

STATE OF MINNESOTA

IN SUPREME COURT

ADM04-8001

**ORDER PROMULGATING CORRECTIVE
AMENDMENTS TO THE RULES OF
CIVIL PROCEDURE**

O R D E R

1. The attached corrective amendments to Rule 26.02 of the Rules of Civil Procedure be, and the same are, prescribed and promulgated to be effective on the filing of this order.

2. The attached corrective amendment to Rule 68 of the Rules of Civil Procedure be, and the same is, prescribed and promulgated to be effective on July 1, 2008, as provided in the order of February 29, 2008.

Dated: May 28, 2008

BY THE COURT:

/s/

Russell A. Anderson
Chief Justice

AMENDMENTS TO RULES OF CIVIL PROCEDURE

[Note: new material is indicated by underscoring; deleted material is indicated by strikethrough.]

1 **Rule 26. General Provisions Governing Discovery**

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3 **26.02 Discovery, Scope and Limits**

4 * * *

5 **(d) Trial Preparation: Materials.** Subject to the provisions of Rule 26.02(~~e~~) a
6 party may obtain discovery of documents and tangible things otherwise discoverable
7 pursuant to Rule 26.02(a) and prepared in anticipation of litigation or for trial by or for
8 another party or by or for that other party's representative (including the other party's
9 attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the
10 party seeking discovery has substantial need of the materials in the preparation of the
11 party's case and that the party is unable without undue hardship to obtain the substantial
12 equivalent of the materials by other means. In ordering discovery of such materials when
13 the required showing has been made, the court shall protect against disclosure of the
14 mental impressions, conclusions, opinions, or legal theories of an attorney or other
15 representative of a party concerning the litigation.

16 * * *

17 **(e) Trial Preparation: Experts.** Discovery of facts known and opinions held by
18 experts, otherwise discoverable pursuant to Rule 26.02(a) and acquired or developed in
19 anticipation of litigation or for trial, may be obtained only as follows:

20 (1)(A) A party may through interrogatories require any other party to identify
21 each person whom the other party expects to call as an expert witness at trial, to
22 state the subject matter on which the expert is expected to testify, and to state the
23 substance of the facts and opinions to which the expert is expected to testify and a
24 summary of the grounds for each opinion. (B) Upon motion, the court may order
25 further discovery by other means, subject to such restrictions as to scope and such
26 provisions, pursuant to Rule 26.02(~~de~~)(3), concerning fees and expenses, as the
27 court may deem appropriate.

28 (2) A party may discover facts known or opinions held by an expert who has
29 been retained or specially employed by another party in anticipation of litigation
30 or preparation for trial and who is not expected to be called as a witness at trial,
31 only as provided in Rule 35.02 or upon a showing of exceptional circumstances
32 under which it is impracticable for the party seeking discovery to obtain facts or
33 opinions on the same subject by other means.

34 (3) Unless manifest injustice would result, (A) the court shall require the
35 party seeking discovery to pay the expert a reasonable fee for time spent in
36 responding to discovery pursuant to Rules 26.02(~~de~~)(1)(B) and 26.02(~~de~~)(2); and

37 (B) with respect to discovery obtained pursuant to Rule 26.02(~~de~~)(1)(B), the court
38 may require, and with respect to discovery obtained pursuant to Rule 26.02(~~de~~)(2)
39 the court shall require, the party seeking discovery to pay the other party a fair
40 portion of the fees and expenses reasonably incurred by the latter party in
41 obtaining facts and opinions from the expert.

42

43 **Rule 68. Offer of Judgment or Settlement**

44 * * *

45 **Rule 68.03. Effect of Unaccepted Offer.**

46 * * *

47 **(c) Measuring Result Compared to Offer.** To determine for purposes of this
48 rule if the relief awarded is less favorable to the offeree than the offer:

49 (1) a damages-only offer is compared with the amount of damages
50 awarded to the plaintiff; and

51 (2) a total-obligation offer is compared with the amount of damages
52 awarded to the plaintiff, plus applicable prejudgment interest, the
53 ~~offeree's~~plaintiff's taxable costs and disbursements, and applicable attorney fees,
54 all as accrued to the date of the offer.

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