STATE OF MINNESOTA

IN SUPREME COURT

In the Matter of Rules of Pleading, Practice and Procedure in Civil Actions and In the Matter of Rules of Civil Appellate Procedure	)))))	ORDER FOR HEARING ON ADOPTION OF PROPOSED AMENDMENTS TO THE RULES FOR DISTRICT AND MUNICIPAL COURTS AND ON THE ADOPTION OF NEW RULES OF CIVIL APPELLATE PROCEDURE

WHEREAS the Advisory Committee appointed by the Supreme Court under Section 480.052 Minn. Stat. to assist the court in considering and preparing rules and amendments thereto governing the regulation of pleading, practice, procedure, and the forms thereof in all the courts of this state has reported and recommended to this court the adoption of proposed amendments to the Rules of Civil Procedure for the District Courts and the adoption of corresponding amendments to the Rules of Civil Procedure for the Municipal Courts, so far as the same may be consistent with the jurisdiction of the municipal courts; and

WHEREAS, the Advisory Committee has also reported and recommended to this court the adoption of new Rules of Civil Appellate Practice to replace the existing Rules of Practice of the Supreme Court of Minnesota; and

WHEREAS, the proposed amendments and the proposed new rules are on file and open to inspection in the office of the clerk of this court and whereas the same will be published and distributed by West Publishing Company, on or about April 25, 1967, to the bench and the bar of this state.

NOW, THEREFORE, IT IS HEREBY ORDERED That a hearing be had before this court in the State Capitol at St. Paul, Minnesota on Thursday, June 1, 1967 at 9:30 A.M. at which time the court will hear proponents or opponents of said proposed rules.

IT IS FURTHER ORDERED That members of the bench and bar desiring to be heard shall file briefs or petitions setting forth their position and shall also notify the clerk of the Supreme Court, in writing, on or before May 20, 1967, of their desire to be heard, specifying the particular rule or subject they wish to discuss. Prior to June 1, 1967, the court will file with the clerk a memorandum setting forth the names of those who wish to participate in the hearing, the order in which they are to be heard, the subjects they are to discuss, and the allotment of time to each.

Dated March 29, 1967

BY THE COURT

Chief Justice

STATE OF MINNESOTA

IN SUPREME COURT

IN RE PROPOSED AMENDMENTS TO RULES OF CIVIL PROCEDURE FOR THE DISTRICT AND MUNICIPAL COURTS

AND

IN RE PROPOSED RULES OF CIVIL APPELLATE PROCEDURE

ORDER EXTENDING TIME FOR BRIEFS

WHEREAS, oral arguments were heard on June 1, 1967 on the proposed amendments to the Rules of Civil Procedure and on the proposed Rules of Civil Appellate Procedure, at which time, several persons requested additional time to file briefs on the proposed rules, and pursuant to paragraph (2) of the Court's order of May 26, 1967;

IT IS HEREBY ORDERED that the time within which all interested persons may file briefs with the Clerk of this Court be extended to July 31, 1967.

Dated June 2, 1967

BY THE COURT

Chief Justice

SUPREME COURT
FILED
JUN 2 1967
MAE SHERMAN
CLERK

WINTER, LUNDQUIST & SHERWOOD
ATTORNEYS AT LAW
FIRST STATE BANK BUILDING
WHEATON, MINNESOTA 56296

A. R. JOHANSON (1899-1964)
A. H. WINTER
MARVIN E. LUNDQUIST
BRUCE E. SHERWOOD
DONALD B. PEDERSEN
WM. W. GARRISON

TELEPHONES
563-8244
563-8245
AREA CODE 612

May 19, 1967

Original (1 only)

Miss Mae Sherman
Clerk, Supreme Court
State Capitol
St. Paul, Minnesota

Re: Changes of Rules of Civil Procedure
35394

Dear Miss Sherman:

We herewith enclose for filing petition and memorandum in this matter. The undersigned has a commitment for a date certain on May 29, 1967 in connection with a trial in district court, and it probably will be impossible for me to attend the hearing on June 1st, 1967, but I would appreciate your calling my petition and memorandum to the court's attention in the event I am not personally able to be present.

Personal regards.

Respectfully yours,

Marvin E. Lundquist

MEL:ck
enc.

STATE OF MINNESOTA

IN SUPREME COURT

- - - 0 - - -

In the Matter of Rules of Pleading,
Practice and Procedure in Civil Actions

and

In the Matter of Rules of Civil
Appellate Procedure

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P E T I T I O N

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The Advisory Committee appointed to assist the Supreme Court in considering and preparing amendments to the Rules of Civil Procedure having recommended a change in Rule 26.02 permitting discovery of insurance coverage, the Supreme Court issuing an order for hearing in that connection and soliciting briefs or petitions from the members of the bench and bar, the undersigned member of the bar of the State of Minnesota hereby petitions the Supreme Court for an opportunity to be heard in opposition to the granting of said change upon the grounds set out in the attached memorandum.

Dated May 19, 1967.

Marvin E. Lundquist
Attorney at Law
First State Bank Building
Wheaton, Minnesota.

STATE OF MINNESOTA

IN SUPREME COURT

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In the Matter of the Rules of Pleading,
Practice and Procedure in Civil Actions,

and

In the Matter of Rules of Civil
Appellate Procedure,

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M E M O R A N D U M

- - - 0 - - -

We respectfully submit that the supreme court enunciated the proper rule as a matter of public policy in holding that the amount of insurance carried by a defendant is not discoverable in an action brought to recover damages for the sole purpose of evaluating a personal injury case in order to determine whether it should be settled. Jeppesen v. Swanson, 243 Minn. 547, 68 N.W. 2d 649. Nothing has occurred since that decision to justify a change in Rule 26.02 to overrule in effect the Jeppesen case. Nor is there any great urge among the bar or the public to justify the change.

Plaintiff's counsel in Jeppesen argued that before plaintiff and his attorneys could properly evaluate a figure for settlement or trial, it was necessary that they know the policy limits of the defendants. In a lengthy and considered opinion, the supreme court points out the fallacy of plaintiff's position.

The supreme court cites McClure v. Boeger (e.d.Pa.) 101 F. Supp. 612, and quotes Chief Judge Kirkpatrick, as follows:

> "...Every argument that could be made in favor of requiring the disclosure could also be made in favor of compelling a defendant in any civil case, tort or contract, to furnish the plaintiff with full information as to his financial resources, and, in the case of an individual, as to the extent of his private fortune."

Chief Judge Kirkpatrick continues:

> "Of course, the fact that the information would not be relevant and that the fact of liability insurance could not be introduced at the trial does not necessarily forbid discovery, but whatever advantages the plaintiff might gain are not advantages which have anything to do with his presentation of his case at trial and do not lead to disclosure of the kind of information which is the objective of discovery procedure."

To require the disclosure of a policy limits violates the spirit and the rule regarding discovery, because disclosure of insurance limits clearly would not be admissible on a trial of the issues involved in the case, nor would the fact or information lead to the discovery of evidentiary information in some way related to the proof or defense of the issues involved in the trial of the case. Where discovery is sought relating to information which can have no possible bearing on the determination of the action on its merits, discovery has uniformly been resisted. It is not intended to supply information for the personal use of a litigant that has no connection with the determination of the issues invoved in the action on the merits. Balazs v. Anderson (N.D.Ohio) 77 F. Supp. 612. There clearly

is no distinction between knowledge concerning the extent of insurance coverage and similar knowledge as to the extent of defendant's financial ability to pay. No one argues that the latter data is discoverable, and we respectfully submit that there is no logical reason developed in the twelve years the Jeppesen case has been the law in Minnesota to overrule it.

We commend to the court's consideration the case of Disserier v. Manning, 207 F. Supp. 476 (1962 D.C., N.J.), where the divergent rulings and views advanced on this issue are reviewed. The court notes that under New Jersey law "the existence or non-existence of liability insurance is not evidentiary matter in negligence actions," and then proceeds to point out that under Rule 26 (b) questions asked must call for information "relevant to the subject matter involved" in the action, but that the inquiry need not be limited to admissible evidence "if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence." The court approves the line of authority denying discovery, saying:

> "The cases denying discovery in this area of insurance, while recognizing the broad scope of the rule and the right of a plaintiff to inquire into any relevant matter, not privileged, hold that the existence or non-existence of insurance has no relevancy to the issues of liability and damages in a negligence action; that such matter is not admissible as evidence at the trial; that an inquiry concerning such insurance is not reasonably calculated to lead to the discovery of admissible evidence; and that to permit such discovery is an invasion of a defendant's right of privacy before there is any determination of liability."

The following state courts are in accord with the Minnesota court, as enunciated in Jeppesen:

> Arizona. D. I. Pietruntonio v. Superior Court, 84 Ariz. 291, 327 P.2d 746; Delaware. Ruark v. Smith, 51 Del. 420, 147 A.2d 514 (1959); Florida. Brooks v. Owens, 97 S.2d 693 (1957); Nevada. State ex rel Allen v. Second Judicial District Court, 69 NEV. 196, 245 P.2d 999 (1952); Oklahoma. Peters v. Webb, 316 P.2d 170 (1957); Bean v. Best, 76 S. D. 462, 80 N.W.2d 565 (1957).

In D. I. Pietruntonio, discovery was denied under state rules because of irrelevancy. In Ruark, the court concluded that the better reasoned cases disallowed the discovery. In Brooks, the court said: "The basic concept of our judicial system is to insure to citizens of this state and nation an entry into the courts for the purpose of (1) proving liability of an injury and (2) proving damages occasioned thereby. Limits of insurance carried by a defendant in a cause of action are not relevant to either of those basic purposes."

See also Flynn v. Williams, 30 F.R.D. 66 (1958 D.C., Conn.), Rosenberger v. Vallejo, 30 F.R.D. 352 (1962), McDaniel v. Mayle, 30 F.R.D. 399 (1962 D.C., Oh.), Hillman v. Penny, 29 F.R.D. 159 (1962) and Gallimore v. Dye, 21 F.R.D. 283 (1958 D.C. Ill.).

In Flynn, the plaintiff invoked Federal Rule of Civil Procedure 34 for the production of documents, and discovery was denied, the court saying:

> "The information sought is beyond the scope of discovery under the rule, for it is not relevant to any present issue in the

action between plaintiffs and defendants."

In Hillman, the court said:

> "If insurance can be discovered, then logically it should follow that all assets which may be available to satisfy any judgment should likewise be discoverable. The basic is, therefore, whether the resources of the defendant should be fully disclosed upon discovery in an automobile accident case prior to the determination of liability and damages...It seems to the court that not only is such inquiry going considerably astray from the issues of liability and damages, but that the plaintiff's interest in and reasons for acquiring this information are consistently outweighed by the defendant's right to refrain from disclosing his confidential affairs until such time as such disclosure may be relevant or necessary in the interest of justice."

See also State ex rel Bush v. Elliott, 363 S.W.2d 631, (Mo. 1963). Plaintiff's counsel in this case demanded a production of the liability insurance policy. The court held that the policy need not be produced for these reasons: (1) Production of the policy was not relevant under the best evidence rule, since the name of the insurer was sufficient for examining the jury panel concerning possible interest; (2) Information contained in the document was not shown to be necessary for the discovery of the identity of the vehicle involved, since there was no issue as to ownership or agency; (3) Provisions of the statute requiring certain provisions to be made a part of the insurance contract could not have any relevance until after judgment; (4) Information contained in the policy as to the extent of coverage would not be necessary for possible future garnishment since speculative, and if the plain-

tiff "obtains a judgment, he knows against whom to proceed to collect the insurance money, and the information as to policy limits which he now seeks would then be relevant."; and (5) The information as to coverage would not be relevant as promoting the disposition of litigation without trial, since the facts sought could not be admissible at trial or lead to the discovery of admissible evidence. Counsel for the defendant argued: "There being no issue in this case of agency, punative damages, or ownership of defendant's vehicle, the interrogatory in issue is simply not relevant to the subject matter and seeks privileged information outside of and beyond the pleadings. Neither is the interrogatory reasonably calculated to lead to the discovery of admissible evidence. Discovery relates only to the subject of the suit and not to the solvency of litigants."

See also Hooker v. Raytheon Co., 31 F.R.D.120 (1962 S.B., Cal.) This involved a Jones Act case for wrongful death, and discovery was denied as to insurance coverage.. The court held that the insurance policy was not discoverable under the

circumstances.

We call the court's attention also to Bisserier v. Manning, 207 F. Supp. 476 (D.C.N.J.). This case involved an automobile negligence action, and the defendant was held not to be required to disclose limits of his liability insurance.

Under the federal rules, an interrogatory as to liability insurance in a personal injury action arising from an automobile collision was held improper. McNelley v. Perry, 18 F.R.D. 360 (D.C. Tenn.). In Roembke v. Wisdom, 22 F.R.D. 197 (D.C.Ill.), the court held in an action arising out of an automobile accident that an interrogatory as to whether the defendant had insurance at the time of the collision was improper.

The court in Cooper v. Stender, 30 F.R.D. 389 (D.C. Tenn.) held in a personal injury action that the defendant was not required to state the limitation of his liability insurance.

See also the case of DiBiase v. Rederi, 32 F.R.D. 41 (D.C. N.Y.) in which the party was not required to answer an interrogatory as to insurance coverage until after the return of the verdict.

In the case of Verrastro v. Grecco, 21 Conn. Supp. 165, 149 A.2d 307, the court held in a negligence action that the defendant may not be compelled to disclose whether he had liability insurance, and, if so, the amount thereof and a copy of the policy. It was held that this request did not fall within the rule of practice requiring a showing that disclosure sought would assist in the prosecution of the action.

In McKee v. Walker, 21 Conn. Supp. 168, 149 At1.2d 704 the court he1d in a ma1practice action, that the p1aintiff's motion for production and inspection as to insurance coverage be denied.

See a1so Langlois v. A11en, 30 F.R.D. 67 (D.C.Conn.) which invo1ved an automobi1e negligence case, the court ho1ding that the defendant was not required to disc1ose 1iabi1ity coverage, since the question whether defendant might be able to satisfy any judgment which might be obtained against him had no re1evancy to whether any judgment shou1d be rendered against him.

In Pati11o v. Thompson, 106 Ga. App. 808, 128 S.E.2d 656, the court he1d that since the fact that the defendant is covered by a po1icy of insurance in an ordinary negligence action is not re1evant or admissib1e in evidence, the court proper1y refused to compe1 the production of such po1icy for examination by the p1aintiff's counse1. The court cited the annotation in 41 A.L.R. 2d 968 and stated further that the 1itigant has at 1east a qua1ified right to discovery, but not to obtain po1icy 1imits.

The Montana court in State ex re1 Hersman v. District Court of Sixth Judicia1 District, 381 P.2d 799, he1d that the disc1osure of an insurance coverage may not be compe11ed in a negligence action.

See a1so Mecke v. Bahr, 177 Neb.877, 129 N.W.2d 573. The court he1d that the discovery statute did not permit, before

determination of liability, discovery of coverage and limits of liability of insurance policies of automobile owner involved in an accident where the information sought was not admissible at the trial and disclosure of insurance information did not appear to lead to discovery of admissible evidence.

See Hardware Mutual Casualty Co. v. Hopkins, a New Hampshire case decided in 196 A.2d 66, in accord with the above cited cases.

C O N C L U S I O N

Although there are cases to the contrary, we respectfully submit that plaintiff's claim that he could not properly evaluate the case for settlement or trial as expressed in Jeppesen has no more validity today than it did in 1955, and that there is no showing that divulging policy limits would lead to more settlements and quicker dispositions of personal injury actions. In fact, the contrary probably is true. We respectfully request the court not to effect a change in the rule.

Respectfully submitted,

Marvin E. Lundquist
Attorney at Law
First State Bank Building
Wheaton, Minnesota.

SCHLAGEL & SCHLAGEL
ATTORNEYS AND COUNSELORS AT LAW
1506 PIONEER BUILDING
ST. PAUL, MINNESOTA 55101

GILBERT J. SCHLAGEL
ALDEN E. SCHLAGEL

224-5827

May 19, 1967

Clerk of Minnesota Supreme Court
State Capital
St. Paul, Minnesota

District
35394

Gentlemen:

Attached please find original and four copies of Petition in opposition to the proposed amendment to Rule 35 which provides for waiver of medical privilege. Please place my name on the calendar to speak in opposition to the proposed amendment.

Very truly yours,

SCHLAGEL & SCHLAGEL

Gilbert J. Schlagel

GJS:rw
enc.

PETITION

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

Sirs:

We the undersigned members of the Bar admitted to practice before this Court oppose the proposed amendment to Rule 35 which amendment provides for waiver of Medical Privilege. We most urgently express our strong opposition to the proposed addition of automatic waiver of medical privilege by simply making a claim involving physical, mental or blood condition for the following reasons:

(1). Such an amendment will dangerously impede the free flow of confidential information between doctor and patient.

(2). Will result in the taking of depositions from doctors who have treated plaintiffs in the past and its practical effect will be to further separate the professions of medicine and law. It is common knowledge that busy doctors are already reluctant to treat patients for injuries which may ultimately require the doctor's presence in Court. How much more reluctant the doctors will be to treat the injured when they are summoned for depositions 5, 10 or even 20 years after treating an individual.

(3). Will result in prohibitive costs to plaintiffs to successfully prosecute their claims.

Name	Address	Year admitted to practice in Minnesota
Gilbert J. Schlagel	1506 Pioneer Bldg. St Paul Minn	1951
Allen G. Schlagel	1506 Pioneer Bldg. St Paul, Minnesota	1958
James P Nelson	1607 Pioneer Bldg. St Paul, Minn.	1960
Roger D Sayre	111 Endicott Bldg St Paul Mn	1964
Paul O Ane	111 Endicott or Robert	1964
Elmer Wiblishauser	810 Pioneer Bldg	1938
Orten Paulos	372 St Orten	1958
Anthony Athenas	372 St Peter, St Paul, Minn	1961
Aly B Seibel	378 ft Pete, St Paul	1957
Patrick J Sullivan	620 Commerce Bldg St. Paul, Minn	1958

Daniel A. Kammeier	620 Commerce Bldg St. Paul, Minn.	1964
Robert F Wills Jr.	817 Pioneer Bldg St Paul, Minnesota	1951
John M Lyden	1222 - Pioneer Bldg St Paul Minn	1923

J

JOHNSON, ESSLING, MALONE AND WILLIAMS

ATTORNEYS AND COUNSELORS AT LAW
(AN ASSOCIATION)

TELEPHONES: 224-4818 – 224-0778
(AREA CODE 612)

JOSEPH P. JOHNSON
WILLIAM W. ESSLING
THOMAS MALONE
CHARLES H. WILLIAMS, JR.

May 19, 1967

SUITE 730 MINNESOTA BUILDING
SAINT PAUL, MINN. 55101

Miss Mae Sherman
Clerk of Supreme Court
Saint Paul, Minnesota

District [redacted]

Re: In the Matter of Rules of Pleading, Practice and Procedure in Civil Actions and in the Matter of Rules of Civil Appellate Procedure
35394

Dear Miss Sherman:

Pursuant to the Order of the Court dated March 29, 1967, I herewith hand you original and three copies of Petition by the undersigned and Petition signed by one hundred members of the Ramsey County Bar.

I desire to be heard at the hearing set for June 1, 1967, on the request for extension of time and on the subject of the proposed amendment to Rule 35 and Rule 33. I request an allotment of at least fifteen minutes of time. Mr. John S. Connolly, an attorney in St. Paul, joins in this request to be heard on the subject of extension of time and Rules 33 and 35. He would likewise appreciate an allotment of fifteen minutes of time.

Yours very truly,

William W. Essling

WWE:rl
Enclosure

STATE OF MINNNESOTA

IN SUPREME COURT

In the Matter of Rules of Pleading, Practice and Procedure in Civil Actions and in the Matter of Rules of Civil Appellate Procedure.

PETITION

Your Petitioner, WILLIAM W. ESSLING, pursuant to the Order of this Court dated March 29, 1967, does in his own behalf and on behalf of the one hundred Ramsey County lawyers who have joined in the Petition attached hereto, represents and shows to the Court:

1. REQUEST FOR EXTENSION OF TIME.

(a) That the proposed amendments are of broad and sweeping significance and will materially affect the practice of law by Petitioner and all other attorneys.

(b) That the said amendment proposals have only recently reached the attention of the Minnesota Bar in the specific form proposed.

(c) That some attorneys have not received the specific proposed amendments and those who have received them have not had time to adequately read, study and consider them.

(d) That the method of submitting the proposed amendments to members of the Bar varies substantially from the method followed at the time consideration of the tentative draft and subsequent formal adoption of the original rules. That nearly all members of the Minnesota Bar anticipated that the proposals would be considered and discussed at

District Bar Association meetings and at the annual conventions of their associations.

(e) That the undersigned and the one hundred attorneys joining in the attached Petition respectfully requests that the time for filing notices of appearance for briefs and hearings in the matter be continued to a suitable date subsequent to September 25, 1967.

2. PROPOSED AMENDMENT TO RULE 35.

That Petitioner, as well as the other lawyers joining in the attached Petition, had no knowledge or information that the proposed amendments to the Rules would include a proposal to affect an automatic waiver of the medical privilege. That like other lawyers, he has not had sufficient time to properly brief or raise objections to the proposals. Some points or arguments intending to support objections to the proposal are as follows:

(a) ~~A~~ The proposed amendment adopts a minority view on the subject of waiver of medical privilege. In the United States, more than thirty-five states recognize and give effect to the privilege. The British Commonwealth in Great Britain follows the proposed minority view. However, some of the Canadian provinces, some of the Australian provinces, and New Zealand follow the majority view in recognizing and giving force to the medical privilege. Generally, throughout the world, on the European Continent, and in those nations following the Civil Law, full and complete recognition is accorded the medical privilege.

(b) The proposal to effect an automatic waiver of the medical privilege is more properly a legislative matter. This is the view repeatedly announced by the Minnesota Supreme Court. See Hillary v. Minneapolis Street Railway, 104 Minn. 432, 116 N. W. 933 (1908), where the Court referring to the statute creating the medical privilege and considering some arguments for changing the statute said:

"The wisdom of making a change should be left to the legislature".

In Ost v. Ulring, 207 Minn. 500, 202 N. W. 207 (1940), the Court again was presented with some argument suggesting a change in the statutory rule and said:

"But it is for the legislature to amend or repeal the law."

In Nelson v. Ackerman, 249 Minn. 582, 83 N. W. 2d, 500 (1957), the Court, in considering the medical privilege statute, said:

"As far as the statute goes, it creates a right with which the courts have no right to interfere".

In Soukop v. Summer, 269 Minn. 472, 131 N. W. 2d, 551 (1964), the Court, in considering the statutory medical privilege, said:

"We cannot abrogate the statutory privilege by judicial construction."

The reach of the medical privilege is far greater than simply a procedural rule to be followed in court proceedings.

In Snyker v. Snyker, 245 Minn. 405, 72 N. W. 2d, 357 (1955), the Court, in recognizing the broad basis of the medical privilege statute said:

"This statutory shield is solely for the protection of the patient and is designed to promote health and not truth."

"In dealing with evidentiary privileges of this character, it is to be borne in mind that their . . . . warrant is the protection of interests and relationships . . . . of sufficient social importance to justify some incidental sacrifice of sources of facts needed in the administration of justice."

(c) The idea of a confidential relationship between doctor and patient long preceded the idea of mechanical perfection in judicial proceedings. As far as it can be determined, the medical privilege concept arose approximately 2,258 years before there was a Supreme

Court of Minnesota, for its origin is traceable to the Oath of Hippocrates propounded in 400 B. C.

(d) The report of the Advisory Committee does not indicate any consultation with the medical association, whereas it has long been the practice, at least in the Second Judicial District, to consult with and work closely with the medical profession on all matters concerning the relations between doctors and lawyers. We have a standing committee made up of members of both professions which considers such matters and promulgates written rules for the guidance of doctors and lawyers.

(e) In the thinking of many lawyers who have had time to consider the wording of the proposed amendment, many questions are raised both as to the meaning and the desirability of the words and mechanics affected by them. For example, a husband and father of five small children is seriously injured in an auto accident. Who is to say that his efforts to recover the damage and loss is a voluntary act and not a necessary required act?

(f) If the mechanical administration of a court proceeding is truly impaired by recognizing privileged communications, why don't we likewise seek to abolish the privileges that exist as to communications between attorney and client, husband and wife, priest and penitent?

(g) The proposed amendment is a complete departure from the Federal rules and does not follow the general scheme of conforming as closely as possible to the Federal rules. This particular facet can also be said in respect to the proposed amendment to Rule 33 which appears to be quite complicated and subject to many objections by lawyers.

WHEREFORE, Petitioner and those joining herein request that the time for filing notices of appearance, of briefs and hearings in the matter be continued to a suitable date subsequent to September 25, 1967.

Respectfully submitted,

WILLIAM W. ESSLING

STATE OF MINNESOTA

IN SUPREME COURT

In the Matter of Rules of Pleading, Practice and Procedure in Civil Actions and In the Matter of Rules of Civil Appellate Procedure.

P E T I T I O N

The undersigned Attorneys and Counselors at Law all being Members of the Bar of Minnesota and of the Second Judicial District represent and show to the Court:

1. That the Amendments as proposed by the Advisory Committee in the above matters are of broad and sweeping significance and will materially affect the practice of law by the undersigned.

2. That the said amendment proposals have only within the past few days reached the attention of the undersigned in the specific form proposed.

3. That in particular the proposed amendment to Rule 35, Civil Procedure District Courts, is vigorously opposed by a majority of the members of the Bar.

4. That it is necessary and imperative for the members of the Bar to have further time within which to consider these matters, to discuss it among themselves and at the Conventions of their Associations in June and July next and to formally prepare and present their views and objections to this Court.

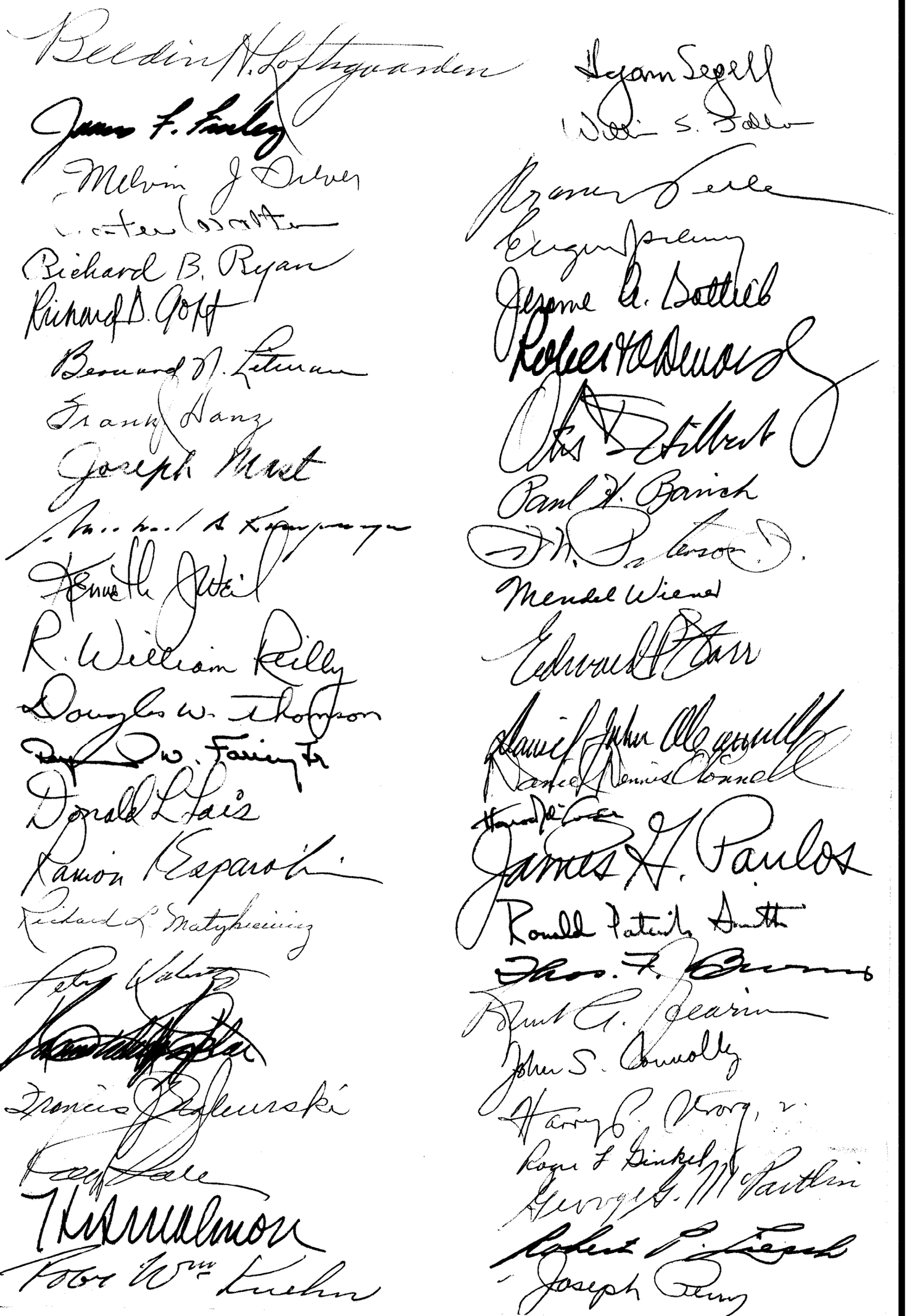
WHEREFORE it is respectfully requested that the time for filing Notices of Appearance, for briefs and Hearing in the Matters be continued to a suitable date subsequent to September 25, 1967.

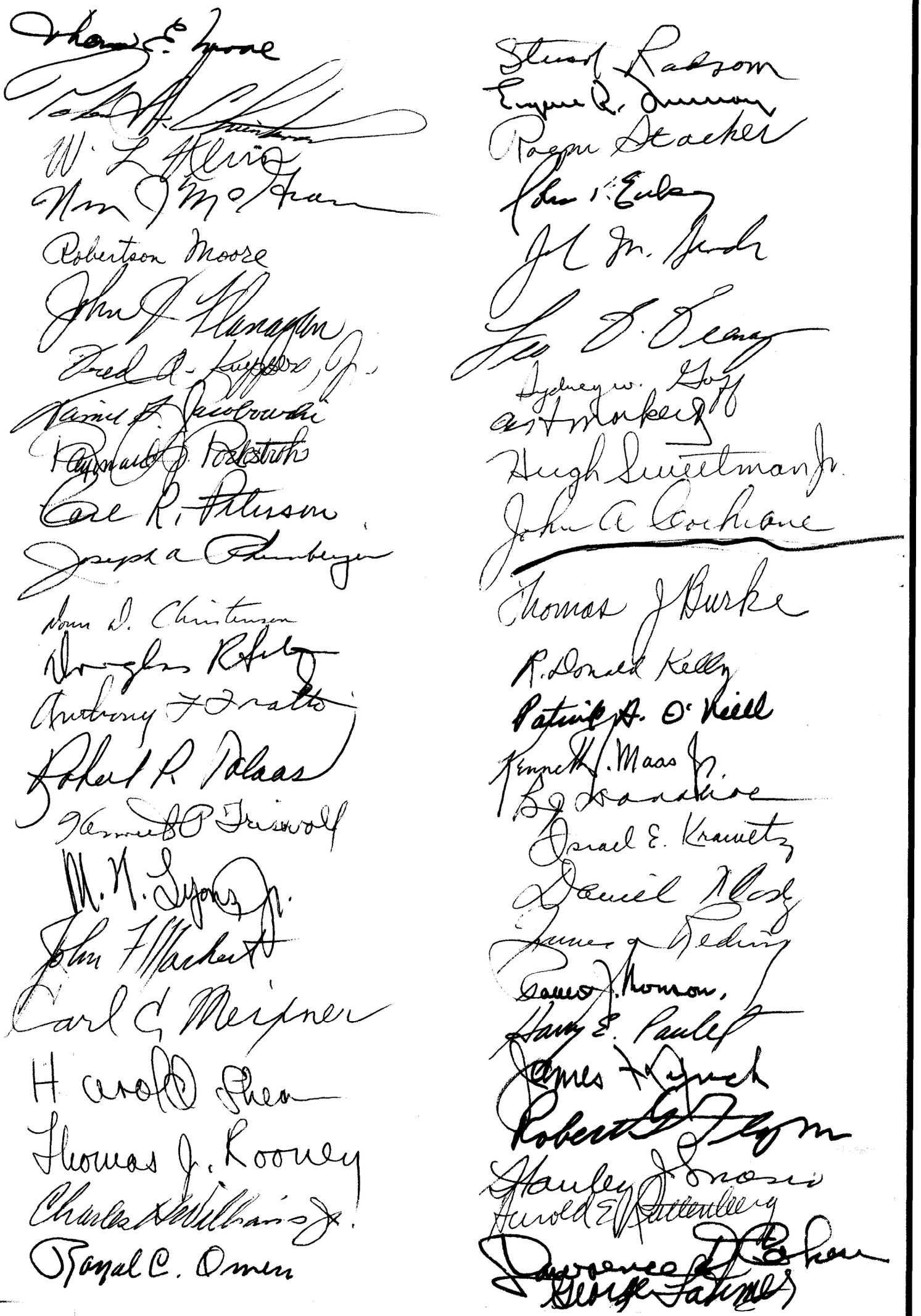
Dated May 9, 1967

William S. Essling

Joseph P. Johnson

[illegible signatures]





William W Essling
Joseph P Johnson
T M Quayle
Wm J Dunn

Beldin H Loftsgaarden
James F Finley
Melvin J Silver
Lester Walter
Richard B Ryan
Richard D Goff
Bernard N Litman
Frank J Danz
Joseph Mast
Michael A Kampmeyer
Kenneth J Weil
R William Reilly
Douglas W Thompson
Raymond W Faricy
Donald L Lais
Ramon Esparolini
Richard L Matykiewiz
Peter Valenty
Casimir L Cyptar
Francis J Nahurski
Roger T. Sahr
H W Malmon
Robt Wm Kuehn

Hyam Segell
William S Fallon
Benjamin Pielen
Eugene P Schway
Jerome A Gottlieb
Robert A Dworsky
Otis F Hilbert
Paul H Ravich
Fred N Peterson
Mendel Wiener
Edward P Starr
Daniel John O'Connell
Daniel Dennie O'Connell
Harold J O'Loughlin
James G Paulos
Ronald Patrick Smith
Thos F Burns
Robt A Gearin
John S Connolly
Harry P Strong Jr
Roger L Ginkel
George G McPartlin
Robert P Liesch
Joseph Perry

Thomas E Moore
Robert I Christensen
W L Ulvin
Wm J McGraw
Robertson Moore
John J Flannagan
Fred A Kueppers Jr
Daniel G Jacobowski
Raymond G Rockstroh
Carl R Peterson
Joseph A Rheinberger
Donn D Christensen
Douglas R Seltz
Anthony L Fratto
Robert R Tolaas
Kenneth P Griswold
M N Lyons Jr
John F Markert
Carl C Meixner
Harold Shear
Thomas J Rooney
Charles H Williams Jr
Royal C Orren

Stuart Radsom
Eugene P Murray
Ralph Stacker
John K Eulsy
John M. Sands
Leo F Feeney
Sydney W Goff
A H Markert
Hugh Sweetmen Jr
John A Cochrane
Thomas J Burke
R Donald Kelly
Patrick A O'Neil
Kenneth J Maas Jr
B J Donahoe
Israel E Krawetz
Daniel F Cody
James Redding
Robert J Monson
Harry E Paulet
James F Lynch
Robert G Flynn
Stanley J Mosio
Harold E Ruttenberg
Lawrence D Cohen
George Latimer

(100 Signatures)

STATE OF MINNESOTA

ss.

COUNTY OF RAMSEY

WILLIAM W. ESSLING, being first duly sworn upon oath, says that he presented the attached petition to the first eighty-three lawyers whose names appear thereon, discussed the petition with each of said lawyers and personally observed each said lawyer sign his name thereto.

WILLIAM W. ESSLING

Subscribed and sworn to before me this 12 day of May, 1967.

ROSEMARY LE RUE
Notary Public, Ramsey County, Minn.
My Commission Expires Nov. 11, 1970

STATE OF MINNESOTA

ss.

COUNTY OF RAMSEY

JOHN S. CONNOLLY, being first duly sworn upon oath, says that he presented the attached petition to the last seventeen lawyers whose names appear thereon, discussed the petition with each of said lawyers and personally observed each said lawyer sign his name thereto.

JOHN S. CONNOLLY

Subscribed and sworn to before me this 12th day of May, 1967.

JANET L. ERICKSON
Notary Public, Ramsey County, Minn.
My Commission Expires Mar. 15, 1974

225-8540

WILLIAM C. HOFFMAN
Attorney at Law
MINNESOTA BUILDING
ST. PAUL, MINNESOTA 55101

May 16, 1967

Miss Mae Sherman
Clerk of Supreme Court
State Capitol
St. Paul, Minnesota 55101

35394
District

Dear Miss Sherman:

Re: Minnesota Proposed Rules of Court

I'm enclosing fifteen copies of a brief which I have prepared with regard to the Minnesota Rules of Civil Procedure, and I would like to be given the opportunity to comment on Proposed Rule 35.03 before the Justices of the Supreme Court on June 1, 1967.

Thank you very much for your assistance in this matter.

Yours truly,

William C. Hoffman

WCH:nlv
Enclosures

STATE OF MINNESOTA

IN SUPREME COURT

In re	BRIEF OPPOSING
Minnesota Proposed Rules of Court	PROPOSED RULE 35.03

I oppose the adoption of proposed rule 35.03 for the following reasons:

1. M.S.A. 595.02 establishes the physician-patient privilege. The proposed rule is an attempt to establish a rule directly in conflict with a law set up by our legislature. It is an attempt by the judiciary branch of the government to invade the field of the legislative branch and an attempt to usurp the powers belonging to one branch by another branch of government.
2. The Constitution of the United States and the Constitution of the State of Minnesota give a person the right to seek justice in our courts. I believe the proposed rule is unconstitutional because it interferes with a person's absolute right to seek justice by placing a condition on the right which is unreasonable. It forces a person to choose between the physician-patient right and the right to seek justice and compels him to give up one right in order to keep the other right.
3. Three years ago at the Minnesota Bar Convention in Duluth this proposed rule was submitted to the members of the bar association for their approval or disapproval, and they voted against the proposed rule at that time. The proposed rule is an attempt to circumvent the express position of the members of the bar.
4. The proposed rule is contrary to the spirit of our Rules of Civil Procedure. When the Rules of Civil Procedure were initially adopted, the members of the bar opposed the theory of full disclosure in all matters pertaining to a lawsuit and, therefore, the last sentence of Rule 26.02 was added to our Rules. There is no similar sentence at the end of Rule 26 (b) of the Federal Rules of Civil

Procedure which our rules are based upon.

5. On page 8 of the booklet furnished to the members of the bar containing the Proposed rules, in the first paragraph of the Introduction we find the sentence, "The Committe believed that the Minnesota Rules should conform as closely as possible to the Federal Rules while still preserving the traditions of our state law and our state court system." Nowhere in the Federal Rules of Civil Procedure do we find any rule similar to the proposed rule 35.03.

6. Rule 26.02 of our Rules of Civil Procedure exempt from discovery the conclusions of an expert. A doctor is an expert so why should he be treated any differently than any other expert.

7. The proposed rule would give the defense an unfair advantage because they could find out what the plaintiff's doctor's opinions are. If the opinions are favorable to the defense, they will elect not to get a medical examination of their own for fear that the opinions of the doctors that they select would be more unfavorable to them than the opinions of the plaintiff's doctors. If, on the other hand, the plaintiff's doctor's opinions are unfavorable to the defense, they can then elect to have a medical examination conducted by a doctor of their own choice in the hope that they will get a more favorable medical opinion. They are getting the best of both worlds because they can eat their cake and have it too.

8. Insurance companies and defense lawyers have the power to select the doctors who will conduct medical examinations on their behalf. Such doctors are consistently selected to perform adverse examinations and they become very trained and skilled in this area. The reports that they issue reflect this training and skill. Attorneys for

plaintiffs do not have the same power of selection and plaintiffs' doctors are often inexperienced in this area and their reports reflect such inexperience. To permit the defense to automatically have access to the plaintiffs' doctor's reports gives them an unfair advantage.

9. Because of the long time lapse between the institution of a lawsuit and the trial of the lawsuit attorneys representing plaintiffs will institute a lawsuit before the client's condition has stabilized. As a result of such unstabilization early medical opinions are sometimes incorrect and must be changed later on. Under the proposed rule, an attorney representing a plaintiff would have to elect between waiting until his client's condition had stabilized before he instituted the lawsuit, or take a chance and institute the lawsuit before his client's condition had stabilized.

William C. Hoffman

WILLIAM C. HOFFMAN
Attorney at Law
1140 Minnesota Building
St. Paul, Minnesota

STATE OF MINNESOTA

IN SUPREME COURT

35394
Dissmissed

In the Matter of Rules of Pleading, Practice, and Procedure in Civil Actions and In the Matter of Rules of Civil Appellate Procedure	))))))	PETITION FOR HEARING OF CHARLES R. MURNANE

Petition is herewith made to the above named court for leave to permit the undersigned to appear before the Supreme Court of the State of Minnesota, on June 1st, 1967, the date set by said court for hearing of arguments on proposed changes in the Rules of Civil Procedure.

Petitioner is a duly licensed practicing attorney of the State of Minnesota, and is a partner in the law firm of Murnane, Murnane, Battis and deLambert, 1106 Commerce Building, St. Paul, Minnesota, and seeks permission to be heard for the purpose of presenting supporting arguments for proposed changes to the following rules:

RULE 33 INTERROGATORIES TO PARTIES

RULE 35.03 WAIVER OF MEDICAL PRIVILEGE

RULE 39.03 PRELIMINARY INSTRUCTIONS IN JURY TRIALS

RULE 39.04 OPENING STATEMENTS BY COUNSEL

Dated this 18th day of May, 1967.

Respectfully submitted,

Charles R. Murnane

CHARLES R. MURNANE
1106 Commerce Building
St. Paul, Minnesota

Area Code 612
223-5121

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KENNETH J. FITZPATRICK
GERALD H. SWANSON

May 11, 1967

Miss Mae Sherman
Clerk of The
Supreme Court
State Capitol
St. Paul, Minnesota 55101

Re: Minnesota Proposed Rules Of Court

Dear Miss Sherman: docket 35394

On behalf of the City of Saint Paul, and individually as a member of the Minnesota Bar, I request permission to appear before the Supreme Court on June 1, 1967, in opposition to the changes proposed in rules 59.01, 59.02, 59.03, 59.07, and 59.08, of the Minnesota Rules. I shall file a petition reciting the reasons for such opposition beforehand.

Very truly yours,

Thomas J. Stearns

Thomas J. Stearns
Assistant Corporation Counsel

TJS:bf

STATE OF MINNESOTA

IN SUPREME COURT

35394

City of Saint Paul, by Thomas J. Stearns, Assistant Corporation Counsel, and Thomas J. Stearns, Individually,

Petitioners,

PETITION

IN OPPOSITION TO CERTAIN AMENDMENTS TO THE RULES OF CIVIL PROCEDURE

On the part of the City of Saint Paul and of Thomas J. Stearns, objection is herewith submitted to the following amendments to the Rules of Civil Procedure for the District Courts (and the Municipal Courts):

1. Rule 59.02. Basis of Motion (for New Trial).

"A motion made under Rule 59.01 shall be made and heard on the files, exhibits, and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit. A full or partial transcript of the court reporter's notes may be used on the hearing of the motion."

2. Rule 59.03. Time for Motion.

"A notice of motion for a new trial shall be served within 15 days after a general verdict or service of notice by a party of the filing of the decision or order; and the motion shall be heard within 30 days after such general verdict or notice of filing, unless the time for hearing be extended by the court within the 30 day period for good cause shown."

3, Rule 59.07. Case; How and When Settled.

(Eliminated)
Note: ". . . the transcript is not official and has no greater standing than other items constituting the minutes of the court . . . . Inability to obtain the unofficial transcript

in time for the hearing is not grounds for automatic delay of the hearing . . ."

4. Rule 59.08. Settling Case; When Judge Incapacitated.

(Eliminated)

The proposed amendments provide for unequal treatment of appellants on a motion for new trial before the trial court. Those who are able to obtain a transcript, because the case was short, can prepare and argue their motion on the reliable basis of the transcript. Those who are unable to obtain a transcript, because the suit occasioned a longer, more involved trial, must rely on memory. The practice will be discriminatory, although the party aggrieved may have had nothing to do with the length of the trial or the delay in preparing the transcript. Further, such would seem to favor those who are benefited by the error, rather than those who might have been prejudiced by it at the trial level.

Secondly, as a practical matter, the elimination of a transcript for the hearing on the motion for new trial (and of the settled case) means that it will be virtually impossible to present a cogent argument to the trial court on two grounds where a transcript is invaluable: Rule 59.01 (1) Irregularities, and (7) Errors of Law. It would result in the motion before the trial court being just a procedural step in the removal of the case to the Supreme Court. Petitioners believe that all cases that can be disposed of by the trial court should be disposed of. To demonstrate to the Supreme Court the type of situation that has in fact arisen, petitioners are attaching a part of a motion for new trial they presented to a trial court last year. After a week's trial, the jury returned a verdict adverse to the City of Saint Paul. The motion for new trial was argued on the basis of the settled case, and a new

trial granted. The second trial resulted in a defendant's verdict. That verdict became final without an appeal. Needless to say, the complexities of the errors claimed to have existed in the original trial would have made it impossible for such to be revealed without reliance on a transcript. Memory is just not that good. Yet, justice would certainly dictate that, regardless of what they are, all the errors should be outlined in full and presented to the court which presided at a trial without favoritism to either party. That can best--sometimes only--be done with a transcript (and a settled case).

The present proposals go further. On appeal to the Supreme Court, they prescribe that argument is to be made primarily on the basis of minutes and "other items" constituting the minutes of the court. Now, what errors will be covered by the short notes taken by a busy court? Most of the time, there will be something about negligence, proximate cause, contributory negligence, alternate routes, and what have you. Then, what besides these notes, the testimony, and the exhibits will constitute the "other items?" Possibly, the judges might be in a better position to relate what will end up on their yellow pads and what else there is. However, it hardly seems proper for an important appeal--to the parties, an unique appeal--to be based on something that is not in conformance with the truth and is not verbatim. Again, the only party who might be favored by guesswork is the one who benefited from and promulgated the error originally.

In the introduction to the Proposed Amendments, the Committee asserted that it felt the Minnesota Rules should conform with the Federal Rules. If such Federal Rules are better, it would be preferable to conform to them; however, petitioners would like to point out that there is a procedure

for settling a case under the Federal Rules. See: 28 USCA, Rule 75 (d):

> "Correction or Modification of The Record. If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth."

In the Federal Courts, this settlement takes place after an appeal is made. This is much the same as occurs in New York under its rules (78 CPLR, Rule 5525). But is such procedure necessarily better? It takes three years to get to trial in some communities, and the only time-consuming element afterwards is the preparation of the transcript. Ten days, twenty days, thirty days, or sixty days? It depends on the length of trial. After that, in 99 times out of 100, the stipulation for a settled case is signed as soon as the attorneys get around to it. It is seldom that a contested case must be transmitted to the trial court for its order, and even this is resolved relatively soon after the receipt of the transcript.

It is the petitioners' opinion that the rules, as they stand, are the fairest and the best. If they must be modified, the virtues should be retained without adopting the disadvantages of the proposals. The motion for new trial can be noticed after the receipt of the transcript, and the case settled for the purposes of an appeal after the order denying the motion for new trial. This might save a little time.

Respectfully submitted,

City of Saint Paul
Thomas J. Stearns

by Thomas J. Stearns
Thomas J. Stearns

II.

That, as a matter of law, plaintiff assumed the risk of injury to her, and, thus, the evidence establishes as a matter of law that the verdict should have been in favor of defendant.

III.

That, as a matter of law, plaintiff was contributorily negligent, and, thus, the evidence establishes as a matter of law that the verdict should have been in favor of defendant.

Defendant further moves the above-named court that if said motion for judgment notwithstanding the verdict be denied, the Court then makes its order setting aside the verdict of the jury against defendant and granting defendant a new trial of said action. Said motion for a new trial will be based upon the settled case and the files and records herein and upon each and all of the following grounds, to wit:

I.

That the verdict is not justified by the evidence and is contrary to law.

II.

Errors of law occurring at the trial, hereby specifically assigned as follows, to wit:

(a) The Court erred in overruling defendant's objection to the following question as being argumentative (Tr 26):

> "Q. And the only reason it wouldn't have been sanded then by noon is due to somebody's oversight?
>
> Mr. Stearns: I will object. It is argumentative.
>
> Mr. Norton: Isn't that correct?
>
> The Court: Overruled.
>
> The Witness: Well, you say oversight, yes, but I do check the streets; so I would know."

(b) The Court erred in overruling defendant's objection to the following question as being leading and suggestive (Tr 53):

"Q. (By Mr. Norton) Mrs. Loney, I will start my question over again. Mrs. Loney, is there another route via Pleasant?

A. Well, you could go down and go over Pleasant Avenue, but that wasn't good either.

Q. Would you tell us why, Mrs. Loney?

A. Well, because apparently there must have been houses or something there that were tore down, and the sidewalks were bumpy. That is, some of the blocks were up.

Q. Prior to the occurrence of this accident had you gone that way to ascertain what manner of street it was?

Mr. Stearns: I object. It is leading and suggestive.

The Court: Overruled.

Q. (By Mr. Norton) You can answer, Mrs. Loney.

A. Well, a few times when I would walk downtown, I would go that way, but I got that I didn't make it as a rule."

(c) The Court erred in permitting plaintiff, Mary Loney, to answer the following question over defendant's objection (Tr 306-307):

"Q. (By Mr. Norton) Now could you just step up--and watch that step, Mrs. Loney--now with reference to the evenness or uneveness of this sidewalk, would you point out for the ladies and gentlemen of the jury the area where this particular sidewalk was uneven?

Mr. Stearns: Excuse me.

Q. (By Mr. Norton) Or how was it, and first of all would you point and tell us what area--first of all describe the character of it, and then point it out in the photograph.

Mr. Stearns: I am going to object on foundation. She said she always traveled the other route.

Q. (By Mr. Norton) Well, Mrs. Loney--

The Court: Are you trying to show that the reason that she didn't take this route was because of the condition of the sidewalk?

Mr. Norton: That's right, Your Honor.

The Court: And that this was smoother or was it--

Mr. Norton: The other route was better.

The Court: The route she took was better than this one?

Mr. Norton: That's right.

The Court: Go ahead if you can show it.

The Witness: These sidewalk blocks in here were bulging up, and then the few times I did walk down a couple of these steps were, you know, broken in the back."

(d) The Court erred in permitting plaintiff's witness, George V. Stennes, to testify as follows (Tr 147-152):

"Q. And I would ask you to assume a female aged 65 and ask you what would be the total value figure for that life expectancy under American Experience Table?

A. The what amount and what? I don't understand the question.

Q. I would say $1,000.00 per year.

The Court: What do you mean a value of a person?

Mr. Norton: No, total value of $1,000.00 over the life expectancy and the total value figure of that--

* * * *

(Colloquy)

* * * *

Mr. Stearns: I will voice my objection to the offer of proof and just on the grounds of foundation and relevance because I think it should be related to actually, in fact, the loss of earnings rather than just an arbitrary figure that you picked out of the hat."

* * * *

The Court: Overruled."

(e) The Court erred in permitting plaintiff's witness, George V. Stennes, to testify as follows (Tr 158):

"Q. Could I hold those for you, Mr. Stennes, and would you write that in here, please, across the column? I can hold the-- is that giving you trouble? I believe that won't work sufficiently. Let me get one that will. You are going to have to press down rather hard. Now, Mr. Stennes, I am interested in another figure, and I would ask you to compute this for our benefit. What would, say, 40 hours per week times $1.57 an hour minus 13 hours which would be--well, just 13 hours per week times $1.85 per hour?

A. Thirteen weeks--

Mr. Stearns: What was that?

Mr. Norton: That would be 40 hours times $1.57 minus 13 hours times $1.85.

Mr. Stearns: I am going to object on the grounds of relevance. What connection has--

The Court: Overruled.

The Witness: The subtraction of 40 times 1.57, or 62.80 a week, less 13 weeks at 1.85, is $38.75."

(f) The Court erred in admitting Plaintiff's Exhibit P over defendant's objection as follows (Tr 161):

"Mr. Norton: May the Court please, we offer Plaintiff's Exhibit P.

Mr. Stearns: Your Honor, for the--just for the record I will object on the grounds of foundation and relevance, same objection I had before.

The Court: Overruled. Received."

IV.

The Court erred in instructing the jury as follows (Tr 356):

"In the case before you there is no dispute in the evidence that the City assumed to make the street in question less hazardous by the use of sand and salt, and there is no dispute in the evidence that the City duly inspected this particular place in question; so that the only question in that regard is whether the City should have sanded this area before twelve o'clock noon on the 14th day of December, 1961, when the plaintiff attempted to use the street and fell . . ."

(Tr 363):
"The crux of the duty on the part of the City and

the important matter for the jury to determine from all the evidence is, after knowledge of the slippery condition of the street was there an unreasonable delay in sanding it, if sanding was necessary. Did the City act with reasonable dispatch in sanding this street, or did it not after notice of the condition."

V.

The Court erred in repeating the instruction to the jury as follows (Tr 367):

"The Court: In the charge where I talked about assumption of risk and contributory negligence which is alleged by the City as a defense, I said that the City had the burden of proving the assumption of risk and the contributory negligence of the injured party in the same manner as the--and to the same extent that the plaintiff had in proving her case, but it is desirable perhaps to say that means that the City, having this burden, must prove her contributory negligence or assumption of risk by a fair preponderance of the evidence; that is by an overweight of the evidence as I indicated. Does that clear it up?"

VI.

That defendant was deprived of a fair trial because of the irregularity of the Court's comments during the course thereof as follows, to wit:

(a) The Court erred in commenting on the evidence as follows (Tr 193, 194):

"The Court: I won't do it. I can't do it. He just can't take time to read all those records. He said he read them, and that ought to be sufficient. You don't need that. He has testified as a doctor that this broken ankle was caused by the fall. There is your casual connection between the accident and the condition.

Mr. Lundberg: Yes, Your Honor, but we are asking the Court to permit him to testify there is also a casual connection between this fall and arthritis.

The Court: It isn't necessary. Things equal to the same thing are equal to each other.

Mr. Norton: Is it the Court's ruling, Your Honor, then as a matter of law that the establishment of the casual connection between the injury of 1961, December 14, and this subsequent problem and limitation of motion in effect establishes the causal connection between the original injury of December 14, 1961, and the subsequent and the future development of the traumatic arthritis?

The Court: No. I don't assume that at all.

Mr. Lundberg: Is it the Court's ruling then that this doctor may not testify to casual connection between--

The Court: He already testified to casual connection.

Mr. Lundberg: But not to the condition that he is presently--

The Court: You don't have to have that. If you have the casual connection of the condition of the ankle, which is the accident is the casual connection. The accident, the condition of the ankle. Now he says in the future he thinks she will have--to a medical certainty he can testify that she will have traumatic arthritis. You don't have to prove casual connection of the original accident.

Mr. Norton: Well, that is fine, Your Honor. Thank you very much."

(b) The Court erred in commenting and advising plaintiff's counsel as follows (Tr 195):

"Q. (By Mr. Norton) Doctor, would you explain to us how traumatic arthritis develops?

The Court: No, that isn't the point either. Ask him if--why he thinks that the condition now existing in this woman's ankle will result in the future in traumatic arthritis.

Q. (By Mr. Norton) I adopt the question. Doctor, Would you please answer the judge's question?

The Court: Because an opinion of an expert is no better than the reason he can assign for giving it.

Q. (By Mr. Norton) Doctor, would you explain that to us, please?

The Court: Why he thinks so."

(c) The Court erred in commenting and permitting plaintiff, Mary Loney, to testify as follows (Tr 313):

"Q. Mrs. Loney, I have one more question. Which route was the safest route in inclement weather?

Mr. Stearns: I am going to object. I think it calls for a conclusion with insufficient foundation.

Mr. Norton: Your Honor, there is a lot of foundation here.

Mr. Stearns: No, there isn't.

The Court: What was the safest route is a question for this jury, but what she thought was the safest route may be testified to by her.

Q. (By Mr. Norton) Mrs. Loney, would you state what you thought was the safest route?

A. I thought this one was. That is why I always took it.

Mr. Norton: Thank you."

VII.

That the damages are excessive and appear to be given under the influence of passion and prejudice.

Dated this_____day of_____, 1966.

STEPHEN L. MAXWELL
Corporation Counsel

By THOMAS J. STEARNS
Assistant Corporation Counsel

Attorneys for City of Saint Paul
316 City Hall and Court House
Saint Paul, Minnesota 55102

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STATE OF MINNESOTA
DISTRICT COURT, FIFTH DISTRICT
CHAMBERS AT NEW ULM

NOAH S. ROSENBLOOM
JUDGE

May 26, 1967

Hon. Oscar Knutson
Chief Justice
Minn. Supreme Court
St. Paul, Minnesota

Re: Proposed Changes to Rule 33 MRCP

Dear Justice Knutson: (hac)

I enclose for filing 15 copies of a brief commenting on a portion of the proposed changes of the rules. The hearing procedure set up by the Court to consider these changes and the specific wording of the changes themselves did not come to my attention until yesterday. For some reason, West failed to send me a copy of the printed proposals when distribution was made several weeks ago. I have discussed my interest in this specific part of the proposed change with Justice Rogosheski this afternoon. He assured me my comments in written brief form could be appropriately forwarded and filed at this late date. Thank you for the opportunity so afforded me to express my viewpoint.

Very truly yours,

Noah S. Rosenbloom

Noah S. Rosenbloom

NSR:dm
Enclosure
Hon. Walter Rogosheski

STATE OF MINNESOTA

IN SUPREME COURT

In the Matter of the Proposed Changes in the Rules of Civil Procedure For the District Courts of Minnesota.

* * *

Brief in Opposition to Proposed Changes Limiting Written Interrogatories under Rule 33.

* * *

To the Honorable Judges of the Supreme Court of the State of Minnesota:

At the June, 1962, State Convention of the Minnesota State Bar Association a proposal to change Rule 33 to limit discovery by written interrogatories to two sets comprising a maximum of 50 separate questions was adopted. There was no discussion there and, I believe, inadequate discussion elsewhere of the effect of that change. A memorandum setting forth my thinking written with a fellow practitioner was composed for submission to Bench and Bar in an effort to stimulate further thought and possible reconsideration. Bench and Bar declined publication. The memorandum read as follows:

> "Minority Report: The Proposed Changes to The Rules of Civil Procedure for the District Courts Have Not Been Adequately Considered.

"We are concerned that the proposal to amend Rule 33 to restrict the scope of discovery upon written interrogatories directed to a party was adopted by the Convention without any discussion. Casual conversation with many lawyers convinced us this proposal was adopted without realization of its implications and consequences. Some of the most disturbing implications will be summarized herein.

"Let us assume one has a complicated case in which it is necessary to obtain technical information from the adversary by aid of which experts consulted for the purpose can formulate a reliable conclusion. It is doubtful such information could be obtained in fifty interrogatories in a case of real substance. In order to obtain an answer responsive to what the proponent has in mind, good interrogatory practice requires precision of language, simplicity of question, and elimination of ambiguity which so far restricts the scope of each interrogatory as to require a large number of questions. It is rare that the proponent of interrogatories in a complicated and substantial case could cover the subject in fifty separate individual questions. One need only review the transcripts of depositions taken in like matters, often after interrogatories propounded and answered, and note the number of folios, indeed pages, of transcript required to cover a single minor point. Often a question must be put several different ways before a responsive answer is obtained and doubt resolved. The questioner in a deposition has the advantage of being present, able to re-phrase his question as required. He need not anticipate possible confusion or evasion as must the proponent of an interrogatory. Limitation as to number of interrogatories makes as much sense as an attempt to limit, by blanket rule, the time to be consumed in a discovery deposition upon oral examination.

"But we have assumed that the proponent of an interrogatory knows the information he seeks at the time he propounds his questions and has already ascertained the general thrust and direction of his discovery procedure. Discovery procedures necessarily involve 'fishing expeditions' We frequently don't know until several sets of interrogatories have been propounded and answered, what direction further inquiry can and must take. Often the key fact issues to be determined are not obvious until discovery procedure is well advanced. It is rare that this point will have been reached in two sets of interrogatories.

"Those who favor the change urge that a simple remedy is afforded upon application to the Court for authority to propound further interrogatories The remedy is a snare and a delusion. The landmark case, Hickman vs. Taylor, 329 US 495, 91 L. Ed. 451, laid down the proposition that one could not inquire into counsel's work product in the discovery process under the Federal Rules. That principle has been followed under the Minnesota Rules, and, as enlarged and construed over the years, has come to include the further limitation that one cannot obtain discovery of the theories of a party's experts. Let us suppose we desire leave of the Court to propound further interrogatories, having exhausted the limitation proposed. Part of our showing must necessarily include a review of prior interrogatories and an argument to the Court why further interrogatories are necessary. But that very presentation will necessarily disclose to the Court and to ones opponent exactly the information privileged under the Hickman rule. How could one convince the Court further discovery by interrogatories would be justified unless, by explication of ones mental work product and evaluation of the case, or of the theories of his experts, it was shown that the factual material already amassed is inadequate. Are we prepared to disclose the entire content of our files and of the minds of our experts to our opponents in this fashion? That is what the changed rule will require.

"No limitation was proposed upon discovery by deposition on oral examination. As much burden upon counsel's time and that of his client can be imposed upon an adverse party in such proceedings as by written interrogatories. No one has proposed that we place the burden upon the person seeking discovery to justify his right to obtain it rather than leaving the burden upon the party claiming to be aggrieved to obtain relief. More to the point, discovery depositions cost money. Just as the contingent fee is often justified by the manner in which it affords access to the Courts for those unable to pay large retainers to counsel, so the interrogatory affords opportunity to litigants to obtain extensive discovery without the expensive burden of court reporting and similar costs. When the Minnesota Rules were proposed, there were many who said the discovery procedures would prove so expensive that only insurers and others with unlimited expense funds at their disposal could make effective use of them. The restriction upon written interrogatories will have that precise effect. Counsel able and willing to take the time may obtain information by written interrogatories directed to the adverse party even though his client cannot afford the reporting costs of a discovery deposition upon oral examination sought for the same purpose.

" In the technical case against the multi-state business, it often happens that important witnesses are outside the jurisdiction; or the identities of the pertinent agents of the corporation are unknown until considerable discovery has produced a clear picture of its organizational structure and operating procedures; or the individuals within the corporate organization having cognizance of the event in which we are interested or of the information with which we are concerned, may not be known by those agents whom we choose to depose. In all of these situations, a series of written interrogatories directed to a corporate party and served upon its counsel may be the only means of identifying the knowledgeable witness, the cognizant personnel, or the custodial location of the objects or facts sought to be discovered. Is it desirable to limit the opportunity to obtain that information? That is what the change in the rule will effect.

"A further consideration is the effect and nature of answers to interrogatories. Who of the trial bar of this State has not had the experience of obtaining an admission from an adverse witness in a deposition only to have the witness come forth with an exculpatory explanation which takes the heart out of the admission when the case comes to trial? It's not so easy to do that with respect to an answer to an interrogatory. The answer is there under oath over the signature of the party and in black and white so that it may be introduced into evidence if need be. The witness cannot so easily explain or evade such an answer once given.

"Often times, too, factual material will come to light during the course of a deposition and a request will be made for copies of documents or for specific details not immediately available at the time. Such requests have a convenient way of getting lost or ignored. Perhaps the reporter didn't get the transcript out soon enough before trial to afford the party ample time to provide the information; or maybe there is a misunderstanding as to what was requested. How much simpler to propound a direct interrogatory specifically requesting the information under a procedural rule x imposing a clear time limit upon the adverse party within which the information must be supplied. Is it desired to cut off that opportunity?

"Lest it be thought this argument is framed exclusively from the viewpoint of plaintiff's counsel, we point out that the interrogatory is an extremely useful tool in several types of defense situations. In a defense to an accounting case, how can one obtain the necessary informati with which to prepare his defense without extensive use of interrogatories? If the case involves any particular substance, the subject matter simply cannot be covered in two sets of interrogatorie let alone fifty questions. Or let us assume our client is the defendant in an action brought against him to collect a bill. The action may be brought by a collection agency whose name means nothing to him. Or it may involve a claim of such age that his inadequate records and failing memory leave him at a loss to ascertain what it is all about. The amount is often minor, such that it would not warrant deposition techniqu for discovery purposes. One or two sets of simple short interrogatories may be required simply for the purpose of identifying the particular circumstances upon which plaintiff asserts the claim in suit. Only then will one have sufficient information upon which to proceed further in an attempt to elicit facts useful and essential to his defense. That extremely effective tool available to the defendant in such an action will be severely limited under the proposed rule change. Yet such actions probably involve as many litigants as any other single type of legal proceeding in our State. Is it desired that such parties be denied the full and effective use of discovery technique?

"But, those favoring the change assert, we want to eliminate the oppressi worked on a party served with voluminous and unnecessary interrogatories. Objections to interrogatories may be summarized under the heading of relevance, privilege, and propriety (this last is related to the first). No undue consumption of time is required to dictate a set of answers to the most searching set of interrogatories, simply answering those thought to be objectionable with the words 'inapplicable', 'irrelevant', 'improper interrogatory', or 'privileged'. There is no great mystery about these matters. Counsel are generally well aware what interrogatories fall within, and what interrogatories fall without, the standard mentio Rule 37, as actually administered by our Courts, will protect the party legitimately refusing to answer an interrogatory. We know of no instance in our areas of practice in which a party has been materially prejudiced by a failure to answer an interrogatory where that failure is based upon good faith objection, as distinguished from evasion. Even where evasion has been found, our Courts have contented themselves with imposition of costs upon erring counsel, rather than remedies which would prejudice his client.

"It is significant that the proposed change to Rule 38 to require that a Note of Issue be filed at least thirty days prior to the beginning of a general term in our rural districts, aroused considerable discussion whereas no one seemed interested in the proposal to limit discovery upon written interrogatories under Rule 33. We favor the proposed amendment of Rule 38 precisely to afford parties ample opportunity to use discovery interrogatories and obtain answers thereto before being pressed on for trial. We know of an instance this Spring in which an answer and counterclaim for an accounting was interposed in an action within five days after service of the original Summons and Complaint. Immediately thereafter, plaintiff filed a Note of Issue. The trial calendar opened before the time for answer to the interrogatories had expired. Thereby the counterclaiming defendant was virtually denied the use of effective discovery procedures in support of his accounting claims by the simple device of pressing him on for trial. He could and did apply to the Court for relief. But the Rule change extending the time for filing a Note of Issue to thirty days prior to the commencement of the term would have avoided this problem. It would not have been necessary for counsel to travel some distance, take up the Court's time with an interlocutory motion which was otherwise unnecessary, all to obtain simple access to discovery process in that case. We surmise that those unfamiliar with, or unsympathetic to, the discovery process were in the majority of the House at the time these two proposals were considered.

"We hope further thought has been generated upon these matters. All members of the trial bar of this state should give further careful consideration to the problem. We believe the proposals which have been recommended are untimely and unfortunate. The Federal Rules have functioned since 1938 without serious movement to limit the scope of discovery in the manner now proposed by this Association in Minnesota. In fact, when a minority group of decisions, beginning with Coca-Cola Company vs. Dixie-Cola Laboratories, Inc. (D, Md, 1939) 30 F. Supp. 275, took an analogous position, it was rejected by the advisory committee; The 1946 amendment to those rules explicitly rejected the minority view by changing the federal rule to include the language,

> '* * * The number of interrogatories or sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression. * * *'

"The resulting version of federal rule 33 is substantially that now in force in Minnesota at this time.

"Let us not discard or emasculate so useful a tool. At least, let us not do so without full and searching discussion of the issues involved. We hope interested counsel will give the matter further thought so that when, and if, this recommendation is considered by the Court, that body will have all sides of the question presented to it. It is a matter of surprise and regret that the Bar Convention did not.

"Respectfully submitted

Robert G. Johnson, Willmar, Minnesota

-and-

Noah S. Rosenbloom, Redwood Falls, Minn."

[illegible] written interrogatories was proposed to eliminate [illegible] discovery practices. Lengthy sets of "canned" questions, many irrelevant and served broadside by some practitioners. Motions for relief under existing Rules 30 and 33, under pain of penalty under Rule 37, unnecessarily consume judicial time and are burdensome upon the aggrieved party. Many lawyers made brief objection by way of answer to each objectionable question. That practical, informal procedure afforded relief but was eliminated by the decision in State -vs- Boening (1967), ____ Minn. ____, 149 NW 2d 87. Proposed Rule 33 wisely eliminates the problem sharpened by Boening insofar as it changes the objection procedure. Under the proposed rule, a party can make his objection as part of his answers. The Proponent must then timely move the Court for hearing on the [illegible] objection made or proponent's right to demand an answer is waived.

The reason for the 1962 limitation proposal is eliminated by proposed Rule 33(3). Arguments advanced in 1962 against limitation on written interrogatories are my position today, insofar as they remain relevant. I have not consulted with Mr. Johnson about them recently; they are advanced here solely as my own. I urge the Court to adopt an amended Rule 33, but propose that its wording be changed as follows (language I would add underscored and language I would eliminate ~~lined-thru~~), viz:-

"Rule 33(1). Any party may serve upon any other party written interrogatories after commencement of the action without leave of court, except that if service is made by the plaintiff within 10 days after the commencement of such action, leave of court granted with or without notice must be obtained first. ~~No-party-may-serve-more-than-a-total-of-50-interrogatories-upon-any-other-party-unless-permitted-to-do-so-by-the-court-upon-motion,notice-and-a-showing-of-good-cause.--In-computing-the-total-number-of-interrogatories-each-subdivision-of-separate-questions-shall-be-counted-as-an-interrogatory.~~

* * *

33 (5). Interrogatories may relate to any matters which can be inquired into under Rule 26.02 and the answers may be used to the same extent as provided in Rule 26.04 for the use of the deposition of a party. Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the court on motion of the witnesses or the party interrogated, may make such protective orders as justice may require. The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression. The provisions of Rule 30.02 are applicable for the protection of the party from whom answers to interrogatories are sought under this rule."

Respectfully submitted,

Noah S. Rosenbloom

Noah S. Rosenbloom
Judge of District Court

New Ulm, Minnesota
May 26, 1967

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June 5, 1967

The Honorable Oscar Knutson
Chief Justice, Supreme Court
Minnesota State Capitol
Saint Paul, Minnesota

Re: Proposed Rules of Civil Procedure

Dear Justice Knutson:

The argument before the Supreme Court on June 1 dealing with Rule 33 appeared to inadequately cover the respective issues. I have no objection to any provision in Rule 33 except the limitation of the number of interrogatories a party can serve.

There is no justifiable reason in most cases to limit the number of questions an advocate can ask of his adversary in order to adequately prepare his case for trial. It is only in the exceptionally few cases where counsel serves extensive interrogatories for the purpose of harassment only that a rule of this nature would fairly come into play. In product liability cases, breach of contract actions, and other actions of similar character, it will normally be essential to ask over 50 interrogatories to adequately prepare a case for trial. Rule 33 (1) puts an unjustified burden upon counsel preparing such a case. Quite often counsel will not be able to show "good cause" for answering numerous questions in that he has no idea what the answers may be. Yet, with the benefit of the answers and his expert's advice, liability may be established from these interrogatories.

The rule in effect penalizes the vast majority of attorneys who are preparing their cases rather than penalizing those few counsel who send interrogatories for the purpose of harassment only. The theory behind the rule is a good one but the method of obtaining the goal is in my humble opinion a poor choice.

I respectfully suggest that a better method of obtaining the desired result is to require the party receiving interrogatories to move to quash the interrogatories and to grant to said moving party, if he prevails, costs and attorneys' fees. Such a provision, which is similar to the present Rule 37.01, although inapplicable to this situation, should stem the practice by those few practitioners that abuse the privilege granted to them by the rules.

In making this suggestion, I am cognizant of the extensive printed form interrogatories some defense counsel use. Although this will require me, doing predominantly plaintiffs' litigation, to make the required motion, such instances are rather few and far between. I feel that the proposal I make is sufficient to satisfactorily handle such forms.

Rather than make extensive reference to the arguments dealing with Rule 35, please allow me to state that the position taken by Mr. Hvass and Mr. Robins at the hearing of June 1, 1967, appears to me to be equitable and just;if the medical privilege is waived, it should be waived by everyone.

I appreciate the opportunity of submitting this short memorandum and hope that it will be of some benefit in the Court's deliberations on the issues involved.

Very truly yours,

ROBINS, DAVIS & LYONS

Stanley E. Karon

SEK:blg

STATE OF MINNESOTA

IN SUPREME COURT

Dismissed

35394

In the Matter of Rules of Pleading, Practice and Procedure in Civil Actions
and
In the Matter of Rules of Civil Appellate Procedure

OBJECTION TO PROPOSED RULES AND NOTICE OF MOTION TO SET ASIDE ALL PREVIOUS ORDERS ENACTING BY COURT ORDER RULES OF CIVIL PROCEDURE IN AND FOR THE DISTRICT AND MUNICIPAL COURTS OF MINNESOTA

Comes now, Jerome Daly, a citizen of the United States of America and the State of Minnesota and a member of the Attorneys Bar of the Supreme Court of the State of Minnesota; pursuant to the Constitution of the United States, the Constitution of the State of Minnesota and the Declaration of Independence your petitioner respectfully petitions and moves the Court as follows:

1. Pursuant to the Order of this Court dated March 29,1967 your Petitioner requests to be heard in Oral argument in opposition to the adoption of the proposed reles and on application to set aside all previous Orders placing said rules into effect for any purpose.

2. Petitioner claims and will assert that all the Rules, proposed or otherwise, are unconstitutional upon the fillowing grounds:

A. That Minnesota Statutes Sections 480 et al are unconstitutional as they constitute an unconstitutional delegationo of legislative power upon the Judiciary and the Minnesota State Bar Association. See Dunnell Sec. 1597, Art. 6 Section 14, Minn. Const.

B. That previous Order enacting the rules of Civil procedure constitute an unconstitutional assumption of legislative power by the Judicial Branch of the Government of Minnesota. See Dunnell Section 1595. Article 3, Minn. Const.

C. That the present proposed rules and previous rules are an attempted exercties of political power by the Judicial branch of the Government of Minnesota. See section 1588 Dunnell, See Sections 219 to 227 16 Am Jur 2d page 461 thru 475.

D. That the said proposed Order and all previous Orders are attempts to abolish Statutes of this State enacted by the legislature by Court Order, an impossibility. Cook Vs. Iverson 108 Minn. 388, Curryer v. Merill 25 Minn. 1. See More especially 16 Am Jur 2d Section 225. Communist Party v. Subversive Activities Control Board, 367 U.S.1 and 6 Led 2d. 625. Also Art. 6, Minn Const. The jurisdiction of the supreme Court is limited to "Cases"

Jerome Daly

Jerome Daly, Savage, Minnesota

STATE OF MINNESOTA

IN SUPREME COURT

IN RE PROPOSED AMENDMENTS TO RULES
OF CIVIL PROCEDURE FOR THE DISTRICT
AND MUNICIPAL COURTS

AND

IN RE PROPOSED RULES OF CIVIL
APPELLATE PROCEDURE

BRIEF

This Brief is an opposition to Rules and in support of Motion to set aside all previous orders.

M.S.A. 480.051 through 480.057 authorizing the Supreme Court to regulate pleading, practice, and procedure in the Courts of this State are unconstitutional. At the time of passage of 480.051 - 057 Minnesota Constitution Article VI., Section 14 read as follows:

> "Legal Pleadings"
> "Sec. 14. Legal pleadings and proceedings in the Courts of this State shall be under the direction of the legislature. ** The term direction as used in this constitutional provision is defined by Webster as "a making straight; act of directing; a directing; management; control."

Minnesota Constitution, Article VI, Section I, provides as follows:

> "Section I. The judicial power of the state is hereby vested in a Supreme Court, a District Court, a probate court, and such other courts, minor judicial officers and commissioners with jurisdiction inferior to the district court as the legislature may establish."

It is observed that the Constitution only vests a judicial power in the Supreme Court. Judicial power is defined in law dictionary as follows:

> "The authority vested in the judges or courts, as distinguished from that vested in other departments of government. That power by which judicial tribunals construe the constitution, and laws of the United States, or of the states, and determine the rights of parties, and application of the laws."

It is further to be noted that the Supreme Court according to the Constitution is a completely independent and separate Court from the District Court. It is also to be noted that the Supreme Court as compared to the District Court is a Court of very limited jurisdiction. See Article VI, Section 2, which states as follows"

> "The Supreme Court . . . shall have original jurisdiction in such remedial cases as may be prescribed by law and appellate jurisdiction in all cases but there shall be no trial by jury in said court."

It is to be noted from this Constitutional provision that the Constitution only grants to the Supreme Court jurisdiction in certain specified "cases." The word case has been defined in the law dictionary as follows:

> "CASE. A question before a court of justice. 88 Ill. App.199.
>
> Any state of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice or any question contested before such a court. 257 Ill. 55.
>
> A subject on which the judicial power is capable of acting and which has been submitted to it by a party in the form required by law. 88 Ill. App. 199.
>
> A question contested before a court of justice; an action or suit at law or in equity. 1 Wheat (U.S.) 352; 4 Iowa, 152."

It must be born in mind and there can be do doubt under our State and Federal Constitutions, all sovereign power is vested in and consequently is derived from the people. This is born out by the Constitution of the United States, Amendments 9 and 10,

> "Art. IX The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."
>
> Art. X. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

and also Article I, Section 1 of the Minnesota Constitution, which is as follows:

> "Section I. Government is instituted for the security, benefit and protection of the people, in whom all political power is inherentm together with the right to alter, modify or reform such government, whenever the public good may require it."

It is obvious that the framers of the Constitution intended that the people should vest each of the three branches of govern= ment with certain well-defined duties and obligations to be carried out by elected officers acting as their trustees and servants. This is obvious from an examination of Article III, Section 1, which is quoted as follows:

> "Section 1. The powers of government shall be divided into three distinct departments -- legislative, executive, and judicial; and no person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others, except in the instances expressly provided in this constitution."

From a case in point and setting out the necessity of a separation of powers in government and the purpose of the separation

of power is State ex rel. v. Brill, 100 Minn. 499, where it is quoted as follows:

> "(a) The tendency to sacrifice established principles of constitutional government in order to secure centralized control and high efficiency in administration may easily be carried so far as to endanger the very foundations upon which our system of government rests. That system, devised and elaborated with infinite care and wide knowledge of history and political theory, rests upon certain conceded fundamental principles. The structure which was erected is not simple. It is complex; the parts interrelated and dependent. It was deliberately framed and adopted for the purpose of effecting a change from the system which prevailed on the continent of Europe and to a certain extent in the colonies, and which had earnest and skillful advocates among political writers such as John Milton in England, Turgot in France, and Franklin in America, who argued for a sovereign legislative body, in which all political power should be vested. But the people were not willing to trust everything to a single person or collection of persons. They had heard that a wise and benevolent despot in the best of all possible rulers, but they had learned that rulers are not always wise and benevolent. A single legislative body, with full control over executive and judicial action, was to their minds as full of possible danger as a single despotic ruler. They were unwilling to trust any man or body of men with the uncontrolled exercise of all the powers of government.
>
> Constitution-making began with the states and culminated in the constitution of the nation. The idea that the powers of the government should be distributed among different bodies of men had taken possession of the minds of the states - men and people of the formative period. They were familiar with the contrary theory, and with the works of the political writers in which such theories were advocated. But they believed, with Paley, that the first maxim of a free state is that the law should be made by one set of men and administered by another; in other words, that the legislative and judicial character be kept separate. When these offices were united in the same person or assembly, particular laws are made for particular cases, springing oftentimes from particular motives and directed to private ends. Whilst they are kept separate, general laws are made by one body of men without foreseeing whom they may affect; and, when made, they must be applied by the other, let them affect whom they will. They had read in Montesquieu's Spirit of Laws that 'when the legislative and executive powers are united in the same person or in the same body of magistrates there can be no liberty. *** Again, there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subjects would be exposed to arbitrary control, for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything were the same man or the same body *** to exercise those three powers, that of enacting laws, that of executing the public resolutions and of trying the causes of individuals.' Their Blackstone taught them that 'in this distinct and separate existence of the judicial power in a peculiar body of men, nominated indeed, but not removable at pleasure, by the crown, consists one main preservative of public liberty, which cannot subsist long in any state unless the administration of common justice be in some degree separated from the legislative and also from the executive power.' Paley's Moral Philosophy, bk. 6, c. 8; Montesquieu, Spirit of Laws, bk. 11, c. 6; Blackstone, Comm. bk. 1, c. 7, p. 269 (Hammond's Ed.)"

See also page 521 of the same case.

> "'Each department of government,' said the court, 'is strictly confined within its appropriate sphere, and an attempt to exercise any power properly belonging to either of the other departments is not only unauthorized, but positively forbidden."
>
> "In Re Senate, 10 Minn. 56 (78), a statute which authorized either branch of the legislature to call for the opinion of the supreme court, or any one of the judges thereof, was held unconstitutional. "The powers and duties of each department", said Mr. Justice McMillan, "are distinctly defined. The departments are independent of each other to the extent, at least, that neither can exercise any of the powers of the others not expressly provided for. *** This not only prevents an assumption by either department of power not properly belonging to it, but also prohibits the imposition by one of any duty upon either of others not within the scope of its jurisdiction; and "it is the duty of each to abstain from and to oppose encroachments on either,' Any departure from these important principles must be attended with evil."
>
> "We have not discussed the policy of imposing other than judicial functions upon the judiciary, but it is apparent that the founders of our system of government intended to confine the courts to their judicial duties, and thus prevent them from becoming involved in the turmoil of political life. The disposition to impose such nonjudicial functions upon the judges is manifestly due to the public confidence in their fairness and disinterestedness, and to the belief that they will not be influenced by selfish, unworthy, or partisan motives. It is possible that for a time the public would be benefited by the performance of such functions, by the court, but the inevitable result in the end would be to lessen its efficiency and prestige as the guardian and conservator of the constitution and laws and the rights of individuals under the law."

See also Lauritsen v. Seward, 99 Minn. 313, where this court has gone to great lengths in its discussion on the subject of the jurisdiction of the supreme court as granted by the constitution.

The Rules of Civil Procedure are unconstitutional for the following reasons:

1. The Supreme Court has only appellate jurisdiction over the District Court and is a completely and entirely separate court and had no power under the constitution to control the action of the District Court in any way, shape, or form, except where there is a disputed case properly pending before the court.

2. The Supreme Court is powerless to abolish an act of the legislature by court order or otherwise the best they can do is declare it unconstitutional.

3. The statutes in question attempt to delegate upon the Supreme Court a legislative power contrary to the constitution.

4/ The Rules of Civil Procedure tend to break down our system of government in that it is the law that the Court may waive a rule or enforce it as it sees fit. See Dunnell's Digent Section 2773. This gives the judge option to enforce a rule or waive it, It makes the judge the lawmaker it the time as to the vital question of procedure in due Process of Law and gives the Judge the arbitrary authority to act on whim and caprice.

The evil thing about the rules is that a Court can enforce it or not as it sees fit. It does not have the fixed authority of a statute for the reason that any Court can waive its rule which gives it an arbitarry authority to act on whim and caprice. The Court can waive its rule or enforce it as it wants to. As a matter of due process of law, we do not have a rule of law but a rule of men. This destroys our form of government in that we have a dissolution of constitutional government. We do not have a government of law but a government of men.

The judges personal inclination determines his action. If he decides to waive a rule, he waives it. If he does not want to, he does not. It is not a matter of decision. It is a matter of inclination.

The evils which are inherent in such a course of action that is being undertaken presently by the Supreme Court regulating the pleading, practice, and procedure in the courts of this state are obvious on a moment's reflection.

The impropriety of a Judge or group of Judges or Court, especially one of last resort in abolishing the statutes of this state securing substantive due process of law procedural rights, and setting up others under the guise of a court rule which matteres, in the natural sequence of events, necessarily comes before the court for adjudication, immediately suggests itself. The Court is now called upon to rule upon its own legislation.

In further support of our position that the Supreme Court cannot abolish MSA 595.02 by legislating a Court rule see Bloom vs. American Express Co. 222 M at 256 where it is stated --

"Minn. Const. Art. 6 Sec. 14 Provides: "Legal pleadings and proceedings in the Courts of this State shall be under the direction of the legislature." Under that provision there can be no doubt that as to procedure the legislature must first act to create the necessary statutory directives. No other department of government has such power. A constitutional grant of power to one of the three departments of government, and thereby so designated, "is a denial to the others."

See also 2 Minnesota Statutes Annotated:
112. Judicial power, definition of "Judicial power" is the power that adjudicates upon the rights of persons or property, and to that end declares, construes, and applies the law. In re Hunstiger, 1915, 130 Minn. 474, 153 N.W. 869, rehearing denied 130 Minn. 538, 153 N.W. 1095.

116 - Interference with Legislative Department
"Under the Constitution, initiative in legislation lies entirely with Legislature, and judicial branch may not interfere with legislative power except in cases involving police power in any other way than by passing upon constitutionality, as of time of enactment of laws. Smith v. Holm, 1945, 220 Minn 486, 19 N.W. 2d 914."

111. - Judiciary, Independence of:
"The judicial and executive departments are made distinct and independent by this section, and, as neither is responsible to the other for the performance of its duties, so neither can enforce the performance of the duties of the other." Rice v. Austin, 1873, 19 Minn. 103 (Gil.74).

123. Political questions
"Courts have nothing to do with wisdom or expediency of statutes, and the remedy for unwise or inexpedient legislation is political and not judicial. Hickok v. Margolis, 1946, 22 N. W. 2d 850."

"When litigation properly presents question whether proposed administrative action of executive or administrative official is within law, constitutional or statutory, both subject of inquiry and function of decision are automatically removed from field of executive to that of judicial, but, if question is political rather than legal, courts will not determine it. Rockne v. Olson, 1934, 191 Minn. 310, 254 N.W. 5.

Dated May 31, 1967

Respectfully submitted,

JEROME DALY
Attorney at Law
28 East Minnesota Street
Savage, Minnesota

SEE ATTACHED PAGE on Constitutional Law - AM JUR

See an excellent statement of Constitutional Law on the effect of unconstitutionality, AM Jur 2d Section 177 on Constitutional Law:

D. Effect of Totally or Partially Unconstitutional Statutes
1. Total Unconstitutionality

#177. Generally

"The general rule is that unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it, an unconstitutional law, in legal contemplation, is an inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted."

"Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it. A contract which rests on an unconstitutional statute creates no obligation to be impaired by subsequent legislation."

"No one is bound to obey an unconstitutional law and no courts are bound to enforce it."

"A void act cannot be legally inconsistent with a valid one. And an unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby. Since an unconstitutional statute cannot repeal or in any way affect an existing one, if a repealing statute is unconstitutional, the statute which it attempts to repeal remains in full force and effect. And where a clause repealing a prior law is inserted in an act, which act is unconstitutional and void, the provision for the repeal of the prior law will usually fall with it and will not be permitted to operate as repealing such prior law."

"The general principles stated above apply to the constitutions as well as to the laws of the several states insofar as they are repugnant to the Constitution and laws of the United States. Moreover, a construction of a statute which brings it in conflict with the constitution will nullify it as effectually as if it had in express terms, been enacted in conflict therewith."
See cases cited.

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May 31, 1967

Miss Mae Sherman
Clerk of the Supreme Court
State of Minnesota
St. Paul, Minnesota

Re: Proposed Changes to The Rules of Civil Procedure

Dear Miss Sherman:

Pursuant to the Order of Chief Justice Knutson dated March 29, 1967, the undersigned wishes to file the following comments with respect to some of the Proposed Changes to The Rules of Civil Procedure in the District Courts.

Proposed Rule 33(3) contains no provision for extending the time in which to file notice of hearing with respect to objections to interrogatories. It should be noted that proposed Rule 33(2) provides that the court may enlarge or shorten the time with respect to answering interrogatories. I respectfully submit that provision should also be made for enlarging the time for noticing the hearing on objections to interrogatories. Often there will be other avenues open to obtain the information desired, e.g., depositions; until those avenues are exhausted a lawyer may not be able to determine whether it will be necessary to bring on a motion to compel answers to interrogatories. No useful purpose is served by restricting the motion period to 15 days. Furthermore, with respect to Rule 33(2) and Rule 33(3), the practice of the Bar at the present time is to accept a stipulation of counsel with respect to the extension of time to answer interrogatories and to compel answers. It would be time saving both for lawyers and for the courts if the new Rules provided that reasonable extensions of time could be granted by the Court, or obtained on stipulation of counsel (in lieu of Order of Court).

There are ambiguities inherent in proposed Rule 33(3). First, it is not clear whether Rule 6.02 is applicable to Rule 33(3). While Rule 6.02 provides generally for theenlargement of time, Rule 33(2) contains a specific provision with respect thereto which is limited in its terms to answering interrogatories. Since no provision is made for the enlargement of time for compelling answers to interrogatories or resolving objections to interrogatories, this may give rise to the inference that no enlargement of time can be obtained.

Second, Rule 33(3) is unclear as to whether it may be circumvented by allowing the 15 day period to run and then at some later date submitting the same interrogatory and moving to compel the answer after receipt of the same objection. The Rule states that failure to serve the notice constitutes a waiver of the right to require the answer but it is not clear whether the waiver is absolute for purposes of the entire discovery process in the lawsuit. For example, would the question be barred in a subsequent oral examination or in a motion to produce documents referred to in the original interrogatory? It would be helpful if this ambiguity were resolved in the Rule itself.

Yours truly,

LEONARD, STREET AND DEINARD

By Morris M. Sherman
Morris M. Sherman

MMS/jmh

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May 31, 1967

Mae Sherman
Clerk of Supreme Court of Minnesota
St. Paul, Minnesota

35394

Re: Argument on Proposed Amendments to Rules of Civil Procedure for District and Municipal Courts - Rule 35.03-- Waiver of Medical Privilege

Dear Miss Sherman:

Under separate cover I have prepared fifty (50) copies of proposed change entitled 35.03 Waiver. Additionally, I am leaving with you for distribution to the Chief Justice and the Associate Justices of the Court a letter addressed to the Chief Justice with copy of the proposed change attached.

It may be that you will want copies of this proposed change distributed to those attorneys attending the hearing on June 1, 1967.

Yours very truly,

CHARLES T. HVASS

CTH:mgm

"35.03 Waiver

(a) Any medical privilege that a patient might otherwise have shall be deemed to be waived in an action in which the physical, mental or blood condition of the patient is an element or factor of the claim or defense of the patient or of any party claiming through or under the patient or claiming as a beneficiary of the patient through a contract to which the patient is or was a party.

(b) Disclosures or depositions pursuant to the foregoing provision shall be made only upon order of the court, upon good cause shown, after due notice to the parties, and upon such terms as the Court may impose, as provided by Rules 30.02 and 30.04, or upon written consent of the party who would otherwise be entitled to assert the privilege.

(c) If a patient shall furnish to the other party copies of all medical reports received by the patient, written authority to inspect hospital records and written authority to request medical reports of doctors who have examined or treated the patient and from whom no report has been received, then disclosures or depositions pursuant to paragraph (b) shall not be allowed.

(d) If any doctor shall refuse to furnish a written report upon request, or a hospital shall refuse to make its records available for inspection, then paragraph (c) shall not be applicable to such doctor or hospital.

(57)

353944

SUPREME COURT
FILED
AUG 1 1967
MAE SHERMAN
CLERK

State of Minnesota,
In Supreme Court

BRIEF IN SUPPORT OF AMENDING PROPOSED RULE 50.02(4) OF THE MINNESOTA PROPOSED RULES OF COURT

ROBINS, DAVIS & LYONS
BY LAWRENCE ZELLE
400 Rand Tower
Minneapolis, Minnesota

333-3539 Hayward-Court Brief Prtg. Co., Mpls., Minn. 55415 333-3530

State of Minnesota,
In Supreme Court

BRIEF IN SUPPORT OF AMENDING PROPOSED RULE 50.02(4) OF THE MINNESOTA PROPOSED RULES OF COURT

This brief is being submitted in accordance with the order of this Court allowing the filing of briefs and petitions setting forth the position of members of the State Bar regarding certain proposed amendments to the presently existing Rules of Civil Procedure for the District Court. The scope of this brief will be directed to proposed Rule 50.02(4)

The obvious purpose of the addition of Subdivision (4) to Rule 50.02 is to promote the efficient administration of justice by eliminating the possibilities of double appeals in a single action. It is intended to broaden the scope of appellate review so as to enable the Supreme Court to act upon any and all matters which are relevant and pertinent to the appeal and to foster judicial economy and fairness.[1] In order to improve judicial efficiency in the handling of appeals rising out of rulings on blended motions for judg-

[1]By way of illustration, the provision in the last sentence of proposed Rule 50.02(4) clearly eliminates the inefficient and unjust procedure of double appeal that previously was necessitated in situations such as was presented to this Court in *Connolly v. Nicollet Hotel*, 254 Minn. 373, 95 N.W.2d 657 (1959), on second appeal, 258 Minn. 405, 104 N.W.2d 721 (1960).

ment n.o.v. or, in the alternative, a new trial, the Advisory Committee apparently intended to draft Rule 50.02(4) in a manner which would eliminate the inefficiency in judicial administration which has been created by this Court's interpretation of its powers under *M.S.A.* 605.09. See *Satter v. Turner,* 257 Minn. 145, 100 N. W. 2d 660 (1960), and *Gothe v. Murray,* 260 Minn. 181, 109 N. W. 2d 350 (1961).

The problem confronting litigants in our courts as a result of the holdings of *Satter v. Turner,* 257 Minn. 145, 100 N. W. 2d 660 (1960), and *Gothe v. Murray,* 260 Minn. 181, 109 N. W. 2d 350 (1961), is that, because of the provisions of *M.S.A.* 605.09 (Proposed App. Rule 103.03), it is not possible to obtain judicial review of a trial court order conditionally granting a new trial when it is coupled with an order granting judgment notwithstanding the verdict. An injustice may thus be created if the trial court has erred or been arbitrary in conditionally granting the motion for new trial after ordering judgment notwithstanding the verdict. Under such circumstances, the appellant who appeals from the order granting judgment n.o.v., and is successful in obtaining reversal of that order, is without remedy before the Supreme Court to correct the arbitrary or erroneous action of the trial court in conditionally granting the motion for new trial. This inefficient and unjust situation exists because of the peculiar wording of *M.S.A.* 605.09 (Proposed App. Rule 103.03), which rigidly defines those circumstances under which an order granting a new trial, whether conditional or not, is appealable. See Note, Appealable Orders, Prohibition and Mandamus in Minnesota, *51 Minn. L. Rev.* 115, 131 (1966).

Because the Federal Courts are not hindered by any Federal Statute comparable to *M.S.A.* 605.09, the language of *Federal Rule* 50(c) enables the federal appellate courts to efficiently review the conditional granting of an order for new trial on an appeal from the order granting judgment n.o.v. The key word in the federal rule which enables the federal appellate court to consider and pass upon the lower court's conditional granting of a new trial is the word "otherwise", as it appears in Rule 50(c) as follows:

> "In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has *otherwise* ordered." (Emphasis added.)

In his treatise on the Federal Rules of Civil Procedure, Professor Moore analyzes the use of the term "otherwise" as follows:

> "This means, among other things, that the appellate court may reverse the grant of a new trial and order entry of judgment on the verdict. Or, it may remand the case to the trial court for the court to consider the motion for a new trial in light of the disposition by the Court of Appeals of the judgment N.O.V." *5 Moore, Federal Practice* 2382 (2d ed. 1966).

This explanation of the practice regularly followed by federal appellate courts under *Federal Rule* 50(c) is also recognized in the treatise on federal procedure by Barron & Holtzoff, wherein it is stated:

> "And where an appeal is properly taken from a judgment notwithstanding the verdict, the appellate court,

> on holding that such judgment was erroneous, may also review the conditional order of the trial court, made pursuaant to Rule 50(b), granting a new trial." *3 Barron & Holtzoff, Federal Practice and Procedure* Sec. 1302 (Wright rev. 1958).

The Advisory Committee which drafted proposed Rule 50.02(4) assumes that conforming the language of our rule to the language of the federal rule will result in the same practice being followed by our Supreme Court as is followed by the federal appellate courts. The fact of the matter is that this is nothing more than a gratuitous presumption on the part of the Advisory Committee and is no guarantee to the members of the Bar of this state that such a change will, in fact, occur as a result of the adoption of the federal language. There is no reason why the arguments accepted by this Court in *Satter v. Turner, supra,* and *Gothe v. Murray, supra,* would not have equal force and effect under proposed Rule 50.02(4). If this were to be the case, then the purpose and intent of the amendment as drafted by the Advisory Committee would be completely frustrated.

It is possible to argue, of course, that *M.S.A.* 605.05 (Proposed App. Rule 103.04) will eliminate the inequity previously existing under 605.09, on the grounds that in those situations where there has been arbitrary or erroneous action by the trial court "the interests of justice" will require appellate review of the order conditionally granting a new trial. While this argument has a great deal of merit and pursuasiveness,[2] it nevertheless fails to completely

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[2]This argument has already been presented to the Supreme Court in the case of *McCormack v. Hankscraft Co., Inc.,* File Number 39627, which is presently under consideration. See Appellant's Brief p. 99.

conform our practice to that presently existing in the federal courts. Even assuming the validity of the argument under 605.05 (Proposed App. Rule 103.04), an appellant seeking reversal of an order conditionally granting a new trial would have to bear the burden, on a case-by-case basis, of establishing before this Court that "the interests of justice" require appellate review of the conditional order. If certainty in the law is desirable, the practice of determining the reviewability of an order conditionally granting a new trial on a case-by-case basis, depending upon the particular equities involved in each instance, is a step in the wrong direction.

The basic purpose of this brief is to demonstrate that the ambiguity and uncertainty presently existing as to whether an order conditionally granting a new trial can be reviewed on appeal may be easily eliminated by slightly modifying the language of the Rule 50.02(4) as proposed. It is possible to achieve with certainty the desired goal of the Advisory Committee[3] and eliminate the necessity of an appellant relying upon an argument grounded on the provisions of *M.S.A.* 605.05 (Proposed App. Rule 103.04) by a slight alteration of the proposed language. This petitioner respectfully suggests that proposed Rule 50.02(4) be altered to read as follows:

---

[3]Although the Advisory Committee comment to proposed Rule 50.02(4) seems to be an indication that the Committee desires to provide appellate review of an order conditionally granting a new trial, the rule as worded contains sufficient uncertainty so that an able and competent appellate lawyer could easily argue that "the new rules make no change in practice in this area." See letter of May 31, 1967, to Petitioner, copy of which was forwarded to the Honorable Oscar R. Knutson.

PROPOSED RULE 50.02(4):

> If the motion for judgment notwithstanding the verdict is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for a new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally denied *or granted for any reason, either party* on appeal may assert error in that *order;* and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court. (Suggested changes in italics.)

It is submitted that, if the rule is so worded, there will be no question of this Court's power, on an appeal from an order granting judgment n.o.v., to consider and review a conditional order which either grants or denies a motion for a new trial. The establishment of such procedure in no way limits or affects the present provisions of *M.S.A.* 605.09 (Proposed App. Rule 103.03), inasmuch as the procedural rule merely broadens the scope of review without in any way or manner affecting the question of appealability of the order. There is no question but that the Supreme Court may, on appeal from an order granting judgment n.o.v., review an order conditionally *denying* a motion for a new trial. In the interests of fairness, equity, and the efficient administration of justice, this Court should have the clear and unequivocal power to act in the

same manner regarding an order conditionally *granting* a motion for a new trial.

Respectfully submitted,

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TELEPHONE
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May 15, 1967

Miss Mae Sherman
Clerk of the Supreme Court
State Capitol
St. Paul, Minnesota

35394

Re: In the Matter of Rules of Pleading, Practice and Procedure in Civil Actions
and
In the Matter of Rules of Civil Appellate Procedure

Dear Miss Sherman:

I would like the opportunity of appearing in opposition to the proposed amendment to Rule 26.02 at the hearing to be held June 1, 1967 in the above entitled matter. A couple of minutes would be sufficient for all I have to say on the subject.

I will be filing a Brief with your office on or before May 20th.

Yours very truly,

DOHERTY, RUMBLE & BUTLER

By Frank Claybourne

FC:eha

(42)

35394

STATE OF MINNESOTA
In Supreme Court

IN THE MATTER OF RULES OF PLEADING,
PRACTICE AND PROCEDURE
IN CIVIL ACTIONS
and
IN THE MATTER OF RULES OF CIVIL
APPELLATE PROCEDURE

BRIEF

FRANK CLAYBOURNE
DOHERTY, RUMBLE & BUTLER
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St. Paul, Minnesota 55101

224-7631 — Review Publishing Co., 287 E. 6th St., St. Paul, Minn. 55101 — 224-7631

STATE OF MINNESOTA
In Supreme Court

IN THE MATTER OF RULES OF PLEADING,
PRACTICE AND PROCEDURE
IN CIVIL ACTIONS
and
IN THE MATTER OF RULES OF CIVIL
APPELLATE PROCEDURE

BRIEF

The Supreme Court Advisory Committee has recommended an amendment to Rule 26.02 by the addition of the following language:

> "In any action in which there is an insurance policy which may afford coverage, any party may require any other party to disclose the coverage and limits of such insurance and the amounts paid and payable thereunder and under Rule 34 may obtain production of the insurance policy; provided, however, that the above provision will not permit such disclosed information to be introduced into evidence unless admissible for other reasons or upon other grounds."

We respectfully urge that this proposed amendment to Rule 26.02 should not be adopted.

It is basic that there must be some connection between the information sought by discovery and the action itself before such information becomes discoverable. The coverage and

limits of an insurance policy is not information that constitutes admissible evidence nor is it information that leads to the discovery of admissible evidence in the ordinary case.

The opinion in the case of *Jeppesen vs. Swanson* (1955) 243 Minn. 547, 68 N.W. (2) 649, by this Court is probably as authoritative a statement and as carefully considered an opinon on this subject as has been written.

This case holds that the right to inspect a policy of liability insurance on defendant's truck is not within the scope of discovery afforded by Rule 34. The opinion carefully reviews the cases then written on the subject and discusses the basis of the discovery rules and the purpose they were intended to serve.

It is respectfully suggested that a careful review of this opinion would be more instructive, more helpful and less burdensome to the Court on the question of whether to adopt this proposed amendment than any elaborate or lengthy brief that could be submitted.

For the reasons set forth and discussed in that opinion, we believe that the proposed amendment should not be adopted. As stated at page 562 of the opinion, ". . . we should not emasculate the rules by permitting something which never was intended or is not within the declared objects for which they were adopted."

Respectfully submitted,

FRANK CLAYBOURNE
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St. Paul, Minnesota 55101

NORD AND WEBSTER
ATTORNEYS and COUNSELORS at LAW
340 Minnesota Building
Saint Paul, Minnesota

DAVID W. NORD
BRUCE A. WEBSTER
TERENCE P. BRENNAN

Telephone
222-7477

May 19, 1967

Miss Mae Sherman
Clerk of Supreme Court
State Capitol
Saint Paul, Minnesota 55101

35394
District

Dear Miss Sherman:

I should like to be heard by the Supreme Court on the subject of proposed Rule 35.03. I believe that before the actual hearing date there will be a number of others associated with me.

Very truly yours,

NORD AND WEBSTER

David W. Nord

David W. Nord
jar

Brief to follow before June 1

DONALD W. DUNN, *Executive Director*

minnesota hospital association inc.

ROOM 203, 720 WASHINGTON AVENUE SOUTHEAST • MINNEAPOLIS, MINNESOTA 55414
(612) 331-5571

May 19, 1967

35394
Dismissed

Clerk of the Supreme Court
State of Minnesota
State Capitol
Saint Paul, Minnesota

Dear Sir:

In accordance with the Order of the Court dated March 29, 1967, the Minnesota Hospital Association hereby indicates its desire to be heard in regard to the new proposed Rule 35.03, Waiver of Medical Privilege.

This proposal has just come to the attention of the Association. Our attorney is out of town. Details relating to our position in regard to the proposed rule will be forwarded next week.

Thank you for your attention to this request.

Sincerely yours,

Donald W. Dunn

Donald W. Dunn

DWD/h

Joseph Hamilton
2200 1st Nat'l Bank
Mpls-

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ATTORNEYS AND COUNSELORS
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WILLIAM J. MILOTA

TELEPHONE 339-4521
AREA CODE 612

May 17, 1967

The Honorable Mae Sherman
Clerk of the Supreme Court
State Capitol
St. Paul, Minnesota

Dear Miss Sherman:

In re Hearing on proposed rules 35394

Please be advised that the undersigned wishes to be heard on the proposed changes in Rules 26.02, 33, 35.03, 39.03, 47.03 and 60.02 of the Rules of Civil Procedure.

We will file our brief thereon shortly.

Very truly yours,

MAHONEY AND MAHONEY

Richard P. Mahoney

RPM:jmc

FLANAGAN McGRAW & MOORE
ATTORNEYS AT LAW
COMMERCE BUILDING
ST. PAUL, MINNESOTA 55101

19 May 67

JOHN J. FLANAGAN
WILLIAM J. McGRAW
ROBERTSON MOORE

PHONE 222-8493

Mrs. Mae Sherman
Clerk of the Supreme Court
St. Paul, Minnesota

Re: In the Matter of Rules of Pleading, Practice and Procedure in Civil Actions
and
In the Matter of Rules of Civil Appellate Procedure

Dear Mrs. Sherman:

Enclosed herewith is a Petition to consider Amending Rule 59.02 of the Rules of Civil Procedure.

We do not desire to be heard on the day this matter is scheduled for hearing.

Thank you.

Yours very truly,

William J. McGraw

WJM:plz
encls.

STATE OF MINNESOTA

IN SUPREME COURT

In the Matter of Rules of Pleading, Practice and Procedure in Civil Actions and In the Matter of Rules of Civil Appellate Procedure

PETITION TO CONSIDER AMENDING RULE 59.02 OF THE RULES OF CIVIL PROCEDURE

Petitioner, Flanagan McGraw & Moore, Attorneys at Law, states that:

WHEREAS the Advisory Committee has proposed that Rule 59.02 be amended to read as follows:

> "A motion made under Rule 59.01 shall be made and heard on the files, exhibits and minutes of the Court. Pertinent facts that would not be a part of the minutes may be shown by affidavit. A full or partial transcript of the court reporter's notes may be used on the hearing of the motion."

and;

WHEREAS, Rule 43.05 now reads as follows:

> "When a motion is based on facts not appearing of record, the Court may hear the matter on affidavits presented by the respective parties, but the Court may direct that the matter be heard wholly or partly on oral testimony or depositions."

NOW, THEREFORE, petitioner hereby requests the Supreme Court to consider amending said Rule 59.02 to read as follows:

> "A motion made under Rule 59.01 shall be made and heard on the files, exhibits and minutes of the Court. Pertinent facts that would not be a part of the minutes may be shown by affidavit, and, at the discretion of the Court, by oral testimony or depositions. A full or partial transcript of the court reporter's notes may be used on the hearing of the motion."

Petitioner contends that the additional language "and, at the discretion of the Court, by oral testimony or depositions" should be added to make Rule 59.02 consistent with Rule 43.05. This Court is aware and can take

judicial notice of the fact that there are some trial irregularities which might best or only be shown by oral testimony. In the recent case of Weber vs. Stokely-Van Camp, Inc., 1966, 274 Minn. 482, 144 N.W. 2d, 540, this Supreme Court held that, based on the facts and circumstances of the trial of that case, oral testimony would have been preferable in hearing a motion for a new trial.

Petitioner does not desire to be heard at the scheduled hearing of the above matter, but merely wishes to call the attention of the Court to this proposed change for its consideration.

Dated this 19th day of May, 1967.

Respectfully submitted,

FLANAGAN McGRAW & MOORE

By _____

William J. McGraw
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SAMUEL LIPSCHULTZ
(1894-1960)

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224-5471

May 19, 1967

Miss Mae Sherman
Clerk of the Supreme Court
State of Minnesota
State Capitol Building
Saint Paul, Minnesota 55101

35394
District

Re: In the Matter of the Rules of Pleadings,
Practice and Procedure in Civil Actions

Dear Miss Sherman:

Pursuant to order of the Supreme Court dated March 29, 1967, be advised that this firm by the undersigned and Hansen & Hazen by Gene P. Bradt will be filing a joint brief with the court and each of us also desire to be heard by the court in opposition to the proposed amendment to Rule 26.02 of Minnesota Rules of Civil Procedure for the District Courts. We will appreciate your advising the court of our request and we assume that you will notify us as to the time of hearing.

Yours truly,

J. H. Geraghty
for
ALTMAN, GERAGHTY, LEONARD & MULALLY

JHG:skm
cc: Mr. Gene P. Bradt

(46)

39394

SUPREME COURT
FILED
MAY 22 1967
MAE SHERMAN
CLERK

SUPREME COURT OF MINNESOTA

IN THE MATTER
OF
PROPOSED AMENDMENT TO
RULE 26.02 — DISCLOSURE
OF POLICY LIMITS

PETITION AND BRIEF

ALTMAN, GERAGHTY,
LEONARD & MULALLY
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HANSEN, HAZEN,
DORDELL & BRADT
600 Degree of Honor Building
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224-7631 — Review Publishing Co., 287 E. 6th St., St. Paul, Minn. 55101 — 224-7631

INDEX

STATE OF MINNESOTA
In Supreme Court

IN THE MATTER
OF
PROPOSED AMENDMENT TO
RULE 26.02 — DISCLOSURE
OF POLICY LIMITS

PETITION AND BRIEF

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

We, the undersigned, as members of the Bar, and pursuant to the permission granted by the Court in its Order of March 29th, 1967, do desire to be heard and are submitting herewith our brief which opposes the proposed amendment to Rule 26.02 as prepared and recommended by the Supreme Court Advisory Committee.

INTRODUCTION

The Advisory Committee, in its report, recommended that Rule 26.02 of the Minnesota Rules of Civil Procedure be amended to provide as follows:

> "In any action in which there is an insurance policy which may afford coverage, any party may require any other party to disclose the coverage and limits of such insurance and the amounts paid and payable thereunder and under Rule 34 may obtain production of the insurance policy; provided, however, that the above provision will not permit such disclosed information to be introduced into evidence unless admissible for other reasons or upon other grounds."

We believe that the adoption of the amendment would not be in the best interests of the public and it may have an adverse effect upon the orderly and efficient administration of justice.

ARGUMENT

I

The existence of insurance coverage and the limits thereof are not relevant and will not lead to the discovery of admissible evidence.

The discovery rule has provided and will continue to provide that inquiry may be directed to matters that are relevant to the subject matter or which should appear reasonably calculated to lead to discovery of admissible evidence.

The proposed amendment is inconsistent with the relevancy requirement of the rule since this Court and many other courts have held that discovery of insurance coverage and the limits of such coverage under Rule 26.02 and similar rules is not relevant.[1] In *Jeppesen*, this Court construed the intended purpose of discovery by stating:

> "It would seem to us that, even though the discovery is not to be limited to facts which may be admissible as evidence, the ultimate goal is to ascertain facts or information which may be used for proof or defense of an action. Such information may be discovered by leads from other discoverable information. The purpose of the discovery rule is to take the surprise out of trials of cases so that all relevant facts and information pertaining to the action may be ascertained in advance of trial. Where it is thought to discover information which can have no possible bearing on the determination of the action on its merits, it can hardly be within the rule. It is not intended to supply information for the personal use of a litigant

[1] **Jeppesen v. Swanson,** 243 Minn. 547, 68 N.W. 2d 649; 41 A.L.R. 2d 968

> that has no connection with the determination of the issues involved in the action on their merits." [2]

In holding that insurance was not discoverable in *Jeppesen*, this Court quoted from *McClure v. Boeger* (D.C.) E.D. Penn., 105 S. Supp. 612:

> "* * * whatever advantages the plaintiff might gain are not advantages which have anything to do with his presentation of his case at trial and do not lead to disclosure of the kind of information which is the objective of discovery procedures." [3]

We submit that the philosophy and purpose of discovery rules are well summarized in the above quotes and we urge that there is no justification for including in a basic discovery rule which is limited to relevant matters, a subject matter which is admittedly not relevant and which will not lead to the discovery of admissible evidence.

If an exception to the relevancy requirement is permitted in this instance, will others not follow, so that inquiry will be permitted into the cash and other property assets of an insured individual?

Is there any real reason to distinguish between the two situations? In one, an individual has undertaken to protect himself against liability, while in the other, he has not. While the issues of the case remain the same in both instances, the discovery procedures, under the proposed amendment, would differ.

If the defendant is asked whether he has insurance to protect himself against the loss, and he answers yes, plaintiff may

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[2] 243 Minn. 547, 560, 68 N.W. 2d 649, 656
[3] 243 Minn. 547, 554, 68 N.W. 2d 649, 653

then proceed to inquire into the amount of the limits. If he answers no, plaintiff's inquiry presumably must cease, even though in the latter case, the amount of defendant's assets may be greater than the limits of the insured defendant's policy.

Is the law to provide one rule for the insured defendant and one for the uninsured? If it does, it would be an unfair rule.

II

Permitting the discovery of insurance and the limits thereof will not promote out-of-court settlements or relieve the congested court calendar.

The argument most often advanced by proponents of the amendment is that discovery of insurance and the limits will promote out-of-court settlements and relieve the congested court calendars.

We submit that this argument is without merit. It is well recognized that more than 90% of all lawsuits now are settled before trial. It would seem difficult to improve on that figure. The way to eliminate court congestion is to effect settlements before the action is commenced. This proposed amendment could have the result of discouraging this, since plaintiff would be more likely to want to commence the action first in order to be able to determine the limits, whenever these are in doubt.

In addition, a survey conducted in one state which has held that insurance coverage and limits are discoverable, indicates that the adoption of this rule has not had the effect of relieving court congestion. In Illinois, according to a 1960 report by the Institute of Judicial Administration, in 1957 the delay in the Circuit Court of Cook County was 30 months and in the

Superior Court of Cook County, 54 months. In 1957 the Supreme Court of Illinois ruled that insurance policies and limits were discoverable (*People ex rel. Perry v. Fischer*, 12 Ill. 2d 231, 145 N.E. 2d 588).

Three years after that decision, the report discloses, the delay in the Circuit Court was 70 months and in the Superior Court 68 months. Obviously, the decision did not have any noticeable effect on court congestion.

Nor will the fact that the proposed amendment would require the plaintiff to disclose to the defendant the amount of payments he has received or may be entitled to receive from private insurance carriers, have the effect of promoting settlements, since Minnesota does not have the "collateral source rule."

The courts concededly have a right to be concerned about the settlement of disputes, particularly in the administration of jury calendars, many of which are congested. While compulsory settlement conferences may have a place in the modern court administration, the necessity for such should be determined by the particular judicial district depending upon its current calendar circumstances. The Rules of Civil Procedure were intended by the court to regulate pleadings, practice, procedure and the forms thereof in civil actions. Rule 1 provides "* * * they shall be construed to secure just, speedy, and inexpensive determination of every action."

Thus, while settlements are to be encouraged, there should not be added to these rules, amendments which have as their only conceivable purpose, providing the plaintiff with information which might place him in a strategically superior bargaining position.

While no reason is given by the Advisory Committee for the proposed amendment, the only possible reason that we can

think of is the one advanced by plaintiff in *Jeppesen* (supra), to-wit: To assist plaintiff in evaluating his case for purposes of settlement.

The evaluation of a case for settlement depends fundamentally on two factors: (1) The likelihood of establishing liability, and (2) probable damages. Injecting a third factor, the extent of insurance—which is legally irrelevant—does not properly promote settlement. It may, in fact, have the reverse effect.

As is pointed out in 74 Harvard Law Review 940, at page 1019:

> "Indeed, should the injured party find that the defendant is insured to a greater degree than he had initially believed, discovery may inhibit the chance of settlement, for the plaintiff may be encouraged to increase his prayer for recovery and to risk trial before a possibly sympathetic jury. Discovery of the policy limits may also encourage the injured party to make the settlement demand at top limits, which might in turn put pressure upon the insured to settle at that maximum; and the insurer's refusal might create the risk of a suit by the insured for negligent failure to settle, should the jury subsequently return an award for the plaintiff in excess of the settlement offer."[4]

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[4] Developments in The Law – Discovery, 74 Harv. L. Rev. 940

III

There is no practical necessity for the amendment to 26.02.

(1) The existence of insurance is generally known to plaintiff before suit is commenced.

In automobile accident cases, the parties are required by M.S.A. 170.25 to file proof of financial responsibility with the Commissioner of Highways. This information is available to plaintiff.

In almost all cases, plaintiff is contacted by a representative of the insurer within a few days of the accident. Settlement negotiations are conducted by plaintiff or his counsel directly with the insurer. It is only after settlement negotiations break down that the matter is placed in suit.

(2) The real objective of the proposed amendment, therefore, must be to obtain knowledge of the policy limits. Again, there is no practical necessity for this.

To our knowledge, no plaintiff or his attorney in this state has ever been misled into an improvident settlement because the limits of defendant's insurance policy were concealed or misstated. We have observed that in those cases of liability favorable to plaintiff and where damages are substantial, defendant's counsel will advise plaintiff's counsel during the course of settlement discussions that the limits are low. It is not unusual that such settlements are conditioned upon the representation by defense counsel of the amount of the policy limits. Trial counsel of this Bar are all aware of this common practice.

Conversely, where the defense refuses to disclose the limits of coverage where the damages are substantial, it is assumed

that the amount of coverage is adequate to cover any possible verdict.

Of course, the insurer and its attorney has the duty of disclosing to the insured defendant that the damages may exceed his coverage and that he may personally or by his private counsel participate in the settlement discussions.

Giving plaintiff knowledge of the limits in each case, may induce him to over-evaluate his claim; to hold out longer in the hope of reaching the maximum; or to play the policy holder against his company by threat of an excess verdict.

(3) Finally, where an injured person has satisfied the legal requirements, i.e., established liability and damages resulting in a verdict favorable to him, he has the benefit of M.S.A. 60.51 which provides for a direct action against the insurer after an execution has been returned unsatisfied. While that statute has been in existence since 1937, it has seldom been used, as our research indicates that it has not been cited by this Court in any decision except *Jeppesen*. The inference can be drawn that where there is a question of limits or of the extent of coverage, the issue is resolved before final judgment.

Whether the statute is utilized or not, it is only when an execution has been returned unsatisfied, that the existence of coverage, and limits thereof become relevant. At that point, plaintiff has, by virtue of M.S.A. 60.51 all the legal authority necessary to inquire into the question.

By leaving this remedy where it properly belongs—after final judgment—the possibility of insurance affecting settlement negotiations, the trial court's impartial participation, or the jury's verdict, is negated.

CONCLUSION

For the foregoing reasons, we urge that the recommendation of the Advisory Committee to amend Rule 26.02 not be adopted.

Respectfully submitted,

ALTMAN, GERAGHTY,
LEONARD & MULALLY
By James H. Geraghty
HANSEN, HAZEN,
DORDELL & BRADT
By Gene P. Bradt

STATE OF MINNESOTA

IN SUPREME COURT

IN RE PROPOSED AMENDMENTS TO RULES
OF CIVIL PROCEDURE FOR THE DISTRICT
AND MUNICIPAL COURTS

AND

IN RE PROPOSED RULES OF CIVIL
APPELLATE PROCEDURE

Pursuant to the order of March 29, 1967 a number of briefs and petitions were filed with the clerk of this court specifying certain proposed rules upon which oral argument was desired, and in addition a number of letters were received requesting that the time for filing briefs be extended;

NOW THEREFORE, in order to facilitate the court's consideration of both the proposed amendments to the Rules of Civil Procedure for the District and Municipal Courts and the proposed new Rules of Civil Appellate Practice;

IT IS HEREBY ORDERED:

(1) That the attorneys and organizations listed in the attached calendar be allotted time for oral argument on June 1, 1967 commencing at 9:30 A. M. on the subjects or rules indicated.

(2) That a copy of this order be mailed to all persons or organizations who wrote letters to the court, even though they did not file briefs or petitions with the clerk, and the said persons or organizations are invited to attend the hearing on June 1, 1967, and to thereafter file briefs on any rule which they deem to have been inadequately covered, within such time as the court may thereafter determine.

(3) After all briefs have been filed under paragraph 2 the court will determine whether additional oral argument will assist its consideration of the recommendations made by the Advisory Committee.

Dated May 26, 1967.

BY THE COURT:

OSCAR R. KNUTSON

Chief Justice

STATE OF MINNESOTA

IN SUPREME COURT

JUNE 1, 1967 9:30 A. M.

ARGUMENTS ON PROPOSED AMENDMENTS TO RULES OF CIVIL PROCEDURE FOR DISTRICT AND MUNICIPAL COURTS

Henry Halladay, Chairman of Advisory Committee

Rule 26.02 - Disclosure of Insurance

Charles Hvass, Minneapolis

J. H. Geraghty, St. Paul

Rule 33 - Interrogatories to Parties

Richard Mahoney, Minneapolis

William Essling, St. Paul

Rule 35.03 - Waiver of Medical Privilege

Charles Murnane, St. Paul

Charles Hvass, Minneapolis

Minnesota Hospital Association

Rule 59.02 - Motion for new trial on minutes

David Nord, St. Paul

Thomas Stearns, St. Paul

James L. Hetland, Jr., Secretary of Advisory Committee

ARGUMENTS ON PROPOSED RULES OF CIVIL APPELLATE PROCEDURE

O. C. Adamson II, Advisory Committee

Rule 110 - Transcript and record on appeal

David Nord, St. Paul

Minnesota Shorthand Reporters Association

After the above arguments have been presented, an opportunity will be afforded on June 1, 1967 to other interested persons to present arguments on points not repetitious of prior arguments. While no specific time is allotted, the amount of time allowed will be set by the court.

May 17, 1967

William H. DeParcq
Attorney at Law
565 Pillsbury Building
608 Second Avenue South
Minneapolis, Minnesota 55402

Dear Bill:

I have your letter of May 16 regarding the proposed amendments to the rules of civil procedure.

I realize that the time allowed for filing briefs and studying the proposed amendments is short. However, I have discussed the matter with the court and we feel that we should go ahead with the initial hearing on June 1, at least for the purpose of ascertaining in what areas there are controversies. We can then continue the matter so as to allow further time for filing briefs and if necessary have another hearing on the proposed amendments that seem to be controversial. We have no intention of hurrying the adoption of these proposed amendments or of depriving anyone bfsa right to be heard.

From the similarity of the number of letters I have received I assume that the request for extension of time as to many of them comes from the same source. I do hope that many of the attorneys who have objections to some of the rules, or favor them, can get together and prepare common briefs. If each of those who have written are to file separate briefs it would multiply our task beyond all reason. I assume there will be comparatively few of the amendments that are controversial.

I remember with pleasure attending the meetings of the committee that you headed for a long time. I think your committee served a good purpose and sometimes regret that it was more or less abandoned.

In any event,before any of the proposed amendments are adopted I can assure you that ample time will be given to the Bar to study them so that all views may be presented.

Sincerely yours,

ORK:dm

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MINNEAPOLIS, MINNESOTA 55402

WILLIAM H. DEPARCQ
JEROME T. ANDERSON
ROBERT E. ANDERSON
ASSOCIATE

TELEPHONE
339-4511
AREA CODE 612

May 16, 1967

The Honorable Oscar R. Knutson
Chief Justice Minnesota Supreme Court
State Capitol
St. Paul, Minnesota

Re: Amendments to the Rules of Civil Procedure

Dear Mr. Chief Justice:

Hell hath no fury like that of a lawyer who has been denied an ample opportunity to be heard and to express his views, when he deems such denial to be unjustified.

Because of their complexity, importance and controversiality, I would respectfully suggest that the time to file briefs, and appearances, and present arguments, be extended until some time subsequent to the annual convention of the Minnesota State Bar Association this summer.

I know that some lawyers feel deeply about these amendments, and I am unable to see any prejudice arising from this delay.

I noted with interest that some of the suggested amendments were recommended by the Court Rules Committee during the seven years when it was under the sound and conservative chairmanship of the undersigned. You were also a liaison member during all or most of that time. Some of the changes we recommended, but which were rejected by the Advisory Committee, and later by the Supreme Court, have now been recommended by the Advisory Committee, and their entire report is of great interest to me. I must confess that I, too, personally would desire an opportunity for more adequate study.

Sincerely yours,

William H. DeParcq

WHD/m

CC to all Justices of the Minnesota Supreme Court

May 22, 1967

Mr. William H. DeParcq
Attorney at Law
565 Pillsbury Building
608 Second Avenue South
Minneapolis, Minnesota 55402

Dear Bill:

I wish to thank you for your letter of May 19. I heard from Solly Robins today and I have heard from some of the others to whom I have written and the plan I have outlined in my former letters seems to meet with general approval.

I do hope that you and Solly, and probably some of the others who wish to be heard, can agree upon a common spokesman if you are to appear in opposition or support of the adoption of the same rule.

We were going to prepare a schedule of those to be heard, and the order, but we have heard from so many it is going to be impossible to arrange any kind of schedule unless you get together on it.

Sincerely yours,

ORK:dm

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WILLIAM H. DEPARCQ
JEROME T. ANDERSON
ROBERT E. ANDERSON
ASSOCIATE

TELEPHONE
339-4511
AREA CODE 612

May 19, 1967

Honorable Oscar R. Knutson
Judge of Supreme Court
State Capitol Building
St. Paul, Minnesota

Dear Mr. Chief Justice:

Thank you very much for your excellent letter of May 17th, 1967 which I greatly appreciated. I think the procedure which you have outlined is sound, sensible and fair and it appears to me to be an excellent way to give lawyers a fair opportunity to be heard on the few controversial matters without delaying the entire hearing and without holding up the study and approval of rules that are concededly improvements or at least noncontroversial.

After your letter I had a long talk with Ochie Adamson for whose judgment I have, of course, the greatest and highest respect. As the result of your letter and my conversation with Ochie, I have dissuaded a group of lawyers from filing a formal petition or assaulting the court with additional letters, which would not be particularly helpful.

I hope that next week we can get a group of the plaintiffs' lawyers together and select one lawyer, or at the most two lawyers, to appear at your hearing on June 1st. Also, I think the idea that those lawyers who either oppose or favor a certain amendment should adopt or present a common brief is an excellent one, and I will do what I can to accomplish this result.

Again thanks for your letter, and with kindest personal regards, I am,

Yours sincerely,

Bill DeParcq

William H. DeParcq

WHD:vs

May 22, 1967

Mr. Solly Robins
Attorney at Law
Minnesota Building
St. Paul, Minnesota 55101

Dear Mr. Robins:

I have your letter of May 18.

I have heard from a large number of lawyers who obviously are interested in the same proposals to amend our rules. I would think that all the lawyers, or most of them, who appear on the same side either in opposition to or in favor of the adoption of a rule could get together and submit common arguments and briefs. I have a letter from Bill DeParcq where he has that in mind, and I suggest you get in touch with him as I would guess that you would have the same ideas in mind.

We do not wish to sit and listen to two dozen arguments from different lawyers on the same subject unless they have something new to add. While we do not wish to foreclose anyone from being heard it would seem that most of those who wish to speak on a common subject could agree upon a spokesman.

Sincerely yours,

ORK:dm

LAW OFFICES

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THOMAS D. FEINBERG
JAMES A. KARIGAN
LAWRENCE ZELLE
WILTON E. GERVAIS
JULIUS E. DAVIS
SIDNEY S. FEINBERG
BERNARD ROSENBERG
ARNOLD M. BELLIS
PAUL W. URBANEK
ROBERT J. TWEEDY
ELLIOT S. KAPLAN
CHARLES H. HALPERN (1911-1965)

STANLEY E. KARON
JAMES L. FETTERLY
JOHN T. CHAPMAN
JOHN M. SANDS
SIDNEY KAPLAN
DALE I. LARSON
ELLIOT ROTHENBERG
HOWARD A. PATRICK
NORMAN K. GURSTEL
DAVID J. LARSON
JOHN F. EISBERG
STANFORD ROBINS
STEPHEN A. KRUPP
THOMAS C. KAYSER
LEO F. FEENEY

WASHINGTON, D. C. OFFICE
RONALD A. JACKS

May 18, 1967

The Honorable Oscar R. Knutson
Chief Justice
The Supreme Court of Minnesota
State Capitol
St. Paul, Minnesota

Dear Justice Knutson:

Thank you for your prompt answer to my letter of May 8, 1967.

Pursuant to your Order of March 29, 1967, I would appreciate your including my name on the list of those individuals who would like to be heard at the hearing presently scheduled for June 1, 1967, for the purpose of discussing the proposed Rules of Civil Procedure.

The matters upon which I would like to be heard include the following: Rule 33 and, more specifically, that portion of the Rule dealing with the method of objecting to interrogatories; Rule 35.03 pertaining to waiver of medical privilege; Rule 103.03 - 103.04 dealing with appealable judgments and orders; Rule 105.01 pertaining to discretionary review, and Rule 110.02 pertaining to the record on appeal.

In addition, I would like to be heard on certain proposals made to the Advisory Committee but which were not recommended to the Supreme Court, including the adoption of an amendment to Rule 49.01 to permit a judge to allow comment on the effect of answers to special interrogatories and, secondly, the adoption of a requirement that jury instructions precede closing arguments.

While I do not know in what manner the Court intends to allot time to the discussion of these various subjects, I would expect that a

larger portion of my time would be devoted to the discussion of the Rule on medical privilege.

If there is any additional information you would like from me at the present time, I would very much appreciate your letting me know.

Kindest personal regards.

Respectfully yours,
ROBINS, DAVIS & LYONS

Solly Robins

sr

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Tel. 8-2949

ST. CHARLES OFFICE
813 Whitewater St.
Tel. 932-3440

May 19, 1967

Chief Justice Oscar R. Knutson
Supreme Court of Minnesota
St. Paul, Minnesota

Dear Sir:

Thank you very much for your letter of May 15, 1967. You are quite correct in your assumption that the request for extension comes from a single source. The Minnesota Association of Trial Lawyers, of which I am a member, sent me a notice of the time limitations that we would be facing in reviewing the proposed changes. I am dictating this letter during my lunch hour, because I am due back in court to continue the trial of a case. I trust that in the coming week I will have an opportunity to review the new rules, hoping to understand them before June 1st.

I would agree that probably there will be very few rules about which a controversy will exist, and I believe that your proposed procedure will allow everybody to be heard.

Thank you very much for your consideration of our needs in this regard.

Very truly yours,

PETERSON & CHALLEEN, LTD.

Duane M. Peterson

DMP/fn

COURTNEY, COURTNEY & GRUESEN
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JAMES J. COURTNEY (1909-1954)

JAMES J. COURTNEY, JR.
EDWARD D. COURTNEY
THOMAS W. GRUESEN

TELEPHONE
AREA CODE 218
722-1487

May 18, 1967

Hon. Oscar R. Knutson
The Chief Justice
The Supreme Court of Minnesota
State Capitol Building
St. Paul, Minnesota

Dear Justice Knutson:

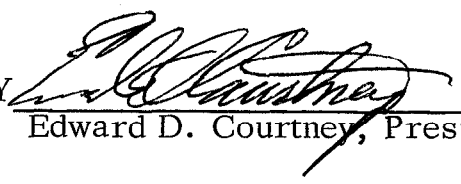
Thank you most sincerely for your prompt response of May 15, 1967. We concur in your suggestion that points of view be consolidated in so far as possible. For our part, toward this end we will forward the considerations and suggestions made by the Duluth Trial Lawyers Association to our Twin Cities counterparts in hopes that the meetings to discuss the adoption or rejection of the various rules be something less than a mass meeting.

However, I would not want this opportunity to pass by without saying that in greatest part the suggested rules amendments were greeted with enthusiasm and with many complimentary remarks regarding the clarity of draftsmanship.

Once again, many thanks for your kind consideration.

Very truly yours,

DULUTH TRIAL LAWYERS ASSOCIATION

BY 
Edward D. Courtney, President

EDC/M

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JOSEPH W. RYAN
MICHAEL F. RYAN

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May 18, 1967

Honorable Oscar R. Knutson
Chief Justice
Supreme Court of Minnesota
St. Paul, Minnesota

Dear Judge Knutson:

Thank you for yours of the 16th. I fully agree that every lawyer interested in the rules should not appear, and that one or two voices on each side of the conflict should be enough. I did not intend to and cannot participate. Our May jury term starts today and will run well into June.

I was not stimulated to write you by the MTLA campaign. At a meeting of the Board of Governors of the Bar Association May 6, I expressed the same concern about haste in adopting controversial changes in the rules, and had a visit with Judge Rogosheske about it after the meeting.

Your plan of hearing everyone interested on June 1, with postponement of action on rules in serious conflict, should satisfy everyone in providing a fair opportunity to be heard.

Sincerely,

Joseph W. Ryan

JWR:lj

Identical letters to: (Donard J. Kunesh, President, Stearns-Benton Bar
5/17/67 (Association, City Hall, St. Cloud
(James Zeug, Box 148, Olivia, Minnesota 56277

5/18 - Thomas Gallagher, 1900 First Nat. Bank Bldg., Mpls. 55402

May 17, 1967

Johnson, Flanery, Daniels & Jensen
1547 Cargill Building
NorthstartCenter
Minneapolis, Minnesota 55402

Gentlemen:

I have your letter of May 12 regarding the proposed changes in the Rules of Civil Procedure.

After conferring with the members of the court we feel that we should proceed with the initial hearing on June 1, at least for the purpose of ascertaining what rules or amendments are controversial. If it becomes necessary at that time we will continue the matter so as to give all lawyers a chance to thoroughly study the proposed amendments and to be heard, even if it requires another hearing. You will also be given time to file briefs after the initial hearing.

From the similarity of the letters that I have received I am assuming that the request for time comes from a single source. I am hoping that when it has been determined which rules are controversial attorneys can get together and prepare and submit common briefs so that we will not have to read a multitude of them. I suppose that when it develops what amendments are controversial attorneys pro and con will have substantially the same reasons for either opposing or favoring adoption and can combine their efforts in a logical manner. In any event I assure you that the rules will not be adopted without giving attorneys ample opportunity to be heard, either by filing briefs or by another hearing if that becomes necessary.

Sincerely yours,

Identical letterto Tom Wangensteen
First National Bank Building
Chisholm, Minnesota 55719

ORK:dm

LAW OFFICES
WANGENSTEEN & BANGS
FIRST NATIONAL BANK BUILDING
CHISHOLM, MINNESOTA 55719

CHARLES T. WANGENSTEEN
EUGENE E. BANGS
TOM WANGENSTEEN

CLEARWATER 4-3335

May 15, 1967

The Honorable Oscar R. Knutson
Chief Justice of the Supreme Court
State Capitol
St. Paul, Minnesota 55101

Dear Justice Knutson:

We have just recently been apprised of the contemplated and proposed changes in the Minnesota Rules of Civil Procedure. The hearing on the same has come up on such short notice that we have not been able to fully digest the impact that these rule changes may have. I can appreciate that the committee has worked diligently on these suggestions. However, this office feels that the matter of filing objections or briefs relative to the rule changes should be postponed until sometime in the summer and the matter heard in the fall term of the Supreme Court.

This matter was brought up at a meeting of the Range Bar Association last week, and many lawyers, and even one judge, were unaware that the rules changes had been proposed.

We would appreciate your consideration of an extension of time to file objections and extending the hearing until the fall term of court.

Very truly yours,

WANGENSTEEN & BANGS

Tom Wangensteen

TW:ma
cc: Mr. S. S. Larson, President
Minnesota Bar Association

LAW OFFICES OF
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ROGER A. JOHNSON
JOHN D. FLANERY
KENNETH F. DANIELS
DAVID L. JENSEN

800 TORREY BLDG.
DULUTH, MINNESOTA
727-8509

May 12, 1967

The Honorable Chief Justice,
Oscar Knutson
Supreme Court of Minnesota
State Capitol
St. Paul, Minnesota

Re: Proposed Changes in Minnesota
Rules of Civil Procedure

Dear Sir:

We, the members of this firm, would appreciate a postponement of the Court passing on any changes in the Minnesota Rules of Civil Procedure and that other attorneys be advised of the proposed changes.

We feel that the matter before the Court at the present time does not allow sufficient time for the attorneys of this state to review the proposed changes and would suggest a postponement of any hearing on it to the Fall Term of the Supreme Court of Minnesota.

Very truly yours,

Kenneth F. Daniels

John D. Flanery

Roger A. Johnson

David L. Jensen

James L. Daniels

cc: Sheldon S. Larson, President
Minnesota Bar Association
Winthrop, Minnesota

City of St. Cloud

City Hall
St. Cloud, Minnesota

CITY ATTORNEY

May 16, 1967

The Honorable Oscar R. Knutson
Chief Justice of the Supreme Court
State of Minnesota
State Capitol
St. Paul, Minnesota

RE: ORDER FOR HEARING ON ADOPTION OF PROPOSED AMENDMENTS TO THE RULES FOR DISTRICT AND MUNICIPAL COURTS AND ON THE ADOPTION OF NEW RULES OF CIVIL APPELLANT PROCEDURE

Sir:

At the regular meeting of the Stearns-Benton Bar Association on May 12, 1967, it was found by unanimous vote to be the opinion of our membership that May 20, 1967, (deadline for filing briefs or petitions relative to these revisions) does not allow sufficient time for discussion and study of the proposed rules. As President of this Association, I wish to inform you of this opinion of our Association, and to respectfully request that this date be changed to at least thirty days after the annual State Bar Association meeting.

It is the feeling of our Association that considerable discussion of the proposed rules will develop at the State Bar Association meeting, and that individual members, on their return to their offices, would then be in a better position to file briefs or petitions.

Very truly yours,

Donard J. Kunesh

Donard J. Kunesh, President
Stearns-Benton Bar Association

DJK:sw

LAW OFFICES
WILLETTE, ZEUG & KRAFT
BOX 148
OLIVIA, MINNESOTA 56277

DePAUL WILLETTE
JAMES ZEUG
JOHN KRAFT

TELEPHONE 290
AREA CODE 612

May 16, 1967

Chief Justice Oscar Knutson
Supreme Court
State Capitol Building
St. Paul, Minnesota

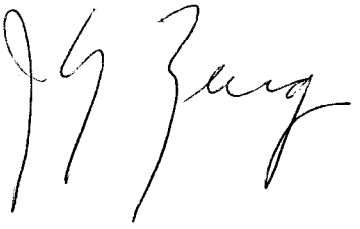
In re: Changes in Rules of Civil Procedure

Dear Judge:

We have just received the proposed amendments to the Rules of Civil Procedure and we note that the time for filing briefs in opposition to the proposed changes is May 20. We would appreciate it if you would extend the time for filing briefs in opposition to the proposed changes so that we may have an opportunity to examine the proposed changes in depth. We do not believe that the time allowed is sufficient to give any serious consideration to these changes.

Very truly yours,

WILLETTE, ZEUG & KRAFT

BY 

JEZ/kb
c.c. Mr. Sheldon S. Larson, President
Minnesota Bar Association
Winthrop, Minnesota

CLOUTIER & GALLAGHER
ATTORNEYS AT LAW
1900 FIRST NATIONAL BANK BUILDING
MINNEAPOLIS, MINNESOTA 55402

CORTLEN G. CLOUTIER
THOMAS GALLAGHER

TELEPHONE
335-9565
335-6813

May 16, 1967

The Honorable Oscar Knutson
Chief Justice
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota

Dear Chief Justice Knutson:

The impending hearings on the proposed changes in the Minnesota Rules of Civil Procedure leaves little time for the preparation of a brief in opposition to some of the more flagrantly one-sided proposals.

I received my copy of the proposed changes on May 3rd, together with an Order of the Court stating that I had until May 20th to file a brief. As a practicing lawyer I, of course, have many other matters scheduled in the seventeen day period between the 3rd and the 20th of May.

On Friday, May 5, 1967, I attended a meeting of the Board of Governors of the Minnesota Trial Lawyers Association of which board I am a member. It was the consensus of the Board that there would not be sufficient time to prepare adequate briefs for submission to the Supreme Court by the 20th of May and that the Association should direct its efforts toward the postponement of the hearing so that adequate written briefs and arguments might be presented to the Court.

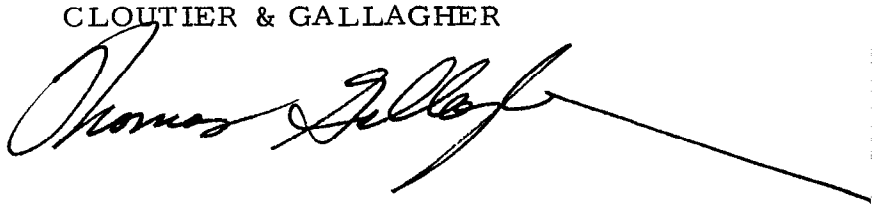
I think this is particularly important in view of the fact that the composition of the Rules Advisory Committee contains not one single member who can be identified as a member of the plaintiff's bar. As might be expected, this group has resurrected the waiver of medical privilege proposal which has been rejected three times by the Minnesota State Bar Association Convention during the last five years.

An extension of time for the filing of briefs and for the hearing upon the proposed changes in the Minnesota Rules of Civil Procedure until the fall

term of Court would, I believe, not only provide the Minnesota Trial Lawyers Association with time to submit adequate briefs, but also would help to prevent any feeling among the Bar that these proposed changes in the rules were being railroaded through.

Very truly yours,

for
CLOUTIER & GALLAGHER



TG:e

Identical letter to:
A. G. Christoffersen, 1003 Payne Avenue, St. Paul 55101
Gerald H. Hanratty, 722 Midland Bank Building, Minneapolis 55401
David O'Connor, 1001 Degree of Honor Building, St. Paul 55101
Joseph W. Ryan, First National Bank Building, Aitkin
Roy A. Schwappach, 1020 Rand Tower, Minneapolis 55402
Messrs. Yaeger & Yaeger, 715 Foshay Tower, Minneapolis 55402
Elmer Wiblishauser, 810 Pioneer Building, St. Paul, 55101
May 22: to Paul Owen Johnson, 1711 1st Nat. Bank Bldg., Mpls 55402
Lee B. Primus, 432 Midland Bank Bldg., Mpls. 55401

May 16, 1967

Mr. A. G. Christoffersen
Attorney at Law
1003 Payne Avenue
St. Paul, Minnesota 55101

Dear Mr. Christoffersen:

I have your letter of May 15 regarding the hearing on the proposed amendments to our Rules of Civil Procedure. We have received a number of letters from attorneys throughout the state and it is quite apparent that the request for extension comes from the same source. It would seem to me that it will not be necessary for so many lawyers to file briefs. Those who are interested could get together on the preparation of a single brief, or a few.

We intend to proceed with the hearing on June 1, at least for the purpose of determining in what areas there are controversies regarding these proposed rules. If it develops that such controversies do exist we will permit the filing of briefs thereafter and, if necessary, will have an additional hearing.

I assume there are only one or two of the proposed amendments that will arouse much controversy. We have no desire to rush the adoption of these amendments but do not wish to delay the hearing if it can be avoided. It seems to me that at the hearing possibly the lawyers who either advocate or oppose the adoption of certain rules could get together on a spokesman so that we will not have to listen to a great number of arguments covering the same ground.

Sincerely yours,

ORK:dm

SWANSON & CHRISTOFFERSEN
ATTORNEYS AT LAW
1003 PAYNE AVENUE
ST. PAUL, MINN. 55101

C. SIGURD SWANSON
ALLEN G. CHRISTOFFERSEN

PHONE 774-6081

May 15, 1967

Chief Justice Oscar Knutson
Minnesota Supreme Court
State Capitol Building
St. Paul, Minnesota 55101

Re: Proposed Rules of Court for Minnesota

Dear Judge Knutson:

It is my understanding that we have until May 20, 1967, to submit any brief in opposition to the proposed changes in the rules. A hearing is set for these rule changes on June 1, 1967. It is my personal feeling that we do not have adequate time in which to prepare a brief in opposition to the proposed changes.

It is requested that an extension of time in which to file briefs be given to July 15, 1967.

It is further requested that you grant a postponement of the hearing on the rules until the Fall term of the Minnesota Supreme Court.

Thank you for your consideration of this matter.

Yours truly,

A. G. Christoffersen

A. G. CHRISTOFFERSEN

AGC:gb

cc: Mr. Sheldon S. Larson
President Minnesota Bar Association
Winthrop, Minnesota 55396

HANRATTY AND KLINE
ATTORNEYS AT LAW
722 MIDLAND BANK BUILDING
MINNEAPOLIS, MINNESOTA 55401

GERALD H. HANRATTY
(612) 335-7295

JEROME E. KLINE
(612) 332-5633

May 15, 1967

The Honorable Oscar Knutson
Chief Justice
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55101

Dear Justice Knutson:

I feel the time allowed to file Briefs regarding the rule changes is insufficient. I feel the time should be extended to at least July 15, 1967, to give those of us who are concerned a full opportunity to study the proposed changes.

Yours truly,

Gerald H. Hanratty

GHH:ds
cc: Att. Sheldon Larson

LAW OFFICES
O'CONNOR, COLLINS AND ABRAMSON
1001 DEGREE OF HONOR BUILDING
SAINT PAUL, MINNESOTA 55101
227-8231

DAVID O'CONNOR
THEODORE J. COLLINS
SIDNEY P. ABRAMSON

May 15, 1967

Chief Justice Oscar Knutson
Minnesota Supreme Court
State Capitol
Saint Paul,Minnesota

Re: Proposed changes in Minnesota Rules of Civil Procedure

Dear Judge Knutson:

This letter is written to request an extension of time for filing briefs regarding the rules changes in Minnesota Rules of Civil Procedure to July 15, 1967, and requesting a postponement of the Rules to the fall term of the Supreme Court of Minnesota. Thank you for your consideration.

Very truly yours,

DAVID O'CONNOR

DO'C:clm
cc: Mr. Sheldon S. Larson
President, Minnesota Bar Association

RYAN & RYAN
LAWYERS
FIRST NATIONAL BANK BUILDING
AITKIN, MINNESOTA

JOSEPH W. RYAN
MICHAEL F. RYAN

AREA CODE 218
927-2136

May 12, 1967

Honorable Oscar Knutson
Chief Justice of Supreme Court
State Capitol
St. Paul, Minnesota

Dear Judge Knutson:

The proposed changes in the Rules of Civil Procedure appear to be of such consequence that more time should be allowed for members of the bar to present their thoughts to the court. The month of May is a most busy one for trial lawyers in an effort to clear up court calendars. They should have the summer within which to prepare and submit to your court positions on the rules.

I, therefore, add my word of request for postponing the hearing until September.

Sincerely,

Joseph W. Ryan

JWR:lj

cc: Attorney Sheldon S. Larson

RESIDENCE WEST 5-4811

OFFICE FEDERAL 3-2279

LAW OFFICES

ROY A. SCHWAPPACH

1020 RAND TOWER

MINNEAPOLIS 2, MINNESOTA

May 15, 1967

Chief Justice Oscar Knutson
State Capitol
St. Paul, Minnesota

Dear Sir:

I would like to request on behalf of myself and at least twelve other attorneys that I do trial work for, a postponement on the hearing scheduled for June 1, 1967 regarding changes in the Minnesota Rules of Civil Procedure. I feel this is a very serious matter and it will benefit everyone in the State of Minnesota to allow sufficient time to file briefs and obtain information pertinent to the rule changes.

Thank you for your courtesies.

Sincerely yours,

Roy A. Schwappach

RAS:ik

cc - Mr. Sheldon S. Larson

CARL L. YAEGER—1962
JOHN B. McCARTHY

CARL L. YAEGER, JR.
WILLIAM J. YAEGER

LAW OFFICES OF
YAEGER AND YAEGER
715 FOSHAY TOWER
MINNEAPOLIS, MINNESOTA 55402
PHONE 333-6371 AREA CODE 612

May 15, 1967

The Honorable Oscar Knutson
Chief Justice
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota

Dear Judge Knutson:

We would greatly appreciate an extension of time to file briefs to July 15 concerning the proposed changes in the Minnesota Rules of Civil Procedure Nos. 26.02, 33, 35.03, 38.03, 39.03, and 47.03. We also respectfully request a postponement of the Hearing on these Rule changes to the Fall Term of the Supreme Court.

Thank you for your consideration of these requests.

Very truly yours,
YAEGER & YAEGER

Carl Yaeger Jr
William J Yaeger

By: Carl Yaeger, Jr.
William J. Yaeger
John B. McCarthy

John B. McCarthy

Y & Y;, gc

ELMER WIBLISHAUSER
ATTORNEY AT LAW
810 PIONEER BUILDING
SAINT PAUL, MINNESOTA 55101

PHONE 224-7841

May 15, 1967

Hon. Oscar R. Knutson, Chief Justice
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55101

Dear Chief Justice Knutson:

Several weeks ago the Bench and Bar of the State of Minnesota received by mail the proposed changes in the Rules of Civil Procedure, particularly the changes applicable to the District Courts in the State of Minnesota.

Many attorneys with whom I have come into daily contact within the past several weeks have stated to me in most cases that they did not have adequate time to make a study of the changes that had been proposed by the Committee for recommendation to the Minnesota Supreme Court.

For this reason, primarily, it is sincerely requested that the Minnesota Supreme Court permit a further extension of the time for the filing of Briefs in the matter, and, it is further requested that the Court permit a postponement of the hearing on the proposed changes to the Fall Term of the Supreme Court.

Respectfully and sincerely yours,

Elmer Wiblishauser

ELMER WIBLISHAUSER
EW:hs

cc: Sheldon S. Larson, Esq., President
Minnesota State Bar Association
Winthrop, Minnesota

JOHNSON & ILDSTAD
ATTORNEYS AT LAW
1711 FIRST NATIONAL BANK BUILDING
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE: 338-8697

May 19, 1967

Chief Justice Oscar R. Knutson
Supreme Court of Minnesota
State Capitol Building
St. Paul, Minnesota 55101

Dear Chief Justice Knutson:

RE: Proposed Changes in Rules of Civil Procedure
and Rules of Civil Appellate Procedure.

Since receiving the Proposed Rules the first of May, we have been fully occupied in this office in Trial and preparing documents for Pre-Trial. We have not had time to review the 50 or more changes in the District Court Rules or to consider the new Appellate Rules. We may not have any serious objections to the Rules, but the opinion is that the lawyers of Minnesota should have more than 20 days to give consideration to this important matter.

I am not aware that the 15 Members of the Supreme Court Advisory Committee were elected or selected by the lawyers of the Minnesota State Bar Association. If they were not representatives of the Bar Association, then we believe there is strong reason for permitting additional time for the lawyers of Minnesota to consider the Proposed Rule changes.

The Minnesota State Bar Association has, several times, voted against repealing or changing Minnesota Statutes 595.02 which is the Physician-Patient Privilege. The Legislature has not seen fit to repeal this Law. Nullifying this Statute by the Proposed Rule 35.03 should have further consideration and time for discussion. For example, we would like to see the following words included in this Rule on Line 4 after the word testimony:

in Trial Court.

In the practice of law, there will be an additional burden of time and expense on all the parties by having the physician be subject to interrogatories, depositions, office interview and correspondence. There may be a serious lack of cooperation by all doctors in regard to willingness to treat injured persons when the doctors become subjected to interrogatories, depositions, interviews, reports to lawyers and insurance adjusters.

We do not believe that the injured plaintiff should be permitted to work a fraud by preventing any physician from telling the truth in Court.

We have never asserted medical privilege in Court; the Dubois Case is very effective to make the present Rule operate fairly.

The Minnesota State Bar Association will be meeting in June, a very short time after the proposed Hearing Date, and we do not know of any reason why these Rules should be rushed through without giving the lawyers in this State an opportunity to deliberate and form an opinion. Twenty days is not sufficient time.

Respectfully yours,

JOHNSON & ILDSTAD

By Paul Johnson
Paul Owen Johnson

POJ:ka

LEE B. PRIMUS
ATTORNEY AT LAW
432 MIDLAND BANK BUILDING
MINNEAPOLIS, MINNESOTA 55401

PHONE 335-8923
AREA CODE 612

May 18, 1967

The Honorable Oscar Knutson
Chief Justice of the Supreme
Court of Minnesota
State Capitol Building
St. Paul, Minnesota

Re: Proposed changes in Minnesota Rules
of Civil Procedure

Dear Judge Knutson:

This is to respectfully request an extension of time to file briefs in the above entitled matter and that the hearings thereon be continued to the Fall Term of the Supreme Court of Minnesota.

Yours truly,

LEE B. PRIMUS

LBP/jj

cc: Mr. Sheldon S. Larson, President
Minnesota Bar Association
Winthrop, Minnesota

Mr. Michael L. Robins, Secretary
Minnesota Trial Lawyers Association
1616 Park Avenue Lawyers Building
Minneapolis, Minnesota

May 15, 1967

Mr. Sheldon Larson
President, Minnesota Bar Association
Winthrop, Minnesota 55396

Dear Sheldon:

I am enclosing copy of a letter which I am writing today to a large number of attorneys from whom I have heard regarding the hearing on the proposed amendments to our rules. It appears to me that the request for most of these letters came from a single source.

The hearing will be held on June 1 and if it develops then that there are areas of serious controversy we can always accept briefs after the hearing and, if necessary, set another hearing. We do not want to delay the matter until fall.

I thought you should be kept advised on what the situation is.

Sincerely yours,

ORK:dm
Enc.

May 15, 1967

Mr. Terence L. Meany
Attorney at Law
LMC Building
Austin, Minnesota 55912

Dear Mr. Meany:

I have your letter of May 12 regarding the hearing on the proposed amendments to our Rules of Civil Procedure. We have received a number of letters from attorneys throughout the state and it is quite apparent that the request for extension comes from the same source. It would seem to me that it will not be necessary for so many lawyers to file briefs. Those who are interested could get together on the preparation of a single (or a few) brief.

We intend to proceed with the hearing on June 1, at least for the purpose of determining in what areas there are controversies regarding these proposed rules. If it develops that such controversies do exist we will permit the filing of briefs thereafter and, if necessary, will have an additional hearing.

I assume there are only one or two of the proposed amendments that will arouse much controversy. We have no desire to rush the adoption of these amendments but do not wish to delay the hearing if it can be avoided. It seems to me that at the hearing possibly the lawyers who either advocate or oppose the adoption of certain rules could get together on a spokesman so that we will not have to listen to a great number of arguments covering the same ground.

Sincerely yours,

(11)

Identical letters to: Robert R. Biglow, 687 Northwestern Bank Bldg., 620 Marquette Ave., Mpls. 55402
(12) Bernard J. Bischoff, Secy.-Treas., Range Bar Assn., St. Louis County, Hibbing
Edward D. Courtney, Pres., Duluth Trial Lawyers Assn., 1505 Alworth Bldg., Mulut [55802
~~Patrick W. Fitzgerald, Hennepin Co. Bar Ass., 700 Lumber Exch. Bldg., Northwest Center, Mpls. 55402~~

(11) Letters rec'd all dated May 12 except as noted

ORK:dm

Richard H. Hilleren, 117-14th St., Benson - 56215
C. A. Johnson II, 600 So. 2d St., Mankato, 56002

(CONTINUED ON REVERSE)

LAW OFFICES
LEIGHTON, MEANY & COTTER
ATTORNEYS AT LAW
AUSTIN -:- ALBERT LEA
MINNESOTA

ROBERT J. LEIGHTON
TERENCE L. MEANY
RICHARD A. COTTER

AUSTIN 55912
LMC BUILDING
601 NORTH MAIN
PHONE 433-8813

ALBERT LEA 56007
406 SOUTH BROADWAY
PHONE 373-8198

May 12, 1967

Honorable Oscar Knutson
Chief Justice, Minnesota Supreme Court
State Capitol
St. Paul, Minnesota

Dear Justice Knutson:

Re: Proposed Changes in Minnesota Rules of Civil Procedure

It is my understanding that May 20th is the deadline to submit any briefs in opposition to proposed changes in the Rules of Civil Procedure. I have just had an opportunity to read over the changes in respect to the day to day matters that we deal with, particularly waiver of medical privilege.

My first inquiries of doctors concerning this particular change convinces me that there will be serious problems in inter-professional relationships if they are to be subjected to repeated requests for medical reports from insurance companies whenever an action has been commenced.

In view of the radical departures from present practice, I would like to urge you to grant additional time to allow attorneys who will be most affected by these rules to file briefs.

Thank you for consideration of this request.

Very truly yours,

LEIGHTON, MEANY & COTTER

By: Terence L. Meany

TLM/sp

ROBERT R. BIGLOW
ATTORNEY AT LAW

687 NORTHWESTERN BANK BUILDING
620 MARQUETTE AVENUE

MINNEAPOLIS MINNESOTA 55402
TELEPHONE 339-9221

May 11, 1967

Chief Justice Oscar Knutson
Supreme Court
State of Minnesota
State Capitol
St. Paul, Minnesota 55101

Dear Chief Justice Knutson:

Would you please consider an extension of time to file briefs regarding the proposed Rules of District Court 26.02, 33, 35.03, 38.03, 39.03 and 47.03 until at least July 15, 1967.

The proposed change received on or about the 1st of May has not given us sufficient time to study the possible effects of the propose change, nor to file briefs in any matters which we feel may not be proper or correct.

I would appreciate your prompt consideration of this matter inasmuch as there is little time remaining in which to file these briefs.

Sincerely,

Robert R. Biglow

RRB:mn

cc: Mr. Sheldon Larson, President
Minnesota State Bar Association
Winthrop, Minnesota

Range Bar Association

ST. LOUIS COUNTY, MINNESOTA

May 12, 1967

Honorable Oscar Knutson
Chief Justice
Minnesota Supreme Court
State Capitol Building
St. Paul, Minnesota

Re: Proposed Changes - Minnesota Rules of Civil Procedure

Dear Judge Knutson:

At a regular meeting of our Range Bar Association last night in Hibbing, a resolution was passed to request that the time for filing briefs in the above matter be extended.

It was the general consensus of the group that the time allotted was entirely insufficient for proper consideration of the matters involved. We would very much like to see the filing time extended at least until July 15, 1967.

Thank you for your consideration and cooperation in regard to this matter.

Respectfully,

Bernard J. Bischoff

Bernard J. Bischoff
Secretary-Treasurer
Range Bar Association

BJB/lrn
cc: Sheldon S. Larson, President
Minnesota Bar Association

COURTNEY, COURTNEY & GRUESEN
ATTORNEYS AT LAW
SUITE 1505 ALWORTH BUILDING
DULUTH, MINNESOTA 55802

JAMES J. COURTNEY (1909-1954)

JAMES J. COURTNEY, JR.
EDWARD D. COURTNEY
THOMAS W. GRUESEN

TELEPHONE
AREA CODE 218
722-1487

May 12, 1967

The Chief Justice
The Supreme Court
The State Capitol Building
St. Paul, Minnesota

Sir:

As you may know, I am president of the Duluth Trial Lawyers Association, a group of lawyers whose prime concern in the law is the trial of cases. A short time ago, we received a copy of the proposed changes in the Minnesota Rules of Civil Procedure and have had little time to completely digest the nature and extent of the proposed changes. We are anxious to have all members of our group familiar with the proposed changes and we desire to meet to discuss them. From that discussion, we hope some worthwhile comment might evolve. We seriously doubt, however, that we would be able to submit any brief regarding these changes by May 20.

Unfortunately, receipt of these changes came at a time when our State Courts are in session and the Federal Term is about to begin in the Fifth District, and accordingly, there is precious little time for quiet scholarly research. At the suggestion of the secretary of the Minnesota Trial Lawyers Association, I would like to join with others in requesting an extension of time to file briefs to July 15, 1967.

Your consideration of this request is most appreciated.

Very truly yours,

DULUTH TRIAL LAWYERS ASSOCIATION

Edward D. Courtney, President

EDC:B

cc: Mr. Sheldon S. Larson, Pres.
Minnesota State Bar Association
Winthrop, Minnesota

BARNARD, HILLEREN & SPATES
ATTORNEYS AT LAW
117 14TH STREET SOUTH
BENSON, MINNESOTA 56215

FRANK A. BARNARD
RES. 843-3212

RICHARD H. HILLEREN
RES. 842-6461

KENNETH C. SPATES
RES. 842-9023

PHONE:
OFFICE 842-0601

May 12, 1967

Chief Justice Oscar Knutson
Supreme Court of Minnesota
St. Paul, Minnesota

Dear Chief Justice Knutson:

I and my partners would respectfully ask for an extension of time to file briefs regarding the rule changes recently proposed to July 15, 1967. We would also petition a request for a postponement of the hearing on the rules to the Fall term of the Supreme Court of Minnesota. To be honest with you, I haven't had a chance to study these rule changes and we are in the midst of several very important trials. In view of this I would respectfully request such an extension.

Yours very truly,

BARNARD, HILLEREN & SPATES

Richard H. Hilleren

Richard H. Hilleren

RHH/dl

cc: Sheldon S. Larson
President, Minnesota Bar Association

JOHNSON & JOHNSON
ATTORNEYS AT LAW
600 SOUTH SECOND STREET
MANKATO, MINNESOTA 56002

C. A. (GUS) JOHNSON
C. A. (GUS) JOHNSON, II
JEROME T. ANDERSON

AREA CODE 507
TELEPHONE 345-5001

May 12, 1967

Chief Justice Oscar Knutson
Supreme Court
State Capitol
St. Paul, Minnesota

Dear Chief Justice Knutson:

As a member of the Bar we request that an extension of time to file briefs regarding the proposed changes in the Minnesota Rules of Civil Procedure as well as a postponement of the hearing on the rules to the Fall Term of the Supreme Court. We feel that additional time is necessary in order to more adequately study the proposed changes and to prepare briefs in the event of opposition to the proposed changes.

We respectfully submit this request to you for your consideration.

With personal regards,

Sincerely yours,

JOHNSON & JOHNSON

C. A. (Gus) Johnson, II

CAJII/cb

cc: Mr. Sheldon S. Larson
President, Minnesota Bar Association
Winthrop, Minnesota

NORD AND WEBSTER
ATTORNEYS and COUNSELORS at LAW
340 Minnesota Building
Saint Paul, Minnesota

DAVID W. NORD
BRUCE A. WEBSTER
TERENCE P. BRENNAN

Telephone
222-7477

May 12, 1967

The Honorable Oscar Knutson
Chief Justice
Minnesota Supreme Court
State Capitol
Saint Paul, Minnesota 55101

Dear Chief Justice:

I understand that the Bar is invited to comment on the proposed new Rules of Civil Appellate Procedure, either in a favorable or unfavorable sense. I would like you to know that I think this is a superb piece of legislation. Particularly to be commended, in my opinion are the changes in the Rules having to do with the transcript and the printed record. Further, the changes in Rules of Civil Procedure 59.02 eliminate what is probably the greatest booby trap for the inexperienced practitioner in our entire procedural system. This change alone is enough to justify the entire exercise.

Respectfully,

NORD AND WEBSTER

David W. Nord

David W. Nord
jar

Peterson & Challeen, Ltd.
ATTORNEYS AT LAW
Suite 203, First National Bank Building
WINONA, MINNESOTA 55987

DUANE M. PETERSON
DENNIS A. CHALLEEN

STEPHEN J. DELANO

WINONA OFFICE
Tel. 8-2949

ST. CHARLES OFFICE
813 Whitewater St.
Tel. 932-3440

May 12, 1967

State of Minnesota
Supreme Court
St. Paul, Minnesota

Attention Chief Justice Oscar Knutson

Re: Proposed rule changes in Minnesota
Rules of Civil Procedure

Dear Judge:

I understand that ten days remain to file briefs regarding the desirability of adopting the new proposed rules of civil procedure. I have not yet, because of the press of trial work in our winter and spring terms, had an opportunity to read the rules which arrived in my office about four days ago. I would like to have an opportunity to read them before they are adopted, to see if I might have any suggestions or briefs to file with the court. It seems that the press of time is so close that many lawyers will have difficulty in submitting briefs in this matter in time for consideration by the court.

I, therefore, wish to respectfully urge the court to postpone the adoption of these rules and extend the time for filing briefs until the Fall term of the court.

Thank you very much for your consideration in this regard.

Very truly yours,

PETERSON & CHALLEEN, LTD.

Duane M. Peterson

DMP/fn

STONE & STONE
ATTORNEYS AT LAW

ROBERT N. STONE
THEODORE M. STONE

TELEPHONE 336-2651
707 FIRST NATIONAL BANK BUILDING
MINNEAPOLIS, MINNESOTA 55402

May 11, 1967

Honorable Oscar Knutson
Chief Justice, Minnesota Supreme Court
State Capitol Building
St. Paul, Minnesota 55101

Dear Judge Knutson:

I understand that the Supreme Court has ordered the filing of all briefs in connection with the proposed changes in the Minnesota Rules of Civil Procedure by May 20th. The proposed rules reached my desk, and I am sure the desks of other lawyers throughout the state, on May 1st. It seems that this is hardly sufficient time for preparation for so serious a matter. The fifteen members of the Rules Advisory Committee, who in theory represent forty-five hundred Minnesota lawyers, spent over two years studying these rules changes before submitting their report. It seems only fair that an extension of time in which to file briefs regarding the proposed rules for a period of at least sixty to ninety days be ordered. I respectfully urge your consideration of this request and a delay of the scheduled hearing until sometime thereafter.

Respectfully,

Robert N. Stone

RNS:lp

cc: Mr. Sheldon S. Larson
Attorney at Law
President, Minnesota State Bar Association
Winthrop, Minnesota 55396

PHONE 243-4711

RAINER L. WEIS
AND
RONALD FRAUENSHUH
LAW FIRM
105 W. JAMES ST.
PAYNESVILLE, MINNESOTA 56362

May 11, 1967

Chief Justice Oscar Knutson
Supreme Court
State of Minnesota
St. Paul, Minnesota

Dear Sir:

Our office concurs completely with the quite obvious opinion of the Minnesota Trial Lawyers Association that the short time in which to read the proposed rules and to come to an intelligent decision is impossible.

In reading the rules to the extent we have we are of the opinion that there are some things that should be given serious consideration before the matter is submitted to be part of the law of the State.

We feel further that there has been too much of this haste in this State already and the adage "Sin in haste, repent in leisure" certainly applies to something of this scope.

We respectfully request that the matter be postponed for hearing on the rules at the fall term of the Supreme Court of Minnesota to give us an opportunity to study the rules and file a brief if we deem the results of our study would justify such a procedure.

Respectfully submitted,

Rainer L. Weis and Ronald R. Frauenshuh
Law Firm.

RLW:eg

LAW OFFICES

ROBINS, DAVIS & LYONS

RAND TOWER

MINNEAPOLIS 55402

TELEPHONE 339-4911

SAINT PAUL
MINNESOTA BUILDING

WASHINGTON, D. C.
815 CONNECTICUT AVE. N. W.

S. ROBINS
M. ARNOLD LYONS
HARDING A. ORREN
THOMAS D. FEINBERG
JAMES A. KARIGAN
LAWRENCE ZELLE
WILTON E. GERVAIS
JULIUS E. DAVIS
SIDNEY S. FEINBERG
BERNARD ROSENBERG
ARNOLD M. BELLIS
PAUL W. URBANEK
ROBERT J. TWEEDY
ELLIOT S. KAPLAN
CHARLES H. HALPERN (1911-1965)

STANLEY E. KARON
JAMES L. FETTERLY
JOHN T. CHAPMAN
JOHN M. SANDS
SIDNEY KAPLAN
DALE I. LARSON
ELLIOT ROTHENBERG
HOWARD A. PATRICK
NORMAN K. GURSTEL
DAVID J. LARSON
JOHN F. EISBERG
STANFORD ROBINS
STEPHEN A. KRUPP
THOMAS C. KAYSER
LEO F. FEENEY

WASHINGTON, D. C. OFFICE
RONALD A. JACKS

12 May 1967

The Honorable Oscar R. Knutson
Chief Justice of the Supreme
Court of Minnesota
State Capitol Building
St. Paul, Minnesota

Dear Justice Knutson:

The proposed changes and modifications in the Minnesota Rules of Civil Procedure and the Rules of Civil Appellate Procedure are most interesting and thought provoking. I am sure that a considerable amount of time and study was devoted by the Supreme Court Advisory Committee before the proposed amendments were finalized. Because of the sweeping nature of the changes which have been suggested, it would appear that members of the Bar who wish to discuss particular amendments or failures to amend should be allowed more than twenty days in which to file briefs setting forth their position.

With this thought in mind, I am requesting as a member of the Bar that the Supreme Court give consideration to extending the time in which to submit briefs or petitions until July 31, 1967, and that hearings be rescheduled to coincide with the commencement of the fall term of the Supreme Court. I believe that such extention of time will give all of the members of the Bar more adequate opportunity to thoroughly consider the proposed rule changes and thus be able to more intelligently express their position to the Supreme Court.

Thank you in advance for giving this matter your consideration.

Yours very truly,

Lawrence Zelle

LZ:d'A

Lawrence Zelle

MANLY A. ZIMMERMAN
ATTORNEY AT LAW
1725 RAND TOWER
MINNEAPOLIS, MINNESOTA 55402
PHONE: 338-3125 — 335-3414

May 12, 1967

Chief Justice Oscar Knutson
State Capitol
St. Paul, Minnesota 55101

Dear Sir:

I have just realized that I have until May 20, 1967 to submit my brief in opposition to any proposed changes in the Minnesota Rules of Civil Procedure. I submit that I do not have sufficient time, nor does any other of my fellow lawyers have sufficient time to submit such a brief. Since these proposed changes are of great importance to the practice of law in the State of Minnesota, I would request that you grant an extension of time to file briefs regarding these Rule changes until at least July 15, 1967. Further, I would also request that you postpone any hearing on these proposed rules until the fall term of the Supreme Court.

Sincerely,

Manly A. Zimmerman

MAZ/cs

cc: Sheldon S. Larson, President
Minnesota Bar Association
Winthrop, Minnesota

May 12, 1967

Mr. Charles T. Hvass
Attorney at Law
715 Cargill Building
North Star Center
Minneapolis, Minnesota 55402

Dear Mr. Hvass:

I have your letter of May 11 regarding the hearing on the proposed changes in Rules of Civil Procedure and the rules of this court.

I have conferred with the other members of the court and we feel that it is not possible to change the date for this hearing at this time. Notice has gone out to all the lawyers of the state and it would require another notice and a rescheduling of the hearing during the summer months, which would be somewhat difficult.

As far as I can determine from the letters we have received and the discussions we have had with other members of the Bar, there are only a limited number of proposed changes that will be open to controversy.

We feel that we should go ahead with the hearing on June 1 and if it develops that more time is needed in these controversial areas we can always continue the hearing to another time if necessary and also permit briefs to be filed after the hearing. I presume most of the arguments presented will be oral and that no extensive briefs are necessary. For that reason we intend to go ahead with the hearing, at least for the purpose of determining whetherthere are areas of controversy.

Sincerely yours,

ORK:dm

LAW OFFICES
HVASS, WEISMAN, KING & ALLEN
715 CARGILL BUILDING
NORTH STAR CENTER
MINNEAPOLIS, MINNESOTA 55402

CHARLES T. HVASS
SI WEISMAN
ROBERT J. KING
FRED ALLEN
GARY C. HOFFMAN
FRANK J. BRIXIUS

TELEPHONE 333-0201
AREA CODE 612

May 11, 1967

Honorable Oscar R. Knutson
Chief Justice, Supreme Court
State Capitol
St. Paul, Minnesota

Dear Judge Knutson:

On the 1st of May, I received a copy of the proposed changes in the Rules of Civil Procedure recommended by the Advisory Committee.

In all probability there will be opposition to some of the proposed changes, and I do know that a large segment of the Bar would like to state its position in opposition. I do note that briefs are required to be filed by May 20, 1967, with hearings scheduled for June 1, 1967.

I have been in trial for the past two weeks, both in Hennepin District Court and in the Federal District Court in St. Paul. You may appreciate the almost impossible task for busy trial lawyers to give adequate consideration to the effect of the Rule changes and prepare a brief within a twenty (20) day period of time. Had the contents of the recommended changes come to the attention of the attorneys the later part of March, there then would have been adequate time.

I assume that the Court is to some extent interested in the views of the Bar Association as a group. The forum for discussion of the proposed changes insofar as the Bar itself is concerned should be our forthcoming State Bar Association meeting during the middle of June. Perhaps the date for filing briefs could be extended to June 15th,

which would give us sufficient time, and a re-scheduling of the hearing on the proposed changes to the early part of July, which will be after the Convention.

In the event there is a consensus of opinion as to the proposed changes on those which might be termed controversial, this consensus and the reasons therefor might be of benefit to the Court.

Respectfully,

CHARLES T. HVASS

CTH:tr

cc: Martin A. Nelson, Associate Justice
cc: William P. Murphy, Associate Justice
cc: James C. Otis, Associate Justice
cc: Walter F. Rogosheske, Associate Justice
cc: Robert J. Sheran, Associate Justice
cc: C. Donald Peterson, Associate Justice
cc: Frank T. Gallagher, Retired Justice
cc: Sheldon S. Larson, President
Minnesota State Bar Association

May 12, 1967

Professor James L. Hetland Jr.
Law School, University of Minnesota
Minneapolis, Minnesota 55455

Dear Jim:

We have had a number of letters from lawyers requesting an extension of the time for hearing on the proposed amendments to our Rules of Civil Procedure and the Supreme Court Rules. Possibly we did not allow enough time in view of the fact that the proposed changes were circularized somewhat later than we anticipated. However, I have written to all lawyers I have heard from that it would be difficult to change the date now, but that we should go ahead with the hearing at least for the purpose of determining what proposals are subject to controversy; and if it becomes necessary, we can continue the matter and even have a further hearing on those proposals that seem to be in dispute at a later date.

I thought I would let you know our position and you can notify the other members of the Advisory Committee if you wish.

You may have heard from some of the same attorneys. It would be difficult at this time to reschedule the hearing during the summer months and the only alternative would be to let it go to fall. We see no necessity for so doing.

Yours very truly,

ORK:dm

May 12, 1967

Mr. William E. Mullin
Attorney at Law
1820 Rand Tower
Minneapolis, Minnesota 55402

Dear Mr. Mullin:

This acknowledges your letter of May 11 requesting an extension of time of the hearing for consideration of the proposed amendments to our Rules of Civil Procedure and Supreme Court Rules.

It is practically impossible to change this date now as notice has gone out to all attorneys of the state. However, we anticipate that there will be only a limited number of changes that are controversial. If it should develop that more time is needed for a hearing on those subjects we can always continue the matter and have a further hearing if it is necessary. Briefs can also be filed after the hearing if they become of importance. I would assume that most of the arguments will be oral and that there will be no need for extensive briefs.

Yours truly,

ORK:dm

Identical letter to: Stanley E. Karon, Minnesota Building, St. Paul 1
James R. Bennett, 145 W. Snelling Ave., Appleton - 56208
Harlan G. Sween, 1020 Plymouth Building, Mpls. 2
Howard I. Malmon, 524 Minnesota Bldg., St. Paul 1
Theodore M. Stone, 707 1st Nat. Bank Bldg., Mpls. 2

BENNETT & BODGER
ATTORNEYS AT LAW
145 W. SNELLING AVE.
APPLETON, MINNESOTA 56208

TELEPHONE 289-1081

May 11, 1967

Chief Justice Oscar Knutson
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota

Dear Judge:

With reference to the changes in Minnesota Rules of Civil Procedure we would like to have the time to file briefs extended to July 15, 1967. We would also like to petition for a postponement of the hearing on the rules to the Fall term of the Supreme Court of Minnesota.

Very truly yours,

BENNETT & BODGER

James R. Bennett

James R. Bennett

JRB:la

LAW OFFICES

ROBINS, DAVIS & LYONS

MINNESOTA BUILDING
ST. PAUL 55101
TELEPHONE 224-5884

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JOHN F. EISBERG
STANFORD ROSINS
STEPHEN A. KRUPP
THOMAS C. KAYSER
LEO F. FEENEY

WASHINGTON, D. C. OFFICE
RONALD A. JACKS

May 10, 1967

The Honorable Oscar Knutson
Chief of Minnesota Supreme Court
Minnesota State Capitol
Saint Paul, Minnesota

Re: Amendment to Rules of Civil Procedure

Dear Judge Knutson:

I have recently received notice of a proposal to drastically alter some very important provisions in the Rules of Civil Procedure. In order to adequately comprehend these changes, I respectfully request that additional time be granted for the Bar to review these very important matters. Certainly this task cannot be completed by May 20. I therefore respectfully request that the time to file memoranda regarding these matters be continued for at least 60 days.

Thank you in advance for your consideration.

Very truly yours,

ROBINS, DAVIS & LYONS

Stanley E. Karon

SEK:blg

cc: Mr. Sheldon S. Larson
Attorney at Law
Winthrop, Minnesota

HOWARD I. MALMON
ATTORNEY AT LAW
524 MINNESOTA BUILDING
SAINT PAUL, MINNESOTA 55101
PHONE 225-6500

May 11, 1967

The Honorable Oscar Knutson
Chief Justice, Minnesota Supreme Court
State Capitol Building
St. Paul, Minnesota 55101

Dear Justice Knutson:

I have recently received notice of the proposed changes to the Minnesota Rules of Civil Procedure. I believe that the time remaining to file briefs and to have the hearing on these proposed changes is too short a period for so serious a matter.

I am hereby requesting that the time be extended to file briefs regarding these rule changes to not earlier than July 15, 1967, and that the hearing on the proposed rule changes be postponed to the Fall Term of the Supreme Court. While I am certain that a great deal of study was done by the rules committee, nevertheless, all of the lawyers of the Minnesota Bar should have an ample opportunity to review and study these proposed changes before the final determination on them.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

HOWARD I. MALMON

HIM:kk
cc. Mr. Sheldon S. Larson
President, Minnesota Bar Association
Winthrop, Minnesota

LAW OFFICES
MULLIN, GALINSON & SWIRNOFF

WILLIAM E. MULLIN
MURRAY L. GALINSON
MICHAEL A. SWIRNOFF

1820 RAND TOWER
MINNEAPOLIS, MINNESOTA 55402
332-4356

May 11, 1967

Chief Justice Oscar Knutson
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota

Dear Justice Knutson:

On May 1, this office received the proposed changes in the Minnesota Rules of Civil Procedure. I have since learned that briefs on the proposed changes are due May 20. I respectfully request an extension of time in which to file a brief until July 15, 1967, and request that the hearing on the rule changes be postponed until the Fall Term of the Supreme Court of Minnesota, so that there will be enough time for the entire Bar to provide meaningful assistance to the Court in considering the proposed rule changes.

Yours very truly,

William E. Mullin

WEM/js

STONE & STONE
ATTORNEYS AT LAW

ROBERT N. STONE
THEODORE M. STONE

TELEPHONE 336-2651
707 FIRST NATIONAL BANK BUILDING
MINNEAPOLIS, MINNESOTA 55402

May 11, 1967

Honorable Oscar Knutson
Chief Justice, Minnesota Supreme Court
State Capitol Building
St. Paul, Minnesota 55101

Dear Judge Knutson:

I have recently received a copy of the proposed changes for the Minnesota Rules of Civil Procedure. I note that a hearing is scheduled on this matter on June 1st and that briefs or petitions in writing must be filed on or before May 20th. I have not had the opportunity to examine in depth all of the changes but do note that some of the proposed amendments substantially change the existing rules and may seriously effect substantive rights and remedies of parties involved in a law suit.

I do not feel that the time limitations ordered are sufficient to enable one to review and consider changes of so serious a nature. I would request a extension of time in which to file briefs until at least July and a postponement of the scheduled hearing until this fall.

Thank you for your consideration of this matter.

Respectfully,

Theodore M. Stone

TMS:lp

cc: Mr. Sheldon S. Larson
Attorney at Law
President, Minnesota State Bar Association
Winthrop, Minnesota 55396

Sigal, Savelkoul, Cohen & Sween

Attorneys at Law

Samuel I. Sigal
Donald C. Savelkoul
Norman Cohen
Harlan G. Sween

Raul O. Salazar

1020 PLYMOUTH BUILDING
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE 336-5831

May 11, 1967

The Honorable Oscar Knutson
Chief Justice
Supreme Court of Minnesota
State Capitol
St. Paul, Minnesota

Dear Sir:

Re: Proposed changes in the Minnesota Rules of Civil Procedure

Slightly more than a week ago, my partners and I received a publication from West Publishing Company advising us of the proposed changes in the Minnesota Rules of Civil Procedure.

Upon a brief perusal of the document, I note that rule changes are proposed for depositions, interrogatories, medical privilege, Notes of Issue, and jury trial instructions. I also note from the publication that a hearing on the proposed changes is scheduled for June 1, 1967, before the Supreme Court and further that briefs in opposition to the proposed changes must be filed within ten days from the date of this letter.

On behalf of myself, my partners, and my associates, I respectfully request that the hearing on the above matter be continued until the fall term of Court and that the date for filing briefs be extended to include August 1, 1967. In this way it will allow us and the numerous other lawyers that primarily represent pleintiffs and labor unions in the courts of this state to study the rules and be better able to form an opinion as to the advisability of the proposed changes.

Yours very truly,

SIGAL, SAVELKOUL, COHEN & SWEEN

By Harlan G. Sween
Harlan G. Sween

HGS:ja
cc. Sheldon S. Larson

May 10, 1967

Mr. Burton R. Sawyer
Attorney at Law
Northfield, Minnesota

Dear Mr. Sawyer:

I have your letter of May 8 regarding the proposed hearing for amendments to the Rules of Civil Procedure and the Rules of the Supreme Court.

It would be practically impossible to change the date of the hearing at this time. The order has been mailed to all the lawyers of the state by West Publishing Company, as you know. To set the hearing for some date during the summer would not be convenient and the hearing was set, after consulting with the Advisory Committee, as near after our recess for the summer as we could have it.

It strikes me that no extensive briefs are necessary. All of the matters that are in controversy have been quite fully argued in the past and the court is of the opinion that the hearing ought to go on as set. If there develop areas where further hearings are needed we can continue the matter at that time. We will also be glad to permit anyone who wishes to do so to file a brief after the hearing if they have not had time to do so prior to that time. I am assuming from past experience with these matters that most of the arguments will be vocal rather than written and we intend to take whatever time is necessary to hear anyone who wishes to be heard.

Yours truly,

ORK:dm

cc - SheldonS. Larson (blind)

MINNESOTA TRIAL LAWYERS ASSOCIATION

May 8, 1967

Hon. Oscar R. Knutson
Chief Justice of Supreme Court
State Capitol
St. Paul, Minnesota

Dear Justice Knutson:

We wish to request that the court amend its recent order of March 29, 1967 so as to grant the objectors to some of the proposed new civil rules of proceedure further time in order to make an appearance and to file briefs.

Most of the members of our organization did not receive their copy of the rules or notice of the court order until the week of May 1. At this season of the year many of the bar are busy with court appearances and prior commitments and it is difficult for us to educate ourselves with reference to the many changes proposed by the new rules and to prepare the necessary briefs.

If time could be granted until the latter part of July to file briefs it would appear in the best interests of justice. These proposed changes are so radical that all parties should have plenty of time and the opportunity should be given to test out the sentiment of the bar with respect to them.

Respectfully yours,

Burton R. Sawyer

BRS:lms

May 10, 1967

Mr. Sheldon S. Larson
President, Minnesota
State Bar Association
Winthrop, Minnesota 55396

Dear Sheldon:

Walter Rogosheske turned over to me a copy of your letter of May 9 to Cochrane, Thompson and Bresnahan regarding the hearing on the proposed amendments to the rules. I am enclosing a copy of a letter which I have written to Burton Sawyer of Northfield, who requested that a later date be set.

I think we should go ahead with the hearing to see what develops. If more time is needed to hear all those who wish to be heard that can be decided on then.

For your records I wanted you to know what we are doing.

Yours sincerely,

ORK:dm

MINNESOTA STATE BAR ASSOCIATION
505 MINNESOTA FEDERAL BLDG.
MINNEAPOLIS, MINNESOTA 55402
AREA CODE 612 -- 335-1183

May 9, 1967

Sawyer & Lampe
Attorneys at Law
311 South Water St.
Northfield, Minnesota

ATTENTION: Mr. Burton R. Sawyer

RE: Proposed Amendments to Court Rules

Dear Burt:

This will confirm my telephone conversation to you of Sunday, May 7th, in which I reported to you the action that I had taken in regard to your telephone request which I received on Saturday, May 6th, requesting that as President of the Minnesota State Bar Association I contact the Supreme Court and ask for an extension of time in which to file briefs and petitions in the above matter and to also ask the Court for some delay on the hearing which is now set for June 1st. You indicated to me that you felt that in setting May 20th as the deadline for filing briefs and petitions, the Court had not granted sufficient time for any interested parties to make adequate preparation.

I felt that I had no authority to submit any requests to the Court without receiving instructions to do so by the Board of Governors. Fortunately, the Board of Governors had a meeting on Saturday, May 6th at 10:00 o'clock and I submitted your request to the Board and the matter was thoroughly considered and arguments were heard pro and con on the matter of submitting such a request to the Court and finally the Board adopted a motion to the effect that the Minnesota State Bar Association take no action in the matter, and of course I am bound by that decision.

I also indicated to you that the majority of the members of the Board felt that it might be highly advisable to get this matter on for hearing before the Court adjourned for its summer recess. Many of them felt that the more controversial matters contained in the proposed amendments had already been thoroughly considered

MINNESOTA STATE BAR ASSOCIATION
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MINNEAPOLIS, MINNESOTA 55402
AREA CODE 612 -- 335-1183

and discussed at various bar association activities and that there existed differences of opinions among the various lawyers in the state in respect to these matters that the Court was fully aware of.

I further indicated to you that a representative of the Supreme Court was in attendance at our Board meeting and I am confident that a message was carried back to the Court that a number of lawyers are concerned about the shortage of time granted the lawyers for the preparation of briefs. The thought was advanced that if any lawyers find the time inadequate that they should individually apply to the Court for an extension and that the Court might be very lenient in granting any such requests. The thought was also advanced that the Court might proceed with its hearing on June 1st and then continue the hearing if it felt that the matter had not been thoroughly presented to them and that by an extension additional viewpoints could be obtained.

Now this is all that I can do on the matter except to indicate to you that at our Board meeting we had present lawyers who are normally considered as being for the plaintiff and also lawyers who are primarily engaged in defense work, so that the Board had the full benefit of the various viewpoints.

With best personal wishes, I am

Sincerely,

Sheldon S. Larson

COPY

SSL/jve
cc: Austin G. Anderson
Sidney S. Feinberg
Robert J. King
Timothy P. Quinn
Charles Murnane

Blind Copy to: Hon. Walter F. Rogosheske

MINNESOTA STATE BAR ASSOCIATION
505 MINNESOTA FEDERAL BLDG.
MINNEAPOLIS, MINNESOTA 55402
AREA CODE 612 -- 335-1183

May 9, 1967

Cochrane, Thompson & Bresnahan
Attorneys at Law
830 Minnesota Building
St. Paul, Minnesota

Re: Proposed Amendments to Court Rules

COPY

Gentlemen:

I acknowledge the receipt of your telegram requesting that the officers of the Bar Association apply to the Supreme Court for an extension of time for the filing of briefs and for some delay in the hearing in this matter scheduled for June 1st.

Rather than repeat the details concerning this situation I am enclosing a photostatic copy of a letter which I have sent to Sawyer & Lampe of Northfield who had submitted a similar request to me on last Saturday morning. That letter will indicate to you the position which the Bar Association must now take in regard to such requests in view of the action of the Board of Governors taken at their meeting held on May 6th.

I understand that your telegram was also sent to other officers of the association, so I am sending them copies of this letter and the Sawyer letter so that they will be fully advised that your telegram has received a response.

With best regards, I am

Yours very truly,

Sheldon S. Larson

SSL/jve -Enc.
cc: Austin G. Anderson
Sidney S. Feinberg
Robert J. King
Timothy P. Quinn
Charles Murnane

Blind Copy to: Hon. Walter F. Rogosheske

May 10, 1967

Mr. Solly Robins
Attorney at Law
Minnesota Building
St. Paul, Minnesota 55101

Dear Mr. Robins:

I have your letter of May 8 regarding the hearing on the proposed amendments to the Rules of Civil Procedure and the Rules of the Supreme Court.

It would be practically impossible to change the date of the hearing at this time. The order has been mailed to all the lawyers of the state by West Publishing Company, as you know. To set the hearing for some date during the summer would not be convenient and the hearing was set, after consulting with the Advisory Committee, as near after our recess for the summer as we could have it.

It strikes me that no extensive briefs are necessary. All of the matters that are in controversy have been quite fully argued in the past and the court is of the opinion that the hearing ought to go on as set. If there develop areas where further hearings are needed we can continue the matter at that time. We will also be glad to permit anyone who wishes to do so to file a brief after the hearing if he has not had time to do so prior to that time. I am assuming from past experience with these matters that most of the arguments will be vocal rather than written and we intend to take whatever time is necessary to hear anyone who wishes to be heard.

Yours very truly,

ORK:dm

LAW OFFICES

ROBINS, DAVIS & LYONS

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DAVID J. LARSON
JOHN F. EISBERG
STANFORD ROBINS
STEPHEN A. KRUPP
THOMAS C. KAYSER
LEO F. FEENEY

WASHINGTON, D. C. OFFICE
RONALD A. JACKS

May 8, 1967

Chief Justice Oscar R. Knutson
Supreme Court
State Capitol
St. Paul, Minnesota

Dear Justice Knutson:

I have carefully reviewed the proposed amendments to the Rules of Civil Procedure for the District Courts and the Rules of Civil Appellate Procedure. I have come to the conclusion that the proposed changes are so far reaching in various areas, such as those that relate to the waiver of medical privilege and change in the rules that apply to interrogatories and changes proposed in Appellate Procedure, that lawyers should be given sufficient time within which to properly prepare a careful presentation as to their viewpoints on these proposed changes.

Lawyers who are particularly affected by these rules find the month of May one of their busiest Court months and in view of the fact that the Committee has deliberated upon this for several years, would there be any great harm in continuing the hearing on these changes until the Fall term of the Supreme Court? The advantage of permitting a longer time before hearing all sides on these proposed rules would be to also extend the time within which briefs or petitions could be filed with the Clerk of the Supreme Court.

I do know that there are many lawyers who would like to file briefs or petitions who would be unable to do so in the brief time that will be allotted between the receipt of the rules and the time set for the filing of briefs or petitions.

I respectfully submit that no great harm will result from this postponement but that the benefit resulting from an enlarged opportunity to be heard would far outweigh any harm that would be occasioned.

Kindest personal regards.

Yours very truly,
ROBINS, DAVIS & LYONS

Solly Robins

SR/vkl

PS: I have now discovered, since writing this letter, that there are some lawyers in my firm who have not even received copies of the "Minnesota Proposed Rules of Court" from West Publishing. It may very well be that West Publishing has not yet delivered all copies of the amended rules to the lawyers in the State. SR