STATE OF MINNESOTA

IN SUPREME COURT

A-1

IN RE PROPOSED AMENDMENTS TO
RULES OF CIVIL APPELLATE PROCEDURE

O R D E R

IT IS HEREBY ORDERED that a hearing be had before this court in the Courtroom of the Minnesota Supreme Court, State Capitol, on Tuesday, June 7, 1983, at 9:00 o'clock A.M., to consider amendments to the Rules of Civil Appellate Procedure. At that time, the court will hear proponents and opponents of the amendments.

IT IS FURTHER ORDERED that advance notice of the hearing be given by the publication of this order once in the Supreme Court edition of FINANCE AND COMMERCE, ST. PAUL LEGAL LEDGER, and BENCH AND BAR.

IT IS FURTHER ORDERED that the proposed rules be published in the NORTH WESTERN REPORTER advance sheets and in the May-June issue of BENCH AND BAR.

IT IS FURTHER ORDERED that all citizens, including members of bench and bar, desiring to be heard shall file briefs or petitions setting forth their position and shall notify the Clerk of the Supreme Court, in writing, on or before 4:00 P.M., June 3, 1983, of their desire to be heard on the proposed rules. Eleven copies of each brief, petition, or letter should be supplied to the Clerk.

Dated: April 27, 1983

BY THE COURT

Douglas K. Amdahl
Chief Justice

(6)

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ATTORNEYS AT LAW

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June 3, 1983

WRITER'S DIRECT DIAL NUMBER

340-7928

Minnesota Supreme Court
230 State Capitol Building
St. Paul, Minnesota 55155

A-1

Re: Proposed Minnesota Rules
of Civil Appellate Procedure

Justices of the Supreme Court:

The Appellate Rules Subcommittee of the Court Rules Division of the Minnesota Civil Litigation Section has conducted a survey of the Section's members with respect to certain of the proposed amendments to the Minnesota Rules of Civil Appellate Procedure. I have received 199 completed questionaires, which are enclosed with this letter along with a summary of the results. By this letter I request the Court's permission to testify concerning the results of the survey at the hearing to be held on June 7, 1983.

A number of the persons who responded to the survey included additional comments. One comment that appeared numerous times was that the requirement of a certified copy of the judgment or order, pursuant to proposed Rule 103.01, would result in unnecessary expense and delay. The survey and accompanying comments also reflect a strong sentiment that oral argument be allowed in all cases other than those that the Rules expressly exclude, and that written opinions be issued in all cases. A substantial majority also favored en banc rather than panel consideration by the Court of Appeals of cases conflicting with prior Court of Appeals decisions, declaring

a statute unconstitutional, or of decisions inconsistent with Supreme Court precedent. I will present a more detailed discussion of the survey for the Court's information at the June 7 hearing.

Very truly yours,

Eric J. Magnuson
Chairman
Appellate Rules Subcommittee
Civil Litigation Section
Minnesota State Bar Association

EJM/be
Enclosure

cc: Mr. Duane Peterson

QUESTIONNAIRE

1) Should written opinions be required in all cases decided by the Court of Appeals? (Rule 136)

Yes 163 (81.9%)
(No Opinion: 1.0%)
No 34 (17.1%)

2) Should the time for submitting briefs (30 days for appellant, 30 days for respondent) be changed? (Rule 131)

Yes 99 (49.8%) Days for appellant _____
(No Opinion: 1.0%)
No 98 (49.2%) Days for respondent _____

3) Should a prehearing conference be held in all cases before the Court of Appeals (Rule 133)

Yes 74 (37.2%)
(No Opinion: 5.0%)
No 115 (57.8%)

4) Should the time for ordering a transcript begin to run from the date the notice of appeal is filed? (Rule 110)

Yes 141 (70.9%)
(No Opinion: 6.0%)
No 46 (23.1%)

5) Should the Court of Appeals screen cases and hold oral argument in its discretion rather than permit oral argument in all cases other than those specifically excluded by the Rules? (Rule 134)

Yes 80 (40.2%)
(No Opinion: 0.5%)
No 118 (59.3%)

6) Should the Rules provide for en banc consideration, or for consideration by a group of more than three judges of the Court of Appeals, of any decision:

a) creating a conflict with a prior decision of the Court of Appeals?

Yes 157 (78.9%)
(No Opinion: 0.5%)
No 41 (20.6%)

b) declaring a statute or ordinance unconstitutional?

Yes 143 (71.9%)
(No Opinion: 0%)
No 56 (28.1%)

c) overturning precedent established by the Minnesota Supreme Court?

Yes 155 (77.9%)

No 41 (20.6%)

(No Opinion: 1.5%)

7) Other comments:

Of the 99 persons who answered yes to question 2, 26 suggested retaining the present briefing schedule of 60 days for appellant and 45 days for respondent; 37 favored 45 and 30 days. Other suggestions ranged from 75 and 60 days to 30 and 15 days.

Please return this questionnaire to:

Minnesota Civil Litigation Section
Appellate Rules Subcommittee
Eric J. Magnuson, Chairman
Rider, Bennett, Egan & Arundel
2500 First Bank Place West
Minneapolis, Minnesota 55402

(5)

minneapolis
city of lakes

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SUPREME COURT
FILED
JUN 3 1983
WAYNE TSCHIMPERLE
CLERK

June 3, 1983

Mr. Wayne Tschimperle
Clerk of Court
Minnesota Supreme Court
230 State Capitol
St. Paul, MN 55155

A-1

Re: Proposed Amendments to Rules of Civil Appellate Procedure

Dear Mr. Tschimperle:

In response to the Supreme Court's request for comments about the Proposed Amendments to the Rules of Civil Appellate Procedure, I offer the following suggestions:

1. Rule 103.01, Subd. 3 (e) states that filing fees shall not be required when "the appellant is the state or an officer, agency or governmental subdivision of the state." Under the language of this rule, it appears that filing fees would be required of municipal officers, municipal employees, and municipal agencies, since such parties are not officers or agencies "of the state." Municipal officers, employees and agencies should be exempt from filing fees for appeals for the same reasons as state parties. One governmental agency should not charge fees to another; past practices following this policy should continue. To do so, the language of Rule 103.01, Subd. 3 (e) could be modified to read: "the appellant is the state, an officer, employee, agency or governmental subdivision of the state, or an officer, employee or agency of a governmental subdivision of the state."

2. Rule 107, Subd. 2 (e) states that no cost bond is required "when the appellant is the state or an officer, agency or governmental subdivision of the state." Under the language of this rule, it appears that a cost bond would be required of municipal officers, municipal employees, and municipal agencies, since such

parties are not officers or agencies "of the state." Municipal officers, employees and agencies should be exempt from the posting of a cost bond for the same reasons as state parties. In the past, cost bonds have not been required from municipal parties, and municipal parties have always paid costs when awarded. The language of Rule 107. Subd. 2 (e) could be modified to read: "when the appellant is the state, an officer, employee, agency or governmental subdivision of the state, or an officer, employee or agency of a governmental subdivision of the state."

3. Rule 139 allows the recovery of costs and disbursements. Presumably this rule does not change case law holding that unless specifically authorized by statute, costs and disbursements may not be taxed against the state and governmental subdivisions of the state acting in their sovereign capacities. See State v. Bentley, 224 Minn. 244, 247, 28 N.W.2d 770, 771 (1947). It is unnecessary that this case law be codified in the Rules of Civil Appellate procedure when no change is intended.

Thank you for this opportunity to submit comments about the Proposed Rules of Civil Appellate Procedure. Please accept these written comments in lieu of an oral presentation.

Respectfully submitted,

ROBERT J. ALFTON
Minneapolis City Attorney
Attorney Registration Number:
1119
A-1700 Government Center
Minneapolis, MN 55487
612/348-2021

6-3 -- Copy to each Justice, Comm Johnson & L. Harmon

(4)

STATE OF MINNESOTA
DISTRICT COURT
SECOND DISTRICT

JOSEPH P. SUMMERS
JUDGE

May 23, 1983

Mr. Wayne Tschimperle
Clerk of Supreme Court
State Capitol
St. Paul, MN. 55155

A-1

RE: Civil Appellate Rules

Dear Mr. Tschimperle:

Enclosed is the original and eleven copies of a brief regarding the proposed Civil Appellate Rules. I do not desire to be heard at the Juen 7, 1983, hearing.

Sincerely,

Joseph P. Summers

JOSEPH P. SUMMERS

JPS:hk

Enclosures: 12

5-24 -- Copies distributed

Court House, Saint Paul, Minnesota 55102

612 298-4759

STATE OF MINNESOTA

IN SUPREME COURT

A-1

IN RE: PROPOSED AMENDMENTS
TO RULES OF CIVIL APPELLATE
PROCEDURE

BRIEF OF JUDGE JOSEPH P. SUMMERS

I. Rule 110.03 and 110.04: These rules permit the parties to proceed without a transcript. I think the practice should be encouraged.

The rules as proposed allow a trial judge to frustrate the parties and force purchase of a transcript by withholding his or her approval of the agreed statement of the proceedings.

I suggest that the rules provide that if the trial judge wishes to disapprove the agreed statement submitted by the parties he or she must file a statement setting forth the reasons therefor. If no such statement is filed, the agreed statement should be deemed approved.

II. Rule 120.

1. The term "trial court" as defined in Rule 101.20, Subd. 4 accurately describes the classes of persons comprehended by the term "inferior". As a matter of taste, I would prefer not to be officially designated as "inferior", leaving everyone to his or her own thoughts on the point.

2. I believe the rule should state unequivocally that the filing of an application for a writ of mandamus or prohibition does not stay proceedings in the trial court unless a temporary

stay is ordered by a judge of the Court of Appeals.

III. Rule 136. I favor the rule advanced by the majority of the committee. The attached extract from my article in Minnesota Trial Lawyer, March-April, 1982, sums up my feelings on this point.

Respectfully submitted,

JOSEPH P. SUMMERS
Judge of District Court
Court House
St. Paul, MN. 55102
612-298-4759

DATED: This 23 day of May, 1983.

The growing caseload of our Supreme Court has led to the disposition of a growing number of appeals without discursive opinions. Some people think this is bad; I think it is good. An intermediate court will free up more time for the Supreme Court to write opinions, and an intermediate court will write additional opinions of its own. Some people think this is good. I think it is bad.

The mission of an appeals court ought to be to collegially determine disputed points of law and correct errors. Time spent writing opinions should be looked upon as time diverted from the mission.

I think it is a fallacy to assume that an appeals court must put out two or three hundred opinions per year in order to "clarify" the law. I venture to guess that the common law produced fewer reported opinions in the 725 years between the Norman Conquest and the adoption of the U.S. Constitution than the courts of the United States now put out in a year. Of making books there is no end, yet the law grows more confused and complex rather than less.

Our Minnesota Supreme Court has, over the years, been distinguished by the brevity and clarity of its opinions. To prepare this article I conducted a "windshield survey" of the Northwestern Reporter, and this is what I found:

There are 45 opinions of the Minnesota Supreme Court in 1 N.W.2d, published in 1941. They average 2 1/2 pages each.

By 1981, our Court's opinions still were 2 1/2 pages short, but in order to *find* 45 opinions of our Court I had to plow through 300, 301, 302, and 303 N.W.2d.

Why? Principally, because these volumes are now packed with judicial logorrhea from states which have intermediate appellate courts.

Take Iowa, for example. Iowa has an intermediate appellate court. The opinions of its Supreme Court are, on the average, 40% *longer* than those of our court. Armed with the leisure produced by its intermediate appellate court, the Iowa Supreme Court in 1981 produced

- a 3-page opinion on whether to grant an application for leave to take an interlocutory appeal of a grant of partial summary judgment;
- a 2 1/2 page opinion on whether to dismiss an appeal because of counsel's failure to obtain an extension of time to file a transcript;
- a 4 1/2 page opinion, in an interlocutory appeal, upholding substitute service on a third-party defendant and permitting the trial to go on.

(con't. on p. 20)