STATE OF MINNESOTA
IN SUPREME COURT

C4-85-1848

ORDER FOR HEARING TO CONSIDER ADOPTION
OF PROPOSED RULES GOVERNING ACCESS TO RECORDS
OF THE JUDICIARY

IT IS HEREBY ORDERED that a hearing be had before this Court in the courtroom of the Minnesota Supreme Court, State Capitol, on Wednesday, December 16, 1987, at 9:00 o'clock a.m., to consider the adoption of the Proposed Rules Governing Access to Records of the Judiciary as a replacement for the Interim Rules on Access to Public Records.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 10 copies of such statement with the Clerk of the Appellate Courts, 230 State Capitol, St. Paul, Minnesota 55155, on or before December 2, 1987, and

2. All persons desiring to make an oral presentation at the hearing shall file 10 copies of the material to be so presented with the aforesaid Clerk together with 10 copies of a request to make the oral presentation. Such statements and requests shall be filed on or before December 2, 1987, and

3. All persons wishing to obtain copies of the proposed rules, and the advisory committee report which discusses the rules, shall write to the aforesaid Clerk.

Dated: September 23, 1987.

BY THE COURT

OFFICE OF
APPELLATE COURTS

SEP 23 1987

FILED

Douglas K. Amdahl
Chief Justice

Proposed Addition

to the Proposed Rules

Governing Access to Records

of the Judiciary

C4-85-1848

Rule 10. Access by Data Subjects.

Records of the judiciary which are not accessible by the public shall be accessible by individuals who are the subjects of those records unless a statute, other than Chapter 13, or other judicial rule clearly makes those records inaccessible by the data subject.

WARREN E. LITYNSKI
Judge of District Court
Nicollet County Courthouse
P.O. Box 496
St. Peter, Minnesota
56082

October 5, 1987

Office of the Clerk
Minnesota Appellate Courts
230 State Capitol
St. Paul, MN 55155

Re: Proposed Rules Governing Access to Records

Dear Clerk:

In reviewing the proposed rules, I did not see anything regarding records or work product pertaining to guardians ad litem.

I believe the rules should contain a provision that there is no accessibility to these records or work product.

The above statement is in lieu of a personal appearance at the hearing scheduled for December 16, 1987.

Yours truly,

Warren E. Litynski
Judge of District Court

WEL/cv

425 Portland Avenue
Minneapolis, Minnesota 55488

Star Tribune
NEWSPAPER OF THE TWIN CITIES

Tue, Nov 24, 1987

Clerk of the Appellate Courts
230 State Capitol
St. Paul, Minnesota 55155

C4-85-1848

To the Clerk:

I desire to make an oral presentation at the Dec. 16 hearing on the Proposed Rules Governing Access to Records of the Judiciary. Enclosed are 10 copies of a position paper being submitted by the Star Tribune and other news media.

It is my intention at the hearing to summarize some key points in the position paper and make myself available for any questions the Court may have.

Shortly after the Dec. 2 deadline for filing comments on the proposed rules, someone from the Star Tribune will be in touch with your office to arrange for us to get copies of the various statements that were filed. Reading those statements will help me prepare to answer any questions the Court may pose.

Sincerely,

Rodgers Adams

Rodgers Adams
Chairperson
First Amendment Committee

cc: First Amendment Committee

Civil Court records

Submitted by

Rodgers Adams
Chairperson
Star Tribune First Amendment Committee

John Finnegan
Senior Vice President/Assistant Publisher
St. Paul Pioneer Press Dispatch

Duane Rasmussen
President
Minnesota Newspaper Association

Nov. 24, 1987

I. INTRODUCTION

The recommendations of the court's advisory committee on judicial records would further restrict access to information in the civil justice system, a system where the bulk of information is already inaccessible to the public—and even to the courts. This may not be the intent of the proposal, which on the whole seems merely to endorse the *status quo*. This certainly does not seem to be the intent of the Minnesota Supreme Court, which over the years has been a leader in recognizing the importance of the free flow of information in a democratic society.

It is almost as if we have all become so preoccupied with details and so comfortable with familiar processes that a comprehensive view has eluded us. When we step back to take a broader look, the scene can surprise us—surprise us because so little of the civil justice process is visible, even to the courts. Civil cases may be born, live and die without the court ever being aware of them. Increasing volumes of pre-trial information are stored outside the courthouse, where even judges can't get access through normal channels. The majority of the cases are concluded and injuries are compensated, often with the active intervention of a judge, without any official record of this activity. The civil justice system is a far-reaching institution, operating under the rules and authority of the court and staffed by officers of the court, **yet the only portion of this enterprise that is generally accessible is the small fraction of cases that go to trial.**

In this paper, we will discuss how officials can become so focused on individual cases that they loose sight of their responsibility to the public for the total system. We will show that the scope of the definition of court records bears little resemblance to the reality of the civil case process. We will show that the available information is so paltry that, at the least, it complicates the court's efforts to manage the civil justice system and, at the worst, it leaves the court vulnerable to charges of mismanagement of the public trust. We will show that the advisory committee recommendation fails to address

fundamental policy questions, and that the advisory committee process is inadequate to deal with the policy questions inherent in these rules. We will propose an approach to civil case records that we think offers a firm policy foundation as well as a solution to some practical concerns.

We strongly urge that the court:

1) Set aside the committee's recommendation.

2) Fashion new rule-making processes suitable for dealing with policy issues.

3) Consider seriously the approach to civil case records that we present near the end of this paper.

II. WHY THE PROCESS FAILED

Because record-keeping rules involve so many tedious details, it is easy to overlook the policy implications of these rules. Yet records constitute one of the distinguishing marks of advanced civilization—the foundation of history, of policy analysis, of accountability, of the law. Access to records is access to the power of information. Inadequate or incomplete records cripple attempts at enlightened management. Decisions about who must keep records, what the records must contain, and who has access to the records are among an institution's most important policy decisions.

There are indications that the court did not fully appreciate these policy implications when it undertook to formulate rules governing access to records of the judiciary. As it has done with other advisory committees, the court simply defined a conceptual category ("records of the judiciary") and asked the committee to recommend rules. The problem is that these categories do not have clear boundaries. Records are intertwined with the practices and customs that create them. When busy committee members are trying to hammer out a consensus, they tend to define their assigned category as narrowly as possible, in order to finish their work quickly. They are reluctant to get caught up in lengthy policy debates if there is a reasonable excuse to avoid them. In recent years we have raised policy questions about record management before two different advisory committee—this committee on records of the judiciary and earlier the committee on the rules of civil procedure. The basic response in both cases has been to avoid the policy issues, saying they belong to some other committee.

In hindsight, it is becoming clear that these advisory committees would have benefitted from better policy guidance. One approach would have been for the court to have identified policy questions, asking the committee to study and make recommendations regarding those questions. Another approach would have been for the court to have determined the basic points of policy, asking the committee to recommend rules implementing those policies.

When policy issues are not explicitly identified, what often happens is a kind of guerrilla warfare over policy. For instance, if the discussion topic is mandatory filing and there is no overt policy discussion, then opponents of mandatory filing might adopt a proxy issue: fear that mandatory filing would swamp the courts. But if there is a clear distinction between policy and implementation, policy discussions can be focused on matters of principle. Once it has been determined that mandatory filing is a sound principle, a committee can then focus on finding ways to make it work, such as by requiring filing only of cases started after a certain date.

The current report illustrates what happens when a committee lacks clear policy guidance. The committee completed its work without making any policy determination as to what records should be considered civil case records. Instead, the committee based its decision on past practice and some incomplete assumptions about administrative options. Instead of shaping administrative practices to match policy, the committee let policy fall by the wayside in its preoccupation with administrative convenience.

The committee did attempt to deal with controversial policy regarding restricting access to case records. The committee split and the majority recommendation follows the familiar solution: referring the issue to a different, allegedly more appropriate, committee.

The way the majority dealt with that issue also illustrates confusion over the difference between policy-setting and policy-interpretation. The committee majority bases its proposal on case law. Case law can offer insights into policy questions, as can law review articles and speeches by judges and even papers presented by journalists. But case law has inherent flaws as a primary basis for policy-making.

The first problem is the fact that case law is policy-interpretive, not policy-formulating. In deciding cases, judges are restricted to the issues presented to them, and are not at liberty to consider the merits of alternative social orders. Legislatures, on the other hand, can properly consider all manner of practical and philosophical issues as they shape policy.

The second problem is the fact that case law is only as strong as the adversarial process that produces it. Truth can emerge from the contesting parties only if all the parties are present to give their arguments. In the bulk of civil cases, there was no public voice to defend the need for access to information. The civil court system is not just another private dispute-resolution agency, where the only interested parties are the litigants. The civil courts are a public institution, and the public is an interested, though largely unrepresented, party in the evolution of the case law upon which that system is based.

The dangers of building civil court policy on case law are illustrated by the majority recommendation, which is based on the Galaxy case. (This despite the fact that the judges in Galaxy explicitly cautioned against freely applying the decision to other cases.) A key question in Galaxy was the importance of an unusual situation that required settlement terms to be presented in open court. The argument was that that requirement should not cost the plaintiffs the confidentiality that is available in most settlements. Limited to the narrow confines of case law, the court could not address the broader public policy issue: Should most settlements be confidential? In a situation where key policy issues cannot even be raised, sound policy is not likely to be produced.

Dealing effectively with policy-making will not be an easy task for an institution whose procedures are built around its traditional function of interpreting policy set by others. When it turns from its interpretive role to its policy-setting role, the court faces unique problems of providing accountability, access and openness. Let me illustrate each of these problems in turn.

1) Accountability. Legislators and city council members are clearly policy makers and they are clearly accountable to the public at each election. Members of the executive branch also set policy, and the president or governor is ultimately responsible to

the voters for those policies. The courts, however, are primarily accountable for their skill and wisdom in interpreting the policies of others, as is entirely proper. We are not aware that any judge has even been held accountable for rules promulgated by the court.

2) Access. In the legislative and administrative process, there is ample opportunity for public and private exploration, clarification, and negotiation of policy issues. The decision-makers themselves represent a variety of interests and backgrounds. But only legal insiders are participants in the rule-making process the court currently uses; no laymen have decision-making roles in the drafting process. The advisory committee held no public hearings on its recommendations before forwarding them to the court. Today's hearing is the public's one opportunity to comment on the recommendations, and the format is formal and limiting. There is no opportunity for the evolution and refinement of ideas that can come about through conversation. For legislative bodies, this conversation often takes place during informal meetings. But the trial model is so strong in the court system that everyone seems to agree that it would be highly improper for anyone to privately lobby a judge with regard to court rules—although this is clearly not an adjudicatory process.

3) Openness. The wording for the committee's majority report was presented at the final committee meeting and was not subject to the same public, detailed analysis received by the minority proposal and other sections of the report. The committee's decision was not made in public at that meeting, but was arrived at privately through a poll of committee members. More important, tradition indicates that this court will not meet in public to discuss its reactions to this hearing or to the majority and minority reports, nor will it meet in public to make its decisions regarding these rules. Tradition also indicates that the court will promulgate its rules without any sort of written explanation, ironically dropping a case law practice in this one instance where it would be most appropriate.

These are formidable challenges to effective policy-making by a judicial body, requiring imaginative approaches to compensate for some of the inherent limitations of the system. Instead, the court turned to a familiar process. It used a model found in many fields, that of the technical standards committee, in which knowledgeable insiders get together to work out detailed rules that few laypersons would understand or care about. This is a technique that can work well in dealing with the details of implementing policy. But as a tool for setting policy for a public institution, it offends an layperson's sense of fairness. As a device, it does not assure the public that concern for the public interest dominates decisions, rather than the comfort and convenience of the participants. As a technique, it excludes the fresh insights that can be offered by laypersons and is vulnerable to the tendency of insiders to overlook broad issues in their preoccupation with familiar details.

A number of other models exist that could be used for judicial policy-making. There is the broad-based committee of interested citizens, the model used by the Citizens League and presidential commissions. There is the exclusively lay committee supported by expert staff, the model used for grand juries. There is the legislative committee, where elected decision-makers are open to public testimony and private lobbying. There is the issues-clarification retreat, where key players get together to try to fashion compromises, or at least identify the key issues in dispute. There is the model

of commissioning a consultant to research crucial questions, an approach often used by businesses and other agencies. Some combination of these techniques could be shaped to provide greater accountability and broader participation, under rules that assure the openness of the process.

III. HOW THE REPORT FALLS SHORT

America's civil court system faces serious problems. Judges complain that the case load threatens to overwhelm them. Many outsiders see the system as a closed club of legal professionals, concerned primarily with protecting the privileges of its members. Some companies use secret settlements to try to cover up defective products on the market. The dispute over medical liability grows so intense that some persons have been denied treatment.

So far, not much attention has been devoted to the role the court system itself plays in these problems. But it is only a matter of time before some ambitious legislator or some eager investigative reporter or some angry consumer-advocate organization turns the spotlight on the courts. They will ask tough questions, many of which will touch on the court's records-management policy—or, more precisely, the lack of a records-management policy.

When judges and lawyers and the public dig for the facts to answer these questions, they are going to discover that the courts collect surprisingly little information about the civil system for which they are responsible. The courts do not know how many civil cases actually exist at any one time, especially in the underground civil system of unfiled cases. The courts do not know how many unnecessary cases clog the system, delaying justice for those who truly need the help of the courts. The courts do not know whether or not the system deals equitably with injuries, whether or not judges lose their objectivity in private attempts to negotiate settlements, whether or not attorneys always represent the best interest of clients in negotiating settlements.

Consider for a moment some of the general questions likely to be put to the courts, along with related questions that can be answered only with adequate records:

General question: What are the dimensions of the problem? *Records questions* : How many cases are started in a year, how many are settled or dropped prior to filing, how many are settled or dropped prior to trial, how many are settled or dropped during trial, and how many go to jury verdicts?

General question: Are the courts, by their practices, inviting unnecessary cases? *Records question*: In what percentage of the cases has there been a serious effort at private mediation prior to serving papers?

General question: Does the court have a system for weeding out frivolous or knee-jerk cases? *Records question*: Is there any correlation between initial claims for injury, compared to the average for claims in similar cases, and the eventual settlement or judgment, compared to the average for settlements and judgments in similar cases? Put another way: Do unusually large or small claims tend to be tip-offs to weak cases?

General question: Is the court system being abused by those trying to get quick compensation for weak cases? *Records question*: How many cases are started and settled prior to filing? Prior to trial? How do settlement terms in those cases compare with other cases?

General question: Does the system produce equitable results? *Records questions*: How do settlement terms compare to jury awards for similar injuries? What is the range of compensation for similar injuries? Is there any significant pattern in the cases that produce the lowest and highest compensations for similar injuries?

General question: Is it proper for judges to intervene prior to a trial to try to negotiate a settlement? (This is both a justice question [Can a judge preside impartially at a trial after one of the parties has rejected his settlement proposal?] and a functions question [If mediation can settle the case, is it a sign that the parties should have put more effort into private mediation before turning to the courts?]. *Records question*: What do judges say during negotiation sessions? Put another way: Do judges overstep their bounds in pressing the parties to accept a settlement? Do they come to conclusions based on pre-trial information that interfere with their ability to be objective during the trial?

General question: Does the system sometimes encourage lawyers to recommend settlements based on considerations other than the best interests of their clients? *Records questions*: How are settlement proceeds divided between lawyers and clients? Are lawyers more inclined to recommend settlements that are structured a certain way? If so, does the structure create disparities between what lawyers and litigants can gain from going to trial?

The proposed rules address almost none of these records policy issues. They will do nothing to help the courts prepare themselves to answer key questions about their stewardship of civil justice. With regards to specifics of handling case records, the proposed rules define their scope not on a point of public policy but on a point of administrative convenience: the filing of papers with the court. Some jurisdictions are currently trying to deal with the volume of paper pouring into the courthouse by discouraging the filing of case documents. In this context, the effect of the committee's proposed definition is to further limit what is already inadequate case information.

The proposed rules ignore the fact that it is possible to have a deputy sheriff serve papers threatening court sanctions for noncompliance, take depositions under court rules, and reach a settlement that may or may not fairly protect the interests of the parties, all without filing a paper. This underground, secret civil system is taking place in the court's name but outside the court's knowledge. The proposed rules ignore the fact that knowledge of settlement terms is essential to any evaluation of the effectiveness and fairness of the court system. The majority report further restricts information by lowering the standards for obtaining restrictive orders closing case records and by making it difficult for the public to intervene to protect its rights to that information.

The proposed rules do not even recognize key policy questions, let alone address them adequately. We therefore strongly urge you to reject the committee recommendation.

IV. BUILDING A STRONG POLICY FOUNDATION

As you build a policy for records management in the civil justice system, we urge you to start with the principle that the civil courts are a public institution, created and sustained by the public, and as such are fundamentally different from private dispute-resolution mechanisms. One important difference is the public's presumptive interest

in information collected as part of the civil court process. This interest springs from the public's "ownership" of the system, from the need to provide the public with accurate information about the nature and extent of social issues, and from the need to provide oversight of the public courts. The public's interest in civil court information is discussed in more detail in Rodgers Adams' letter to the court dated Dec. 11, 1986, a copy of which is attached for reference.

Another crucial issue is the definition of civil court records. The committee report adopts the phrasing used in the Data Practices Act, which refers to data that government agencies create or come to possess. This definition has proved satisfactory for most government agencies, but it does not recognize the unusual nature of the civil court system as a government agency that delegates considerable power and authority to others. Much of the paperwork in a civil case is created under the constraint of rules promulgated by the civil courts, but outside government offices and outside the direct supervision of judges and court administrators.

The unusual nature of the process creates ambiguities when the traditional definition is applied. Consider three documents. The first is a sheet of notes in a lawyer's file folder. The notes were taken by the lawyer interviewing a doctor to see if there might be a basis for a civil suit. The second is a deposition of the same doctor, taken after the suit has begun and stored in the lawyer's files. The third is the same deposition, stored in the clerk of court's files. The most significant difference among these documents is surely not where they are stored, but the circumstances under which they were created. The definition of government records should be based on significant differences, not superficial details.

The most reasonable basis for the definition of civil case records is the fact that, once a civil suit is started by serving papers, the rules and powers of the system are extended outside the courthouse. The government is present, in the form of agents of the government (such as sheriff's deputies) and officers of the court (lawyers). Documents created and handled according to the rules of the civil courts can be distinguished from other documents by that fact, which provides the basis for defining them as civil system documents, and therefore as government documents.

The danger of basing public policy upon a weaker standard is illustrated by anomalies in the way civil case records are treated today:

¶ Filing is an unregulated event, left largely to the discretion of attorneys. To rely on that event as a foundation for the court's record management policy is in direct contradiction to the principles of the Data Practices Act. Although the court is not bound by the act, the committee did turn to the act for its definition of court records. A basic principle of the act is the fact that decisions about access to data are policy decisions to be made by legislators and not administrative decisions to be made by government employees. The proposed rules do not follow a parallel approach of giving full control over access to the courts as the policy-makers. Instead, the rules would delegate control to persons who are not even government employees—to attorneys in civil cases. The result is to undermine the court's ability to manage the civil system. The court is put in a position similar to a business manager who has no idea how many sales orders are being written because there is no rule requiring salesmen to turn in orders promptly.

¶ The rules of filing are formulated primarily based on administrative concerns.

At one time depositions were often filed with the clerk prior to trial, and became accessible to the public. But now, in some counties, the depositions are stored in lawyer's offices and are inaccessible. In some cases, we are told, judges have requested depositions but the clerk refused to accept them when the attorneys tried to bring them to the courthouse, so the judges had to ask the lawyers to slip them the depositions privately.

¶ The rules of filing do not generally encompass out-of-court settlements. The public may think "out-of-court" means out of the courthouse when it often simply means out of the courtroom. What happens is not beyond the knowledge of the court in the many cases where the judge is an active participant in negotiating the settlement. Regardless of who is present when the terms are negotiated, the negotiation clearly takes place after the case has started and before it is concluded, and is therefore part of the civil process. The courts may properly adopt a reasonable definition of the civil process that encompasses settlements and they may properly direct attorneys, as officers of the court, to report settlement terms. The courts are in a similar position to the hospital administrator who observes that many of the people coming to the emergency room wait for some time, then abruptly leave the hospital with an intern without having been treated. A responsible administrator would quickly try to find out what was going on, and would not hesitate to quiz the interns who were leading the patients out the door.

These anomalies can be avoided with a definition of civil case records that is simple, comprehensive and reasonable: All records of a civil case that are available to opposing parties under court rules. That the definition is simple is obvious. It is comprehensive because it spans the life of a civil case, from its beginning to its conclusion. It is reasonable because it is based on a significant characteristic, not on some administrative detail.

By their nature as records of a government process, civil case records are presumptively under the jurisdiction of the court, without exception. They are also presumptively accessible to be public, with exceptions. We recognize that the presumption of public access may be set aside for certain narrow categories of civil case information, such as trade secret information. Our concern is that these categories not be so numerous or so vague as to seriously undermine the public's presumptive right of access. We urge the court, in setting policy, to make clear that any exceptions should be constructed so that they apply to only a small portion of civil case records. In addition, we propose that the court adopt a policy that a motion to restrict public access may be based only on the issue of whether or not a record falls within one of the pre-defined exceptions.

(To avoid any misunderstanding, perhaps we should say explicitly that this proposal does not extend to all records about disputes. If a dispute is settled by mediation or other private means <u>prior to starting a case</u> by serving papers, the dispute is not part of the civil justice system and the records of that dispute are not covered by the rules we are proposing.)

We think these policies form a solid foundation for the treatment of civil case records. But we recognize that they do not deal with the mechanics of providing access. We think there is also a simple solution to that problem, a solution that is consistent with both principles of policy and practical concerns: Permit the bulk of the civil case records to be stored in attorney's offices, without a general right of immediate access.

But provide a process for granting access in response to specific requests. At the same time, provide the court with essential management information by requiring that certain information be filed at the beginning of each case and upon the conclusion of each case.

Our suggestion is based on the likelihood that most civil records will be of little interest to anyone other than the parties, so that the attorney's offices are a reasonable storage location. It does not offend the principles we outlined above to say that those records stored in attorney's offices are temporarily inaccessible.

However, when a judge or administrator or lawyer or member of the public has an interest in viewing civil case records, there should be a procedure for granting reasonably prompt access. This process should be flexible, so that the attorney holding the records has the option of permitting inspection in his or her office, or bringing the records to the courthouse for viewing. It should also be flexible so that anyone seeking access can specify the kind of information that is of interest, avoiding whenever possible the need to deal with the entire file of a case. (This will work, of course, only if the attorney holding the records is required to be helpful in identifying the general content of the file.) Because the records are presumptively public and theoretically accessible to anyone, and because they are housed in the attorney's office only as a matter of administrative convenience, all persons seeking access should be treated equally, and there should be no test of the legitimacy of the person's right to view the records.

These provisions deal only with civil case records stored in the offices of lawyers. Records in the custody of the courts, for whatever reason, should be accessible in the same way other court records are accessible. Information presented in open court should be accessible thereafter, regardless of its status prior to being presented.

Procedures permitting private storage of temporarily inaccessible documents should greatly ease the concerns both of attorneys, who don't want outsiders prowling through their files, and of court administrators, who have no place to house all the files of all the cases. But these procedures do not provide the base-line information required by the courts to keep track of the civil justice process. For that reason, we urge the court to require two filings for every case: a filing upon commencement and a filing upon conclusion. These filings need not be voluminous. They could take the form of existing documents or newly designed forms, so long as they provided the information the court needs for management purposes. At a minimum, commencement filings should include the identity of the defendant, a brief description of the injury upon which the suit is based, and a statement of damages sought. (Any counter-claims should be treated similarly.) At a minimum, conclusion filings should include either the fact that the case was dropped without compensation or conditions, or a complete report of the conditions and distribution of compensation among court costs, attorneys and litigants. Court rules could assure prompt filing of these documents. Because of their basic nature, such documents should be accessible to the public without exception.

V. SUMMARY

In this paper, we have examined a missed opportunity to correct a situation that now leaves the courts and the public in the dark about important aspects of the civil justice system. We have explained that the outcome does not seem to have been delib-

erate, but rather a kind of drifting off course at some significant points.

But the fact that the effort may have been well-intentioned does not justify a recommendation that lacks a solid foundation of public policy. We urge the court to reject the committee proposal as one that does not address basic public policy issues: a definition of civil justice records that matches the true scope of the system, provision for broad access to information in the system, and a means of handling restrictions on public access in a way that does not obviate the presumption of openness. We also urge the court to turn away from a process that seems to outsiders to be insular, unfair, and overly concerned with protecting the membership privileges of a kind of civil justice club. We have suggested several different models for policy study and development, models that singly or in combination can provide greater accountability, access and openness.

Finally, we urge the court to consider a plan that meets the requirements of sound public policy while at the same time minimizing problems in handling the physical records. The key points of that proposal are:

1) The case-related records of the civil court system extend from the first paper served to the last document implementing judgment or settlement, to the extent that those documents are available to the opposing parties under court rules.

2) Case-related records are presumptively accessible to the public, except for narrowly defined categories such as trade secret information. Material presented in open court is accessible without exception.

3) It is consistent with sound public policy to permit storage of civil case records in attorney's offices where the records will be temporarily inaccessible to the court and the public, so long as there are provisions for making the records accessible, upon request and with reasonable promptness. If case-related records are stored in the offices of lawyers, the lawyers should have the option of meeting a request for access by bringing the necessary records to the courthouse, or permitting inspection in their offices.

4) A base record of every civil case should be created by prompt filing of two sets of information: a description of the suit upon commencement (including counterclaims), and a description of the terms of disposition (including out-of-court settlements and decisions to drop without compensation). This information without exception should be accessible to the public.

5) Because case-related records are presumptively public, all requests for access should be treated equally, without requiring any showing of special interest in the case.

Some lawyers and judges have argued that we should not change the current system because the result might be to jeopardize settlements prior to trial. Aside from the fact that that is a poor way to justify weak public policy, we think there will be a quite different result from a thorough, knowledgeable study of the civil justice system that leads to reforms based on sound public policy. If a trial is not necessary to resolve disputes, perhaps bringing the suit is not necessary either. As the courts gather more factual information about the characteristics of cases that never get to trial, they will be in a position to set policies that discourage those suits and encourage more use of private mediation. That is the path that offers the best promise of dealing effectively with case load, freeing judges to concentrate on the disputes that really do need the services of a public court.

Patricia Hirl Longstaff
Associate General Counsel
(612) 372-4171
425 Portland Avenue
Minneapolis, Minnesota 55488

Star Tribune
NEWSPAPER OF THE TWIN CITIES

December 2, 1987

Wayne O. Tschimperle
Clerk of the Appellate Court
Minnesota Court of Appeals
230 State Capitol Building
St. Paul, MN 55155

Dear Mr. Tschimperle:

I would like to make an oral presentation at the December 16th hearing on the Proposed Rules Governing Access to Records of the Judiciary.

At the hearing, I will answer any questions the Court may have about the enclosed brief and make several remarks about:

1. The Committee's work;

2. The importance of the Court making a decision on access; and

3. The importance of having all access provisions together.

These remarks will be made as part of my participation as a Committee member and not as a legal representative of the Star Tribune.

Sincerely,

Patricia Hirl Longstaff

PHL:cje
Enclosure

cc: Mike Johnson

STATE OF MINNESOTA

MINNESOTA SUPREME COURT

In re Report of Supreme Court Advisory Committee on Rules Governing Access to Public Records of the Judiciary

BRIEF OF

PATRICIA HIRL LONGSTAFF

INTRODUCTION

The undersigned submits this brief in order to assist in the Court's deliberations of the constitutional and common law parameters regarding access to civil case documents. It first examines the current state of the law and then applies these legal principles to the majority report presented by the Supreme Court Advisory Committee on Rules Governing Access to Records of the Judiciary. This brief addresses only that part of the Committee report that deals with case records.

STATEMENT OF THE ISSUES

I. What is the current state of the law regarding access to civil case files?

II. Does the majority report's proposed Amendment to the Rules of Civil Procedure comply with the constitution and common law standards for restricting access to court documents?

ARGUMENT

II. WHAT IS THE CURRENT STATE OF THE LAW REGARDING ACCESS TO CIVIL CASE FILES?

A. Constitutional Principles Regarding Substantive and Procedural Rights of Public Access to Civil Cases.

1. Use of the Constitutional Analysis by Federal Courts.

The Courts of Appeals for the First, Third, Sixth, Seventh, Eighth, and Eleventh Circuits have extended a constitutional right of access to civil judicial proceedings and records. See In Re San Juan Star Company, 662 F.2d 108 (1st Cir. 1981) (First Amendment guarantees right of access to pretrial discovery materials in civil rights action); Publicker Industries v. Cohen, 732 F.2d 1059 (3rd Cir. 1984) (First Amendment guarantees right of access to civil proceedings overcome only upon specific findings which demonstrate closure is essential to preserve higher values and is narrowly tailored); Brown and Williamson Tobacco Corp. v. FTC, 710 F.2d 1165 (6th Cir. 1983) (First Amendment guarantees right of access to court record in injunctive action by company against agency), cert. denied, 104 S.Ct. 1595 (1984); In Re Continental Ill. Sec. Litig. 732 F.2d 1302, 1308-16 (7th Cir. 1984) (First Amendment guarantees right of access to report of a special litigation committee filed with court in shareholders derivative action); In Re Iowa Freedom of Information Council, 724 F.2d 658, 661 (8th Cir. 1983) (First Amendment guarantees right of access to civil contempt proceedings and transcripts); Newman v. Graddick, 696 F.2d 796, 801 (11th Cir. 1983) (First Amendment guarantees right of access to civil hearings in action challenging penal conditions).

In reaching a constitutional right of access to civil trials, these decisions relied on the U. S. Supreme Court's two-part analysis in cases relating to access to criminal trials. This test was first set out in Gannett Co. v. DePasquale, 443 U.S. 368 (1979), and was latter used in Richmond Newspapers v. Virginia, 448 U.S. 555 (1980). The Court's analysis in these cases focuses on two features of the criminal justice system: 1) criminal trials have historically been open to the press and general public, and 2) the right of access to criminal trials plays a particularly significant role in the functioning of the judicial process and the government as a whole. The Court in DePasquale noted that "For many centuries both civil and criminal trials have traditionally been open to the public." Id. at 386.

In Publicker Industries, Inc. v. Cohen, 733 F.2d 1059 (3rd Cir. 1984), the Third Circuit conducted an extensive analysis to determine whether the "historical" and "functional" tests relied on in Richmond Newspapers justified an extension of a constitutional right of access to civil trials as well. The court reviewed the work of Blackstone and Wismore on Evidence and others to determine the historical context of public access to civil cases as well as the functional role that access plays in the American system of justice. The court concluded that there is both a constitutional and a common law right of access to civil files that can only be overcome by important countervailing reasons.

The court went on to state that when these rights are in questions, the trial courts must afford procedural due process to those requesting access. Thus, the trial courts must make findings of fact and examine alternatives to closure.

> Procedurally, a trial court in closing a proceeding must both articulate the countervailing interest it seeks to protect and make "findings specific enough that a reviewing court can determine whether the closure order was properly entered." See Press-Enterprise Co. v. Superior Court, 104 S.Ct. 819, 824 [10 Med.L.Rptr. 1161] (1984); In re Iowa Freedom of Information Council, 724 F.2d at 662. Substantively, the record before the trial court must demonstrate "an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." Press-Enterprise Co. v. Superior Court, 104 S.Ct. at 814.

Likewise, the Seventh Circuit in In re Continental Illinois Securities Litigation, concluded that public screening of civil cases is vital to the functioning of the courts. "While sealing of one document in one case may not have a measurable effect on confidence in judicial integrity or on the effective operation of the courts, the effect of a consistent practice of sealing documents could prove damaging." Id. at 314.

In Newman v. Graddick, the Eleventh Circuit also reviewed the Court's discussion in Richmond Newspapers to determine whether that holding applies to a civil case that concerned the Alabama penal system. "Focusing on the beneficial consequences of criminal trials being conducted in public, we see little difference between a criminal trial and the proceedings here which relate to the release of convicted persons."

In Re Iowa Freedom of Information Council, the Eighth Circuit concluded that the First Amendment extended to contempt proceedings, a hybrid containing both civil and criminal characteristics. The court then determined the First Amendment mandates that the court give a member of the media and the public a reasonable opportunity to state objections at a closure hearing.

The Sixth Circuit in Brown v. Williamson succinctly explained the basis for finding a First Amendment right of access to civil litigation:

> The Supreme Court's analysis [in Richmond Newspapers] of the justifications of access to the criminal courtroom apply as well to the civil trial. The Supreme Court has acknowledged the broad application of these principles. Justice Burger's plurality opinion notes that "whether the public has a right to attend trials in civil cases is a question not raised by this case, but we note that historically both civil and criminal trials have been presumptively open." Richmond Newspapers, supra, 448 U.S. at 580 n. 17, 100 S.Ct. at 2829 no. 17. Justice Stewart, concurring, states emphatically that "the First and Fourteenth Amendments clearly gives the press and the public a right of access to trials themselves, civil as well as criminal." Id. at 599, 100 S.Ct. at 2839. The historical support for access to criminal trials applies in equal measure to civil trials. See Gannett Co. v. DePasquale, 443 U.S. 368, 386 n. 15, 99 S.Ct. 2898, 2908-09 n. 16, 61 L.Ed.2d 608 (1979) ("For many centuries; both civil and criminal trials have traditionally been open to the public.") See also Richmond Newspapers and Beyond, 16 Harv. C.R.-C.L.L. Rev. 430-31 (1981); Cox, Foreword: Freedom of Expression in the Burger Court, 94 Harv. L. Rev. 1, 156 n. 42 (1980); Note, Trial Secrecy and the First Amendment Right of Public Access to Judicial Proceedings, 91 Harv. L. Rev. 1899, 1921-23 (1978).
>
> The policy considerations discussed in Richmond Newspapers apply to civil as well as criminal cases. The resolution of private disputes frequently involves issues and remedies affecting third parties or the general public. The community catharsis, which can only occur if the public can watch and participate, is also necessary in civil cases. Civil cases frequently involve issues crucial to the public--for example, discrimination, voting rights, antitrust issues, government regulation, bankruptcy, etc.

710 F.2d at 1178-79.

2. Use of the Constitutional Analysis in Minnesota.

This court's long dedication to the principle that government must operate in public has never faltered. Even when it has approved the restriction of access to government records or procedings, it has made the restriction the

narrowest possible and has gone to great lengths to indicate that these decisions do not indicate a judicial approval of government secrecy. For example, in Minneapolis Star and Tribune v. HRA, 251 N.W.2d 620 (1976), the court said:

> We cannot emphasize too strongly that should this exception be applied as a barrier against public access to public affairs, it will not be tolerated, for this court has consistently emphasized that respect for and inherence to the First Amendment is absolutely essential to the continuation of our democratic form of government.

Id. at 626.

The DePasquale two-part test for determining whether case records should be open to the public was used by the court in Minneapolis Star and Tribune v. Kammeyer, 341 N.W.2d 550 (Minn. 1983). In that case the court examined the history of public records to pretrial criminal records and the government interest furthered by public access. It found that access to the records is guaranteed by the First Amendment absent an overriding government interest and closure is available only if no other alternatives exist. The court also found that the right of access cannot be vindicated unless some procedural rights are recognized, including the right of the public to notice of closure.

The two-part test was applied to civil case records in Minneapolis Star and Tribune v. Schumacher, 392 N.W.2d 197 (Minn. 1986) in connection with public access to settlement records. The court found that settlements are historically not public and that there is a government interest in encouraging settlements. Therefore, the records were not subject to a First Amendment right but a common law right. The court specifically stated that this holding was a narrow one and applied only to similar settlement documents.

3. Decisions from Other Jurisdictions Comment on the Constitutional Standard in Civil Cases by Scholars.

Unfortunately, there are virtually no decisions from other state courts that decide whether a constitutional standard should be applied for access to civil case records. Once again, Minnesota finds itself in the forefront of an important and developing legal question.

Legal commentators have been almost unanimous in their opinions that such a standard is supported by precedent and in the best interests of the judicial system. A particularly interesting exposition of the historical and functional access to civil documents has recently been published by the University of Chicago Law Review. "The First Amendment Right of Access to Civil Trials After Globe Newspaper Co. v. Superior Court, 51 Univ. Chi. L. Rev. 286 (1984). In this article, the author traces the history of the civil courts to their roots in the tenth century when attendance at the county and hundreds courts was compulsory for all freemen. It goes on to examine the works of Lords Coke and Blackstone who both expressed their understanding that the process was open.

The article also examines the function of the civil justice system and asks if this presents fewer arguments in favor of openness than to criminal trials.

> Even where a particular civil suit does not directly affect the public at large, the judiciary remains a branch of government and its conduct of civil litigation is a matter "relating to the functioning of government," a subject about which the public has a right to be informed. The Court in Globe did not predicate the public's right of access to criminal trials on its role as a party to the litigation. Instead, the Court emphasized that access to criminal trials fosters the "free discussion of governmental affairs" and protects the competence and integrity of the judicial

> process. A right of access to civil trials also serves this protective purpose. Because criminal cases currently account for less than half of the caseload in both federal and state courts, limiting the right of access to criminal cases would deprive the public of the opportunity to scrutinize much of the judicial process meaningfully, and the judicial system itself would suffer. As noted in Globe, public presence at trials aids accurate factfinding, fosters an appearance of fairness, and serves as a check on abuse. These benefits are not diminished simply because the underlying charge is civil and not criminal.

Id. at 298. (citations omitted)

See also "A Constitutional Right to Access to Pretrial Documents: A Missed Opportunity in Reporters Committee for Freedom of the Press," 62 Ind. L. J. 735 (1987); "Access to Trial Exhibits in Civil Suits: In re Reporters Committee for Freedom of the Press," 60 St. John's L. Rev. 358 (1986), Note "Procedural and Substantive Prerequisites to Restricting the First Amendment Right of Access to Civil Hearings and Transcripts" Temp. L. Q. 159 (1985).

B. Common Law Principles Applied to Access to Civil Case Records.

1. Interpretation of the Common Law Right of Access by the Federal Courts.

The federal courts have approached the question of access under the common law in a number of ways. Access to case records that have been filed with the court are generally subject to a common law presumption of access, while discovery materials are generally subject to the Rules 5(d) and 26(c) of the Federal Rules of Civil Procedure.

The common law presumption of access to civil trials was addressed by the U.S. Supreme Court in Nixon v. Warner Communications, Inc., 435 U.S. 589

(1978). The Court stated that "It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." Id. at 597.

The Court pointed out that this general right stemmed from the public's desire to observe the workings of government. The Court also noted the limitations in this right of access.

> It is difficult to distill from the relatively few judicial decisions a comprehensive definition of what is referred to as the common-law right of access or to identify all the factors to be weighed in determining whether access is appropriate. The few cases that have recognized such a right do agree that the decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case.

Id. at 598-99.

The Sixth Circuit's decision in In re Knoxville News-Sentinel Co., Inc., 723 F.2d 470 (1983), applied the Nixon holding to a decision of a federal district court permitting the bank to remove prior to public inspection exhibits from the court's record which the bank had filed in a lawsuit against the Federal Deposit Insurance Corporation. The Knoxville court limited judicial discretion where the questions of common law access of public records are considered:

> [T]he power to exercise a discretion does not imply that discretionary powers can be exercised without restraint. A district court's determination is not insulated from review merely because the judge has discretion in this domain. The district court's discretion is circumscribed by a long-established legal tradition.

Id. at 473-74, citing Brown & Williamson, 710 F.2d at 1177.

The Courts of Appeals have grappled with the question of what constitutes abuse of discretion when the presumption of access is involved. As noted earlier, the majority of circuits have required a showing that denial of access is permitted only when necessitated by a compelling governmental interest, and is narrowly tailored to meet that interest.

The Eleventh Circuit applied this standards in Wilson v. American Motors Corp., 759 F.2d 1568 (1985), where the sealing of a settlement in a wrongful death claim was challenged by a new plaintiff seeking to invoke offensive collateral estoppel against the defendant. The district court sealed the entire record. The Court of Appeals observed, "From a review of the records, we are unable to determine the status or whereabouts of the exhibits introduced. We are unable to determine if transcripts of any part or all of the trial proceedings exist." Id. at 1570. The court held that closure of the entire record in a case that had gone to trial was an abuse of discretion in light of the strong common law presumption in favor of public access.

> There is no questions that courts should encourage settlements. However, the payment of money to an injured party is simply not "a compelling governmental interest" legally recognizable or even entitled to consideration in deciding whether to seal a record. We feel certain that many parties to lawsuits would be willing to bargain (with the adverse party and the court) for the sealing of records after listening to or observing damaging testimony and evidence such suppression of public records cannot be authorized.

Id. at 1571-1572, n. 4.

In another recent case, the Third Circuit considered whether a settlement agreement filed under seal between a bank and a real estate developer could be unsealed on motion from an unpaid contractor basing its claim on the common law right of access. Bank of America Nat'l. Trust v. Hotel Rittenhouse, 800 F.2d 339 (3rd Cir. 1986).

The court applied a balancing approach of the factors for and against access to determine whether "judicial policy of promoting the settlement of litigation justifies the denial of public access to records and proceedings to enforce such settlements." Id. at 344. The court determined that secret judicial proceedings in the name of encouraging settlements should not overturn centuries of tradition of open access to court documents.

> Having undertaken to utilize the judicial process to interpret the settlement and to enforce it, the parties are no longer entitled to invoke the confidentiality ordinarily accorded settlement agreements. Once a settlement is filed in the district court, it becomes a judicial record, and subject to the access accorded such records.

Id. at 345.

Two months ago, the First Circuit concluded that the appellants "had not borne the heavy burden of exhibiting the existence of special circumstances adequate to overcome the presumption of public accessibility" in FTC v. Standard Financial Management, 830 F.2d 404 (1st Cir. 1987). In that case, sworn personal financial statements sought to be protected in a consent decree between the FTC and a closely held corporation. The court stated that these financial statements were "relevant and material to the matters sub judice." Consequently, the district court relied upon the documents in determining the litigants' substantive rights, and in performing its adjudicating function. Therefore the common law presumption of access attached to them. Id. at 410. In determining that the appellants had not demonstrated "sufficiently compelling reasons to warrant cloaking the documents in secrecy," the court concluded that "the people have a right to know the contents of the materials upon which the agency, and ultimately the court, relied in this endeavor. Here, as in so many other instances, justice is better served by sunshine than by darkness." Id. at 413.

With respect to closure of discovery matters, court have considered a statutory right of access based on the Federal Rules of Civil Procedure, Rule 5(d) and Rule 26(c). A challenge to a district court order unsealing discovery materials in the Agent Orange class action settlement did not overcome the good cause requirement of Fed.R.Civ.P. 26(c). In Re Agent Orange Product Liability Litigation, 821 F.2d 139 (2nd Cir. 1987).

The court reviewed Rule 5(d) advisory committee notes which "make clear that Rule 5(a), far from being a housekeeping rule, embodies the Committee's concern that class action litigants and the general public be afforded access to discovery materials whenever possible." Id. at 146. Concluding that the Agent Orange subject matter of the litigation is of "special public interest," the court upheld the district court's finding of a statutory right of access.

The courts have inserted First Amendment considerations into the application of Rule 26(c). The U.S. Supreme Court in Seattle Times v. Rhinehart, 467 U.S. 20 (1984), reviewed the "good cause" standard of Rule 26(c) concerning a motion and order to protect the identities of a religious group's donors and members in a libel case.

The Court held that the First Amendment is not offended by a protective order if three criteria are met: (1) there is a showing of good cause as required by Rule 26(c); (2) the restriction is limited to the discovery context; and (3) the order does not restrict the dissemination of information obtained from other sources. Id. at 37.

The First Circuit, in applying the Seattle Times holding to an order denying a newspaper access to discovery materials, stated:

> In our opinion, this means that First Amendment considerations cannot be ignored in reviewing discovery protective orders. Although the "strict and heightened" scrutiny tests no longer apply, the First Amendment is still a presence in the review process. Protective discovery orders subject to First Amendment scrutiny; but that scrutiny must be made within the framework of Rule 26(c)'s requirement of good cause. citing Anderson v. Cryovac, 805 F.2d 1 (1st Cir. 1986), Id. at 7.

2. Interpretation of the Common Law Right of Access by This Court

In Schumacher, 392 N.W.2d at 202, the court stated that "It is undisputed that a common law right to inspect and copy civil court records exists." While the opinion does not define the exact parameters of this right, it does state that access can be denied only if the countervailing interests are strong enought to overcome the presumption. A balancing of interests by trial courts is subject only to "abuse of discretion" review by the appellate courts. This apparently low level of of difference given to the common law right of access was expressly reserved for records that had failed the two-part constitutional test: 1) the records have historically been open, and 2) there is an important public purpose in openness.

The only provision in the Minnesota Rules of Civil Procedure that allows for closure of case records is in Rule 26.03 and concerns the court's power to limit discovery. It is not clear whether the language that allows a trial court to "make any other order which justice requires to protect the party or person from annoyance, embarrassment, oppression or undue expense" would be sufficient to allow the court to seal any type of document that was usually a public record and, therefore, subject to the two-part test of Schumacher.

II. DOES THE AMENDMENT TO THE MINNESOTA RULES OF CIVIL PROCEDURE SUGGESTED BY THE MAJORITY REPORT MEET THE TWO-PART TEST OF SCHUMACHER?

The proposed rule does not meet even the relatively low common law standard enunciated in Schumacher. It certainly does not meet the constitutional standard.

The majority's proposal allegedly is based on this Court's decision in Schumacher. It proports to adopt the standard the Court applied to settlement documents or transcripts and extend that standard to other civil case records despite the Court's clearly expressed intention in the Schumacher decision not to extend the standard to other civil trial records or documents. Id. at 203.

The proposed standard is basically a two-part balancing test providing broad discretion to the trial judge. When parties seek to restrict access to case records and thus overcome the presumption of access, they must present counterveiling reasons why access should be restricted. If the court finds strong counterveiling reasons, then the presumption of access has been overcome. The court then balances the interests asserted for restricting access against those favoring access. The proposal has enumerated factors which the court should consider in employing the balancing test.

Once the presumption of access is overcome, the competing considerations are merely offset against each other without any emphasis given to the magnitude of the right involved. The items listed regarding "interests regarding access" appear to negate a presumption of access and permit a finding against

access interests based on such things as the "public nature" of the case. Thus, in the typical auto accident case, the presumption of access would be defeated and almost any counterveiling interest would prevail.

The proposal also suggests that pretrial documents have less presumptive access than those used at trial although no historical or functional reason for such a distinction is offered. This court has held that pretrial records in criminal cases are subject to the same constitutional right of access as those at trial. Minneapolis Star and Tribune v. Kammeyer, 341 N.W.2d at 550. When similar analysis in the civil context is applied, one finds that pretrial documents have historically been public records and there are many reasons for a strong public interest in these records because, as in a criminal case, court actions at this stage are often determinative of the outcome. Since most civil cases are settled prior to trial, the proposed rule could close the vast majority of the work of the civil justice system.

Furthermore, the majority proposal does not meet even the lowest imaginable standard of procedural due process for the protection of either constitutional or common law rights. For example, there is no provision for notice to the public. This ignores the thoughtful analysis of notice in criminal cases that this court set out in Kammeyer. Similarly, while purporting to codify Schumacher, it ignores the detailed outline of procedural safeguards outlined there for the assertion of rights by non-parties in civil cases and the expedited appeal of a closure order via a Writ of Prohibition.

In short, the proposal of the majority would establish Minnesota as the state with the least protection for public access to workings of the civil justice system. It is a distinction that neither the people of this state nor this court has ever sought.

Dated: December 2, 1987

Respectfully submitted,

Patricia Hirl Longstaff
License No. 45408

425 Portland Avenue
Minneapolis, Minnesota 55488
(612) 372-4171

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PIONEER PRESS
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John R. Finnegan
Sr. Vice President / Assistant Publisher
(612) 228-5406

345 Cedar Street
Saint Paul, Minnesota 55101-1057
(612) 222-5011

December 2, 1987

Clerk of Court's Office
Supreme Court of Minnesota
Room 230
State Capitol
St. Paul, MN 55155

Dear Sirs:

This is a request that I be permitted to make a presentation in opposition to the recommendations of the Supreme Court's Advisory Committee on Rules Governing Access to Records of the Judiciary scheduled for December 16, 1987.

Ten copies of this letter and ten copies of a summary of conclusions reached in a position paper already submitted to the court are attached. I will base my remarks on items mentioned in the document.

Sincerely,

John R. Finnegan

SUMMARY OF REMARKS BY JOHN FINNEGAN APPEARING
AT THE HEARING ON CIVIL COURT PROCEDURES DECEMBER 16, 1987

The court's advisory committee on judicial records has missed an opportunity to correct a situation that leaves the courts and the public in the dark about important aspects of the civil justice system. The outcome of the committee's actions does not seem to have been deliberate, but rather a kind of drifting off course at some significant points.

But the fact that the effort may have been well-intentioned does not justify a recommendation that lacks a solid foundation of public policy. We urge the court to reject the committee proposal as one that does not address basic public policy issues: a definition of civil justice records that matches the true scope of the system, provision for broad access to information in the system, and a means of handling restrictions on public access in a way that does not obviate the presumption of openness. We also urge the court to turn away from a process that seems to outsiders to be insular, unfair, and overly concerned with protecting the membership privileges of a kind of civil justice club. We have suggested several different models for policy study and development, models that singly or in a combination can provide greater accountability, access and openness.

Finally, we urge the court to consider a plan that meets the requirements of sound public policy while at the same time minimizing problems in handling the physical records. The key points of that proposal are:

1) The case-related records of the civil court system extend from the first paper served to the last document implementing judgement or settlement, to the extent that those documents are available to the opposing parties under court rules.

2) Case-related records are presumptively accessible to the public, except for narrowly defined categories such as trade secret information. Material presented in open court is accessible without exception.

3) It is consistent with sound public policy to permit storage of civil case records in attorney's offices where the records will be temporarily inaccessible to the court and the public, so long as there are provisions for making the records accessible, upon request and with reasonable promptness. If

case-related records are stored in the offices of lawyers, the lawyers should have the option of meeting a request for access by bringing the necessary records to the courthouse, or permitting inspection in their offices.

4) A base record of every civil case should be created by prompt filing of two sets of information: a description of the suit upon commencement (including out-of-court settlements and decisions to drop without compensation). This information without exception should be accessible to the public.

5) Because case-related records are presumptively public, all requests for access should be treated equally, without requiring any showing of special interest in the case.

Some lawyers and judges have argued that we should not change the current system because the result might be to jeopardize settlements prior to trial. Aside from the fact that that is a poor way to justify weak public policy, we think there will be a quite different result from a thorough, knowledgeable study of the civil justice system that leads to reforms based on sound public policy. If a trial is not necessary to resolve disputes, perhaps bringing the suit is not necessary either. As the courts gather more factual information about the characteristics of cases that never get to trial, they will be in a position to set policies that discourage those suits and encourage more use of private mediation. That is the path that offers the best promise of dealing effectively with case load, freeing judges to concentrate on the disputes that really do need the services of a public court.

STATE OF MINNESOTA

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December 2, 1987

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IN THE MATTER OF THE PROPOSED
ADOPTION OF RULES GOVERNING
ACCESS TO RECORDS OF THE JUDICIARY

Pursuant to the notice given on September 23, 1987, by the Supreme Court of a hearing to consider adoption of these proposed rules, I hereby request that I be able to appear before the Court anytime after 9 a.m. on December 16, 1987, to present an oral statement on these proposed rules.

As required by that notice, ten copies of the materials I intend to present are enclosed. Ten copies of this request for appearance are also enclosed.

Respectfully submitted,

Donald A. Gemberling, Director
Data Privacy Division
5th Floor Centennial Building
658 Cedar Street
St. Paul, MN 55155
(612) 296-6733

vf
Enclosures

STATE OF MINNESOTA
IN SUPREME COURT

C4-85-1848

IN THE MATTER OF THE PROPOSED
ADOPTION OF RULES GOVERNING
ACCESS TO RECORDS OF THE JUDICIARY

ORAL PRESENTATION

Introduction: My name is Donald A. Gemberling. I am an attorney and the Director of the Data Privacy Division of the state of Minnesota Department of Administration. In that position, I have acted as the principal resource on issues of data privacy, confidentiality, and freedom of information for the legislature, government agencies including the judiciary and the public for the past 13 years. I was also honored to be a member of the Advisory Committee on the proposed rules governing access to records of the judiciary.

Commentary: My experience of working with the Minnesota Government Data Practices Act and other laws relating to privacy and freedom of information over these last 13 years tells me that attempts to regulate the government's collection, maintenance, use, and dissemination of information and access to that information will always present a challenge of balancing three distinct, compelling and competing interests. Those interests are:

1. The public's right to gain access to information maintained by its government to gain a clear picture of what that government is doing.

2. The individual's right, when government agencies maintain data about him or her, to have sensitive information protected, to be able to gain access to that information in most instances and to exercise certain other rights. These rights are critical because of the potentially enormous impact that government information can have on individuals in what has come to be called the information society.

3. The general public interest in the common good for government agencies to be able to collect and use information in an efficient fashion to administer governmental functions and to carry out constitutional duties.

Overall, the proposed rules that have been presented to you for adoption do an admirable job of balancing two of those three interests. They clarify what data maintained by the judiciary is accessible by the public while preserving certain records from public disclosure when, inter alia, the effective operation of the judiciary might suffer from that disclosure.

However, these proposed rules do not in my view deal completely with the last of the three interests that ought to be balanced when government information is regulated -- the rights of individuals on whom the government maintains information. I want to make it clear that I am not criticizing the work of the committee or its staff. Mr. Michael Johnson should be publicly commended for the fine work he has done in staffing the work of the committee. There was also a sense during the committee's deliberations that the major charge to the committee was to deal only with issues associated with public access to the records of the judiciary. However, I would urge this court to go beyond balancing only two of the three interests and to also deal with rights of individuals on whom the judiciary maintains information. This principle of extending certain rights to individuals goes under a variety of labels. It is most often called <u>data privacy</u>.

The term data privacy tends to be misleading. It evokes images of the more traditional forms of privacy such as the constitutional right of privacy under the Fourth Amendment of the United States Constitution or the "penumbra of rights" theory of privacy, developed by that same court, which has recently received considerable publicity. It also becomes confused with the varieties of privacy associated with the tort of invasion of privacy.

Fundamentally, data privacy is actually at its basic level an emerging legal principle that is conceptually associated with one of the most cherished rights of a democratic society -- the right to due process. Data privacy took a great leap forward in 1973 when an advisory committee of the federal government recommended that all institutions that collect and maintain information on individuals establish a code of fair information practice principles. (See Records, Computers and the Rights of Citizens. Report of the Secretary's Advisory Committee on Automated Personal Data Systems, U.S. Department of Health, Education, and Welfare, July 1973.)

The fair information practice principles are as follows:

1. There must be no personal data record keeping systems whose very existence is secret.

2. There must be a way for individuals to find out what information about them is in a record and how it is used.

3. There must be a way for individuals to prevent information about them obtained for one purpose from being used or made available for other purposes without their consent.

4. There must be a way for individuals to correct or amend a record maintained about them.

5. Any organization creating, maintaining, using, or disseminating records of identifiable personal data must assure the reliability of the data for their intended use and must take reasonable precautions to prevent misuse of the data.

In Minnesota, the fair information practice principles have been a part of the Minnesota Government Data practices Act since its initial enactment in 1974. They constitute a major portion of the Minnesota legislature's attempt to complete the balancing of all three of the competing interests by providing rights to individuals because Minnesota governmental agencies maintain data on those individuals.

Those rights are set out at Minnesota Statutes (1986) Section 13.04. They include:

1. The right of individuals to be provided with information about why the government seeks to collect sensitive data from the individual, how that data will be used, and who will have access to it.

2. The right of individuals to know that the government is maintaining information about them and in most instances to actually gain access to that data unless there is a compelling government interest present so that access ought to be denied.

3. The right to challenge the accuracy and completeness of government information maintained about them.

The overall charge to the Advisory Committee was to deal with issues associated with public access to records maintained by the judiciary. In part this charge came about because the legislature, in a 1985 amendment, exempted the judiciary from the provisions of the Minnesota Government Data Practices Act. The proposed rules will fill the gap created by that legislative amendment in clarifying what records of the judiciary are accessible by the public. The proposed rules will not fill the gap created when the section of the Data Practices Act providing rights to individuals no longer applies to records of the judiciary.

I urge this court to deal with the issues of fair information practice that are presented by the maintenance of data on individuals by the judiciary. In particular, I would ask you to deal with the issues associated with the right of individuals to gain access to most data maintained about them by the judiciary when that data would not be available to them as a member of the public and there is no compelling interest that ought to preclude access.

One of the real advancements that has been made by this state in its work with data privacy and fair information practices has been the establishment of the concept of "private data." This is, by the terms of the state's Data Practices Act, data which is not public but which is accessible by the individual subject of the data. This concept of private data establishes an important principle that there should be a midpoint between government data which is freely accessible by the general public and government data which, for compelling reasons, should not be accessible by anyone except the governmental agencies who work with that data.

Examples of data which might be appropriate for treatment by the judiciary in a fashion comparable to the treatment of private data under the Minnesota Government Data Practices Act are:

1. Personnel data maintained by the judiciary including data on employees and applicants for employment;

2. Data on juveniles maintained by the juvenile and family courts;

3. Court services data;

4. Passport records;

5. Portions of various criminal cases which are made inaccessible to the public by statutes other than Chapter 13; and

6. Some of the records of the various boards and commissions of this court and in particular the Board of Bar Examiners.

The principle of access by data subjects to information maintained about them by the judiciary could be established in these rules by the addition of a subdivision that would provide for access by a data subject to those records of the judiciary which are public but which are not made confidential, in the Data Practices Act use of that term, by statute or other rules of court.

However, given the complexity of the issues associated with balancing the three primary interests presented by government records, it would be more appropriate for this court to authorize a new committee to consider the application of fair information practice principles to records of the judiciary. This committee could carefully consider issues associated with data subject access to judiciary records and draft proposed rules.

By authorizing such a committee, this court would have the opportunity to provide uniform treatment for issues of individual data subject access to judiciary records. This court would have the opportunity to consider the application of fair information practice principles to the judiciary. Lastly, the work of this committee would provide an opportunity for review of existing statutes and rules, to resolve existing problems and to update out of date and inconsistent provisions and practices.

If the court were to establish such a committee, I would be honored to once again offer my services to you in completing the work of dealing with all of the issues presented by records of the judiciary.

If you have any questions, I would be happy to answer them.

Thank you.

December 2, 1987

Clerk of the Appellate Courts
230 State Capitol
St. Paul, Minnesota 55155

Dear Clerk-

I am interested in appearing before the Minnesota Supreme Court to make an oral presentation, on Wednesday, December 16, 1987 as it will relate to the proposed rules governing access to records.

Please find attached ten copies of a general outline of my oral presentation.

Sincerely,

Richard Neumeister
2076 E. Margaret St.
St. Paul, Minn.
612-738-2076 55119

I wish to share with you several points and concerns about the proposed rules. They are the following:

Rule 5 Accessibility to Administrative Records, Subd. 1. Employee Records —

This section does not allow Court employees to have access to their own personnel files. The Minnesota Government Data Practices Act (Chapter 13), 13.04, subd. 3, allows an individual to review private data about themselves. For those Court employees that are not under the auspices of Chapter 13 they would have no right to their own data that may be considered "private" as defined by the Data Practices Act. I spoke with Ms. Warwick, Administrative Assistant, Personnel Department, State Courts, she indicated to me that there may be 40-50 employees that are under the jurisdiction of the State Court Administrator, when I asked her if those employees had a right to access to their own files she indicated she did not know. In speaking with her the following day she indicated to me that in the "Personnel Plan" there is a provision for State Court employees to have access to their own file. If it is correct that those employees have access to their files, do all employees that serve under the auspices and regulations of these rules (proposed) have equal and fair access to their personnel files?

Rule 7, Procedure for Requesting Access, Subd. 3 Delay or Denial; Explanation

I have a concern of how "administrative rule" is used in the context of denial. My experience in trying to gain access to material in the Courts and in state and local agencies have led me to believe that if a court administrator or responsible authority does not want you to have access and that person is not able to cite a statute, federal or state, or a Minnesota Supreme Court Order, to say that I cannot have access, arbitrarily, they will say we have a rule/regulation or administrative order that prevents access. I think it is important that it be most clear that all Court administrative rules and regulations preventing access be based on Rule 5, subd. 13.

Rule 4 Inspection and Copying
Subd. 1, Inspection and Photocopying, and Subd. 3, Fees.

I am of the opinion that these two subdivisions can be much clearer as to avoid misinterpretation of how inspection is allowed and how fees are charged. The past three years I have been lobbying the legislature to amend the Minnesota Government Data Practices Act as to make it clear to citizens and responsible authorities that government agencies cannot charge for the purpose of inspection, and secondly, if the individual wishes to inspect the data only, retrieval and search costs, could not be charged. If you review Chapter 13, 13.03, subd. 3, you will note how clear the statute is now. I suggest that you may wish to adopt some type of language as in Chapter 13, rather than what is being proposed. It is my impression that as the proposed rules stand now there may be confusion when these rules are implemented and practiced in reality. I share this insight from my experiences in monitoring access rules and law.

Recieved ten copies of a presentation regarding a hearing to be held on December 16, 1987.

Recieved as of today Dec 2nd 1987.

Peggy Graham
Assistant Clerk

STATE OF MINNESOTA

IN SUPREME COURT

C4-85-1848

In re Hearing to Consider Adoption
of Proposed Rules of Public Access
to Records of the Judicial Branch

To: The Honorable Chief Justice and Associate Justices of the Minnesota Supreme Court.

The Honorable Bruce R. Douglas and Michael B. Johnson hereby request the permission of this Court to appear at the hearing scheduled for 9:00 a.m., Wednesday, December 16, 1987, to make oral presentations as outlined in the materials attached to this request.

Dated: December 1, 1987

Bruce R. Douglas /By: Brenda L. Montgomery

Hon. Bruce R. Douglas
Judge of District Court
Tenth Judicial District
P.O. Box 207
Buffalo, MN 55313
Telephone: (612) 339-6881

Michael B. Johnson
Sate Court Administration
1745 University Ave. W. #302
St. Paul, MN 55104
Telephone: (612) 649-5936

STATE OF MINNESOTA

IN SUPREME COURT

C4-85-1848

Outline of Oral Presentations by Hon. Bruce R. Douglas, Member of the Supreme Court Advisory Committee on Rules Governing Access to Records of the Judiciary, and Michael B. Johnson, Staff to the Committee.

The Hon. Bruce Douglas will present a general overview of the proposed rules and the activities of the Advisory Committee. The overview will describe the frequency and nature of committee meetings, the comments received by the committee, the materials reviewed by the committee, and the drafting process. The overview will explain that, in preparing the proposed rules, the Advisory Committee attempted to provide a procedure for determining whether a particular record is accessible to the public. The overview will also highlight the presumption of accessibility underlying the proposed rules, new terminology, and several of the major issues and how they were resolved, or left unresolved, by the proposed rules.

Michael Johnson will present a detailed overview of the proposed rules; among the points to be made are the following: Rule 1 identifies records that are beyond the scope of the rules, including records of the various boards and commissions of the Supreme Court. As the Advisory Committee report indicates (at p. 5), proposed Rule 1 contemplates that the provisions of the Interim Rules on Access to Public Records regarding records of

the Board of Law Examiners and the Interest on Lawyers Trust Account program (Interim Rule 3, Subd. 2(o) and (p)) would be incorporated into existing rules governing these matters. This incorporation has already taken place with respect to the Board of Law Examiners by virtue of the adoption of comprehensive access provisions codified as Rule VI of the Rules of the Supreme Court for Admission to the Bar (Order of Supreme Court dated October 1, 1986). With respect to IOLTA records, the incorporation could easily be accomplished by adding the Interim Rule provision to Rule 2(d) of the Rules of Lawyer Trust Account Board.

Proposed Rule 2 sets forth the general policy of the rules, including the presumption of accessibility. The rule recognizes that records that are inaccessible to the public may disclosed to the public upon court order. The rules do not offer guidance for the determination of requests for such orders. Guidance might be found in applicable court rules or statutes. For example, Rule 34.02, subdivision 3B, of the Rules of Procedure for Juvenile Court, provides that disclosure of certain juvenile court records to the public requires a finding that disclosure is: in the best interests of the child; in the interests of public safety; necessary for the functioning of the juvenile court; or in the interests of the protection of the rights of a victim of a delinquent act.

Another example can be found in Minnesota Statutes, section 593.42, subdivision 5, which provides that juror's names and

qualifications forms can be disclosed to the public upon request unless the judge determines that, in the interests of justice, the information should remain confidential. Judges faced with requests for orders granting access might also seek guidance from the provisions of the data practices act regarding discovery of inaccessible data (Minn. Stat. § 13.03, subd. 6, balancing the interests of the agency and the parties and persons affected; notice to individuals affected but not before the court must be considered) and preparation of summary data (statistical or other derivative data which does not identify an individual; preparation of the data may be delegated to an individual as long as they agree to maintain the confidentiality of identities of individuals).

Proposed Rule 3 defines the terminology utilized in the rules. For the benefit of the public and court staff, the committee attempted to organize "records," a term that is broadly defined, onto three categories (case, administrative, and vital statistics records). The committee recognized that there may not always be a clear distinction between these categories. Thus, an Appendix for each category is included for illustrative purposes. For example, wiretapping warrants and applications are considered case records and are inaccessible pursuant to statutes listed in Appendix B. Judges and county attorneys must report applications and warrants to the State Court Administrator's Office (Minn. Stat. § 626A. 17); these reports are considered administrative records and are also inaccessible pursuant to statutes listed in

Appendix C.

Similarly, juvenile case files, including the court administrator's register of actions and indexes, are considered case records and are inaccessible pursuant to statutes and court rules (Minn. Stat. § 260.161; R. Juv. Ct. 34, 64). Trial courts are required to report various case related activities to the State Judicial Information System (Minn. Stat. § 480.17, reporting requirements); the reporting is summary in nature and does not name juveniles involved in the cases. Although case related, the compiled reports are considered administrative records; traditionally, these have been accessible to the public and other government agencies. This tradition continues under the proposed rules.

Proposed Rule 4, subdivision 1 lists the case records that are not accessible to the public. Part (b) of this subdivision is a "catch-all" provision for various court services information that is maintained by court administrators (as opposed to records maintained by court services officers or agencies). As the Advisory Committee Report indicates (at p. 9), court administrators traditionally treated these records as being inaccessible to the public, although existing statutes and court rules have not made this clear. Proposed Rule 4, subdivision 1(b) was not intended to override existing provisions that clearly delineate public accessibility to these records; such provisions are incorporated by reference into the proposed rules under parts (d) and (e) of this subdivision.

As an example, Minnesota Statutes, section 609.115, subdivision 6 prohibits public access to presentence investigation reports except by order of the court. Proposed Rule 4, subdivision 1(b) does not change this. In criminal cases in which there is no presentence investigation report (common for misdemeanors), the court files may contain information similar to that found in presentence investigation reports, and access to that information would be governed by subdivision 1(b).

Judicial work products and drafts, which are inaccessible to the public pursuant to proposed Rule 4, subdivision 1(c), are sometimes inadvertently made accessible to the public. Some trial court judges place their research memorandums in the court files for the benefit of the parties and the public, while other judges place them in court files merely for storage. Individual judges and court administrators should attempt to reach an understanding on this issue, either orally or in writing.

The last sentence of proposed Rule 4, subdivision 1 (d) reiterates a recent legislative enactment (1987 Minn. Laws c. 331, § 4) that precludes access to the appellate court case files involving certain juvenile matters. Although opinions of the court are accessible to the public, the remainder of the file, including briefs, are inaccessible unless otherwise ordered by the court. Pursuant to the legislation, the Supreme Court has allowed the public (i.e. the media) access to the entire appellate file on a case by case basis.

Proposed Rule 4, subdivision 2 indicates that the procedures

for restricting public access to case records are set forth in the rules of civil and criminal procedure and in the caselaw interpreting these rules. As the Advisory Committee Report indicates (at pp. 10-14), the committee could not reach a compromise on the appropriate procedure for restricting access to civil case records and the appropriate location of that procedure. The differences between the two proposed procedures reflect different opinions as to the strength of the presumption of accessibility embodied in the proposed rules. The majority's proposal incorporates the procedure normally accorded a common law right, while the minority proposal incorporates the protection normally afforded a constitutional right. The majority prevailed by a vote of 8 to 5, with the chair abstaining.

Both proposals contain a limitation that only recently became evident. Both proposals consider, as a factor, the likelihood of "revealing a common law trade secret or a trade secret as defined in M.S.A. 325C.01." (Adv. Com. Rep. at pp. 12, 15.) It is not uncommon to have a case in which Minnesota courts would apply the trade secret law of another jurisdiction; the definitions of what constitutes a trade secret could vary significantly, and a request for a restrictive order would depend on the fortuity of the law of the case coinciding with that of this state. This oversight could easily be removed from both proposals by allowing consideration of the trade secret law applicable to the secrets involved in the case.

A related oversight also appears in the provision of the minority proposal that allows interested parties to attend the closed portion of a hearing (the purpose of which is to inform the court of the nature of the record sought to be protected) if they "agree not to reveal the nature of the records if the court finds that they should be closed." (Adv. Com. Rep. at 15.) It is likely that the entire record sought to be protected may be disclosed to the court, not just the nature of the record. This oversight could be removed by requiring that interested parties agree not to reveal the nature "or the contents" (or substance) of the records.

Proposed Rule 5, subdivision 1 generally prohibits public access to personnel records, with certain exceptions. The exceptions that generate the most questions are those that allow public access to "the status of any complaints or charges against the employee, whether or not the complaint or charge resulted in disciplinary action," and "the final disposition of any disciplinary action and any supporting documentation." It is clear that, under these provisions, a letter terminating an employee and specifying the reasons for the termination is accessible to the public. Johnson v. Dirkswager, 315 N.W.2d 215, 222 (Minn. 1982). An accurate oral summary of the letter can also be given to the public. Id. A recent opinion of the Attorney General's Office (851-i, Cr. Ref. 172-d; dated Nov. 4, 1987), suggests that any documentation that "supports" a disciplinary action is accessible to the public; the opinion

recognizes, however, that the determination as to whether a particular document or portion of it "supports" a disciplinary action is a fact question that must be decided in the first instance by the disciplinary body.

This does not mean that court personnel are free to distribute this personnel information absent a request. An absolute privilege against defamation actions would appear to apply to few if any court personnel. Johnson v. Dirkswager, supra (reserved for top level, cabinet officials exercising their duty under the law). A statement is conditionally privileged only if it is made upon a proper occasion, from a proper motive, and is based on reasonable or probable cause. Lewis v. Equitable Life Assurance Soc., 389 N.W.2d 876, 889 (Minn. 1986).

Proposed Rule 5, subdivision 6 prohibits public access to state owned trade secrets as defined by common law or minnesota Statutes only. It is not contemplated that the court system would desire the protection of trade secret provisions of another jurisdiction. Should the need arise, court personnel may seek an amendment or an order of the Supreme Court pursuant to proposed Rule 5, subdivision 13.

Proposed Rules 7 and 9 supply a procedure for obtaining access to records. At least one committee member queried whether the State Court Administrator's Office (SCAO) has sufficient personnel to handle referrals and appeals from all 87 local court administrators and whether the efforts of the SCAO will be coordinated with the normal avenue of inquiry for local court

administrators, i.e. through the county attorney and/or the Attorney General. The current practice under similar provisions of the Interim Rules has largely been limited to informal requests for explanations of the rules and has not inundated the SCAO. Many court administrators indicate that county attorneys suggest that court administrators defer their questions about the rules to the SCAO. The SCAO routinely invites court administrators to verify the explanations with their county attorney, and the SCAO has had contact with various county attorneys and the Attorney General's Office with respect to a number of issues that have been raised.

Proposed Rule 8, subdivision 3 authorizes the assessment of a reasonable fee to cover the cost of providing certain commercially valuable compilations of information. Typical requests include compilations of all medical malpractice plaintiffs and tenants involved in unlawful detainer actions, and persons making these requests offer to pay the necessary programming or other compilation costs. The problem, however, is that most records custodians cannot replenish their budgets with the fees collected; the fees generally go directly to the local or state treasury. As a result, many requests cannot be granted.

Finally, several individuals, including one Advisory Committee member, have queried whether the proposed rules should address access by an individual to various court records containing information about that individual. This subject has not been perceived as a problem. Access to case records by

parties or litigants is generally covered by existing procedural rules and statutes. In addition, intervention to obtain access to civil case records is available to interested parties. It should also be noted that many court personnel may have rights of access to their own personnel records pursuant to personnel policies or pursuant to the data practices act (Minn. Stat. c. 13), which applies to records maintained by county personnel offices and state executive branch agencies.

COMMITTEE HEARING ROSTER OF Wednesday, December 16, 1987

TITLE: In Re Proposed Rules Governing Access to Records of the Judiciary.

FILE NO: C4-85-1848

APPEARANCES:

Hon. Bruce R. Douglas, Representative of the Committee, Judge-10th Judicial District

Michael B. Johnson, Staff person for committee

Rodger Adams, Star Tribune, Chairperson-1st Amendment Committee

Patricia Hirl Longstaff, Committee member

Richard Neumeister

John R. Finnegan, Pioneer Press Dispatch

Donald A. Gemberling, Administrative Dept., Director of Data Privacy Division

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PROPOSED RULES GOVERNING ACCESS TO RECORDS OF THE JUDICIARY

Supreme Court No: C4-85-1848

Hearing Date: December 16, 1987
9:00 a.m.
Supreme Court

NAME		DATE WRITTEN SUMMARY FILED	ORAL PRESENTATION YES	ORAL PRESENTATION NO	ORDER OF ARGUMENT	ALLOTTED TIME
Warren E. Litynski	Judge of Nicollet County District Court	10-7-87		X		
Rodgers Adams	Star Tribune. Chairperson 1st Amendment Committee	10-24-87	X			
Patricia Hirl Longstaff	Committee Member	12-2-87	X			
Hon. Bruce R. Douglas Michael B. Johnson	Judge-10th Judicial Dist. State Ct Administration	12-2-87	X X			
Richard Neumeister		12-2-87	X			
John R. Finnegan	Pioneer Press Dispatch	12-2-87	X			
Donald A. Gemberling	Admin. Dept., Director of Data Privacy Division	12-2-87	X			