

Preface

This handbook is the inspiration of our friend and mentor David Herr. David had a driving passion aimed at helping others in the profession find paths to justice in fair and efficient ways. His hope for this handbook was that we could help Minnesota trial lawyers and judges find quick, accurate, and accessible answers to many of the questions that arise during trial. Perhaps the book may also serve as a starting point for research into more complicated issues, but that was not the focus. We tried to bring together relevant state statutes, rules, and case authority along with comparable federal references to permit assessment of the applicable legal rules and some practical suggestions on how to apply the rules. This handbook incorporates recent cases and legislation as well as recent rule changes, such as those found in the Minnesota Civil Trialbook.

This book is not necessarily the last word in evidence law. It should be the first word, however. We hope the leading authorities will be readily located in this book from which cogent arguments can be framed in the heat of battle. Reference to more comprehensive treatises, including PETER N. THOMPSON, 11 MINNESOTA PRACTICE: EVIDENCE, (5th ed.) is recommended. For handier, pocket-sized reference on specific evidentiary objections, DAVID F. HERR & PETER N. THOMPSON, MINNESOTA TRIAL OBJECTIONS (Thomson/West 2008), should be a convenient and useful reference. It is also available as an e-Book, ready to access from iPad or iPhone in the courtroom.

For more in-depth analysis of the Rules of Civil Procedure, see DAVID F. HERR & ROGER S. HAYDOCK, 1, 1A, 2 & 2A, MINNESOTA PRACTICE: CIVIL RULES ANNOTATED (6th ed.). The General Rules of Practice are analyzed and explained in DAVID F. HERR, 3A MINNESOTA PRACTICE: GENERAL RULES ANNOTATED (2024 ed.).

This book covers Minnesota appellate decisions reported through volume 23 of Northwestern Reporter, Third Series and legislation through June 2025. Among other issues it addresses the struggle the Courts have had developing consistent approaches to novel expert testimony under Rules 702 and 703, other crimes-*Spreigl* evidence, Rule 404(b) and the interplay between the hearsay rule and the modern, evolving approach to the Constitutional Right to Confrontation. In addition after a decade with no changes in the rules, the Court has now promulgated

amendments to the Rules of Evidence in 2016, 2018, and 2019. This work includes those changes as well as a proposed change by adding Rule 902(11) and amending Rule 803(6).

The Minnesota legislature and Supreme Court recently amended Minn. Stat Ann. § 480A.08 and Minn. R. Civ. App. 136.01 regulating the Court of Appeals' designation of unpublished opinions. Under Rule 136.01, opinions labeled as nonprecedential are now more readily available for citation without requiring prior notice.

The impetus for the rule changes was to encourage the Court of Appeals to be more generous in designating opinions as precedential and to make it easier for lawyers and judges to look to and use nonprecedential reasoned opinions. At least with regard to the Rules of Evidence the changes have not generated more precedential decisions. In the twelve-month period from May 31, 2021, to June 1, 2022, Westlaw lists 75 Court of Appeals opinions citing the Minnesota Rules of Evidence. Only two opinions were listed as precedential. Many of the nonprecedential opinions included reasoned resolution of important evidentiary issues. During that same period only 6 opinions from the Minnesota Supreme Court cited a Rule of Evidence. It appears that Minnesota lawyers and judges are not being guided by precedential evidentiary decisions by Minnesota appellate courts. To understand how the Rules of Evidence are being applied by Minnesota Courts, lawyers and judges must consult "nonprecedential opinions." Consequently, beginning in 2022 this Handbook includes significant decisions by the Court of Appeals, without regard to whether the decision is designated precedential or nonprecedential.

This book will be kept current annually to keep you up to date on trial practice in Minnesota trial courts. If you have any suggestions about how to make this handbook more useful, please let us know. Send your comments to:

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