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# Jurisdiction of the Minnesota Court of Appeals

David W. Larson

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## JURISDICTION OF THE MINNESOTA COURT OF APPEALS

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I.	INTRODUCTION .....	627
II.	THE ORIGIN OF THE COURT OF APPEALS .....	628
III.	JURISDICTION OF THE COURT OF APPEALS .....	632
	<i>A. Appeals From Municipal, County, and District Courts ..</i>	633
	<i>B. Discretionary Review .....</i>	635
	1. <i>Writs .....</i>	635
	2. <i>Discretionary Appeals .....</i>	636
	<i>C. Accelerated Review by the Supreme Court .....</i>	636
	<i>D. Exceptions to the Court of Appeals Jurisdiction .....</i>	639
IV.	WILL THE NEW COURT SOLVE THE CASELOAD PROBLEM? .....	640
V.	CONCLUSION.....	643

### I. INTRODUCTION

In 1982, the Minnesota Legislature submitted to Minnesota voters a proposed amendment to the Minnesota Constitution allowing the legislature to create an intermediate appellate court.<sup>1</sup> The voters overwhelmingly approved the amendment<sup>2</sup> and the Minnesota Court of Appeals was subsequently established. Filings

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The author wishes to thank those who assisted and advised him in preparing this Article. Particular thanks go to Laurence Harmon, Minnesota Supreme Court Administrator, and Sue Williams, Staff Attorney, Minnesota Court of Appeals. The author is also indebted to Dale Good, Research and Statistics Manager, Minnesota Judicial Planning Committee, for providing the statistical data contained in the Article and to Carol L. Bros, law clerk, for research assistance and editorial advice.

1. See Court of Appeals Act, ch. 501, 1982 Minn. Laws 569. The ballot question read: "Shall the Minnesota Constitution be amended to allow the creation of a court of appeals?" *Id.* § 2, 1982 Minn. Laws at 570.

2. See THE MINNESOTA LEGISLATIVE MANUAL, 1983-1984, at 342-43 (1983) (votes for constitutional amendment by county).

in the court commenced August 1, 1983.<sup>3</sup> The design and broad jurisdiction of the new court were intended to relieve the supreme court of its burdensome caseload and to permit it to guide the development of the law, while maintaining the integrity of appellate review.<sup>4</sup>

A new tier of appellate review, as well as new statutory and procedural requirements, accompanied the introduction of the new court. This Article outlines the jurisdictional changes that resulted from the creation of the court of appeals, directs the practitioner to the appropriate rules and statutory provisions, and evaluates whether creation of the new court will solve the caseload problem in Minnesota.

## II. THE ORIGIN OF THE COURT OF APPEALS

Since the late 1950's, there has been a dramatic increase in the Minnesota Supreme Court's caseload.<sup>5</sup> It was clear to the legal

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3. Act of June 1, 1983, ch. 247, § 221, 1983 Minn. Laws 852, 964. At the time of this writing, at least 33 states other than Minnesota have intermediate appellate courts. Those states include: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Washington, and Wisconsin. See Marvell & Kuykendall, *Appellate Courts—Facts and Figures*, STATE CT. J., Spring 1980, at 11-13.

4. See JUDICIAL PLANNING COMMITTEE, REPORT OF THE INTERMEDIATE APPELLATE COURT SUBCOMMITTEE 4-5 (1980) [hereinafter cited as JPC REPORT]. See generally M. OSTHUS, INTERMEDIATE APPELLATE COURTS 3 (1976); Flango & Blair, *Creating an intermediate appellate court: does it reduce the caseload of a state's highest court?*, 64 JUDICATURE 74 (1980); Hopkins, *The Role of an Intermediate Appellate Court*, 41 BROOKLYN L. REV. 459 (1975).

5. D. Amdahl, *The Case for a Minnesota Court of Appeals*, in SPEAKERS HANDBOOK FOR PROPOSED MINNESOTA COURT OF APPEALS 13 (n.d.) [hereinafter cited as HANDBOOK].

In 1957, 213 appeals were filed with the Minnesota Supreme Court. In 1981, the number had increased to 1391. Minnesota Supreme Court Chief Justice Amdahl estimated that the court could properly handle no more than 250 cases each year. *Id.*; see also Kagan, Cartwright, Friedman & Wheeler, *The Evolution of State Supreme Courts*, 76 MICH. L. REV. 961 (1978); Wolfram, *Notes from a Study of the Caseload of the Minnesota Supreme Court: Some Comments and Statistics on Pressures and Responses*, 53 MINN. L. REV. 939 (1969).

The Minnesota experience reflects a nationwide problem. For the past twenty years, the caseload in every state has been increasing at the rate of at least 11% annually, while the caseload in federal circuit courts of appeals has grown 418.6% since 1960. Mills, *Caseload Explosion: The Appellate Response*, 16 J. MAR. L. REV. 1, 2 (1982). Commentators offer various reasons for this "explosion," including the increasing need to resolve problems, public resort to the courts, and complexity of government social policies and regulations. See Marcus, *Judicial Overload: The Reasons and the Remedies*, 28 BUFFALO L. REV. 111 (1979); Nelson, *Why are Things Being Done This Way?*, JUDGES' J., Fall 1980, at

community that action should be taken to accommodate the great volume of appeals without depriving citizens of the right to appellate review. A variety of alternatives were proposed, including increasing judicial personnel,<sup>6</sup> improving judicial efficiency,<sup>7</sup> restricting the number of appeals,<sup>8</sup> and establishing an intermediate court of appeals.<sup>9</sup>

In the late 1960's, Minnesota organizations and advisory committees began advocating an intermediate appellate court.<sup>10</sup> While debate on the efficacy of a new appellate court continued, the supreme court attempted other less drastic measures to cope with the caseload problem. In 1967, the supreme court began sitting in panels,<sup>11</sup> and in 1973, two justices were added.<sup>12</sup> The court also limited oral arguments and began to rely more on staff.<sup>13</sup> Al-

12, 15. *But see* Barlow, *The Litigation Explosion Myth*, CALIF. LAW., Dec. 1983, at 38 (litigation "explosion" is a myth).

6. *See* Harmon & Lang, *A Needs Analysis of an Intermediate Appellate Court*, 7 WM. MITCHELL L. REV. 51, 56-58 (1981). The theory behind this approach is to spread the work among more people. *Id.* at 56. At the state supreme court level, however, additional justices may actually slow the court's efficiency. STANDARDS RELATING TO COURT ORG. § 1.13, at 35 (1974).

7. Among the alternatives proposed were restricting oral argument, limiting the length of briefs, reducing the number of written opinions issued by the court, using staff in quasi-judicial roles, and increasing the use of judicial panels. *See* Halladay, *Minnesota Does Not Need an Intermediate Appellate Court*, 7 WM. MITCHELL L. REV. 131, 138-44 (1981); Harmon & Lang, *supra* note 6, at 58-60; Norberg, *Some Second and Third Thoughts on an Intermediate Court of Appeals*, 7 WM. MITCHELL L. REV. 93, 118-25 (1981); Wolfram, *supra* note 5, at 963-75; NATIONAL CENTER FOR STATE COURTS, *STUDY ON THE APPELLATE SYSTEM IN MINNESOTA* 41 (1974).

8. *See* Harmon & Lang, *supra* note 6, at 71-78. Under the Minnesota Constitution, MINN. CONST. art. VI, § 2, a right of appeal to the supreme court is not guaranteed. *See, e.g.,* *State v. Wingo*, 266 N.W.2d 508, 512 (Minn. 1978); *In re O'Rourke*, 300 Minn. 158, 163-76, 220 N.W.2d 811, 815-22 (1974).

9. *See* Flango & Blair, *supra* note 4; Harmon & Lang, *supra* note 6, at 78-85; Hopkins, *supra* note 4.

10. *See, e.g.,* THE JUDICIAL COUNCIL OF THE STATE OF MINNESOTA, BIENNIAL REPORT 18, 31 app. (1968); SUBCOMMITTEE ON REORGANIZATION AND REFORM, COURT REORGANIZATION AND REFORM, GOVERNOR'S COMMISSION ON LAW ENFORCEMENT, ADMINISTRATION OF JUSTICE AND CORRECTIONS 4 (1968); *Minnesota State Bar Association Committee Section 1967-1968 Reports*, BENCH & B. MINN., May-June 1968, at 168, 170.

11. Minnesota Supreme Court Minutes (Aug. 29, 1967); *see* Knutson, *Appellate Review by Divisions*, BENCH & B. MINN., Nov. 1967, at 6, 9-10.

12. Act of May 24, 1973, ch. 726, § 1, 1973 Minn. Laws 2133, 2134 (codified at MINN. STAT. § 480.01 (1982)) (increasing the number of associate justices from six to eight).

13. HANDBOOK, *supra* note 5, at 13. In announcing the decision to hear all arguments en banc and to limit the number of oral arguments by the use of prehearing conferences conducted by staff, former Chief Justice Robert H. Sheran wrote:

This is not the ideal way for a Supreme Court to dispose of its caseload, but we feel it is the best way, given a volume of cases that is increasing at an annual rate of nearly 12 percent. If the legal profession and the public are satisfied with the

though these measures proved somewhat helpful in terms of efficiency, they raised concerns about the quality of the appeal process.<sup>14</sup>

Notwithstanding the efforts to improve the appeal process, the supreme court's caseload continued to increase, decisions were delayed, less time was spent on each case, and staff assumed traditionally judicial functions.<sup>15</sup> Creating an intermediate appellate court appeared to be the "only option that ha[d] the capability to

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approach which we are inaugurating in the coming term, we intend to keep abreast of the caseload by assigning significant responsibility to the professional staff working under supervision of the judges. No case will be decided without being considered by all of the judges, but the detailed examination of the record, the analysis of the legal authorities, and to some extent the expression of the views of the court will be handled by the staff. If that is acceptable to the legal profession and the public, we can live with it. However, it is my impression that they will ultimately insist upon an intermediate court. In the meantime, it is important that everyone understands the situation.

Chief Justice Sheran, State of the Judiciary Message 1 (June 19, 1980) (presented to the Minnesota State Bar Association Convention).

14. The American Bar Association recommended that state supreme courts sit en banc and "all members of the court should participate in the decision of each case. The court should not sit in panels or divisions, whether fixed or rotating, or delegate its deliberative and decisional functions to officers such as commissioners." STANDARDS RELATING TO APPELLATE COURTS § 3.01(a) (1977).

The ABA also recommended creation of an intermediate court of appeals where the caseload has unduly burdened the state supreme court:

Where a supreme court by reason of workload is unable to perform . . . its principal functions, some additional mechanism of appellate review becomes necessary. This situation has long since prevailed in states with large population, and is becoming increasingly prevalent in states of smaller population. The immediate necessity for an intermediate appellate court may be met or postponed by such devices as use of per curiam and memorandum decisions in cases having limited general significance, by limiting oral argument in appropriate circumstances, and by improved efficiency in management of the highest appellate court's work. On the other hand, such expedients as dividing the highest appellate court into panels, using commissioners to hear cases, or eliminating oral argument dilute the appellate function, particularly that of developing the law. . . . Hence, when improvements in efficiency of operation in the highest court cannot be achieved without dilution of the appellate function, the appropriate solution is the creation of an intermediate appellate court. Since there seems little prospect for a long run decline in the volume of appellate litigation, once the surge of appellate cases has been felt in a state having only one appellate court, steps should be taken forthwith to establish an intermediate appellate court rather than temporizing with substitute arrangements.

STANDARDS RELATING TO COURT ORG. § 1.13, at 35 (1974) (emphasis added).

15. HANDBOOK, *supra* note 5, at 13. The Judicial Planning Committee noted that despite efforts to promote efficiency, the caseload of the supreme court nearly doubled between 1973 and 1978. JPC REPORT, *supra* note 4, at 8. The average processing time of a case on appeal was 15.6 months for civil cases and 21.8 months for criminal cases. *Id.* at 7. The Committee reported that after creation of the intermediate appellate court in Wisconsin, the average processing time of appeals dropped from 22 months for civil appeals and 18.3 months for criminal appeals to eight months in both categories. *Id.* at 8.

handle the caseload while maintaining the integrity of the appellate process."<sup>16</sup>

In 1982, the Minnesota Legislature passed enabling legislation for the intermediate appellate court.<sup>17</sup> Since creation of a court of appeals required an amendment to the state constitution,<sup>18</sup> the proposed amendment was presented to the electorate in 1982. The proposed amendment to the Minnesota Constitution provided in relevant part:

The legislature may establish a court of appeals and provide by law for the number of its judges, who shall not be judges of any other court, and its organization and for the review of its decisions by the supreme court. The court of appeals shall have appellate jurisdiction over all courts, except the supreme court, and other appellate jurisdiction as prescribed by law.<sup>19</sup>

Voters approved the amendment and the Minnesota Court of Appeals was established in 1983.<sup>20</sup>

16. HANDBOOK, *supra* note 5, at 12. The Judicial Planning Committee concluded that "the State of Minnesota is unable to adequately and justly process and dispose of the continually increasing number of appellate matters within its existing appellate framework." JPC REPORT, *supra* note 4, at 4.

Those who advocated creating the new appellate court claimed it would produce four major advantages: (1) appellate decisions would be provided more quickly; (2) the 90-day rule and travel of the appellate court panels around the state would reduce the cost of appeals for litigants; (3) the right to an appeal would be assured; and (4) the quality of justice would remain high. *See* HANDBOOK, *supra* note 5, at 10; *see also* Harmon & Lang, *supra* note 6, at 79.

17. Court of Appeals Act, ch. 501, 1982 Minn. Laws 569. For a review of the experiences of other states operating with an intermediate appellate court, see Handler, *Justice at the Intermediate Appellate Level: The New Jersey Appellate Division*, 10 SETON HALL L. REV. 58 (1979); Hayes, *Status Report on Court of Appeals*, KY. BENCH & B., Apr. 1981, at 11; Hopkins, *supra* note 4 (New York); Johnedis, *Massachusetts' Two-Court Appellate System in Operation*, 60 MASS. L.Q. 77 (1975); Record, *Remedies For Backlog In The Appellate Court of Illinois*, 62 ILL. B.J. 82 (1973); Reynolds, *The Court of Appeals of Maryland: Roles, Work and Performance* (pts. 1 & 2), 37 MD. L. REV. 1 (1977), 38 MD. L. REV. 148 (1978); Sales & Cliff, *Jurisdiction in the Texas Supreme Court and Courts of Civil Appeals*, 26 BAYLOR L. REV. 501 (1974); Weisberger, *Appellate Caseload: Meeting the Challenge in Rhode Island*, 16 U. MICH. J.L. REF. 527 (1983); Project, *The Appellate Division of the Supreme Court of New York: An Empirical Study of Its Powers and Functions as an Intermediate State Court*, 47 FORDHAM L. REV. 929 (1979); Comment, *The Kansas Courts of Appeals*, 12 WASHBURN L.J. 378 (1973).

18. *See* MINN. CONST. art. VI, § 1.

19. *Id.* § 2 (1857, amended 1982).

20. The amendment passed 1,188,022 to 402,814, with the approval of 75% of those voting. *See supra* note 2. The process of approving a constitutional amendment in Minnesota requires counting the failure to vote on the question as a "no" vote. *See* MINN. CONST. art. IX, § 3. Therefore, voter apathy was a concern prior to the election. Millett, *Appellate court judged essential by jurists*, St. Paul Pioneer Press, Oct. 24, 1982, at B1, col. 2.

The amendment was endorsed by major newspapers across the state, including the Minneapolis Star, Minneapolis Tribune, St. Paul Dispatch, St. Paul Pioneer Press, Bemidji Pioneer, Duluth Herald, St. Cloud Daily Times, and Worthington Daily Globe. HANDBOOK, *supra* note 5, at 34. Major civic groups and organizations also endorsed the

The supreme court then appointed the Advisory Committee on Rules of Civil Appellate Procedure (Rules Committee) to revise court rules to accommodate the court of appeals.<sup>21</sup> The Rules Committee formulated its recommendations to incorporate the new court into the structure and procedure of existing rules. The philosophical approach of the committee was to make as few substantive changes in the rules as possible.<sup>22</sup> In addition, it decided to integrate the rules for appeals to the appellate courts, rather than propose two separate sets of rules.<sup>23</sup> It theorized that integrated rules would simplify appellate procedure and ease the transition to the new two-tiered appellate system.<sup>24</sup> The supreme court adopted most of the recommended changes, which became effective on August 1, 1983.<sup>25</sup>

### III. JURISDICTION OF THE COURT OF APPEALS

Prior to the creation of the court of appeals, the Minnesota court system consisted of district, county, and municipal courts at the trial level. The Minnesota Supreme Court was the only court at the appellate level. Appeals from county and municipal courts were first heard by a panel of three district court judges. The supreme court had jurisdiction over all criminal and civil appeals from the district courts and three-judge panels,<sup>26</sup> as well as from

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constitutional amendment, including the AFL-CIO, Association of Minnesota Counties, Common Cause, League of Minnesota Cities, League of Women Voters of Minnesota, Minneapolis Urban League, Minnesota Association of Commerce and Industry, Minnesota Education Association, and Minnesota Farmers Union. *Id.*

21. Justice M. Jeanne Coyne served as chair of the Advisory Committee. Other members included: Richard B. Allyn, St. Paul; Roderick D. Blanchard, Minneapolis; G. Alan Cunningham, Minneapolis; J. Peter Dosland, Moorhead; Samuel L. Hanson, Minneapolis; Charles Hvass, Jr., Minneapolis; Maclay R. Hyde, Minneapolis; Commissioner Cynthia M. Johnson, St. Paul; Judge William A. Johnson, Faribault; C. Paul Jones, Minneapolis; John J. Killen, Jr., Duluth; David W. Larson, St. Paul; Judge David E. Marsden, St. Paul; Joan S. Morrow, Minneapolis; Roger A. Peterson, Minneapolis; Wayne O. Tschimperle, St. Paul; and Richard V. Wicka, St. Paul. *See* BENCH & B. MINN., July 1983, at 14 (order promulgating amendments and memorandum expressing appreciation to members).

22. Keeler, *The Appellate Court—After the Big Win, The Reality of the Work Ahead*, BENCH & B. MINN., Dec. 1982, at 27 (quoting Justice Coyne).

23. Telephone interview with Laurence Harmon, Minnesota Supreme Court Administrator (Mar. 26, 1984).

24. *Id.*

25. Order Promulgating Amendments of the Rules of Civil Appellate Procedure, BENCH & B. MINN., July 1983, at 14. Rule 136, governing written opinions, was revised by the supreme court before adoption. Telephone interview with Laurence Harmon, Minnesota Supreme Court Administrator (Mar. 26, 1984).

26. MINN. CONST. art. VI, §§ 1-2 (1982); Minn. R. Civ. App. P. 103.03 (1982).

certain administrative agency determinations and special matters.<sup>27</sup>

Creation of the new court of appeals brought fundamental jurisdictional changes to the court system. The jurisdiction of the new appellate court encompasses almost all traditional appeal and writ matters previously brought before the supreme court,<sup>28</sup> as well as appeals from administrative agency actions and county and municipal court appeals.<sup>29</sup> The new court's vast jurisdiction reduces the original appellate jurisdiction of the supreme court to a small fraction of its former level.<sup>30</sup>

In creating the new court, the Minnesota Legislature intended to remove the responsibility for correcting trial errors from the supreme court.<sup>31</sup> The legislature did not intend that the court of appeals interpret statutes or clarify unsettled legal concepts.<sup>32</sup> Cases involving ambiguous statutes or unsettled legal concepts should remain in the sole province of the supreme court.<sup>33</sup>

#### *A. Appeals From Municipal, County, and District Courts*

Minnesota's revised Rule 103.03 of Civil Appellate Procedure is the key provision defining which lower court orders may be reviewed on appeal.<sup>34</sup> Under the rule, virtually all appeals from dis-

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27. Minn. R. Civ. App. P. 105, 115.01, 120-121 (1982).

28. Compare *id.* 103.03 with MINN. R. CIV. APP. P. 103.03.

29. See MINN. R. CIV. APP. P. 103.03, 105.01, 115, 116.

30. See *infra* notes 34-77 and accompanying text.

31. "Correction of error can and should be left to the intermediate court when issues involved have no precedential importance." JPC REPORT, *supra* note 4, at 12.

32. *Id.*

33. See MINN. STAT. § 480A.10, subd. 2 (Supp. 1983); MINN. R. CIV. APP. P. 117-18; see also *infra* notes 100-02 and accompanying text.

34. MINN. R. CIV. APP. P. 103.03. The rule provides:

An appeal may be taken to the Court of Appeals:

- (a) from a judgment entered in the trial court;
- (b) from an order which grants, refuses, dissolves or refuses to dissolve, an injunction;
- (c) from an order vacating or sustaining an attachment;
- (d) from an order denying a new trial, or from an order granting a new trial if the trial court expressly states therein, or in a memorandum attached thereto, that the order is based exclusively upon errors of law occurring at the trial, and upon no other ground; and the trial court shall specify such errors in its order or memorandum, but upon appeal, such order granting a new trial may be sustained for errors of law prejudicial to respondent other than those specified by the trial court;
- (e) from an order which, in effect, determines the action and prevents a judgment from which an appeal might be taken;
- (f) from a final order or judgment made or rendered in proceedings supplementary to execution;
- (g) except as otherwise provided by statute, from a final order, decision or judg-



tract, county, and municipal courts are initially heard by the court of appeals.<sup>35</sup>

Most of the court of appeals' caseload will stem from its review of district court actions.<sup>36</sup> Appeals from final decisions of district courts on civil trial matters are directed to the intermediate appellate court.<sup>37</sup> In felony cases, all sentences and convictions, except those for murder in the first degree, are appealed initially to the new court.<sup>38</sup> The court of appeals replaces the three-judge district court panels that previously reviewed decisions from county and municipal courts. All civil and criminal judgments and appealable orders from county and municipal courts are reviewed by the court of appeals,<sup>39</sup> eliminating district court review.<sup>40</sup>

Another significant revision in the Rules of Civil Appellate Procedure prohibits appeal from an order for judgment.<sup>41</sup> An appeal

ment affecting a substantial right made in an administrative or other special proceeding, provided that the appeal must be taken within the time limited for appeal from an order; and

(h) if the trial court certifies that the question presented is important and doubtful, from an order which denies a motion to dismiss for failure to state a claim upon which relief can be granted or from an order which denies a motion for summary judgment.

*Id.*

35. *Id.*

36. Interview with Dale Good, Research and Statistics Manager, Minnesota Judicial Planning Committee (Mar. 29, 1984).

37. See MINN. R. CIV. APP. P. 103.03(a), 104.01.

38. MINN. R. CRIM. P. 28.01, subd. 1, 29.02; see *infra* notes 65-67 and accompanying text. In criminal cases, the Rules of Civil Appellate Procedure govern unless the Rules of Criminal Procedure specifically address the issue. MINN. R. CRIM. P. 28.01, subd. 2.

39. MINN. R. CIV. APP. P. 103.03.

40. There is a substantial and highly controversial legislative move to consolidate the county and district courts into a single-tiered trial bench consisting solely of judges of the district court. Passage of intermediate appellate court legislation and the creation of a new tier between the trial and supreme courts is bound to hasten the commencement of a unified trial bench. Minnesota State Supreme Court Chief Justice Douglas Amdahl, in his recent State of the Judiciary Address to the Minnesota Legislature, urged lawmakers to unify district, county, and municipal courts as one state trial court, stating that "no single issue has so divided the judicial ranks." Oberdorfer, *State of judiciary good, Amdahl says*, Minneapolis Star & Trib., Apr. 5, 1984, at 4B, col. 3. Although the supreme court has been divided on the issue, the court recently came out in favor of unification. *Id.*

41. The Rules Committee revised the Minnesota Rules of Civil Appellate Procedure to accommodate the new court of appeals. Rule 104.01 previously read:

An appeal from a judgment may be taken within 90 days after the entry thereof, and from an order within 30 days after service of written notice of filing thereof by the adverse party.

The time for taking an appeal from a partial judgment disposing of less than all multiple claims or affecting less than all of the multiple parties to an action shall begin to run on the date of the entry of the final judgment relating to all of the remaining multiple claims or multiple parties.

Minn. R. Civ. App. P. 104.01 (1982).

can now be taken only from an entered judgment.<sup>42</sup> A stayed order for entry of judgment also is no longer appealable. These changes thus create a new class of nonappealable orders and alter the date for filing an appeal. An appeal from an order for entry of judgment is now a ground for dismissal.

## *B. Discretionary Review*

### *1. Writs*

All writs<sup>43</sup> and emergency writs<sup>44</sup> of prohibition and mandamus are now heard by the court of appeals. The only occasion for the supreme court to issue an original writ would be to direct one to the court of appeals. By definition, writs are directed to agencies or public officials to correct an abuse of discretion or to demand fulfillment of a mandatory duty.<sup>45</sup> The court of appeals has few mandatory duties regarding the content of its decisions.<sup>46</sup> The appropriate action for review of the content of a court of appeals opinion is a petition for supreme court review under Rule 117.<sup>47</sup>

42. The revised rule provides:

An appeal may be taken from a judgment within 90 days after its entry, and from an order within 30 days after service by the adverse party of written notice of filing unless a different time is provided by law.

An appeal may be taken from a judgment entered pursuant to Rule 54.02, Minnesota Rules of Civil Procedure, within 90 days of the entry of the judgment only if the trial court makes an express determination that there is no just reason for delay and expressly directs the entry of a final judgment. The time to appeal from any other judgment entered pursuant to Rule 54.02 shall not begin to run until the entry of a judgment which adjudicates all the claims and rights and liabilities of the remaining parties.

MINN. R. CIV. APP. P. 104.01.

43. *Id.* 120.

44. *Id.* 121.

45. The general definition of "writ" is "[a]n order issued from a court requiring the performance of a specified act, or giving authority to have it done." BLACK'S LAW DICTIONARY 1441 (5th ed. 1979). "Mandamus" means:

We command. This is the name of a writ . . . which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, or to an executive, administrative or judicial officer, or to an inferior court, commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived.

*Id.* at 866.

46. See MINN. R. CIV. APP. P. 136.01(1)(a). This rule states that "[e]ach Court of Appeals disposition shall be in the form of a statement of the decision, accompanied by an opinion containing a summary of the case and the reasons for the decision . . ." *Id.* The court must also comply with the 90-day rule contained in Minnesota Statutes section 480A.08, subdivision 3. See *infra* note 99 and accompanying text.

47. MINN. R. CIV. APP. P. 117. Parties may petition the supreme court for review of

A writ concerning the procedural rules of the court of appeals is the only type of writ appropriately issued by the supreme court and directed to the court of appeals.<sup>48</sup> Thus, writs directing the court of appeals to grant oral argument, to issue an opinion pursuant to supreme court rules, and to issue a timely opinion may be directed to the court of appeals.

## 2. *Discretionary Appeals*

The court of appeals may, upon petition by a party and at the court's discretion, take an appeal from an otherwise nonappealable order.<sup>49</sup> Historically, parties petitioned for such review by the supreme court;<sup>50</sup> the bulk of these petitions involved pretrial discovery issues. These appeals should not significantly increase the caseload of the new court since they are discretionary and used only where an immediate appeal is necessary. In addition, the written appeals must be brief and submitted without oral argument.<sup>51</sup>

### C. *Accelerated Review by the Supreme Court*

The addition of a new court to the appellate process raised concerns over the expeditious processing of appeals and the potential delays in deciding important cases.<sup>52</sup> To insure supreme court review of only the most important cases and to alleviate delay, the supreme court now exercises almost complete discretionary review and can "decline to review decisions which, right or wrong, do not

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court of appeals' decisions. Review by the supreme court is discretionary and guided by the following criteria:

- (a) the question presented is an important one upon which the Supreme Court should rule; or
- (b) the Court of Appeals has ruled on the constitutionality of a statute; or
- (c) the lower courts have so far departed from the accepted and usual course of justice as to call for an exercise of the Supreme Court's supervisory powers; or
- (d) a decision by the Supreme Court will help develop, clarify, or harmonize the law; and
  - (1) the case calls for the application of a new principle or policy; or
  - (2) the resolution of the question presented has possible statewide impact; or
  - (3) the question is likely to recur unless resolved by the Supreme Court.

*Id.* 117, subd. 2.

48. *See id.*

49. *Id.* 105. Supreme court review of decisions of the court of appeals is discretionary.

*See supra* note 47.

50. *See* Minn. R. Civ. App. P. 105.01 (1982).

51. *Id.* 105.02.

52. *See, e.g.*, JPC REPORT, *supra* note 4, at 12-13; *see also* M. OSTHUS, *supra* note 4, at 25.

present questions of sufficient gravity.”<sup>53</sup> The legislature also enacted a provision allowing bypass of the intermediate court in unusual cases to provide for the prompt disposal of those cases.<sup>54</sup> The bypass provides the supreme court flexibility to assert appellate jurisdiction in meritorious cases, and to refuse a case where direct appeal is unwarranted.<sup>55</sup>

The new procedures permit the supreme court to assert jurisdiction over a case before a decision by the court of appeals.<sup>56</sup> Accelerated review may be initiated by petition of a party,<sup>57</sup> on the

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53. JPC REPORT, *supra* note 4, at 13 (quoting *Brown v. Allen*, 344 U.S. 443 (1953)).

54. MINN. STAT. § 480A.10, subd. 2 (Supp. 1983); MINN. R. CIV. APP. P. 118. Most states with intermediate appellate courts have enacted similar bypass procedures. *See M. OSTHUS, supra* note 4, at 25-28.

55. An interesting twist to normal bypass procedure presented itself in the recent complaint of the Board of Judicial Standards (Board) against an associate justice of the Minnesota Supreme Court. Accused of the unauthorized use of reference materials while taking the Minnesota State Bar Exam, the justice's conduct was the subject of an investigation and hearing before the Board. A stipulation was eventually reached between the Board and the justice. In an unprecedented departure from customary procedure, the supreme court refused to review the Board's findings and declined to make the ultimate determination of the issues in the case. In a "reverse" bypass procedure, the supreme court justices unanimously disqualified themselves and ordered the new court of appeals "to sit as the Supreme Court of the State of Minnesota for the purpose of considering and making the ultimate determination of the issues here presented with the full power to act in lieu of the undersigned justices." *In re Complaint Concerning the Honorable John J. Todd*, Associate Justice of the Minnesota Supreme Court, No. C9-83-1744, Memorandum and Order at 1 (Minn. Dec. 29, 1983).

Relying on California precedent and Minnesota Statutes section 2.724, subdivision 2, the memorandum accompanying the court's novel order provided:

It is unprecedented for this Court, as a collegial body, to be called upon to sit in judgment on one of its own members who is the subject of judicial discipline. The concept of drawing upon an Intermediate Appellate Court to make such adjudication, however, is not without precedent. The first constitutional-statutory provisions for the discipline of judges was adopted in California and it was upon such provisions that the constitutional-statutory provisions in Minnesota were patterned. California explicitly provides that in any case involving a justice of the Supreme Court, the adjudication is to be made by a panel drawn from among the numerous judges of its Courts of Appeal. Minnesota does not have such explicit provision, but for no other reason apparently than that, at the time of its adoption, Minnesota did not have a Court of Appeals. Our Minnesota Constitution, statutes and rules do, however, explicitly provide a mechanism for members of the new Court of Appeals to constitute an ad hoc Supreme Court by replacement of justices of the Supreme Court who disqualify themselves. Thus, Minn. Stat. § 2.724, subd. 2, as recently amended by Laws 1983, Chapter 247, provides that if any number of justices disqualify themselves, the Supreme Court may temporarily assign a Court of Appeals judge to hear and consider the case in place of the disqualified justices. By this procedural mechanism, the sound public policy adopted in California may be, and hereby is, adopted in Minnesota.

*Id.* at 3.

56. MINN. STAT. § 480A.10, subd. 2 (Supp. 1983); MINN. R. CIV. APP. P. 118.

57. MINN. STAT. § 480A.10, subd. 2(a) (Supp. 1983); MINN. R. CIV. APP. P. 118.

supreme court's own motion, or by certification from the court of appeals.<sup>58</sup> The supreme court's decision whether to grant accelerated review is discretionary.<sup>59</sup> Furthermore, the case must be pending in the court of appeals before the supreme court can grant accelerated review, which may be granted at any time before a final decision by the court of appeals.<sup>60</sup> The supreme court does not have original jurisdiction in these cases; appellate jurisdiction is first perfected in the court of appeals, then removed by order.

The bypass feature is intended for cases that will, by their nature, inevitably require supreme court review.<sup>61</sup> Minnesota Statutes section 480A.10, subdivision 2(b) states:

[T]he supreme court may provide for accelerated review of any case if (i) the question presented is an important one upon which the court has not, but should rule, (ii) the lower courts have held a statute to be unconstitutional or (iii) the lower courts have so far departed from the accepted and usual course of justice as to call for an exercise of the court's supervisory powers.<sup>62</sup>

Bypass is a narrow exception to the general rule of review by the court of appeals, and will be granted only where "the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in the supreme court."<sup>63</sup> Thus, the accelerated review provision should not significantly affect the caseload of either the supreme court or the court of appeals.<sup>64</sup>

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Filing a petition for accelerated review does not stay appellate court proceedings or extend the time requirement of the court of appeals. MINN. STAT. § 480A.10, subd. 2(a) (Supp. 1983); MINN. R. CIV. APP. P. 118.

58. MINN. STAT. § 480A.10, subd. 2(b) (Supp. 1983).

59. *Id.* § 480A.10, subd. 1; MINN. R. CIV. APP. P. 118, subd. 1.

60. MINN. STAT. § 480A.10, subd. 2(a) (Supp. 1983); MINN. R. CIV. APP. P. 118.

61. *See* MINN. STAT. § 480A.10, subd. 2(b) (Supp. 1983).

62. *Id.*

63. *Id.* § 480A.10, subd. 2(a); MINN. R. CIV. APP. P. 118, subd. 1. This standard is to be applied in addition to the criteria set out for appeals from the court of appeals in Rule 117. *See supra* note 47.

64. In studying the impact of bypass procedures in other states, the Judicial Planning Committee found that from four to twelve percent of the total intermediate appellate court findings were accepted for accelerated review. JPC REPORT, *supra* note 4, at 12. In Massachusetts, the bypass procedure was used in cases that did not raise important legal issues but were nevertheless transferred to alleviate the heavy caseload of the intermediate appellate court. Johnedis, *supra* note 17, at 80-81.

*D. Exceptions to the Court of Appeals Jurisdiction*

There are several exceptions to the general rule of exclusive court of appeals' jurisdiction. The first exception is an appeal from a conviction of first degree murder.<sup>65</sup> Due to the seriousness of the crime and the potential penalty involved in first degree murder cases, the legislature believed that parties would be unsatisfied with court of appeals review.<sup>66</sup> Therefore, the legislation establishing the new court permits a direct appeal to the supreme court.<sup>67</sup>

Appeals from legislative contests are also excepted from the court of appeals' jurisdiction and must be appealed directly to the supreme court.<sup>68</sup> Since legislative contest adjudications are essentially advisory opinions,<sup>69</sup> it is appropriate for the state's highest court to make such recommendations to the legislative branch. While the trial court's written findings of fact and conclusions of law are reported to the legislature,<sup>70</sup> the legislature is the final arbiter on its members' qualifications and conduct.<sup>71</sup>

Appeals of workers' compensation decisions are also taken directly to the supreme court, where review is discretionary.<sup>72</sup> Workers' compensation cases are initially heard by settlement judges in the workers' compensation division.<sup>73</sup> Decisions of the judges may then be appealed to the Workers' Compensation Court of Appeals.<sup>74</sup> The existence of one level of appellate review led the proponents of the court of appeals legislation to permit original workers' compensation jurisdiction to remain in the supreme court.<sup>75</sup>

Appeals from the tax court are also excepted from the court of appeals' jurisdiction and are reviewable by certiorari to the supreme court.<sup>76</sup> The tax court serves as an appellate court of the

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65. MINN. STAT. § 480A.06, subd. 1 (Supp. 1983).

66. Telephone interview with Laurence Harmon, Minnesota Supreme Court Administrator (Mar. 25, 1984).

67. See MINN. STAT. § 480A.06, subd. 1 (Supp. 1983).

68. *Id.*

69. Telephone interview with Laurence Harmon, Minnesota Supreme Court Administrator (Mar. 29, 1984); see also MINN. STAT. § 209.10, subd. 1 (1982 & Supp. 1983).

70. MINN. STAT. § 209.10, subd. 1 (1982 & Supp. 1983).

71. *Id.*

72. MINN. R. CIV. APP. P. 116.01.

73. MINN. STAT. § 176.305 (1982 & Supp. 1983).

74. *Id.* §§ 175A.01, subd. 2, 176.421.

75. Interview with Laurence Harmon, Minnesota Supreme Court Administrator (Mar. 25, 1984).

76. MINN. R. CIV. APP. P. 116.01.

agency determination. Requiring court of appeals review of tax court decisions would have established a third level of appellate review for those cases. Therefore, under the new rules, appeal from a tax court decision is taken directly to the supreme court.<sup>77</sup>

Finally, the court of appeals does not directly review cases which originate in conciliation court.<sup>78</sup> An appeal from a conciliation court decision is heard de novo by a county court,<sup>79</sup> whose decision may then be appealed to the court of appeals.<sup>80</sup>

#### IV. WILL THE NEW COURT SOLVE THE CASELOAD PROBLEM?

During the debates on the establishment of a new court, critics raised several serious objections to the intermediate court of appeals. Opponents complained of the increased cost to litigants<sup>81</sup> and government,<sup>82</sup> the uncertainty of precedent in a two-tiered appellate system,<sup>83</sup> and the possibility that the caseload problem would simply shift to the new court.<sup>84</sup> Although it is too early to determine whether these concerns were justified, there are indications that the new court's caseload will be burdensome.

77. *Id.*

78. MINN. STAT. § 480A.06, subd. 1 (Supp. 1983).

79. *Id.* § 487.30, subd. 1. In Hennepin and Ramsey counties, de novo appeals from conciliation courts are heard by municipal courts. *Id.* § 488A.17, subd. 1 (Hennepin County); *id.* § 488A.34, subd. 1 (Ramsey County).

80. *Id.* § 487.39, subd. 1.

81. This argument is based on the so-called "double appeal" problem. Litigants may seek supreme court review after a court of appeals decision, in effect doubling litigation costs, attorney time, and delay. See, e.g., M. OSTHUS, *supra* note 4, at 4; Halladay, *supra* note 7, at 134; Marvell, *The Problem of Double Appeals*, 1979 APP. CT. AD. REV. 23.

Since review by the supreme court is discretionary, however, most cases will not proceed beyond the court of appeals' decision. Since there should be less delay at the court of appeals level, JPC REPORT, *supra* note 4, at 11-12, and the new court's panels will travel outstate, costs to most litigants should actually decrease. See HANDBOOK, *supra* note 5, at 14.

82. Creation of the new court involves more judges (with salaries and benefits), more staff, new facilities, and higher operational costs. The appropriation for the supreme court and the court of appeals in fiscal years 1984 and 1985 was \$15,504,400 (\$12,415,200 for the supreme court and \$3,089,200 for the court of appeals). Act of June 8, 1983, ch. 301, §§ 3-4, 1983 Minn. Laws 1558, 1562-63. This compares to total supreme court appropriations for fiscal years 1982 and 1983 of \$9,331,100, Act of June 1, 1981, ch. 356, § 3, 1982 Minn. Laws 1770, 1774, and for 1980 and 1981 of \$8,644,000, Act of June 5, 1979, ch. 333, § 3, 1979 Minn. Laws 988, 990.

As part of the reorganization of the judicial system, the membership of the supreme court will be reduced to seven members, which will decrease costs at that level. See MINN. STAT. § 480.01 (Supp. 1983); HANDBOOK, *supra* note 5, at 14.

83. M. OSTHUS, *supra* note 4, at 4; Marvell, *Appellate Capacity and Caseload Growth*, 16 AKRON L. REV. 43, 65-67 (1982).

84. Harmon & Lang, *supra* note 6, at 79.

As a result of the broad jurisdiction granted to the court of appeals,<sup>85</sup> the supreme court's heavy caseload was essentially transferred to the new court. It is questionable whether the court of appeals will have sufficient judicial resources to handle the caseload, particularly when the supreme court could not successfully do so.

The court of appeals is currently composed of twelve judges, who work in panels of three members.<sup>86</sup> Staffing for the court is set at three staff attorneys<sup>87</sup> and one law clerk<sup>88</sup> and secretary<sup>89</sup> for each judge. Current figures suggest that the total filings for 1984 will exceed 2000.<sup>90</sup> In comparison, 1681 cases were filed in the

85. See *supra* notes 28-30 and accompanying text.

86. See MINN. STAT. § 480A.08, subd. 1 (Supp. 1983).

87. MINN. CT. APP. INTERNAL R. 8.2, 8.5. One commissioner/chief attorney will supervise the central legal staff. The staff attorneys will "provide professional assistance as house counsel to the judges and efficiently and effectively process matters pending before the Court . . . review petitions for writs and requests for temporary relief and other matters and prepare recommendations . . ." *Id.* 8.5.

88. *Id.* 8.6. A law clerk is to serve "as the personal, professional assistant to a particular judge and shall perform such tasks as are assigned by that judge. The work includes legal research, memorandum drafting, citation checking, editorial work, and review of appeal record." *Id.*

89. Interview with Sue Williams, Staff Attorney, Minnesota Court of Appeals (Mar. 26, 1984). The court has revamped the original scheme due to the workload and now has approximately 15 law clerks, or 1 1/2 per judge, and 10 secretaries.

90. The Judicial Planning Committee reported that 1046 cases were filed with the court of appeals between August 1983, when the new court began taking filings, and March 1984. The average is 146.6 cases filed per month. The breakdown is as follows:

August 1983	96
September 1983	147
October 1983	142
November 1983	156
December 1983	138
January 1984	182
February 1984	169
March 1984	154

Minnesota Court of Appeals Case Processing Statistics (Mar. 30, 1984) (available in William Mitchell Law Review office).

As expected, filings with the supreme court have dropped significantly since the court of appeals began operations. In February 1982, for example, 134 cases were filed with the supreme court and in February 1983, 164 cases were filed. In February 1984, however, only 22 cases were filed with the supreme court. The breakdown of supreme court filings is as follows:



supreme court in 1982, and 1314 cases in 1983.<sup>91</sup> With twelve judges hearing and deciding cases, each judge must resolve approximately 166 cases within a 249 day work-year.<sup>92</sup> Thus, the caseload is already too burdensome to be handled properly.<sup>93</sup>

The statute creating the court of appeals includes a formula for increasing the court's size based on the number of filings.<sup>94</sup> Judges will be added only on the recommendation of the state court administrator, and the legislature must create and fund each additional position.<sup>95</sup> Increasing the size of the court, therefore, is not a simple mechanical process. Only a significant increase in filings will propel the political machinery necessary to establish additional judicial positions. Nevertheless, if the caseload continues to grow, the formula for increasing the size of the new court may guarantee its continued vitality.

Other emerging caseload-related problems appear in the length of the new court's opinions. The Minnesota Legislature and the Rules Committee intended that opinions issued by the court of appeals be terse and limited to correction of trial court errors.<sup>96</sup> Notwithstanding this legislative intent, decisions of the new court have been much longer than contemplated.<sup>97</sup>

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January 1983	154
February 1983	164
March 1983	115
April 1983	171
May 1983	183
June 1983	138
July 1983	149
August 1983	90
September 1983	49
October 1983	47
November 1983	32
December 1983	22
January 1984	22
February 1984	22
March 1984	16

*Id.*

91. Interview with Dale Good, Research and Statistics Manager, Minnesota Judicial Planning Committee (Mar. 26, 1984).

92. *Id.*

93. Chief Justice Amdahl estimated that 225 to 250 cases per year can be given full and careful judicial consideration by the supreme court. Amdahl, *The Caseload of High Court is Denial of Justice*, St. Paul Pioneer Press, Oct. 10, 1982, at E3, col. 1.

94. MINN. STAT. § 480A.01, subd. 3 (Supp. 1983).

95. *Id.*

96. See JPC REPORT, *supra* note 4, at 12.

97. Court of appeals opinions to date have been approximately as long as supreme court opinions. A review of recent opinions published in the *Northwestern Reporter Second* shows an average page length of 3.13 pages for court of appeals opinions compared to 3.59

The continuation of this trend could result in several problems. First, the court of appeals may not have sufficient time and personnel to handle each case adequately since the court was designed and staffed to produce shorter, more concise opinions.<sup>98</sup> Under section 480A.083 of the Minnesota Statutes, opinions of the court of appeals must be issued within ninety days of oral argument or final submission of briefs or memoranda, whichever occurs later.<sup>99</sup> Moreover, the members and staff of the court have little appellate court experience. This inexperience can be expected initially to impede the court's efficiency. If the court persists in issuing unduly long opinions, it risks abusing the ninety-day rule and creating a caseload and backlog problem which could eventually undermine the fundamental design of the two-tier appellate review system.

A second problem arising from lengthy court of appeals opinions is the tendency of such opinions to creep into the policymaking area. The selection and interpretation of precedent tend to create a body of case law at the intermediate appellate court level. This can lead to creation of new precedent, the usurpation of supreme court functions,<sup>100</sup> conflict among panels of the court of appeals,<sup>101</sup> and confusion in the law. Policymaking by the court of appeals is clearly contrary to legislative intent and beyond the scope of its designated authority.<sup>102</sup>

## V. CONCLUSION

Every new court faces initial difficulties. Given the lack of ap-

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pages for supreme court opinions. Although this is not a statistically accurate assessment of opinion lengths, this informal survey demonstrates the trend toward unduly long opinions by the court of appeals.

98. See *supra* notes 86-89 and accompanying text.

99. MINN. STAT. § 480A.08, subd. 3 (Supp. 1983). The 90-day rule states:

A decision shall be rendered in every case within 90 days after oral argument or after the final submission of briefs or memoranda by the parties, whichever is later. The chief justice or the chief judge may waive the 90-day limitation for any proceeding before the court of appeals for good cause shown. In every case, the decision of the court, including any written opinion containing a summary of the case and a statement of the reasons for its decision, shall be indexed and made readily available.

*Id.* The 90-day time limit begins when oral argument is heard or the filing of briefs is final. No time limit is specified for the court's scheduling of oral arguments. Furthermore, the Chief Judge may waive the 90-day rule for "good cause." *Id.* The court of appeals has not yet established guidelines to govern a "good cause" determination.

100. Hopkins, *supra* note 4, at 466-68.

101. See *also supra* note 83.

102. See JPC REPORT, *supra* note 4, at 12.

pellate court experience of members and staff and the court's burdensome caseload, it would not be surprising if the court of appeals encounters problems during the start-up phase. While it remains to be seen whether the court's structure and design are sound, the reaction to its efforts has been highly favorable. In the first speech by a Minnesota Chief Justice to the legislature, Chief Justice Douglas Amdahl recently assured lawmakers that "the state of the judiciary is good."<sup>103</sup> Echoing the sentiments of many in the legal community, he praised the new court of appeals, noting that it has already helped the supreme court to substantially reduce its backlog of cases.<sup>104</sup> In light of the record time in which it has fulfilled its most important mandate, the high caliber of its members and staff, and the success of similar experiments in other jurisdictions, the new court promises to be an important addition to Minnesota's system of justice.

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103. Oberdorfer, *supra* note 40, at 4B, col. 1.

104. *Id.*, col. 2.