

STATE OF MINNESOTA

IN SUPREME COURT

ADM04-8001

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

O R D E R

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

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

Dated: May 28, 2008

BY THE COURT:

OFFICE OF  
APPELLATE COURTS

MAY 28 2008

**FILED**



Russell A. Anderson  
Chief Justice

## AMENDMENTS TO RULES OF CIVIL PROCEDURE

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

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

2                    \* \* \*

#### 3        **26.02 Discovery, Scope and Limits**

4                    \* \* \*

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

16                  \* \* \*

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

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

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

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

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

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

\* \* \*

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

\* \* \*

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

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

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