THE SUPREME COURT OF MINNESOTA

RESEARCH AND PLANNING
STATE COURT ADMINISTRATION
MINNESOTA JUDICIAL CENTER
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January 4, 1993

Mr. Frederick K. Grittner
Clerk of the Appellate Courts
245 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: #CX-84-2136
Supreme Court Advisory Committee on Conciliation Court Rules

Dear Mr. Grittner:

Enclosed for filing please find the following formats of the Final Report of the Minnesota Supreme Court Advisory Committee on Conciliation Court Rules:

1. One unbound original;

2. Twelve bound copies; and

3. One diskette copy.

The twelve bound copies are printed in double side format. The original is in single side format, and includes several blank pages that will facilitate double side copying by your office. The diskette includes separate Wordperfect (version 5.1) computer files for the body of the report ("FINALREP"), the proposed rule amendments ("FINALRUL"), proposed forms ("UCF8.FRM," "UCF9.FRM," "UCF10.FRM," and "92UCF22.W51"), and proposed statute ("FINLSTAT"). I note that three of the forms (UCF-8, UCF-9 and UCF-10) contain a case number designation along the upper right hand margin; for technical reasons, this does not appear in the diskette version of the forms. The diskette files are complete in all other respects.

If there are any questions, please do not hesitate to contact me at (612) 297-7584.

Respectfully submitted,

Michael B. Johnson
Advisory Committee Staff

cc: Committee Members

STATE OF MINNESOTA

IN SUPREME COURT

CX-84-2136

In Re: Supreme Court Advisory Committee on Conciliation Court Rules

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Recommendations of Minnesota Supreme Court Advisory Committee on Conciliation Court Rules

Final Report

January 1, 1993

Committee Members:
Hon. Terri J. Stoneburner, Judge of District Court, New Ulm, Chair
Gordon K. Bahner, District Court Administrator, Ada
Sally Cumiskey, District Court Administrator, Winona
Hon. Harold R. Finn, Minnesota Senate, Cass Lake
Joseph E. Gockowski, Court Administrator, Ramsey County
James A. Lee, Southern Minnesota Regional Legal Services, St. Paul
Karen L. Lemcke, Deputy Court Administrator, Granite Falls
Virginia Neff, Deputy Court Administrator, South St. Paul
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Hon. John T. Oswald, Judge of District Court, Duluth
Hon. Thomas W. Pugh, Minnesota House of Representatives, South St. Paul
Hon. Homer A. Saetre, Judge of District Court, Moorhead
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TABLE OF CONTENTS

APPENDIX

ADVISORY COMMITTEE ON CONCILIATION COURT RULES

OVERVIEW OF ADVISORY COMMITTEE REPORT

Background of the Advisory Committee

The Minnesota Supreme Court Advisory Committee on Conciliation Court Rules was established by the Supreme Court on November 13, 1991. The Advisory Committee is a continuation of efforts begun in 1989 to unify, where practicable, the practice and procedure of local trial courts. The Minnesota Supreme Court Uniform Local Rules Task Force was able to unify many components of conciliation court practice, and these became effective January 1, 1992, as Rules 501-525 of the General Rules of Practice for the District Courts. Complete unification required substantial legislative amendment, however, as many procedural provisions are also scattered in a patchwork of statutes. Consequently, the Supreme Court established the Advisory Committee to recommend the appropriate statutory and rule amendments to complete the unification process.

The Advisory Committee is comprised of court administrators, judges, legislators, and practicing lawyers from all areas of the state. It includes former members of the Uniform Local Rules Task Force and individuals active in conciliation court reform efforts.

The Advisory Committee has met on a monthly basis and has reviewed all conciliation court rules and statutes in Minnesota. The Advisory Committee has also reviewed recent articles, surveys and studies regarding small claims courts, and has surveyed the rules and statutes governing small claims actions in all fifty states. In addition, the Advisory Committee has received comments from the public, litigants, the trial courts and other governmental agencies. Finally, the Advisory Committee closely monitored conciliation court legislative proposals and provided input into the legislative changes that occurred during the past legislative session.

Specific Recommendations

Specific recommendations of the Advisory Committee are set forth in the proposed rule amendments and legislation appended to this report, and in the Effective Date and Implementation section of this summary. In addition, the Advisory Committee recommends the repeal of the Hennepin County Conciliation Court Special Rules of Procedure, which would be replaced by the amended rules set forth in the appendix to the report. Many of the recommendations are discussed in the Discussion of Proposals section of this report.

Format of the Report

The report includes two appendices. The first is a set of proposed amendments to existing conciliation court rules, and is referred to in the Report as "Proposed Minn.Gen.R.Prac. ___." The

proposed rule amendments are presented in typical amendment fashion, with deletions indicated by ~~strikeouts~~ and additions indicated by underline. Advisory Committee comments for specific rules are included where appropriate. These comments are intended for the benefit of the Supreme Court and, should the rules be adopted, for the guidance of the bench, bar, and unrepresented litigants.

The second appendix is a proposed legislative enactment and is referred to in the Report as "Proposed Legislation." The Proposed Legislation is a comprehensive recodification of conciliation court statutes, with many existing statutory provisions being repealed and reenacted. Both new and reenacted provisions appear as new statutory language (i.e. underlined), and repealed statutes are listed in the repealer section near the end of the proposal.

As illustrated in the Table of Contents, the first subject addressed in the Discussion of Proposals section of this Report is jurisdiction. Jurisdiction often influences or controls procedure, and it is important to begin the discussion by examining this relationship in its entirety. This is followed by a discussion of attorney participation in conciliation court proceedings. Attorney participation, also influenced by jurisdiction, is one of the most sensitive issues addressed by the Advisory Committee. The remaining discussion follows a procedural outline from pretrial to appeal and enforcement, followed by brief discussions of personnel and brochures. Both the Proposed Legislation and Proposed Amendments to Minn.Gen.R.Prac. are referred to throughout the discussion. As noted above, the latter incorporates additional Advisory Committee comments following specific rules.

Public Information and Hearing

The Advisory Committee held a public hearing on the proposals set forth in its Discussion Draft on Friday, November 13, 1992. Notice of the Hearing was published in the October 30, 1992, Supreme Court edition of Finance & Commerce and was widely distributed to all general recipients of Supreme Court decisions, including the media. Copies of the Discussion Draft were also distributed by staff to all Minnesota Judges and Court Administrators, and to all persons and officials who indicated an interest in the Advisory Committee's work. Public dissemination of the Discussion Draft was also facilitated by a group known as Friends of Conciliation Court.

At the November hearing, the Advisory Committee received testimony from several members of the public, representatives from legal aid offices, a county sheriff, and the Office of the Secretary of State. The Advisory Committee also received written comments from the public and members of the bench and bar.

Effective Date and Implementation

It is important that the proposed rules and legislation become effective simultaneously in order to achieve uniformity of procedure. It is also important that this occur on or before July 1, 1993, in order to avoid increasing the monetary jurisdiction

from $5,000.00 to $6,000.00, which the Advisory Committee strongly opposes.

Implementation of the proposed rules and legislation is left to the discretion of the Supreme Court. The Advisory Committee has not, for example, had an opportunity to present its proposal to the Conference of Chief Judges for review and approval. In addition, although a commitment to sponsor the proposed legislation in the Senate has been obtained, no steps have been taken to introduce the proposed legislation or to obtain a House sponsor. Several members of the Advisory Committee are willing to assist the Court in its review process and, subject to trial schedules and availability, are willing to present information to the legislature and/or the conference of Chief Judges.

Although minor forms revisions are incorporated in the proposed rules, many courts incorporate additional information and directions for litigants on the forms that they produce. Most courts also distribute brochures and instruction sheets. Unless there is a special legislative session, the proposed rules and legislation could be in place by late May, which would allow courts a little over one month to revise and produce the forms and brochures. As the proposed rules and legislation do not drastically alter procedure, this timetable appears workable.

With respect to the more distant future, the Advisory Committee recommends the creation of a thorough, statewide conciliation court brochure. The brochure would benefit the public and could provide a framework for judicial training as well. Most members of the Advisory Committee are willing to continue serving in order to develop the brochure should the Supreme Court deem it desirable.

Finally, the Report identifies a number of issues that should be addressed in judicial training courses and materials. The development of specific training materials and programs is also left to the sound discretion of the Supreme Court.

Dated: January 1, 1993

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON CONCILIATION COURT RULES

ADVISORY COMMITTEE ON CONCILIATION COURT RULES

DISCUSSION OF PROPOSALS

Jurisdictional Issues

During the 1992 legislative session, the Minnesota legislature made several significant changes to conciliation court jurisdiction. The monetary jurisdictional limit in all cases was raised to $5,000 effective July 1, 1992, with additional increases raising the limit to $6,000 in 1993 and $7,500 in 1994. Jurisdiction over foreign corporations and individuals doing business in this state was also authorized, as well as the commencement of a single action against multiple defendants who reside in different counties. Finally, jurisdiction to determine ownership and possession of personal property and to determine certain rental property claims were also added.[1]

The Advisory Committee's proposed statute appended to this report incorporates all of the recent legislative changes except the scheduled increases in monetary jurisdiction for 1993 and 1994. The Advisory Committee's proposal also recommends excluding several types of claims from the jurisdiction of conciliation court.

One of the guiding principles of the Advisory Committee is that substantive issues such as jurisdiction should remain in the statutes as the proper bailiwick of the legislature and that procedural provisions should be codified in court rules as the proper bailiwick of the judiciary. The jurisdiction of a court often dictates its procedures, and the Advisory Committee is concerned that substantial increases in monetary jurisdiction may necessitate more formal procedures and thereby destroy the informal nature of conciliation court.

For example, in almost all conciliation court cases, the statement of claim and summons is served on the defendant by mail.[2] If the mail does not reach the defendant, which can occur for many reasons, including change of address or an incorrect address, and the mail is not returned to the court marked "undelivered," a default judgment may be entered. The defendant may first become aware of the judgment when wages are garnished or a home sale or loan is rejected because of an outstanding judgment. Thus, a defendant could be forced to either pay a judgment or incur the expense and inconvenience of reopening a case, which is generally handled in district court. All citizens of this state are exposed to this risk, and the risk increases in proportion to the monetary jurisdiction of the court.

Over the past six years, almost one third of all conciliation court cases in Minnesota have resulted in default judgments. Thus, in one third of the cases, the court has no reassurance that the

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[1]1992 Minn. Laws ch. 591, §§ 2, 4, 5, 6, 21.

[2]Minn.Gen.R.Prac. 509; Minn. Stat. §§ 488A.14, subd. 4; 488A.31, subd. 4.

defendant actually received notice of the case. The potential for abuse is great, and the only way to avoid it is to require personal service of the statement of claim and summons on the defendant. Personal service would substantially increase the cost and difficulty of processing a case in conciliation court, however, and should be avoided.

As monetary jurisdiction increases, so does the complexity of cases and the expectations of litigants, which may also necessitate other formalities such as pretrial discovery (including interrogatories and depositions), evidentiary standards, recording or court reporting of proceedings, and decisions with written reasons. These formalities will not only alter the fundamental nature of conciliation court, they will also increase the time and expense for litigants and they will require additional court resources at a time when most court budgets are experiencing cutbacks.

The courts began receiving formal requests for written explanations of decisions before the monetary jurisdiction was raised to $5,000, on the basis that the monetary jurisdiction was already substantial enough to require written explanations so that litigants can be assured that their case received thoughtful consideration.[3] Excluding defaults, Minnesota conciliation courts have disposed of an average of more than 60,000 cases per year. Requiring written explanations in each of these cases would substantially increase the need for judicial resources.

Written explanations may also influence the outcome of an appeal/removal of a conciliation court case. On removal to district court, the case is supposed to be tried anew, without regard to the outcome in conciliation court. The Advisory Committee has already heard several complaints that district court judges tend to follow the decisions made by their colleagues on the conciliation court level. If a written conciliation court explanation exists, however, there is a greater likelihood that it could influence the outcome at the district court level.

Similar problems are created by recording or court reporting of conciliation court proceedings. Recording or reporting places litigants at a substantial risk if they do not have the assistance of counsel to help them say the necessary things and to avoid saying inappropriate things on the record. Rather than obviating the need for attorneys, recording or reporting would virtually assure that attorneys will be involved, which is contrary to the goal of providing an environment where attorneys are largely unnecessary. The existence of a record also invites a limitation

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[3]E.g., letter from State Representative Peggy Leppik to State Court Administrator Sue Dosal, dated July 15, 1991 (copy on file at Research & Planning Office) ($4,000 jurisdictional limit substantial enough to warrant a written decision explaining calculation of the judgment amount, why each party was or was not credible, why cited statutes were or were not applicable, and why certain evidence was or was not acceptable).

on the appeal/removal process; why have a "new" proceeding in district court if the conciliation court trial is already preserved on a record?[4] Finally, recording or reporting, and the preparation of transcripts, will substantially increase the need for judicial resources and increase the cost to litigants and taxpayers.

The Advisory Committee considered whether the increased complexity caused by increased monetary jurisdiction may be reduced by excluding certain complex types of cases from conciliation court jurisdiction. Class actions and actions for defamation by libel and slander, for example, are inherently complex and cannot be handled by the simple and informal process available in conciliation court.[5] Thus, the Advisory Committee recommends that these matters be excluded from the jurisdiction of conciliation court.[6]

Personal injury claims can also be complex; they frequently include claims for pain and suffering as well as future damages. Such issues normally require testimony by medical and economic experts. Conciliation court trials typically last from five to twenty minutes, and it is difficult, if not impossible, to conduct a trial involving expert testimony in such a short time frame. The Advisory Committee rejected a proposal to exclude personal injury claims that require expert testimony because the exclusion would be difficult to administer. Court administrators, who are required to assist litigants, do not have the necessary legal training to determine whether a particular claim requires expert testimony.

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[4]Article 1, section 4 of the Minnesota Constitution guarantees the right to jury trial for "all cases at law without regard to the amount in controversy." This requires that jury trials be provided at some step in the process. If jury trials are not available at the district court appeal/removal phase, which would occur if the district court appeal/removal were confined to the record, jury trials must be available at the conciliation court phase. Jury trials would drastically alter conciliation court.

[5]Defamation actions raise complex legal issues, including publication, falsity, malice, damages, privilege and justification. The requirements for bringing and maintaining a class action are also complex. See Minn.R.Civ.P. 23. One of the purposes of a class action is to permit the pursuit of claims which are too small individually to be the subject of a lawsuit. Herr, Haydock, Minnesota Practice, Civil Rules Annotated, § 23.3 (1985). Conciliation court was designed for small claims, however, which would appear to obviate the need for class actions.

[6]Proposed Legislation, section 1, subdivision 4(b), (d). Other matters that are typically handled in district court are also excluded, such as claims involving title to land, family law matters, juvenile law matters, probate matters and unlawful detainers. Proposed Legislation, section 1, subdivision 3(a), (g), (h), (i), (j).

Thus, the issue would not be determined until trial, and the results could vary by judge. Conciliation court jurisdictional issues should not be so complex or uncertain.

The Advisory Committee also rejected the idea of a total ban on personal injury claims in conciliation court as it would be inappropriate to exclude minor personal injury claims, such as a cut finger, that can be processed in the informal atmosphere of conciliation court. Moreover, personal injury claims and property damage claims often arise out of the same situation. Under current law, such claims must be brought in the same action.[7] If personal injury claims are excluded from conciliation court jurisdiction, in whole or in part, it might alter the law[8] and permit multiple actions: one in conciliation court for property damage and another in district court for personal injury. The Advisory Committee concluded that alteration of the law in this manner is beyond the scope of its authority. In addition, allowing litigants to split their case would undoubtedly and significantly increase the conciliation court caseload and subject many defendants to multiple court actions.

Alternatively, excluding personal injury claims from conciliation court might force related property damage claims to be litigated in district court. As indicated above, it would be inappropriate to force minor claims out of the conciliation court process.

The Advisory Committee also considered, but rejected, the exclusion of medical and legal malpractice claims. Malpractice claims typically arise in conciliation court as a defense or a counterclaim to a bill collection claim (e.g. refusal to pay a dentist because the wrong tooth was treated or refusal to pay a lawyer because the services were not rendered). In many cases, there have been no problems in handling such issues in the conciliation process. Expert testimony may be required, however, particularly in medical malpractice claims in which the certificate of an expert is often required before the claim can be commenced.[9] As discussed above with respect to personal injury claims requiring

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[7]Mattsen v. Packman, 358 N.W.2d 48 (Minn. 1984) (driver whose automobile was rear-ended and who obtained a conciliation court judgment for property damage could not subsequently bring a district court action for personal injuries arising from the same collision; under the doctrine of res judicata, a judgment on the merits constitutes an absolute bar to a second suit for the same cause of action and is conclusive not only as to any other matter that was actually litigated in the case but also as to every matter which might have been litigated in the case).

[8]Arguably, the doctrine of res judicata (discussed in footnote 7, supra) would not apply as the personal injury claim could not be raised in conciliation court.

[9]Minn. Stat. § 145.682 (1990).

expert testimony, a total or partial ban on malpractice claims in conciliation court creates more problems than it solves.

The Advisory Committee recognizes that allowing personal injury and malpractice claims in conciliation court makes judges and administrators uneasy. Judges may be forced to deny a claim because of insufficient proof (e.g., no expert testimony on a critical issue), and administrators could be subject to liability for failure to advise litigants to consider all potential claims or that an expert may be necessary. Expanded brochures for litigants and training for administrators and judges should help avoid some of this uneasiness and help litigants to select the appropriate forum for their cases.[10]

Exclusion of specific case types from the jurisdiction of conciliation court does little to suppress the increased expectations that litigants have in routine conciliation court cases when the amount at stake reaches several thousand dollars. As the jurisdiction of conciliation court has been increased, so has the concern over the number of appeals/removals. Several years ago, the legislature met this concern with an appeal/removal penalty.[11] If the person making the appeal/removal does not improve the result by $500 or 50% over the conciliation court outcome, an automatic penalty is imposed. Last session the legislature increased this penalty from $200 to $250.

The appeal/removal penalty has had the desired impact of reducing appeals.[12] It has not, however, reduced frustration of unsuccessful litigants. A surprisingly large number of complaints regarding the outcome of conciliation court proceedings have recently reached the Board on Judicial Standards, prompting the Board to voice its opposition to increased monetary jurisdiction.[13]

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[10]As discussed in the next section of the report, many litigants consult counsel about their conciliation court case. It is primarily the responsibility of the lawyer to discuss the advantages and disadvantages of proceeding in a particular forum (e.g., district court procedure offers the advantage of formal discovery, which includes the discovery of the opposing party's expert and the scope and nature of the expert's testimony so there are no surprises at trial. Minn.R.Civ.P. 26.02(d)). Judges and administrators can only give general factual statements.

[11]1989 Minn. Laws, ch. 344, §§ 4, 8, 12.

[12]During calendar years 1986-1988, appeal/removals averaged approximately 2,600 statewide. During 1989-1991 this figure has not exceeded 2,100. Source: Research & Planning Office, State Court Administration.

[13]Letter from Board on Judicial standards Executive Secretary DePaul Willette to Advisory Committee chair Hon. Terri Stoneburner, dated September 30, 1992 (copy on file at Research & Planning Office).

The Board is concerned that higher jurisdictional limits may tend to increase the complexity of cases thus increasing the risk of greater disappointed expectations and greater frustration with the judicial system. As alluded to above, this frustration will lead to increased formality and the conciliation court will no longer exist.

The difficult question is at exactly what point should the jurisdiction stop in order to preserve the informality of conciliation court without significant additional resources. The Advisory Committee heard testimony that increased monetary limits are necessary to provide access to justice for cases involving claims that are too small to justify the expense of a district court proceeding, and in particular the cost of retaining a lawyer.[14] One witness observed that there are no studies addressing the gap between current conciliation court monetary limits and the minimum claim amount necessary to justify a district court proceeding.[15] Although there is a general lack of statistical information regarding the amount of claims made and awarded in Minnesota conciliation and district courts, many Advisory Committee members estimate that the majority of claims now being made do not exceed $2,000.

The Advisory Committee also received testimony from representatives of legal aid offices that the monetary limits are already too high and that higher limits will require more formal procedures.[16] These witnesses also pointed out that the majority of cases do not involve one private homeowner or consumer against another, but instead involve claims made by business against consumers and homeowners. This is consistent with the experience of Advisory Committee members.[17]

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[14]Nov. 13, 1992, testimony of Mr. Irv Dreher, tax consultant, Mr. Eric Mattson, small business proprietor, Ms. Lois Gschlecht, and Ms. Linda Jensen (tape on file at Research & Planning Office).

[15]Nov. 13, 1992, testimony of Mr. Thomas Hanseng, member of Friends for Dispute Reform (tape on file at Research & Planning Office).

[16]Nov. 13, 1992, testimony of Mr. Paul Onkka, Southern Minnesota Regional Legal Services, and Mr. Galen Robinson, Legal Aid Society of Minneapolis (tape on file at Research & Planning Office). Letter from Ms. Roseann Eshbach, Legal Services Advocacy Project, to Advisory Committee Staff, dated Nov. 12, 1992 (copy on file at Research & Planning Office).

[17]See also letter from Eighth Judicial District Court Administrators to Advisory Committee staff, dated Nov. 12, 1992 (copy on file at Research & Planning Office).

Both the legislature and the Advisory Committee have rejected suggestions that use of conciliation court by businesses for bill

Compared to other United States small claims courts, Minnesota already has one of the highest monetary jurisdictional amounts. As of the beginning of 1992, only Indiana has a higher small claims monetary limit ($6,000), but the limit does not apply statewide. Four other states (Alaska, California, Texas, and Delaware) and large metropolitan areas in two others (New Mexico and Pennsylvania) have a $5,000 jurisdictional limit. Only four states (Arkansas, Colorado, North Dakota, and West Virginia) have small claims monetary limits between $3,000 and $3,500. The remaining thirty seven states have small claims monetary limits below $2,500.[18]

The present $5,000 monetary limit in Minnesota represents a 150% increase over the past seven years.[19] The scheduled increases for 1993 and 1994 would represent a 275% increase over nine years. Although the $7,500 monetary limit scheduled for 1994 is more acceptable than the $10,000 or $20,000 limits that were discussed during the past legislative session and the Advisory Committee's public hearing, a $7,500 monetary limit goes beyond the comfort level of the Advisory Committee if current informal procedures are to be maintained.

The Advisory Committee discussed but rejected an approach that would attempt to tie future increases to an economic indicator, such as the Consumer Price Index. This approach presumes that the initial monetary limit is a correct one. In addition, this approach does not take into consideration any decreases in economic indicators. Finally, indexing dilutes notice to the public as the statute would contain only a formula, and litigants would be forced to contact the court or other government agency to determine the current monetary limit.

The Advisory Committee recognizes that the ultimate decision as to the monetary jurisdiction is a legislative determination.

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collection purposes should be limited or denied. Permitting such use, whether by collection agencies or directly by businesses, appears to be positive for consumers. Many collection cases are resolved with an agreement to make specific installment payments. Moreover, the alternative is to force consumers to appear in district court as defendants, which not only increases the cost of defending claims but increases overall consumer costs as well. Administrative steps can also be taken in conciliation court which can reduce the overall impact on consumers, such as separate dockets for collections cases, along with mass education about common consumer defenses.

[18]For a convenient summary of small claims jurisdiction and procedures, see Citizen's Legal Manual, Small Claims Court, by HALT, Inc., an organization of Americans for legal reform (1983). This summary was updated by Advisory Committee staff.

[19]See 1985 Minn. Laws ch. 149 (raising limit from $1,250 to $2,000).

During this past year, many courts have invited local legislators to observe conciliation court first hand so that they can develop a feel for the process. Such education is important, but it may be impractical to maintain over a long period of time. One approach that might be acceptable to the public, the legislature, the bench and the bar would be for the legislature to establish a cross disciplinary council for the sole purpose of reviewing the monetary limits at specified intervals and making recommendations to the legislature. This approach would allow a more orderly presentation of information, and the Advisory Committee favors this approach. No specific recommendation on this issue is included in the Proposed Legislation, however, as it would be inappropriate for the Advisory Committee to suggest the detailed structure and membership for this approach.[20]

The Advisory Committee proposal continues existing provisions regarding student loans, dishonored checks and certain rental property claims.[21] These permit claims to be made against defendants who are located outside the county in which the educational institution is administratively located, in which the dishonored check was issued, or in which the rental property is located.[22]

Also included in the Advisory Committee's proposal is the recently created jurisdiction over claims involving ownership or possession of personal property within the monetary limit of the court.[23] The provision as enacted by the legislature allows the court's decision to be enforced by the sheriff without further legal process. The Advisory Committee is concerned that enforcement of these decisions may be attempted before the decision becomes final (e.g., prior to expiration of the appeal/removal period[24]), thus the Proposed Legislation clarifies that this enforcement provision is limited to "final" judgments.

The Advisory Committee is also concerned about the effectiveness of this enforcement process. By simply declaring the court's return-of-property judgment "enforceable...without further legal process," it appears that the legislature intended to

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[20]A similar approach is presently used for establishing the compensation of constitutional officers, legislators and judges. Minn. Stat. § 15A.082 (1990). One witness testified that members of the public should be included in such efforts, and that they should be paid for their time and expenses. Nov. 13, 1992, testimony of Mr. Thomas Hanseng, member of Friends of Dispute Reform (tape on file at Research & Planning Office).

[21]Proposed Legislation, section 1, subdivisions 6 and 10.

[22]Proposed Legislation, section 1, subdivision 3.

[23]Proposed Legislation, section 1, subdivision 5.

[24]See Proposed Minn.Gen.R.Prac. 515, 520(a), and 521(b).

sidestep the additional steps and fees required under the formal, statutory judgment execution process.[25] The Advisory Committee received testimony that sheriffs would be unwilling to proceed without the fees and a clear directive (to seize the property and turn it over) from the court, and that the judgment or the statutes should be amended to allow the sheriff to use the aid of the county to enforce the judgment.[26] The Advisory Committee proposal includes amendments to the judgment form and the statutes to authorize the effective enforcement of these judgments by any sheriff in the state.[27]

The Advisory Committee also received testimony requesting that courts pay particular attention to the description of property set forth in the judgment. Serial numbers and make and model can often avoid disputes as to which item of property is affected by the judgment.[28] This issue should be addressed in training seminars for all court staff and judges and included in brochures.

Also included in the Advisory Committee proposal are the recently enacted provisions regarding jurisdiction over foreign defendants and multiple defendants residing in separate counties.[29]

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[25]Enforcement procedure is discussed in detail on pages 18-19 of this report.

Some court administrators have expressed doubt about docketing a return-of-property judgment that does not include a specific dollar amount as an alternative to return of the property. In some courts, the fees for filing in conciliation court, obtaining transcript and docketing, and obtaining the writ of execution are docketed as a money judgment against the defendant. This allows the sheriff to collect the fees from the judgment creditor's property. Minn. Stat. § 550.04(5) (1990).

[26]Nov. 13, 1992, testimony of Lt. Rodney Otten, Hennepin County Sheriff's Department (tape on file at Research & Planning Office); Letter from Ms. Roseann Eshbach, Legal Services Advocacy Project, to Advisory Committee Staff, dated Nov. 12, 1992 (copy on file at Research & Planning Office). Lt. Otten also testified that any costs of gaining entry (i.e. hiring a locksmith) must be paid for by the judgment creditor. He also noted that judgment creditors often incur their own expenses, such as renting a trailer to haul the property away.

[27]See Proposed Minn.Gen.R.Prac. Appendix of Forms, UCF-9; Proposed Legislation, section 1, subdivision 5. Statewide enforceability of these judgments recognizes the mobile nature of personal property.

[28]Testimony of Lt. Rodney Otten, supra.

[29]Proposed Legislation, section 1, subdivisions 7 and 8. The recent legislation allows jurisdiction over a foreign corporation "doing business in this state." 1992 Minn. Laws ch. 591, § 4. At

As discussed further below, the Advisory Committee has proposed that litigants have some responsibility for obtaining service on certain foreign defendants.

Participation by Attorneys

One of the most sensitive issues addressed by the Advisory Committee is the participation of attorneys in conciliation court. On one side are the proponents of a "people's court"; simple, informal and unintimidating. On the other side are those who believe that litigants have a fundamental right to be represented by a lawyer. Feelings were strong on both sides.

The divisiveness of this issue is reflected in current practice. Attorney representation is permitted in the two large metropolitan courts, but their participation at trial is limited to the extent and in the manner that the judge deems helpful.[30] In the rest of the state, representation by a lawyer at the trial is prohibited except when the court, in its discretion, finds that the interests of justice would best be served by the representation.[31]

The Advisory Committee found that, in the two large metropolitan conciliation courts, few litigants are represented at trial by a lawyer, and that such representation is generally viewed as helpful by the conciliation court judges. Such representation does not increase the time required to hear cases, and in fact may reduce the time by helping to focus on relevant matters. Participation is often limited, for example, to requesting the judge to ask a particular question. Although several litigants testified before the legislature that it is intimidating to appear in conciliation court without a lawyer when the other side is represented, courts have been lenient in granting continuances to

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least one conciliation court has taken a position that a foreign corporation must be doing business in this state at the time of commencement of the action. Such a result does not appear to be what the legislature intended. Statutes subjecting foreign corporations to service of process issued by Minnesota courts are not limited to corporations currently conducting business in this state. See, e.g., Minn. Stat. § 303.13 (1990). The Advisory Committee proposal avoids the issue by referencing the service of process provisions. Proposed Legislation, section 1, subdivision 7(a).

[30]Minn. Stat. §§ 488A.15, subd. 2; 488A.32, subd. 2 (1990).

[31]1992 Minn. Laws ch. 591, § 8 (participation, if permitted, is limited to the extent and in the manner deemed helpful by the court; codified as Minn. Stat. § 487.30, subd. 4a). This new legislation essentially continues the practice under the previous provision, which precluded attorney representation except with the permission of the court, which permission appears to have been rarely granted. See Minn.Gen.R.Prac. 512(b).

allow litigants to obtain counsel in such situations. Judges also indicated that they tend to bend over backward to assist the unrepresented litigant.

A recent study by the National Center for State Courts[32] examined the impact of attorney participation in small claims cases in 15 cities, including Minneapolis. The study revealed that most litigants do not use attorneys at trial, but they consult attorneys about their case, and as the amount in controversy increased, all litigants were equally likely to consult with an attorney. Plaintiffs who were represented did no better than unrepresented plaintiffs. Unrepresented defendants, however, did equally poorly whether facing a represented or unrepresented plaintiff.

As the study pointed out, barring attorneys does not correct the imbalance against unrepresented defendants. The study also pointed out that unrepresented plaintiffs receive trial preparation assistance, while unrepresented defendants rarely had contact with the court prior to trial. Thus, it was suggested that basic trial preparation advice should be available and advertised to defendants.

The Advisory Committee also found that only fourteen other states place any limitations on trial participation by lawyers in small claims cases. Only five states (California, Indiana, Kansas, Michigan and Nebraska) completely prohibit attorney participation. Three states (Arkansas, Illinois and Utah) have geographic splits similar to Minnesota. Attorney participation is discretionary with the court in three states (Colorado, Oregon and Washington). Montana allows attorneys when both sides are represented, Arizona permits representation upon stipulation of the parties, and Hawaii prohibits representation in landlord-tenant cases only.

The Advisory Committee rejected a complete ban on lawyer participation as some litigants have physical or emotional problems that necessitate representation. In addition, it has been argued that the due process clause of the state and federal constitutions establishes a fundamental right to representation by counsel (although not at state expense).[33] Although this issue has not been decided by the appellate courts, it is doubtful that the average citizen faced with a $5,000 or $6,000 or $7,500 liability would disagree with the argument.

Opponents of attorney participation in conciliation court argue that litigants who desire representation can elect to proceed in district court. While this may be true for most plaintiffs, it

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[32]Ruhnka, Weller, Martin, Small Claims Court, A National Examination 59-72 (National Center for State Courts, Williamsburg, Virginia 1978). For a convenient summary, see Weller, Ruhnka, Small Claims Courts Operations and Prospectives, State Court Journal (Winter 1978).

[33]Letter from Mr. Jeffrey M. Baill, Wasserman & Baill, Mpls., to Advisory Committee chair, dated Feb. 17, 1992 (copy on file at Research & Planning Office).

is not true for defendants.[34] An appeal/removal is no substitute either, because of the $250 appeal penalty if the ultimate result is not improved by $500 or 50%.[35]

The Advisory Committee also considered and rejected the discretionary approach because the only convenient time for the court to exercise its discretion is at the beginning of the trial, and parties could incur unnecessary expense if representation is denied. Requiring a stipulation or that both parties be represented suffers from the same problem.

The Advisory Committee concluded that attorney representation at trial should be permitted as a matter of right, with participation limited to the extent and in the manner deemed helpful by the judge.[36] Many attorneys cannot afford to take conciliation court cases except on a retainer basis.[37] Thus, if monetary jurisdictional limits remain relatively low, it is expected that actual attorney participation will remain low as indicated by the experience in the two large metropolitan courts.

The Advisory Committee also considered a proposal to require

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[34]The only conciliation court bypass procedure available to a defendant is when the defendant has a counterclaim in excess of the conciliation court's jurisdiction. Minn.Gen.R.Prac. 511. The Advisory Committee considered and rejected a proposal to permit a defendant to bypass conciliation court upon payment of the plaintiff's district court filing fees (which now exceed $100). Defendants could bypass conciliation court solely to delay the proceedings or to intimidate the plaintiff with the complexity and formality of district court procedure. There is no effective method of precluding such abuse. The Advisory Committee concluded that a unlimited bypass procedure represents such a fundamental philosophical change that it would be beyond the scope of the Committee's authority and that such a change, if any, should only be made by the legislature.

[35]1992 Minn. Laws ch. 591, § 10.

[36]Proposed Minn.Gen.R.Prac. 512(b). In Nicollet Restoration, Inc., v. Turnham, 486 N.W.2d 753 (Minn. 1992), the Minnesota Supreme Court clearly indicated that the separation of powers clause of the state constitution grants the Supreme Court the sole authority to determine who may practice law before the courts of this state. Thus, the question of attorney participation is ultimately one for the courts, not the legislature, to decide.

[37]Attorney fees may be awarded by the court only when specifically authorized by law or by contract. Although some consumer contracts (e.g., credit account applications) may include a clause authorizing attorney fees, most conciliation courts do not award attorney fees whether an attorney appears or not. There are no formal pleadings to be drawn, and many attorneys who appear are on retainer, which makes fee calculation difficult.

advance notice of representation to the other party because litigants might prepare differently if they are aware that the other side is represented. Interestingly, several litigants opposed this because they felt that some parties might use the notice solely to intimidate the other side, never intending to appear with a lawyer. It was noted that courts have been lenient in granting continuances to retain a lawyer, and the availability of up to $50 costs may offset any inconvenience. Litigants and the Advisory Committee agreed that a continuance would be an adequate remedy, and that this issue should be included in judicial training programs.

Pretrial Procedure

Section 2 of the Advisory Committee's proposed bill sets forth the basic procedural framework for the court. Claims are to be determined without a jury trial and by a simple and informal procedure. Uniform forms are to be accepted by any conciliation court.

Section 2 also provides that conciliation court proceedings shall not be reported. The Advisory Committee found that if reporting were permitted, it would substantially increase the resources necessary to operate the court. In the two large metropolitan courts, the judges do not have court reporters. In other areas that use pooled reporters, reporters are not currently assigned to conciliation court. Reporters who work for a single judge are often assigned other duties while the judge is presiding in conciliation court. Preparation of transcripts would also be costly and time consuming, and are largely unnecessary because appeals are not made on the record but are conducted as an entirely new trial. Finally, as noted above, recording or reporting only encourages a more formal process and invites attorney participation.

Both the proposed statute and proposed rule amendments authorize court administrators to provide certain assistance to litigants.[38] Although this appears to be repetitive, both the statute and the rule play a separate role. The separation of powers clause of the state constitution grants the Supreme Court the sole authority to determine who may practice law before the courts of this state, while the legislature has the authority to determine who may be criminally prosecuted for the unauthorized practice of law.[39] Thus, the rules serve the purpose of granting permission to perform limited acts, while the statute insures that there will be no criminal liability for such activity.

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[38]Proposed Legislation, section 2, subdivision 2; Proposed Minn.Gen.R.Prac. 505(b). For a discussion of the limitations, see pages 3-5 of this report regarding assistance by administrators with respect to certain types of cases.

[39]Nicollet Restoration, Inc., v. Turnham, 486 N.W.2d 753 (Minn. 1992).

The proposed statute also continues the uniform, statewide filing fee established under Minnesota Statutes, section 357.22, and incorporates a reference to the additional law library fees established under sections 134A.09-.10. Law library fees are set by local law library boards, and although they are normally very small, the fact that a different fee applies in almost every county makes it difficult for both litigants and administrators. The ideal would be a uniform, statewide law library fee for conciliation court cases. The Advisory Committee recognizes, however, that local law libraries rely on such fees and therefore no proposed uniform fee language is included in the proposal.

Commencement of a case remains essentially unchanged: the plaintiff must file a completed statement of claim along with the appropriate fee or fee waiver affidavit, in the appropriate county.[40] Service of the statement of claim is generally made by the court administrator by mailing a copy to the defendant at the address on the statement of claim.[41] If the address is outside the state, however, the Advisory Committee proposes that the plaintiff be responsible for obtaining service on the defendant and filing proof of service with the court. Various laws govern service on a non-resident defendant, and these are discussed in the Advisory Committee comment immediately following the rule. In certain situations, service can be accomplished through a government office, such as the secretary of state's office.

Requiring the parties to assume some service responsibility will add some delay to the process. In addition, most of the laws regarding service on non-residents allow a longer period for making a response or counterclaim. Thus, court administrators will have to take these factors into account when selecting the hearing date.[42]

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[40]Proposed Minn.Gen.R.Prac. 505. Both the proposed rules and statutes continue the requirement that a court administrator must accept a uniform claim or counterclaim form and on request forward it to the appropriate conciliation court. Proposed Legislation, section 2, subdivision 2; Proposed Minn.Gen.R.Prac. 504. The phrase "on request" was added by the Advisory Committee to emphasize that it is the litigants' responsibility to determine the appropriate county in which to file claims and counterclaims. A party cannot meet a deadline (e.g., commencement of an action prior to expiration of statute of limitations) by filing with the wrong conciliation court. When a claim is presented to a court administrator for forwarding to another county, it is not "filed" in that county; the court administrator merely serves as a conduit to facilitate the filing with the proper county.

[41]Proposed Minn.Gen.R.Prac. 508.

[42]Proposed Minn.Gen.R.Prac. 508 and accompanying Advisory Committee Comment.

The Advisory Committee considered but rejected the requirement of an informal answer or response from the defendant prior to the hearing. The purpose would be to distinguish default matters from contested matters and to permit the court to excuse litigants from unnecessary trips to the courthouse. Such a practice has been informally and successfully followed for several years in the Arrowhead region of the state and was found to reduce unnecessary travel and assist the court to manage its cases more efficiently.

Although litigants do not appear to oppose such a requirement in general, not every conciliation court has sufficient resources to fully implement the process, which requires follow up contact by the court. The Advisory Committee initially attempted to incorporate the answer/response process as an option, but found the forms too confusing. The Advisory Committee also received comments indicating that the answer/response process used in the Arrowhead region created problems for neighboring courts that did not use the procedure.[43]

The Advisory Committee also considered an express provision authorizing third party claims. Although a plaintiff is authorized to file a claim against multiple defendants, a plaintiff may not always file against all necessary parties, and the defendant may want to bring in another defendant. The Advisory Committee found that, although third party claims are currently authorized in Hennepin County,[44] use of the provision is not common; it is more common for the court to grant a continuance to allow the defendant to bring a separate claim against another defendant, and then consolidate the matters for hearing, and this practice occurs statewide. The Advisory Committee concluded that a third party claim provision is unnecessary and the situation can be adequately addressed in a brochure.

Court administrators on the Advisory Committee also requested clear authority to remove a settled claim from the trial calendar prior to trial. Procedures detailing the process have been incorporated into the Advisory Committee's proposal.[45]

Trial

The proposed rules include the addition of a paragraph addressing the availability of, and process for obtaining, subpoenas.[46] Although the subject is addressed in most conciliation court brochures and information sheets, incorporating

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[43]Letter from Linda Griffith, Deputy Clerk, Itasca County Court Administration, to Advisory Committee, dated Nov. 4, 1992 (copy on file at Research & Planning Office).

[44]Minn. Stat. § 488A.14, subd. 7 (1990).

[45]Proposed Minn.Gen.R.Prac. 511.

[46]Proposed Minn.Gen.R.Prac. 512(a).

a provision in the rules increases the likelihood of notice to all litigants.

The proposed legislation authorizes the court to issue subpoenas on a statewide basis.[47] This recognizes the expanded territorial jurisdiction of the court and the reality that necessary witnesses and documents may be located outside the county boundaries. Provisions requiring the payment of fees for attendance, travel, and production of documents have also been incorporated, and these should help avoid any potential abuses of the process.[48]

The Advisory Committee found that approximately 90% of exhibits submitted at trial are documents, and that most courts routinely copy any documents they need and return the originals at the end of the hearing. Parties frequently blame the court, however, for loss of exhibits, and the administrators requested a rule that clearly delineates the responsibility for exhibits. Thus, the Advisory Committee proposes to insert a clause stating that "all exhibits will be returned at the end of the hearing unless otherwise ordered by the judge."[49] It was noted that promissory notes and other negotiable instruments must be retained by the court and that judges must take the initiative and order that these items be retained by the court. This issue should also be addressed in judicial training materials.

The Advisory Committee proposal retains the requirement that parties must be present at trial. It is impossible to conciliate the parties if one of them is not present, and it is not uncommon for one party to rely on the testimony of the opposing party as part of the first party's case. The Advisory Committee recognized, however, that situations might arise (e.g., temporary or permanent health considerations make attendance unreasonable) when the presence of one of the parties should not be required if a legal representative appears.[50] Thus, the rules include a proviso permitting the court to excuse the presence of a party.[51]

In district court, there is no rule of civil procedure that requires a party's attendance at trial, and if the testimony of a party is desired by an opposing party, attendance at trial may be

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[47]Proposed Legislation, section 1, subdivision 3.

[48]Proposed Minn.Gen.R.Prac. 512(a).

[49]Proposed Minn.Gen.R.Prac. 512(b).

[50]Although it might be contrary to sound public policy to require a medical doctor to appear in person for routine bill collection cases, the claim can be assigned and the assignee can make an appearance. In some situations, however, the testimony of the doctor may be necessary for proof of the claim.

[51]Proposed Minn.Gen.R.Prac. 512(c).

secured through a subpoena or a deposition may be taken.[52] Depositions are not allowed in conciliation court, and although subpoenas may be obtained from the court to secure the attendance of a witness, the statement of claim already requires the appearance of the parties.

The Advisory Committee found that most non-resident business litigants currently appear through counsel in the metro conciliation courts. Both the proposed statute and rule amendments specify what constitutes an acceptable appearance for a business entity.[53] The appearance and participation by attorneys is discussed at length in a preceding section of this report.

The Advisory Committee also reviewed the evidence standards utilized by other states and found them to be less articulate than the present evidentiary standard.[54] The Advisory Committee also concluded that litigants should know ahead of time whether an

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[52]Pagliarini v. Doyle's Services, Inc., 470 A.2d. 218, 219 (R.I. 1984) (citing Teitelman v. Bloomstein, 155 Conn. 653, 236 A.2d 900 (1967); Bauer v. Bauer, 177 Mich. 169, 142 N.W. 1074); accord, Nachtsheim v. Wartnick, 411 N.W.2d 882 (Minn. App. 1987) (deposition of opposing party admissible as direct evidence).

[53]Proposed Legislation, section 2, subdivision 4; Proposed Minn.Gen.R.Prac. 512(c). Although it appears to be unnecessary to have both a rule and a statute, each plays a separate role. As noted above, the separation of powers clause of the state constitution grants the Supreme Court the sole authority to determine who may practice law before the courts of this state, while the legislature has the authority to determine who may be criminally prosecuted for the unauthorized practice of law. Nicollet Restoration, Inc., v. Turnham, 486 N.W.2d 753 (Minn. 1992). Thus, the rules serve the purpose of granting permission to perform limited acts, while the statute insures that there will be no criminal liability for such activity.

Both the proposed rules and legislation specify that an employee who is appointed by a corporation to appear in district court must be a natural person. There already have been some instances in which a corporation has attempted to appoint a separate corporation to appear on its behalf. For example, a corporate landlord hires a property management corporation to manage the property and the management corporation sends its employee to appear on behalf of the corporate landlord. The management corporation employee generally does not have the authority to settle the case on behalf of the corporate landlord. The natural person requirement is designed to ensure that the appearing individual has the requisite authority and to avoid creating small business enterprises that routinely engage in the unauthorized practice of law.

[54]Proposed Minn.Gen.R.Prac. 512(d).

affidavit will be accepted and whether and how many repair estimates to bring, and agreed that training and brochures are the appropriate methods of addressing issues regarding affidavits and other specific evidence.

The Advisory Committee considered but rejected a proposal for immediate announcement of decisions at the conclusion of trial. Although most courts do this on occasion, experience has shown that it can lead to arguments and fights, and that it may increase the number of appeals.

Finally, the proposed statute continues the authority to order judgment payable in installments, subject to a one year limit for the last installment and an automatic acceleration upon any default which renders the entire amount immediately due and payable.[55] Although the constitutionality of forced installment payments has not been decided, several courts routinely enter installment judgments (often for longer than one year periods) based upon stipulations reached by the parties.

Appeal/Removal to District Court

The Advisory Committee found that the terms "removal," "appeal" and "de novo" are all used to describe what is essentially a new trial. Although a removal is technically not an "appeal" because there is no review of the conciliation court proceedings, conciliation court litigants may think in terms of an "appeal" and when consulting the rules they will search for that heading. In addition, "de novo" is a term of art that judges recognize, and deleting it might be viewed by some as changing the nature of the proceedings in district court. Thus, the Advisory Committee concluded that references to all three terms should remain in the rules and statutes.[56]

Under current rules and statutes, parties attempting to vacate a default judgment are permitted two opportunities to convince a trial judge to reopen the case, one before the conciliation court, and another in the district court on a limited removal.[57] In some

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[55]Proposed Legislation, section 2, subdivision 5.

[56]Proposed Legislation, section 2, subdivision 6; Proposed Minn.Gen.R.Prac. 521(a).

[57]Minn. Stat. §§ 487.30, subds. 5b, 5c; 488A.16, subds. 5, 6; 488A.17, subd. 3; 488A.33, subds. 5, 8; 488A.34, subd. 12 (1990); Minn.Gen.R.Prac. 521(c). The Advisory Committee has attempted to clarify the procedures and requirements for obtaining vacation of a default judgment. A simple, informal procedure is available prior to the effective date of the judgment. Proposed Minn.Gen.R.Prac. 520(a). Once the judgment becomes finally effective, formal district court motion practice must be followed, and the moving party must show that they did not receive notice within sufficient time to permit a defense or to vacate prior to the effective date of judgment, and that the party has acted with

counties, these opportunities occur only days apart, and some judges have queried whether multiple review is necessary and appropriate. The Advisory Committee found that the review in district court is necessary to create a record for appeal, and that the review in conciliation court is inexpensive and practical, judges are typically more lenient at the conciliation court level, and conditional costs help offset any delays. The Advisory Committee recommends retention of these procedures and the inclusion of the subject as a judicial training issue.[58]

Current rules and statutes also establish a uniform, twenty day time period for obtaining an order to vacate or for removing a case to district court.[59] The twenty days is measured from the mailing of the notice of judgment, and the law requires that an additional three days be added to the time period when notice is served by mail.[60] Computing the deadline can be difficult and confusing for lay persons, and the Advisory Committee proposal attempts to alleviate this problem by requiring the court administrator to perform the computation and specify the resulting date in the notice of order for judgment, taking into consideration the applicable rules.[61]

The Advisory Committee proposal also attempts to clarify some of the steps necessary to effect an appeal/removal to district court, including the manner of service of the demand for removal on the other party, proof of service, and fee waiver. Transmittal of the record to district court has also been clarified, and the

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due diligence in making the motion. Proposed Minn.Gen.R.Prac. 520(b). A showing of a meritorious defense, required for obtaining a motion to vacate a district court judgment, is not included because of the summary nature of conciliation court proceedings. If the conciliation court judgment has been docketed in district court, however, the judgment becomes a district court judgment, and district court proceedings must be commenced to vacate the district court judgment.

The rule does not preclude a court from exercising its inherent power to vacate, on its own initiative, a judgment that appears invalid. The most common example is when both the summons and notice of judgment have been returned undelivered to the court after issuance of a judgment.

[58]Proposed Minn.Gen.R.Prac. 520, 521(e).

[59]Minn. Stat. §§ 487.30, subds. 5a, 5b, 5c; 488A.16, subds. 2, 5, 6; 488A.33, subds. 2, 5, 6 (1990); Minn.Gen.R.Prac. 515, 520(a), 521(b)(c).

[60]Wilkins v. City of Glencoe, 479 N.W.2d 430 (Minn. App. 1992) (construing rule 6.05 of the Minnesota Rules of Civil Procedure).

[61]Proposed Minn.Gen.R.Prac. 514.

requirement of certification of the record by the conciliation court judge has been deleted as unnecessary.[62]

As noted above,[63] the Minnesota Supreme Court has recently ruled that a corporation must be represented by a licensed attorney when appearing in district court regardless of the fact that the action originated in conciliation court and the corporation appeared in conciliation court without a lawyer. The Advisory Committee has included a reference to the case in a committee comment following rule 521 so that litigants are aware of the law.[64]

Finally, the Advisory Committee has continued the proviso that if the person making the appeal/removal does not improve the result by $500 or 50% over the conciliation court outcome, an automatic penalty is imposed.[65] Last session the legislature increased this penalty from $200 to $250.[66] The Advisory Committee received testimony that the penalty amount is too high, the circumstances in which the penalty applies are too confusing, and the penalty applies only to the first party filing a notice of removal.[67]

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[62]Proposed Minn.Gen.R.Prac. 521(b),(d).

[63]See footnotes 36, 39, and 53, supra, and accompanying text.

[64]The Advisory Committee received several comments seeking a reversal of this decision. [See Letter from Mr. John Kerwin, Nicollet Restoration, Inc., to State Representative Kathleen Vellenga, dated Oct. 14, 1992; Letter from Theresa and Eugene Binder to State Representative Robert Milbert, dated Oct. 31, 1992 (copies on file at Research & Planning Office).] The Advisory Committee concluded, however, that the issue of representation in district court is outside the bailiwick of the Committee.

[65]Proposed Legislation, section 2, subdivision 6; Proposed Minn.Gen.R.Prac. 524.

[66]1992 Minn. Laws ch. 591, § 10.

[67]Nov. 13, 1992, testimony of Mr. Paul Onkka, Southern Minnesota Regional Legal Services (tape on file at Research & Planning Office). Mr. Onkka provided the following examples of the application of the penalty provision:

1. If you get nothing in conciliation court, you must recover either (a) $500 or (b) half of what you request when you appeal to district court, whichever is less.

For example, say you originally asked for $1200 in conciliation court but received nothing. You appeal and request $800. You must recover at least $400 in district court because this is half of what you requested on appeal and it is less than $500. If you request the full $1200 on appeal you must recover at

Although judges and administrators often struggle with the application of this penalty provision, the provision has had the desired impact of reducing unnecessary appeals, and it prevents potential abuses by parties who might otherwise appeal simply to pressure the other party into a settlement in order to avoid the cost and intimidation of a district court proceeding.[68] Moreover, as the provision is in the form of a penalty, it is appropriate that the legislature determine the amount of the penalty and define the circumstances under which it will be applied. The penalty provision is included in both the proposed legislation and rules in an effort to provide litigants with as much notice as possible. Forms have also been updated to emphasize the penalty.[69]

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least $500 because this is less than half of what you request on appeal.

2. If you won something in conciliation court but not all you requested, you must increase your recovery in district court by $500 or 50%, whichever is less.

For example, if you requested $2000 in conciliation court but recovered only $400, you must recover at least $600 in district court because this is 50% more than what you got in conciliation court. If you had recovered only $1200 in conciliation court, you must recover at least $1700 in district court because this is $500 more than what you recovered in conciliation court and is less than the $1800 you would have to recover in order to improve your recovery by 50%.

3. If the opposing party won some amount in conciliation court, then you must succeed in having the district court reduce that recovery by half or $500, whichever is less.

For example, if the opposing party recovered $600 from you in conciliation court, the district court must reduce that recovery by at least half to $300. If the opposing party recovered $1200 from you then that recovery must be reduced to at least $700 because this amount is $500 below what the opposing party got before and this is less of a reduction than it would take to cut the recovery in half, i.e. $600.

[68]See footnote 12 and accompanying text.

[69]See Proposed Minn.Gen.R.Prac., Appendix of Forms, UCF-9.

Appeal to Court of Appeals

The Advisory Committee proposal continues the provision permitting an appeal from the decision of the district court to the Court of Appeals.[70]

Enforcement of Judgments

Perhaps the most troublesome aspect of conciliation court is the collection of judgments. The Advisory Committee found that a process exists, is well documented with forms and instructions, but appears to break down at a certain point (i.e. when debtors fail to comply with requests for disclosure of assets). The Advisory Committee has attempted to remedy this by explaining the process more thoroughly in the rules, brochures, and in this report.

Once a conciliation court judgment becomes effective, it may be enforced. Enforcement is generally accomplished by execution. The conciliation court is precluded by law from issuing execution documents; thus, the conciliation court judgment must first be transcribed to district court and docketed as a district court judgment.[71] This requires a transcription fee (currently $7.50) and docketing requires an affidavit of identification from the judgment creditor (the party in whose favor the judgment was entered).[72] Upon docketing, the judgment creditor may obtain a legal paper known as a writ of execution (the current fee for issuing an execution is $10)), which authorizes the sheriff to collect on the debtor's non-exempt assets, such as bank accounts.[73] The judgment creditor must, however, supply the sheriff with detailed information regarding the debtor's assets.[74]

If a conciliation court judgment creditor does not know what assets the debtor has, and the judgment has been docketed in district court for at least thirty days, the creditor may request the district court to order the debtor to disclose those assets to the creditor. If the judgment debtor does not comply with the order, the judgment creditor may request the court to issue an order to show cause, which requires the judgment debtor to appear

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[70]Proposed Legislation, section 2, subdivision 7; Proposed Minn.Gen.R.Prac. 525.

[71]Minn. Stat. §§ 488A.16, subd. 8; 488A.33, subd. 7; Proposed Minn.Gen.R.Prac. 518(a); Proposed Legislation, § 1, subd. 2. Docketing a money judgment creates a lien against all real property of the judgment debtor in the county in which it is docketed, except for unregistered land, which requires an additional filing (pursuant to Minn. Stat. §§ 508.63 and 508A.63 (1990)) to create a lien. Minn. Stat. § 548.09, subd. 1 (1990).

[72]Minn. Stat. §§ 357.021, subd. 2(5); 548.09, subd. 2 (1990).

[73]Minn. Stat. §§ 357.021, subd. 2(4); 550.01, et seq. (1990).

[74]Proposed Minn.Gen.R.Prac. 518(a).

and explain why the judgment debtor should not be cited for civil contempt for failure to disclose assets. Cash bail posted as a result of a civil contempt citation may be ordered payable to the judgment creditor in order to satisfy the judgment.[75]

If a judgment debtor has no assets, or the assets are exempt or their existence is unknown to the judgment creditor and the court, there is little the court can do to assist in the collection of the judgment. The frustration is understandable. One witness suggested that there are too many exemptions and the dollar amounts of the exemptions are too high. The exemptions are established by the legislature and have an impact beyond the scope of the Advisory Committee's work, and the Advisory Committee makes no recommendations with respect to exemptions.

Personnel

The Advisory committee proposal continues the current provisions regarding personnel, quarters and supplies.[76] Currently, referees are permitted only in the two large metropolitan conciliation courts. Whether further use of referees should be permitted is an issue with broad ramifications for the entire trial court system.[77] Therefore, the Advisory Committee makes no recommendation other than to maintain the status quo with respect to referees.

Brochures

All conciliation courts either produce their own brochure or use the brochure prepared by the State Court Administrators Office in conjunction with the Procedures and Forms Committee of the Minnesota Association for Court Administrators. In addition, many courts distribute separate instruction sheets with each form. The various brochures and forms will have to be updated in light of any changes made following this report, and most of the brochures and forms could easily be improved. The Advisory Committee recommends that, following the implementation of the proposed rules and statutes, the Supreme Court establish a particular committee to prepare a thorough conciliation court brochure. Most of the members of the Advisory Committee are willing to continue serving in their capacity to accomplish such a task, should the Supreme Court deem it desirable.

Mediation

The Advisory Committee received testimony from one witness that there is not enough alternative dispute resolution available

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[75]Proposed Legislation, section 2, subdivision 9; Proposed Minn.Gen.R.Prac. 518(b).

[76]Proposed Legislation, section 3; Proposed Minn.Gen.R.Prac. 504.

[77]Minn. Stat. §§ 2.722; 484.75 (1990).

in the court system and that mediation should be incorporated into conciliation court.[78] Although it appears that at least one city may have incorporated mediation into its small claims court, the Advisory Committee concluded that the subject is outside its bailiwick.[79]

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[78]Nov. 13, 1992, testimony of Mr. Thomas Hanseng, member of Friends of Dispute Reform (tape on file at Research & Planning Office).

[79]See Small Claims Mediation Project In the District Court of the State of Oregon for Multinoma County (Portland, Oregon; September 1991) (copy on file at Research & Planning Office). Alternative dispute resolution in the Minnesota courts is the focus of the Minnesota Supreme Court Alternative Dispute Resolution Implementation Committee.

ADVISORY COMMITTEE ON CONCILIATION COURT RULES

PROPOSED AMENDMENTS TO THE GENERAL RULES OF PRACTICE

FOR THE DISTRICT COURTS

TITLE VI -- CONCILIATION COURT RULES

Rule 501 Applicability of Rules

Rules 501 through 525 apply to all Conciliation Court proceedings~~, except in Hennepin and Ramsey counties~~.

Rule 502 Jurisdiction

The conciliation court shall have jurisdiction and powers as prescribed by law.

~~**Rule 503 Powers; Issuance of Process**~~

~~The conciliation court may issue process as necessary or proper to carry out the purposes of conciliation court.~~

Rule 5043 Computation of Time

~~In computing any period of time prescribed by these rules, 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 falls on a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed is less than seven days, intervening Saturdays, Sundays and holidays shall be excluded in the computation.~~

(a) General. All time periods shall be measured by starting to count on the first day after any event happens which by these rules starts the running of a time period. If the last day of the time period is anything other than a working week day, then the last day is the next working week day.

(b) Time Periods Less Than Seven Days. When the time period is less than seven days, only working week days shall be counted.

(c) Working Week Day. A "working week day" means a day which is not a Saturday, Sunday or legal holiday. For purposes of this rule, a legal holiday includes all state level judicial branch holidays established pursuant to law and any other day on which county offices in the county in which the conciliation court is held are closed pursuant to law.

1993 Committee Comment

State level judicial branch holidays are defined in Minnesota Statutes, section 645.44, subd. 5 (1990), which includes: New Years Day, January 1; Martin Luther King's Birthday, the third Monday in January; Washington's and

Lincoln's Birthday, the third Monday in February; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Veteran's Day, November 11; Thanksgiving Day, the fourth Thursday in November; and Christmas Day, December 25. Section 645.44, subdivision 5 further provides that when New Year's Day, January 1; or Independence Day, July 4; or Veteran's Day, November 11; or Christmas Day, December 25; falls on Sunday, the following day shall be a holiday and that when New Year's Day, January 1; or Independence Day, July 4; or Veteran's Day, November 11; or Christmas Day, December 25; falls on Saturday, the preceding day shall be a holiday. Section 645.44, subdivision 5, also authorizes the judicial branch to designate certain other days as holidays. The 1992 Judicial Branch Personnel Plan designates the Friday after Thanksgiving as a holiday.

Conciliation courts are housed in county buildings, and the county is authorized to close county offices on certain days pursuant to Minnesota Statutes, section 373.052 (1990). Thus, if a county closes its offices under section 373.052 on a day that is not a state level judicial branch holiday, such as Christopher Columbus Day, the second Monday in October, the conciliation court in that county would nevertheless include that day as a holiday for the purpose of computing time under Rule 503. See Mittelstadt v. Breider, 286 Minn. 211, 175 N.W.2d 191 (1970) (applying section 373.052 to filing of notice of election contest with district court). If a county does not close its offices on a day that is a state level judicial branch holiday, such as the Friday after Thanksgiving, the conciliation court in that county must still include that day as a holiday for the purpose of computing time under Rule 503.

Rule 505~~4~~ Judge(s); Administrator; Reporting

(a) **Judges.** The judge(s) and, where authorized by statute, full and part time judicial officers and referees of the district court shall serve as judge(s) of conciliation court for such periods and at such times as the judge(s) shall determine. A judge, judicial officer, or referee so serving shall be known as a conciliation judge.

(b) **Administrator.**

(1) The court administrator shall manage the conciliation court, and may delegate a deputy or deputies to assist in performing the administrator's duties ~~herein prescribed~~. The court administrator shall keep records and accounts and perform such duties as may be prescribed by the judge(s). The court administrator shall account for, and transmit ~~pay over~~ to the appropriate official ~~entitled thereto~~, all fees received as required by statute or rule.

(2) Under supervision of the conciliation court judges, the court administrator shall explain to litigants the procedures and functions of the conciliation court and shall on request assist litigants in filling out the forms provided under rules 508~~7~~(b) and 518(b) of these rules and on request shall forward properly completed statement of claim and counterclaim forms

to the administrator of the appropriate conciliation court together with the applicable fees, if any. The court administrator shall also advise litigants of the availability of subpoenas to obtain witnesses and documents. The performance of these duties shall not constitute the practice of law.

(c) **Reporting.** Conciliation court trials and proceedings shall not be reported.

1993 Committee Comment

Rule 504(b)(2) requires court administrators to advise litigants of the availability of subpoenas under Rule 512(a). The required advice may be provided orally or in writing (e.g. on the litigant's copy of a court form, an accompanying instruction sheet, or in a brochure).

Rule 505 Commencement of Action

An action is commenced against a defendant when a statement of claim as required by Rule 507 ~~complaint~~ is filed with the court administrator of the conciliation court having jurisdiction and the applicable ~~a filing~~ fees ~~as established by rule 507 of these rules is~~ are paid to the administrator or the affidavit in lieu of filing fees prescribed in rule 506 is filed with the administrator.

Rule 506 Fees; Affidavit in Lieu of Fees

The court administrator shall charge and collect a filing fee ~~of $13.00~~ in the amount established by law and the law library fee, from every plaintiff and from every defendant when the first paper for that party is filed in any conciliation court action. If the plaintiff or defendant who is a natural person signs and files with the court administrator an affidavit claiming ~~no money or property and~~ an inability to pay the applicable ~~a filing~~ fees, no ~~filing~~ fees are ~~is~~ required. If the affiant prevails on a claim or counterclaim, the amount of the ~~filing~~ fees which would have been payable by the affiant must be included in the order for judgment and paid to the administrator of conciliation court by the affiant out of any money recovered by the affiant on the judgment.

1993 Committee Comment

A uniform, conciliation court filing fee is established by the legislature. Minn. Stat. § 357.022 (1990) ($13.00). The law library fee is established by the local law library board, and these fees typically range from $0.00 to $10.00. Minn. Stat. §§ 134A.09-.10 (1990 + 1991 Supp.). The fee waiver procedure under Rule 506 is essentially a clerical process, and the waiver applies to the conciliation court filing and law library fees only. The procedure for waiver of other fees [e.g. service fees under Rule 508(d)(3), subpoena fees under Rule 512(a), and removal/appeal fees under Rule 521(b)(4)] is set forth in Minnesota Statutes, Section 563.01 (1990), which requires a formal application to, and decision

by, the court. Only a party who is a natural person may utilize the fee waiver procedures under section 563.01 and Rule 506.

Rule 5087 Statement of Claim and Counterclaim~~Complaint~~; Contents; Verification

(a) **Claim; Verification; Contents.** Each statement of claim and each counterclaim ~~The complaint~~ shall be made in the form approved by the court and shall contain a brief statement of the amount~~, date of accrual~~ and nature of the claim, including relevant dates, and the name and address of the plaintiff and the defendant. The court administrator shall assist with the completion of the statement of claim and counterclaim ~~complaint~~ upon request. Each statement of claim and each counterclaim ~~The complaint~~ shall also be ~~verified~~ signed and sworn to by the ~~plaintiff~~party, or the lawyer representing the party, in the presence of a notary public or the court administrator.

(b) **Uniform Statement of Claim ~~Complaint~~ or Counterclaim; Acceptance by Court.** A statement of claim ~~complaint~~ or counterclaim in the uniform form prescribed in the appendix to these rules ~~prescribed by the Supreme Court~~ shall be accepted by any conciliation court administrator when properly completed and filed with the applicable fees, if any ~~and shall be forwarded together with the entire filing fee, if any, to the court administrator of the appropriate conciliation court. Every conciliation court shall accept a uniform complaint or counterclaim which has been properly completed and which has been properly forwarded to the court by another conciliation court~~.

1993 Committee Comment

Rule 507(b) requires that all courts accept a statement of claim or counterclaim properly completed on the form set forth in the appendix. Rule 507(a) authorizes a court to tailor the forms that it makes available to litigants for use in that court or to approve forms prepared by the litigants. This rule allows both the court and the litigants to benefit from increased efficiency through the use of various pre-printed forms and word processor or computer generated forms. Courts using tailored forms cannot, however, reject a statement of claim or counterclaim properly completed on the form set forth in the appendix.

Rule 5098 Summons; Trial Date

(a) Trial Date. When an action has been properly commenced, the court administrator shall set a trial date~~,~~ and prepare a summons~~, and cause it to be served upon the parties by first class mail~~. Unless otherwise ordered by a judge, the trial date shall not be less than 10 days from the date of mailing or service of the summons.

(b) Contents of Summons. The summons shall state the amount and nature of the claim; require the defendant to appear at the trial ~~hearing~~ in person or if a corporation, by officer or agent ~~and without lawyer except by leave of the court~~; shall specify that if the defendant does not appear judgment by default ~~will~~ may be entered for the ~~relief demanded~~ amount due the plaintiff, including fees, expenses and other

items provided by statute or by agreement, and where applicable, for the return of property demanded by the plaintiff;~~,~~ and shall summarize the requirements for filing a counterclaim. ~~Unless otherwise ordered by a judge, the hearing date shall be not less than 10 days from the date of mailing or service of the summons.~~

(c) **Service on Plaintiff.** The court administrator shall summon the plaintiff by first class mail.

(d) **Service on Defendant.**

(1) If the defendant's address as shown on the statement of claim is within the county, the administrator shall summon the defendant by first class mail.

(2) If the defendant's address as shown on the statement of claim is outside the county but within the state, and the law provides for service of the summons anywhere within the state, the administrator shall summon the defendant by first class mail.

(3) If the defendant's address as shown on the statement of claim is outside the state, the administrator shall forward the summons to the plaintiff who, within 60 days after issuance of the summons, shall cause it to be served on the defendant and file proof of service with the administrator. If the summons is not properly served and proof of service filed within 60 days after issuance of the summons, the action shall be dismissed without prejudice. A party who is unable to pay the fees for service of a summons may apply for permission to proceed without payment of fees pursuant to the procedure set forth in Minnesota Statutes Section 563.01.

1993 Committee Comment

The territorial jurisdiction of conciliation court is limited to the county boundaries, and a summons cannot be issued outside the county except in certain situations, including: recovery of certain student loans by educational institutions located within the county; recovery of alleged dishonored checks issued within the county; certain claims arising out of rental property located within the county; actions against two or more defendants when one defendant resides in the county; actions against foreign corporations doing business in this state; and actions against non-residents other than foreign corporations when the state has jurisdiction under Minnesota Statutes, section 543.19. Minn. Stat. § 491.01, subds. 3, 6-10 (Supp. 1993). In situations in which the address of the defendant as shown on the statement of claim is outside the state, the summons is forwarded to the plaintiff who is then responsible for causing service of the summons on the defendant in the manner provided by law and filing proof of service with the court within 60 days of issuance of the summons.

Various laws govern the service of a summons on nonresident defendants. See, e.g. Minn. Stat. §§ 45.028 (foreign insurance entities doing business in this state); 303.13 (foreign corporations doing business in this state); 543.19 (other nonresident defendants subject to the jurisdiction of Minnesota's courts). The procedure under each

of these laws is different, and it is the plaintiff's responsibility to ensure that the appropriate procedures are followed. For example, service on a unregistered foreign corporation pursuant to Minn. Stat. § 303.13 (1991 Supp.) can be accomplished by delivering three copies of the summons to the secretary of state and payment of a $35.00 fee. The Secretary of state then mails a copy to the defendant corporation and keeps a record of the mailing. Rule 508(d) requires that the plaintiff file an affidavit of compliance which should be accompanied by the fee receipt from the secretary of state's office or a copy of the summons bearing the date and time of filing with the secretary of state. Service on a unregistered foreign insurance entity pursuant to Minn. Stat. § 45.028, subd. 2 (1990), may be accomplished by: (1) delivering a single copy of the summons to the commissioner of commerce (as of August 1, 1992, there is no filing fee); and (2) the plaintiff mailing a copy of the summons and notice of service to the foreign insurance company by certified mail; and (3) filing of an affidavit of compliance with the court. Service is not effective until all steps are completed, including the filing of the affidavit of compliance, which should be accompanied by receipts or other proof of mailing and filing with the commissioner of commerce. Finally, service on other non-residents pursuant to Minn. Stat. § 543.19 (1990) requires that the summons be "personally served" on the nonresident and proof of service filed with the court. Such "personal service" may only be made by a sheriff or any other person not less than 18 years of age who is not a party to the action. Reichel v. Hefner, 472 N.W.2d 346 (Minn. App. 1991) (applying rule 4.02 of the rules of civil procedure for the district courts).

When service on a foreign corporation has been made under Minn. Stat. § 303.13 through the office of the secretary of state, the defendant corporation so served shall have thirty days from the date of mailing by the secretary of state in which to answer the complaint. Thus, the conciliation court trial date must be scheduled to allow the defendant the full thirty days to appear. Similarly, when certain foreign insurance entities are served under Minn. Stat. § 45.028, subd. 2, the law also provides a thirty day response period [see, e.g., Minn. Stat. § 64B.35, subd. 2 (fraternal benefit societies)] or prohibits default judgments until the expiration of thirty days from the filing of the affidavit of compliance. Minn. Stat. § 60A.21, subd. 1(4) (unauthorized foreign insurer)].

Rule 508(d) recognizes that in most situations involving resident defendants, first class mail is a sufficient method of notifying the defendant of the claim. If for some reason the summons cannot be delivered by mail, the last sentence of rule 508(a) recognizes that personal service of the summons pursuant to the rules of civil procedure for the district court is always an effective means of providing notice of the claim. The party filing the claim is responsible for

obtaining personal service, including any costs involved. As indicated above, "personal service" may only be made by a sheriff or any other person not less than 18 years of age who is not a party to the action.

Rule 5~~10~~09 Counterclaim

(a) Counterclaims Allowed. The defendant may assert ~~interpose~~ a counterclaim within jurisdiction of conciliation court which the defendant has against the plaintiff, whether or not arising out of the transaction or occurrence which is the subject matter of plaintiff's claim.

(b) Assertion of Counterclaim. To assert a ~~The~~ counterclaim the ~~shall be interposed by~~ defendant shall perform all the following not less than five days prior to the date set for trial of plaintiff's claim:

(1) file~~ing~~ with the court administrator a counterclaim required by Rule 507; ~~brief statement of the amount, date of accrual and nature of the counterclaim, verified by the defendant, and by payment of defendant of~~

(2) pay to the court administrator the applicable ~~a filing~~ fees ~~as established by rule 507 of these rules to the court administrator~~ or ~~by~~ file~~ing~~ with the administrator the affidavit in lieu of ~~filing~~ fees prescribed in rule 507~~6~~.

(c) Administrator's Duties. The court administrator shall assist with the preparation of the counterclaim on request. When the counterclaim has been properly asserted, t~~T~~he court administrator shall note the filing of the counterclaim on the original claim, promptly mail notice of the counterclaim to ~~notify~~ plaintiff ~~by mail thereof~~ and set the counterclaim for trial ~~hearing~~ on the same date as the original claim.

(d) Late Filing. No counterclaim shall be heard if filed less than five days before the trial date of plaintiff's claim except by permission of the judge, who has discretion to allow a filing within the ~~said~~ five day period. Should a continuance be requested by and granted to plaintiff because of the ~~such~~ late filing, the judge may require payment of costs by defendant, absolute or conditional, not to exceed $~~25~~50.00.

Rule 5~~11~~0 Counterclaim in Excess of Court's Jurisdiction

(a) The court administrator shall strike plaintiff's action from the calendar i~~I~~f the defendant not less than five days prior to ~~of~~ the date set for trial of plaintiff's claim ~~complaint~~, files with the court administrator an affidavit stating that:

(~~a~~1) the defendant has a counterclaim against plaintiff arising out of the same transaction or occurrence as plaintiff's claim, the amount of which is beyond monetary jurisdiction of the conciliation court, and

(~~b~~2) the defendant has ~~filed~~ commenced or will commence ~~intends to file~~ within 30 days an action against plaintiff in a court of competent jurisdiction based on such claim~~, the court administrator shall strike plaintiff's action from the calendar, advising plaintiff by mail.~~

(b) ~~Said striking~~ The plaintiff's action shall be subject to reinstatement on the trial calendar at any time after thirty days and up to three years, upon the filing by plaintiff of an affidavit showing that the plaintiff has not been served with a summons by defendant. If the action is reinstated, the court administrator shall set the case for trial and mail notice of the trial date to the parties by first class mail ~~summon the defendant as originally whereupon the court shall hear and determine the matter~~.

(c) Absolute or conditional costs, not to exceed $50.00, may be imposed against the defendant if the defendant fails to commence an action as provided in paragraph (a)(2) of this rule, and the court determines that the defendant caused the plaintiff's action to be stricken from the calendar in bad faith or solely to delay the proceedings or to harass.

Rule 511 Notice of Settlement

If the parties agree on a settlement prior to trial, each party who has made a claim or counterclaim shall promptly advise the court in writing that the claim or counterclaim has been settled and that it may be dismissed.

Rule 512 Trial

(a) **Subpoenas.** Upon request of a party and payment of the applicable fee, the court administrator shall issue subpoenas for the attendance of witnesses and production of documentary evidence at the trial. Minnesota Rules of Civil Procedure 45.01, 45.02, 45.03, 45.05, 45.06, and 45.07 apply to subpoenas issued under this rule. A party who is unable to pay the fees for issuance and service of a summons may apply for permission to proceed without payment of fees pursuant to the procedure set forth in Minnesota Statutes Section 563.01.

(~~a~~b) **Testimony and Exhibits.** ~~T~~Subject to part (d) of this rule, the judge shall hear testimony of the parties, their witnesses, and shall consider exhibits offered by the parties. The party offering an exhibit shall mark the party's name on the exhibit in a manner that will not obscure the exhibit. All exhibits will be returned to the parties at the conclusion of the trial unless otherwise ordered by the judge.

(~~b~~c) **Appearances.** ~~Appearances in conciliation court shall be by the parties, without lawyers, except by leave of the court; a removal of the cause to district court, however, as provided in these rules, may be taken through a lawyer.~~ The parties shall appear in person, unless otherwise authorized by the court, and may be represented by a lawyer admitted to practice law before the courts of this state. A lawyer representing a party in conciliation court may participate in the trial to the extent and in the manner that the judge, in the judge's discretion, deems helpful.

A corporation, partnership, sole proprietorship, or association may be represented in conciliation court by an officer or partner or may appoint a natural person who is an employee of the party to appear on its behalf or settle a claim in conciliation court. In the case of an officer or employee, an authorized power of attorney, corporate authorization resolution, corporate by-law or other evidence of authority acceptable to the court must be filed with the claim or

presented at the trial. The authority shall remain in full force and effect only as long as the case is active in conciliation court.

(~~c~~d) Evidence. The judge shall normally receive only evidence admissible under the rules of evidence, but in the exercise of discretion and in the interests of justice, may receive otherwise inadmissible evidence.

(~~d~~e) Conciliation; Judgment. The judge may attempt to conciliate disputes and encourage fair settlements among the parties. If at the trial the parties agree on a settlement the judge shall order judgment in accordance ~~there~~with the settlement. If no agreement is reached, the judge shall ~~summarily~~ hear, determine the cause, and order judgment. Written findings of fact or conclusions of law shall not be required.

(~~e~~f) Failure of Defendant to Appear. If the defendant fails to appear at the trial ~~time set for hearing~~, after being summoned as provided in these rules, the judge ~~in his or her discretion~~ may ~~either~~ hear the plaintiff and may:

(1) order ~~default~~ judgment ~~to be entered~~ in the amount due the plaintiff, including fees, expenses and other items provided by law or by agreement, and where applicable, order return of property to the plaintiff or

(2) otherwise dispose of the matter ~~continue the matter to a later date, notice of said subsequent trial date to be given by the court administrator to defendant by mail~~.

(~~f~~g) Failure of Plaintiff to Appear, Defendant Present. Should plaintiff fail to appear at the trial, but defendant appears, the judge may hear the defendant and may:

(1) ~~either~~ order judgment of dismissal on the merits~~,~~ or order a dismissal without prejudice on the plaintiff's statement of claim, and, where applicable, order judgment on defendant's counterclaim in the amount due the defendant, including fees, expenses and other items provided by law or by agreement, and where applicable, order return of property to the defendant, or

(2) otherwise dispose of the matter ~~continue the trial to a later date. If the matter is continued to a later date, the court administrator shall promptly notify the plaintiff thereof by mail~~.

(~~g~~h) Continuances. On proper showing of good cause, a continuance may be granted by the court on request ~~motion~~ of either party. The court may require payment of costs, absolute or conditional, not to exceed ~~$25.00~~ $50.00, as a condition of such an order. On proper showing of good cause, requests for continuance that are made at least five days prior to the trial may be granted by the court administrator. Continuances granted by the court administrator shall be limited to one continuance per party.

1993 Committee Comment

Rule 512(a) authorizes the issuance of subpoenas to secure the attendance of witnesses and production of documentary evidence. The attendance of the parties is required by Rule 512(c).

The fee for issuing a subpoena is $3.00. Minn. Stat. §§ 357.021, subd. 2(3) (1990). A subpoena may be served by the sheriff, a deputy sheriff, or any other person not less than 18 years of age who is not a party to the action.

Minn.R.Civ.P. 4.02; 45.03. The sheriff's fees and mileage reimbursement rate for service of a subpoena are set by the county board. Minn. Stat. § 357.09 (1990).

Witnesses are also entitled to attendance fees and travel fees, and, unless otherwise ordered by the court, a witness need not attend at the trial unless the party requesting the subpoena pays the witness one day's attendance and travel fees in advance of the trial. Minn. Stat. § 357.22 (1990) ($10.00 per day attendance fee, $.24 per mile mileage fee, to and from courthouse, measured from witness' residence, if within state, or from state boundary line, if residence is outside the state); Minn.R.Civ.P. 45.03.

A witness who is not a party or an employee of a party and who is required to provide testimony or documents relating to a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of such profession, business or trade (e.g., a banker witness subpoenaed to produce bank records), is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents. The party requesting the subpoena must make arrangements for such compensation prior to the trial. Minn.R.Civ.P. 45.06; D. Herr, R. Haydock, 2 Minnesota Practice, Civil Rules Annotated, § 45.14 (1985). With respect to any subpoena requiring the production of documents, the court may also require the party requesting the subpoena to pay the reasonable costs of producing the documentary evidence. Minn.R.Civ.P. 45.02.

Rule 512(e) does not preclude a court from providing the parties with a written explanation for the court's decision. Explanations, regardless of their brevity, are strongly encouraged. Explanations provide litigants with some degree of assurance that their case received thoughtful consideration, and may help avoid unnecessary appeals. Explanations may be inserted on Form UCF-9, appended to the rules, in either the Order for Judgment section on the front of the form or in the Memorandum section on the reverse side of the court's copy of the form.

Rule 513 Absolute or Conditional Costs; Filing of Orders

In any case in which payment of absolute or conditional costs has been ordered as a condition of an order under any provision of these rules, the amount so ordered shall be paid to the court administrator before the order becomes effective or is filed. Conditional costs shall be held by the court administrator to ~~abide~~ be paid in accordance with the final order ~~to be~~ entered in the case; absolute costs shall be promptly transmitted ~~paid over~~ by the court administrator ~~forthwith~~ to the other party as that party's absolute property.

Rule 514 Notice of Order for Judgment

The court administrator shall promptly mail to each party a notice of the order for judgment entered by the judge. The notice shall state the ~~number of~~ last days ~~allowed~~ for obtaining an order to vacate (where there has been a default) or for removing the cause to the civil division of district court under these rules. The notice shall also contain a statement that if the cause is removed to district court, the court will ~~may, in its discretion,~~ allow the prevailing party to recover from the aggrieved party ~~an amount not to exceed $200.00~~ $250.00 as costs if the prevailing party on appeal is not the aggrieved party in the original action as provided in Rule 524.

1993 Committee Comment

Rules 515, 520(a), and 521(b) of these rules establish a uniform twenty day time period for obtaining an order to vacate or for removing the case to district court. The twenty days is measured from the mailing of the notice of judgment, and the law requires that an additional three days be added to the time period when notice is served by mail. Wilkins v. City of Glencoe, 479 N.W.2d 430 (Minn. App. 1992) (construing rule 6.05 of the Minnesota Rules of Civil Procedure). Computing the deadline can be difficult and confusing for lay persons, and Rule 514 attempts to alleviate this problem by requiring the court administrator to perform the computation and specify the resulting date in the notice of order for judgment, taking into consideration applicable rules, including rule 503 of these rules and rule 6.05 of the Minnesota Rules of Civil Procedure.

Rule 515 Entry of Judgment

The court administrator shall promptly enter judgment ~~forthwith~~ as ordered by the judge. The judgment shall be dated as of the date notice is sent to the parties. The judgment so entered becomes finally effective twenty days after mailing of the notice, unless:

(a) payment has been made in full, or
(b) removal to district court has been perfected, or
(c) an order vacating the prior order for judgment has been filed, or
(d) ordered by a judge.

As authorized by law, any judgment ordered may provide for satisfaction by payment in installments in amounts and at times, as the judge determines. Should any installment not be paid when due, the entire unpaid balance of the judgment ordered, becomes immediately due and payable.

1993 Committee Comment

Rule 515 provides that a judgment becomes finally effective twenty days after notice of judgment is mailed to the parties, and the law requires that an additional three days be added to the time period when notice is served by mail. Wilkins v. City of Glencoe, 479 N.W.2d 430 (Minn. App. 1992) (construing rule 6.05 of the Minnesota Rules of Civil

Procedure). Computing the effective date of the judgment can be difficult and confusing for lay persons, and Rule 514 attempts to alleviate this problem by requiring the court administrator to perform the computation and specify the resulting date in the notice of order for judgment, taking into consideration applicable rules, including rule 503 of these rules and rule 6.05 of the Minnesota Rules of Civil Procedure. The purpose of the twenty day time period specified in Rule 515 is to permit a party to obtain an order to vacate under Rule 520(a) or effect removal of the case to district court under Rule 521(b).

The legislature has determined that any judgment ordered may provide for satisfaction by payment in installments in amounts and at such times, not exceeding one year for the last installment, as the judge determines to be just and reasonable. Minn. Stat. § 491.02, subd. 5 (Supp. 1993). Rule 512(e) recognizes that the one year limit on installment payments may be waived by the parties as part of a settlement.

Rule 516 Costs and Disbursements

The~~re shall be included in the~~ order for judgment shall include the ~~filing~~ fees paid or payable by the prevailing party pursuant to rules 506 and 508(d)(3) of these rules~~. Additionally the judge~~ and, in the discretion of the court, may include ~~therein~~ all or part of disbursements incurred by the prevailing party which would be taxable in district court~~. The order for judgment also may include or be adjusted by the amount of~~ and any conditional costs previously ordered to be paid by either party.

Rule 517 Payment of Judgment

The non-prevailing party may pay all or any part of the judgment to the court administrator for benefit of the prevailing party or may pay the prevailing party directly. The court administrator shall enter on the court's records any payment made to the administrator or the prevailing party directly when satisfied that the ~~said~~ direct payments have ~~in fact~~ been made.

Rule 518 Docketing of Judgment in District Court; Enforcement

(a) **Docketing.** Except as otherwise provided in Rule 519 with respect to installment judgments, w~~W~~hen a judgment has become finally effective as defined in Rule 515 of these rules the judgment creditor may obtain a transcript of the judgment from the court administrator on payment of ~~a~~ the applicable statutory fee ~~of $7.50~~ and file it in ~~transcribe the judgment to~~ district court ~~without additional fee~~. Once filed in district court the judgment becomes and is enforceable as a judgment of district court, and the judgment will be docketed by the court administrator upon presentation of an affidavit of identification. No writ of execution or garnishment summons shall be issued out of conciliation court.

(b) **Enforcement.** Unless the parties have otherwise agreed, if a conciliation court judgment has been docketed in district court for a

period of at least 30 days and the judgment is not satisfied, the district court shall upon request of the judgment creditor order the judgment debtor to mail to the judgment creditor information as to the nature, amount, identity, and location of all the debtor's assets, liabilities, and personal earnings. The information shall be provided on a form prescribed by the Supreme Court (see form UCF-22 appended to these rules), and the information shall be sufficiently detailed to enable the judgment creditor to obtain satisfaction of the judgment by way of execution on nonexempt assets and earnings of the judgment debtor. The order shall contain a notice that failure to complete the form and mail it to the judgment creditor within ten days after service of the order may result in a citation for civil contempt of court. Cash bail posted as a result of being cited for civil contempt of court order under this rule may be ordered payable to the creditor to satisfy the judgment, either partially or fully.

1993 Committee Comment

The party in whose favor the judgment was entered (the "judgment creditor") is responsible for enforcing the judgment if the other party (the "judgment debtor") does not voluntarily comply with the judgment. Obtaining a transcript of the judgment and filing it in district court under rule 518(a) is the first step in enforcing a judgment. A judgment requiring the payment of money (as opposed to a judgment requiring the return of property) will also be docketed by the court administrator upon transcription if the statutorily required affidavit of identification (Minn. Stat. § 548.09, subd. 2 (1990)) is presented. Docketing a money judgment creates a lien against all real property of the debtor in the county in which it is docketed, except for registered land, which requires an additional filing (pursuant to Minn. Stat. §§ 508.63 and 508A.63) to create a lien. Docketing must be accomplished before the judgment creditor is permitted to use the disclosure provisions of rule 518(b), which may assist in locating assets of the judgment debtor. Additional information on enforcement of judgments against non-exempt assets of the debtor is set forth in brochures and forms available from local court administration and legal aid offices.

Specific fee amounts have been deleted from these rules as the fees are subject to modification by the legislature. Minn. Stat. § 357.021 (1990) ($7.50 transcription fee). Whether a separate fee in addition to the transcription fee is required for filing and docketing is also subject to legislative modification. Under current law, no separate fee may be charged for filing and docketing a conciliation court judgment in the district court of the county in which the judgment was rendered.

Rule 519 Docketing of Judgment Payable in Installments

No transcript of a judgment of conciliation court payable in installments shall be issued and filed until 20 days after default in payment of an installment due.

Rule 520 Vacation of Judgment Order and Judgment

(a) **Vacation of Order for Judgment Within 20 Days.** When a default judgment or judgment of dismissal on the merits has been ordered for failure to appear, the judge within twenty days after notice was mailed may vacate said judgment order ex parte and grant a new trial ~~hearing~~ on a proper showing by the defaulting party of lack of notice, mistake, inadvertence or excusable neglect as the cause of that party's failure to appear. Absolute or conditional costs not to exceed ~~$25.00~~ $50.00 to the other party may be ordered as a prerequisite to that relief.

(b) **Vacation of Judgment After 20 days.** A default judgment may be vacated by the judge ~~more than ten days after finally effective~~ upon a proper showing by the defendant that: (1) the defendant did not receive a summons before the trial ~~hearing~~ within sufficient time to permit a defense and did not receive notice of the order for default judgment within sufficient time to permit application for relief within twenty days after notice, or (2) upon other good cause shown. Application for relief pursuant to this Rule 520(b) shall be made within a reasonable time after the applicant learns of the existence of the judgment and shall be made by motion in accordance with the procedure governing motions in the district court, except that the motion is filed with the court administrator of conciliation court. ~~Said vacation, if ordered,~~ The order vacating the judgment shall grant a new trial on the merits and may be conditioned upon payment of absolute or conditional costs not to exceed $~~25.00~~50.00.

(c) **Notice.** The court administrator shall promptly notify the parties by mail of a new trial date ~~created pursuant to this rule~~.

1993 Committee Comment

Rule 520(a) establishes a twenty day time period for obtaining an order to vacate a default judgment order or order for judgment of dismissal. The twenty days is measured from the mailing of the notice of judgment, and the law requires that an additional three days be added to the time period when notice is served by mail. Wilkins v. City of Glencoe, 479 N.W.2d 430 (Minn. App. 1992) (construing rule 6.05 of the Minnesota Rules of Civil Procedure). Computing the deadline can be difficult and confusing for lay persons, and Rule 514 attempts to alleviate this problem by requiring the court administrator to perform the computation and specify the resulting date in the notice of order for judgment, taking into consideration applicable rules, including rule 503 of these rules and rule 6.05 of the Minnesota Rules of Civil Procedure.

Rule 520(a) authorizes an informal, ex parte proceeding (involving appearance of one party only), which typically includes the presentation of an affidavit establishing lack of notice, mistake, inadvertence or excusable neglect as the

cause of that party's failure to appear. In contrast, Rule 520(b) requires compliance with the formal requirements for making a motion in the district court. See Minnesota Rules of Civil Procedure 4.02, 5.02, 6.05; Minnesota General Rules of Practice for the District Courts 115.01, .02, .04-.10. Forms and instructions are available from the conciliation court.

Rule 521 Removal (Appeal) to District Court~~; Appeal~~

(a) **Trial de novo.** Any person aggrieved by an order for judgment entered in conciliation court after contested trial ~~hearing~~ may remove the cause to district court for trial de novo (new trial). An "aggrieved person" may be either the judgment debtor or creditor.

(b) **Removal Procedure.** To effect removal, the aggrieved party must perform all the following within twenty days after the date the court administrator mailed to that party notice of the judgment order:

(1) Serve on the opposing party or the opposing party's lawyer~~, by personal service or by mail,~~ a demand for removal of the cause to district court for trial de novo. Service shall be by first class mail. Service may also be by personal service in accordance with the provisions for personal service of a summons in district court. The demand for removal shall state~~, stating~~ whether trial demanded is to be by court or jury, and~~; the demand~~ shall indicate the name, address, and telephone number of the aggrieved party's lawyer, if any.

(2) File with the court administrator the original demand for removal with proof of service. ~~If the opposing party or the opposing party's lawyer cannot be found for service of the demand within the twenty day period, t~~The aggrieved party may file with the court administrator within the ~~said~~ twenty day period the original and copy of the demand together with an affidavit by the party or the party's lawyer showing that after due and diligent search the opposing party or opposing party's lawyer cannot be located. This affidavit shall serve in lieu of making service and filing proof of service. When an affidavit is filed, ~~Thereupon~~ the court administrator shall mail the copy of the demand to the opposing party at the party's last known residence address.

(3) File with the court administrator an affidavit by the aggrieved party or that party's lawyer stating that the removal is made in good faith and not for purposes of delay.

(4) Pay to the court administrator as the fee for removal the amount prescribed by law for filing a civil action in district court~~,~~, and if

~~(5) If~~ a jury trial is demanded under Rule 521 (b) (1) of these rules, pay to the court administrator the amount prescribed by law for requesting a jury trial in a civil action in district court. A party who is unable to pay the fees may apply for permission to proceed without payment of fees pursuant to the procedure set forth in Minnesota Statutes Section 563.01.

(c) ~~Limited Removal.~~

~~(1) When a motion for vacation of an order for judgment, or judgment under Rule 520 (a) or (b) of these rules, is denied, the aggrieved party may demand limited removal to the district court for hearing de novo. Procedure for service~~

~~and filing of the demand for limited removal and notice of hearing de novo and proof of service thereof and procedure in case of inability of the aggrieved party to make service on the opposing party or the opposing party's lawyer shall be in the same manner prescribed in part (b) of this Rule. The fee payable by the aggrieved party to the court administrator for limited removal shall be the same as the filing fee prescribed by law for filing of a civil action in district court. The court administrator shall then place the matter on the special term calendar for the date specified in the notice. At the hearing in district court, either party may be represented by a lawyer.~~

~~(2) A judge other than the conciliation court judge who denied the motion, shall hear the motion de novo and may (A) deny the motion or (B) grant the motion. In determining the motion the judge shall consider the entire file plus any affidavits submitted by either party or their lawyers.~~

~~(3) The court administrator shall send by mail a copy of the order made in district court after de novo hearing to both parties and the venue shall be transferred back to conciliation court.~~

~~(d)~~ **Demand for Jury Trial.** Where no jury trial is demanded on removal under Rule 521(b) by the aggrieved party, if the opposing party desires a jury trial that party shall perform all the following within twenty ~~ten~~ days after the demand for removal was served on the party or lawyer:

(1) Serve a jury trial demand by first class mail ~~therefor~~ upon the aggrieved party or that party's lawyer. Service may also be by personal service in accordance with the provisions for personal service of a summons in district court.

(2) File the original jury trial demand and ~~with~~ proof of service ~~thereon~~ with the court administrator.

(3) Pay to the court administrator the amount prescribed by law for requesting a jury trial in a civil action in district court and, if the demand is the first paper filed by the party in the district court proceeding, pay to the administrator the amount prescribed by law for filing a civil action in district court . A party who is unable to pay the fees may apply for permission to proceed without payment of fees pursuant to the procedure set forth in Minnesota Statutes Section 563.01.

(ed) **Removal Perfected; Vacating ~~of~~ Judgment; Transmitting File.** When all removal papers have been filed properly and all requisite fees paid as provided under Rule 521(b), the removal is perfected~~; the original judge shall prepare and file~~, and the court shall issue an order vacating the order for judgment in conciliation court, and ~~together with a certificate setting out generally proceedings had, issues tried and the order entered in conciliation court.~~

~~(f) **Court Administrator's Duties Upon Removal.** Upon filing of the judge's order and certificate under part (e) of this rule the court administrator shall file in district court~~ the whole contents of the conciliation court file of the cause shall be filed in district court.

~~(g) **Trial Setting.** The matter shall be set for trial in district court as other civil actions.~~

(e) **Limited Removal.**

(1) When a motion for vacation of an order for judgment, or judgment under Rule 520 (a) or (b) of these rules, is denied,

the aggrieved party may demand limited removal to the district court for hearing de novo (new hearing) on the motion. Procedure for service and filing of the demand for limited removal and notice of hearing de novo, proof of service of the notice, and procedure in case of inability of the aggrieved party to make service on the opposing party or the opposing party's lawyer shall be in the same manner prescribed in part (b) of this Rule. The fee payable by the aggrieved party to the court administrator for limited removal shall be the same as the filing fee prescribed by law for filing of a civil action in district court. The court administrator shall then place the matter on the special term calendar for the date specified in the notice. At the hearing in district court, either party may be represented by a lawyer.

(2) A judge other than the conciliation court judge who denied the motion, shall hear the motion de novo (anew) and may (A) deny the motion or (B) grant the motion. In determining the motion the judge shall consider the entire file plus any affidavits submitted by either party or their lawyers.

(3) The court administrator shall send by mail a copy of the order made in district court after de novo hearing to both parties and the venue shall be transferred back to conciliation court.

Cross Reference: Minn. R. Civ. P. 4.02, 4.06, 5.02, 6.01, 6.02, and 6.05.

1993 Committee Comment

Rule 521(b) establishes a twenty day time period for removing the case to district court. The twenty days is measured from the mailing of the notice of judgment, and the law requires that an additional three days be added to the time period when notice is served by mail. Wilkins v. City of Glencoe, 479 N.W.2d 430 (Minn. App. 1992) (construing rule 6.05 of the Minnesota Rules of Civil Procedure). Computing the deadline can be difficult and confusing for lay persons, and Rule 514 attempts to alleviate this problem by requiring the court administrator to perform the computation and specify the resulting date in the notice of order for judgment, taking into consideration applicable rules, including rule 503 of these rules and rule 6.05 of the Minnesota Rules of Civil Procedure.

In district court, personal service may only be made by a sheriff or any other person not less than 18 years of age who is not a party to the action. Reichel v. Hefner, 472 N.W.2d 346 (Minn. App. 1991). This applies to personal service under this Rule 521. Service may not be made on Sunday, a legal holiday, or election day. Minn. Stat. §§ 624.04; 645.44, subd. 5 (1990); Minn. Const. art. VII, § 4.

Rule 522 Pleadings ~~Issues; Amendments~~ in District Court

~~Issues for trial in district court shall be those in conciliation court as set out in the judge's certificate; however, amendments to the issues may be granted in district court on motion therein brought in the usual manner for such motions; granting or denial of such motions shall be in the discretion of the judge of district court. Provided, however, that if either party seeks to increase the amount of a claim or counterclaim, the party seeking the increase shall give notice to the opposing party by serving upon that party a formal complaint, as provided by the Minnesota Rules of Civil Procedure.~~

The pleadings in conciliation court shall constitute the pleadings in district court. Any party may amend its statement of claim or counterclaim if, within 30 days after removal is perfected, the party seeking the amendment serves on the opposing party and files with the court a formal complaint conforming to the Minnesota Rules of Civil Procedure. If the opposing party fails to serve and file an answer within the time permitted by the Minnesota Rules of Civil Procedure, the allegations of the formal complaint are deemed denied. On the motion of any party or on its own initiative, the court may order either or both parties to prepare, serve and file formal pleadings.

Rule 523 Procedure in District Court

~~Trial~~ Proceedings in the district court shall, except as otherwise expressly provided in these rules, be in accordance with ~~as if originally commenced therein, and according to~~ the Minnesota Rules of Civil Procedure and the General Rules of Practice for the District Courts. The judge who presided in conciliation court shall not preside in district court ~~the appeal~~.

1993 Committee Comment

The Minnesota Supreme Court has determined that a corporation must be represented by a licensed attorney when appearing in district court regardless of the fact that the action originated in conciliation court. Nicollet Restoration, Inc. v. Turnham, 486 N.W.2d 753 (Minn. 1992).

Rule 524 Mandatory Costs in District Court

(a) For the purposes of this rule, "removing party" means the ~~party who demands removal to district court or the~~ first party who serves or files a demand for removal~~, if another party also demands removal~~. "Opposing party" means any party as to whom the removing party seeks a reversal in whole or in part.

(b) If the removing party prevails in district court, the removing party may recover costs from the opposing party as though the action were commenced in district court. If the removing party does not prevail, the court shall award the opposing party an additional ~~$200.00~~ $250.00 as costs.

(c) For purposes of this rule, the removing party prevails in district court if:

(1) the removing party recovers at least $500.00 or 50 percent of the amount or value of property that the removing

party requested on removal, whichever is less, when the removing party was denied any recovery in conciliation court;

(2) the opposing party does not recover any amount or any property from the removing party in district court when the opposing party recovered some amount or some property in conciliation court;

(3) the removing party recovers an amount or value of property in district court that exceeds the amount or value of property that the removing party recovered in conciliation court by at least $500.00 or 50 percent, whichever is less; or

(4) the amount or value of property that the opposing party recovers from the removing party in district court is reduced from the amount or value of property that the opposing party recovered in conciliation court by at least $500.00 or 50 percent, whichever is less.

(d) Costs or disbursements in conciliation or district 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 rule.

1993 Committee Comment

Rule 524 simply repeats, for the benefit of litigants, the requirements set forth by the legislature. Minn. Stat. §§ 487.30, subd. 8; 488A.17, subd. 10; 488A.34, subd. 9 (1990) as amended by 1992 Minn. Laws ch. 591, §§ 10, 13, 18. Statutory costs normally available in district court pursuant to Minnesota Statutes section 549.02 do not apply to conciliation court matters that have been removed to district court. 1992 Minn. Laws chapter 591, section 20.

Rule 525 Appeal From District Court

The judgment of the district court on removal from conciliation court in any cause may be appealed to the eCourt of aAppeals as in other civil cases.

1993 Committee Comment

An appeal may not be taken directly from conciliation court to the court of appeals. McConnell v. Beseres, 358 N.W.2d 113 (1984). Removal under Rule 521(b) or limited removal under Rule 521(c), and a ruling on the removal by the district court, are jurisdictional prerequisites for an appeal to the court of appeals from an action initiated in conciliation court. Id.

APPENDIX OF FORMS

[Forms UCF-8, UCF-9, and UCF-10 consist of three parts. Part 1 is the original copy, and parts 2 and 3 are the plaintiff's and defendant's copies. Only part 1 of the three part forms is shown in this Appendix.]

UCF-8 STATEMENT OF CLAIM AND SUMMONS

UCF-8 (SCAO 12/92) Statement of Claim and Summons — Minn.Gen.R.Prac. 507; 508

State of Minnesota — Conciliation Court

COUNTY	JUDICIAL DISTRICT	CASE NO.

Plaintiff #1	Name and Address ZIP	Plaintiff #2	Name and Address ZIP
	vs.		vs.
Defendant #1	Name and Address ZIP	Defendant #2	Name and Address ZIP

STATEMENT OF CLAIM

Name _____ Title _____
being duly sworn says that: s/he is the above named plaintiff/plaintiff's attorney; each defendant listed above is at least 18 years old; is not now in the Military Services; defendant #1 is a resident of _____ County, State of _____; defendant #2 is a resident of _____ County, State of _____; and alleges that the defendant(s) is (are) indebted to the plaintiff(s) in the amount of $_____ plus $ _____ filing fee, totaling $ _____ plus disbursements, by reason of the following FACTS:

DO NOT WRITE BELOW THIS LINE

NOTARY STAMP OR COURT SEAL	SUBSCRIBED AND SWORN TO BEFORE ME ON: DATE _____ _____ SIGNATURE	THE ABOVE STATEMENT OF CLAIM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE SIGNATURE _____ TELEPHONE _____

SUMMONS NOTICE OF HEARING

THE STATE OF MINNESOTA TO THE ABOVE NAMED DEFENDANT

YOU ARE HEREBY SUMMONED to appear at the hearing of the above entitled case at _____ (time) m., on _____ (Date), at _____ (Place).

Dated: _____ **Court Administrator/Deputy:** _____

FAILURE TO APPEAR

Failure of defendant to appear at the hearing may result in a default judgment being entered for the plaintiff, and failure of the plaintiff to appear may result in dismissal of the action or a default judgment being entered in favor of the defendant on any counterclaim that has been asserted.

Memoranda of Proceedings

Judgment becomes final and time for removal expires on _____, 19_____.

ACTION	DATE	ACTION	DATE
Claim filed		Notices Mailed	
Hearing set for		Stricken-Settled	
Notices mailed		Order of Dismissal	
Notice returned/not delivered		Judgment entered	
Notice re-mailed		Notice of Judgment	
Answer/Offer filed		Judgment satisfied	
Counterclaim filed		Removal/Appeal perfected	
Notices mailed		Order Vacating Judgment	
Hearing continued/reset to		Transcript issued	
Notices mailed		Exhibit Inf. (date filed)	
Hearing continued/reset to		Exhibits returned	

Settlement Agreement

Minn. Gen. R. Prac. 512(e)

The parties hereto have agreed upon a settlement of the within controversy, which agreement is as follows:

_____

_____

_____

_____

_____

_____

_____

_____

The parties further agree that they will abide the judgment to be entered herein based upon this agreement, without removal, appeal or further litigation.

_____ Plaintiff

_____ Defendant

_____ Plaintiff

_____ Defendant

Dated: _____

_____ Judge

UCF-9 JUDGMENT AND NOTICE OF JUDGMENT

UCF-9 (SCAO 12/92) Judgment and Notice of Judgment — Minn.Gen.R.Prac. 514

CASE NO.

State of Minnesota — Conciliation Court

COUNTY | JUDICIAL DISTRICT | CASE NO.

Plaintiff #1 — NAME AND ADDRESS, ZIP

vs.

Defendant #1 — NAME AND ADDRESS, ZIP

Plaintiff #2 — NAME AND ADDRESS, ZIP

vs.

Defendant #2 — NAME AND ADDRESS, ZIP

Appearances: ☐ Plaintiff ☐ Defendant ☐ Neither Party ☐ Contested ☐ Default

ORDER FOR JUDGMENT ON CLAIM AND COUNTER CLAIM

Upon evidence received, IT IS HEREBY ORDERED:

☐ _____ is entitled to judgment against _____ for the sum of $ _____, plus fees of $ _____, disbursements of $ _____, and conditional costs of $ _____, for a total of $ _____.

☐ judgment shall be entered in favor of _____ (without damages).

☐ _____'s claim is dismissed without prejudice.

☐ _____'s claim is dismissed with prejudice.

☐ _____ shall immediately return _____ _____ _____ to the _____, and that the Sheriff of the county in which the property is located is authorized and directed to effect repossession of such property according to M.S. § 491.01 subd.5, and turn the property over to _____.

☐ Other / ☐ Memo _____

Dated: _____. **Judge:** _____

JUDGMENT

JUDGMENT is hereby declared and entered as stated in the Court's Order for Judgment set forth above, and the judgment shall become finally effective on the date specified in the notice of judgment set forth below.

Dated: _____. **Court Administrator/Deputy:** _____

NOTICE OF JUDGMENT

THE PARTIES ARE HEREBY notified that Judgment has been entered as indicated above, but the Judgment is stayed by law until

_____ (DATE), _____ (TIME) p.m. (to allow time for an appeal/removal if desired).

THE PARTIES ARE FURTHER NOTIFIED that if the cause is removed to district court and the removing party does not prevail as provided in Rule 524 of the Minnesota General Rules of Practice for the District Courts, the opposing party will be awarded $250 as costs.

Dated: _____. Court Administrator/Deputy: _____

TRANSCRIPT OF JUDGMENT

I certify that the above is a correct transcript of the Judgment entered by this Court.

Dated: _____. Court Administrator/Deputy: _____

FILE # _____

_____ VS _____

PLAINTIFF DEFENDANT

MEMORANDUM

DATED: _____ _____

Judge

Order Vacating Judgment For Cause

Minn. Gen. R. Prac. 520

Upon cause shown by the ☐ Plaintiff ☐ Defendant, the written judgment is hereby vacated and costs in the amount of $ _____ is hereby assessed against the ☐ Plaintiff ☐ Defendant as ☐ Absolute/ ☐ Conditional costs.

DATED: _____ _____

JUDGE

Order Vacating Judgment Upon Removal/Appeal

Minn. Gen. R. Prac. 521(e)

Removal/Appeal by the ☐ Plaintiff ☐ Defendant having been perfected, the within judgment is hereby vacated.

DATED: _____ _____

JUDGE

UCF-10 DEFENDANT'S COUNTERCLAIM

UCF-10 (SCAO 12/92) Defendant's Counterclaim — Minn.Gen.R.Prac. 509

State of Minnesota — Conciliation Court

COUNTY	JUDICIAL DISTRICT	CASE NO.

Plaintiff #1	NAME AND ADDRESS ZIP	Plaintiff #2 — NAME AND ADDRESS ZIP
	vs.	vs.
Defendant #1	NAME AND ADDRESS ZIP	Defendant #2 — NAME AND ADDRESS ZIP

Name _____ Title _____
being duly sworn says that: s/he is the above named defendant/defendant's attorney; each plaintiff listed above is at least 18 years old; is not now in the Military Services; and alleges that the plaintiff(s) is (are) indebted to the defendant(s) in the amount of $_____ plus $_____ filing fee, totaling $ _____ plus disbursements, by reason of the following FACTS:

STATEMENT OF CLAIM

NOTARY STAMP OR COURT SEAL	SUBSCRIBED AND SWORN TO BEFORE ME ON: DATE_____ _____ SIGNATURE	THE ABOVE STATEMENT OF CLAIM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE SIGNATURE_____ TELEPHONE_____

DO NOT WRITE BELOW THIS LINE

THE STATE OF MINNESOTA TO THE ABOVE NAMED PLAINTIFF

SUMMONS NOTICE OF HEARING

YOU ARE HEREBY SUMMONED to appear at the hearing of the above entitled case at _____ (time) m., on _____ (Date), at _____ (Place).

Dated:_____ Court Administrator/Deputy:_____

FAILURE TO APPEAR

Failure of defendant to appear at the hearing may result in a default judgment being entered for the plaintiff, and failure of the plaintiff to appear may result in dismissal of the action or a default judgment being entered in favor of the defendant on any counterclaim that has been asserted.

UCF-22 FINANCIAL DISCLOSURE FORM

The purpose of this Financial Disclosure Form is to tell the JUDGMENT CREDITOR what money and property you have which may be used to pay the judgment the creditor obtained against you in the lawsuit. It also allows you to tell the creditor that some or all of your property and money is "exempt," which means that it cannot be taken to pay the judgment. You must answer every question on this form. If you need additional space, continue your answer on the back of the form or attach additional sheets if necessary. If you do not understand the questions or don't know how to fill out the form, call the court administrator for assistance or consult with an attorney.

WARNING: IF YOU CLAIM AN EXEMPTION IN BAD FAITH, OR IF THE JUDGMENT CREDITOR WRONGLY OBJECTS TO AN EXEMPTION IN BAD FAITH, THE COURT MAY ORDER THE PERSON WHO ACTED IN BAD FAITH TO PAY COSTS, ACTUAL DAMAGES, ATTORNEY FEES, AND AN ADDITIONAL AMOUNT OF UP TO $100.

1. JUDGMENT DEBTOR Name

2. ☐ Individual ☐ Partnership ☐ Corporation ☐ Other _____

3. Street Address

4. City

5. State

6. Zip

7. Date of Birth

8. If Married, Spouse's Full Name

9. Home Telephone Number ( )

10. Employer or Business

11. Work Telephone Number ( )

12. Street Address

13. City

14. State

15. Zip

16. What are your total wages, salary, or commissions per pay period? $_____

17. How often are you paid? ☐ Daily ☐ Weekly ☐ Twice a month ☐ Monthly ☐ Other _____

18. Do you have income from any other source? ☐ Yes ☐ No If yes, give the source and amount of the income:

_____

_____

19. By answering this question, you will be able to claim the exemptions you have for wages and income. The first exemption is already checked for you, check all others that apply:

- ☐ I claim that 75% of my disposable (after-tax) earnings or 40 times the federal minimum wage (now equals $170 for 40-hour week) is exempt (whichever is greater).
- ☐ I am presently receiving or have received relief based on need in the past 6 months so all my wages are exempt. Type of relief you receive _____
- ☐ I have been an inmate in a correctional institution within the past 6 months so all my wages are exempt. Name institution and release date _____
- ☐ My income is exempt because it is: ☐ Unemployment Comp. ☐ Worker's Comp. ☐ V.A. Benefits ☐ Social Security ☐ Accident or Disability Benefits ☐ Retirement Benefits
- ☐ Other (specify) _____

20. Do you have a checking or savings account? (This includes any account whether you have it by yourself or with someone else, or whether it is in your name or any other name) ☐ Yes ☐ No For each, provide the following information:

Name and Address of Bank, Credit Union or Financial Institution	Type of Account	Account Number

21. If you claimed an exemption for your wages or income, you may claim an exemption when your money is deposited in a bank. Claim your exemptions by checking the boxes that apply to you:

- ☐ The money in my account is from exempt wages, income, or benefits.
- ☐ The money in my account is from the exempt sale of my homestead within the past year.
- ☐ The money in my account is from exempt life insurance received on the death of a spouse or parent.
- ☐ The money in my account is from other exempt property (specify) _____

22. Do you have any stocks, bonds, securities, certificates of deposit, mutual funds, money market account, etc.? (This includes any whether owned by you alone or with any other person, or whether it is in your name or any other name.) ☐ Yes ☐ No If yes, itemize these and the location of each:

_____

_____

_____

Continued on Back

23. Do you own your home? ☐ Yes ☐ No Your homestead (house owned and occupied by you) is exempt. Do you own any other houses, land, or real estate? ☐ Yes ☐ No For each, give the following information:

Location	Estimated Value	Amount Owed (if any)	To Whom

24. Do you own any motor vehicles, motorcycles, boats, snowmobiles, trailers, etc.? ☐ Yes ☐ No For each, provide the following:

Make	Model	Year	Lic. Plate No.	Market Value	Amount You Owe (if any)

One motor vehicle worth up to $3,000 after subtracting what you owe is exempt. Which vehicle do you want to claim as exempt?

25. Do you own any of the following property?

Cash or travelers checks	☐ Yes ☐ No	Farm supplies, implements, livestock, grain worth more than $13,000	☐ Yes ☐ No
Household goods, furnishings, and personal effects that are worth more than $6,750 total	☐ Yes ☐ No	Business equipment, tools, machinery worth more than $7,500 total	☐ Yes ☐ No
Jewelry	☐ Yes ☐ No	Inventory	☐ Yes ☐ No
Coins or stamp collections	☐ Yes ☐ No	Accounts receivable/claims	☐ Yes ☐ No
Firearms/Guns	☐ Yes ☐ No	Are you the owner or partner in any business not already listed	☐ Yes ☐ No
Life insurance policy with a cash (surrender) value more than $6,000	☐ Yes ☐ No	Any other property please specify _____	☐ Yes ☐ No
Any property that you are selling on a contract for deed	☐ Yes ☐ No		

If you answered yes to any item in question 25, provide the following information:

Description and location of property (if not at residence)	Estimated Value	Amount Owed (if any)	To Whom

If you need additional space to answer the questions, continue your answers here. Indicate the question number your are answering. Attach additional sheets if necessary.

The above information is true and correct to the best of my knowledge.

Date: _____ Signature: _____

NOTE: YOU MUST COMPLETE, SIGN, AND RETURN THIS FORM TO THE JUDGMENT CREDITOR WITHIN 10 DAYS.

ADVISORY COMMITTEE ON CONCILIATION COURT RULES

PROPOSED LEGISLATION

A bill for an act

relating to courts; conciliation court; merging court statutes for all judicial districts into one statute; proposing coding for new law in Minnesota Statutes, chapter 491; repealing Minnesota Statutes 1992, sections 487.30; 488A.12; 488A.13; 488A.14; 488A.15; 488A.16; 488A.17; 488A.29; 488A.30; 488A.31; 488A.32; 488A.33; 488A.34; and Laws 1992, chapter 591, section 21.

Section 1. **[491.01] ESTABLISHMENT; POWERS; JURISDICTION.**

Subdivision 1. [ESTABLISHMENT.] The district court in each county shall establish a conciliation court division with the jurisdiction and powers set forth in this chapter.

Subd. 2. [POWERS; ISSUANCE OF PROCESS.] The conciliation court has all powers, and may issue process as necessary or proper to carry out the purposes of this act. No writ of execution or garnishment summons shall be issued out of conciliation court.

Subd. 3. [JURISDICTION; GENERAL.] Except as provided in subdivisions 4 and 5, the conciliation court has jurisdiction to hear, conciliate, try, and determine civil claims if the amount of money or property which is the subject matter of the claim does not exceed $5,000.00. Except as otherwise provided in this subdivision and subdivisions 5 through 10, the territorial jurisdiction of conciliation court shall be coextensive with the county in which the court is established. The summons in a conciliation court action under subdivisions 6 through 10 may be served anywhere in the state, and the summons in a conciliation court action under

subdivision 7(b) may be served outside the state in the manner provided by law. Subpoenas to secure the attendance of non-party witnesses and the production of documents at trial may be served anywhere within the state in the manner provided by law.

Subd. 4. [JURISDICTION; EXCLUSIONS.] The conciliation court does not have jurisdiction over the following:

(a) actions involving title to real estate, including actions to determine boundary lines;

(b) actions involving claims of defamation by libel or slander;

(c) actions for specific performance, except to the extent authorized in subdivision 5;

(d) actions brought or defended on behalf of a class;

(e) actions requesting or involving prejudgment remedies;

(f) actions involving injunctive relief, except to the extent authorized in subdivision 5;

(g) actions pursuant to Minn. Stat. ch. 256, 257, 259, 260, 518, 518A, 518B, and 518C;

(h) actions pursuant to Minn. Stat. ch. 524 and 525;

(i) actions where jurisdiction is vested exclusively in another court or division of district court; and

(j) actions for unlawful detainer.

Subd. 5. [JURISDICTION; PERSONAL PROPERTY.] If the controversy concerns the ownership or possession of personal property the value of which does not exceed $5,000.00, the conciliation court has jurisdiction to determine the ownership and

possession of the property and direct any party to deliver the property to another party. Notwithstanding any other law to the contrary, once the judgment of the court directing return of the property becomes final, it is enforceable by the sheriff of the county in which the property is located without further legal process. The sheriff is authorized to effect repossession of the property according to law, including, but not limited to: (1) entry upon the premises for the purpose of demanding the property and ascertaining whether the property is present and taking possession thereof; and (2) causing the building or enclosure where such property is located to be broken open and the property taken therefrom, and if necessary to that end, the sheriff may call the power of the County to the sheriff's aid. If the party against whom the judgment is directed is not physically present at the time of entry by the sheriff, then a copy of the judgment shall be served upon any person in possession of the property or if no person is present, a copy of the judgment shall be left on the premises. After taking possession of the property, the sheriff shall turn the property over to the prevailing party.

Subd. 6. [JURISDICTION; STUDENT LOANS.] The conciliation court also has jurisdiction to determine a civil action commenced by a plaintiff educational institution, including but not limited to, a state university or community college, with administrative offices in the county in which the conciliation court is located, to recover the amount of a student loan or loans even though the

defendant or defendants are not residents of the county under the following conditions:

(a) the student loan or loans were originally awarded in the county in which the conciliation court is located;

(b) notice that payment on the loan is overdue has previously been sent by first class mail to the borrower to the last known address reported by the borrower to the educational institution; and

(c) the notice states that the educational institution may commence a conciliation court action in the county where the loan was awarded to recover the amount of the loan.

Subd. 7. [JURISDICTION; FOREIGN DEFENDANTS.] (a) If a foreign corporation is subject by law to service of process in this state or is subject to service of process outside this state under section 543.19, a conciliation court action may be commenced against the foreign corporation:

(1) in the county where the corporation's registered agent is located;

(2) in the county where the cause of action arose, if the corporation has a place of business in that county either at the time the cause of action arose or at the time the action was commenced; or

(3) in the county in which the plaintiff resides, if the corporation does not appoint or maintain a registered agent in this state, withdraws from the state, or the certificate of authority of the corporation is canceled or revoked.

(b) If a nonresident other than a foreign corporation is subject to service of process outside this state under section 543.19, a conciliation court action may be commenced against the nonresident in the county in which the plaintiff resides.

Subd. 8. [JURISDICTION; MULTIPLE DEFENDANTS.] The conciliation court also has jurisdiction to determine a civil action commenced against two or more defendants in the county in which one or more of the defendants resides. Counterclaims may be commenced in the county where the original action was commenced.

Subd. 9. [JURISDICTION; RENTAL PROPERTY.] The conciliation court also has jurisdiction to determine an action commenced under section 504.20 for the recovery of a deposit on rental property, or under section 504.245, 504.255, or 504.26, in the county in which the rental property is located.

Subd. 10. [JURISDICTION; DISHONORED CHECKS.] The conciliation court also has jurisdiction to determine a civil action commenced by a plaintiff, resident of the county, to recover the amount of a dishonored check issued in the county, even though the defendant or defendants are not residents of the county, if the notice of nonpayment or dishonor described in section 609.535, subdivision 3, is sent to the maker or drawer as specified in that section and the notice states that the payee or holder of the check may commence a conciliation court action in the county where the dishonored check was issued to recover the amount of the check. This subdivision does not apply to a check that has been dishonored by a stop payment order.

Sec. 2. **[491.02] PROCEDURE.**

Subdivision 1. [PROCEDURE; RULES; FORMS.] The determination of claims in conciliation court shall be without jury trial and by a simple and informal procedure. Conciliation court proceedings shall not be reported. By July 1, 1993, the Supreme Court shall promulgate rules governing pleading, practice and procedure for conciliation courts, and shall promulgate uniform claim and counterclaim forms. Every conciliation court shall accept a uniform claim or counterclaim that has been properly completed and forwarded to the court together with the entire filing fee, if any.

Subd. 2. [ASSISTANCE TO LITIGANTS.] Under the supervision of the conciliation court judges, the court administrator shall explain to litigants the procedures and functions of the conciliation court and shall on request assist them in filling out all forms and pleadings necessary for the presentation of their claims or counterclaims to the court. The uniform claim and counterclaim forms shall be accepted by any court administrator and shall on request be forwarded together with the entire filing fee, if any, to the court administrator of the appropriate conciliation court. The court administrator shall on request assist judgment creditors and debtors in the preparation of the forms necessary to obtain satisfaction of a final judgment. The performance of duties described in this subdivision do not constitute the practice of law for purposes of section 481.02, subd. 8.

Subd. 3. [FEES.] The court administrator shall charge and collect the fee established pursuant to section 357.022, together

with applicable law library fees established pursuant to law, from every plaintiff and from every defendant when the first paper for that party is filed in any conciliation court action. The rules promulgated by the Supreme Court shall provide for commencement of an action without payment of fees when a litigant who is a natural person claims an inability to pay the fees, provided that if the litigant prevails on a claim or counterclaim, the fees must be paid to the administrator out of any money recovered by the litigant.

Subd. 4. [REPRESENTATION.] A corporation, partnership, sole proprietorship, or association may be represented in conciliation court by an officer or partner or may appoint a natural person who is an employee to appear on its behalf or settle a claim in conciliation court. This representation does not constitute the practice of law for purposes of section 481.02, subd. 8. In the case of an officer or employee, an authorized power of attorney, corporate authorization resolution, corporate by-law or other evidence of authority acceptable to the court must be filed with the claim or presented at the hearing. The authority shall remain in full force and effect only as long as the case is active in conciliation court.

Subd. 5. [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. 6. [APPEAL BY REMOVAL TO DISTRICT COURT FOR TRIAL DE NOVO; NOTICE OF COSTS.] The rules promulgated by the Supreme Court shall provide for a right of appeal from the decision of the conciliation court by removal to the district court for a trial de novo. The notice of order for judgment shall contain a statement that if the removing party does not prevail in district court as provided in section 7, the opposing party will be awarded an additional $250 as costs.

Subd. 7. [MANDATORY COSTS IN DISTRICT COURT]

(a) For the purposes of this rule, "removing party" means the first party who serves or files a demand for removal. "Opposing party" means any party as to whom the removing party seeks a reversal in whole or in part.

(b) If the removing party prevails in district court, the removing party may recover costs from the opposing party as though the action were commenced in district court. If the removing party does not prevail, the court shall award the opposing party an additional $250.00 as costs.

(c) For purposes of this section, the removing party prevails in district court if:

(1) the removing party recovers at least $500.00 or 50 percent of the amount or value of property that the removing party requested on removal, whichever is less, when the removing party was denied any recovery in conciliation court;

(2) the opposing party does not recover any amount or any property from the removing party in district court when the opposing party recovered some amount or some property in conciliation court;

(3) the removing party recovers an amount or value of property in district court that exceeds the amount or value of property that the removing party recovered in conciliation court by at least $500.00 or 50 percent, whichever is less; or

(4) the amount or value of property that the opposing party recovers from the removing party in district court is reduced from the amount or value of property that the opposing party recovered in conciliation court by at least $500.00 or 50 percent, whichever is less.

(d) Costs or disbursements in conciliation or district 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 section.

Subd. 8. [APPEAL FROM DISTRICT COURT.] Decisions of the district court on removal from a conciliation court determination on the merits may be appealed to the Court of Appeals as in other civil actions.

Subd. 9. [JUDGMENT DEBTOR DISCLOSURE.] Unless the parties have otherwise agreed, if a conciliation court judgment or a judgment of district court on removal from conciliation court has

been docketed in district court for at least 30 days, and the judgment is not satisfied, the district court in the county in which the judgment originated shall, upon request of the judgment creditor, order the judgment debtor to mail to the judgment creditor information as to the nature, amount, identity, and locations of all the debtor's assets, liabilities, and personal earnings. The information shall be provided on a form prescribed by the Supreme Court, and the information shall be sufficiently detailed to enable the judgment creditor to obtain satisfaction of the judgment by way of execution on non-exempt assets and earnings of the judgment debtor. The order shall contain a notice that failure to complete the form and mail it to the judgment creditor within ten days after service of the order may result in a citation for civil contempt of court. Cash bail posted as a result of being cited for civil contempt of court order under this section may be ordered payable to the creditor to satisfy the judgment, either partially or fully.

Sec. 3. **[491.03] JUDGES; ADMINISTRATOR; REPORTER; SUPPLIES.**

Subdivision 1. [JUDGES; REFEREES.] The judges of district court shall serve as judges of conciliation court. In the second and fourth judicial districts, a majority of the judges of the district may appoint one or more suitable persons to act as referees in conciliation court; a majority of the judges of the district shall establish qualifications for the office, specify the duties and length of service of referees, and fix their

compensation not to exceed an amount per day determined by the chief judge of the judicial district.

Subd. 2. [ADMINISTRATOR.] The court administrator of the district court shall serve as the court administrator of conciliation court. The court administrator shall account for and pay over to the appropriate official all fees received by the court administrator.

Subd. 3. [COURT REPORTER.] Each court reporter appointed by a judge of district court shall, at the request of the judge, assist that judge in performing the judge's duties as conciliation court judge. A court reporter shall not take official notes of any trial or proceedings in conciliation court.

Subd. 4. [QUARTERS; SUPPLIES.] The county in which the court is established shall provide suitable quarters for the court. Except as otherwise provided by law, all expenses for necessary blanks, stationary, books, furniture, furnishings and other supplies for the use of the court and the officers of the court shall be included in the budget for the court administrator's office provided by the county board pursuant to section 485.018, subdivision 6.

Sec. 4. [REPEALER.]

Minnesota Statutes 1992, sections 487.30; 488A.12; 488A.13; 488A.14; 488A.15; 488A.16; 488A.17; 488A.29; 488A.30; 488A.31; 488A.32; 488A.33; 488A.34; and Laws 1992, chapter 591, section 21, are repealed.

Sec. 5. [EFFECTIVE DATE.] Sections 1, 2, 3, and 4 are effective July 1, 1993.