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By

ERICA A. HOLZER
Maslon LLP
Minneapolis

JEVON C. BINDMAN
Maslon LLP
Minneapolis



For Customer Assistance Call 1-800-328-4880

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INTRODUCTION TO THE 2026 EDITION

These three volumes are updated in 2026 to incorporate numerous changes in the law and to include several new forms. The new materials include:

- Several recent cases applying the law to specific causes of action and defenses.
- New forms are supplied dealing with business torts, contract actions, insurance, dram shop litigation, employment cases, false imprisonment, fraud cases, fiduciary duty, legal and medical malpractice actions, libel and slander cases, negligence cases in several contexts, nuisance, premises liability, real property, and myriad other causes of action and covered in the pleadings in these volumes. There are many examples of pleadings from complex cases involving multiple causes of action, claims, counterclaims, and third-party claims as well as defenses. These forms either illustrate newer methods of pleading these claims or provide additional examples as alternatives to those in prior editions.
- Verdict forms, proposed jury instructions, and jury instructions used by Minnesota trial judges in numerous trials.
- Dozens of significant jury verdicts and settlements are either included or summarized throughout the book. Many of these verdict and settlement reports include citations to earlier pleadings used in the case, including complaints, answers, jury instructions, and verdict forms.

DEDICATION

In memory of our mentor David F. Herr, who continues to teach us every day.

ABOUT THE AUTHOR

Erica A. Holzer is a partner at Maslon LLP, where she focuses her practice on trial and appellate work in cases involving complex commercial disputes and insurance coverage. Erica was appointed by the Chief Justice of the Minnesota Supreme Court to serve as Reporter for the Supreme Court Advisory Committees on the Minnesota Rules of Civil Appellate Procedure, the Rules of Civil Procedure, and the General Rules of Practice. She is a member the Board of Directors of the Minnesota Supreme Court Historical Society and is past-Chair of the Minnesota State Bar Association's Appellate Practice Section. Erica also co-authors several other volumes of Minnesota Practice, including *Appellate Rules Annotated*, *Civil Rules Annotated*, and *General Rules of Practice Annotated*, and also authors a chapter in the *Eighth Circuit Appellate Practice Manual*. Before joining Maslon, Erica clerked for the Honorable Matthew E. Johnson of the Minnesota Court of Appeals.

Jevon C. Bindman is a trial attorney at Maslon LLP in Minneapolis. He works with clients in a range of industries, with a focus on assisting policyholders in insurance coverage disputes and representing stakeholders in construction and real estate matters, as well as appeals. Jevon co-authors four volumes of the Minnesota Practice Series, including the *Minnesota Handbook of Courtroom Evidence* and *Civil Rules Annotated*. In addition, he is a fellow with the Construction Lawyers Society of America and a member of the Minnesota Supreme Court Advisory Committee on the Rules of Civil Procedure. Before joining Maslon, Jevon clerked for the Honorable G. Barry Anderson of the Minnesota Supreme Court.

David F. Herr (1950-2021) was an attorney and leading appellate and complex litigation counselor practicing with Maslon LLP, in Minneapolis, where he practiced for more than 40 years. He handled trials and appeals throughout Minnesota and in federal trial and appellate courts, including the United States Supreme Court. He authored several titles in the Minnesota Practice series, and also annotated the Federal Judicial Center's Manual for Complex Litigation (Fourth), published annually by Thomson/West. He was past-President of the American Academy of Appellate Lawyers, and also past-President of the Academy of Court-Appointed Masters.

PREFACE

These volumes were the brainchild of our former colleague, mentor, and friend, David F. Herr, and are intended to be a useful tool for Minnesota lawyers. They should be a starting point for the research, and not the end. We assume no one will ever sit down and read the volumes cover to cover, but we hope a section here or there will help a lawyer find the way to assess a case and plead it if there is a valid cause of action to assert. Many thanks as well to Maslon attorneys Haley-Rose Severson and Emilio Giuliani for their invaluable research assistance.

The statements of the law as to the elements of various causes of action are, of necessity, summary in nature. They are not comprehensive, nor are all defenses identified or discussed. They provide the broadest of outlines of the relevant law. These volumes should help in research, but should not replace it.

The forms included throughout these volumes are actual forms filed and used in Minnesota cases, but they are not “models” nor are they by any means free of fault. They are all derived from Westlaw’s ever-expanding databases. Many could be clearer, and many presumably were tailored to the needs of a particular case. They may not be appropriate for use in your case, and may not even have been ideal for the case in which they were filed. They should be used with caution and as a starting point. Use them as examples of different ways to do things, and of the range of things that are probably acceptable, at least in some contexts. **THEY ARE NOT MODEL FORMS, HOWEVER!**

The strike zone for pleading a claim or defense in Minnesota is pretty large. One of the fundamental reforms of Code pleading, brought into existence with the Field Code in New York in 1848, was the abolition of the strict pleading requirements for every action at law and proceeding in equity. This liberalized pleading regime was brought forward with the rules of civil procedure, adopted in Minnesota in 1953. Under the rules, all that is necessary to state a claim is a “short and plain statement of the claim showing that the pleader is entitled to relief.” Minn. R. Civ. P. 8.01. Except for matters of fraud or mistake, which must be “stated with particularity” under Minn. R. Civ. P. 9.02, a short, plain statement suffices, and no particular form or phrases are required. Accordingly, the forms in these volumes represent only a few examples of the myriad ways capable lawyers might plead a claim. The Minnesota Supreme Court has rejected the application of the more onerous pleading standards adopted in federal court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). *See* *Walsh v.*

U.S. Bank, N.A., 851 N.W.2d 598, 604–05 (Minn. 2014).

This publication includes references to the Minnesota Jury Instruction Guides, created by the Minnesota District Judges Association and capably reported and edited by Professors Mike Steenson and Peter Knapp. *See* MINNESOTA DISTRICT JUDGES ASS'N, 4 & 4A MINNESOTA PRACTICE: JURY INSTRUCTION GUIDES—CIVIL (Steenson & Knapp, Reporters, 6th ed. 2014). The JIGs, as they are commonly known, are immensely helpful, and should be consulted in any case involving instructing a jury. They too should be used with caution, however, for they are not infallible. They have, from time to time, included instructions that do not fully or fairly state the law. In those cases, the best lawyers will strive mightily to prevent their use. Sometimes successfully! For example, in 2005 the courts determined that an earlier version of the instruction on preexisting injuries, CIVJIG 91.40, misstated the law and that the trial court abused its discretion in using it. *See* *Rowe v. Munye*, 702 N.W.2d 729 (Minn. 2005), invalidating 4A MINNESOTA DIST. JUDGES ASS'N, MINNESOTA PRACTICE—CIVIL JURY INSTRUCTION GUIDES—CIVIL, CIVJIG 91.40 (4th ed. 1999 & Supp. 2005). The *Rowe* court noted that the instruction guides specifically point out that “it is only a guide and that judges should not rely on it as their exclusive source for substantive law.” 702 N.W.2d at 734. Consult them here, but don't be hypnotized by them.

One aspect of this book is worthy of your attention. The sample pleadings included in the book have been placed in particular chapters where they illustrate a particular subject. In many cases, however, there is overlap between the chapters, so it may be rewarding to become familiar with related chapters and consult them where they may be relevant. For example, “Business Torts” gathers pleadings that particularly deal with issues such as interference with contract, interference to prospective advantage, misappropriation of trade secrets, and similar commercial torts. But those pleadings often include breach of contract, breach of fiduciary duty, fraud, or defamation claims. It is worth consulting those chapters as well. Similarly, “Wrongful Death” addresses particular cases where the defendant's conduct is alleged to have caused death; chapters on negligence and product liability may contain additional useful information that might be tailored to the particular needs of wrongful death actions. A reminder to do this is added to each chapter where that cross-referencing is likely to be worthwhile.

Please let us know how these volumes could be made more useful. They will be regularly updated, and we would welcome any suggestions, comments, criticism; we will refer demands for refunds to the Publisher. Contact us at:

Erica A. Holzer

Jevon C. Bindman

PREFACE

Maslon LLP
225 South Sixth Street, Suite
2900
Minneapolis, MN 55402-4140
(612) 672-8387
erica.holzer@maslon.com

Maslon LLP
225 South Sixth Street, Suite
2900
Minneapolis, MN 55402-4140
(612) 672-8371
jevon.bindman@maslon.com

E.A.H.
J.C.B.
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