STATE OF MINNESOTA

IN SUPREME COURT

In re Proposed Amendments to) Rules of Civil Procedure for) the District and Municipal) Courts)	ORDER FOR HEARING ON ADOPTION OF PROPOSED AMENDMENTS TO THE RULES FOR DISTRICT AND MUNICIPAL COURTS

Pursuant to the unanimous recommendation of its Advisory Committee on Rules, appointed by the Supreme Court under Minn. St. 480.052, 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, the Supreme Court is considering the adoption of amended Rule 49.01, Minnesota Rules of Civil Procedure, the readoption of Rule 51, Minnesota Rules of Civil Procedure, and an amendment to Appendix B of Minnesota Rules of Civil Procedure, to reflect the effect of these amendments on M. S. A. 546.14 (Laws 1971, Ch. 715). The recommendations are:

1. RULE 49.01 TO BE AMENDED TO READ AS FOLLOWS:

The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and require written findings thereon as it deems most appropriate. The court shall give to the jury such explanations and instructions concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding; or, if

it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict. Neither the court or counsel shall inform the jury of the effect of its answers on the outcome of the case. (New matter underlined)

2. RULE 51 TO BE READOPTED TO READ AS FOLLOWS:

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform the counsel of its proposed action upon the requests prior to their arguments to the jury, and such action shall be made a part of the record. The court shall instruct the jury after the arguments are completed except, at the discretion of the court, preliminary instructions need not be repeated. No party may assign as error unintentional misstatements and verbal errors, or omissions in the charge, unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objections. An error in the instructions with respect to fundamental law or controlling principle may be assigned in a motion for a new trial though it was not otherwise called to the attention of the court.

3. APPENDIX B TO BE AMENDED BY THE FOLLOWING ADDITIONS:

Appendix B(1)

Rule	Statute Superseded M.S.A. 1971
49.01	546.14 (Laws 1971, Ch. 715)
51	546.14 (Laws 1971, Ch. 715)

Appendix B(2)

Statute Superseded M.S.A. 1971	Rule
546.14 (Laws 1971, Ch. 715)	49.01; 51

The official comments of the Advisory Committee are as follows:

Your Advisory Comittee finds such an urgency to exist to resolve the confusion and to clarify the inconsistency in practice

in the district courts regarding the proper procedures to be followed in submitting special verdicts to the jury following the enactment of Laws 1971, Chapter 715, as to require immediate attention by the Court. Your Advisory Committee believes that it is essential to restore commonality of practice in our districts and therefore recommends to the Court the immediate promulgation of the foregoing amendments. Your Advisory Committee is considering and will propose to the Court additional amendments to the Rules, but recommends that the Court not delay adoption of these amendments until the Committee has had an opportunity to complete its other work. The effect of the proposed amendments will be to preserve the practice as set forth by the Minnesota Supreme Court in McCourtie v. United States Steel Corp., 253 Minn. 501, 93 N. W. 2d 552 (1958) and Johnson v. O'Brien, 258 Minn. 502, 105 N. W. 2d 244 (1960).

Your Advisory Committee believes that it is beyond its province to comment on the effect, if any, of Laws 1971, Chapter 715, on prior judicial proceedings; however, at such date as the Court promulgates the foregoing amendments, Minnesota Laws 1971, Chapter 715, can and should have no further effect.

IT IS HEREBY ORDERED That a hearing be had before this court in the State Capitol at St. Paul, Minnesota, on Monday, September 18, 1972, at 2 o'clock p. m., at which time the court will hear proponents or opponents of the proposed amendments.

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 September 8, 1972, of their desire to be heard on the proposed amendments.

PROVIDED That if the court adopts said amendments to the rules, the same shall become effective on the date of their adoption.

BY THE COURT

Chief Justice

Dated July 18, 1972

Peterson, Challeen, Delano & Thompson, Ltd.

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September 13, 1972

Minnesota Supreme Court
State Capitol
St. Paul, Minnesota

Attention: Honorable Chief Justice Oscar Knutson

Re: Proposed Rule 49

Honorable Justices:

I wish to be recorded as opposed to the new proposed rule #49 which would attempt to nullify laws of 1971 Chapter 715. My reasons follow.

(1) The jury is entitled to know the effect of their verdict. Litigants and jurors alike are frustrated by what they describe as legal "mumbo jumbo" when they read that the result of their verdict was entirely different than they intended. They feel that they have been misused and mistrusted. They say in effect that if we don't trust them, why call them in and waste their time in the first place. The net effect of not letting the jury know the effect of their verdict is an undermining of public confidence in the courts and in our system of justice.

(2) The proposed rule will tend to favor insurance companies and defendants in civil cases. The best tactic for a defendant is to sow seeds of confusion and doubt. It is not so easy to do that if one cannot muzzle the opposition. The defense can seduce the jury

into thinking that they are making a fair compromise by making a 50-50 finding on the comparative negligence question. The jury believes that they are awarding 50% of the damages to the plaintiff. Defense counsel does not want plaintiff's counsel to let the jury know what will happen to the plaintiff as a result of the 50-50 finding.

(3) The court's rule making power has already been invaded by the Legislature in M.S. 604.01

> "The court may, and when requested by either party shall, direct the jury to find separate special verdicts......"

Regardless of the court's previous inherent discretion to either submit a special or general verdict, either litigant may now demand a special verdict. It is significant that no one may demand a general verdict and that the courts are willing to have the Legislature make this rule but not chapter 715.

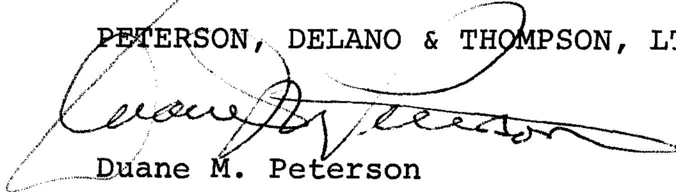
(4) Juries are unlikely to render perverse and conflicting answers to a special verdict if both sides can argue the effect to the fullest. Giving the court the opportunity to instruct is an added help to proper and consistent findings. It is in the interest of the average individual litigant to have his lawsuit resolved without error or costly appeals. It is in the interest of professional defendants, such as liability insurance carriers, to have a means of upsetting unfavorable results through the appeal procedure. The facts, well known to trial lawyers, are that insurers seldom pay the full amount of a verdict. They are usually able to compromise any verdict downward if they have a chance of appeal. The special verdict gives them more such opportunities than does a general verdict, and proposed rule #49 - will give them further assistance and an unfair advantage over the victim of an accidental injury.

(5) The proposed rule is directly contrary to the legislative enactment of the laws of 1971 Chapter 715.

The court's position generally is that the Legislature has no business making rules for the courts. Recognizing that the courts have - (and need to have) inherent rule making powers, it is not necessarily good policy to overrule legislative enactments in this area unless there is a good solid reason to do so. Witness the lack of concern by the courts over the mandatory special verdict rule cited in (3) above. Chapter 715 is in effect a mere amendment of 604.01.

Respectfully submitted,

PETERSON, DELANO & THOMPSON, LTD.



Duane M. Peterson

DMP/gd

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September 11, 1972

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

RE: Rule 49.01
JURY ARGUMENT AND
COURT INSTRUCTION

Dear Judge Knutson:

I do not intend to file any brief in connection with this matter, but, I would like to call the Court's attention to my feeling with respect to the problem.

It seems to me that it is a slap in the face to the jury if we do not give them credit for having ability to understand the result of their decision.

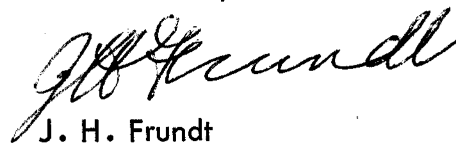
Numerous cases have illustrated how the jury have been under the impression that they were holding in a certain way and yet, because of a lack of comprehension of the effect of what they were saying, their decision has not been carried out as they wanted it carried out.

I am sure that the only people who hope that mistakes of that character would take place are the insurance carriers, and they certainly are attempting to confuse the issue here as they normally do when we try cases against them.

It has been my experience, and I am sure the experience of members of the Court when trying a case against insurance company lawyers, that their strategy is oftentimes to confuse the issue, either on questions of liability or on questions of damages; and the Court has taken cognizance of this situation in many instances. As for example, your holding in Weber vs. Stokely-Van Camp.

I hope the Court will approve of the Rule stated in Chapter 715 of the Laws of 1971. Please pass this on to the other members of the Court, and greet them all for me.

Most sincerely,



J. H. Frundt

JHF:ljh

ROBERT S. PARKER
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September 12, 1972

Clerk, Minnesota Supreme Court
State Capitol
St. Paul, Minnesota

Re: Proposal to amend Rule 49

Dear madam:

Enclosed herewith please find a Petition signed by members of the Isanti County Bar requesting that the Supreme Court not amend Rule 49 to prohibit informing the jury of the effect of its answers on the outcome of a case. We understand that the Supreme Court is going to consider this matter on September 18, 1972, and wish to voice our opposition to a change as proposed.

Yours very truly,

PARKER AND OLSEN

Robert S. Parker

RSP/sl
Enc.
CC: John V. Norton, President, MTLA
118 South Main Street
Stillwater, Minnesota 55082

IN THE MATTER OF THE AMENDMENT TO RULE 49
OF THE RULES OF CIVIL PROCEDURE FOR THE
DISTRICTS COURTS OF MINNESOTA

TO THE HONORABLE MINNESOTA SUPREME COURT:

The undersigned, members of the Isanti County, Bar, hereby petition and show the Court as follows:

1. That they are active members of the Minnesota Bar Association, engaged in trial practice primarily in East Central Minnesota. That they represent both plaintiffs and defendants in civil litigation, including both personal injury and a wide variety of other matters, and also have considerable experience in the prosecution and defense of criminal matters.

2. That we believe it is helpful to a jury to be able to explain and inform the jury of the effect of its answer on special verdicts, or otherwise, and believe it is helpful that both counsel for the plaintiff and defendant, and the court, be permitted to comment on the result thereof. We have long felt, prior to the adoption of Laws of 1971, Chapter 715, that in many cases injustices have resulted, or peculiar results have come about, because neither the court nor counsel could explain to the jury the results of their answers. We believe that Laws of 1971, Chapter 715, remedied this defect and is good legislation which should be preserved as law.

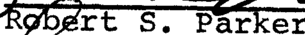
WHEREFORE, the undersigned members do hereby petition and request the court not to amend Rule 49 so as to nullify the effect of such legislation.

Dated September 14th, 1972.

John F. Dablow

David C. Johnson

P. Hunter Anderson


Robert S. Parker

Lawrence E. Olsen

Raymond T. Olsen

(9)

MELVIN OGURAK
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(612) 339-2731

September 6, 1972

Supreme Court
State Capitol
Saint Paul, Minnesota

ATTENTION: JOHN McCARTHY, CLERK OF SUPREME COURT

Dear Mr. McCarthy:

Enclosed herewith is my Petition regarding Rule 49.01, Jury Argument and Court Instruction.

It is my understanding that the Minnesota Supreme Court is hearing arguments regarding Rule 49.01 on September 18, 1972, at 2 p.m. I will not be at the hearing but wish to have this Petition brought before the Court.

Thank you.

Very truly yours,

OGURAK & ASSOCIATES

Mel

Melvin Ogurak

MO:lp

Enc.

STATE OF MINNESOTA

SUPREME COURT

RE: RULE 49.01 JURY ARGUMENT AND COURT INSTRUCTION	))))	PETITION

COMES NOW, Melvin Ogurak, Attorney at Law, and respectfully Petitions this Court to reject the Amendments to Rule 49.01 now under the Court's consideration.

In support of this Petition, your Petitioner states as follows:

I.

That the jury, as the ultimate finder of fact, cannot function as such without having full knowledge of the effects of its answers on the outcome of the case.

II.

That the jury cannot perform its purposes without having full knowledge of the effects of its answers on the outcome of the case.

III.

That parties, in requesting jury trials, have a constitutional right to have the jury completely aware of the effects of its answers upon the outcome of the case.

IV.

That failure of the jury in having full and complete knowledge regarding the effects and consequences of their answers on the outcome of the case is a denial of due process and, therefore, unconstitutional.

DATED: September 6, 1972.

OGURAK & ASSOCIATES

By ______________

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Area Code 507
387-1179

September 7, 1972

Mr. John McCarthy, Clerk
Minnesota Supreme Court
State Capitol Building
St. Paul, Minnesota 55101

Re: Hearing on Proposed Amendments to Rule 49.01, Appendix B, and Readoption of Rule 51, Minnesota Rules of Civil Procedure

Dear Mr. McCarthy:

This correspondence is written pursuant to Order of the Chief Justice dated July 18, 1972, stating that a hearing on the captioned matter is set for September 18, 1972, at 2:00 P.M., and that members of the Bench and Bar desiring to be heard shall file briefs or petitions and shall notify the Clerk in writing of their desire to be heard.

The undersigned appears as counsel for respondents Martin Krengel and Irma L. Krengel in case No. 43539, set for hearing by the Court on September 25. One of the issues in said Krengel case concerns the matter that is the subject of hearing on September 18, 1972.

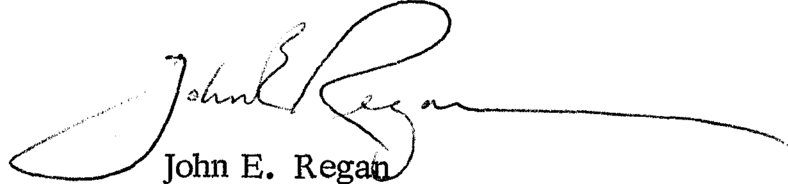
We filed the plaintiffs' respondents' brief with the Clerk of the Supreme Court on May 30, 1972. Instead of filing a separate brief for the September 18 hearing, we respectfully request you to direct the attention of the Court to Section III, pages 29 to 43 inclusive, of our previously filed brief, which Section III is directed

toward the matter under consideration at the September 18 hearing. We respectfully request the Court to consider said Section III as our brief submitted as opponents of the proposed amendments to the aforesaid Rules.

We also herein express our desire to be heard, time of the Court permitting, in the consideration of the proposed amendments at the September 18 hearing.

Thank you for your consideration of our request.

Very truly yours,



John E. Regan

JER:b

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GARY R. MACOMBER
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September 8, 1972

Mr. John McCarthy, Clerk
Minnesota Supreme Court
State Capitol Building
St. Paul, Minnesota 55101

Re: Hearing on Proposed Amendments to Rule 49.01, Appendix B, and Readoption of Rule 51, Minnesota Rules of Civil Procedure

Dear Mr. McCarthy

As discussed today with Wayne Chipperly, this letter is to notify you of my desire to be heard regarding the above captioned matter providing time of the Court permits.

Very truly yours

G. Marc Whitehead

GMW:jg

(6)

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Montevideo, Minnesota
September 11, 1972

Mr. John McCarthy
Clerk of Supreme Court
State Capitol
St. Paul, Minnesota 55101

Re: Robert E. Sandven and Annette Sandven
vs. Walter Schultz and Ernest Tostenson
Supreme Court File No. 43849

Dear Mr. McCarthy:

I am in possession of a copy of Justice Knutson's Order of June 18th, 1972 for hearing on Monday, September 18th, on the recommendations of the Advisory Committee on Rules in reference to M.S.A. 546.14.

The above referred to case, which is on Appeal to the Supreme Court at this time, involves an issue which may or may not be affected by the Supreme Court's determination at its September 18th hearing.

In the Sandven case the writer obtained a verdict in the District Court of Chippewa County on January 28, 1972 in the total sum of $25,000.00. In the Final Argument the writer commented on the effect of the verdict as permitted by M.S.A. 546.14, and likewise Judge Langsjoen in his Instructions explained to the jury the effect of their answers to the Special Interrogatories also in accordance with the above quoted Statute. The only issue being seriously urged by Appeal is the constitutionality of this Statute.

The writer desires at this time to take exception to the recommendation of the Advisory Committee on Rules and respectfully requests the Supreme Court decline to adopt District Court Rule 49.01 as proposed by the Advisory Committee.

There are in my opinion strong policy reasons for not following the recommendations of the Advisory Committee on Rules. It is my feeling that almost invariably juries try to figure out the total effect of their answers to Special Interrogatories. By preventing counsel and the Court from explaining to the jury the overall effect of their

Mr. John McCarthy
September 11, 1972
Page 2

answers to the special Interrogatories the Supreme Court would be merely interjecting into the jury process another substantial element of speculation which I feel would result in many unjust verdicts. It is my experience in a number of trials prior to the adoption of Chapter 715 that the juries tried to anticipate the effect of their answers to interrogatories and were shocked to hear the actual legal results.

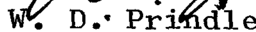
For the above reasons I respectfully request that the Supreme Court decline to adopt the recommendation of its Advisory Committee on Rules.

I am unable to appear at the hearing scheduled for September 18th for the reason that I shall be taking depositions out of state on that day.

Will you please bring this letter to the attention of the Chief Justice.

Very truly yours,

PRINDLE, MALAND AND WARD, CHARTERED
by



W. D. Prindle

WDP:ae

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September 12, 1972

Mr. John McCarthy
Clerk of the Supreme Court
State Capitol
St. Paul, Minnesota 55101

Re: Proposed Amendment to Rule 4901, Minnesota Rules of Civil Procedure

Dear Mr. McCarthy:

Through this letter I wish to make known my objection to the adoption of the proposed amendment to this rule.

The addition to the rule would provide as follows:

"Neither the court or counsel shall inform the jury of the effect of its answers on the outcome of the case."

District judges have permitted counsel to comment on the effect of their answers, and it seems to me that this has been uniformly appreciated by the members of the jury. Without some explanation, it would be natural for the jury panel to assume that the total damages which they find would be reduced by the percentage of negligence that they find allocable to the plaintiff. This would hold if they find the plaintiff 90% negligent or 50% negligent.

Under the comparative negligence statute, this is not the law. If we expect the jury to decide issues on the basis of the facts and the law, the jury should be instructed, and counsel should be permitted to argue all of the law appropriate to their disposition of the case.

If the trial court is of the view that the jury's findings on the special verdict are not supported by the evidence, the judge does have the power to make the appropriate correction or adjustment.

I would appreciate it if you would make this letter available to the Court.

Thanking you, I am

Very truly yours,

WEST & GOWAN

John S. Gowan

JSG:mw

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September 4, 1972

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

Dear Justice Knutson:

I read with interest in my August 16th issue of Northwestern Advance Sheets the proposed amendment to Rule 49.01 prohibiting comment by the court or counsel on the effect of a jury's answers to interrogatories. This is admittedly repealing L. 1971 Ch. 715 which permits that practice.

There is a serious question in my mind that the court has the power to do this.

The adoption of such a rule would have the effect of a statute entirely inconsistent with a court rule. This would not lead to uniformity and certainty in practice.

Whether the legislature or the courts should govern trial practice is a good philosophical question. I recall when the Loring Sub-committee of the Judicial Council proposed the rule-making power, the legislative reaction was quite negative as it felt its perogatives were being infringed upon. It wasn't until six years later that the legislature granted that power to the courts by the enactment of L. 1947 Ch. 498. Subdivision 6 of that act (now M.S. 480.056) provided that present laws relating to practice in conflict with the rules are of no force and effect. I cannot read into this the judicial power to make rules in conflict with future (post 1947) statutes, especially in view of Subdivision 8 of that 1947 law (now M.S. 480.058) reserving to the legislature the power to modify or repeal any court rule.

I have no particular opinion as to whether commenting on the effect of a verdict is desirable or not. My reaction is that jurors are not as stupid as judges and lawyers think they are. (See Mr. Justice Murphy's footnote 6 at 93 N.W. 2nd 563 in McCourtie v. United States Steel Corporation.) In case of a general verdict in a civil case and in all criminal cases the juries know the effect of their verdicts. I see no harm in that.

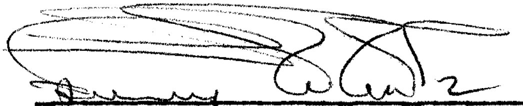
What I am concerned with is the exposure of the court to the criticism that it is usurping power that it does not have by invalidating a statute by a court rule. If L. 1971 Ch. 715 is a poor law than it should be repealed; then the court could make any rule it pleased on this subject and there would be no conflict.

Honorable Oscar R. Knutson
Chief Justice
Supreme Court of Minnesota
State Capitol Building
St. Paul, Minnesota
September 4, 1972 - Page Two

I do not wish to file a formal petition or participate in oral argument, but did want to express my views.

Best personal regards.

Yours very truly,



C. Stanley McMahon

CSM:jmb

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September 5, 1972

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

Dear Justice Knutson:

It appears that the opponents of the jury system wish to further dilute its effectiveness by proposing Amendment to Rule 49 prohibiting court or counsel from advising the jury as to the legal effect of its findings.

The special interrogatories in many cases have caused great confusion among the jurors. They are at least entitled to know the legal effect of such fact finding.

To bring down a curtain of silence and ignorance between those learned in the law and the jurors will create further suspicion and distrust of our judicial system.

Put yourself in the seat of the juror who is just told by the judge that he is prohibited by law, as are the attorneys for both sides, to explain the effects of proposed findings submitted to them.

It is my opinion that such a rule will lead in short order to elimination of the jury system in civil cases in this state.

Respectfully yours,

Robert R. Biglow

Robert R. Biglow

RRB:r

Telephone (612) 256-4205

Law Offices of

Meyer and Meyer

William G. Meyer
Mark H. Meyer

6 North Third Avenue East
Melrose, Minnesota 56352

September 1, 1972

The Honorable Justices' of the Supreme Court
Supreme Court of Minnesota
St. Paul, Minnesota

Gentlemen:

We wish to voice our concern in regard to the proposed rule change regarding jury instruction and comment by counsel. We very strongly take the position that the present rule is proper and that the jury should be aware and informed of what it is doing. We ask that you do not change the rule as set forth in the Statutes of 1971, Chapter 715.

Very truly yours,

Mark H. Meyer

MHM/wco

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IRVING NEMEROV
RES. 825-3455

OF COUNSEL
LLOYD W. FRIEDMAN
RES. 927-6809

September 1, 1972

Minnesota State Supreme Court
Minnesota State Capitol
Saint Paul, Minnesota

Attention: The Honorable Chief Justice Oscar R. Knutson

Re: Rule 49.01 Jury Argument and Court Instruction

To the Honorable Supreme Court of the State of Minnesota:

Yom Kippur falling on September 18, 1972, makes it impossible for me to attend the hearing on the above matter.

I would strongly oppose any change in the statutory authority in the above matter. My experiences have been no justice results where the jury is kept in the dark as to the consequence of their answers.

Very truly yours,

Irving Nemerov

IN:dls

BLETHEN, OGLE, GAGE & KRAUSE
ATTORNEYS AND COUNSELORS

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WILLIAM C. BLETHEN
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AREA CODE 507

September 7, 1972

Minnesota Supreme Court
State Capitol Building
St. Paul, MN 55101

Gentlemen:

We have just become aware of the opportunity to be heard on the proposed amendments to Rule 49 relative to advising the jury of the effect of their answers in special verdicts. Since we will be unable to attend the hearing on September 18, 1972, we should like to express the views of our firm briefly in this letter.

As with most firms engaged in general practice outside the metropolitan area, we do approximately an equal amount of work for both plaintiffs and defendants so that, hopefully, our opinion is not biased for one side or the other. We have had considerable experience with special verdicts and are convinced that in proper cases, especially where the trial is long and the issues complex, they are an invaluable tool in the search for truth and the administration of justice. In at least the majority of cases, however, we believe these purposes are advanced, not hindered, by permitting reasonable comment on the purpose and effect of the verdict. We hold this opinion for three general reasons:

1. From a practical standpoint, we have seen rather monstrous results from special verdicts where the questions perhaps were not prepared with the greatestskill (a difficult task at best in the limited time normally available for this purpose during a trial) and the jury did not understand the results of its findings. There is a special danger where questions are submitted on technical points or in language that may be meaningful to lawyers but not to laymen. I personally recall a case where the most flagrant negligence was found not to be a "proximate cause" and the jurors were shocked when they learned the results of a verdict to which they had honestly given their best. Comparative negligence cases with multiple defendants, for example, are a fertile source of results which are not at all what a jury intended.

We are aware of the argument that special verdicts without explanation should result in verdicts that are free of emotion or prejudice, based entirely and objectively on the facts. We believe, however, that this argument reflects a lack of faith in or understanding of the jury system. Any juror worth his salt is going to be concerned about the result of a case to which he has given careful and undivided attention. If he has a really good mind, and is honestly concerned about the litigants before him, he is inevitably, perhaps unconsciously, going to try to tailor his verdict to what he considers a fair and just result. But without comment or guidance he is working in the dark in a field he only half understands, and injustice is certain to be the result in many cases.

If care is exercised in the selection of jurors--and this has improved immensely in Minnesota in recent years--we are no more likely to find passion or prejudice among jurors than among lawyers or judges. Better the risk that occasionally a juror will not measure up to his oath and allow emotion to sway his judgment, than the greater risk of misunderstanding when an intelligent and honest juror is forced to work in a vacuum, the meaning of which he is not allowed to know.

2. From a philosophical standpoint, we are convinced that the ameliorating influence of the jury on the strict and often inflexible standards of the law has been, and continues to be, one of the prime reasons our common law has survived and grown while other systems in other cultures have been subjected to revolution and overthrow. If we contend that standards of conduct designed generally for all cases will always bring true justice to each individual case, we delude ourselves. While not often announced in black and white, many a lawyer and jurist recognizes that the combined judgment of six or twelve representative citizens, even though it may occasionally seem to stretch a legal technicality, results more often than not in the substantial justice that is our goal. In looking back over years of jury trials, we recognize that for every verdict which has gone astray, there are half a dozen that make a great deal of sense after the heat of combat has died away.

The jury can accomplish this purpose with a general verdict or with a special verdict where it has some understanding of its meaning. The jury cannot accomplish this purpose if it merely fills the schoolboy role of answering unrelated questions with no understanding of their purpose--an approach, incidentally, almost universally abandoned in the field of education today.

After all, the common law is little more than generally accepted public opinion applied to specific disputes. By what right should lawyers and judges alone contribute to its growth?

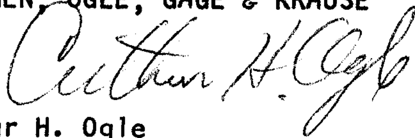
3. From a legal standpoint, we question the propriety of the Court's deciding to override an act of the Legislature without first having found that act unconstitutional in a controversy where its constitutionality was an issue properly presented and argued by the affected litigants. This question is particularly pertinent today since the most common use of special verdicts is in comparative negligence cases. Comparative negligence is a legislative doctrine in Minnesota, not one adopted by judicial decision. It is the Legislature which has specifically given litigants the right to demand a special verdict in these cases. It would seem, therefore, that the Legislature has the right to set the standards for its use. Whatever the technical difference between matters of procedure and matters of substance, experienced trial lawyers and judges know that the proposed rule, like the 1971 Statute, has a substantive effect on the outcome of litigation.

It seems to us the Statute should be given a fair trial. If its constitutionality is challenged, then, of course, the Legislature has to act, and this Court has been very effective in stimulating legislative action in other areas of injustice. At the present time, and based upon our experience, we should like to see the proposed amendment set aside, at least until there has been a sufficient trial of the 1971 Statute to demonstrate clearly either that it works or that it does not.

We express our sincere appreciation for the opportunity to present our views on what is certainly an interesting and important issue for our profession.

Respectfully submitted,

BLETHEN, OGLE, GAGE & KRAUSE



Arthur H. Ogle

AHO:eg

cc: Mr. Jerome T. Anderson
Minnesota Trial Lawyers Association

Plunkett & Peterson, P.A.
ATTORNEYS AT LAW
SUITE 210 ROCHESTER STATE BANK BUILDING
ROCHESTER, MINNESOTA 55901

RICHARD H. PLUNKETT
DENNIS R. PETERSON

TELEPHONE: (507) 288-6705
P. O. BOX 6477

September 7, 1972

Supreme Court
State of Minnesota
State Capitol Building
Saint Paul, Minnesota 55101

Attention: Honorable Justices of the Supreme Court

Gentlemen:

It is our understanding that the Supreme Court has before it an amendment to Rule 49.01 of the Minnesota Rules of Civil Procedure. The undersigned write this letter in protest to the proposed amendment.

We have tried many cases wherein a jury has returned to the Court after rendering their verdict in astonishment because their verdict has been reduced by the amount of the plaintiff's negligence. In every one of these occasions the jurors had taken into consideration the plaintiff's negligence and had already reduced the plaintiff's damages because of his negligent conduct. It is our sincere belief that jurors do not understand that the Court will reduce the plaintiff's damages in accordance with the negligence determined. Therefore, the plaintiff, under the present system where no instructions from the Court or comment from counsel is given to them results in a "double cut" of damages to the plaintiff.

It seems ludicrous that our system should allow a jury to determine measures as damages for pain and suffering, future loss of earning capacity, etc. on one hand and then turn around and argue that these jurors are not competent to understand an instruction or the effect of the answers in their verdict. If we are to have a jury system in civil matters they should be instructed as to the significance of their findings in order that they may reach an intelligent decision.

Lastly, it appears obvious that the proposed amendment is being urged by defense attorneys who largely represent insurance companies. Their motive in urging this amendment to the rule is to obtain a "double cut" of the plaintiff's damages, once by the jury and then again by the Court after the verdict is rendered.

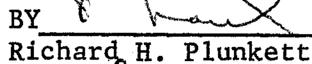
continued -

Attn: Honorable Justices of the Supreme Court

We strongly urge and recommend that this amendment be rejected and that the Supreme Court instruct the trial courts of this state to inform the jurors of the effect of the answers contained in their verdicts and that counsel be allowed to comment on these verdicts.

Yours truly,

PLUNKETT & PETERSON, P. A.

BY 
Richard H. Plunkett

BY
Dennis R. Peterson

RHP: DRP: dk

STATE OF MINNESOTA

IN SUPREME COURT

PETITION FOR REJECTION OF PROPOSED RULE CHANGE

TO: THE SUPREME COURT OF THE STATE OF MINNESOTA;

I, John F. Fletcher, respectfully submit that the Court recognise that it is my position that the proposed amendments being considered on September 18, 1972, to Rule 49 would not be in the best interest of justice. That I hereby go on record as being in opposition to and ask the Court to reject such proposed amendment which provides that:

> Neither the court or counsel shall inform the jury of the effect of its answers on the outcome of the case.

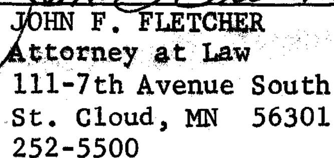
I further urge that this rule be reaffirmed and remain in effect as enumerated in the applicable portion of the laws of 1971, Chapter 7, which provide in part:

> The Court shall give to the jury such explanations and instructions concerning the matters thus submitted as may be necessary to enable the jury to make its findings upon each issue, and the court shall explain to the jury the legal conclusions which will follow from its findings, and counsel shall have the right to comment thereon.

The present wording of such Statute makes it possible for the jury to be properly informed and continue its role as an effective and impartial trier of fact.

WHEREFORE, I ask that the Court reject any amendments being considered to Rule 49 and reaffirm such rule as it presently reads.

Dated this 13th day of September, 1972.



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ALLEN OLEISKY
TELEPHONE 338-6735

September 13th, 1972

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

Re: Rule 49.01 and Its Proposed Amendment.

Dear Mr. Chief Justice:

Before me I have a copy of Mr. John Spellacy's letter to the Clerk of your Court, dated September 5th, 1972, opposing the proposed amendment to Rule 49.01, and I share his views wholeheartedly.

Although I understand the order setting a date for briefs and oral presentation was signed in the month of July, it seems that no effective method of notifying the members of the bar was adopted until recently. At least, I was not aware that the oral presentation had been set for Yom Kippur until about two weeks ago. I was also surprised and disappointed to learn that the request of the Plaintiffs' Association of Trial Lawyers to continue this matter for approximately sixty days, in order to afford an opportunity for adequate briefs and more effective opposition at the oral presentation, has been denied.

Like the vast majority of other lawyers to whom I talked and corresponded about this, I feel that the members of the bench and bar should be given adequate notice and an adequate opportunity to present their views, and that this is not a matter of such great urgency that an immediate hearing is necessary.

I wish to summarize my views and those of each of the six members of the bar who are partners, associates or employees of this law office. We are painfully aware, as said by James, that the history of special verdicts is "a rocky road strewn with innumerable wrecks." The grounds of our opposition has been stated by James, Wright, Green, Moore, Thayer, Holmes, Pound and Traynor, as well as Justices Black and Douglas. Perhaps the interest of brevity would be served if I would simply content myself

in this letter with two quotations which seem to me quite apropos, to wit:

In the year 1874, the Supreme Court of the United States in Sioux City & Pac. R. v. Stout, 17 Wall 657, said:

> "Twelve men of the average of the community, comprising men of education and men of little education, men of learning and men whose learning consists only in what they have themselves seen and heard, the merchant, the mechanic, the farmer, the laborer; these sit together, consult, apply their separate experience of the affairs of life to the facts proven, and draw a unanimous conclusion. This average judgment thus given it is the great effort of the law to obtain. It is assumed that twelve men know more of the common affairs of life than does one man; that they can draw wiser and safer conclusions from admitted facts thus occurring than can a single judge."

Perhaps Professor Moore has summarized the philosophy which supports the general verdict as forcefully as anyone:

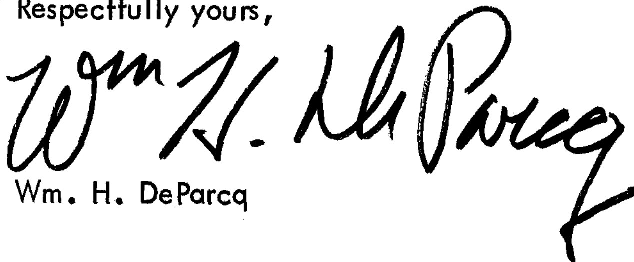
> "Those who condemn the jury system and the general verdict proceed on the assumptions that all law is complicated and that all jurors are incompetent or dishonest. The fallacy in these assumptions ... is demonstrated by the few general verdicts that are set aside as being against the weight of evidence. Also the general verdict, at times, achieves a triumph of justice over law. The jury is not, nor should it become, a scientific fact-finding body. Its chief value is that it applies the 'law', oftentimes a body of technical and refined theoretical principles and sometimes edged with harshness, in an earthy fashion that comports with 'justice' as conceived by the masses, for whom after all the law is mainly meant to serve. The general verdict is the answer from the man in the street. If on occasion the trial judge thinks the jury should be quizzed about its overall judgment as evidenced by the general verdict, this can be done by interrogatories accompanying the general verdict. But if there is sufficient evidence to get by a motion for directed verdict, then the problem is usually best solved

by an overall, common judgment of the jurors - - the general verdict."

"The general verdict is not simply a device for defeating logic and the law. It is a medium through which the people effectively express themselves and individually participate in their government. While the special verdict does not constitute an infringement of the constitutional guarantee of a jury trial, it is a mode of quizzing the jury, and a means of limiting the role of juries in the administration of justice. The general verdict is founded upon faith in the judgment of fellow-men. Further the notion that issues of 'fact' are easily framed is unsound. 5 Moore, Federal Practice, §49.05."

I respectfully submit that the amendment to Rule 49.01 should not be adopted.

Respectfully yours,



Wm. H. DeParcq

WHD:vs

cc All Associate Justices

(8) Copy - orig. of letter in file 43502

MINNESOTA TRIAL LAWYERS ASSOCIATION

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THOMAS WOLF, Rochester, Minnesota

September 7, 1972

Mr. John McCarthy, Clerk
United States Supreme Court
State Capitol
St. Paul, Minnesota

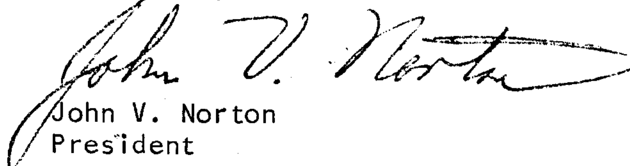
Dear Mr. McCarthy:

Pursuant to the Order setting hearing on Rule 49 for September 18, 1972, by this letter I wish to indicate my desire to be heard on that date as an individual attorney and as a representative of the Minnesota Trial Lawyers Association.

In connection with the cases to be heard on September 29, 1972 we have prepared an Amicus Curiae Brief. Because September 18, 1972 is a religious holiday, a member of our association who would be arguing on this Rule 49 issue will not be able to appear. Thus, I would appreciate being able to present an oral argument in connection with the case to be heard on September 25, 1972 in connection with the brief being submitted as it relates to those cases and the same issues as developed by the facts of those cases.

We would appreciate a confirmation in connection with the allowance of an oral argument on September 25, 1972 which at this point is tentatively scheduled to be made by Mr. Robins in connection with the Amicus Curiae Brief.

Yours truly,



John V. Norton
President

JVN:kt

9/8 Called Mr Norton's office at request of chief and informed secretary Mr Norton would be allowed to argue as requested in letter
WT.

(8)

Howard R. Albertson
John V. Norton
John V. Jergens
David K. Hebert
J. E. Cass
Douglas G. Swenson

ALBERTSON, NORTON & JERGENS
Attorneys At Law
118 South Main Street
Stillwater, Minnesota 55082

Telephone 439-1544
Area Code 612

September 7, 1972

Mr. John McCarthy, Clerk
United States Supreme Court
State Capitol
St. Paul, Minnesota

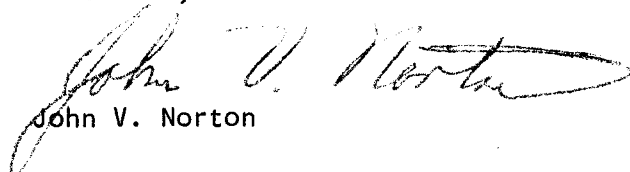
Re: Stapleman v. St. Joseph
Worker
Rule 49 Change

Dear Mr. McCarthy:

We enclose for transmittal to the Court in connection with the upcoming hearing, the attached Petition in connection with the views taken by members of the Washington County Bar Association on this proposed rule change.

Yours truly,

ALBERTSON, NORTON & JERGENS



John V. Norton

JVN:kt

Enc.

STATE OF MINNESOTA

IN SUPREME COURT

- - - - - - - - - - - - - - - - - - -

In Re Proposed Amendments to
Rules of Civil Procedure for
the District and Municipal Courts

P E T I T I O N

- - - - - - - - - - - - - - - - - - -

The undersigned being duly licensed attorneys in the State of Minnesota, and members of the Washington County Bar Association and having been advised of the proposed rule change of Rule 49.01 and wishing to communicate to the Court their opposition to this proposed change in rules, affix their signatures below, and thereby evidence their opposition to this proposed rule change and further advises the Court that if there is any change in the rules that the change should, in effect, be to re-affirm Minnesota Laws 1971, Chapter 715, so that the jury might be informed by both Court and counsel in argument and instructions as to the ultimate outcome of the case.

DATED: August 30, 1972.

NAME

NAME

STATE OF MINNESOTA

IN SUPREME COURT

In re Proposed Amendments to Rules of Civil Procedure for the District and Municipal Courts	))))	PETITION OF THE MINNESOTA TRIAL LAWYERS ASSOCIATION IN OPPOSITION TO THE ADOPTION OF THE PROPOSED AMENDMENTS TO THE RULES FOR DISTRICT AND MUNICIPAL COURTS

The Minnesota Trial Lawyers Association respectfully submits this petition in opposition to the adoption of the proposed amendments to the rules for district and municipal courts.

The Supreme Court Advisory Committee on Rules in its official comment to the proposed amendments finds that confusion and inconsistency in practice exist in the district courts regarding the proper procedure to be followed in submitting special verdicts to the jury due to the enactment of Laws 1971, Chapter 715. We recognize that confusion and inconsistency exist and that it should be remedied.

It is our position that confusion and inconsistency can be eliminated by incorporation of the intent of the legislature as expressed in Laws 1971, Chapter 715 into the Rules of Civil Procedure. By following this procedure, the public policy of the State of Minnesota, as expressed by its legislative and executive branches of government, can be fulfilled without creating confusion or inconsistency in the judicial branch. Adoption of the proposed amendments will not eliminate confusion and inconsistency, since the proposed amendments cannot supersede or render Laws 1971, Chapter 715 of no further effect as the Advisory Committee assumes in its official comment. Under MSA §480.051-.058, this court lacks the authority to supersede any law passed subsequent to 1947. MSA §480.056 provides:

> "All present laws relating to pleading, practice, and procedure, excepting those applying to the Probate Courts, shall be effective as Rules of court until modified or superseded by subsequent court rule, and upon the adoption of any rule pursuant to this act such laws, insofar as they are in conflict therewith, shall thereafter be of no further force and effect."

Since Laws 1971, Chapter 715 was not in existence in 1947 when MSA §480.056 was passed, it could not have been included in the category of "all present laws" to which the power of the Rules of Civil Procedure to modify or supersede is limited.

This limitation coupled with the reservation by the legislature in MSA §480.058 of the "right to enact, modify or repeal any statute or modify or repeal any rules of the Supreme Court" clearly prohibits the adoption of the proposed amendment to the Rules of Civil Procedure.

This court, however, does have the power, which it should exercise in this instance, to incorporate the meaning and intent of Laws 1971, Chapter 715 into the existing Rules of Civil Procedure. By this means, the court can eliminate any confusion and uncertainty and conform the Rules to the policy adopted by the legislature.

Even if it is assumed that this court has the power to supersede or repeal, Laws 1971, Chapter 715, certainly, some reason for repealing a legislative enactment, representing the public policy of this State should be set forth. The Advisory Committee comments while recommending that this court exceed its statutory powers and attempt to supersede or repeal a valid legislative act fails to state a single reason for doing so. The only reason stated for repeal or supercision of this statute is the fact that confusion and inconsistency exist in the district courts. As pointed out above, this confusion and inconsistency can as easily be remedied by incorporation of the intent of the legislature as by ignoring it as the Advisory Committee proposes. The simple fact that the Advisory Committee has not seen fit to set forth any reason for superseding the public policy adopted by the legislature, in and of itself, requires that that public policy must be upheld by this court.

Furthermore, the policy expressed in Laws 1971, Chapter 715 is supported by the great weight of scholarly authority. See, e.g., Brown, Federal Special Verdicts: The Doubt Eliminator, 44 FRD 338 (1967); Comment, 43 Minnesota Law Review 283; Comment, 74 Yale L. J. 483, (1965); Green, Blindfolding the Jury, 33 Texas Law Review 273 (1955); 2 Hetland & Adamson, Minnesota Practice, 290-92; 9 Wright & Miller, Federal Practice and Procedure, §2509, at 512-13.

Briefly summarized, it is the conclusion of these authorities that the prohibition on informing the jury of the effect of its answers to special verdicts is at best ineffective and at worst, results in an irremediable miscarriage of justice. Such a rule, even absent the legislative action present here, should not be adopted. When the public policy of the State contravenes that rule, it cannot be adopted.

It is respectfully submitted that the proposed amendments to the Rules of Civil Procedure be rejected and amendments conforming the Rules to Laws 1971, Chapter 715 be adopted.

Respectfully submitted,

JOHN V. NORTON
118 S. Main Street
Stillwater, Minnesota 55082
Telephone: 439-1544
President, Minnesota Trial
Lawyers Association

Of Counsel:

ROBERT M. WATTSON
ROBINS, DAVIS & LYONS
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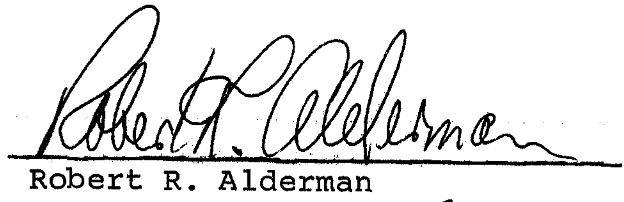
Minneapolis, Minnesota 55402
Telephone: 339-4911

MINNESOTA STATE SUPREME COURT

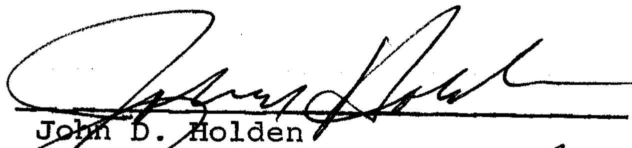
PETITION

The undersigned hereby petition the Supreme Court of the State of Minnesota to reject the amendments being considered to Rule 49, which have been set for hearing on September 18, 1972.

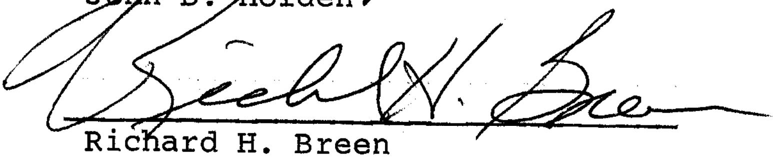
It is the experience of the petitioners that injustice has been the result of the jury's failure to receive explanation and instructions concerning the legal conclusions which follow from their findings.



Robert R. Alderman



John D. Holden



Richard H. Breen

Alderman, Holden & Breen
Attorneys at Law
520 Laurel Street
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September 6, 1972

Mr. John McCarthy, Clerk of Supreme Court
State Capitol
St. Paul, Minn. 55101

Re: Proposed amendment to Rule 49.01 and Rule 51
of the Minnesota Rules of Civil Procedure

Dear Mr. McCarthy:

We are in receipt of order for hearing on the adoption of the above captioned rules. In accordance with the provisions of that order, this is notice that we would like to file a short brief in support of our position with reference to the proposed amendments and will do so prior to September 18, 1972.

Yours very truly,

MC LEAN, PETERSON AND SULLIVAN, CHARTERED

BY: Charles T. Peterson

CTP:nk

MEAGHER, GEER, MARKHAM & ANDERSON
ATTORNEYS AT LAW
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JAMES M. RILEY
JAMES F. ROEGGE
J. RICHARD BLAND

September 5, 1972

Mr. John McCarthy
Clerk of the Supreme Court
State Capital Building
St. Paul, Minnesota

Dear Mr. McCarthy:

Please be advised that I desire to appear before the Court on September 18, 1972, at 2:00 P.M., as a proponent for the amendment of Rule 49.01 as set forth in the Court's Order for Hearing dated July 18, 1972. My appearance should be noted as President of the Minnesota Defense Lawyers' Association and as a partner in the firm of Meagher, Geer, Markham, Anderson, Adamson, Flaskamp & Brennan. Attached you will find a Memorandum in Support of the Proposed Amendment.

Very truly yours,

MEAGHER, GEER, MARKHAM, ANDERSON,
ADAMSON, FLASKAMP & BRENNAN

By
Clyde F. Anderson

CFA/ks

Enclosure

STATE OF MINNESOTA

IN SUPREME COURT

In re Proposed Amendments to) Rules of Civil Procedure for) the District and Municipal) Courts)	MEMORANDUM IN SUPPORT OF PROPOSED AMENDMENT OF RULE 49.01

It is the contention of the undersigned, as President of the Minnesota Defense Lawyers' Association, and on behalf of a majority of the Board of Directors of that organization, that the proposed amendment of Rule 49.01, which specifically adopts the rule of McCourtie v. United States Steel Corp., 253 Minn. 501, 93 N.W.2d 552 (1958), ought to be adopted. As was said by Justice Murphy in that opinion:

> "The controlling thought behind the special verdict 'is to free the jury from any procedure which would inject the feeling of partisanship in their minds, and limit the deliberations to the specific fact questions submitted.'
>
> * * *
>
> "The use of the special verdict permits the jury to concentrate on the facts without being troubled by attempting to understand the court's charge or the consequences of its answers to definite questions of fact."

Those comments are particularly appropriate since the advent of comparative negligence. The opposite rule would unquestionably allow plaintiff's counsel to make the following argument: "To give this plaintiff money you must find that his percentage of negligence is less than that of any other party." A stronger "feeling of partisanship" can hardly be imagined.

Quite apart from the obvious partisanship injected into the jurors' minds by allowing counsel to comment, the confusion resulting from the Court's instructions in a complex, multi-party case, now quite common, would be staggering. In a products liability case, as an example, where

there were four defendants with cross-claims for indemnity or contribution, and a plaintiff guilty of some negligence or assumption of risk, the verdict form would probably have twelve questions -- four on plaintiff's negligence, assumption of risk and direct cause, and eight on defendants' negligence and direct cause. The Court would have to instruct the jury on 12 x 11 x 10 x 9, etc. possible outcomes -- a total of 842,889,600(?) instructions. Little further need be said about the impracticality of such a procedure.

In addition, it is quite common that the trial judge defers legal rulings until he sees the jury's interrogatory answers, and quite properly so. In the above example, certain negative answers would obviate the necessity to decide crossclaims, etc. And no good purpose can be served by instructing a lay jury on the nuances of indemnity, warranties between suppliers, etc. In short, a great variety of legal issues are not within either the province or expertise of the jury and should properly be reserved to the trial judge. Any other procedure would create chaos.

The reasons for adoption of the amendment are apparent -- the elimination of partisanship on the part of the jury, and the prevention of impractical, confusing and often impossible jury instructions.

Respectfully submitted,

MEAGHER, GEER, MARKHAM, ANDERSON,
ADAMSON, FLASKAMP & BRENNAN

By
Clyde F. Anderson
400 Second Avenue South - 7th Floor
Minneapolis, Minnesota 55401
338-0661

LAW OFFICES
WILLETTE & KRAFT
BOX 148
OLIVIA, MINNESOTA 56277

DEPAUL WILLETTE
JOHN KRAFT

TELEPHONE 523-1322
AREA CODE 612

September 6, 1972

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

In re: Rule Change 49.01

Dear Sir:

I am enclosing original and nine copies of Petition for rejection by the Court of changes to Rule 49.01.

We do not request to appear and argue personally because of prior committment.

Very truly yours,

WILLETTE & KRAFT

BY:

DDW/sba

Enclosures: 10

mme

STATE OF MINNESOTA

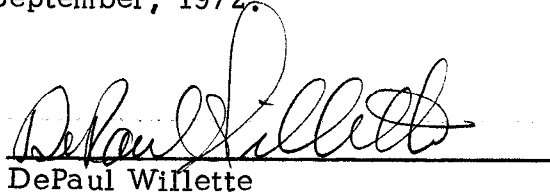
IN SUPREME COURT

In the matter of the hearing to amend Rule 49.

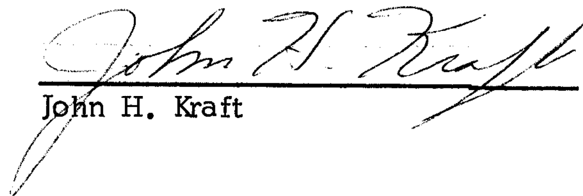
PETITION

The undersigned, duly admitted members of this Court, upon careful consideration of the proposed amendments being considered by this Court to Rule 49, hereby request the Court's rejection of the proposed change and affirm your petitioners' support to the statute adopted in the 1971 session, namely, Laws of 1971, Chapter 715, which provides that counsel and the Court may inform the jury and argue the merits of legal conclusions.

Dated this 6th day of September, 1972.



DePaul Willette



John H. Kraft

(8)

LAW OFFICES OF
SPELLACY & LANO, LTD.
115 EAST FIFTH STREET
GRAND RAPIDS, MINNESOTA 55744

A. W. SPELLACY (1897-1966)
JOHN A. SPELLACY
NEAL A. LANO

INVESTIGATION:
CARL E. SUNDQUIST
ALLEN E. McLAUGHLIN

OFFICES AT:
GRAND RAPIDS, MINNESOTA
PHONE: 326-9603

MARBLE, MINNESOTA
PHONE: 247-7521

September 5, 1972

Clerk of the Supreme Court
State Capitol
St. Paul, Minnesota 55155

Re: Rule 49.01 - Jury Argument and Court Instruction

Dear Sir:

Please consider this to be an informal petition on behalf of myself and my partner relative to the proposed amendments to Rule 49.01. I confess that I was not aware of the proposed rule change until very recently and this accounts for the lateness of our "petition" and its brevity.

I think I may take either the credit or blame for the present comparative negligence law, as it was sponsored by my committee, and I personally spent many hours trying to achieve its adoption by the legislature. The law was patterned after the Wisconsin law, but we specifically provided for special verdicts, joint and several liability, etc.

I can only state that my own Motor Vehicle Insurance Committee, which was comprised of about 50% defense attorneys, including a number of house counsel, and 50% plaintiff's attorneys, voted overwhelmingly in both 1970 and in 1971 to permit counsel and to require the Court to explain to the jury the effects of its special verdict. It was this feeling which resulted in legislation in 1971.

A very simplistic argument in favor of permitting a jury to know the effects of its special verdict is that jurors, like any other citizens, are entitled to know the law and in fact are expected to know and obey the law, whether it be comparative negligence or criminal or punitive statutes. I expect that a good number of our jurors are somehow learning something about the law of comparative negligence, but unfortunately, what they are learning is sometimes all true, sometimes partly true, and many times 100% false. We do know for a fact that jurors are extremely disappointed and angered to learn after a special verdict that their desires have not been achieved and that final judgment bears little resemblance to the verdict the jury felt it had reached.

The most horrible result of a continuation (in spite of the 1971 statute) of the McCourtie rule which will result by the proposed amendment, is the roulette wheel type of justice which is occurring in rural counties. In most rural counties, the same jury hears all of the cases at a particular term, which usually includes several comparative negligence cases. In the first case,

one might have presumed a couple of years ago that the jury was simply oblivious of the law, that they would find the facts and not concern themselves about the final judgment. This was not true even two years ago, because the juries would speculate on the final result, would try to do justice by all by bringing in a "50-50" verdict, and would in general, reach a result which neither they nor the parties nor the Court felt was justified by the evidence. The same situation still prevails on some occasions even though some jurors on almost all juries have some idea of what the law of comparative negligence might be. For any attorney to want his case tried first by a new jury borders on the suicidal.

After the first case, juries learn to a degree what the law is and parties in the final cases tried by a particular jury will get a result which is intended by the jury. This is not justice at all and has resulted in extreme dissatisfaction on the part of litigants and juries alike.

On the contrary, I have had the pleasure of trying cases in the Sixth District where the judges have uniformly permitted the jury to know exactly what it is doing. The jury is instructed by the Court on the law of comparative negligence and the parties themselves argue the effects of the answers. It is my belief that present day juries are rather sophisticated and that they reach the right result in most cases. Surprisingly, plaintiffs have not fared as well as apprehensive insurers have feared they would. I do about 50% defense work and 50% plaintiff's work, as does my partner, and we are both 100% convinced that justice will be far better served if the 1971 statute is adhered to by the judiciary and if no attempt is made to insulate Minnesota juries from existing law.

Attacks upon our jury system have been almost universal in recent years. In my opinion, if we cannot trust juries to do the right thing, then I suppose that we, the bar and bench, should join the forces who would do away with the system entirely. It is unfortunate, but not surprising, that most lawyers would prefer to try cases before a lawyer-arbitrator in uninsured motorists coverage claims than before a jury rendering a special verdict under comparative negligence. The reason is that one knows that a lawyer will know the law and one knows that the jury is not going to know the law unless it is trying the third or fourth comparative negligence case in a row. I do not like slot machine or roulette wheel justice and I earnestly request and plead that the Court not subvert the intent of the legislature. Special verdicts were few and far between before the advent of comparative negligence and it is possible that juries did render their decisions cloaked with a mantle of legal oblivion. Mass communication via the television screen together with the almost universal use of special verdicts makes the amendment to Rule 49.01 a pure fiction, and in my humble opinion signals the downfall of the jury system as we know it.

Respectfully yours,

SPELLACY & LANO, LTD.

BY John A. Spellacy /ce

JAS:ce

94

ERICKSON AND CASEY

LAW OFFICES

319 SOUTH SIXTH STREET

BRAINERD, MINNESOTA 56401

TEL. 218-829-9226

CARL E. ERICKSON FREDERICK J. CASEY

16 October 1972

Clerk
Supreme Court
State Capitol
St. Paul, Minnesota 55155

Dear Sir:

RULE 49.01

Having tried the first jury case on the calendar in Crow Wing County, I am convinced more than ever that counsel should be permitted to argue the effects of answers to interrogatories. Shortly after that trial I had occasion to talk with John Spellacy and this subject came up.

Mr. Spellacy has sent me a copy of his letter of 5 September 1972 addressed to the Clerk of the Supreme Court, a copy of Mr. DeParcq's letter of 13 September 1972 addressed to Honorable Oscar R. Knutson and a copy of Robert J. King's letter of 15 September 1972 addressed to Honorable Oscar R. Knutson. I heartily concur in everything that is said in all three of those letters.

We are playing games with jurors and in the process we are destroying the democratic element in the judicial process when jurors do not know what they are doing. I sincerely hope that the Court will permit comment on the effect of answers to interrogatories pursuant to the statute.

Carl E. Erickson

ms

cc: Mr. John Spellacy
Spellacy and Lano
Attorneys at Law
Grand Rapids, Minnesota

(93)

STATE OF MINNESOTA

IN SUPREME COURT

In Re Proposed Amendments to Rules of Civil Procedure for the District and Municipal Courts	))))	PETITION OF PAUL D. TIERNEY

PAUL D. TIERNEY, being a duly licensed and practicing attorney in the State of Minnesota, hereby petitions the Supreme Court of the State of Minnesota as follows:

I.

That the proposed Amendments to the Rules of Civil Procedure contained in the Amendments, amended Rules numbered 49.01 and Rule 51 should not be adopted.

II.

That the proposed Rule 49.01, if adopted by the Supreme Court of Minnesota would be in violation of law, and in violation of the clear intent of the Legislature of the State of Minnesota.

III.

Effective January 1, 1952, the Courts adopted the Rules of Civil Procedure for the Courts in the State of Minnesota including Rule 49.01 and Rule 51. Neither of these rules specifically touched upon the question which was raised in the case of McCourtie vs. United States Steel Corporation, 253 Minn. 501, 93 N.W. 552 (1958), and later considered in the case of Johnson vs. O'Brien, 258 Minn. 502, 105 N.W. 2d 244 (1960).

In these two cases the Court clearly indicated that the Court shall not instruct and counsel shall not argue the ultimate effect of the answers to special verdicts.

IV.

The Legislature of the State of Minnesota having specifically in mind

the McCourtie decision, supra, and the decision in the Johnson vs. O'Brien, supra, specifically passed legislation to require the Court to instruct the jury on the ultimate effect of the answers to special verdicts and allowed counsel to state the ultimate effect of the answers to the jury in final argument.

V.

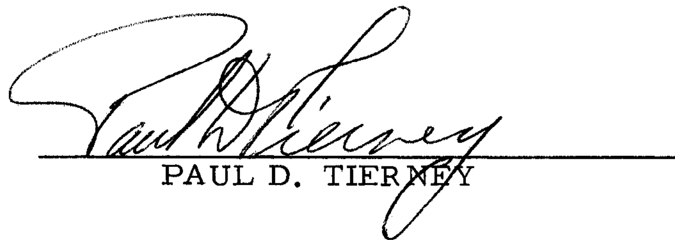
The State Legislature had the authority, the power, and the clear intent to exercise its legislative prerogative and change the law as stated in the McCourtie case, supra, and the case of Johnson vs. O'Brien.

VI.

When the Minnesota State Legislature passed the enabling legislation to enable the Supreme Court of Minnesota to adopt the Rules of Civil Procedure, it retained for itself the power to enact, modify, or repeal any statute or modify or repeal any rule of the Supreme Court adopted pursuant to said enabling legislation.

VII.

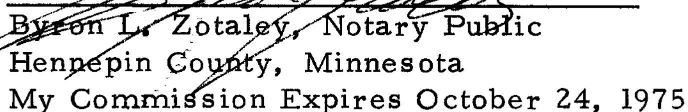
That although the Advisory Committee report is unanimous in its recommendation to the Supreme Court, it is the belief of the undersigned Petitioner that the recommendation of the Trial Bar in the State of Minnesota as a whole would be that the proposed Amendment to Rule 49.01 is both unwise and improper.



PAUL D. TIERNEY

Subscribed and sworn to before me

this 27th day of September, 1972.



Byron L. Zotaley, Notary Public
Hennepin County, Minnesota
My Commission Expires October 24, 1975

(8)

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CHARLES H. HALPERN (1911-1965)

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STEPHEN J. DAVIS
JAMES R. SAFLEY
MICHAEL B. LEBARON
STEPHEN H. COHEN
LARRY R. FREDRICKSON
WILLIAM A. FAWCETT
A. JAMES ANDERSON

September 8, 1972

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

RE: Proposed Amendments to Rules of Civil Procedure for the District and Municipal Courts

Dear Sir:

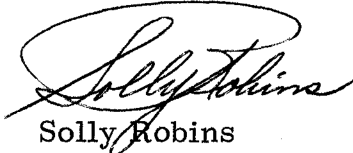
In accordance with Chief Justice Oscar R. Knutson's July 18, 1972, Order in the above captioned matter, please be advised of my desire to be heard on the proposed amendments.

I have been informed that the Petition setting forth my position may be filed with the Court on or before September 15, 1972, Unfortunately, it would be impossible for me to appear on September 18, 1972, at 2:00 p.m., as that is a religious holiday which I have never failed to observe.

I would appreciate being notified of any other time at which the Court will hear proponents or opponents of the proposed amendments.

Thank you for your courtesy and cooperation in this matter.

Yours very truly,
ROBINS, DAVIS & LYONS



Solly Robins

SR/vkl

9/8 Cy to Knutson, J

STATE OF MINNESOTA

IN SUPREME COURT

In re: Proposed Amendments to) Rules of Civil Procedure for the) District and Municipal Courts)	PETITION OPPOSING PROPOSED AMENDMENTS TO RULE 49 AND THE PROPOSED READOPTION OF RULE 51, AS CONTAINED IN THE ORDER OF THE SUPREME COURT DATED JULY 18, 1972

Pursuant to the Order dated July 18, 1972, by this Honorable Court, which was received in the undersigned's office on August 18, 1972, the undersigned herewith files his objections to the proposed amendments to Rule 49.01, Minnesota Rules of Civil Procedure, the readoption of Rule 51, Minnesota Rules of Civil Procedure, and an amendment to Appendix B of Minnesota Rules of Civil Procedure, to reflect the effect of these amendments on M.S.A. §546.14 (Laws 1971, Ch. 715).

It is respectfully submitted that the proposed changes are objected to on the following grounds:

1. The proposed changes clearly contemplate repealing a statute that is unquestionably constitutional and proper.

2. The proposed changes controvert public policy.

3. The procedure adopted is in violation of the original concept that the legislature has delegated the rule-making powers to the Supreme Court upon recommendations of its Advisory Committee, except as especially reserved in M.S.A. §480.058.

I

THE PROPOSED CHANGES CLEARLY CONTEMPLATE REPEALING A STATUTE THAT IS UNQUESTIONABLY CONSTITUTIONAL AND PROPER

The net effect of the proposed rules is to negate a statute which was, to the best of petitioner's knowledge, duly and legally passed by the 1971 session of the Minnesota State Legislature. Chapter 715 of the Laws of 1971, coded as Minnesota Statutes, §546.14, was introduced, discussed, and passed by the legislature in accordance with the constitutional requirements. It was signed into law by the governor. It is not only a valid statute, but seemingly a wise one in the eyes of the legislature and the governor.

It received considerable support from the members of the bar.

If the proposed rules are adopted, the net effect would be to over-rule the collective judgment of the governor, the State Senate, and the State House of Representatives. If your petitioner correctly understands the Minnesota State Constitution, this Court can only negate a duly enacted statute if it is unconstitutional. If the proposed rules are adopted, §546.14 will have been, in effect, declared unconstitutional.

This Court has consistently set strict limits on its power to declare duly enacted statutes unconstitutional. The cases in which this question has been discussed are too numerous to cite herein. The approach applied by this Court has recently been summarized in Head v. Special School District No. 1, 288 Minn. 496, 182 N.W. 2d 887 (1971). In that case, this Court stated:

> "In our consideration of whether these statutes are constitutional or not, we must start with the principle that a law must be sustained unless unconstitutional beyond a reasonable doubt. Laws are held constitutional if reasonably possible. The power of the courts to hold the law unconstitutional is exercised only when absolutely necessary, and then, with extreme caution. If the language of the law can be given two constructions, one constitutional and the other unconstitutional, the constitutional one must be adopted, though the unconstitutional construction may be more natural. A law may not be declared unconstitutional merely because the Court believes it is bad policy or bad economics. . . ."
>
> "There is a presumption in favor of constitutionality. It is presumed that the legislature intended to keep within constitutional limits and enact a constitutional law." 893-94 (Emphasis added.)

If the proposed changes are adopted, the judgment of this Court will have been substituted for that of the legislature and the governor. The Court will have in effect stated that the law enacted by the legislature was bad policy. Your petitioner is unaware of any authority for such a power to have been invested in the Court. If this Court believes that §546.14 is unconstitutional, it should so state. If this Court does not believe that §546.14 is unconstitutional, it should not adopt the proposed changes.

II

THE PROPOSED CHANGES CONTROVERT PUBLIC POLICY

In enacting §546.14, the legislature and the Governor of the State of Minnesota have declared the rule stated therein to be the public policy of the State of Minnesota. This is their prerogative and duty under the Constitution of the State of Minnesota. The courts, except in the instances of unconstitutional legislation, have no power to countermand the legislature and establish contrary public policies. This legal precept has also been consistently enunciated and followed by this Court. In Park Construction Co. v. Independent School District No. 32, 209 Minn. 182, 296 N.W. 475 (1941), this Court stated:

> "Public policy, where the legislature has spoken, is what it has declared that policy to be." 477.

The adoption of §546.14 was a statement of the public policy of the State of Minnesota with respect to the matters contained therein. The legislature did speak, and public policy was what it declared it to be. It is not within the province of the courts to adopt a different public policy.

III

THE PROCEDURE ADOPTED IS IN VIOLATION OF THE ORIGINAL CONCEPT THAT THE LEGISLATURE HAS DELEGATED THE RULE-MAKING POWERS TO THE SUPREME COURT UPON RECOMMENDATIONS OF ITS ADVISORY COMMITTEE EXCEPT AS ESPECIALLY RESERVED IN M.S.A. §480.058.

Both the Constitution of the State of Minnesota and the United States Constitution contemplate that our government shall be based upon a separation of powers. Where one branch of government has properly delegated to another branch of government any of its powers, it is traditionally and fundamentally recognized that all other prerogatives, authority and power remain reserved by the donor branch of government. In the instant matter, the utilization of the Advisory Committee on Rules to specifically repeal a statute that was passed by the most recent legislature, is a direct violation of the principle that the powers of each branch of government shall remain inviolate except as properly delegated.

To contend that the judicial branch of government has the power to exercise its delegation of legislative authority to repeal a statute passed subsequent to the delegation, is to take the position that the delicate system of checks-and-balances, upon which our government is based, is meaningless. It is tantamount to declaring the supremacy of one arm of the government over all others. Such a concept can only further erode the relationship between the various branches of government, rather than strengthen and improve the historic concept of government so well accepted and believed by the citizens of this state. To cite to this Honorable Court authority for this position would require volumes of material ranging from grammar school textbooks through encyclopedias on the history of government printed in every language and read daily by scholars throughout the world.

Numerous arguments could be cited to demonstrate the danger inherent in abuse of the delegated power. In the interests of brevity, three arguments and examples will be discussed in this petition.

First, the delegation of rule-making power to the Supreme Court was not absolute. The Constitution of the State of Minnesota, Article VI, Section 14, clearly vests the legislature with the rule-making power at issue herein. This section states:

> "Legal pleadings and proceedings in the courts of this state shall be under the direction of the legislature. The style of all process shall be, 'the state of Minnesota,' and all indictments shall conclude, 'against the peace and dignity of the state of Minnesota.'" (Emphasis added.)

In enacting the Minnesota Statutes, §§480.051 through 480.058, the legislature and governor saw fit to delegate this constitutional rule-making power to the Supreme Court of the State of Minnesota. However, the legislature specifically reserved the right to intervene in the rule-making process. Minnesota Statutes, §480.058, states:

> "Sections 480.051 to 480.058 shall not abridge the right of the legislature to enact, modify, or repeal any statute or modify or repeal any rule of the Supreme Court adopted pursuant thereto." (Emphasis added.)

By enacting §546.14, the legislature was clearly exercising its reserved powers. If the proposed changes are adopted, this Court will be exceeding its delegated authority. Such an action would be in violation of Article VI, Section 14, of the State Constitution, and in violation of §480.058.

While the legislature authorized this Court to enact rules to supersede prior legislative enactments, it did not delegate the authority for this Court to substitute its judgment for subsequent legislative declarations. §480.058 makes this quite clear and specific.

Second, the Supreme Court of the State of Minnesota, and courts in other jurisdictions, have recognized that the legislative rule-making power is superior to that delegated to the courts. Minnesota's recognition of this principle came very early in its history. In Jordan v. White, 20 Minn. 91, Gil. 77 (1874), this Court dealt with the submission of questions of fact to the jury. This Court stated:

> "It is not important that the course pursued to procure such submission was not in accordance with Rule 23, Dist. Ct. Rules, 6 Minn. Whatever force that rule possessed was derived from chapter 16, Laws 1862. That chapter, and that alone, provides that the rules made thereunder 'shall govern the . . . district courts,' and upon its express and unconditional repeal by chapter 122, Gen. St., the foundation upon which the rules rested was taken away and they governed no longer." at 78. See also Fagebank v. Fagebank, 9 Minn. 72, Gil. 71 (1864).

The United States Supreme Court, in a somewhat similar situation, has also followed this principle. Palermo v. United States, 360 U.S. 343, 3 L. Ed. 2d 1287, 79 S. Ct. 1217 (1959), is one example of this. That case arose when a Supreme Court decision with respect to the rights of discovery of criminal defendants was superseded by a duly enacted law in the form of the so-called Jencks Act (18 U.S.C. 3500). The Court was asked to decide whether the rights of discovery were governed by the rules set forth in its decision, or the statute. The Court held that the "statutory procedures are exclusive." at 351. See also, e.g., Amsler v. United States, 381 F. 2d 37 (9 Cir. 1967) at 42-43; 158 A.L.R. 705 at 712; 110 A.L.R. 22 at 43; United States v. McClellan, 248 F. Supp. 62 (S.D. Miss. 1965).

Finally, the allocation of the rule-making power within the judicial branch would be disrupted if lower courts used the same procedure which is advocated here. The Supreme Court of the United States and this Court have both delegated certain rule-making powers to the lower courts. This delegation of rule-making powers to the lower courts, like the legislative delegations to the Supreme Courts, is not absolute. In cases of conflict, rules adopted by the lower courts must give way to those adopted by the higher courts. See, e. g., Edwards v. United States, 223 F. Supp. 1017 (E.D. Pa. 1963).

The supremacy of the higher courts must be maintained if order is to be preserved in the judicial process, and chaos is to be avoided. In Minnesota, for example, Rule 83 of the Rules of Civil Procedure grants the district courts power to adopt rules not in conflict with the rules promulgated by the Supreme Court. Assume, by way of example, that this Court becomes dissatisfied with a district court rule adopted pursuant to Rule 83. Assume further that this Court adopts a new Rule of Civil Procedure to supersede the district court rule with which it disagrees. Certainly it could not be argued that the district court could re-enact the superseded local rule one year later or immediately thereafter. This Court would not -- and should not -- countenance such an action.

IV

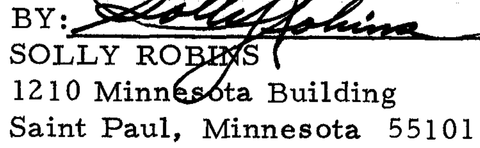
CONCLUSION

It is respectfully submitted that Minnesota Statutes, §546.14, is unquestionably constitutional and proper. There is no basis upon which this Court could find the statute unconstitutional. This Court is therefore without power or authority to negate the statute. Since the statute was duly enacted, it is a valid statement of the public policy of the State of Minnesota. It is respectfully submitted that this Honorable Court is without the power or authority to substitute its own judgment as to the proper public policy for the State of Minnesota. Finally, the adoption of the proposed changes would be in violation of the statute delegating rule-making authority to this Court, would upset the system of checks-and-balances under which our government operates, and would lead

to chaos in the area of court rule-making. Under the circumstances, it appears patently clear that the proposed rule changes should not be adopted.

Dated: September 15, 1972.

ROBINS, DAVIS & LYONS

BY: 

SOLLY ROBINS
1210 Minnesota Building
Saint Paul, Minnesota 55101

September 13, 1972

Mr. A. J. Berndt
Attorney at Law
Martin Building, Suite 370
P. O. Box 287
Mankato, Minnesota 56001

Dear Mr. Berndt:

Your letter of September 7 to Mr. Justice Peterson regarding the hearing on the proposed change in our rules concerning special verdicts has been turned over to me.

Mr. Norton was in to see me some time ago and I informed him that we would make no decision on the proposed amendment until after we had heard arguments in the two cases set for September 25. I informed Mr. Norton that he could argue as amicus at those hearings as well as on the 18th. He seemed to be satisfied with that, and I assumed that he had informed others who were worried about a rule change before the cases could be heard.

In order to put your mind at rest, I want you to know what our understanding is. You need have no worry that a decision will be made on the proposed rule until after we have heard the arguments on the two cases involving the same subject matter.

Sincerely yours,

ORK:dm
cc - Clerk of Supreme Court

(8)

LAW OFFICES
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MANKATO, MINNESOTA 56001

A. J. BERNDT
LYLE B. OVERSON
THOMAS E. NELSON

TELEPHONE 345-4549
AREA CODE NO. 507

September 7, 1972

John McCarthy
Clerk of Supreme Court
Minnesota Supreme Court
St. Paul, Minnesota 55100

Re: In re. Proposed Amendments to Rules of Civil Procedure for the District and Municipal Courts

Dear Mr. McCarthy:

Enclosed please find copy of a letter sent this date to the Honorable C. Donald Peterson, Associate Justice, The Supreme Court of Minnesota. The enclosed letter relates directly to the proposed adoption of amended Rule 49.01 and readoption of Rule 51, Minnesota Rules of Civil Procedure.

In accordance with the Order issued by Oscar R. Knutson, Chief Justice of The Supreme Court of Minnesota, dated July 18, 1972, we wish to have the enclosed copy formally filed for record as a petition objecting to the adoption of amended Rule 49.01 until such time as the Supreme Court has reached decisions in the cases of Eva Stapleman v. St. Joseph the Worker, No. 43502, and Martin Krengel, et al., v. Midwest Automatic Photo, Inc., et al., No. 43539, for the reasons set forth in the attached letter.

If it is necessary for us to provide additional copies of the enclosed letter in order to complete the formal filing of this petition, please so inform us.

Sincerely yours,

BERNDT & OVERSON

BY:
Thomas E. Nelson

TEN:bls

Enclosure

CC: Honorable C. Donald Peterson

LAW OFFICES
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MARTIN BUILDING, SUITE 370
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MANKATO, MINNESOTA 56001

A. J. BERNDT
LYLE B. OVERSON
THOMAS E. NELSON

TELEPHONE 345-4549
AREA CODE NO. 507

September 7, 1972

Honorable C. Donald Peterson
Associate Justice
The Supreme Court of Minnesota
St. Paul, Minnesota 55100

Re: Stapleman v. St. Joseph the Worker -- Case No. 43502/236

Dear Sir:

We are the attorneys representing the plaintiff-respondent in the above-captioned case, set for oral argument before the Supreme Court on September 25, 1972. We have been working in conjunction with the Minnesota Trial Lawyers Association, which is submitting an _amicus curiae_ brief in support of our position on one of the issues being appealed, namely whether Laws 1971, Chapter 715, (M.S.A. 546.14) permits trial court explanation and counsel comment to a jury about the legal effect of the jury's special verdict findings in a comparative negligence action. Through this relationship we have received a copy of your letter to Mr. John V. Norton dated August 2, 1972, granting permission to file the _amicus curiae_ brief, a copy of which is attached hereto.

Additionally, through the good offices of Richard J. Leonard, Commissioner, we have recently received a copy of the notice dated July 18, 1972, by Chief Justice Oscar R. Knutson, which sets a hearing date on September 18, 1972, for hearing proponents and opponents of the proposed amendment to Rule 49.01 and Rule 51 of the Minnesota Rules of Civil Procedure. The proposed amendment to Rule 49.01 would reverse the procedure established by Laws 1971, Chapter 715, (M.S.A. 546.14), retaining the practice set forth in _McCourtie_ v. _United States Steel Corp_., 253 Minn. 501, 93 NW 2d 552 (1958).

We can understand the desire of lawyers and District Judges in Minnesota that the issue of allowing or prohibiting trial court explanation and counsel comment on special verdicts in comparative negligence cases, and in other special verdict cases, should be resolved at the earliest time. However, the suggestion in your letter of August 2, 1972, that the Supreme Court may well have decided the question concerning the retention of the rule of the

McCourtie case prior to hearing our case on September 25, 1972, troubles us deeply. It seems inappropriate to us that this issue should be decided in a rule making proceeding when just seven days later the Supreme Court will hear oral argument in the above case, and in its companion case, Krengel v. Automatic Photo Co., Case No. 43539, cases in which the identical issue has been fully briefed and in which a complete record is before the Court. As we state on page 15 of our Respondent's Brief and Appendix, filed August 21, 1972, depending upon the rationale adopted, the Supreme Court faces in these two cases some, or all, of the following questions:

> "1.) Is Laws 1971, Chapter 715, valid and constitutional?
> 2.) Regardless of the answer to question 1.), have either plaintiffs or defendants been prejudiced or harmed by the manner in which their case was submitted to the jury?
> 3.) Should Rule 49.01 of the Rules of Civil Procedure be interpreted to allow explanation by the trial court and comment by counsel in comparative negligence cases without reference to the application of Laws 1971, Chapter 715?
> 4.) Since the passage of the comparative negligence law and the decision in Thielbar v. Juenke, ____Minn. ____, 189 NW2d 493 (1971) has the purpose and rationale of the McCourtie case, supra, been modified in the instance of submission of comparative negligence cases to juries?
> 5.) What is a workable and fair procedure for submitting comparative negligence cases to the jury in the future?***"

Additionally, we believe a possibility exists that the Supreme Court will find that the use of special verdicts in comparative negligence cases may be distinguished from the use of special verdicts in other types of cases.

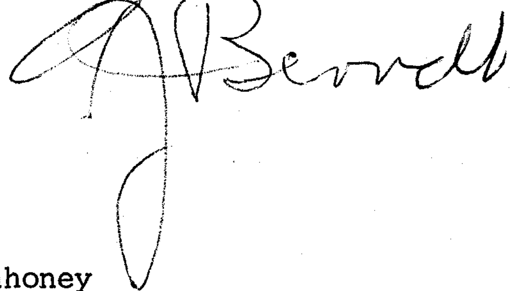
We believe that it is not in the interest of either orderly procedure or fairness for the Supreme Court to make a decision on the amendments of the advisory committee on September 18, 1972, when the more comprehensive formulation of the entire issue is scheduled to be presented to the Supreme Court seven days later, on September 25, 1972. The natural result of the Supreme Court's decision in the two cases scheduled for oral argument on September 25, 1972, will decide whether or not the McCourtie rule is to be applicable in the future, as well as deciding some or all of the additional questions stated above. After the decisions of these cases have been reached, or simultaneously therewith, the Supreme Court can issue a decision whether any portion of the proposed amendments to the Rules of Civil Procedure should be adopted.

The purpose of this letter, then, is formally to object to a decision by the Supreme Court in the rule making proceeding proposing to amend Rule 49.01 until such time as the Supreme Court issues decisions in the two cases set for hearing on September 25, 1972, cited above.

Sincerely yours,

BERNDT & OVERSON

BY:



AJB:jch

CC: John F. Angell
Mahoney, Dougherty, Angell & Mahoney
912 First National Bank Building
Minneapolis, Minnesota 55402
Attorneys for Defendant-Appellant

John McCarthy
Clerk of Supreme Court
Minnesota Supreme Court
St. Paul, Minnesota

John V. Norton
118 South Main Street
Stillwater, Minnesota 55082

THE SUPREME COURT OF MINNESOTA
SAINT PAUL

...RS OF
...D PETERSON
...SOCIATE JUSTICE

August 2, 1972

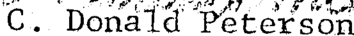
Mr. John V. Norton
118 South Main Street
Stillwater, Minnesota 55082

Dear Mr. Norton:

I have today signed an order granting the petition of the Minnesota Trial Lawyers Association to file an amicus curiae brief in Stapleman v. St. Joseph Worker, Case No. 43502, and Krengel v. Automatic Photo Co., Case No. 43539. You will shortly receive notice, if you have not already learned of it, that this court will, on September 19, 1972, hear and consider arguments pro and con on the report of the advisory committee unanimously recommending retention of the rule of McCourtie v. United States Steel, 253 Minn. 501, 93 N. W. 2d 552. I mention this on the thought that you may, if you wish, refrain from filing the amicus curiae brief in the expectation that the issue, in view of the earlier hearing, may well have been decided before decision in the two appeals.

This rule has been brought on for hearing at this early date, I should add, because of the request of lawyers and district judges that the issue be resolved at the earliest possible time.

Sincerely,



C. Donald Peterson

CDP/m

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A. J. BERNDT
LYLE B. OVERSON
THOMAS E. NELSON

TELEPHONE 345-4549
AREA CODE NO. 507

September 7, 1972

John McCarthy
Clerk of Supreme Court
Minnesota Supreme Court
St. Paul, Minnesota 55100

Re: In re. Proposed Amendments to
Rules of Civil Procedure for the
District and Municipal Courts

Dear Mr. McCarthy:

Enclosed please find copy of a letter sent this date to the Honorable C. Donald Peterson, Associate Justice, The Supreme Court of Minnesota. The enclosed letter relates directly to the proposed adoption of amended Rule 49.01 and readoption of Rule 51, Minnesota Rules of Civil Procedure.

In accordance with the Order issued by Oscar R. Knutson, Chief Justice of The Supreme Court of Minnesota, dated July 18, 1972, we wish to have the enclosed copy formally filed for record as a petition objecting to the adoption of amended Rule 49.01 until such time as the Supreme Court has reached decisions in the cases of Eva Stapleman v. St. Joseph the Worker, No. 43502, and Martin Krengel, et al., v. Midwest Automatic Photo, Inc., et al., No. 43539, for the reasons set forth in the attached letter.

If it is necessary for us to provide additional copies of the enclosed letter in order to complete the formal filing of this petition, please so inform us.

Sincerely yours,

BERNDT & OVERSON

BY:
Thomas E. Nelson

TEN:bls

Enclosure

CC: Honorable C. Donald Peterson

STATE OF MINNESOTA

IN SUPREME COURT

IN THE MATTER OF THE AMENDMENT
TO RULE 49 of the RULES OF CIVIL
PROCEDURE FOR THE DISTRICT COURTS
OF MINNESOTA

TO THE HONORABLE MINNESOTA SUPREME COURT:

The undersigned members of the Kittson County Bar hereby petition and show the Court as follows:

1. That they are active members of the Minnesota Bar Association engaged in trial practice primarily in Northwestern Minnesota. That they represent both plaintiffs and defendants in civil litigation, including both personal injury and in a wide variety of other matters, and also have considerable experience in the prosecution and defense of criminal matters.

2. That we believe it is helpful to a jury to be able to explain and inform the jury of the effect of their answer on special verdicts and believe it is helpful that both counsel for the plaintiff and defendant and the Court be permitted to comment on the result thereof.

3. That we have long felt, prior to the adoption of Laws of 1971, Chapter 715, that in many cases injustices have resulted and peculiar results have come about because neither the Court nor counsel could explain to the jury the results of their answers. All men are presumed to know the law and fairness dictates that the law be fairly presented in open court.

4. That we believe that Laws of 1971, Chapter 715 remedied this difficulty and is good legislation which should be preserved as law.

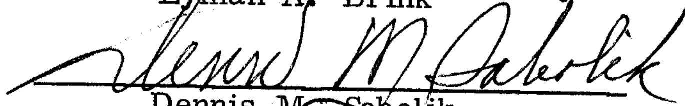
BRINK, SOBOLIK
& SEVERSON
ATTORNEYS AT LAW
HALLOCK, MINN.
56728

WHEREFORE the undersigned members do hereby petition and request the Court not to amend Rule 49 so as to nullify the effect of such legislation.

Dated this 15th day of September, 1972.

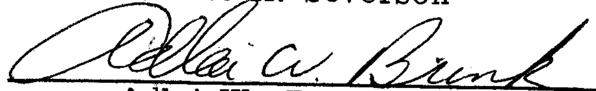
KITTSON COUNTY BAR ASSOCIATION

Lyman A. Brink



Dennis M. Sobolik

Robert K. Severson



Adlai W. Brink

BRINK, SOBOLIK
& SEVERSON
ATTORNEYS AT LAW
HALLOCK, MINN.
56728

STATE OF MINNESOTA
IN SUPREME COURT

In re: PROPOSED AMENDMENTS TO RULES OF CIVIL PROCEDURE FOR THE DISTRICT AND MUNICIPAL COURTS.

PETITION

Pursuant to notice published in the August 16, 1972 North Western Reporter advance sheets, the undersigned attorneys petition the Supreme Court as follows:

(1) The wording of Rule 49.01 should not be changed so as to prevent the counsel and court from informing the jury of the effect of its answers on the outcome of the case.

(2) The wording of Rule 49.01 should be changed to comply with Minn. Stats. Sec. 546.14 (1971) so that the counsel and court may be allowed to inform the jury of the effect of its answers on the outcome of the case.

The basis for this petition is as follows:

(1) The makeup of the Advisory Committee does not contain adequate representation of the trial bar of the State of Minnesota.

(2) The recommendation of the Advisory Committee does not truly represent the thinking of the trial bar of the State of Minnesota.

(3) The Legislature of the State of Minnesota has passed a statute on this matter which presumably represents the will of the people. In response to a request of the Supreme Court the Legislature enacted enabling legislation authorizing the Supreme Court to adopt rules of civil procedure (1949) and criminal procedure (1971). How can the rule in question be solely within the province of the Judiciary Branch when the Judiciary requested authority from the Legislature to adopt the rules in the first place?

The Supreme Court in the past has recognized and bowed to the rule making power of the Legislature. See Te Poel v. Larson, 236 Minn. 482, 53 N.W. 2d 468 (1952) (Presumption of due cause in a death case). Minn. Stats. Sec. 602.04 (1957), Lott v. Davidson, 261 Minn. 130, 109 N.W. 2d 336 (1961).

(4) Unless a jury is instructed on the effect of its answers, juries are left to speculation and conjecture and the disparaging results that follow from speculation and conjecture.

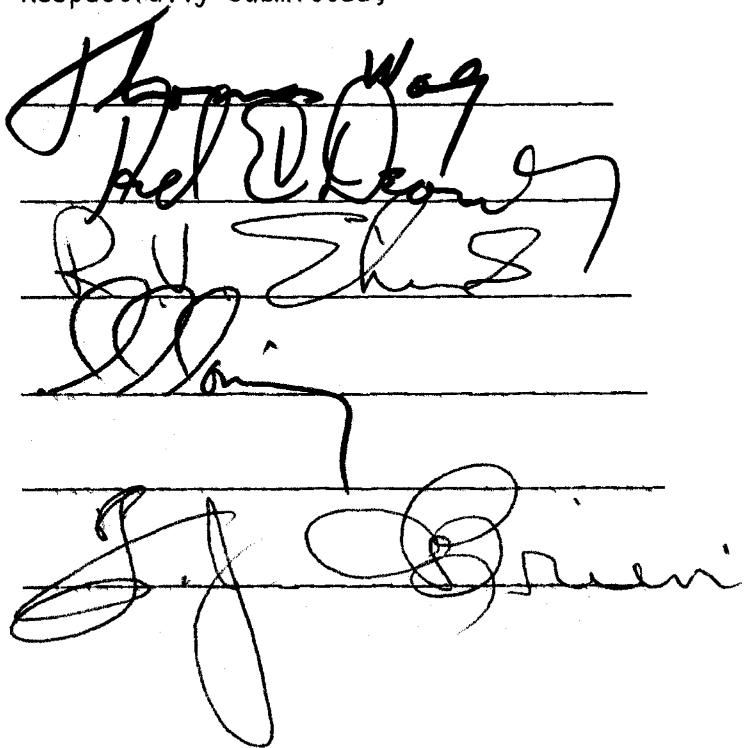
(5) The makeup of juries today is level headed intelligent people who are entitled to know the effect of their deliberations. Obviously juries are instructed on the effect of their decision in a general verdict case. It is difficult to understand why the jury should be blindfolded in a special verdict case.

(6) There is no proof or evidence that knowledge of the effect of its answers would cause juries to render prejudicial verdicts.

(7) Reasonable instructions can be drafted to properly advise the jury. See attached instruction marked Exhibit "A".

Dated: August 31, 1972

Respectfully submitted,



JIG as modified by 715 of 71 Statutes.

BASIC INSTRUCTIONS IN A NEGLIGENCE CASE.

Subtitled Is Liability -- Effect of Findings.

You are to consider whether defendant,________________________, was negligent, and if so, whether that negligence was a direct cause of the collision (accident, injury, or occurrence).

(Question #1 and #2).

You are also to consider whether the plaintiff,__________________, was negligent, and if so, whether that negligence was a direct cause of the collision (and plaintiff's injuries), i.e., whether plaintiff was contributorily negligent. (Question#1 and #4).

If you find that defendant,_________________, was not negligent, or if you find that he was negligent, but that his negligence was not a direct cause of the collision (accident, injury, or occurrence) that plaintiff is not entitled to recover.

However, if you find that defendant,____________________, was negligent and that his negligence was a direct cause of the collision (accident, injury, or occurrence), then plaintiff is entitled to recover such damages as I shall later herein define <u>unless</u> the plaintiff was contributorily negligent to such an extent that it was equal to or exceeded that negligence of the defendant which was a direct cause of the collision.

The damages that plaintiff will recover will be his <u>entire</u> damages as you have determined them to be in your answer to Question #6 only if the plaintiff was entirely free of contributory negligence.

If you determine, however, the plaintiff's contributory negligence was less than 50 (50) percent, then the amount of the damages the plaintiff has sustained, as shown in your answer to Question #6, will be reduced by that exact percentage of which the plaintiff's contributory negligence bears to the total of both his contributory negligence and defendant's negligence (which was a direct cause of the plaintiff's injuries) as outlined in Question #5.

EXHIBIT "A".

STATE OF MINNESOTA

In the Matter of Amendments to Rule 49 | IN SUPREME COURT

Comes now your petitioner, Charles T. Wangensteen, of Chisholm, Minnesota, and respectfully objects to the amendments to Rule 49 as proposed by the Advisory Committee which would nullify the force and effect of the statute passed by the Legislature during its 1971 session, for the following reasons, among others, to-wit:

1. The rule change would again attempt to make jurors some form of computers in dealing with an abstract principle and overlooks the reality of the realism of actual justice in the court rooms. Jurors, like any other citizens, are entitled to know the law and are, in fact, expected to know and obey the law. Unless the law and its effect is explained to them, they cannot adequately return just verdicts, which they diligently attempt to do.

2. The effect of the amendment proposed would be to make the jurors mere pawns of the court, and from the experience of the short time prior to the 1971 law permitting courts to let the jurors know what they were doing, many jurors were shocked and horrified and felt that they had been duped and tricked and will eventually lead to a total destruction of the jury system.

3. Amending Rule 49 according to its proposal prohibiting the courts and counsel to inform the jury of the effect of its answers on the outcome of the case puts the judicial system in the status of a Las Vegas gambling house setting phenomena where injustice is dealt out in roulette wheel type fashion, trial of cases is like playing the slot machine and makes the prediction of juries worse than the odds of Las Vegas or wildcatting for oil wells.

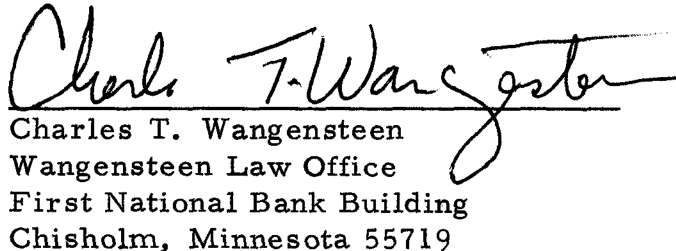
4. The jurors called for jury duty, at least out in the frontier of northern Minnesota, who diligently attempt to work hard at arriving at a just result, are frustrated, embittered and totally disgusted when they find out the results of the case and feel that they have not been given all of the law that pertains to that action when they should be instructed in the law.

5. Under M. S. A. 480.058, wherein the rule-making section given the Supreme Court by the Legislature, the Legislature retains the right to enact, modify, repeal any statute and modify or repeal any rule of the Supreme Court adopted pursuant thereto, and the rule change would, in effect, violate the retention of powers of the Legislature and since the 1971 law was enacted the rule now seems to go beyond the rule-making authority prescribed by the Legislature.

6. That your petitioner accepts and adopts herein, by reference, the petitions and letters written by John Spellacy, the former head of the strong motor vehicle committee of the State Bar Association, who studied the comparative negligence statute and the insurance situation in the state of Minnesota, and which committee, the largest of the entire Bar Association, which was comprised of about 50 per cent plaintiff's attorneys and defense counsel, including a number of House counsel, overwhelmingly in the past agreed that the counsel and the court should be permitted to explain to the juries the effects of its special verdict. It was this feeling that resulted in the legislation of 1971.

WHEREFORE, your petitioner respectfully prays the Court to reject the proposed amendment to Rule 49.

Respectfully submitted,



Charles T. Wangensteen
Wangensteen Law Office
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TELEPHONE (507) 387-3155

September 11, 1972

Mr. John McCarthy, Clerk of Supreme Court
State Capitol
St. Paul, Minn. 55101

Re: Proposed Amendment to Rules of Civil
Procedure for the District and Municipal Courts

Dear Mr. McCarthy:

Enclosed please find Brief in Support of Recommendations of the Advisory Committee on Rules which we request be submitted to the Court.

Yours truly,

MC LEAN, PETERSON AND SULLIVAN, CHARTERED

BY: Charles T. Peterson

CTP:nk
Enc.

STATE OF MINNESOTA

IN SUPREME COURT

In re Proposed Amendments to Rules of Civil Procedure for the District and Municipal Courts	))))	BRIEF IN SUPPORT OF PROPOSED AMENDMENTS TO RULE 49.01

THE PROPOSED AMENDMENT TO RULE 49.01, MINNESOTA RULES OF CIVIL PROCEDURE, AND PROPOSED RE-ADOPTION OF RULE 51, AS WELL AS THE PROPOSED AMENDMENT OF APPENDIX B (1) AND APPENDIX B (2) SHOULD BE ADOPTED BY THE SUPREME COURT OF THE STATE OF MINNESOTA

These amendments become necessary by reason of the passage of Chapter 715, Minnesota Laws of 1971, which attempted to amend M. S. A. 546.14 to permit comments by Court and counsel to the jury with respect to the legal effect of its answers to questions of fact submitted for determination under a special verdict form.

It is submitted that the logical place to clarify the procedure with respect to comment on the legal effect of the special verdict is in Rule 49.01, which specifically deals with special verdicts ---not by attempting, as the Legislature did, to amend M. S. A. 546.14, which is captioned "Requested Instructions", and which statute had been listed in Appendix B (1) and B (2) as "superseded".

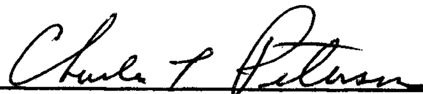
In view of Chapter 715, Minnesota Laws of 1971, it is necessary to add the language proposed by the Advisory Committee on Rules for the amendment of Rule 49.01 in order to preserve the basic concept and meaning of the special verdict as previously recognized by our Supreme Court in McCourtie v. U. S. Steel, 253 Minn. 501, 93 N. W. 2nd 552 (1958) and Johnson v. O'Brien, 258 Minn. 502, 195 N.W. 2nd 244 (1960). We submit that to permit comment by Court and counsel on the legal effect of the special verdict renders the use of the special verdict form meaningless. It is indeed doubtful that any jury, knowing of the consequences of its answers to the fact questions submitted to it, can anser those questions free of any consideration as to the effect their answers will have on the outcome of the case. As the Court has indicated in McCourtie v. U. S. Steel (supra):

> "The use of the Special Verdict permits the jury to concentrate on the facts, without being troubled by attempting to understand the Court's charge or the consequence of its answers to definite questions of fact..... One purpose of the Special Verdict is to permit the jury to make findings of ultimate facts, free from bias, prejudice, and sympathy and without regard to the effect of their answers upon the ultimate outcome of the case."

As Justice Knutson indicated in his concurring opinion:

"Under Rule 49.01 of Rules of Civil Procedure, it is discretionary with the trial court whether the case should be submitted to the jury on a Special Verdict, but, if such verdict is used, it should be used properly. Any other procedure would destroy the value of the rule entirely."

We concur with this reasoning and support the Advisory Committee's recommendations in full.



Charles T. Peterson, for
MC LEAN, PETERSON AND SULLIVAN, CHARTERED
ATTORNEYS AT LAW
P. O. BOX 1387
MANKATO, MINNESOTA 56001

(8)

O'BRIEN, EHRICK, WOLF, DEANER & DOWNING

ATTORNEYS AND COUNSELORS AT LAW

611 OLMSTED COUNTY BANK BUILDING

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L. D. DOWNING
TERENCE L. MAUS

289-4041
AREA CODE 507

September 7, 1972

Mr. John McCarthy
Clerk of Supreme Court
State Capitol
St. Paul, Minnesota

Re: Proposed Amendments to Rules of Civil Procedure for the District and Municipal Courts

Dear Mr. McCarthy:

Enclosed please find Petition to be filed in the above matter.

Thank you for your accommodations herein.

Very truly yours,

FOR THE FIRM:

Thomas Wolf

Thomas Wolf

TW:gb
Enc.

STATE OF MINNESOTA
IN SUPREME COURT

In re: PROPOSED AMENDMENTS TO RULES OF CIVIL PROCEDURE FOR THE DISTRICT AND MUNICIPAL COURTS.

PETITION

* *

Pursuant to notice published in the August 16, 1972 North Western Reporter advance sheets, the undersigned attorneys petition the Supreme Court as follows:

(1) The wording of Rule 49.01 should not be changed so as to prevent the counsel and court from informing the jury of the effect of its answers on the outcome of the case.

(2) The wording of Rule 49.01 should be changed to comply with Minn. Stats. Sec. 546.14 (1971) so that the counsel and court may be allowed to inform the jury of the effect of its answers on the outcome of the case.

The basis for this petition is as follows:

(1) The makeup of the Advisory Committee does not contain adequate representation of the trial bar of the State of Minnesota.

(2) The recommendation of the Advisory Committee does not truly represent the thinking of the trial bar of the State of Minnesota.

(3) The Legislature of the State of Minnesota has passed a statute on this matter which presumably represents the will of the people. In response to a request of the Supreme Court the Legislature enacted legislation authorizing the Supreme Court to adopt rules of civil procedure (1949) and criminal procedure (1971). How can the rule in question be solely within the province of the Judiciary Branch when the Judiciary requested authority from the Legislature to adopt the rules in the first place?

The Supreme Court in the past has recognized and bowed to the rule making power of the Legislature. See Te Poel v. Larson, 236 Minn. 482, 53 N.W. 2d 468 (1952) (Presumption of due cause in a death case). Minn. Stats. Sec. 602.04 (1957), Lott v. Davidson, 261 Minn. 130, 109 N.W. 2d 336 (1961).

JIG as modified by 715 of 71 Statutes.

BASIC INSTRUCTIONS IN A NEGLIGENCE CASE.

Subtitled Is Liability -- Effect of Findings.

You are to consider whether defendant,________________________, was negligent, and if so, whether that negligence was a direct cause of the collision (accident, injury, or occurrence).

(Question #1 and #2).

You are also to consider whether the plaintiff,__________________, was negligent, and if so, whether that negligence was a direct cause of the collision (and plaintiff's injuries), i.e., whether plaintiff was contributorily negligent. (Question#1 and #4).

If you find that defendant,_________________, was not negligent, or if you find that he was negligent, but that his negligence was not a direct cause of the collision (accident, injury, or occurrence) that plaintiff is not entitled to recover.

However, if you find that defendant,____________________, was negligent and that his negligence was a direct cause of the collision (accident, injury, or occurrence), then plaintiff is entitled to recover such damages as I shall later herein define <u>unless</u> the plaintiff was contributorily negligent to such an extent that it was equal to or exceeded that negligence of the defendant which was a direct cause of the collision.

The damages that plaintiff will recover will be his <u>entire</u> damages as you have determined them to be in your answer to Question #6 only if the plaintiff was entirely free of contributory negligence.

If you determine, however, the plaintiff's contributory negligence was less than 50 (50) percent, then the amount of the damages the plaintiff has sustained, as shown in your answer to Question #6, will be reduced by that exact percentage of which the plaintiff's contributory negligence bears to the total of both his contributory negligence and defendant's negligence (which was a direct cause of the plaintiff's injuries) as outlined in Question #5.

EXHIBIT "A".