Appellate Resources in Law Library

JOHN MURPHY, LAW LIBRARY DIRECTOR

Books

Powell on Real Property
Criminal Law Defenses
Criminal Procedure
Search and Seizure
Pirsig on Minnesota Pleading
Clark on Surveying & Boundaries

CLE Materials

- Appellate Practice Institute Manual

Table of Contents

1. **Appealability**
   - Stephen F. Buterin
   - Anne Wyneken

2. **The Nuts and Bolts of an Appeal**
   - Peter D. Gray
   - Sarah C.S. McLaren
   - Karl E. Robinson

3. **Trends in Family Law Appeals**
   - Sheridan Hawley

4. **Arbitration Appeals: Do They Exist?**
   - Liz Kramer

5. **Criminal Appeals for the Non-Criminal Law Practitioner**
   - Rachel Bond
   - Jodie Carlson

6. **Behind the Curtain**
   - Rita Coyle DeMeules
   - Cynthia Lehr

7. **Judicial Behavior**
   - Professor Lee Epstein

CLE Materials

- How to Appeal to the Minnesota Court of Appeals

Table of Contents

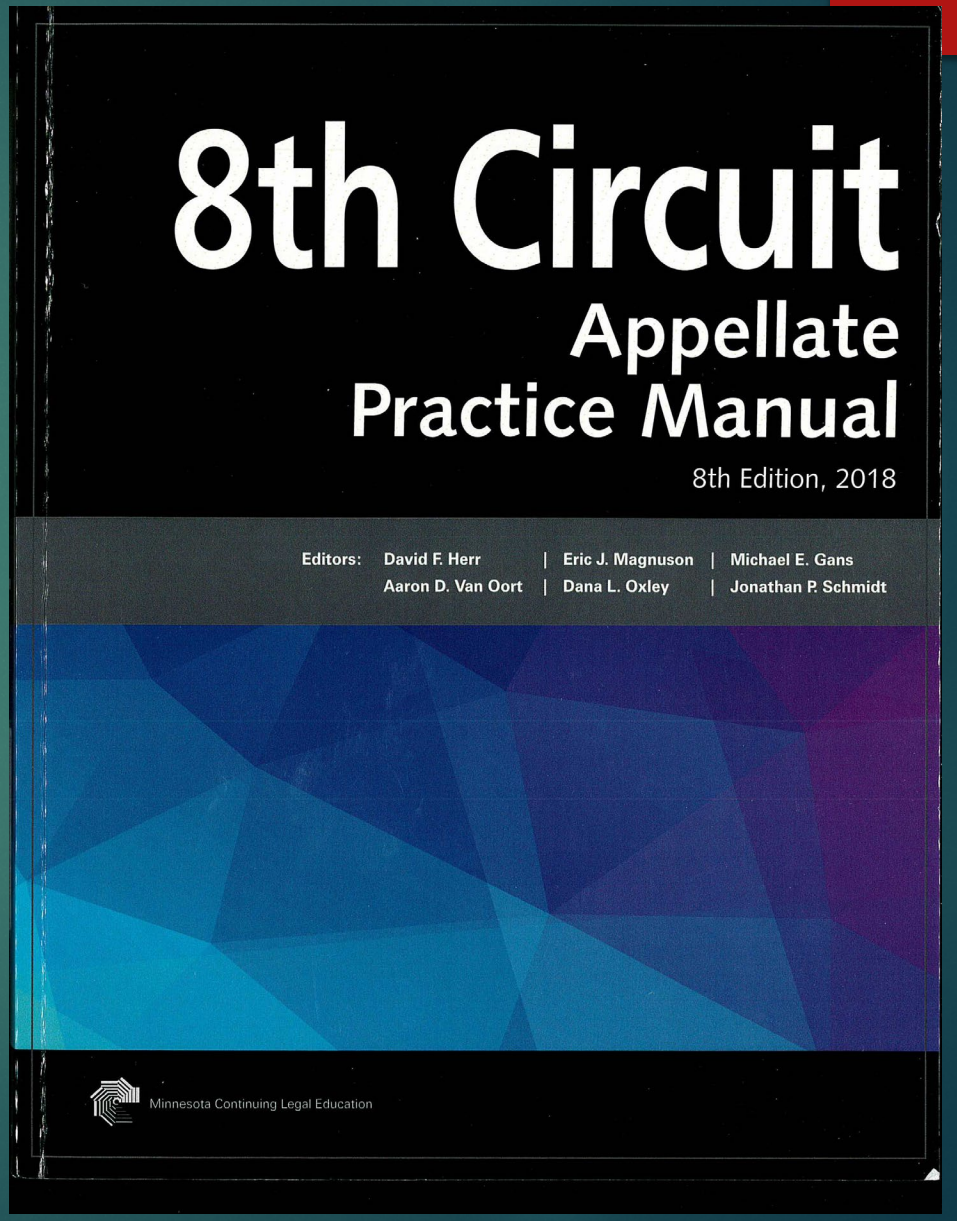
1. **How to Appeal to the Minnesota Court of Appeals**
2. **Annotated Sample Notice of Appeal**
3. **Annotated Sample Filing and Service Letter**
4. **Annotated Sample Statement of the Case**
5. **Sample from Appeal in *Rotary Systems, Inc. v. TomoTherapy Inc.***

See also:

- Brief, Addendum and Appendix of Appellant in *Webb Golden Valley, LLC v. State of Minnesota*, which may be viewed at: http://www.rkmc.com/lawyers/eric-magnuson.
- David F. Herr, Eric J. Magnuson, Diane B. Bratvold, *Summary of Minnesota Appellate Procedure* 7th ed. (including 2014 update) (Minnesota CLE) provided at check-in to all attendees.

CLE Materials

- 8th Circuit Appellate Practice Manual



CLE Materials

Bankruptcy Deskbook

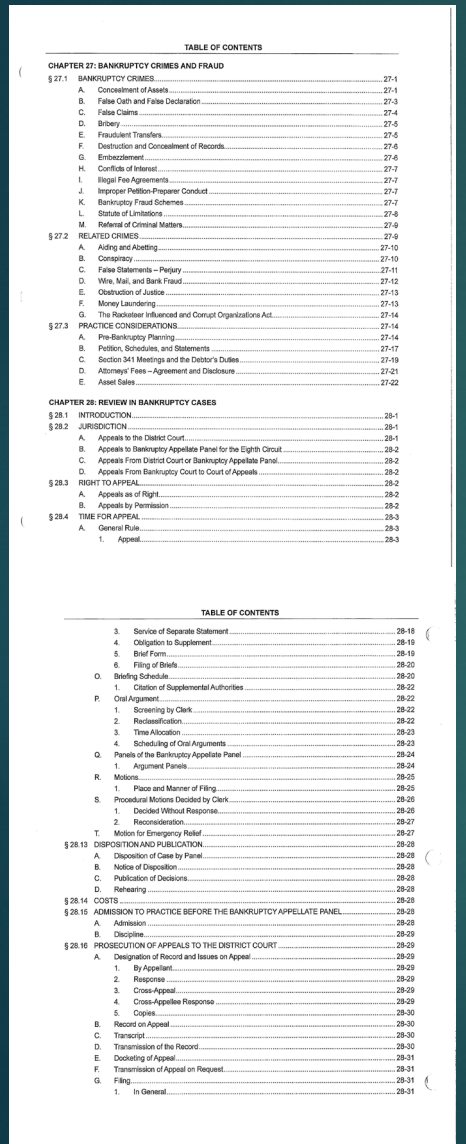


TABLE OF CONTENTS

CHAPTER 27: BANKRUPTCY CRIMES AND FRAUD

§ 27.1 BANKRUPTCY CRIMES 27-1
A. Concealment of Assets 27-1
B. False Oath and False Declaration 27-3
C. False Claims 27-4
D. Bribery 27-5
E. Fraudulent Transfers 27-5
F. Destruction and Concealment of Records 27-6
G. Embezzlement 27-6
H. Conflicts of Interest 27-7
I. Illegal Fee Agreements 27-7
J. Improper Petition-Preparer Conduct 27-7
K. Bankruptcy Fraud Schemes 27-7
L. Statute of Limitations 27-8
M. Referral of Criminal Matters 27-9
§ 27.2 RELATED CRIMES 27-9
A. Aiding and Abetting 27-10
B. Conspiracy 27-10
C. False Statements – Perjury 27-11
D. Wire, Mail, and Bank Fraud 27-12
E. Obstruction of Justice 27-13
F. Money Laundering 27-13
G. The Racketeer Influenced and Corrupt Organizations Act 27-14
§ 27.3 PRACTICE CONSIDERATIONS 27-14
A. Pre-Bankruptcy Planning 27-14
B. Petition, Schedules, and Statements 27-17
C. Section 341 Meetings and the Debtor's Duties 27-19
D. Attorneys' Fees – Agreement and Disclosure 27-21
E. Asset Sales 27-22

CHAPTER 28: REVIEW IN BANKRUPTCY CASES

§ 28.1 INTRODUCTION 28-1
§ 28.2 JURISDICTION 28-1
A. Appeals to the District Court 28-1
B. Appeals to Bankruptcy Appellate Panel for the Eighth Circuit 28-2
C. Appeals From District Court or Bankruptcy Appellate Panel 28-2
D. Appeals From Bankruptcy Court to Court of Appeals 28-2
§ 28.3 RIGHT TO APPEAL 28-2
A. Appeals as of Right 28-2
B. Appeals by Permission 28-2
§ 28.4 TIME FOR APPEAL 28-3
A. General Rule 28-3
1. Appeal 28-3

TABLE OF CONTINUED

3. Service of Separate Statement 28-18
4. Obligation to Supplement 28-19
5. Brief Form 28-19
6. Filing of Briefs 28-20
O. Briefing Schedule 28-20
1. Citation of Supplemental Authorities 28-22
P. Oral Argument 28-22
1. Screening by Clerk 28-22
2. Reclassification 28-22
3. Time Allocation 28-23
4. Scheduling of Oral Arguments 28-23
Q. Panels of the Bankruptcy Appellate Panel 28-24
1. Argument Panels 28-24
R. Motions 28-25
1. Place and Manner of Filing 28-25
S. Procedural Motions Decided by Clerk 28-26
1. Decided Without Response 28-26
2. Reconsideration 28-27
T. Motion for Emergency Relief 28-27
§ 28.13 DISPOSITION AND PUBLICATION 28-28
A. Disposition of Case by Panel 28-28
B. Notice of Disposition 28-28
C. Publication of Decisions 28-28
D. Rehearing 28-28
§ 28.14 COSTS 28-28
§ 28.15 ADMISSION TO PRACTICE BEFORE THE BANKRUPTCY APPELLATE PANEL 28-28
A. Admission 28-28
B. Discipline 28-29
§ 28.16 PROSECUTION OF APPEALS TO THE DISTRICT COURT 28-29
A. Designation of Record and Issues on Appeal 28-29
1. By Appellant 28-29
2. Response 28-29
3. Cross-Appeal 28-29
4. Cross-Appellee Response 28-29
5. Copies 28-30
B. Record on Appeal 28-30
C. Transcript 28-30
D. Transmission of the Record 28-30
E. Docketing of Appeal 28-31
F. Transmission of Appeal on Request 28-31
G. Filing 28-31
1. In General 28-31

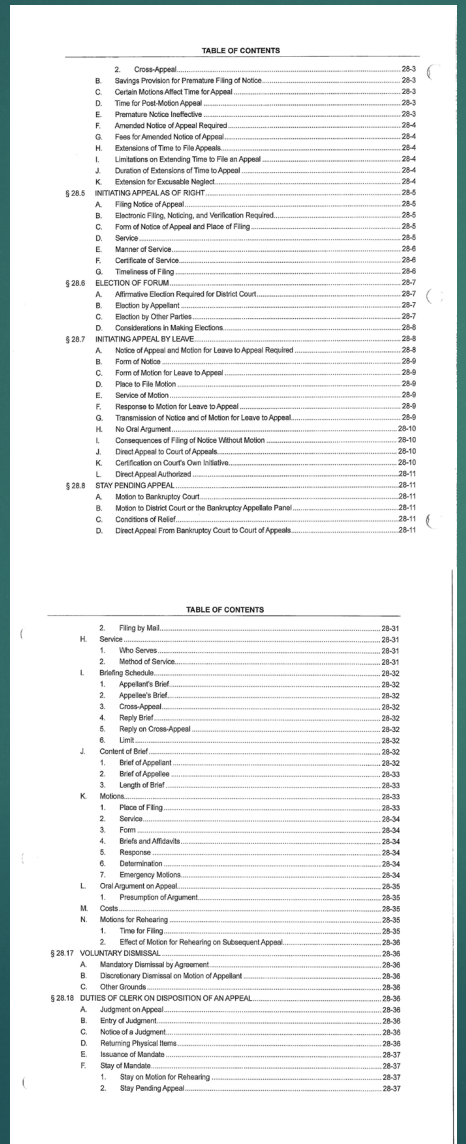


TABLE OF CONTINUED

2. Cross-Appeal 28-3
B. Savings Provision for Premature Filing of Notice 28-3
C. Certain Motions Affect Time for Appeal 28-3
D. Time for Post-Motion Appeal 28-3
E. Premature Notice Ineffective 28-3
F. Amended Notice of Appeal Required 28-4
G. Fees for Amended Notice of Appeal 28-4
H. Extensions of Time to File Appeals 28-4
I. Limitations on Extending Time to File an Appeal 28-4
J. Duration of Extensions of Time to Appeal 28-4
K. Extension for Excusable Neglect 28-4
§ 28.5 INITIATING APPEAL AS OF RIGHT 28-5
A. Filing Notice of Appeal 28-5
B. Electronic Filing, Noticing, and Verification Required 28-5
C. Form of Notice of Appeal and Place of Filing 28-5
D. Service 28-6
E. Manner of Service 28-6
F. Certificate of Service 28-6
G. Timeliness of Filing 28-6
§ 28.6 ELECTION OF FORUM 28-7
A. Affirmative Election Required for District Court 28-7
B. Election by Appellant 28-7
C. Election by Other Parties 28-7
D. Considerations in Making Elections 28-8
§ 28.7 INITIATING APPEAL BY LEAVE 28-8
A. Notice of Appeal and Motion for Leave to Appeal Required 28-8
B. Form of Notice 28-9
C. Form of Motion for Leave to Appeal 28-9
D. Place to File Motion 28-9
E. Service of Motion 28-9
F. Response to Motion for Leave to Appeal 28-9
G. Transmission of Notice and of Motion for Leave to Appeal 28-9
H. No Oral Argument 28-10
I. Consequences of Filing of Notice Without Motion 28-10
J. Direct Appeal to Court of Appeals 28-10
K. Certification on Court's Own Initiative 28-10
L. Direct Appeal Authorized 28-11
§ 28.8 STAY PENDING APPEAL 28-11
A. Motion to Bankruptcy Court 28-11
B. Motion to District Court or the Bankruptcy Appellate Panel 28-11
C. Conditions of Relief 28-11
D. Direct Appeal From Bankruptcy Court to Court of Appeals 28-11

TABLE OF CONTINUED

2. Filing by Mail 28-31
H. Service 28-31
1. Who Serves 28-31
2. Method of Service 28-31
I. Briefing Schedule 28-32
1. Appellant's Brief 28-32
2. Appellee's Brief 28-32
3. Cross-Appeal 28-32
4. Reply Brief 28-32
5. Reply on Cross-Appeal 28-32
6. Limit 28-32
J. Content of Brief 28-32
1. Brief of Appellant 28-32
2. Brief of Appellee 28-33
3. Length of Brief 28-33
K. Motions 28-33
1. Place of Filing 28-33
2. Service 28-34
3. Form 28-34
4. Briefs and Affidavits 28-34
5. Response 28-34
6. Determination 28-34
7. Emergency Motions 28-34
L. Oral Argument on Appeal 28-35
1. Presumption of Argument 28-35
M. Costs 28-35
N. Motions for Rehearing 28-35
1. Time for Filing 28-35
2. Effect of Motion for Rehearing on Subsequent Appeal 28-36
§ 28.17 VOLUNTARY DISMISSAL 28-36
A. Mandatory Dismissal by Agreement 28-36
B. Discretionary Dismissal on Motion of Appellant 28-36
C. Other Grounds 28-36
§ 28.18 DUTIES OF CLERK ON DISPOSITION OF AN APPEAL 28-36
A. Judgment on Appeal 28-36
B. Entry of Judgment 28-36
C. Notice of a Judgment 28-36
D. Returning Physical Items 28-36
E. Issuance of Mandate 28-37
F. Stay of Mandate 28-37
1. Stay on Motion for Rehearing 28-37
2. Stay Pending Appeal 28-37

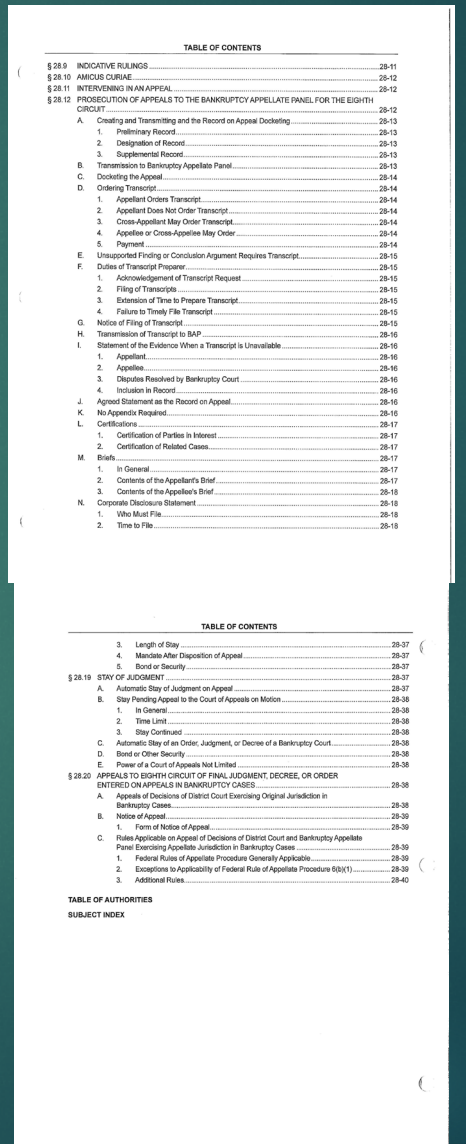


TABLE OF CONTINUED

§ 28.9 INDICATIVE RULINGS 28-11
§ 28.10 AMICUS CURIAE 28-12
§ 28.11 INTERVENING IN AN APPEAL 28-12
§ 28.12 PROSECUTION OF APPEALS TO THE BANKRUPTCY APPELLATE PANEL FOR THE EIGHTH CIRCUIT 28-12
A. Creating and Transmitting and the Record on Appeal Docketing 28-13
1. Preliminary Record 28-13
2. Designation of Record 28-13
3. Supplemental Record 28-13
B. Transmission to Bankruptcy Appellate Panel 28-13
C. Docketing the Appeal 28-14
D. Ordering Transcript 28-14
1. Appellant Orders Transcript 28-14
2. Appellant Does Not Order Transcript 28-14
3. Cross-Appellant May Order Transcript 28-14
4. Appellee or Cross-Appellee May Order 28-14
5. Payment 28-14
E. Unsupported Finding or Conclusion Argument Requires Transcript 28-15
F. Duties of Transcript Preparer 28-15
1. Acknowledgement of Transcript Request 28-15
2. Filing of Transcripts 28-15
3. Extension of Time to Prepare Transcript 28-15
4. Failure to Timely File Transcript 28-15
G. Notice of Filing of Transcript 28-15
H. Transmission of Transcript to BAP 28-16
I. Statement of the Evidence When a Transcript Is Unavailable 28-16
1. Appellant 28-16
2. Appellee 28-16
3. Disputes Resolved by Bankruptcy Court 28-16
4. Inclusion in Record 28-16
J. Agreed Statement as the Record on Appeal 28-16
K. No Appendix Required 28-16
L. Certifications 28-17
1. Certification of Parties in Interest 28-17
2. Certification of Related Cases 28-17
M. Briefs 28-17
1. In General 28-17
2. Contents of the Appellant's Brief 28-17
3. Contents of the Appellee's Brief 28-18
N. Corporate Disclosure Statement 28-18
1. Who Must File 28-18
2. Time to File 28-18

TABLE OF CONTINUED

3. Length of Stay 28-37
4. Mandate After Disposition of Appeal 28-37
5. Bond or Security 28-37
§ 28.19 STAY OF JUDGMENT 28-37
A. Automatic Stay of Judgment on Appeal 28-37
B. Stay Pending Appeal to the Court of Appeals on Motion 28-38
1. In General 28-38
2. Time Limit 28-38
3. Stay Continued 28-38
C. Automatic Stay of an Order, Judgment, or Decree of a Bankruptcy Court 28-38
D. Bond or Other Security 28-38
E. Power of a Court of Appeals Not Limited 28-38
§ 28.20 APPEALS TO EIGHTH CIRCUIT OF FINAL JUDGMENT, DECREE, OR ORDER ENTERED ON APPEALS IN BANKRUPTCY CASES 28-38
A. Appeals of Decisions of District Court Exercising Original Jurisdiction in Bankruptcy Cases 28-38
B. Notice of Appeal 28-39
1. Form of Notice of Appeal 28-39
C. Rules Applicable on Appeal of Decisions of District Court and Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in Bankruptcy Cases 28-39
1. Federal Rules of Appellate Procedure Generally Applicable 28-39
2. Exceptions to Applicability of Federal Rule of Appellate Procedure 6(b)(1) 28-39
3. Additional Rules 28-40

TABLE OF AUTHORITIES

SUBJECT INDEX

Attorney-Client Privilege

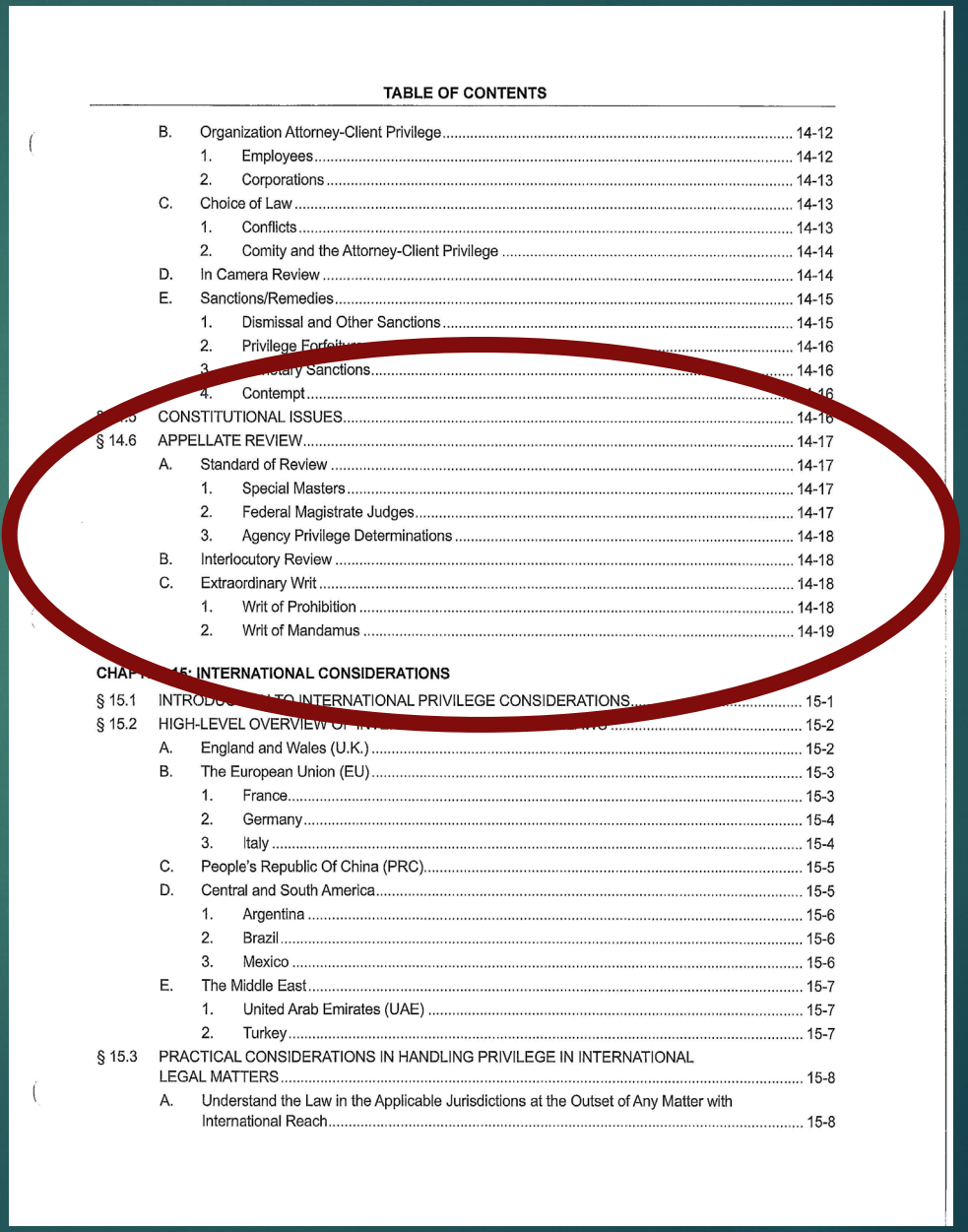


TABLE OF CONTENTS

B. Organization Attorney-Client Privilege 14-12
1. Employees 14-12
2. Corporations 14-13
C. Choice of Law 14-13
1. Conflicts 14-13
2. Comity and the Attorney-Client Privilege 14-14
D. In Camera Review 14-14
E. Sanctions/Remedies 14-15
1. Dismissal and Other Sanctions 14-15
2. Privilege Forfeit... 14-16
3. ...tary Sanctions 14-16
4. Contempt 14-16
§ 14.5 CONSTITUTIONAL ISSUES 14-16
§ 14.6 APPELLATE REVIEW 14-17
A. Standard of Review 14-17
1. Special Masters 14-17
2. Federal Magistrate Judges 14-17
3. Agency Privilege Determinations 14-18
B. Interlocutory Review 14-18
C. Extraordinary Writ 14-18
1. Writ of Prohibition 14-18
2. Writ of Mandamus 14-19

CHAP... 15: INTERNATIONAL CONSIDERATIONS

§ 15.1 INTRODU...TO INTERNATIONAL PRIVILEGE CONSIDERATIONS 15-1
§ 15.2 HIGH-LEVEL OVERVIEW OF IN... 15-2
A. England and Wales (U.K.) 15-2
B. The European Union (EU) 15-3
1. France 15-3
2. Germany 15-4
3. Italy 15-4
C. People's Republic Of China (PRC) 15-5
D. Central and South America 15-5
1. Argentina 15-6
2. Brazil 15-6
3. Mexico 15-6
E. The Middle East 15-7
1. United Arab Emirates (UAE) 15-7
2. Turkey 15-7
§ 15.3 PRACTICAL CONSIDERATIONS IN HANDLING PRIVILEGE IN INTERNATIONAL LEGAL MATTERS 15-8
A. Understand the Law in the Applicable Jurisdictions at the Outset of Any Matter with International Reach 15-8

Child Custody Deskbook

TABLE OF CONTENTS

CHAPTER 9: CHILD CUSTODY AND CHILD SUPPORT APPEALS

§ 9.1 INTRODUCTION 9-1
§ 9.2 APPELLATE MEDIATION 9-1
§ 9.3 MOTIONS FOR NEW TRIAL AND MOTIONS FOR AMENDED FINDINGS 9-3
A. Judicial Economy 9-3
B. Scope of Review 9-4
1. Review of Referee's Order 9-4
2. Review of Child Support Magistrate's Decision 9-5
§ 9.4 STANDARD OF REVIEW 9-6
A. Jurisdiction and Venue 9-6
1. Jurisdiction 9-6
2. Venue 9-7
3. Standing 9-7
B. Failure to Supply Transcript 9-7
C. Findings of Fact 9-7
1. Generally 9-7
D. Custody Appeals 9-8
1. General Custody Appeals 9-8
E. Modification of Custody 9-9
F. Joint Physical Custody 9-9
G. Removal 9-9
H. Locale/*LaChapelle* Restrictions 9-9
I. Third-Party Custody 9-10
J. Parenting Time 9-10
K. Child Support 9-11
1. In General 9-11
2. Child Support Magistrates 9-12
3. Modification of Child Support 9-12
4. Contempt 9-13
L. Parentage 9-13
§ 9.5 HOW TO BEGIN AN APPEAL – MINNESOTA RULE OF CIVIL APPELLATE PROCEDURE 103 9-13
§ 9.6 APPEALABLE JUDGMENTS AND ORDERS – MINNESOTA RULE OF CIVIL APPELLATE PROCEDURE 103.03 9-14
§ 9.7 TIME FOR TAKING AN APPEAL – MINNESOTA RULE OF CIVIL APPELLATE PROCEDURE 104 9-15
§ 9.8 RESPONDENT'S RIGHT TO APPEAL – MINNESOTA RULE OF CIVIL APPELLATE PROCEDURE 106 9-18
§ 9.9 MOTIONS – MINNESOTA RULE OF CIVIL APPELLATE PROCEDURE 127 9-18
§ 9.10 MOTIONS FOR ATTORNEY'S FEES – MINNESOTA RULE OF CIVIL APPELLATE PROCEDURE 139.06 9-19
§ 9.11 COST BOND – MINNESOTA RULE OF CIVIL APPELLATE PROCEDURE 107 9-20
§ 9.12 HANDLING OF CONFIDENTIAL PORTIONS OF THE APPELLATE RECORD 9-20

TABLE OF CONTENTS

§ 9.13 TAXATION OF COSTS AND DISBURSEMENTS ON APPEAL – MINNESOTA RULE OF CIVIL APPELLATE PROCEDURE 139 9-21
§ 9.14 IN FORMA PAUPERIS – MINNESOTA RULE OF CIVIL APPELLATE PROCEDURE 109 9-21
§ 9.15 STAYS ON APPEAL – MINNESOTA RULE OF CIVIL APPELLATE PROCEDURE 108 9-22
§ 9.16 RECORD ON APPEAL/TRANSCRIPTS – MINNESOTA RULE OF CIVIL APPELLATE PROCEDURE 110 9-23
§ 9.17 BRIEFS – MINNESOTA RULE OF CIVIL APPELLATE PROCEDURE 128 9-25
§ 9.18 ORAL ARGUMENTS – MINNESOTA RULE OF CIVIL APPELLATE PROCEDURE 134.03 9-30
§ 9.19 CONSTITUTIONAL QUESTIONS – MINNESOTA RULE OF CIVIL APPELLATE PROCEDURE 144 9-31
§ 9.20 ELECTRONIC FILING AT THE APPELLATE COURTS 9-31
§ 9.21 FORMS 9-31
§ 9.22 HELPFUL RESOURCES 9-32
APPENDIX A – FORM 103A: NOTICE OF APPEAL (COURT OF APPEALS) A-1
APPENDIX B – FORM 103C: NOTICE OF RELATED APPEAL (COURT OF APPEALS) B-1
APPENDIX C – FORM 110A: CERTIFICATE AS TO TRANSCRIPT C-1
APPENDIX D – FORM 110B: CERTIFICATE OF FILING AND DELIVERY D-1
APPENDIX E – FORM 128: APPELLANT'S FORMAL BRIEF AND APPENDIX E-1
APPENDIX F – FORM 132: CERTIFICATION OF BRIEF LENGTH F-1
APPENDIX G – FORM 133: STATEMENT OF THE CASE G-1
APPENDIX H – FORM 139: TAXATION OF COSTS AND DISBURSEMENT H-1

CHAPTER 10: TRIBAL COURT PRACTICES AND ICWA IN MINNESOTA CUSTODY AND CHILD SUPPORT CASES

§ 10.1 INTRODUCTION 10-1
§ 10.2 CUSTODY AND SUPPORT MATTERS IN MINNESOTA'S TRIBAL COURTS 10-1
A. General Principles 10-1
B. Tribal Court Jurisdiction Generally and Jurisdictional Complexities Unique to Custody and Child Support Matters 10-4
C. Substantive Issues 10-6
D. Enforcement Issues 10-7
E. Practice Pointers 10-8
§ 10.3 THE INDIAN CHILD WELFARE ACT 10-9

CHAPTER 11: REPRESENTING CHILDREN

§ 11.1 INTRODUCTION 11-1
§ 11.2 CHILDREN'S VOICES IN FAMILY COURT 11-1
§ 11.3 ROLE OF INDEPENDENT COUNSEL FOR CHILDREN IN FAMILY COURT 11-3
§ 11.4 DIFFERENCES BETWEEN COUNSEL FOR CHILDREN AND GUARDIANS AD LITEM 11-4
§ 11.5 TYPES OF FAMILY COURT CASES WHERE CHILDREN HAVE THE RIGHT TO COUNSEL AS A MATTER OF LAW 11-5
§ 11.6 TYPES OF CASES WHERE CHILDREN MAY BE REPRESENTED BY COUNSEL 11-6
§ 11.7 RETENTION OR APPOINTMENT OF COUNSEL FOR CHILDREN 11-8

Divorce Practice Deskbook

TABLE OF CONTENTS

L. Occupational License Suspension 18-6
M. Payment Agreements 18-6
N. Employer Remedies 18-6
O. Financial Institution Data Match 18-6
P. Reports to Credit Agencies 18-6
Q. Arrearage Collection Projects 18-6
R. Seek Employment Orders 18-7
S. Attorney's Fees 18-7
T. Publication of Names 18-7
U. Parenting-Time Expeditor Appointment and Support Review Hearing 18-7
V. Six-Month Review Hearing 18-7
W. Criminal Charges 18-8
X. Passport Denial 18-8
Y. Creditors' Remedies – Attorney and Sheriff's Levy 18-8
Z. Life Insurance to Secure Support 18-8
AA. Claims Against the Estate and Life Insurance Trust 18-8
§ 18.3 REMEDIES FOR VIOLATIONS OF CUSTODY AND PARENTING-TIME TERMS 18-9
A. Remedies in Parenting-Time Statute and Modification of Custody 18-9
B. Parenting-Time Expeditor Appointment 18-9
C. Parenting Time and Support Review Hearing 18-9
D. Six-Month Review Hearing 18-9
E. Judicial Supervision of Custody and Parenting Time 18-10
F. Contempt 18-10
G. Parental Kidnapping – Jurisdictional Issues and Criminal Penalties 18-10
§ 18.4 CONTEMPT 18-10
A. Types of Contempt and Limitations on Use 18-10
B. Constructive Civil Contempt Procedure 18-11
§ 18.5 PROPERTY SETTLEMENT ENFORCEMENT 18-13

Chapter Nineteen
Appellate Practice
§ 19.1 APPEALS IN GENERAL 19-1
A. Authority for Appeals 19-1
B. Appealable Orders 19-1
C. Time for Appeal 19-2
D. Procedure for Making an Appeal 19-4
1. Notice of Appeal 19-4
2. Serving and Filing the Appeal 19-5
E. Family Appellate Mediation Program 19-7
F. Jurisdiction of Trial Court During an Appeal 19-8
G. Record on Appeal 19-9
H. Appellate Brief 19-9

Updated 2017

TABLE OF CONTENTS

I. Appellate Motions 19-11
J. Oral Argument 19-12
K. Costs and Disbursements 19-13
§ 19.2 APPELLATE REVIEW 19-13
A. Scope of Review 19-13
B. Standard of Review 19-14
1. Without a Motion for Amended Findings and New Trial 19-14
2. De Novo Review 19-14
3. Abuse of Discretion 19-15
4. Findings of Fact 19-15
5. Credibility Determinations 19-15
6. Procedural and Evidentiary Rulings 19-15

Chapter Twenty
Stipulations and Agreements in Family Law Cases
§ 20.1 WHY ENTER INTO A STIPULATION IN A FAMILY LAW CASE? 20-1
§ 20.2 WHAT CAN PARTIES STIPULATE OR AGREE ABOUT? 20-2
A. Property 20-2
B. Custody and Parenting Time 20-4
C. Spousal Maintenance 20-5
§ 20.3 HOW DO STIPULATIONS AND AGREEMENTS GET FINALIZED? 20-7
§ 20.4 HOW TO ENFORCE A STIPULATION? 20-9
§ 20.5 CONCLUSION 20-10

Chapter Twenty-One
Closing Out a Divorce File
§ 21.1 INTRODUCTION 21-1
§ 21.2 WHAT IS CLOSING WORK? 21-1
§ 21.3 CLEAR COMMUNICATION 21-1
§ 21.4 PROCESS AND PROCEDURES PREVENT TASKS FROM SLIPPING THROUGH THE CRACKS 21-2
§ 21.5 SPECIFIC CONCERNS 21-3
A. Certificate of Dissolution 21-3
B. Notice of Withdrawal 21-3
C. Real Estate Transfers 21-3
D. Qualified Domestic Relations Order 21-4
APPENDIX A – CHECKLIST OF POST-DIVORCE TASKS 21-6

Chapter Twenty-Two
Interstate and International Custody
§ 22.1 INTRODUCTION 22-1
§ 22.2 INTERSTATE CHILD CUSTODY AND PARENTING-TIME JURISDICTION 22-1
A. Synopsis of Applicable Law 22-1
1. Uniform Child Custody Jurisdiction and Enforcement Act 22-1

Updated 2017

DWI Deskbook

TABLE OF CONTENTS

B. Judicial Review 17-9
C. Scope of Judicial Review Hearing 17-10
§ 17.10 RETURN OF REGULAR PLATES 17-10
A. Reissuance of Regular Plates 17-10
B. Application for Reissuance of Regular Plates 17-10
C. Reissuance of Regular Plates at No Cost 17-10

Chapter Eighteen
Probation

§ 18.1 DWI PROBATION 18-1
A. Duration of Probationary Supervision 18-1
B. Mandatory Minimum Sentences 18-1
C. Intensive Supervision Programs 18-2
D. Long-Term Monitoring 18-2
E. Interlock Exception 18-2
§ 18.2 MECHANICS OF THE SENTENCE 18-2
A. Executed Sentence 18-2
B. Stay of Execution 18-3
C. Stay of Imposition 18-3
D. Stay of Adjudication 18-3
E. Stayed Sentences for Felony DWIs 18-3
§ 18.3 PROCEDURE AND CASE LAW 18-3
§ 18.4 FELONY DWI SUPERVISION 18-4
A. Sentence Terms and Conditions 18-5
B. Rights and Responsibilities 18-5
C. Felony DWI Supervision Requirements 18-6
D. Violations 18-7
§ 18.5 COMMUNITY CORRECTIONS PROGRAMS 18-7
A. The One-Day DWI Program 18-7
B. DWI Court 18-8

Chapter Nineteen
Appellate Practice

§ 19.1 OVERVIEW OF THE APPELLATE PROCESS 19-1
§ 19.2 BEFORE THE APPEAL 19-1
A. The Record 19-1
1. District Court Record 19-1
2. Appellate Record 19-2
§ 19.3 FILING AND SERVICE TIME LIMITS 19-3
A. Implied Consent Cases 19-3
B. Criminal Cases 19-4
1. *Lothenbach* Stipulations 19-4

TABLE OF CONTENTS

2. Pretrial Orders 19-5
§ 19.4 COST BONDS AND RELATED ISSUES 19-6
A. Cost Bonds 19-6
B. Supersedeas Bonds 19-6
C. In Forma Pauperis 19-6
§ 19.5 SERVICE AND FILING OF BRIEFS 19-7
A. Civil Appeals 19-7
B. Criminal Appeals 19-8
C. Brief Format 19-8
1. Formal Briefs 19-9
2. Informal Briefs 19-9
3. Letter Arguments 19-9
D. Notice to the Attorney General 19-9
§ 19.6 MANDAMUS AND PROHIBITION 19-10
A. Introduction 19-10
B. Writs of Prohibition 19-10
C. Writs of Mandamus 19-10
§ 19.7 MOTION PRACTICE: MINNESOTA RULE OF CIVIL APPELLATE PROCEDURE 127 19-11
§ 19.8 ORAL ARGUMENT 19-12
§ 19.9 STANDARDS OF REVIEW 19-12
A. Findings of Fact 19-12
B. Questions of Law and Construction of Statutes and Rules 19-13
C. Mixed Questions of Law and Fact 19-14
D. Evidentiary Rulings 19-14
§ 19.10 NOTICE OF DECISION; COSTS AND DISBURSEMENTS 19-15
A. Costs and Disbursements 19-15
B. Attorneys' Fees 19-15
§ 19.11 PETITIONS FOR REVIEW 19-15
A. Procedural Requirements 19-15
B. Petitions for Rehearing 19-16

Chapter Twenty
Insurance and Civil Actions

§ 20.1 INSURANCE 20-1
A. Availability and Affordability 20-1
B. DWI Versus a Lesser Offense 20-2
§ 20.2 CIVIL ACTIONS – MOTOR VEHICLE ACCIDENTS INVOLVING INTOXICATION 20-2
A. Common Law Negligence – Intoxicated Driver as Defendant 20-2
B. Common Law Negligence – Intoxicated Driver as Plaintiff 20-3
C. Social Host Liability – Intoxicated Minor Driver as Plaintiff/Defendant 20-4
D. Comparative Fault in Negligence Actions 20-4
E. "Dram Shop" Cause of Action 20-4

Guardianship-Conservatorship Law

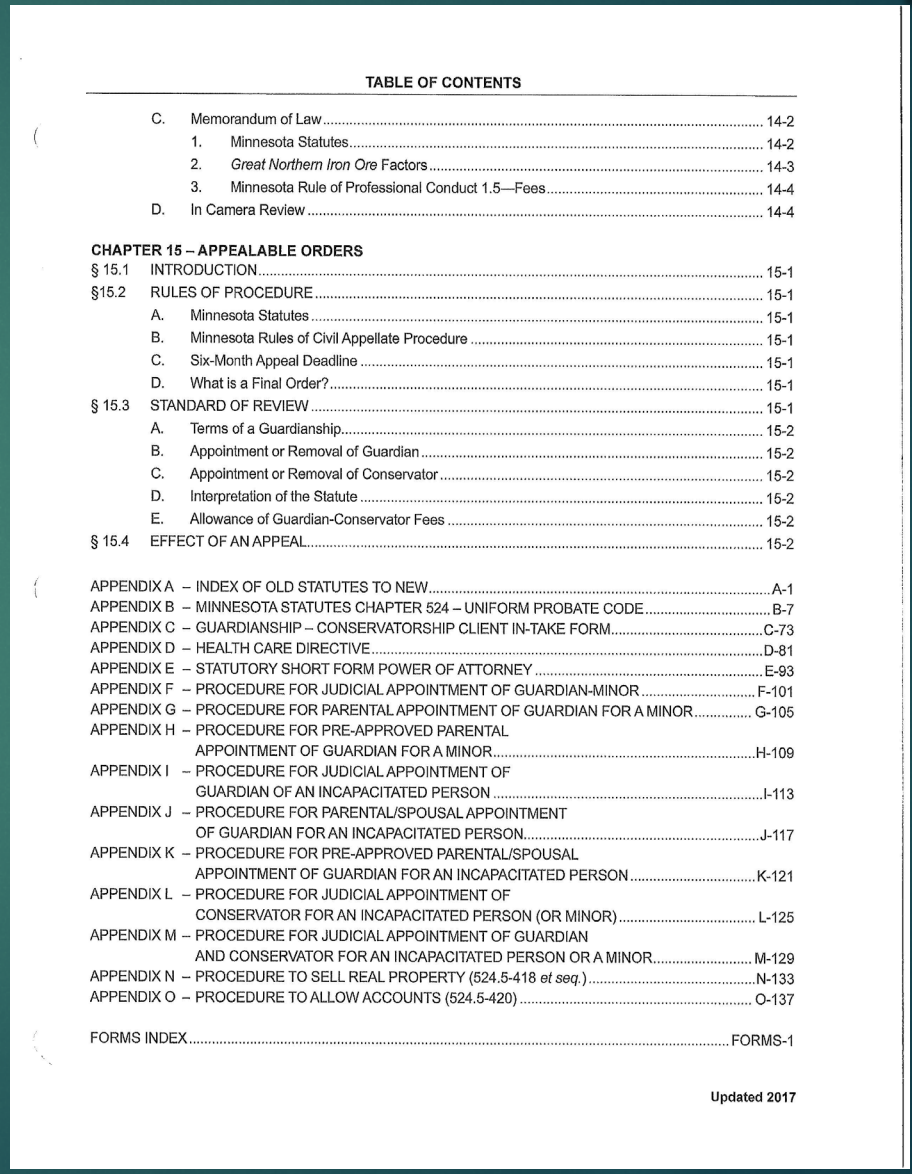


TABLE OF CONTENTS

C. Memorandum of Law 14-2
1. Minnesota Statutes 14-2
2. *Great Northern Iron Ore* Factors 14-3
3. Minnesota Rule of Professional Conduct 1.5—Fees 14-4
D. In Camera Review 14-4

CHAPTER 15 – APPEALABLE ORDERS
§ 15.1 INTRODUCTION 15-1
§15.2 RULES OF PROCEDURE 15-1
A. Minnesota Statutes 15-1
B. Minnesota Rules of Civil Appellate Procedure 15-1
C. Six-Month Appeal Deadline 15-1
D. What is a Final Order? 15-1
§ 15.3 STANDARD OF REVIEW 15-1
A. Terms of a Guardianship 15-2
B. Appointment or Removal of Guardian 15-2
C. Appointment or Removal of Conservator 15-2
D. Interpretation of the Statute 15-2
E. Allowance of Guardian-Conservator Fees 15-2
§ 15.4 EFFECT OF AN APPEAL 15-2

APPENDIX A – INDEX OF OLD STATUTES TO NEW A-1
APPENDIX B – MINNESOTA STATUTES CHAPTER 524 – UNIFORM PROBATE CODE B-7
APPENDIX C – GUARDIANSHIP – CONSERVATORSHIP CLIENT IN-TAKE FORM C-73
APPENDIX D – HEALTH CARE DIRECTIVE D-81
APPENDIX E – STATUTORY SHORT FORM POWER OF ATTORNEY E-93
APPENDIX F – PROCEDURE FOR JUDICIAL APPOINTMENT OF GUARDIAN-MINOR F-101
APPENDIX G – PROCEDURE FOR PARENTAL APPOINTMENT OF GUARDIAN FOR A MINOR G-105
APPENDIX H – PROCEDURE FOR PRE-APPROVED PARENTAL APPOINTMENT OF GUARDIAN FOR A MINOR H-109
APPENDIX I – PROCEDURE FOR JUDICIAL APPOINTMENT OF GUARDIAN OF AN INCAPACITATED PERSON I-113
APPENDIX J – PROCEDURE FOR PARENTAL/SPOUSAL APPOINTMENT OF GUARDIAN FOR AN INCAPACITATED PERSON J-117
APPENDIX K – PROCEDURE FOR PRE-APPROVED PARENTAL/SPOUSAL APPOINTMENT OF GUARDIAN FOR AN INCAPACITATED PERSON K-121
APPENDIX L – PROCEDURE FOR JUDICIAL APPOINTMENT OF CONSERVATOR FOR AN INCAPACITATED PERSON (OR MINOR) L-125
APPENDIX M – PROCEDURE FOR JUDICIAL APPOINTMENT OF GUARDIAN AND CONSERVATOR FOR AN INCAPACITATED PERSON OR A MINOR M-129
APPENDIX N – PROCEDURE TO SELL REAL PROPERTY (524.5-418 *et seq.*) N-133
APPENDIX O – PROCEDURE TO ALLOW ACCOUNTS (524.5-420) O-137

FORMS INDEX FORMS-1

Minnesota Courtroom Evidence

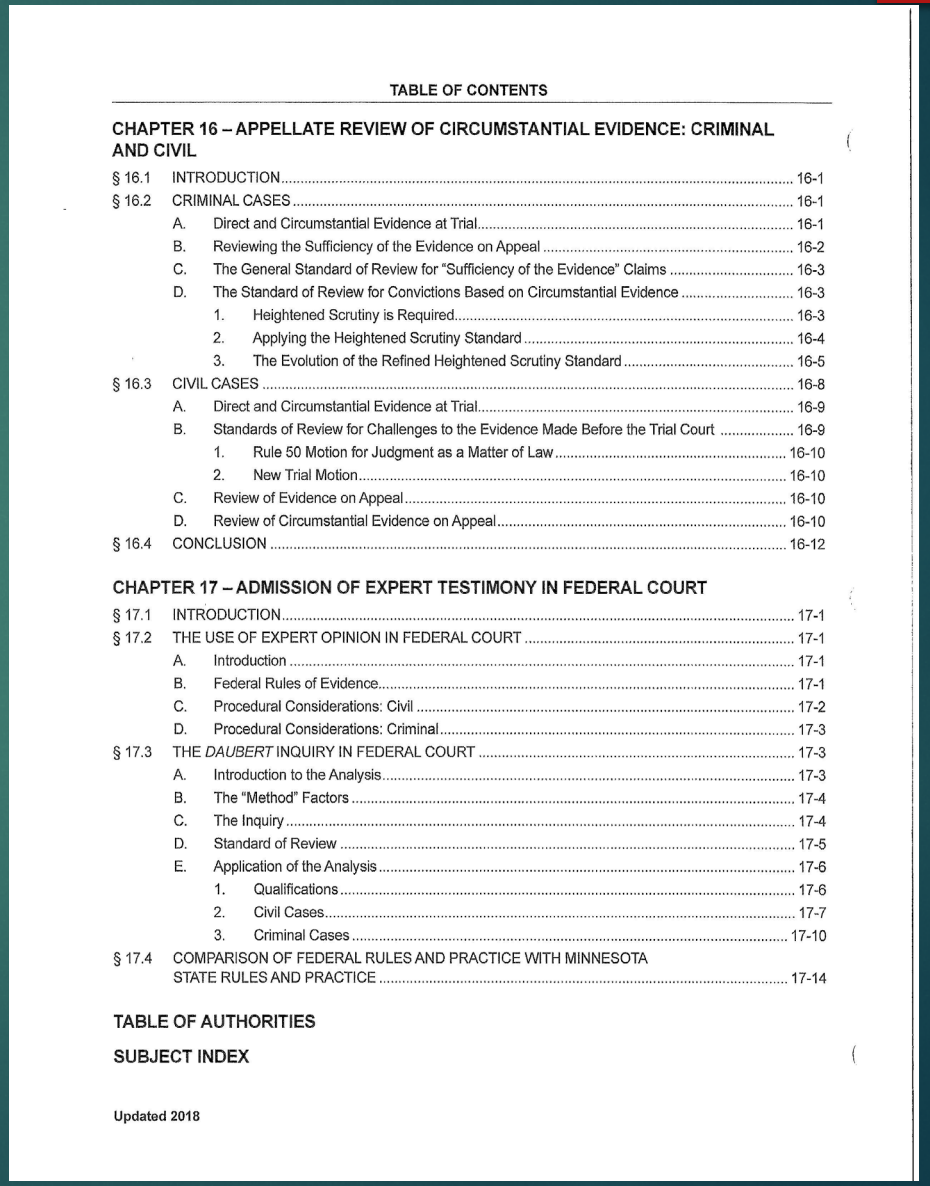


TABLE OF CONTENTS

CHAPTER 16 – APPELLATE REVIEW OF CIRCUMSTANTIAL EVIDENCE: CRIMINAL AND CIVIL

§ 16.1 INTRODUCTION 16-1
§ 16.2 CRIMINAL CASES 16-1
A. Direct and Circumstantial Evidence at Trial 16-1
B. Reviewing the Sufficiency of the Evidence on Appeal 16-2
C. The General Standard of Review for "Sufficiency of the Evidence" Claims 16-3
D. The Standard of Review for Convictions Based on Circumstantial Evidence 16-3
1. Heightened Scrutiny is Required 16-3
2. Applying the Heightened Scrutiny Standard 16-4
3. The Evolution of the Refined Heightened Scrutiny Standard 16-5
§ 16.3 CIVIL CASES 16-8
A. Direct and Circumstantial Evidence at Trial 16-9
B. Standards of Review for Challenges to the Evidence Made Before the Trial Court 16-9
1. Rule 50 Motion for Judgment as a Matter of Law 16-10
2. New Trial Motion 16-10
C. Review of Evidence on Appeal 16-10
D. Review of Circumstantial Evidence on Appeal 16-10
§ 16.4 CONCLUSION 16-12

CHAPTER 17 – ADMISSION OF EXPERT TESTIMONY IN FEDERAL COURT

§ 17.1 INTRODUCTION 17-1
§ 17.2 THE USE OF EXPERT OPINION IN FEDERAL COURT 17-1
A. Introduction 17-1
B. Federal Rules of Evidence 17-1
C. Procedural Considerations: Civil 17-2
D. Procedural Considerations: Criminal 17-3
§ 17.3 THE *DAUBERT* INQUIRY IN FEDERAL COURT 17-3
A. Introduction to the Analysis 17-3
B. The "Method" Factors 17-4
C. The Inquiry 17-4
D. Standard of Review 17-5
E. Application of the Analysis 17-6
1. Qualifications 17-6
2. Civil Cases 17-7
3. Criminal Cases 17-10
§ 17.4 COMPARISON OF FEDERAL RULES AND PRACTICE WITH MINNESOTA STATE RULES AND PRACTICE 17-14

TABLE OF AUTHORITIES

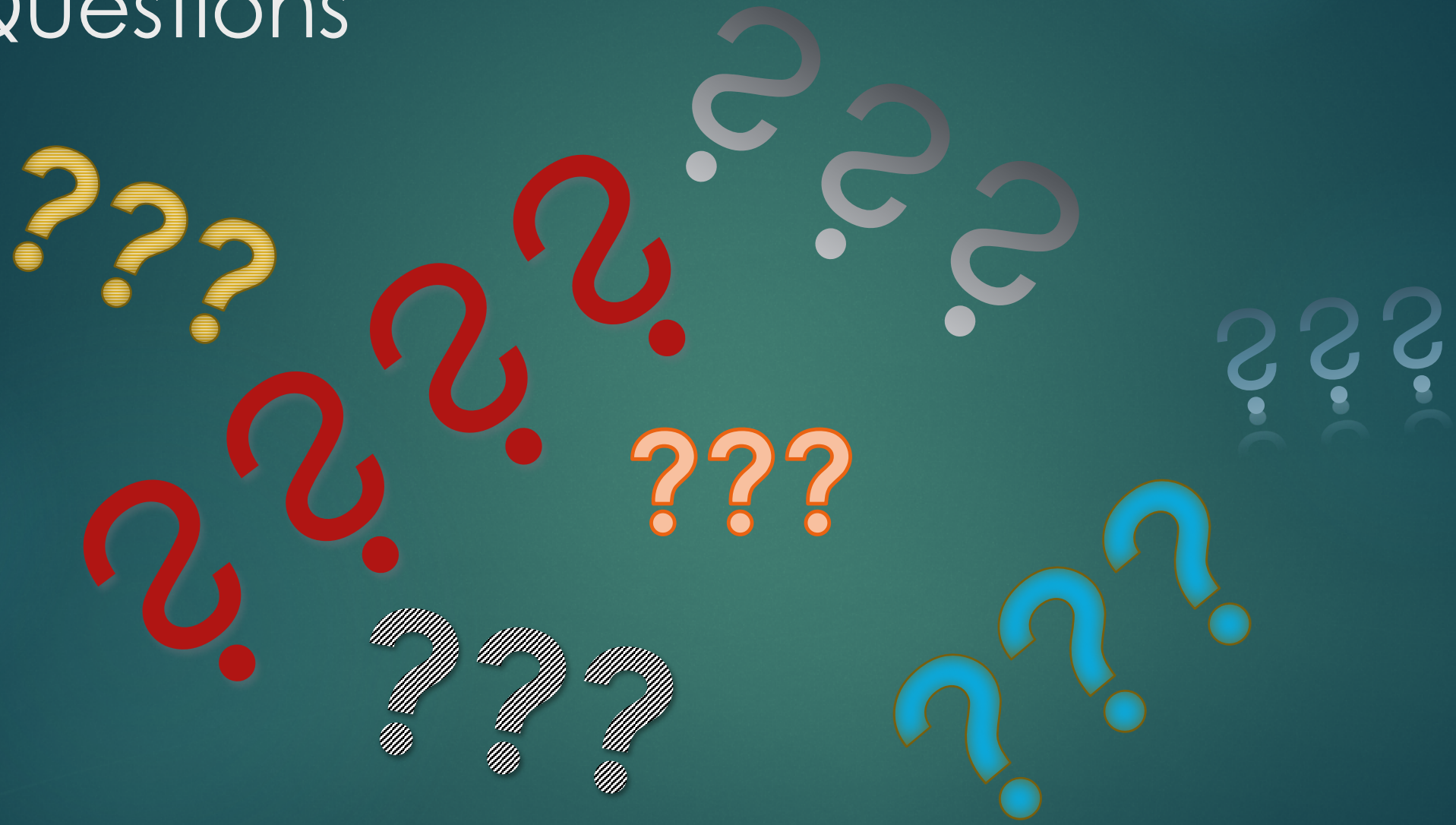
SUBJECT INDEX

Updated 2018

Carl Sandburg

- “If the facts are against you, argue the law. If the law is against you, argue the facts. If the law and the facts are against you, pound the table and yell like hell”

Westlaw

- Briefs
- Secondary Resources
- Restatements and Uniform Laws Annotated
- Law Reviews and Journals
- Legislative History
- Precedent Analysis

Questions