shall be a proper and sufficient voucher for the issuance of such warrant.

Subd. 6. Court rule on selection. (a) If a court rule so providing is adopted by a majority of the judges of said district court and also by a majority of the judges of the municipal court, all petit jurors to serve in the municipal court of the city of Saint Paul may be selected from the petit jurors summoned for jury service by the district court of Ramsey county.

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

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

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

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

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

[1961 c 436 s 7; 1967 c 471 s 1, 2]

488A.25. TRAFFIC VIOLATIONS BUREAU. Subdivision 1. **Establishment confirmed.** The establishment of the existing traffic violations bureau of this court is hereby confirmed and said bureau is continued for the purposes of Laws 1961, Chapter 436. The purpose of the traffic violations bureau is to assist the court in handling the various criminal and civil matters that come before the court.

Subd. 2. Personnel; supervision. The clerk of this court shall supervise the traffic violations bureau and shall assign a sufficient number of this court's employees to staff and operate the bureau.

Subd. 3. Rules. The judges shall issue written rules governing the duties and operation of the bureau.

[1961 c 436 s 8]

488A.26 PLEADING, PRACTICE, PROCEDURE AND FORMS IN CIVIL ACTIONS. Subdivision 1. **General.** Pleading, practice, procedure and forms in civil actions shall be governed by Municipal Court Rules of Civil Procedure promulgated from time to time by the supreme court of this state or by statutes applicable to the district court in situations where said rules are inapplicable. All process issued by the court shall be tested in the name of the senior judge.

Subd. 2. Court rules. A majority of the judges may adopt rules governing pleading, practice, procedure and forms for civil actions which are consistent with the provisions of this act, the Municipal Court Rules of Civil Procedure promulgated from time to time by the supreme court of this state, or governing statutes.

Subd. 3. Costs allowable. Costs shall be allowed in civil actions as follows:

(a) To the plaintiff upon a judgment in his favor when an issue of fact or law has been joined:

(1) \$10 when the amount of the judgment or the value of the property recovered in a replevin action, exclusive of costs and disbursements, exceeds \$250;

(2) \$5 in all other cases.

(b) \$5 to the plaintiff upon a judgment in his favor when no issue of fact or law has been joined and the amount of the judgment or the value of the property recovered, exclusive of costs and disbursements, exceeds \$250.

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

(1) \$10 when the amount claimed in the complaint or the alleged value of the property involved in a replevin complaint exceeds \$250.

(2) \$5 in all other cases.

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

Subd. 4. Lien of judgment; filing of transcript. (a) No judgment of this court shall attach as a lien upon real estate unless and until a transcript thereof is filed and docketed in district court.

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

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

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

Subd. 5. Writs of replevin, attachment and execution. Writs of replevin, attachment and execution may be issued in accordance with the practice and procedure for such writs in district court, but a judge rather than a sheriff or police officer shall approve all bonds requiring approval.

Subd. 6. Satisfaction of execution. When a writ of execution has been delivered to an officer for enforcement, any person indebted to the judgment debtor may pay the amount of such debt, or so much thereof as may satisfy the execution, to the officer holding the writ and the receipt of that officer reciting the facts is a sufficient discharge and satisfaction of so much of said debt as is so paid.

Subd. 7. Garnishment. Proceedings against garnishees may be instituted in the same manner as in the district court. The garnishment summons may be served either by an officer or any person not a party to the action, at any place within the state of Minnesota, and the service shall in all cases be personal. Notwithstanding any other law, such service shall become null and void and ineffective for any purpose unless not later than three days after such service the original or a copy of the summons and complaint in the main action between the parties is filed in the office of the clerk of this court. Any judge may issue an order, ex parte, dismissing a garnishment and discharging the garnishee upon a showing by a certificate of the clerk that the summons and complaint have not been filed within the period of time herein required. The disclosure of the garnishee shall be made and all further proceedings had in the same manner as if the proceedings were in the district court, but the summons shall require disclosure within ten days after service, and service upon the defendant shall be made not later than ten days after the service on the garnishee.

[1961 c 436 s 9; 1965 c 695 s 3]

488A.27 PLEADING, PRACTICE, PROCEDURE, AND FORMS IN CRIMINAL PROCEEDINGS. Subdivision 1. **General.** Save as otherwise provided in this act, pleading, practice, procedure and forms in actions or proceedings charging violation of a statute, ordinance, charter provision, rule or regulation shall be governed by the statutes and common law rules which govern in a similar action or proceeding in the district court (other than those applying peculiarly to felony or gross misdemeanor charges) or by statutes which govern in courts of justices of the peace in the absence of statutes or common law rules governing in district court.

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

Subd. 3. Complaints. Complaints charging violation of a statute, ordinance,

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charter provision, rule or regulation shall be sworn to before the clerk, any deputy or assistant clerk, or any judge of the court and shall be filed with the clerk.

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

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

Subd. 6. **Trials by judge without jury.** A charge of violation of any ordinance, charter provision, rule or regulation shall be heard, tried and determined by a judge without a jury and the defendant shall have no right to a jury trial on such a charge, except for those offenses where the defendant is otherwise entitled to a trial by jury.

Subd. 7. **Process.** All warrants and other criminal process issued by this court shall be tested in the name of the chief judge.

Subd. 8. **Suspension, alteration or modification of sentences.** At the time of imposing sentence, or at any time thereafter, the sentencing judge, or any other judge if the sentencing judge is not available, may, in his discretion, suspend, alter or modify the sentence imposed, upon such terms and conditions as such judge deems appropriate.

Subd. 9. **Bail.** Any judge may set the amount of bail for any person in custody. A sufficient bail bond with sureties approved by the court, or money in such amount may be posted or deposited with the clerk.

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

Subd. 11. **Prosecuting attorneys.** Except where the county attorney is specifically designated by law as the prosecutor for the particular violation charged, the corporation counsel of the city of Saint Paul shall have charge of the prosecution of all violations of statutes, ordinances, charter provisions, rules or regulations triable in this court and said corporation counsel or county attorney, as the case may be, shall prepare complaints for said violations.

Subd. 12. **Police officers.** The city of Saint Paul and the county of Ramsey shall, at the request of the judges, provide a sufficient number of police officers and deputy sheriffs, respectively, to be in constant attendance at the sessions during the criminal and traffic proceedings of the court and at such other times and places as the court may direct. Said officers shall obey the mandates of the court and preserve order during said proceedings, irrespective of the authority or orders of any other official body. The police officers of the city of Saint Paul shall serve all criminal process or other papers issued by the court.

[1961 c 436 s 10; 1967 c 747 s 8]

488A.28 FORCIBLE ENTRY AND UNLAWFUL DETAINER ACTIONS. Subdivision 1. **Procedure.** The general laws applicable to forcible entry and unlawful detainer actions shall apply to this court, and the forms as prescribed in the general laws may be used with such appropriate modifications as may be necessary for this court.

Subd. 2. **Return days.** Return days for forcible entry and unlawful detainer actions may be fixed by rules promulgated by a majority of the judges.

Subd. 3. **Default judgments.** Whenever a duly verified complaint in a forcible entry and unlawful detainer action shows one of the causes of action as set forth by general statute, and on the return day of the summons the defendant does not appear, the judge, upon proof of the due service of the summons, shall enter an order adjudging the defendant to be in default, and thereafter the clerk shall enter judgment for the plaintiff without the introduction of evidence.

[1961 c 436 s 11]

CONCILIATION COURT, ST. PAUL

488A.29 ESTABLISHMENT; JURISDICTION; POWERS; COMPUTATION OF TIME. Subdivision 1. **Established court continued.** The establishment of the ex-

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isting conciliation court of the city of Saint Paul is confirmed and said court is continued with the jurisdiction and powers hereinafter stated.

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

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

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

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

Subd. 6. **Rules of pleading, practice and procedure.** A majority of the judges may promulgate rules governing pleading, practice and procedure consistent with the provisions of this act.

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

[1961 c 437 s 1; 1965 c 695 s 4]

488A.30 JUDGES; CLERKS; SALARIES; QUARTERS. Subdivision 1. Judges.

(a) The judges of the municipal court of the city of Saint Paul shall serve as judges of the conciliation court for such periods and in such rotation as the judges may determine. While so serving they shall act and be known as conciliation judges.

(b) The municipal judge who conducts the conciliation court hearing shall act upon any applications to vacate a judgment or an order for judgment whatever the grounds may be and shall sign the certificate upon a removed cause, but any other municipal judge may act upon such an application or sign such a certificate in the event that the judge who conducted the hearing has not previously denied the application and cannot act upon the application promptly or sign the certificate due to expiration of his term, death, disability, absence from the court house or any other cause.

Subd. 2. **Clerk, duties.** The clerk of the municipal court shall serve as the clerk of the conciliation court. He shall delegate deputy clerks, assistant clerks and bailiffs of the municipal court to assist him in performing his duties under this act. The clerk shall keep such records and accounts and perform such duties as may be prescribed by the judges. He shall account for and pay over to the city of Saint Paul all fees received by him in the same fashion as required in his capacity as clerk of municipal court.

Subd. 3. **Salaries; oaths; bonds.** The judges, clerk, deputy clerks, assistant clerks and bailiffs shall receive only their salaries payable for serving as officers of municipal court while serving in conciliation court. All oaths taken and bonds given by the judges, clerk, deputy clerks, assistant clerks and bailiffs for their respective offices in municipal court include their acts as officers of conciliation court, whether or not so expressed therein.

Subd. 4. **Quarters for court, supplies.** The city of Saint Paul shall provide suitable quarters for the court within the city hall and court house, and court shall be held at that place. The clerk shall procure and furnish all necessary blanks, stationery, books, furniture, furnishings and other supplies for the use of the court and the officers thereof at the expense of the city, with the consent of the city council and under the supervision and approval of a majority of the judges.

[1961 c 437 s 2]

488A.31 **COMMENCEMENT OF ACTION.** Subdivision 1. **Filing fee.** An action is commenced against each defendant when the complaint is filed with the

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clerk of conciliation court and a filing fee of \$2 is paid to the clerk or the prescribed affidavit in lieu of filing fee is filed.

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

Subd. 3. **Claim, verification, contents.** The claim must be verified by the plaintiff and shall contain a brief statement of the amount, date of accrual, and nature of the claim and the name and address of the plaintiff and the defendant. The clerk shall draw up the claim on request.

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

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

(b) The counterclaim shall be interposed by filing with the clerk a brief statement of the amount, date of accrual and nature of the counterclaim, verified by the defendant, and paying a filing fee of \$2 to the clerk. The clerk shall draw up the counterclaim on request.

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

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

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

Subd. 6. **Replevin.** If the controversy concerns the ownership or possession, or both, of personal property the value of which does not exceed the sum of \$250, the judge, in his discretion, may direct an officer of the court to take possession of the property immediately and hold it subject to the further order of the court, without the giving of any bond whatever.

[1961 c 437 s 3; 1965 c 695 s 5; 1967 c 747 s 9, 10]

488A.32 HEARING; EVIDENCE; CONCILIATION; DETERMINATION; DEFALT; DISMISSAL; CONTINUANCE. Subdivision 1. **Testimony, exhibits.** At

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the hearing a conciliation judge shall hear the testimony of the respective parties and consider any exhibits offered by them and may also hear any witnesses introduced by either party.

Subd. 2. Appearance of parties. Any party may appear in his own behalf without an attorney.

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

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

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

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

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

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

(b) If the plaintiff fails to appear at the time set for hearing and the defendant does appear and the defendant has filed a counterclaim, the judge may hear the defendant and order judgment on the counterclaim by default or he may fix a later date for hearing in accordance with what appears just and reasonable.

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

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

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

[1961 c 437 s 4]

488A.33 NOTICE OF ORDER FOR JUDGMENT; ENTRY OF JUDGMENT; COSTS AND DISBURSEMENTS; PAYMENT; VACATING; DOCKETING. Subdivision 1. **Notice of order.** The clerk shall promptly mail to each party a notice of the order for judgment which the judge enters. The notice shall state the last day for removing the cause to municipal court.

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

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

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Subd. 4. **Payment of judgment, record.** The losing party may pay all or any part of the judgment to the clerk for the benefit of the prevailing party or may pay the prevailing party directly and so advise the clerk. The clerk shall make an appropriate entry on his records when any payment has been made to him or when satisfied that any payment to the prevailing party has been made.

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

Subd. 6. **Absolute or conditional costs; filing of orders.** When a judge orders payment of absolute or conditional costs as a condition of an order under any provision of this act, the amount shall be paid to the clerk before the order becomes effective or is filed. Every such order is invalid unless filed with the clerk within five days after its date. Conditional costs shall be held by the clerk to abide the final order entered in the cause. Absolute costs shall be paid over by the clerk forthwith to the other party as his absolute property.

Subd. 7. **Docketing and enforcement in municipal court.** When a judgment has become final under subdivision 2 of this section, the judgment creditor may obtain a transcript of the judgment from the clerk of conciliation court and file it with the clerk of the municipal court of the city of Saint Paul upon payment of the filing fees as prescribed for the municipal court. After filing of the transcript, the judgment becomes, and is enforceable as, a judgment of the municipal court. A transcript of a judgment payable in installments may not be so obtained and filed until 20 days after default in the payment of an installment. No writ of execution nor garnishment summons may be issued out of conciliation court.

[1961 c 437 s 5]

488A.34 REMOVAL OF CAUSE TO MUNICIPAL COURT. Subdivision 1. **Trial de novo.** Any person aggrieved by an order for judgment entered by a conciliation judge may remove the cause to the municipal court of the city of Saint Paul for trial de novo.

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

(a) Serve on the opposing party a demand for removal of the cause to the municipal court for trial de novo stating whether trial by a jury of six or twelve or by the court without a jury is demanded. Service shall be made upon a party in accordance with the provisions for personal service of a summons in the municipal court.

(b) File with the clerk of conciliation court the original demand for removal and proof of service thereof. If the opposing party cannot be found and service of the demand be made within the ten-day period, the aggrieved party may file with the clerk within the ten-day period the original and a copy of the demand, together with an affidavit by himself showing that due and diligent search has been made and that the opposing party cannot be found and the filing of this affidavit shall serve in lieu of making service and filing proof of service. When such an affidavit is filed, the clerk shall mail the copy of the demand to the opposing party at his last known residence address.

(c) File with the clerk of conciliation court an affidavit by the aggrieved party stating that the removal is made in good faith and not for the purpose of delay.

(d) Pay to the clerk of conciliation court \$6 when the demand is for trial by court, plus \$6 additional when the demand is for trial by a jury of six or \$12 additional when the demand is for trial by a jury of twelve.

Subd. 3. **Demand for trial by jury.** If the opposing party desires trial by jury when trial by court has been demanded in the removal, or trial by jury of twelve when trial by jury of six has been demanded in the removal, he shall: (a) serve a demand for trial by jury of six or twelve on the aggrieved party, (b) file the demand with proof of service with the clerk of conciliation court within ten days after the demand for removal was served upon him, and (c) pay to the clerk of conciliation court at the time of such filing a fee of \$6 if he demands a jury of six,

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\$12 if he demands a jury of twelve or \$6 if he demands a jury of twelve instead of six previously demanded by the aggrieved party.

Subd. 4. **Waiver of trial by jury.** If a jury of six or twelve is not demanded within the time limits and in the manner provided in this act, all parties waive trial by jury.

Subd. 5. **Removal, when perfected; vacation of order for judgment; certificate by judge.** When all removal papers have been properly filed and all requisite fees have been paid by the aggrieved party as herein provided, the removal is perfected. Thereupon the conciliation judge shall make and file an order vacating the order for judgment in conciliation court.

Subd. 6. **Clerk's duties upon removal.** After the judge's order has been filed, the clerk of conciliation court shall pay over to the municipal court the removal and jury fees paid to him hereunder and shall file in municipal court all claims, orders and other papers filed in conciliation court in connection with the cause and its removal to municipal court.

Subd. 7. **Pleadings.** No note of issue for trial in municipal court need be filed. The removed cause shall be brought on for trial in the same manner and substantially the same order as though a note of issue had been filed in municipal court on the date the claim was filed in conciliation court. Pleadings conforming to the Municipal Court Rules of Civil Procedure shall be served and filed. If any party fails to serve and file written pleadings within 30 days after removal has been perfected the municipal court shall order a dismissal of the action or a default therein as the case may be, or such other relief as the court deems proper.

Subd. 8. **Issues for trial, amendments.** The issues for trial in municipal court shall be those in conciliation court, but a party may be allowed to amend the issues in municipal court on motion following the same procedure and subject to the same limitations as would apply if the motion were for amendment of the pleadings after a responsive pleading had been served in an action originally brought in municipal court. The court may grant an amendment which increases the amount claimed by either party to an amount in excess of the jurisdiction of conciliation court but not in excess of the jurisdiction of municipal court. The court may allow pleadings to be amended to add a new cause of action by way of counterclaim or otherwise.

Subd. 9. **Costs and disbursements for prevailing party.** (a) The prevailing party in a removed cause may tax and recover from the other party \$5 as costs together with his disbursements incurred in conciliation and municipal court.

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

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

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

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

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

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

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

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

Subd. 10. **Pleading, practice, and procedure.** Except as otherwise expressly provided in this act, pleading, practice and procedure in a removed cause are the same as in an action originally brought in municipal court.

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Subd. 11. **Appeal to supreme court.** Causes removed to municipal court from conciliation court may be removed from municipal court to the supreme court of Minnesota in the same manner, upon like proceedings and with the same effect as causes originally brought in the municipal court.

[1961 c 437 s 6; 1967 c 747 s 11, 12]

MUNICIPAL COURT, DULUTH

488A.35 ESTABLISHMENT; JURISDICTION; POWERS. Subdivision 1. **Establishment confirmed.** The municipal court now existing in the city of Duluth, in the county of St. Louis and state of Minnesota, is hereby confirmed, continued and established as a court for the transaction of all judicial business lawfully brought before it. The sessions of said court shall be held in the said city of Duluth, at some suitable place to be provided by the city council of said city. Said court shall be a court of record and shall have a clerk and a seal, and the jurisdiction of said court shall be coextensive with the limits of the county of St. Louis, except as hereinafter provided.

Subd. 2. **Jurisdiction.** Said court shall have jurisdiction to hear, try and determine civil actions and proceedings as follows:

(1) Any action arising on contract for the recovery of money only, if the sum claimed does not exceed \$4,000, exclusive of interest accruing after commencement of said action, and costs and disbursements.

(2) Any action for damages for an injury to the person, or to real property, or for taking, detaining or injuring personal property, if the damages claimed, or, in replevin, the value of the property in controversy, does not exceed \$4,000, exclusive of interest accruing after the commencement of said action, and costs and disbursements.

(3) Any action for a penalty, given by statute, not exceeding \$4,000, exclusive of interest accruing after the commencement of said action, and costs and disbursements.

(4) Any action upon a bond, conditioned for the payment of money, not exceeding \$4,000, exclusive of interest accruing after the commencement of said action, and costs and disbursements, though the penalty exceeds that sum, the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for each installment as it becomes due.

(5) Any action upon official bond, or bond taken in said court; if the penalty does not exceed \$4,000.

(6) To take and enter judgment on the confession of a defendant, when the amount does not exceed \$4,000, exclusive of interest accruing after the commencement of said action, and costs and disbursements.

(7) To hear and determine all questions that may arise in actions before it under Minnesota Statutes, Chapter 566 and the amendments thereto, relating to forcible entries and unlawful detainer, whether involving the title to real estate or otherwise.

(8) Said court shall also have all the powers of jurisdiction conferred by law upon justices of the peace in this state.

Subd. 3. **Powers, criminal cases, bail, contempt.** To hear all complaints and conduct all examinations and trials in criminal cases under the general laws of the state of Minnesota, arising or triable in the county of St. Louis and cognizable before a justice of the peace, or arising under the charter, ordinances, regulations, or bylaws of the said city of Duluth, and said court shall have the power to fix bail in all cases where bail is allowed to be given under the laws of this state; and in all such cases the person required to give bail may in lieu thereof deposit in said court a sum of money—legal tender of the United States—equal the amount of the bail so fixed. Said court shall have power to punish for contempt of court by a fine not exceeding \$100 or by imprisonment for a period not exceeding 85 days.

Subd. 4. **Limitations to jurisdiction.** The jurisdiction of said court, however, shall not extend:

(1) To any civil action involving the title to real estate, save and except an action brought under and pursuant to chapter 76 of the General Statutes of Minnesota of 1913 and the amendments thereto.

(2) To any action for divorce, or any action wherein the relief demanded in the complaint is equitable in its nature.

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(3) To any action against an executor or administrator as such.

Subd. 5. **Powers and duties.** Said court shall have full power and authority to issue all process, civil and criminal, necessary or proper to carry into effect the jurisdiction given it by law, and its judgment and other determinations, save as hereinafter provided. And it shall have and possess all the powers usually possessed by courts of record at common law, subject to the modifications of the statutes of this state, applicable to courts of record. And said court is hereby vested with all powers over cases within its jurisdiction which are possessed by district courts of this state over cases within their jurisdiction; and all laws of a general nature shall apply to said municipal court, so far as the same are applicable and not inconsistent with the provisions of this act; provided that said municipal court shall not have power to issue a writ of habeas corpus, quo warranto, ne exeat, mandamus, prohibition, or injunction, and provided further, that if, on the return of process, or at any time not later than one day before the commencement of the trial or hearing of any action or proceeding, civil or criminal, pending in said court, any party may make and file with the judge then presiding an affidavit stating that on account of bias or prejudice or other cause he has good cause to believe that the judge then presiding will not decide impartially in the matter, the said municipal judge shall forthwith, without any further act or proof, secure another judge of the said court to preside at the trial of such civil or criminal cause, or hearing of motion, demurrer, or order to show cause.

[1923 c 238 s 1-5; 1925 c 85 s 1; 1941 c 300 s 1; 1955 c 200 s 1; 1959 c 296 s 1]

NOTE: With reference to General Statutes of Minnesota of 1913, Chapter 76, see Minnesota Statutes, Sections 566.01-566.17.

488A.36 JUDGES, TERM, ELECTION. Subdivision 1. **Number of judges; term.** There shall be two judges of said municipal court, the term of office of each of which is six years. On the first Tuesday in April, 1957, and every six years thereafter, two judges of said court shall be elected. Each judge shall assume the duties of the office for which he is elected on the second Monday next succeeding his election at 12 o'clock noon.

Subd. 2. **Election.** After the first Tuesday in April, 1957, when the judges of the court are to be nominated or elected at a city election, the notice of election shall state the name of each judge whose successor is to be nominated or elected. The official ballot shall contain the names of all candidates for each such office and the number of candidates for whom an elector may vote, and designate each candidacy as "For the office of judge of the municipal court of the city of Duluth to which (name of judge) was elected for a regular term" or "for the office of judge of the municipal court of the city of Duluth to which (name of judge) was appointed," as the case may be. The official ballots shall show in the spaces for the purpose the name of the judge whose successor is to be elected. When any judge is a candidate to succeed himself, the word "incumbent" shall be printed after his name where it appears among the names of the candidates for the office. When voting machines are used and such statements cannot be inserted in full, the designation shall be "successor to (name of judge), elected" or "successor to (name of judge), appointed," as the case may be. Each person desiring to have his name placed on the primary ballot as a candidate for judge shall state in his affidavit of candidacy the office of the particular judge for which he is a candidate. The filing of this affidavit with the city clerk and a compliance with all other requirements constitutes such person a candidate for that office, and for that office only. No person shall at any election be a candidate for more than one such office.

Subd. 3. **Special judge.** There shall also be a special judge of said municipal court, having the same powers and qualifications as said other judges, and whose term of office and election thereto, and the filling of any vacancy, shall be the same as those of said other judges. The special judge is empowered to hold court only when directed to do so because of the press of business of said court, or because of the sickness or inability to serve of one of the judges. In case the special judge shall hold court, he shall receive compensation for such service at the rate of \$75 per day. The special judge may practice in the municipal court and act as attorney in any case tried therein except one in which he sits, or is expected to sit, as presiding judge.

[1923 c 238 s 6; 1941 c 300 s 2; 1955 c 200 s 2; 1957 c 255 s 1; 1959 c 296 s 2; 1965 c 771 s 1; 1967 c 651 s 1]

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488A.37 WEST DULUTH DIVISION; FUTURE ABOLITION AND MERGER.

Subdivision 1. Except as hereinafter provided the West Duluth division of the said municipal court shall remain as now established, and the assistant judge of the said municipal court for said division shall have all the powers of the other judges of said court, but shall not be required to hold court in the city proper, unless directed to do so because of the inability of the other judges to do the business of said court, or because of the sickness or inability to serve of one of the other judges. In case either said assistant judge or the conciliation judge for the municipal court does hold court at the municipal court rooms in the city proper, as fixed by law, he shall receive additional compensation at the rate of \$10 for each day necessarily spent, but when he spends less than one-half of a day, he shall be allowed only \$5 therefor, notwithstanding the provisions of any existing act in conflict herewith.

Subd. 2. The council shall provide a suitable place for holding court in that portion of the city of Duluth known as West Duluth and a place where the business of the clerk, having in charge that division of the court's business, may keep his office and attend to the business of said court. The clerk of the municipal court shall assign to some deputy of his office the work of attending to the business of the West Duluth division.

Subd. 3. The assistant judge of the said municipal court shall hold sessions for the care of criminal business as often as necessary. In case of sickness or inability of the said assistant judge of the said municipal court to hear any case, the same may be heard by either of the other judges of said court.

Subd. 4. A record of cases tried and to be tried in said West Duluth division of said court shall be kept by the said clerk the same as the record of cases is kept in said municipal court proper, and all papers, records and documents pertaining to cases tried in said West Duluth division of said court shall be kept on file in the West Duluth office unless ordered otherwise by the judges of said court, and there shall be added on the face and back thereof wherever the name of the court occurs, the additional words: "West Duluth Division."

Subd. 5. Notwithstanding the provisions of any existing act to the contrary, neither the assistant judge nor the conciliation judge for the municipal court shall practice in the municipal court or act as attorney in any case to be tried in said court.

Subd. 6. When the present term of office of the person who holds the office of assistant judge of the municipal court of the city of Duluth expires, or if a vacancy shall occur in said office prior thereto, the West Duluth division of said court and the office of said assistant judge are abolished. At that time the said West Duluth division is merged in the municipal court proper, and the powers, functions, duties and authority of the assistant judge are transferred to, vested in and imposed upon the judges of the said municipal court. The provisions of Laws 1951, Chapter 615, Section 4, shall govern the salary of the assistant judge during the time that office shall remain in existence.

[1923 c 238 s 7; 1941 c 300 s 3; 1955 c 200 s 3]

NOTE: See section 488A.66, for salary provisions.

488A.38 QUALIFICATIONS OF JUDGES. Each judge of said court shall be a resident of the city of Duluth, a person learned in the law and duly admitted to practice as an attorney in the courts of the state, and before entering upon the duties of his office, he shall take and subscribe an oath as prescribed by the general statutes for judicial officers, which oath shall be filed in the office of the city clerk of said city.

[1923 c 238 s 8]

488A.39 JUDGES; POWERS AND DUTIES. Subdivision 1. The judges of said court shall have the general powers of judges of courts of record, and may administer oaths, take and certify acknowledgments in all cases, and as conservators of the peace, shall have all power and authority which is or may hereafter be vested in justices of the peace, or any other judicial officer of this state.

Subd. 2. They shall see that the criminal laws of this state and the ordinances, laws, regulations and bylaws of said city are observed and executed; and for that purpose shall open said court every morning, Saturday, Sunday and legal holidays excepted, proper provision being made for bail to appear the next open day following such Saturday, Sunday or legal holiday and proceed to hear and dispose of all cases which shall be brought before them by the police officers of said city.

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or otherwise, either with or without process for the violation of the criminal laws of this state committed within the county of St. Louis, and to hear, try and determine in a summary manner all cases of violation of the ordinances, laws, regulations and bylaws of said city. Provided, however, court shall be open every Saturday morning when the Friday immediately preceding or the Monday next succeeding has been or will be observed as a legal holiday.

Subd. 3. Said judges shall have power to make and prescribe such rules and regulations for the government of said court and the dispatch of business coming before it, as shall by them be deemed proper, and as shall not be inconsistent with the provisions of this act and the laws of the state.

Subd. 4. Each judge of said court shall have power, both before and after commitment, to reduce, commute or stay any sentence imposed by him in any case, or to parole any person convicted when it is made to appear to the satisfaction of said judge that such action will be for the best interests of the public and of such convicted person.

[1923 c 238 s 9; 1931 c 57 s 1; 1955 c 200 s 4]

488A.40 CLERKS, DEPUTIES, RECORDS. Subdivision 1. **Appointment, oath, bond.** There shall be a clerk of said municipal court, who shall be appointed by the judges of said court, and the said judges shall have the power to remove said clerk at pleasure. Such clerk, before he enters upon the duties of his office, shall take and subscribe an oath to support the constitution of the United States and of the state of Minnesota, and to faithfully and honestly discharge and perform the duties of his office, and shall execute to the city of Duluth a bond in such sum and with such sureties as the city council shall direct and approve, conditioned that he will account to and pay over to the treasurer of said city, on each day, all fines, penalties, fees and other money belonging to or to go to said city which may have come into his hands during said day, and that he will at all times pay over to all persons on demand, all money to which they may be entitled which may have come into his hands in virtue or by reason of his office, and that, at the end of his term of office, he will forthwith pay over to the city of Duluth all money to which said city shall then be entitled, and to his successor in office all other money then remaining in his hands by virtue of his office. Such oath and bond shall be filed in the office of the auditor of said city.

And the city auditor shall, on or before the tenth day of each month, examine the books and records of said court, and the reports of the said clerk for the month next preceding, and make report to the city council of his findings immediately thereafter.

Subd. 2. **Deputy clerks, employees; powers, duties.** The clerk of said court, with the consent and approval of the judges shall have the power to appoint a chief deputy clerk with like powers of the clerk, but acting under authority of said clerk, three senior deputy clerks, one to serve as clerk for the conciliation court established pursuant to Laws 1927, Chapter 17, and two deputy clerks who shall have like powers as said senior deputy clerks. The clerk of said court, under the direction of the judges of said court, may, with the consent and approval of the council of the city of Duluth, appoint one or more additional deputy clerks of said court, in case, in their judgment, necessity therefor arises. Said clerk and deputy clerks shall have full power and authority to administer oaths, swear witnesses and jurors; and said clerk, deputy clerks, probation officer and the bailiffs or court officers shall perform such duties as the judges shall direct and shall have power to serve all process of said court, whether civil or criminal, when directed by the court, and all other powers and authority in this act provided for either thereof, and are vested hereby with the usual powers of constables at common law and with the powers and authority of police officers of the said city of Duluth. If the judges of said court shall so direct, the clerk of said court shall assign one senior deputy clerk to assist the probation officer in the performance of his duties. Each of the said deputy clerks before entering upon the performance of the duties of his office shall first take and subscribe an oath in form as prescribed and execute to the city of Duluth for the use and benefit of said city and all persons injured by failure to observe its conditions a bond in such sum and with such sureties as the city council may approve, conditioned that he will account and pay over to the clerk of the said court on each day all moneys belonging to or to go to said city, and that he will at all times pay over to said clerk of said court on demand all moneys to which

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any person may be entitled which may have come into his hands in virtue or by reason of his office.

Subd. 3. Clerk to be custodian of records. The clerk shall have the custody and care of all books, papers and records of said court, and of the furniture of the court rooms, jury rooms, and other officers of said court, and shall, from time to time, under the direction of the judges, procure and furnish all necessary equipment, blanks, stationery, record and law books, court room, jury room, and office furniture and furnishings and lights, and fuel for the use of the court and the offices thereof, at the expense of the city. He shall be present in court by himself or deputy, unless absent from sickness, or by consent of the judges and in case of absence of both clerk and deputy, the judges may appoint some person temporarily to the position. He may swear all witnesses and jurors, and administer all other oaths and affidavits, and take acknowledgments. He shall have the same power and authority in reference to garnishee disclosures as are by law conferred upon clerks of the district court. He shall keep minutes of all proceedings and enter all judgments, orders and sentences, issue commitments as well as other writs and process, and make up and keep the records of the court under the direction of the judges and when a judge is not present, adjourn the court from day to day. He shall tax all costs and disbursements allowed in every action, subject to review by the judges and do all other acts and things necessary or proper to the enforcing and carrying out of the jurisdiction of the court. He shall receive all fines, penalties and fees of every kind accruing to the said court, or any officer thereof, including police or other peace officers, and keep full, accurate and detailed accounts of the same, and shall on each day deliver over to the city treasurer of the city of Duluth all moneys so received with detailed accounts thereof, except such fines as are collected under prosecutions for violations of state laws, which moneys shall at least once in each week be delivered by the said clerk to the county treasurer of the county of St. Louis with detailed accounts of the same. The said city treasurer and county treasurer respectively shall deliver to said clerk receipts for all moneys received by him as hereinbefore provided. Provided, that the foregoing shall not apply to fines that are to be delivered to the state treasurer of the state of Minnesota under and pursuant to the statutes in such cases made and provided.

Such clerk as well as the judges of said court are hereby made conservators of the peace, and vested with the same authority, discretion and power to act on receiving complaints and issuing warrants of said court in criminal cases.

Subd. 4. Destruction of records. (a) Upon order of all the judges, the clerk may dispose of all the following types of files and records of the court which are more than ten years old:

- (1) All general and special term calendars including unlawful detainer.
- (2) Court reporter notes except in criminal cases.
- (3) Receipt books, cancelled checks for the municipal court, probation officer and personal receiver.
- (4) Judges' docket sheets, bail receipts, and cash sheets.
- (5) Conciliation court calendars, receipt books, and cancelled checks.
- (6) Court officer records.
- (7) Court journals and judges' records.

(b) Upon order of all the judges, the clerk may destroy or dispose of all files and related records of civil actions, conciliation court files and unlawful detainer actions which were commenced more than 20 years prior to the judges' order. A copy of such order shall be sent to the Minnesota state archives commission and St. Louis county historical society. If no petition or application requesting the records under Minnesota Statutes, Section 138.17, is received by the court within 30 days after mailing of the order, the records shall be destroyed by the clerk having custody.

[1923 c 238 s 10-12; 1925 c 85 s 2; 1941 c 300 s 4; 1949 c 429 s 1; 1951 c 615 s 1; 1955 c 200 s 5; 1959 c 296 s 3; 1963 c 367 s 1-3]

488A.41 CITY ATTORNEY TO BE PROSECUTING ATTORNEY. The city attorney of the city of Duluth shall have charge of the prosecution of all criminal cases in said court within the city limits which are not indictable and the county attorney of St. Louis county shall act in the prosecution of all offenders charged with indictable offenses when required by law to prosecute before justices of the peace, or otherwise.

[1923 c 238 s 13]

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488A.42 COURT REPORTERS. Subdivision 1. **Appointment.** The judges of said court or a majority of them may employ and appoint one reporter to make in shorthand writing a true record or report of the proceedings and evidence taken upon the trials of issues of fact in said court and of all examinations held therein, and, when required by the court or either of the parties to such trial or examination, to transcribe such record and report into longhand. And when, by reason of pressure of business the services of one or more reporters are required in addition to the reporter regularly appointed as hereinbefore provided, the clerk of said court shall, by direction of the court, procure some competent person or persons to serve as such additional reporter or reporters, and such additional reporter or reporters shall each receive as compensation therefor the sum of \$20 for each half day or fraction thereof, or \$30 for a full day, so serving.

Subd. 2. **Oath; duties.** Before any such reporter shall enter upon the performance of his duties he shall take and subscribe an oath similar to the oaths required of the reporter in the district courts of the said state, and file the same with the clerk of the said municipal court. The evidence and proceedings in trials of issues of fact in the said municipal court shall be reported in like manner as in the district courts of this state. In the performance of his duties said reporter or reporters shall be subject to the orders and directions of the said court, and the judges may at any time discharge any such reporter or reporters and employ and appoint another.

Subd. 3. **Transcripts.** The official or additional reporters of said court shall, upon the written request of either of the parties to an action, proceeding or examination, transcribe his record into ordinary writing or print, and the party requesting such transcription shall pay to said reporter or additional reporter the same transcript rates as paid to reporters operating in the district courts of this state.

[1923 c 238 s 14-16; 1941 c 300 s 5; 1961 c 188 s 1, 2; 1965 c 771 s 2, 3]

488A.43 TERMS; CALENDAR. Subdivision 1. **Terms of court.** Said court shall hold regular terms for the transaction of civil business and the trial of civil actions to the court without a jury on the first Monday of every month, except the months of July and August, and at said regular terms in the months of February, April, June, September and December, civil actions may also be tried to a jury, which terms shall continue from day to day, with such adjournments as the court may deem proper, until the business of such term shall be finished. Provided, that any judge of said court may set cases for hearing and trial upon any day in that or any subsequent term, and provided further that if the first Monday of any month in which a term of court is to be held is a legal holiday, then the term shall commence on the next succeeding day.

The terms of said court shall open at 9:30 o'clock in the forenoon. All proceedings in civil causes shall be conducted in a room separate and apart from the room wherein criminal proceedings are being conducted.

Subd. 2. **Calendar.** The clerk of the court shall, prior to each term of the court, make up a calendar of the causes which will come up for trial, or for any other disposition before the court, at such term, adopting such arrangements as the judges may direct.

[1923 c 238 s 17, 18; 1931 c 57 s 2; 1941 c 300 s 6]

488A.44 PLEADING, PRACTICE, AND PROCEDURE. All civil actions and proceedings in said court shall be commenced and conducted as prescribed by the statute regulating the commencement, pleading, practice and procedure in the district courts of this state, as far as the same may be applicable, except, however, as in this act otherwise provided.

The defendant in any civil action begun in the said municipal court of the city of Duluth may have a change of venue therefrom to another municipal court within the county of St. Louis, if said court be the municipal court within said county nearest his place of residence, by making a demand in writing therefor within the time allowed for answering, accompanied by an affidavit by himself, his agent or attorney, stating definitely his place of residence and the location of the nearest municipal court thereto within the said county of St. Louis. Said demand and affidavit, with proof of service thereof upon the plaintiff's attorney, shall be filed with the clerk of the municipal court of the said city of Duluth within 15 days from the date of its service, and thereupon the place of trial shall be changed to the municipal court within said county nearest the residence of the defendant without any further proceedings. Provided, that in any action com-

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menced in the said municipal court wherein the amount in controversy is in excess of \$500, the place of trial of such action shall be determined in the same manner as provided by Chapter 302, Laws of Minnesota, 1921, with reference to actions commenced in the district court of St. Louis county and when the place of trial shall have been determined, as provided by said act, to be at a place other than the county seat of said county, said action shall be tried in the said district court of said county as though originally commenced therein.

[1923 c 238 s 19; 1925 c 85 s 3]

488A.45 TIME LIMITATION. The time within which any act is to be done in this court shall be one-half of the statutory period prescribed in the district court proceedings. Provided,

(1) That no such period shall be less than three days, except as herein provided;

(2) That two days' notice of taxation of costs shall be given;

(3) Notes of issue shall be filed at least four days before the term, and notices of trial shall be served at least four days before the term;

(4) The time within which motions for new trials and appeals may be made or taken shall be the same as in the district court;

(5) The practice and proceedings in actions under Chapter 76, of the General Statutes of Minnesota of 1913, and the amendments thereto, shall be the same as in justice's court, except that the summons shall be issued by the clerk and be made returnable not less than three nor more than ten days from the day of issuing the same, and except further that any pleading under said Chapter 76 may be verified before any person authorized by the laws of the state of Minnesota to take acknowledgments; and except further that the trial of actions and appeals thereon under said chapter 76 shall be conducted the same as is the ordinary civil action in said court.

Provided: That where personal service of the summons and complaint is made on the defendant as required by law and no answer is interposed or appearance made on the part of the defendant on the return day judgment for possession may be entered by the clerk without formal proof, upon the filing of an affidavit of default by the complainant;

(6) The notice required of the taking of depositions to be used in said court shall be the same as in the district courts of this state;

(7) Defaults may be opened and judgments and orders set aside or modified, for good cause shown, within 30 days after the party affected thereby shall have notice or knowledge of the same.

[1923 c 238 s 20; 1929 c 241 s 1]

NOTE: With reference to General Statutes 1913, Chapter 76, see Minnesota Statutes, Sections 566.01-566.17.

488A.46 COUNTERCLAIM; RETURN TO DISTRICT COURT. Whenever it shall be made to appear that a counterclaim in excess of \$4,000, exclusive of interest accruing after the commencement of said action, and costs and disbursements, or any equitable defense or ground for equitable relief is interposed, or that the title to real estate is involved save as provided in section 488A.35, subdivision 2, paragraph (7) or, if by leave of the court either the complaint of the plaintiff or the counterclaim of the defendant is amended so as to claim damages in excess of \$4,000, exclusive of interest accruing after the commencement of said action, and costs and disbursements, said court shall immediately cause an entry of the fact to be made of record and cease all further proceedings in the case, and within 20 days thereafter without additional fees the clerk shall certify and return to the district court of said county of St. Louis a transcript of all entries made in the record relating to the case, together with all process and other papers relating to the suit. The district court shall proceed in the cause to final judgment and execution according to law, the same as if said suit had been originally commenced in the district court, and the costs shall abide the event of the suit.

[1923 c 238 s 21; 1957 c 255 s 2; 1961 c 188 s 3]

488A.47 ATTACHMENT, REPLEVIN, GARNISHMENT. Proceedings by attachment, replevin, or garnishment in said court, shall be conducted as in the district courts of this state; provided, that the bonds required in such proceedings shall be executed with sufficient sureties and be in double the amount claimed in attachment, and not less than the sum of \$250, or in double the value of the property claimed in replevin, and all bonds required or allowed in such proceedings

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shall be approved by one of the judges of said court. And provided further, that in garnishment proceedings the summons may be served on the garnishee by an officer or any person not a party to the action, at any place within the state, and the service in all cases be personal, but notwithstanding any other law, such service shall become null and void unless not later than one day after such service the original or a copy of the summons and complaint in the main action between the parties shall have been filed in the office of the clerk of said municipal court. The disclosure of the garnishee shall be made and all further proceedings had in the same manner as if the proceedings were in district court, except, however, that the summons shall require disclosure within ten days after service, service upon the defendant of the garnishee summons shall be made within ten days after service upon the garnishee. And provided further that no judgment shall be rendered against the garnishee when the judgment against the defendant is less than \$10, exclusive of costs, nor when the indebtedness of the garnishee to the defendant, or the value of the property, money, or effects of the defendant, in the hands or under the control of the garnishee, as proved, is less than \$10.

[1923 c 238 s 22; 1951 c 615 s 2]

488A.48 DEPOSITIONS, TENDERS, STAYS, CONFESSION OF JUDGMENT.

Subdivision 1. **Depositions.** Depositions may be taken and used in said court in like manner as in the district court.

Subd. 2. **Tenders of money.** Tenders of money may be pleaded and made in said court in like manner and with like effect, as in the district court.

Subd. 3. **Stay of execution.** Execution may be stayed in this court in like manner, as in the district court.

Subd. 4. **Confession of judgment.** Judgment may be confessed and filed and entered in said court in like manner, as in the district court.

[1923 c 238 s 23-26]

488A.49 ACTIONS INVOLVING TITLE TO REAL ESTATE TRANSFERRED TO DISTRICT COURT. Subdivision 1. **Transfer.** Whenever the title to real estate for the possession of which action is brought under chapter 76 of the General Statutes of 1913 and the amendments thereto, is involved and determined in this court, the person aggrieved thereby may, after written notice of the judgment entered in such action, apply to the court, and have said cause transferred to the district court for the county of St. Louis, upon complying with the following requisites:

(1) He shall deposit with the clerk of the said municipal court, for the use of the persons entitled thereto, the amount of costs and disbursements included in said judgment.

(2) Within 24 hours after notice of such judgment he shall serve upon the adverse party a notice in writing of at least three days, stating that he will apply to the court at the next regular term thereof, occurring not less than four days after such judgment is entered, naming such term, for an order of the court certifying said cause to the district court of the county of St. Louis, for a second trial, and that he will then apply to the court to fix the amount of the bond hereinafter provided for and that he will then propose the name of (insert names), as sureties in such bond.

(3) The amount of the bond having been fixed by the court and the proposed sureties approved, such bond conditioned that the party aggrieved will pay the costs of such second trial and abide any order the court may make therein, and pay all rents, issues, profits and damages justly accruing to the adverse party during the pendency of the action, shall be filed with the clerk of said municipal court within five days thereafter.

Subd. 2. **Bond.** Upon the filing of such bond the court shall make an order directing that the cause be certified to the district court for a second trial therein.

Subd. 3. **Clerk to certify proceedings.** The clerk of the said municipal court shall, within ten days after the filing of such order, certify the cause, and all papers of record therein, to the district court, and thereafter all proceedings in said action shall be had and conducted in said district court.

Subd. 4. **Proceedings stayed.** Upon the filing the notice provided for in sub-

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division 1(2) together with proof of service upon the adverse party, all proceedings in the action shall be stayed in this court until the further order of the court.

[1923 c 238 s 27-30]

NOTE: With reference to General Statutes 1913, Chapter 76, see Minnesota Statutes, Sections 566.01-566.17.

488A.50 PROCESS; FORMS. The judges, or a majority of them, may designate one of their number in whose name process shall be tested and issued under the seal of the court and signed by the clerk, and directed for service to any police officer of the city of Duluth, or the sheriff or any constable of the said county of St. Louis, except as herein otherwise provided. Provided that process tested in the name of any judge of said court shall be valid.

The forms of process may be prescribed by the court by rule or otherwise, and any form so prescribed shall be valid and sufficient, and such form may be changed by the court at any time. In the absence of such prescribed form, the forms of the process in use in the district courts of this state may be changed and adapted to the style of the court, and used at the discretion of the court.

[1923 c 238 s 31]

488A.51 SERVICE OF SUMMONS AND SUBPOENAS. Summons and subpoenas may be served by any police officer of the city of Duluth, or by any sheriff or constable of the county of St. Louis, or by any other person not a party to the action, and the service shall be made and the summons returned and filed with the said clerk of the said court with all reasonable diligence.

[1923 c 238 s 32]

488A.52 COMPLAINTS IN CRIMINAL ACTIONS. Complaints in criminal cases, where the defendant is not in custody, may be made to the court, or a judge, or a clerk and shall be made in writing, or be reduced to writing by the Judge or clerk and sworn to by the complainant, whether the offense charged be a violation of the criminal laws of the state or of the ordinances, regulations, or bylaws of said city. Complaints, warrants and other process in criminal cases may follow substantially the forms heretofore in use by justices of the peace, with such alterations as may be convenient to adapt the same to the style of this court, or may be in such other form as the court may prescribe, sanction or approve.

In cases where alleged offenders shall be in custody and be brought before the court or the clerk without process, the clerk shall enter upon the records of the court a brief statement of the offense with which the offender is charged, which statement shall stand in place of a complaint, unless the court shall direct a formal complaint to be made. The plea of the defendant shall be "guilty" or "not guilty." In case of a failure to plead the clerk shall enter a plea of "not guilty," and a former acquittal or conviction for the same offense may be proved under the plea of "not guilty" with like effect as if formally pleaded.

In the examination of offenders charged with indictable offenses, such minutes of the examination shall be kept as the court may direct, and be properly returned to said court before which the party charged with the offense may be bound to appear.

[1923 c 238 s 33]

488A.53 PROBATION OFFICERS. There shall be appointed by the judges of said court a probation officer, who shall hold his office at the pleasure of said judges.

The probation officer or the deputy clerk assigned to assist him shall be present at every session of the court. He shall receive all persons placed on probation by said court and committed to his care during such probation period and perform such acts with reference to them as the judgment of the court may direct.

Such probation officer shall make such reports as the court may require and shall be provided by the clerk of said court with the necessary books, blanks, stationery, postage and other expenses for the execution of his duties in the same manner as the other expenses incident to the court are provided for.

[1923 c 238 s 33A; 1925 c 85 s 8; 1955 c 200 s 6]

488A.54 CIVIL ACTIONS; COSTS, DISBURSEMENTS, ATTORNEYS FEES. Subdivision 1. **Costs.** Costs shall be allowed to the prevailing party in actions commenced in this court as follows:

(1) To the plaintiff upon judgment in his favor, upon a trial upon the merits when the amount thereof or the value of the personal property recovered, exclusive of disbursements, exceeds \$50, \$5;

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(2) To the plaintiff upon judgment in his favor, upon a trial upon the merits when the amount thereof or the value of the personal property recovered, exclusive of disbursements, exceeds \$100, \$10;

(3) To the plaintiff upon judgment in his favor of \$50 or more, exclusive of disbursements, or in actions of replevin when the value of the personal property involved is \$50 or more, when no issue of fact or law is joined, \$5;

(4) To the plaintiff upon judgment in his favor upon an action arising under chapter 76, General Statutes 1923, relating to forcible entries and unlawful detainers, \$5;

(5) To the defendant upon dismissal, or discontinuance after appearance on the part of the defendant, \$5, with all disbursements, incurred or paid;

(6) To the defendant upon judgment in his favor upon a trial upon the merits, \$5, exclusive of disbursements.

(7) To the defendant upon judgment in his favor upon a trial upon the merits when the money or the value of the property claimed in the complaint, or in his counterclaim, exceeds \$100, \$10, exclusive of disbursements.

(8) Costs may be allowed on a motion or demurrer, in the discretion of the judge, not exceeding \$10, and may be made absolute or directed to abide the event of the action.

(9) Save as hereinbefore provided, costs shall be allowed in all cases to the prevailing party, as in the district court.

Subd. 2. **Disbursements.** Disbursements necessarily made or incurred shall in all cases be allowed to the prevailing party.

Subd. 3. **Taxation and allowances and attorneys' fees.** Costs and disbursements shall be taxed and allowed by the clerk of said court after two days' notice. The judges have power to prescribe by rule a schedule of attorney's fees in default cases wherein the defendant has agreed in writing to pay a reasonable attorney's fee. The said clerk is authorized without reference to the court to tax and allow as costs the fees permitted by such schedule, provided such fees have been pleaded and the defendant's written promise to pay said fees has been filed with the clerk. In any case submitted to the court for hearing and order, attorney's fees shall be fixed by order of the court in such amount as the court may deem proper.

[1923 c 238 s 34-36; 1927 c 33 s 1; 1931 c 57 s 3; 1955 c 200 s 7, 8]

NOTE: With reference to General Statutes 1923, Chapter 76, see Minnesota Statutes, Sections 566.01-566.17.

488A.55 CLERK'S FEES, CIVIL CASES. A party in any civil action, upon filing any pleading or paper in opening said action, shall pay to the clerk of said court, the sum of \$3 for the use and benefit of the city of Duluth, which sum shall be in full for all costs and fees of said court and clerk, up to and including the entry of judgment, and no rebate shall be allowed to any person making such payment; provided that the fees and charges for certifying copies of any papers on file with the said clerk, shall be at the rate of five cents for each folio, and 25 cents for the certificate, excepting in cases where such copies are furnished for certification by the person requiring the same, in which event the said clerk shall charge and receive two and one-half cents per folio for comparing and certifying the same and 25 cents for the certificate; provided further that no police officer of said city shall be required to serve any paper in any cause until the action shall have been opened and the required fee paid as hereinbefore provided; and provided further, that for each writ of execution and each transcript of judgment to the district court issued from and by said court, said clerk shall charge and receive the sum of \$1, and that police officers to whom writs and other process of the court are delivered shall charge and collect the same fees as are by law allowed to the sheriff of the county of St. Louis for like services, such fees to be paid by said police officers to the clerk of said court for the use and benefit of said city of Duluth.

[1923 c 238 s 37; 1951 c 615 s 3; 1963 c 365 s 1]

488A.56 CRIMINAL CASES, COSTS; WITNESS AND INTERPRETER FEES. Subdivision 1. In all criminal cases tried and determined in said court in which the defendant is convicted, the clerk shall tax as costs of the court:

(a) Where no warrant is issued and the defendant pleads guilty, \$5; (b) where a warrant is issued and the defendant pleads guilty, \$7.50; (c) where the defendant pleads not guilty and is tried by the court and found guilty, \$10; (d) where the defendant pleads not guilty and is tried by a jury and found guilty, \$20; said sums respectively to be in addition to all costs of witnesses and interpreters.

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Subd. 2. In cases where the defendant is found guilty and pays the fine and costs the clerk shall immediately pay to any witness or interpreter testifying on behalf of the state or city the fees they may be entitled to receive. In cases where the defendant is found not guilty, or is found guilty and fails to pay the fine and costs, then the fees of said witnesses and interpreter shall, in all cases where the state is a party, be chargeable to the county of St. Louis, and in cases to which the city of Duluth is a party such fees shall be chargeable to the city of Duluth.

Subd. 3. When the fees of any witness or interpreter are chargeable to the county of St. Louis, the clerk shall deliver to each witness or interpreter a certificate for the number of days and miles traveled, for which he is entitled to receive compensation. The certificate is filed with the county auditor, who issues his warrant upon the county treasurer for the amount due, which certificate becomes a sufficient voucher for the issuance of the warrant. When the fees of witnesses or interpreters are chargeable to city of Duluth, the clerk certifies an order for such witnesses or interpreters for the amount due. The order may be presented to the city treasurer for payment and when so paid becomes a sufficient voucher for such payment.

Subd. 4. The fees of all witnesses and interpreters on the part of the state, in any preliminary examination of offenders charged with an indictable offense, or in proceedings under Minnesota Statutes, Sections 257.18 to 257.30 shall be chargeable to the county of St. Louis, and shall be paid in the manner hereinbefore provided for the payment of witnesses and interpreters in criminal actions where the state is a party. Except as herein provided, no costs in criminal actions shall be taxed or charged against the city of Duluth, the county of St. Louis or the state of Minnesota: Provided, that the judges of said court shall have power in their discretion to order the witness fees of any defendant in any criminal action who shall be acquitted after trial or examination to be paid in the same manner as witnesses for the prosecution.

[1923 c 238 s 38; 1955 c 200 s 9; 1963 c 361 s 1]

488A.57 JURIES; FEES. In any civil action in which a jury shall be demanded by one of the parties thereto, the jury shall consist of six jurors, unless the demand shall specify a jury of 12 jurors, and if a jury of 12 shall be demanded, the party making such demand shall pay to the clerk of the said court on the first day of the term at which such action is set for trial, a jury fee of \$3, said jury fee to be for the use and benefit of the said city of Duluth; and unless a jury is demanded upon the calling of the calendar upon the first day of the first term at which the same is set for trial, it shall be considered to be, and the same shall be, waived and said action tried by the court.

[1923 c 238 s 39; 1925 c 85 s 4]

488A.58 JURY CASES TO TAKE PRECEDENCE. The trial of jury cases shall take precedence of court cases, and in the calling of the calendar on the first day of each general term, at which cases may be tried to a jury, all cases to be tried by jury shall be set for trial commencing with the fourth day of the term, and there shall be one or more jury cases set for said fourth and each succeeding day of said term, until all such jury cases are set for trial; and the trial of jury cases shall commence on the fourth day of each such general term and be continued and proceeded with from day to day until all such jury cases so set for trial have been tried or otherwise disposed of.

[1923 c 238 s 40; 1941 c 300 s 7]

488A.59 CONDUCT OF TRIAL; CHALLENGES; SELECTION AND DRAWING OF JURORS. Subdivision 1. **Trial.** Trial by jury in said municipal court shall in all respects be conducted as in the district courts of this state, and all laws of a general nature applicable to jury trials in said district courts shall apply to said municipal court; except, however, as in this act otherwise provided.

Subd. 2. **Challenges.** When a jury of six is to be drawn to try any civil action, 12 jurors shall be called for examination by the parties to said action, and each party shall be entitled to three peremptory challenges.

Subd. 3. **Judge to determine number of jurors drawn.** The judge having charge of the calendar for each general term of said court at which cases may be tried to a jury, shall determine the number of jurors to be drawn for such term, and the number so determined shall be drawn and shall be summoned to appear at said court at 9:30 o'clock in the forenoon of the day designated by the judge and serve as jurors for the trial of actions in said court, and shall so remain in at-

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tendance unless excused by the court until the jury cases for such term are concluded and they are finally discharged for the term by order of the court. Provided, however, that whenever a jury shall be demanded by a defendant entitled to the same in any criminal action or by any of the parties in any forcible entry or unlawful detainer action, the court shall direct the clerk of said court to summon a sufficient number of jurors for attendance upon the court for the trial of any such action upon the day set for the same.

Subd. 4. **Selection of jurors; drawing of juries.** (a) Petit jurors for the trial of all types of actions shall be selected as provided in clause (b) or as provided in clause (c).

(b) Before the first day of September in each year the judges shall select from the qualified electors of the county of St. Louis a list of persons properly qualified to serve as petit jurors and certify the list to the clerk of the municipal court. If there be a deficiency of persons on the list, the judges may select from the qualified electors of the county additional persons to cover the deficiency and certify and deliver to the clerk a supplementary list which shall thereafter stand as part of the original list. The validity of the selection is not affected by the fact that any person selected is disqualified from serving as a juror. Petit jurors shall be drawn from such list and summoned as the judges direct. The clerk shall issue venires for the jurors drawn which shall be returnable on such dates and hours and places as the judges direct. No person shall be drawn as a juror more than once in two years. When necessary the court may issue a special venire.

(c) If a court rule so providing is adopted by a majority of the judges of the district court and also by a majority of the judges of the municipal court, all petit jurors to serve in the municipal court of the city of Duluth may be selected from the petit jurors summoned for jury service by the district court of St. Louis county. The rule may provide the manner in which jurors for the municipal court shall be selected from the jurors summoned by the district court and the period of time during which they shall serve in municipal court. The rule may be amended by a majority of the judges of the district court and a majority of the judges of the municipal court. It may be rescinded entirely at any time by a majority of the judges of either court. The rule may be made effective on any date and shall then supersede any jury list for municipal court theretofore in effect. If the rule be rescinded the judges of the municipal court may reinstate any jury list drawn for that year by the judges of municipal court or prepare a new jury list. The petit jurors summoned for service in both courts shall have the same qualifications and shall be selected by the district court under the same procedure as is now provided by law for selecting jurors for service in the district court.

Subd. 5. **Neglect to answer jury summons; penalties.** If any person duly drawn or summoned to appear in said court as juror neglects to so attend without sufficient excuse, he shall pay a fine not exceeding \$30, which shall be imposed by the court, or be imprisoned until such fine is paid, not exceeding 30 days.

[1923 c 238 s 41-45; 1925 c 85 s 5, 6; 1931 c 57 s 4; 1941 c 300 s 8, 9; 1963 c 364 s 1, 2; 1967 c 780 s 1]

488A.60 COMPENSATION OF JURORS. Jurors summoned and attending as aforesaid in said municipal court shall be entitled to like compensation as jurors in the district courts as fixed by the General Statutes of Minnesota, and shall be paid out of the treasury of said St. Louis county. The clerk of said municipal court shall deliver to each juror so attending a certificate for the number of days attended and miles traveled, for which he is entitled to receive compensation. Such certificate of the clerk of said municipal court shall be filed with the county auditor, who shall issue his warrant on the treasurer of said county for the amount due, which certificate shall be a proper and sufficient voucher for the issuance of said warrant.

[1923 c 238 s 46]

NOTE: See Minnesota Statutes, Section 357.26.

488A.61 APPEALS; DISTRICT COURT, SUPREME COURT. Subdivision 1. In any case in which a judgment or order shall be rendered in said municipal court, and from which any party is entitled to appeal, such party may cause the same to be removed by appeal from said municipal court to the district court of the county of St. Louis or to the supreme court of the state of Minnesota, upon the same grounds and in like manner, and upon like proceedings and with like effect as now or hereafter may prevail in case of appeals from the said district court

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to the supreme court of the said state; and all laws of a general nature relating to appeals from the district court to the supreme court of the said state, shall, as far as possible, apply to and govern such appeals from the municipal court to the district court or to the supreme court of said state, except as herein modified. Orders of the said municipal court of the character of nonappealable orders of the district court shall be nonappealable. The time for doing any act relative to the appeals from the said municipal court to the said district court or to the supreme court herein provided for shall be the same as now provided in case of appeals from the district court to the supreme court.

Subd. 2. If the appeal to the district court in a civil action be from an order a supersedeas bond shall be given and said bond shall be in such sum and with such sureties as the judge making the order directs and approves; and if the appeal be from a judgment shall be in double the amount of such judgment and with such sureties as the judge may approve. In any event the bond to perfect an appeal to the district court shall be in the sum of not less than \$100. No stay of proceedings shall arise in any case appealed to said district court unless a supersedeas bond be given.

Subd. 3. The party appealing to the district court shall pay:

(a) \$2 to the clerk of the municipal court at the time of the filing of the notice of appeals as a fee of said clerk for preparing and certifying the return to the district court.

(b) \$1 to the clerk of the district court as a fee of said clerk for receiving and docketing such appeal.

The clerk of the district court shall also receive a fee of \$1 for the remittitur and for certifying and returning the record and proceedings on appeal to the clerk of the municipal court to be paid by the party obtaining the same. Such fees shall cover all charges of the respective clerks in connection with and subsequent to taking such appeal, except as otherwise herein provided, and when paid by the prevailing party may be taxed by him as disbursements.

Subd. 4. One judge of said district court shall sit as an appellate court. Said appeals may be brought on for hearing at any special term after the record shall have been returned and briefs shall have been served, or service thereof waived, and such appeals shall be heard upon the record, one typewritten copy of which shall be furnished by the appellant for the use of the judge of said court. Either party may submit typewritten briefs in addition to oral arguments, and if submitted, one copy thereof shall be furnished for the use of said judge. Said district court so constituted upon such appeal shall have power in civil cases to affirm, reverse or modify the judgment or order appealed from, and in case of reversal may order a new trial.

Subd. 5. Appeals from the decision of the said district court to the supreme court may be taken in the same manner and upon like proceedings as now provided for appeals from the district court to the supreme court, except that the record as returned to said district court, together with all orders and proceedings therein had upon said appeal, shall stand in place of the settled case.

Subd. 6. Upon determination by the said district court of all matters presented by such appeal, unless appeal be taken therefrom to the supreme court, the case shall be by said district court remanded to the said municipal court for the performance by it of the requirements of such determination. After any appeal to the district court herein provided for in which a supersedeas bond has been given, the municipal court shall not issue a transcript of its judgment, if judgment has already been entered, until the appeal has been determined and the remittitur has been received from said district court. The successful party upon any such appeal shall be entitled to tax his actual disbursements, and in addition thereto, the sum of \$10 as statutory costs of such appeal. The clerk of said district court shall transmit to the clerk of the said municipal court with the remittitur the record theretofore received by him and in addition and attached thereto the order and proceedings, or certificate copies thereof, had on appeal, and after receipt thereof, the clerk of the said municipal court shall, upon written request of the party entitled thereto, enter judgment.

Subd. 7. Said district and municipal courts may make such rules not inconsistent with this act and the laws of this state as will govern their courts respectively and facilitate the dispatch of business relating to appeals therefrom.

[1923 c 238 s 47; 1937 c 143 s 1; 1955 c 200, s 10; 1961 c 530 s 1; 1965 c 771 s 4]

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488A.62 JUDGMENT TO BECOME LIEN ON REAL ESTATE WHEN; SATISFACTION OF JUDGMENT. No judgment rendered in said municipal court shall attach or become a lien upon real estate until a transcript shall be filed in the district court as hereinafter provided for, but writs of execution thereon in civil actions may issue upon the entry of judgment against the personal property of the debtor, returnable within 30 days. Every person in whose favor a judgment is rendered in said municipal court may on payment of all costs, if any, remaining unpaid receive on demand a transcript of such judgment duly certified and file the same in the office of the clerk of the district court of the county of St. Louis, who shall file and docket the same as in the case of transcript of judgment from courts of justices of the peace, and every such judgment shall become a lien upon the real estate of the debtor from the time of the filing of such transcript to the same extent as a judgment of the said district court, and shall thereafter, so far as related to the enforcement of the same, against the real estate of the judgment debtor and personal property of the judgment debtor beyond the county of St. Louis, Minnesota, be exclusively under the control of said district court, and be carried into execution by its process the same as if entered in said district court. The clerk of the said municipal court shall note on the record that such transcript has been given; but said municipal court may at any time thereafter take proceedings to enforce such judgment against the personal property of the judgment debtor, the same as if such transcript had not been issued, and the judges thereof are hereby vested with all the powers and jurisdiction in relation to the examination of debtors and otherwise now vested in said district court and the judges thereof. In case of the satisfaction, or partial satisfaction of any judgment in said municipal court wherein a transcript of said judgment has been issued by the clerk of the said municipal court and filed with the clerk of the said district court, it shall be the duty of the party who executes the instrument of satisfaction or partial satisfaction to execute the same in duplicate and both the original and duplicate copies of such instrument of satisfaction or partial satisfaction shall be delivered to the office of the clerk of the said district court and such original instrument of satisfaction or partial satisfaction shall be filed in the office of the clerk of the said district court and it shall be the duty of the clerk of the said district court to mail or deliver the duplicate copy of such instrument of satisfaction or partial satisfaction, or a certified copy of the same, on being paid the proper fee therefor, to the clerk of the said municipal court, who shall thereupon file the same in his office.

[1923 c 238 s 48; 1929 c 241 s 2]

488A.63 POLICE OFFICERS TO SERVE PROCESSES. The police officers of the said city of Duluth are hereby vested with all the powers of constables under the statutes of this state, as well as at common law. It shall be the duty of the police officers of said city to serve all process or other papers issued by said court in the course of criminal proceedings. All such process shall be delivered to the chief of police, and it shall be his duty to see that all such process is faithfully served and duly executed. Where process is required to be served outside the city limits, such process shall be served by the sheriff or any constable of the county of St. Louis, provided that the sheriff shall receive similar fees as are by law allowed to constables for like services.

[1923 c 238 s 49]

488A.64 BAILIFFS OR COURT OFFICERS; BONDS. It shall be the duty of the commissioner of public safety, or other legally constituted officer or body having supervision and control of the police department and police officers of said city to see that a sufficient number of police officers are always in attendance upon said court, when required, and in readiness to obey its mandates, serve its process and preserve order under its proceedings. Police officers when assigned for special attendance upon said court shall be known as bailiffs, or court officers. Each such bailiff or court officer shall execute to the city of Duluth for the use and benefit of said city and all persons injured by failure to observe its conditions a bond in such sum and with such sureties as the city council may approve, conditioned that he will account and pay over to the clerk of said court on each day all moneys belonging to or to go to said city, and that he will at all times pay over to the persons en-

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titled thereto all moneys which may have come into his hands in virtue or by reason of his office.

[1923 c 238 s 50; 1955 c 200 s 11; 1963 c 360 s 1]

488A.65 NOT TO AFFECT PENDING ACTIONS. All civil and criminal actions pending and undetermined in the municipal court of said city of Duluth upon the passage of this act and all other proceedings in progress at said date in said court shall proceed without interruption in said court.

The enactment of this statute shall save and confirm all rights gained and privileges acquired under and by virtue of the legislation by which the present municipal court of the city of Duluth was created, and under and by virtue of an act by the legislature, amendatory of such legislation.

[1923 c 238 s 51]

488A.66 SALARIES. Subdivision 1. Each judge of the municipal court of the city of Duluth shall be paid an annual salary of \$16,000 in semimonthly installments out of the treasury of the city of Duluth.

Subd. 2. No judge of the municipal court of the city of Duluth, except the special municipal judge, shall practice as an attorney or counsellor at law, nor shall he be a partner of any practicing attorney in the business of his profession.

Subd. 3. The clerk, probation officer, and official court reporter of the municipal court of the city of Duluth shall be paid in accordance with a pay plan or plans recommended by the judges of the municipal court of the city of Duluth and adopted by ordinance of the Duluth city council. In case additional clerks shall be appointed, with the consent and sanction of the city council of the city of Duluth, as provided in section 488A.40, subdivision 2, the said city council shall fix the compensation of the deputy or deputies so appointed. The salary of each officer shall be payable from the city treasury of the city of Duluth in semimonthly installments and none of said officers shall receive any fee or compensation except as herein provided.

[1923 c 238 s 52; 1925 c 85 s 7; 1929 c 45 s 1; 1941 c 300 s 10; 1943 c 524 s 1; 1945 c 361 s 1; 1947 c 426 s 1; 1949 c 428 s 2; 1951 c 615 s 4; 1955 c 200 s 12; 1959 c 296 s 4; 1963 c 697 s 1, 2; 1965 c 569 s 1-3; 1967 c 651 s 2]

488A.67 SALARIES OF JUDGES, CLERKS AND EMPLOYEES TO BE PAID BY CITY. It shall be the duty of the clerk of said court on the 15th and last day of each month to prepare a payroll for said court, which when properly prepared shall be turned over to the city auditor to be processed and paid in the same manner, and on the same dates, as other city employees.

[1923 c 238 s 53; 1949 c 429 s 3]

CONCILIATION COURT, DULUTH

488A.68 CONCILIATION COURT; SESSIONS, JURISDICTION, LIMITATIONS. Subdivision 1. **Judge; office abolished.** When the present term of office of the person who holds the office of conciliation judge for the municipal court of the city of Duluth expires, or if a vacancy shall occur in said office prior thereto, the office of said conciliation judge is abolished. At that time, the powers, functions, duties and authority of said conciliation judge are transferred to, vested in and imposed upon the judges of the municipal court who shall exercise this authority as a conciliation court pursuant to the provisions of this act. The provisions of Laws 1951, Chapter 615, Section 4, pertaining to the salary of the assistant judge of said municipal court shall govern the salary of said conciliation judge during the time that office shall remain in existence.

Subd. 2. **Sessions, jurisdiction.** The sessions of said conciliation court shall be held in said city of Duluth, at some suitable place to be provided by the city council of said city. The jurisdiction of said court shall be coextensive with the corporate limits of the city of Duluth and the towns of Midway, Herman, Canosia, Rice Lake, Lakewood, Duluth, Solway, Grand Lake, Fredenberg, Gnesen, Normanna and Alden in the county of St. Louis and state of Minnesota and said jurisdiction shall be limited to actions in which the person, firm or corporation named therein as defendant is a resident of either the aforesaid city or towns.

Subd. 3. **Jurisdiction; subject matter; amount.** Said conciliation court shall have jurisdiction to hear, try and determine civil actions and proceedings as follows:

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(1) Of an action arising on contract for the recovery of money only, if the sum claimed does not exceed \$200.

(2) Of an action for damages for injuries to the person, or to real property, or for taking, detaining or injuring personal property, if the damages claimed do not exceed \$200.

Subd. 4. Limitations. The jurisdiction of said conciliation court, however, shall not extend:

(1) To any criminal action.

(2) To an action which may arise under Chapter 76 of the General Statutes of Minnesota for 1923 and the amendments thereto, relating to forcible entries and unlawful detainers.

(3) To any civil action not within the jurisdiction of the municipal court of the city of Duluth.

[1927 c 17 s 1, 4, 5; Ex1937 c 67 s 1; 1953 c 293 s 1, 2; 1955 c 163 s 1; 1963 c 359 s 1]

NOTE: With reference to General Statutes 1923, Chapter 76, see Minnesota Statutes, Sections 566.01-566.17.

For salary provisions, see section 488A.66.

488A.69 PERSONAL RECEIVERSHIPS. Subdivision 1. **Receiver, appointment; when allowed.** The said conciliation court shall have jurisdiction upon the petition of any debtor residing within the territorial jurisdiction of said court to appoint the probation officer or clerk of the municipal court of the city of Duluth as personal receiver to receive the personal earnings and income of the debtor and distribute the same to the petitioner and to his creditors in such proportion as may be determined by the court in accordance with the provisions of this act. Provided, however, that said debtor, at the time of the filing of the petition, shall (1) be in the employ of another person, firm or corporation for wages or salary, or on a commission basis, or any combination of wages, salary or commissions, (2) have debts which he is unable to pay, (3) have no income other than that which arises from his current wages or salary, (4) own no property or assets, except such as are exempt from execution under the laws of this state, and (5) a reasonable probability exists that all indebtedness to his creditors can be liquidated within a period of 18 months.

Subd. 2. Probation officer, clerk, duties; petition. The said probation officer or said clerk shall confer with the debtor to determine whether said debtor meets all requirements of subdivision 1 hereof and if so satisfied he shall assist said debtor in the preparation of his petition to the court. Said petition shall be in such form as may be approved by the court and shall be accompanied by an assignment executed in duplicate by the petitioner and in form satisfactory to the court of all the wages, salary and commissions of the petitioner then earned and unpaid and thereafter to be earned to the said probation officer or clerk pending the hearing on said petition, and to his successor, if any, after said hearing. In case the petitioner shall leave his employment and accept new employment with a different employer, he shall immediately notify his personal receiver to that effect and shall execute a new assignment of his wages, salary or commission, as the case may be, in favor of the personal receiver, and shall file the same with the clerk of the conciliation court. The said clerk shall give written notice to the employer named in the assignment of any order of the court appointing a personal receiver. One copy of the assignment shall be filed with the said clerk and the duplicate thereof shall be mailed by the said clerk to the employer of the petitioner. Said petition of the debtor shall be verified by the petitioner and shall disclose his assets, his personal earnings and income; the names, ages and relationship of those dependent upon him for support; the names of those, if any, who are contributing to the support of his family and the amounts received monthly from each; and the names of all of his creditors and the amounts of their respective claims, and whether said claims are disputed or not, and such other information as the court shall require. The petition shall be filed with the said clerk.

Subd. 3. Hearing; creditors' rights. Upon the filing of such petition, the court shall fix a date for a hearing thereon and shall cause notice of such hearing to be given by mail to all the creditors named in the petition not less than ten days prior to the date of said hearing. At said hearing the court shall fix the proportion of the personal earnings and income of the said debtor which shall be set aside for the use and benefit of the creditors, hear and adjudicate the claims of the creditors and determine the amounts which said personal receiver shall pay to

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each of the said creditors on a pro rata basis, and the court, the same time, shall fix the amount which the petitioner shall be entitled to have set apart for him out of the funds coming into the possession of the personal receiver pursuant to any such assignment of wages, salary or commissions. All creditors named in the petition for such personal receivership shall, during the pendency of the same, be estopped from bringing or maintaining any proceeding in garnishment, attachment, or in aid of execution in the municipal court of the city of Duluth, or in any other court, so long as the said debtor shall not default in the payment to the personal receiver of such amounts as may have been ordered by said court. The said conciliation court shall have the power at any time, for cause shown, to terminate any such personal receivership. Such proceedings may be dismissed on the petition of the debtor, the personal receiver, or upon the court's own motion, if it shall appear that the debtor is not entitled to the benefits of this act, or that the proceeding is collusive, or not in good faith, or that the debtor has deceived, or has attempted to deceive the court about any fact material in said proceedings, or in case it shall appear that the financial involvement of the petitioner is, or may be such, that no reasonable probability exists that the mutual interests of the petitioner and his creditors will be benefited by the continuance of such proceedings. The provisions of this section, however, shall not be construed to prevent any creditor from bringing or maintaining proceedings in garnishment, or recovering judgment against said debtor, nor to prohibit the levy under a writ of attachment or execution upon the property of said debtor, other than that which may be in the possession of said personal receiver. The bringing or maintaining of any proceeding in garnishment, attachment or in aid of execution in violation of the provisions of this section shall be construed as a contempt and the said conciliation court is hereby vested with the same power and jurisdiction as the municipal court to punish therefor. The certificate of the clerk of the municipal court of the city of Duluth, under the seal of such court, stating that such proceedings are pending in the said conciliation court and giving the date the petition was filed shall be sufficient warrant for any court to stay proceedings by way of garnishment, attachment, or in aid of execution pending before it at the date of the filing of the petition under this act and to dismiss such proceedings thereafter brought.

Subd. 4. Rule making authority. The judge of the conciliation court may provide, by rule, for notice to such creditors as are recited in the petition of the debtor, the authentication and adjudication of claims, the time and manner of payments by the debtor, or by his employer under an assignment, the distribution of the fund and all other matters necessary or proper to carry into effect the jurisdiction conferred by this section.

Subd. 5. Receiver, bond, duties, supplies. The official bond of the said probation officer or said clerk of court shall be conditioned upon the fulfillment of the trust as such personal receiver. Said personal receiver shall make such reports as the court may require and shall be provided with the necessary books, blanks, stationery, postage and other expense for the execution of his duties in the same manner as other expenses incident to the court are provided for.

Subd. 6. Filing fee. Upon the filing of the petition and assignment executed by the petitioner, the said petitioner shall pay to the clerk of the said conciliation court as a filing fee therefor the sum of \$2 for each creditor named in the petition.

Subd. 7. Payment of wages to receiver. Upon receipt of notification of the pendency of proceedings under this act from the clerk of the conciliation court, the employer of any person filing a petition and making an assignment as herein provided shall pay to the personal receiver named by the court, as the same may become due and payable, all the wages, salary or commissions of such person covered by said assignment. Payment by an employer under any such assignment shall be deemed payment in all respects as if received by said employed person. Provided, however, that nothing therein contained shall be construed as requiring such employer to pay to the said personal receiver any money held by such employer under a garnishee summons, valid upon its face, unless and until the same shall be released, or the garnishment proceedings discharged by the court wherein the same are pending. The provisions of Minnesota Statutes, Sections 181.05, 181.06, 181.07 and 181.08, shall not apply to any assignment of wages, salary or commissions made pursuant to this act.

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Subd. 8. **Secured or unlisted creditors.** Nothing herein contained shall be construed as to deprive a creditor holding security from pursuing his rights under the instrument giving him such security, but such creditor shall not have the right, unless he shall file with the clerk of the said conciliation court his consent in writing to a suspension of the enforcement of his security during the pendency of such personal receivership, to participate in any fund under the provisions of this act. Any person claiming to be a creditor of any person filing a petition under this act who has not been listed as such in the petition shall have the right to intervene and prove his claim as though the same had been listed. A creditor having a lien at the time of the filing of any petition under this act by virtue of proceedings in garnishment, attachment, or in aid of judgment against the salary, wages or commissions of any petitioner hereunder shall have the right to have his claim allowed in proceedings under this section, but, as a prerequisite thereto, he must release his lien.

Subd. 9. **Subsequent receivership, availability.** A debtor in any such personal receivership proceedings may not again avail himself of the benefits of this section until three years have elapsed from the date of the dismissal or discharge of such proceedings.

[1927 c 17 s 6; Ex1937 c 67 s 2; 1953 c 293 s 3; 1965 c 771 s 5-8]

488A.70 SESSIONS OF COURT. Said conciliation judge shall exercise all the special powers conferred by this act. Said conciliation court shall be open every day except Sundays and holidays at such hours as may be fixed by rule and may be open for at least one evening in each week, to be fixed by rule, for the hearing and determining of controversies submitted to such court in accordance with the provisions of this act.

[1927 c 17 s 9]

488A.71 CLERK, COURT OFFICERS. The clerk and court officers of said municipal court shall be respectively ex-officio clerk and court officers of the said conciliation court. The clerk of said municipal court, with the consent and approval of the judges, shall have the power to appoint one deputy clerk to serve as chief clerk of the conciliation court.

[1927 c 17 s 10; 1955 c 163 s 2]

488A.72 CONDUCT OF CAUSES. Causes in the said conciliation court shall be conducted by the parties or their agents. For the purposes of this section the word "agent" shall mean an attorney at law or a person specially authorized in writing to prosecute or defend the claim, or one of a number of partners or joint plaintiffs acting for all, or any officer, manager, or local manager of a corporation acting for it.

[1927 c 17 s 11]

488A.73 COSTS, FEES AND DISBURSEMENTS. Subdivision 1. **Fees and disbursements.** The actual cash disbursements of the prevailing party for the entry fee, mailing fees and witness fees shall be allowed as costs and shall be included in the settlement and judgment of the prevailing party. Except as in this act otherwise provided, no other costs shall be allowed to either party. The court, however, shall have power in its discretion to award costs not exceeding \$10, exclusive of such cash disbursements, or in addition thereto, against any party, whether the prevailing party or not, who has set up a frivolous or vexatious claim or defense, or who has made an unfair or misleading answer, or who has otherwise sought to hamper a party in court in securing a speedy determination of the matter in controversy upon its merits, and to enter judgment therefor, or set off such costs against damages or costs, as justice may require.

Subd. 2. **Costs and fees; entry fee.** The plaintiff, upon commencing any action in the said conciliation court, shall pay to the clerk thereof the sum of \$2 for the use and benefit of the city of Duluth, which sum shall be in full for all costs and fees of said court and clerk and the police officers of said city, up to and including the entry of judgment, except as in this act otherwise provided. Provided, however, that in any case where the plaintiff therein shall subscribe to and file with the said clerk an affidavit to the effect that he has no money or property and is unable to pay said entry fee, no such fee will be required to commence said action. The filing of such affidavit shall be proper authority for said clerk to receive and file such action without the prepayment of any fee therefore while the same is pending in the said conciliation court. Provided, however, that if any

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such plaintiff shall prevail in his claim against the defendant, the amount of the entry fee and mailing expense shall be taxed and allowed and inserted in the judgment against the defendant and shall be paid to the clerk of the said conciliation court for the use and benefit of the said city of Duluth by any such plaintiff out of any money recovered by him under said judgment.

[1927 c 17 s 12, 13; 1963 c 632 s 1]

488A.74 COMMENCEMENT OF ACTION; DUTIES OF CLERK. (a) Any person having a claim within the jurisdiction of the said conciliation court may commence an action in the said court by appearing before the clerk thereof and subscribing to and verifying a claim, which claim shall contain the name and place of residence of the plaintiff and the name and place of residence of the defendant and a brief statement of the nature and amount of said claim and the time when the same accrued. If the said claim involves more than three items, the plaintiff shall deliver to the clerk a list of such items, numbered consecutively, which list shall be attached to and made a part of said claim. If the clerk deems the statement of the claim insufficient to make a prima facie case, the court, at the request of the plaintiff, shall decide whether such claim shall be received. Subpoenas for witnesses, if requested, shall be issued by the clerk, without fee.

(b) The clerk, when requested, shall draw up said claim and when so subscribed to and verified, shall, upon the payment of the entry fee therefor, immediately file the same, and set down the same for hearing before said judge at a time certain not less than seven days and not more than 12 days from the date of said filing. Provided, however, that the court may, by order, designate a two weeks period at any time during the months of July or August in each year during which the clerk shall set no claims for hearing. The clerk shall give to the person signing the claim a memorandum of the time and place set for the hearing. Said memorandum shall state that if the claim is supported by witnesses, books of account, or documents, they should be produced at the hearing, and also in the case of an unliquidated claim the amount of damages must be proved by the plaintiff at the hearing whether the defendant defends or not.

(c) The clerk shall thereupon mail to the defendant at the address supplied by the plaintiff, by certified mail, return receipt requested, the mailing expense being prepaid by the plaintiff, a notice signed by the clerk, which, after setting forth the title and venue of the action shall read substantially as follows:

"To (here insert name of defendant.)

"(Here insert name of plaintiff) asks judgment in this court against you for (here insert amount claimed in dollars and cents) upon the following claim: (here insert the nature of the claim and the time when the same accrued.)

"The court will give you a hearing upon this claim at (here insert the location of the courthouse and the room therein, as may be necessary) at (here insert the hour) o'clock in the (here insert 'forenoon' or 'afternoon' as the case may be) on (here insert the date, including the day of the week, as may be prescribed by general or special order of the court).

"If you deny the claim, in whole or in part, to avoid judgment being entered against you by default, you must do both of the following things:

"1. Notify the clerk of this court not later than (here insert the date, including the day of the week, of the second day before the day set for hearing) of your full and specific defense to said claim. In doing this you may appear before the clerk in person, or by authorized agent, and state your defense orally, or in writing, or you may mail the same to him before the date last mentioned.

"2. You must also appear at the time set for hearing upon the claim.

"If your defense is supported by witnesses, account books, receipts or other documents, you should produce them at the hearing. Subpoenas for witnesses, if requested, will be issued by the clerk, without fee.

"If you admit the claim, but desire time to pay, you must not later than (here insert the date, including the day of the week, of the second day before the day set for hearing) notify the clerk of your desire for time to pay, and you must also appear at the hearing and show your reason for desiring time to pay."

(d) The defendant may also be served with such notice in the same manner as provided by law for the service of a summons in the district court, if the

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court shall so order. The clerk shall attach to the original verified claim the receipt for the certified mail notice, or other evidence of service. Notice shall be valid when refused by the defendant and therefor not delivered. If the notice is returned undelivered, without refusal by the defendant, or, if in any other way it appears that notice has not reached the defendant, the clerk shall issue at the mailing expense of the plaintiff, such other and further notice as the court may order.

(e) If the defense to the claim is presented to the clerk in writing it shall be filed by said clerk as the answer in the case. If said defense is stated to the clerk, orally, he shall forthwith reduce the same to writing and place it in the files of the case, where it shall be deemed the answer. Such answer shall state fully, but in concise and untechnical terms and form, what parts of the claims are contested, and the grounds for such contest. Demurrers and dilatory pleas are prohibited.

(f) The defendant, within the time for answering, may in the manner provided in this section, claim any set-off or counterclaim. The defendant's claim may be answered by the plaintiff orally at the time set for hearing on plaintiff's claim, or the court may, upon application of the plaintiff, continue the hearing on the original claim and counterclaim to a later date. The penalties upon a defendant provided herein shall likewise apply to any plaintiff with respect to a claim by a defendant. The original claim, and the claim of set-off or counterclaim, shall be deemed one case and no additional entry fee shall be required.

(g) The court may at any time allow any claim or answer to be amended.
[1927 c 17 s 14; Ex1937 c 67 s 4; 1963 c 363 s 1]

488A.75 TRIAL OF ACTIONS; JUDGE TO HEAR CASES. At the time set for hearing, said judge shall hear the statements of the respective parties, and shall use his best endeavor to have said parties settle said controversy then and there by agreement. The judge shall also hear any witnesses produced by either party. The parties and the witnesses shall be sworn; but the court shall conduct the hearing in such order and form and with such methods of proof as it deems best suited to discover the facts and to determine the justice of the case. If the parties agree upon a settlement of the controversy, the judge shall cause the clerk to reduce such agreement to writing. Said written agreement shall contain the terms of the settlement and may be signed by all the parties thereto, but whether or not so signed said settlement when agreed upon and countersigned by the judge and entered upon the judgment docket of the clerk shall have all the force of a judgment of a court of record. In case of a judgment for the recovery of money only, said judgment may by its terms provide for the satisfaction of the same by the payment into the said conciliation court, either in a lump sum, or by installments in such amounts and at such times, as to said judge, under all the circumstances of the case, may seem just and reasonable. Said conciliation judge may retain jurisdiction for the collection, satisfaction or modification of the terms of said judgment, or, he may, on application therefor, order that a transcript of such judgment shall be issued by the clerk of the said conciliation court to the municipal court proper and that such judgment shall be docketed by the clerk of the municipal court in the same manner and enforced as the judgment of the said municipal court, provided, however, that before any transcript of judgment shall issue from the said conciliation court to the said municipal court proper, the said conciliation judge shall, if necessary, modify the terms of said judgment so as to have the transcript show a judgment for a specific sum.

[1927 c 17 s 15; Ex1937 c 67 s 5]

488A.76 COUNTERCLAIMS, JUDGMENTS, TRANSFER OF CASES, PLEADINGS, PROCESS, RULES. Subdivision 1. **Jurisdiction, counterclaims; transfer of cases; judgments.** In case the amount in the controversy claimed in the counterclaim on the part of the defendant exceeds the sum of \$200 and the judge, after a hearing thereon, is satisfied that said counterclaim is in good faith, said court shall immediately cause an entry of the fact to be made of record and cease all further proceedings in the case and shall enter an order directing the clerk to transfer the case to the municipal court proper for trial upon the issues presented by the original claim and the counterclaim. The said municipal court, upon the payment to the clerk thereof of the entry or filing fee of the said municipal court by either of the parties thereto, shall proceed in the cause to final judgment and execution,

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according to law, the same as if said action had originally been commenced in the said municipal court, and the costs shall abide the event of the suit. If, however, the amount in controversy claimed in the counterclaim of the defendant is \$200 or less, or, if said judge is of the opinion that the counterclaim, if any, in excess of \$200, is not in good faith, he shall retain jurisdiction and shall proceed summarily to hear and determine the cause of action and cause judgment to be entered on the docket of the clerk. Said judgment shall have all the force and effect of a judgment of a court of record. In case of a judgment for the recovery of money only, said judgment may by its terms provide for the satisfaction of the same by the payment of the same into the said conciliation court, either in a lump sum, or by installments, in such amounts and at such times, as to such judge, under all the circumstances of the case, may seem just and reasonable. In case judgment is not removed by demand of either party to the said municipal court within ten days after the entry thereof, as provided in this act, and said judgment remains unsatisfied, said conciliation court may retain jurisdiction for the collection, satisfaction or modification of the terms of said judgment in the said conciliation court, or, may, on application therefor, order that a transcript of such judgment shall be issued by the clerk of the said conciliation court to the municipal court proper and that such judgment shall be docketed by the clerk of the said municipal court, in the same manner and enforced as the judgment of the said municipal court, provided, however, that before any transcript of judgment shall issue from the said conciliation court to the municipal court proper, the said conciliation court shall, if necessary, modify the terms of said judgment so as to have the transcript show a judgment for a specific sum.

Subd. 2. Pleadings; ancillary process. Except as herein otherwise provided, no formal pleading shall be necessary and the hearing and disposition of all such claims shall be informal, and with the sole object of dispensing speedy justice between the parties. No proceedings in garnishment or attachment may be brought or maintained in the said conciliation court and no execution shall issue from said court.

Subd. 3. Rules prescribed. The judge of the said municipal court may prescribe rules as to procedure, methods of producing evidence, general conduct of the case and the trial thereof, under the provisions of this section, and for carrying out all of the provisions of this act.

[1927 c 17 s 16; 1953 c 293 s 4; 1955 c 163 s 3; 1963 c 362 s 1]

488A.77 DEFAULT JUDGMENTS. Subdivision 1. The defendant in any action, unless the court shall otherwise order, shall be defaulted unless he shall not later than the second day before the day set for hearing personally, or by his authorized agent, state to the clerk of the court, orally, or in writing, his full and specific defense to the claim, and unless he shall also appear in person at the hearing. In case the defendant, duly notified or summoned as provided in section 488A.74, shall fail to state his defense to the clerk, orally, or in writing, and shall fail to appear at the time set for the hearing, the judge may, except in the case of an unliquidated claim for damages, without formal proof on the part of the plaintiff, order that judgment shall be entered by default, if the judge is satisfied upon examination of the receipt for the registered mail notice, or the return of service, if service of the notice has been made in the manner provided by law for the service of a summons in the district court, that the defendant has actually been notified of such hearing by registered mail, or that the actual service of such notice upon him has been made. If the judge is not so satisfied he shall forthwith fix a later date for such hearing, notify the plaintiff of the same and shall direct that the clerk issue a notice of such postponed hearing and that the same be served upon the defendant by one of the methods heretofore recited in section 488A.74. In the case of an unliquidated claim for damages the amount of damages must be proved by the plaintiff at the hearing whether the defendant defends or not. When judgment by default is entered against a defendant, due notice of the same shall be given him by mail or written notice by the clerk.

Subd. 2. If the defendant appears and the plaintiff does not appear at any time set for hearing, the judge may dismiss the claim for want of prosecution, or enter a finding upon the merits for the defendant, or the action may be continued at the discretion of the court.

Subd. 3. When a default judgment or a judgment for dismissal on the merits has been ordered for failure to appear, the judge, within ten days after notice

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thereof was mailed, may vacate the judgment ex parte and grant a new hearing, if the defaulting party shows lack of notice, mistake, inadvertence, or excusable neglect as the cause for his failure to appear. Absolute or conditional costs not exceeding \$15 to the other party may be ordered as a prerequisite to that relief. The clerk shall notify the other party by mail of the new hearing date.

Subd. 4. When a defendant shows that he did not receive a notice before the hearing within sufficient time to permit a defense and that he did not receive notice of the entry of judgment against him within sufficient time to permit him to make application for relief within ten days or shows other good cause, a judge may vacate a default judgment and grant a new hearing on the merits with or without the payment of absolute or conditional costs. The clerk shall notify the parties by mail of the new hearing date.

Subd. 5. When a judge orders payment of absolute or conditional costs as a condition of an order under any provisions of this act, the amount shall be paid to the clerk before the order becomes effective. Every such order is invalid unless such costs are paid to the clerk within ten days from the date of the order. Conditional costs shall be held by the clerk to abide the final order entered in the case. Absolute costs shall be paid over by the clerk forthwith to the other party as his absolute property.

Subd. 6. If judgment by default be entered, the judgment shall have all force of a judgment of a court of record, and the clerk, on application therefor by the judgment creditor after ten days from the date of entry of judgment shall issue a transcript of such judgment from the conciliation court to the municipal court proper, where the judgment shall be docketed by the clerk of the municipal court in the same manner and shall be enforced as the judgment of the municipal court. Provided, however, that no judgment by default shall by its terms provide for the satisfaction of the same by the payment of money into court, either in a lump sum, or by installments.

[1927 c 17 s 17; 1957 c 273 s 1]

488A.78 COSTS; FILING TRANSCRIPT OF JUDGMENT IN MUNICIPAL COURT. Whenever a transcript of any judgment of the said conciliation court is filed in the municipal court proper, as hereinbefore provided, costs in favor of the judgment creditor shall be, without notice to the judgment debtor, taxed and allowed by the clerk of said municipal court and inserted in said judgment by said clerk, as follows:

1. When the amount of the judgment of the said conciliation court, exclusive of disbursements, does not exceed \$25, the sum of \$2.50.

2. When the amount of the judgment of the said conciliation court, exclusive of disbursements, exceeds \$25, the sum of \$5.

Upon filing any transcript of any judgment of the said conciliation court with the municipal court, the party filing the same shall pay to the clerk thereof the sum of \$1 as a filing fee therefor, which fee shall be for the use and benefit of the said city of Duluth. Said transcript fee shall be taxed and allowed by said clerk and inserted in said judgment.

[1927 c 17 s 18; Ex1937 c 67s 6; 1965 c 771 s 9]

488A.79 APPEALS; PROCEDURE. Subdivision 1. Any party aggrieved by the judgment rendered by the conciliation judge after a contested hearing at which he has appeared and submitted evidence may have his cause removed to the municipal court for trial de novo, but no cause shall be so removed unless within ten days after such judgment is rendered, and after the clerk shall have delivered or mailed notice of the entry of judgment to each of the parties thereto, which notice shall be delivered or mailed immediately and shall specify the day on which the time for removal of said cause shall expire; the party so removing same shall do the following things, to wit:

(a) Serve upon the opposite party or his attorney a written demand for trial of the cause in the municipal court, said demand to be served in the same manner now provided by law for the service of a summons in the municipal court and file with the clerk of the conciliation court such original demand with proof of service thereof. If the opposing party or his attorney cannot be found and service of the demand be made within the ten day period the aggrieved party may file with the clerk within the ten day period the original and a copy of the demand, together with an affidavit by himself or his attorney showing that due and diligent search

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has been made and that the opposing party or his attorney cannot be found and the filing of this affidavit shall serve in lieu of making service and filing proof of service. When such an affidavit is filed, the clerk shall mail the copy of the demand to the opposing party at his last known residence address. Such original demand or proof of service shall show the office address of the attorney for each party that has such attorney, and the addresses of all parties to the action.

(b) Pay to the clerk of the conciliation court \$3.

(c) File with the clerk of conciliation court an affidavit by the aggrieved party or his attorney stating that the removal is made in good faith and not for the purpose of delay.

Subd. 2. Within ten days after compliance with the foregoing provisions of this section the clerk of the conciliation court shall deposit \$2 with the municipal court for the use and benefit of the city of Duluth and shall file with the municipal court all the files in such action together with a copy of such judgment and the cause shall be tried in the municipal court as though originally commenced therein, and the claim of the plaintiff and the answer of the defendant appearing in the files shall stand as the complaint and answer respectively in such action. Provided, however, that any pleading may be amended at the time of the trial in the municipal court at the discretion of the court.

Subd. 3. When the papers are so filed in the municipal court, the judgment of the conciliation court and all proceedings thereunder shall be stayed pending the appeal. The cause shall then be tried in the municipal court, and, without the service or filing of any notice of trial or note of issue whatever, shall be by the clerk placed on the calendar of civil causes for the term next ensuing, provided, however, that the appeal shall be effected at least four days before the opening day of the term. All causes so appealed shall be disposed of in the same manner as other causes on the civil calendar of the municipal court, provided that when any cause so removed from the conciliation court is called for trial and the party so appealing does not appear the stay shall be vacated and the appeal dismissed.

Subd. 4. If either of the parties shall demand a jury, the demand shall be made in the manner and at the time by law provided for demanding a jury in the municipal court. If a jury is not so demanded the same shall be deemed to have been waived by both parties.

Subd. 5. The prevailing party upon such appeal shall be awarded an attorney's fee by the municipal court in the sum of \$10 if a trial be had in the municipal court upon the merits and in the sum of \$5 upon a dismissal of the appeal after the same shall have appeared upon the calendar for trial, the attorney's fees to be in addition to disbursements now allowed to be taxed and inserted in the judgment under the provisions of this act. If the judgment of the conciliation court be reversed or modified, the party in whose favor such reversal or modification is made, shall, for the purposes of this section, be deemed to be the prevailing party. If the judgment of the conciliation court be affirmed without modification, the respondent upon such appeal, whether plaintiff or defendant, shall be deemed to be the prevailing party.

Subd. 6. (a) When a motion for vacation of a default judgment under subdivisions 3 or 4 of section 488A.77 has been denied, the aggrieved party may demand limited removal to the municipal court for hearing de novo of his motion. The demand for limited removal and notice of the hearing de novo must be served by the aggrieved party on the other party in accordance with the provisions of subdivision 1(a) of this section and the original demand and notice, with proof of service, must be filed with the clerk of the conciliation court within ten days after the motion has been denied, or the original and one copy of the demand and notice, together with an affidavit similar to that required by subdivision 1(a) hereof must be filed with the clerk within said ten-day period. When such an affidavit is filed, the clerk shall then mail the copy of the demand and notice to the other party at his last known residence address. The aggrieved party shall pay a fee of \$3 to the clerk of the conciliation court for filing the demand and notice and this fee shall not be recoverable as a disbursement. The notice shall set a date for hearing de novo at a special term of the municipal court not less than ten nor more than 30 days subsequent to the date of filing the original demand and notice.

(b) The clerk of conciliation court thereupon shall pay over to the municipal court for the use and benefit of the city of Duluth the \$3 fee and shall file in mu-

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municipal court the removal demand and notice, together with all orders, affidavits and other papers filed in the cause in the conciliation court. The clerk of municipal court shall then place the cause on the special term calendar for hearing on the date specified in the notice.

(c) The judge who hears the motion de novo at special term may deny the motion, without allowance of costs, or grant the motion with or without the allowance of absolute or conditional costs. At the hearing de novo the municipal judge shall consider the entire file of the conciliation court together with any subsequent affidavits or showing made by either party.

(d) The clerk of municipal court shall send a copy of the order made after the de novo hearing to both parties and return the file to the conciliation court.

Subd. 7. With respect to any cause removed from conciliation court to municipal court any judge, other than the judge before whom the cause was tried or heard in conciliation court, may preside at the trial or hearing de novo.

Subd. 8. Causes removed from conciliation court to municipal court may be removed from the municipal court to the district court or to the supreme court in the same manner, upon like proceedings, and with the same effect as causes originally brought in the municipal court.

Subd. 9. In computing any period of time prescribed or allowed by this act, the day of the act, event, or default after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

[1927 c 17 s 19; ~~Ex~~1937 c 67 s 7; 1957 c 273 s 2; 1963 c 366 s 1-3; 1965 c 771 s 10]

488A.80 NOT TO PROHIBIT PROCEEDINGS IN OTHER COURTS. Except as otherwise specifically provided in section 488A.69 herein, nothing in this act shall prevent any person from commencing or prosecuting any action in any court as now provided by law.

[1927 c 17 s 21]

488A.81 PROVISIONS SEPARABLE. The sections and provisions of this act are separable. If any section or provision of this act shall be held unconstitutional by any court all other sections and provisions shall nevertheless be and remain in full force and effect. It shall be the duty of the city attorney of the city of Duluth, in the event that the constitutionality of this act, or any section or provision thereof, shall be attacked in any proceeding before any court, to appear and defend against the same.

[1927 c 17 s 22]