

## 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:

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PREFACE

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