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HIGHLIGHTS OF THE 2026–2027 SUPPLEMENT

- Up-to-date history of the Minnesota Rules of Evidence, including analysis of newly proposed Minn. R. Evid. 902(11) and a corresponding amendment to Minn. R. Evid. 803(6)
- Discussion of the recent decisions of the Minnesota Supreme Court regarding the alternative perpetrator defense and threshold test.
- Recent decisions from the Minnesota Appellate Courts regarding harmless error analysis, attorney-client privilege, impeachment of verdict, impeachment by character evidence, expert testimony, and hearsay.
- Recent Court of Appeals decisions addressing physician-patient privilege, the newsgatherers' privilege, expert testimony, and hearsay.

Preface

This is the third update of this Treatise since the publication of the Fifth Edition. Minnesota has no major rule changes to report. However, Proposed Amendments to Minn. R. Evid. 803(6) and a new Rule 902(11) relating to self-authentication of business records are pending with the Supreme Court as of the time of this publication. See § 101.01 H-2.

The Minnesota appellate courts have addressed many evidentiary issues these last couple of years. Most of the cases addressing evidence issues come from the Courts of Appeals, and most of these are nonprecedential. These nonprecedential cases are taking on major significance. Many nonprecedential cases are being analyzed and cited in other opinions. Westlaw reports 157 Minnesota cases between May 1, 2025, and May 1, 2026. Only 14 of those cases were “precedential”.

Last year the Supreme Court decided very few, but some important cases. See *State v. Paulson*, 22 N.W.3d 144, 150-51 (Minn. 2025) (holding venue is not an element of the crime). The Court addressed several cases involving alternative perpetrators, foreshadowing unrest with how this issue will be handled in the future. See, e.g., *State v. Rooney*, 23 N.W.3d 75, 85 (Minn. 2025) (Thissen, J., concurring, joined by Procaccini, J.).

The Court of Appeals issued a number of reasoned opinions on evidence issues. See *State v. Vick*, 28 N.W.3d 475, 483-84 (Minn. Ct. App. 2025) (addressing the foundation required for business records offered in restitution hearings. Minn. R. Evid. 803(6) and 1101). Several decisions address whether prosecutor error (or misconduct) is harmless error. See, e.g., *State v. Godbout*, 2025 WL 3002601, *6 (Minn. Ct. App. 2025) (nonprecedential) (comparing the child sex victim to Jesus Christ was serious prosecutorial misconduct); *State v. Hashi*, 2025 WL 2202552, *6 (Minn. Ct. App. 2025) (nonprecedential) (treating error as serious misconduct when the prosecutor asked defendant if he “could think of any reason his 13 year old son—who did not testify—would say that [Defendant] had hit [the victim] in the past”). The Court of Appeals also decided several cases involving issues of hearsay and opinion testimony.

For the first time John P. Monnens has been added as a co-author to this treatise. John was a prosecutor for over a decade working in Hennepin and Scott Counties. He currently works at

the Minnesota Public Defender's Appellate Office and serves as a member of the Minnesota Rules of Evidence Supreme Court Advisory Committee. He brings important perspective to this treatise.

If you have comments or suggestions related to this treatise or about Minnesota evidence law, please contact us.

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