STATE OF MINNESOTA
IN SUPREME COURT
CX-89-1863

ORDER FOR HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE MINNESOTA GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on November 24, 1998 at 2:30 p.m., to consider the recommendations of the Minnesota Supreme Court Advisory Committee on General Rules of Practice to amend the General Rules of Practice. A copy of the report containing the proposed amendments is annexed to this order and may also be found at the Court's World Wide Web site: (www.courts.state.mn.us).

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before November 20, 1998, and

2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before November 20, 1998.

DATED: November 2, 1998

BY THE COURT:

Kathleen A. Blatz
Chief Justice

STATE OF MINNESOTA
IN SUPREME COURT

CX-89-1863

In re:

Supreme Court Advisory Committee
on General Rules of Practice

Recommendations of Minnesota Supreme Court Advisory Committee on General Rules of Practice

Final Report

October 19, 1998

Hon. James Gilbert, Chair

Suzanne Alliegro, Saint Paul
Hon. G. Barry Anderson, Saint Paul
Steven J. Cahill, Moorhead
Hon. Lawrence T. Collins, Winona
Daniel A. Gislason, New Ulm
Joan M. Hackel, Saint Paul
Phillip A. Kohl, Albert Lea
Hon. Roberta K. Levy, Minneapolis
Hon. Margaret M. Marrinan, Saint Paul
Hon. Ellen L. Maas, Anoka
Janie S. Mayeron, Minneapolis
Hon. John T. Oswald, Duluth
Leon A. Trawick, Minneapolis

David F. Herr, Minneapolis
Reporter

Michael B. Johnson, Saint Paul
Staff Attorney

ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

Summary of Committee Recommendations

This Court's Advisory Committee on General Rules of Practice met October 1, 1998, to consider and discuss all comments or suggestions relating to these rules during the past year or so. During the last year these comments have been relatively few, and the result is that there are two recommended rule changes in this report.

By way of status report, the strong consensus of the committee is that the rules are working well and continue to foster a high level of uniformity and efficiency in the courts. The changes recommended in this report will advance those interests.

Advisory Committee Process

As has been the practice of this advisory committee for years, all communications regarding the Minnesota General Rules of Practice are retained until the committee can consider them. As a general matter, the committee meets at least annually to consider developments, problems, and suggestions.

The amendments recommended in this report came to the committee from the courts or from the Conference of Chief Judges. These suggestions have been generally well-taken and quite helpful. The committee believes the involvement of the Conference in proposing and evaluating rules issues is helpful and should be encouraged.

Summary of Advisory Committee Recommendations

The two recommendations contained in this report are summarized as follows:

1. Create a new Rule 9 and corresponding form to establish an explicit procedure for dealing with the infrequent, but occasionally quite burdensome, problems of repetitive frivolous litigation by a few *pro se* parties.
2. Amend Rule 114.09(e)(1) to include a reference to the statutory requirement for payment of a filing fee in order to obviate confusion.

Other Issues

The committee considered three other matters, and recommends that no action be taken on them at this time. First, the committee revisited the issues surrounding notice to the Commissioner of Human Services required by MINN. STAT. § 524.3–801(d)(1) & (3), and possible rule amendments relating to the statute. These matters were discussed in detail in this advisory committee's Supplement to Final Report, dated November 3, 1997. The committee believes this issue is not ripe for any rule at this time. Similarly, the committee considered a suggestion that service by publication be authorized by rule for conciliation court actions, and the committee concluded this development would be fraught with danger of creating more problems than it might solve, and should not be adopted.

Finally, the committee considered again problems relating to 1st District policies imposing fines on lawyers for not filing a statement of the case, certificate of representation, or notice of settlement by the deadlines specified in the rules. The committee continues to view this as an unacceptable local practice that detracts from the uniformity intended to exist under these rules, but believes the matter should be handled by means other than creating additional rules. The committee also is advised this practice may be dying a natural death in the 1st District either by passage of time or informal suasion, which also militates in favor of not taking formal action at this time.

The committee will continue to monitor the operation of the rules and will again report to this Court upon its request.

Public Hearing and Effective Date

The committee has considered the effective date of these rules, and is submitting them to the court in October with the expectation that they could be considered for a possible January 1, 1999, effective date. The committee does not believe these amendments require significant "lead time" between adoption and effective date. However, because of the nature of the proposed rule on frivolous litigation, the committee

recommends that the court consider holding a public hearing on these rules and ensure that notice of the proposed rules be given to the public and the bar.

Respectfully submitted,

MINNESOTA SUPREME COURT
ADVISORY COMMITTEE ON GENERAL
RULES OF PRACTICE

Recommendation 1: **Adopt a new Rule 9 and corresponding Form 9 to provide a specific mechanism for controlling litigation abuse in the form of repeated frivolous litigation.**

Rule 9 is a new rule proposed by the Conference of Chief Judges and created by its Pro Se Implementation Committee. The rule provides the court a specific procedure for requiring a frivolous *pro se* litigant, as defined in the rule, to post security before embarking on litigation and, in egregious cases, prohibiting such a litigant from filing litigation without permission of the chief judge of the district.

The rule as proposed by the Conference was derived in part from a California statute that has worked well for a number of years. *See* CAL. CODE OF CIV. PRO. §§ 391.1–.7.

The Conference of Chief Judges Committee on the Treatment of Litigants and Pro Se Litigation has studied the problems facing, and presented by, *pro se* litigants and made the following recommendation, among others:

> "State statutes and court rules should restrict the ability of *pro se* litigants to engage in frivolous litigation and abusive behavior" that is directed at judges, court staff, and other litigants.

Committee Report at 15, quoted in Hon. John M. Stanoch, *Working with Pro Se Litigants: The Minnesota Experience*, 24 WM. MITCHELL L. REV. 297, 301-02 (1998). This proposed rule change is directed to this recommendation.

[Text of Rule 9 and Form 9 are entirely new; underscoring to indicate this is not included with this rule.]

RULE 9. FRIVOLOUS LITIGATION

Rule 9.01. Motion for Order Requiring Security; Grounds

In any action or proceeding pending in any court of this state, at any time until final judgment is entered, the court, upon the motion of any party or on its own initiative and after notice and hearing may enter an order requiring the plaintiff to furnish security. The motion must be based upon the ground, and supported by a showing, that the plaintiff is a frivolous litigant and that there is not a reasonable probability that the plaintiff will prevail in pending litigation.

Rule 9.02. Scope of Hearing; Ruling Not Deemed Determination of Issues

At the hearing upon such motion the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion. No determination or ruling made by the court upon the motion shall be, or be deemed to be, a determination of any issue in the litigation or of the merits thereof.

Rule 9.03. Dismissal for Failure to Furnish Security

If security is required and not furnished as ordered, the litigation shall be dismissed with prejudice as to the plaintiff.

Rule 9.04. Stay of Proceedings

When a motion pursuant to Rule 9.01 is filed prior to trial, the litigation is stayed and the moving defendant need not plead, until 10 days after the motion is denied, or if granted, until 10 days after the required security has been furnished and the moving defendant given written notice thereof. When a motion pursuant to Rule 9.01 is made at any time after commencement of trial, the litigation shall be stayed for such period after the denial of the motion or the furnishing of the required security as the court shall determine.

Rule 9.05. Prefiling Order Prohibiting the Serving or Filing of New Litigation; Sanctions; Conditions

(a) In addition to any other relief provided in this rule, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a frivolous litigant from serving or filing any new litigation in the courts of this state *pro se* without first obtaining leave of the chief judge of the judicial district, or designee, of the court where the litigation is proposed to be served or filed. An order granting leave to serve or file shall have no effect if it is obtained without disclosure of the existence of a prefiling

order. Disobedience of a prefiling order by a frivolous litigant may be punished by sanctions.

(b) The chief judge of the judicial district, or the chief judge's designee, shall permit the serving or filing of new litigation by a frivolous litigant, or the serving or filing of motions, pleadings, letters, or other papers, or both, only if it appears that the litigation is not frivolous and has not been served or filed for the purposes of harassment or delay. For the purposes of carrying out duties under paragraphs (b) and (d) of this rule, a chief judge or designee shall not be subject to removal except for cause.

(c) The court administrator shall not file any litigation presented by a frivolous litigant subject to a prefiling order unless the frivolous litigant first obtains an order from the chief judge of the judicial district, or designee, permitting the filing. If the court administrator mistakenly files the litigation without such an order, any party or the court on its own motion may file with the court administrator and serve on the plaintiff and other parties a notice stating that the plaintiff is a frivolous litigant subject to a prefiling order as set forth in Rule 9.05(a). The filing of such a notice shall automatically stay the litigation. The litigation shall be automatically dismissed with prejudice unless the plaintiff within 10 days of the filing of such notice obtains an order from the chief judge of the judicial district, or designee, permitting the filing of the litigation as set forth in Rule 9.05(b). If the chief judge, or designee, issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead, until 10 days after the defendants are served with a copy of any such order.

(d) Each court administrator shall provide the State Court Administrator a copy of all prefiling orders issued pursuant to Rule 9.05(a). The State Court Administrator shall maintain a record of frivolous litigants, including alias names, if any, subject to such prefiling orders and shall regularly disseminate a list of such persons to each court administrator of this state. The chief judge of the judicial district, or designee, shall have discretion, upon the finding of good cause, to remove the name of an individual from the record of frivolous litigants maintained by the state court administrator.

(e) The chief judge of the judicial district, or designee, shall have discretion to impose sanctions upon a frivolous litigant who violates this statute, including any or all of the following: court costs in an amount not less than $250.00, a civil fine in an amount not less than $250.00, attorneys fees and costs, or a finding of contempt of court.

(f) Unless otherwise ordered by the court, a prefiling order issued under this statute shall be effective for ten years from the date of its issuance.

Rule 9.06. Appeal

A final order under this rule, including but not limited to a prefiling order prohibiting a frivolous litigant from serving or filing new litigation without approval and

an order denying an application to make a specific filing, shall be deemed a final, appealable order. Any appeal under this rule may be taken to the court of appeals as in other civil cases within 60 days after filing of the order to be reviewed . In addition to the service and filing required by the appellate rules, the appealing party shall serve a copy of the notice of appeal and statement of the case on the Attorney General.

Rule 9.07. Definitions

As used in this rule, the following terms have the following meanings:

(a) "Litigation" means any civil action or proceeding, including third-party complaints and counter-claims, commenced, maintained, or pending in any federal or state court, including conciliation court.

(b) "Frivolous litigant" means:

(1) A *pro se* plaintiff who in the immediately preceding five-year period has commenced or maintained *pro se* at least three litigations that have been finally determined adversely to the person; or

(2) A *pro se* plaintiff who, after a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate either

(i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined, or

(ii) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined; or

(3) A person who in any litigation while acting *pro se* repeatedly serves or files frivolous motions, pleadings, letters, or other papers, conducts unnecessary discovery, or engages in oral or written tactics that are frivolous or intended to cause delay; or

(4) A person who has previously been declared to be a frivolous litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

(c) “Five-year period” includes the five years immediately preceding the effective date of this rule.

(d) “Security” means either

(1) an undertaking to assure payment, issued by a surety authorized to issue surety bonds in the State of Minnesota, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be

instituted, or maintained or caused to be maintained by a frivolous litigant or

(2) cash tendered to and accepted by the court administrator for that purpose.

(e) "*Pro se* plaintiff" means the person who or entity that commences, institutes, or maintains a litigation, or causes it to be commenced, instituted, or maintained, including an attorney at law acting *pro se*.

(f) "Defendant" means a person (including corporation, association, partnership, firm, or governmental entity) against whom a litigation is brought or maintained or sought to be brought or maintained.

(7) "*Pro se*" means not represented by an attorney at law.

Advisory Committee Comment—1998 Amendment

This rule is intended to curb frivolous litigation that is egregiously burdensome on the courts, parties, and litigants. This rule is intended to apply only in the most egregious circumstances of abuse of the litigation process, and the remedies allowed by the rule can be viewed as drastic. The rule permits the court to enter an order requiring a frivolous litigant to provide security for the costs of the pending action. In addition, the court may enter any order restricting the right of a frivolous litigant to file future actions, and authorizes other sanctions. Because of the very serious nature of the sanction under this rule, courts should be certain that all reasonable efforts have been taken to ensure that affected parties are given notice and an opportunity to be heard. Failure to give notice or allow a hearing would raise the specter of constitutional infirmity to the order. *See generally Cello-Whitney v. Hoover*, 769 F. Supp. 1155 (W.D. Wash. 1991). Rule 9.01 also requires that the court enter findings of fact to support any relief ordered under the rule, and this requirement should be given careful attention in the rare case where relief under this rule is necessary.

This rule conditions or limits the filings of *pro se* litigants, and does not apply to actions filed by attorneys at law. The authority to regulate the filings of *pro se* parties in some ways complements the disciplinary power the courts directly have over attorneys.

The power to limit the filing of future cases following abuse of the litigation process is well-established. *See, e.g., Werner v. State of Utah*, 32 F.3d 1446 (10th Cir. 1994); *Demos v. U.S. District Court for Eastern Dist. of Wash.*, 925 F.2d 1160 (9th Cir. 1991), *cert. denied*, 498 U.S. 1123 (1991); *Anderson v. Mackall*, 128 F.R.D. 223 (E.D. Va. 1988). Despite the fact this action is readily supported as a proper exercise of the court's inherent powers, the committee believes it is desirable, however, to establish a rule that creates a uniform procedure. It is appropriate for the court to tailor the sanction imposed under this rule to the conduct and to limit the sanction to what is necessary to curb the inappropriate conduct of the frivolous litigant. *See Cello-Whitney v. Hoover*, 769 F. Supp. 1155 (W.D. Wash. 1991).

When acting under Rule 9.05(b) or (c), the chief judge or designee is not subject to a notice to remove under Minn. R. Civ. P. 63.03 or MINN. STAT. § 542.16. When exercising this administrative authority the chief judge or designee is not sitting as a judge assigned to the case. The chief judge or designee is not, however, immune from disqualification when it would not be proper for the judge

to act, and the rule permits removal for cause. In addition, the rule is not intended to preclude the use of a notice to remove against a chief judge or designee for other participation in the case. Thus, if litigation is mistakenly filed and the chief judge or designee has been removed before the service and filing of a notice under Rule 9.05(c), it would be inappropriate for that chief judge or designee to act under Rule 9.05(b). If a chief judge or designee permits the service or filing of new litigation, such participation should not be considered as "presiding at a motion or other proceeding" in the case so as to preclude the filing of a notice to remove against that chief judge or designee under MINN.R.CIV.P. 63.03.

This rule includes a specific provision relating to the possible appeal of an order for sanctions. The rule provides that an appeal may be taken within 60 days, the same period allowed for appeals from orders and judgment, but specifies that the 60-day period begins to run from entry of the date of filing of the order. This timing mechanism is preferable because the requirement of service of notice of entry may not be workable where only one party may be interested in the appeal or where the order is entered on the court's own initiative. The date of filing can be readily determined, and typically appears on the face of the order or is a matter of record, obviating confusion over the time to appeal. Notice to the Attorney General is required to permit participation by the Attorney General, if appropriate. That participation may be as counsel for a party to the appeal, or the court, or, if allowed by proper motion, as an intervenor or as *amicus curiae*. The rule does not create a right to participate, however, and the Attorney General must either appear for a party or seek leave to participate in accordance with the Minnesota Rules of Civil Appellate Procedure.

[New Form 9 is set forth on the following pages.]

Form 9. Order Relating to Frivolous Litigation

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF _____ _____ JUDICIAL DISTRICT

COURT FILE NO.:_____

IN RE:

_____ **PREFILING ORDER**

Name of Litigant

FINDINGS

The Court finds that _____ ("the litigant") is a frivolous litigant as defined in Rule 9 of the Minnesota General Rules of Practice, because:

___ (1) In the immediately preceding five-year period the litigant has commenced or maintained *pro se* at least three litigations that have been finally determined adversely to the litigant.

___ (2) After a litigation has been finally determined against the litigant, the litigant has repeatedly relitigated or attempted to relitigate *pro se* either:

___ (i) the validity of the determination against the same individual or individuals as to whom the litigation was finally determined,

OR

___ (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same individual or individuals as to whom the litigation was finally determined.

___ (3) In a litigation while acting *pro se* the litigant has repeatedly served or filed frivolous motions, pleadings, letters, or other papers, conducted unnecessary discovery, or engaged in oral or written tactics that were frivolous or intended to cause delay.

___ (4) The litigant has previously been declared to be a frivolous litigant by a state or federal court of record in an action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

This determination is based upon the following additional findings of fact:

1. The litigant was given notice of hearing before entry of this order, and a hearing was held on _____.

2. * * *

ORDER

Based upon the above finding(s), IT IS HEREBY ORDERED:

1. Pursuant to Rule 9 of the Minnesota General Rules of Practice and the inherent powers of this Court, the litigant shall not serve or file any new litigation, and in any pending matter shall not serve or file any motions, pleadings, letters, or other papers, in the courts of this State, *pro se*, without first obtaining leave of the chief judge of the judicial district, or designee, of the court where the litigation is pending or proposed to be served or filed.

2. The Chief Judge of this judicial district, or the Chief Judge's designee, shall permit the serving or filing of new litigation, or the serving or filing of motions, pleadings, letters, or other papers, or both, only if that judge is provided a copy of this order and it appears that the litigation is not frivolous and is not being served or filed for the purposes of harassment or delay.

3. No court administrator in the State of Minnesota shall file or accept for filing in any action or proceeding, any pleading, motion or other paper presented by the litigant unless the litigant first provides a copy of this order to hee Chief Judge of the judicial district, or the Chief Judge's designee, and obtains from that judge an order permitting the filing. If the court administrator mistakenly files the litigation without such an order, any party or the court on its own initiative may file with the court administrator and serve on the litigant and other parties a notice stating that the litigant is a frivolous litigant who is subject to this Prefiling Order. The filing of such a notice shall automatically stay the litigation. The litigation shall be automatically dismissed with prejudice unless the litigant within ten days of the filing of such notice obtains an order from the chief judge of the judicial district, or designee, permitting the filing of the litigation as set forth above in paragraph 2. If the chief judge, or designee, issues an order permitting the filing, the stay of the litigation shall remain in effect, and the other party(s) need not plead until 10 days after they are served with a copy of the order permitting the filing of the litigation.

4. An order granting the litigant leave to serve or file shall have no effect if it is obtained without the litigant disclosing the existence of this Prefiling Order.

5. With respect to all future litigation that may be commenced or maintained by the litigant in this State, and for all litigation that is pending in this State involving the litigant, the litigant shall, within ten days of the date of filing of this Prefiling Order, serve upon all parties and the court in each such litigation a copy of this Prefiling Order.

6. Disobedience of this Prefiling Order may be punished by sanctions, including any or all of the following: assessment of court costs in an amount not less than $250.00, a civil fine in an amount not less than $250.00, attorneys' fees and costs, or a finding of contempt of court.

7. The court administrator shall provide to the State Court Administrator a copy of this Prefiling Order.

8. This Prefiling Order shall be effective for _____ (up to ten) years from the date it is signed by the Court.

9. All *in forma pauperis* orders obtained by the litigant in this State without permission of the chief judge shall have no effect. The litigant is prohibited from seeking a new *in forma pauperis* order in this State, and no new *in forma pauperis* orders shall be issued in this State without authorization from the chief judge of the judicial district, or designee, of the court where the petition is sought to be filed.

DATED:_____ BY THE COURT:

_____

Judge of District Court

Recommendation 2: **Amend Rule 114.09 to refer to the requirement of paying a filing fee.**

Rule 114.09(e) establishes the procedure for obtaining a trial following mandatory, non-binding arbitration. The current rule does not mention the requirement of paying a filing fee, a requirement imposed by the Legislature in MINN. STAT. § 484.73, subd. 4 (1996). This omission has the potential to mislead a litigant to overlook the fee requirement, potentially depriving the litigant of a right to a trial. The committee recommends that the rule be amended to include reference to this requirement. This rule is not intended to modify the practice in any way, but simply to remove a possible trap for the unwary.

RULE 114. ALTERNATIVE DISPUTE RESOLUTION

* * *

Rule 114.09. Arbitration Proceedings

* * *

(e) Trial After Arbitration

(1) Within 20 days after the arbitrator files the decision with the court, any party may request a trial by filing a request for trial with the court, along with proof of service upon all other parties and payment of any required filing fee. This 20-day period shall not be extended.

* * *

Advisory Committee Comment—1996~~8~~ Amendment

The changes to this rule in 1996 incorporate the collective labels for ADR processes now recognized in Rule 114.02. These changes should clarify the operation of the rule, but should not otherwise affect its interpretation. The rule is amended in 1998 to include a reference to the requirement of a filing fee as provided for in MINN. STAT. § 484.73, subd. 4 (1996).

December 27, 1998

Minnesota Supreme Court
Clerk of Appellate Courts
Frederick K.Grittner
305 Minnesota Judicial Court
25 Constitution Avenue
St. Paul, MN 55155-6102

RE: Objection to Proposed "Three-Strikes" Rule.

Dear Fred:

I know my objection is at the 11th hour, but it does set forth the principles of extraordinary relief and jurisdiction. I have not been involved with prisoners rights litigation for many years. I read the newspaper and watch the news, but I also own 4 businesses and have 10 employees. So, if public notice was given, I'm sorry but I missed it. Otherwise, I would have appeared at the hearing.

As my objection points out, there is a need for a broader public impact study before implementing a rule that is constitutionally flawed. At any future hearing, I believe representatives from the MCLU, ACLU, NAACP and others, should be invited.

Enclosed are 9 copies of my Objection to the Proposed "Three-Strikes" Rule. It would greatly be appreciated, if you would please bring my Objection before the Court at it's next earliest convenience.

If you have any questions or concerns please give me a call or write. Thank you very kindly for your courtesy and cooperation in this matter.

Sincerely,

Craig T. Seifert

Craig T. Seifert
1342 Devonshire Curve
Bloomington, MN 55431
(612)346-8894 (h)
(612)884-4276 (o)

Enclosures (9)

December 28,1998

Re: Objection to Proposed "Three-Strikes" Rule

Dear Justices:

I would like the opportunity to be heard before the Court makes a final decision on the proposed "three-strikes" rule. Although this humble request is received by the Court on the 11th hour, I recently received notice about the "three-strikes" rule from article sent to me by an inmate at Stillwater State Prison. Enclosed is a copy of the article.

The proposed rule, as I understand it, sets forth criteria for deciding whether *pro se* litigants cause of action are *frivolous*.

- They've lost three cases in five years.
- They've repeatedly resurrected cases or rulings they've lost.
- They've repeatedly filed motions meant to cause delays.
- They've previously been declared frivolous by and State or Federal court in a similar case.

As I understand, the proposed rule was submitted by David Herr from the State's Conference of Chief Judges, and Peter Erlinder, a professor at the William Mitchell College of Law requested the Court to consider the rule's impact and invite broader public discussion before implementation of such a rule.

I would request this Court to at least consider the later request, otherwise, deny implementation on constitutional and statutory grounds, and because its just plain wrong.

Ten years ago, in State v. Seifert, 423 NW 2d 368 (Minn Sup Ct., April 29,1988) the Minnesota Supreme Court ripped asunder the procedural serenity that effectively denied the right to self-representation. The Court, ultimately concluded that the statute (611.25) and rules (28.05 subd. 5) did not prohibit self-representation when properly waived, and that the defendant's right to speak for themselves is paramount.

My name is Craig Seifert. The proposed "three-strikes" rule would have a state-wide impact upon a class of aggrieved citizens who making a free and intelligent choice, wish to exercise there right to self-representation in district court or on appeal in the State of Minnesota.

Ten years ago, I looked at striped-sunlight from inside the walls at Stillwater State Prison. At that time, (for 16 years) the state public defender had been uniformly assigned to represent indigent defendants, even over their objections (that representation had become virtually tantamount to affirmance of the underlying conviction), and denied them access to the trial transcript to perfect their pro se appeal. This oppressive practice by the state public defendant continued even after the "stern advice" by the Eighth Circuit Court of Appeals in Eling v. Jones, 797 F2d 697 (8th Cir.1986).

In *Seifert*, what began as a straight forward attempt by a citizen exercising the right to self-representation rapidly became a test of wills and legal wits between the state and an aggrieved citizen who remain undeterred in vindication to his right to self-representation. This case spawned twenty-one pages of procedural history, and illustrates the "battle for custody of the trial transcript". See *Seifert* v. Jones, 506 U.S. 851 (1992). Every tool in the legal arsenal was used—in both state and federal court—to vindicate this right. From writ's of mandamus and prohibition, to habeas corpus. Civil rights litigation, including motions, restraining orders, and injunctions were used and all denied. As I proceeded through the procedural maze—opposed at every stop by the former State Public Defender—prison authorities did their best to create roadblocks and hinder my solitary climb to the Supreme Court to vindicate my right to self-representation.

After exhausting every conceivable state court remedy, and filing a federal writ of habeas corpus—based on the earlier Supreme Court denial—the *Seifert* Court (upon it's own motion), reversed their earlier denial and agreed to hear this issue.

The *Seifert* case, soon became a separate issue from my the direct appeal. A "mini-appeal" was taken. At that time, I was indigent and could not afford a copy of the trial transcript. My indigency was used against me to deny me access to the trial transcript. I could not adequately represent myself on appeal without the trial record to prepare my brief. This hindrance had a chilling effect upon my right to self-representation. Besides that, the district court had sentenced me to a 25 month period of confinement. The determinate sentencing goodtime laws, reduced my period of incarceration to 17 months. The "mini-appeal" alone took 15 months. Ultimately, I was released from prison before I could obtain appellate review of the underlying jury conviction.

I submit, the so-called "three-strikes" rule would create an onerous burden of "mini-trials" and "roadblocks" upon indigent defendant's who wish to exercise their right to self-representation under the state's determinate sentencing guidelines.

To me, the right to self-representation in the courts is personal. A right freely enjoyed by all citizens of the United States of America and the State of Minnesota. The importance of the right to self-representation, and right to "unfettered" access to the courts are core constitutional rights. Justice Stewart's *Faretta,* opinion demonstrates the historic importance and fact of self-representation. See Faretta v. California, 422 U.S. 806 (1975). Not only had self-representation been the law of the land since the nations inception, it was burned into the fabric of the earlier English history by strong reaction to the Star Chamber of the late sixteenth and early seventeenth centuries. In this horrendous institution, the Crown gained its way by de facto control of the defendants lawyer. It was the worst of all systems: corrupt with the appearance of fairness.

Prior to *Seifert,* the former State Public Defender, C. Paul Jones did not see himself as the trained wild dog of the State, sneaking about the government's business camouflaged in a wool suit. This was illustrated by the amicus briefs in support of *Jones* by the Ramsey County Attorney, the Minnesota County Attorneys Office, and the Minnesota County Attorneys Association. See *Seifert,* supra. At that time, other articles appeared which questioned whether or not Jones had his clients best interests' at heart. Please see "Public defender helped prosecution, aide says," Star Tribune (March 6,1997), and "For the Defense?" Twin Cities Reader (June 29, 1988).

For 16 years, the former state public defender took the position that an indigent criminal defendant cannot seek correction of the worst trial error, unless he employs a lawyer employed by the State of Minnesota. It, ironically, recreated the most objectionable aspect of the English Star Chamber, forcing a defendant to fight the Crown with a lawyer who depends upon the King for his livelihood. In modern times, it required an indigent defendant to use a state chosen or beholden lawyer in order to fight for freedom against the State. That oppressive practice was obviated by this Court in *Seifert*, supra.

The importance of the right to self-representation and the concomitant right to "**unfettered**" access to the court to correct manifest injustices is part of the very fabric of our constitution. The over-reaching constitutional problem with any rule or suggestion that any individual may not exercise the last refuge from tyranny—complaining on one's own behalf—is that it violates the due process of law. Applying the proposed "three-strikes" rule to the *Seifert* procedural history, clearly illustrates the chilling effect the rule would have upon a state-wide class of aggrieved citizens.

The Prejudicial Impact of the "Three-Strikes" Rule

As a free civilian, outside the prison walls, the proposed rule would have a chilling effect upon my right to self-representation. To that end, any citizen wishing to make a free and intelligent choice in exercising their right to self-representation would be hindered by these "mini-trials and roadblocks" the rule places upon pro se litigants and their access to the courts.

I do not want to needlessly burden the Court with my life story, but my story since *Seifert*, illustrates the prejudicial impact this constitutionally flawed rule would have upon myself, and other similarly situated citizens who utilize the legal system in the State of Minnesota.

Prior to my release from prison 9 years ago, I began a new course in my life, and personal integrity and positive principals became my guiding stars. The story of my rise from dire circumstances began about 30 years ago (at age 14), when I was gripped by heroin addiction. It was then, that I was involved in criminal acts to support my addiction, consequent betrayal of family and friends, use of innocent people in drug dealing. With this lifestyle came convictions and incarcerations in one prison after another, a frustrating time of wondering in a dark world of doubt, fear, danger, uncertainty and pain. Gradually during nights of reading in prison, during days of self-assessment their emerged my commitment of character, personal worth and integrity. Acting upon a personal

commitment to self-improvement brought me to volunteer programs in and out of prison that were meant to help others improve themselves

During the past five or six years, I have been a speaker at the YMCA Youth In Law Day at the State Capital. For the past 4 years, former Justice Esther Tomljanovich and myself have spoken at this event. See enclosed information.

After my release from prison in 1991, I made my first legitimate living at a job paying a paltry $5 per hour. Since then, in a continual application of positive principals and determination, I've experienced a number of personal and professional accomplishments.

From 1991-1994, I worked for a law office. During that time, I represented the firm and myself in conciliation court a number of times. I lost three cases.

During that same period, I was involved in two landlord disputes about the safety and security of the apartment building. A copy of the story by Jim Klobuchar is enclosed. I also lost one of the landlord cases.

In October 1993, I sustained injuries in a motor vehicle accident. I was rear-ended by a 16 year old driver who exceeded the maximum posted speed limit. Two lawsuits were commenced. A no-fault claim, and a bodily injury claim.

In August 1994, I was offered a position as executive director of a medical and rehabilitation clinic. During a 28 month period, the clinic grew from a $325,000 in gross revenues, to more than $1.3 million in 1996. I was a 30% owner of the clinic, and represented the clinic's intervenor interests at all workers compensation hearings and trials. From 1994 to 1996, I handled 224 workers compensation cases that were either settled or resulted in administrative conferences or trials at the Department of Labor and Industry. I lost more than three cases during that period.

In January 1997, I began a new company, and charted a new course in healthcare, and have become somewhat of a successful entrepreneur. The Academy of Physical Medicine is a network of "integrated" medical and chiropractic doctors who work together. Like any businessmen, I've sued in conciliation court and lost.

As the post-*Seifert* history illustrates, the proposed "three-strikes" rule would have a chilling effect upon my right to self-representation and access to the court that others similarly situated freely enjoy.

The District Courts Need Guidance?

The right to freely exercise one's right to self-representation, and the concomitant right to unfettered access to the court is a fundamental constitutional right guaranteed by the Constitution of the United States of America. In Minnesota, the right is recognized by statue and rule. See *Seifert,* supra.

At the hearing for the proposed rule, Mr. Herr advised the Court that the district court judges need "guidance" to stop frivolous pro se litigation. That argument must fail! If the objective of the so-called "three-strikes" rule is to limit frivolous prisoner litigation, I submit, the drafters of the rule are looking down the wrong end of the telescope. The "guidance" the district court seeks can be achieved without implementing a constitutionally flawed rule.

For instance, Continuing Legal Education (CLE) seminars can achieve the same results or guidance the district courts seek without bludgeoning the fundamental constitutional rights of self-representation and unfettered access to our courts.

I submit, that CLE seminars on contemporaneous topics and issues listed below can remedy the problem:

- Rule 9 sanctions and indigency;
- Legal standards of indigency;
- Self-representation and the rules;
- Discovery sanctions;
- The standards of frivolousness, i.e., motions, lawsuits, and sanctions;
- What are appropriate sanctions; and,
- What to do if the prisoner has a colorable claim.

There is very little, if any, Minnesota judicial doctrines that address the issues above, and give the district court's guidance in handling difficult pro se litigants. If frivolous lawsuits by pro se prisoners are a problem for district court judges, I submit, that CLE seminars could be helpful to remedy the problem. Further, a wise city or county attorney could easily build a body of case law anon, and utilize that body of law to halt frivolous pro se lawsuits before they begin.

I say these things with confidence because of my experience with prison litigation, and because my own company has held CLE seminars for plaintiff attorneys. Enclosed is a copy our CLE approved seminars in 1998.

I'd be more than willing to be part of any committee to review this idea, offer alternatives, and set forth any necessary action steps.

CONCLUSION

The notion of having counsel "thrust upon" an unwilling citizen or "rules" that forbid self-representation—supposedly disappeared in 1641 when the "Star Chamber" was swept away. The right to defend is personal, and should be honored out of the "respect for the individual which is the lifeblood of the law," Illinois v. Allen, 397 U.S. 337 (1970).

Implementation of the rule would have a chilling effect on two classes of citizens—civilians and prisoners. For civilians, such as myself, the rule would "hinder" the right to self-representation, and the right to "unfettered" access to the court. For prisoners, the rule would ironically, recreate one of the most objectionable aspects of the Star Chamber—de facto control of a citizens access to the court. Both *pro se* citizens would be subject to "mini-trials" based largely on their indigence. These hurdles or "gold keys" are more onerous and burdensome then the law allows, and substantially disadvantages both pro se citizens.

This rule has broad constitutional dimensions and immediate state-wide impact creating exceptional circumstances warranting the exercise of this Courts discretionary appellate powers--as adequate, efficacious relief can not be had in any other form, or in any other Court.

In closing, as a result of my past legal experience, I have a profound respect for the constitution and the right to self-representation. As an indigent *pro se* prisoner, my experience has taught me two things. One, if you have a well-funded defendant, and an impecunious plaintiff the keys to the courthouse are all made of gold. Two, gold keys are wrong fundamentally and constitutionally. All citizens suffer when access to our courts is denied or obstructed by roadblocks for those who are indigent and/or wish to represent themselves.

In my humble opinion, society as a whole, wins everytime it's citizens or "prisoners" can represent themselves "unhindered" in our courts. I don't care if the inmate's pleadings complain that the soup is cold, or that it has glass in it. The mere fact that a prisoner has unrestricted access to the court--regardless of whether or not their represented or have financial means is insignificant.

I certainly recognize the fact that pro se litigants may cause some chaos in the court system, but it must be overlooked. Because everytime a pro se litigant can file a compliant—without hindrance—to me, re-affirms by basic constitutional rights and those of every citizen. There are rules and sanctions available to handle the problems and concerns of troublesome pro se litigants without bludgeoning the right to self-representation, and the right to unfettered access to the courts.

For all of the above reasons, this Court should invite broader public discussion and amicus briefs before implementing this constitutionally flawed rule. Otherwise, I humbly ask the Court to deny implementation of the rule on constitutional and statutory grounds, and because its just plain wrong.

I humbly pray: Fiat justitia, ruat caelum.
"let justice be done though the heavens fall."

Respectfully submitted,

Craig T. Seifert

Craig T. Seifert
1342 Devonshire Curve
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(612) 346-8894 (H)
(612) 884-4276 (O)

Enclosures

High court considers rule to limit frequent lawsuits without lawyers

By James Walsh
Star Tribune Staff Writer

Sharon Anderson knows they're coming after her.

The perennial political candidate and frequent filer of lawsuits has launched 22 suits in federal court and, she guesses, another 30 in state court over the past three decades. At almost every turn she has represented herself. And, at almost every turn, she's lost.

So Anderson was there to fight when the Minnesota Supreme Court held a hearing Tuesday on a proposal to combat frivolous lawsuits filed by people without attorneys.

"I have been denied, stonewalled, jailed, beaten. All my assets have been taken," she claimed. "The courts have been prejudiced against me because I'm not licensed. But you can't bar my right to free speech."

If the Supreme Court approves a proposal by the state's Conference of Chief Judges, judges *could* bar Anderson from filing a suit unless she posts money up front for court costs or bar her from filing altogether under what would essentially be a three-strikes rule.

If people who represent themselves in court — as plaintiffs or defendants — lose three times in five years, they could be barred from filing suits without the permission of a court's chief judge.

Supporters contend that the proposed rule would help judges ferret out people who use lawsuits to plague the courts and harass their enemies. But opponents fear that it is a draconian response that would unfairly punish people who can't afford lawyers.

LAWSUITS continues on B5

LAWSUITS from B1

Some question need for rule to limit 'frivolous' lawsuits

"There is no real data to show the size of the problem," said Peter Erlinder, a professor at the William Mitchell College of Law in St. Paul. "I think we can probably find some people who have systematically abused the right [to file lawsuits]. The question is if that problem is big enough to require this solution."

David Herr, an attorney who presented the proposed rule to the Supreme Court, said judges already have the authority to dismiss frivolous claims and to bar litigants from continuing to use the courtroom as their personal battlefield.

The rule would "provide guidance to district court judges who are faced with these questions," Herr said. And, he admitted, it is also meant to establish the court's authority clearly for people such as Anderson.

"It's for that type of litigant you saw in here today," Herr said. "Those who say to the judge: 'You have no power to do this.' "

The rule would allow anyone opposing a person without a lawyer — known as a *pro se* litigant — to file a motion claiming that the case is frivolous. The judge would then halt the proceedings and schedule a hearing to determine if that was the case.

The criteria for deciding whether *pro se* litigants are frivolous:

- They've lost three cases in five years.
- They've repeatedly resurrected cases or rulings they've lost.
- They've repeatedly filed motions meant to cause delays.
- They've previously been declared frivolous by any state or federal court in a similar case.

If the court rules that the person is a frivolous litigant, it could do any or all of the following: dismiss the case, bar the person from filing that or any other suit for 10 years or allow the case to continue but require the litigant to post enough money to cover court costs and attorney's fees if he or she loses.

Erlinder, the William Mitchell professor, told the Supreme Court that such a rule would give people with attorneys an advantage and, in reality, a way to delay while the judge holds a "minitrial" to determine if someone is abusing the system.

He urged the court to take more time in considering the rule's impact and to invite broader public discussion. The rule is patterned after a California law, he said, but the legislature there adopted it after more public debate.

Tuesday's hearing is the only one scheduled. A committee has recommended implementing the rule Jan. 1. The Supreme Court could decide the issue by mid-December.

To Anderson, it's simply another attempt to shut her up: "I'm going to appeal this. . . In the past 30 years, I have sought redress in all the courts and it's always, 'No, no, no.' "

The columnists: Doug Grow/C.J./Jim Klobuchar

The ex-con and the mugger: a drama of poetic justice

Jim Klobuchar

You can number Craig Seifert among the graduates of the slammer in Stillwater. His résumé: three terms for armed robbery and related misdeeds. Add a stretch in federal prison.

The graduate took the cure. He went to work for a law firm when he was released. And this week Seifert earned his advanced degree as a reformed thief and drugstore heister, now siding with peace and quiet. In a driveway behind an apartment building near the Guthrie Theater and Loring Park, he collided with another slammer candidate bent on robbery.

The reformed armed robber won. He hauled down a suspected purse snatcher and held him until the police came.

Result: The suspect was charged Wednesday with aggravated robbery. The county considered adding a technical kidnapping charge. The police said he dragged his victim into a building entryway when she insisted on keeping her purse, hit her with his camera and choked her until he pried it loose.

The woman screamed, "He's got my purse!" A witness pursued the fleeing thief, and here we get a reintroduction to the somewhat remarkable life of Craig Seifert, legal assistant and former state prison client.

Seifert loused up his life for 20 years with drugs. He did heroin when he could, which was often enough to turn him into a chronic thief, crook, liar and cellblock incumbent.

"I saw some of the older guys snorting stuff when I went to school in Anoka and I figured that's the way to be cool," he said. "It didn't take me long to start stealing for it. I'd go after morphine and Dilaudid in the drugstores. I'd go into a doctor and fake migraines so I could get a prescription. I held up drugstores and whatever else I could. I broke in. When they sent me to Sandstone federal prison, I got busted again for smuggling in drugs."

One of Seifert's spinoff problems was never quite knowing what he wanted to be when he stopped being crazy. For a while he was a star reporter for *the Prison Mirror*. Later he got to be what the legal lodge calls a jailhouse lawyer. He read up on the legal process. He figured out the language and how to file appeals. He appealed one of his own cases and demanded the original trial transcript. The association of public defenders didn't love that idea and took him on in court, saying he couldn't do that because it was one reason we have public defenders. But the Minnesota Court of Appeals said the jailhouse lawyer was right and the defenders were wrong. Eventually he got onto the street, smarter but not very. He went back to drugs and back to Stillwater.

But finally he found a treatment he could handle. This means that Seifert, who is 37, has been sober and fruitful for the past 26 months, working for Ramler & Murray in St. Louis Park. There he happily deals in pleadings and appeals and technical gobbledygook for which a bar admission isn't required. He's also going to Cardinal Stritch College to get a degree. In the midst of this energetic rehabilitation, he works on his car. So it was, Monday evening, when he heard somebody yell, "He's got my purse!"

A few seconds later a man came charging out of Oak Grove St. carrying a woman's purse, with a bystander in pursuit.

So what symbiosis of minds takes place here? The ex-convict and onetime drugstore robber sees a suspected thief running toward him. Does he empathize? Does he run into the house and call the precinct, file for a writ of mandamus? Does he say, "There but for the grace . . ."?

"What I did," Craig Seifert said, "was to give this guy a look of disbelief because he actually yelled out, 'The guy behind me is the one they're after.' "

But the guy coming at you is the one with the purse.

"Right."

On this point there was no confusion.

"None."

On one other point there should be no confusion. Craig Seifert is a man with an eye for detail and an uncommon gift for vocalizing the adventures of Craig Seifert.

"What I did next was to get into a crouch, like a blocker in football getting ready for the impact. I could see people on their balconies looking at all this. So the guy comes down the driveway and barrels into me. Just before he hit I threw out my arm the way they used to in football."

A clothesline.

"Right in the gullet. We were about the same size, about 5-8, 150 or 160 pounds. We went chest to chest and then we went down in the heap. Then we were up and I grabbed him by the shoulders from behind and put a half nelson on him."

Wait a minute. Were you wrestling or tackling this fellow?

"Both. I slammed him into the hood of the car and I said, 'Hey, man, how about some street justice?' "

I think I have heard this on "Cops," but you don't often hear it on Oak Grove. Somebody from the balcony said she would call the police. "She thought he had a gun. In a couple of minutes eight squad cars were on the scene. He didn't have a gun, so most of them left. They arrested the man, but they couldn't do much about my glasses, which broke while we were struggling."

There's a process that will get Seifert a new pair of glasses for aiding in an arrest. If he doesn't, he can always file for a writ. This is a guy who knows the system from two places, the inside and the outside.

This side, he said, is a whole lot better.

MINNEAPOLIS POLICE DEPARTMENT
350 South Fifth Street - Room 130
Minneapolis Minnesota 55415-1389

(612) 673-2853

JOHN T. LAUX
CHIEF OF POLICE

minneapolis
city of lakes

June 5, 1992

Mr. Craig Seifert
333 Oak Grove St., #308
Minneapolis, MN 55403

Dear Mr. Seifert:

Please accept my thanks and the thanks of the Minneapolis Police Department for the service you rendered.

Citizen involvement is a key ingredient of promoting safety and your willingness to get involved really characterizes the highest aspirations of citizenship.

Sgt. Humphrey of the Robbery Unit informs me that on 6/1/92, you heard people yelling out in front of your building to stop a man who had just run outside carrying a purse. You observed the suspect running towards you with another male chasing him. When the suspect got close enought to you, you grabbed onto him and wrestled him to the ground.

Such acts serve as a model of good citizenship as well as a reminder of our common dependency on each other.

Many thanks for your contribution to public safety in Minneapolis.

Sincerely,

John T. Laux

JOHN T. LAUX
CHIEF OF POLICE
MINNEAPOLIS POLICE DEPARTMENT

JTL/njw
Enclosure

CC: LT. GILLIGAN
SGT. HUMPHREY

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
100 Washington Avenue South
Minneapolis, Minnesota 55401-2138

January 15, 1998

Mr. Craig Seifert
1227 Devonshire Curve
Bloomington, MN 55431

Re: Youth in Government

Dear Craig:

A note of thanks for sharing your time and experiences with the YMCA Youth in Government Law Program once again last Thursday.

Your personal examples from 'before and after' have been one of the highlights for our students in the Supreme Court these last four or five years. In dealing with our own worlds each day, we all need reminders of the consequences of poor choices. It's obvious that you care enough about young people to be real with them, to share what it's like on the other side of the law, to encourage staying in school and off drugs.

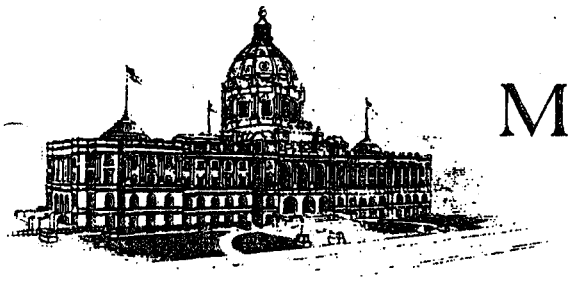
Your friendship and continuing dialogue with Justice Esther Tomljanovich in the courtroom is a great tie-in for the youth to observe real people--professionals in the field of law, and get a better sense of who lawyers and judges are, than from 'Perry Mason' or 'LA Law'.

On a personal level, your frankness in telling it like it was, blew me away the first time I heard you, and I'm anxious and delighted each time to hear of your continuing personal, business, educational and financial successes.

Best wishes in your endeavors. Till next time, thanks again.

Bob Hosman

Bob Hosman
(612) 349-2690



MINNESOTA YMCA
YOUTH IN GOVERNMENT

State Office
4 West Rustic Lodge Avenue
Minneapolis, MN 55409
(612) 823-1381
(800) 372-0002

February 25, 1998

Craig Seifert
1227 Devonshire Curve
Bloomington, MN 55431

Dear Craig,

On behalf of the Minnesota YMCA Youth in Government State Board of Management, Youth Participants, Adult Advisors, Parents and Volunteers, we would like to extend our most sincere thanks and appreciation for speaking to the Supreme Court delegates at the 44th Model Assembly Session. The conference was a big success for both the 1,250 students and 200+ adult advisors. Much of that success is due to your willingness to allow students to use the facilities that give them first-hand opportunities to explore state government.

Peter Rodosovich, Tracee Dierks and I want to thank you for the extra time and effort you put forth to accommodate the students. We appreciate your efforts in going the extra mile to guarantee a successful Model Assembly Session. Thank you for your service to Youth in Government and to the youth of Minnesota!

Our sincere best wishes for a safe and happy 1998!

Very respectfully,

Orville Lindquist
State Program Director

Office: 4 West Rustic Lodge Ave., Minneapolis, MN 55409 • (612) 823-1381 • (800) 372-0002

MINNESOTA YMCA YOUTH IN GOVERNMENT

2/1/96

Dear Mr. Seifert,

I want to thank you very, very much for taking the time to speak to our students. You really received rave reviews! The students all agreed that you were an inspiration and that your involvement really added a great deal to their experience.

Thank you very much! - Shannon Cramer

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
100 Washington Avenue South
Minneapolis, Minnesota 55401-2138

November 19, 1996

Justice Esther Tomljanovich
Minnesota Supreme Court
Judicial Center
25 Constitution Avenue
St Paul, MN 55155

Post-it® Fax Note 7671	Date 11-20-96	# of pages ▶ 4
To CRAIG SEIFERT	From BOB HOSMAN	
Co./Dept. OAC	Co. OAH	
Phone # 798-0120	Phone # 349-2690	
Fax # 798-0122	Fax # 349-2691	

Re: YMCA-Youth In Government Schedule 1/9-12

Dear Justice Tomljanovich:

Paul Reuvers and Susan Rafferty have taken this year off from their involvement with the law program of Youth in Government, which is truly a great loss to the program. Peter Rodosovich and Orville Lindquist from the State office have asked the undersigned (and my wife Jane) to head up the Supreme Court section only, since we have been parent advisors with this program for about eight years. Our section will have over 50 students involved. A team of three or four other advisors will head up the Court of Appeals section of 200-250 students, broken into four groups, in the same format as previous years.

We have had the pleasure of hearing you speak to the students several times, as well as in conjunction with Craig Seifert. And we would be delighted to have you both do so again at our next session in January, if you are interested.

I have spoken with Craig on the phone, who, because of the logistics of our numbers, has more than generously offered to speak to each one of our five courtroom groups, for over five hours! That's way beyond the call of duty--but since I am responsible only for the Supreme Court group, we will try to communicate with those in charge of the Appeals Court to see if and how they may want to utilize Craig's time. I know the students are enthralled with his experiences and message (and awed with yours); but as I expressed to Craig, it seems to me that when sitting on a panel, each speaker feels less freedom of expression than if they are soloing. His suggestion was that he could speak about his background first and then perhaps have you join him to explain your background and then dialogue.

My career with the State began over 23 years ago as a workers' comp court reporter with the Office of Administrative Hearings. When the legislature eliminated the reporters, I remained with OAH as a scheduling clerk. During that time I worked with Judge Edward Toussaint, who has offered to inquire if a panel of his judges would be interested in convening a session of their Court on Friday morning which our Supreme Court students could observe. We haven't heard the response from his other judges yet, but we are excited at the prospect.

One of my goals in helping direct the program is to try to eliminate the boredom which sets in by Saturday and Sunday after the students have argued each side of their case as well as judged several other cases. By then we tend to physically lose those who are finished on the docket. On Saturday afternoon I would like the student Court to hear arguments on the Constitutionality of any bills as they are signed by the Governor, and perhaps have real attorneys in a second courtroom help them argue some redacted cases, which the students haven't yet seen, as well as cases coming up from the Court of Appeals and Attorney General..

We would welcome your appearance literally any time during the weekend, but in deference to your schedule, we thought your best time may be Thursday afternoon, January 9, after our opening Joint Session, perhaps after Craig speaks for a while (5:15 or 5:30), and before our very flexible supper break. Any other time would also work well. The State Y office has eliminated the customary Thursday evening banquet at the hotel, which didn't keep the students' interest, and replaced it with a work session in the program areas until 10:00 p.m. This actually has the blessing of the advisors, but Thursday evening is a difficult time to start arguing cases, so we will probably schedule a mock trial or other speakers after supper.

Since we are new in the planning area, we welcome any suggestions you might have for topics or panels or speakers--including any Associates you might want to invite, and especially in terms of keeping interest up during late Saturday and Sunday sessions. We appreciate your past participation, and look forward to hearing from you.

Sincerely,

Bob Hosman

Bob Hosman
OAH 349-2690
Fax 349-2691

cc: Peter Rodosovich
Orville Lindquist
Craig Seifert
Kirk Myhra, Esq.

Craig: I started redrafting this letter to you - but I wanted you to know what I wrote to the Justice. So...

Would you accept this as your invitation to participate again in January, if it should work for both of your schedules. - Thurs 1/9 4:45 p.m

Another thought just struck - the Court of Appeals will have about the same schedule - and I'll still check with whomever I need to, but maybe if we wined and dined you, you might consider speaking to two (combined) groups of Ct of Appeals after supper, because I can't believe they would want to start arguing cases that evening, either. The kids will be too wound up and unprepared. (Without Justice Tomljanovich) Please advise - and thanks, Bob

@ the Ct of Appeals

MINNESOTA BOARD OF CONTINUING LEGAL EDUCATION
25 CONSTITUTION AVENUE - SUITE 110
ST. PAUL, MINNESOTA 55155
612/297-7100

Please be advised that the following course or courses which you recently submitted has been approved for CLE credit as listed below:

COURSE	COURSE DATES
SPINAL TRAUMA	05/28/98 to 05/28/98
SPINAL TRAUMA	06/18/98 to 06/18/98
SPINAL TRAUMA	07/16/98 to 07/16/98
SPINAL TRAUMA	08/06/98 to 08/06/98
SPINAL TRAUMA	09/17/98 to 09/17/98

MN-ACADEMY OF PHYSICAL MEDICINE OF
CRAIG SEIFERT
9217 17TH AVENUE SO., STE. 206
MINNEAPOLIS, MN 55420

MINNESOTA BOARD OF CONTINUING LEGAL EDUCATION
25 CONSTITUTION AVENUE - SUITE 110
ST. PAUL, MINNESOTA 55155
612/297-7100

Please be advised that the following course or courses which you recently submitted has been approved for CLE credit as listed below:

COURSE	COURSE DATES
INITIAL MEDICAL & CHIROPRACTIC EXAMINATION, ASSESSMENT AND	04/15/98 to 04/15/9

MN-ACADEMY OF PHYSICAL MEDICINE OF
CRAIG SEIFERT
1227 DEVONSHIRE CIRCLE
BLOOMINGTON, MN 55431

(4)

STATE OF MINNESOTA
IN SUPREME COURT

In re:
Supreme Court Advisory Committee
on General Rules of Practice

Statement on Recommendations of Minnesota Supreme Court Advisory Committee on General Rules of Practice

The undersigned persons, acting in their individual capacities as professors of law and members of the bar but not representing William Mitchell College of Law, respectfully submit that, at least in the absence of additional time for public comment and consideration, this Court should not adopt the rule on frivolous *pro se* litigation proposed by the Advisory Committee on General Rules of Practice.

We only recently became aware of the Advisory Committee's proposal, and perceive that neither the public nor the bar generally is familiar with it. We note that neither the Advisory Committee's report nor the law review article it cites specifies the extent to which actual abuses by *pro se* litigants in this state indicate a need for restrictions in addition to those available under current procedural rules. We also note that the proposed rule contains numerous references that appear to be vague, overbroad, and susceptible to abuse. For example, "frivolous litigant" includes a *pro se* plaintiff who in the past five years has maintained three *pro se* "litigations" that have been finally determined adversely (apparently without regard to the number that may have been determined favorably during that time). Many able lawyers might not pass such a test.

Furthermore, the status of "frivolous litigant" may be imposed by the "declaration" of *any* state or federal court, apparently after only one appearance and without any other finding required or any opportunity for review by a Minnesota court. The proposed rule contains other

questionable or ambiguous references, such as the terms "unnecessary" discovery and "causing" litigation to be commenced. It also appears that, on its face, the proposed rule would bar *any* subsequent resort to the court, *pro se* or not. This may have been an oversight, but as presented it is overbroad and of doubtful constitutionality.

We believe that a remedy as drastic as the one proposed should not be adopted absent a very strong showing of actual need and a painstaking analysis and drafting of each procedural restriction to make sure that the limitations go no further than demonstrably necessary in restricting the important right of every person to access to the courts of this state.

Respectfully submitted,

Paul J. Marino # 67568
875 Summit Ave.875
St. Paul, MN 55105

Kenneth F. Kirwin # 56169
Summit Ave.
St. Paul, MN 55105

Ann Juergens by KK
Ann Juergens #157156
875 Summit Ave.
St. Paul, MN 55105

Ann Iijima # 172248
875 Summit Ave
St. Paul, MN 55105

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Mr. Fred Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

November 20, 1998

Dear Mr. Grittner,

Enclosed are 12 copies of my response to the proposed Rule 9. I respectfully request an opportunity to present comments orally at the hearing at 2:30 pm on November 24, 1998, or at such other times as required by the Supreme Court.

Sincerely,

Prof. Peter Erlinder
Professor of Constitutional Criminal Law

Enclosures

CPE:me

STATE OF MINNESOTA
IN THE SUPREME COURT

In re:

Supreme Court Advisory Committee
on General Rules of Practice

Response to Recommendations of the
Minnesota Supreme Court Advisory Committee
on the General Rules of Practice

INTRODUCTION

The following comments are in response to the proposed Rule 9, which was promulgated pursuant to an Order of the Chief Justice on November 2, 1998. The comments, herein, are preliminary in nature, due to the very short time available for research, more deliberate analysis and comment. The Advisory Committee Comments acknowledge that the proposed rule is "drastic", insofar as it directly limits access to the courts for a certain category current and future litigants. Any such limitation upon the right of *all* people to seek redress in the courts, is not a small issue. No matter how this issue is eventually decided, the time for comment should be extended and a greater effort should be made to make the provisions of the proposed rule made known to the general public, and to the bench and bar.

Although the proposed rule purports to follow the provisions of a California statute, Cal. Code of Civ. secs. 391.1-.7, there are some significant differences between the proposed rule and the California statute. For example, the California statute specifically excludes small claims court claims; the statute requires five (5) litigations over a seven (7) year period for a litigant to qualify as "vexatious"; the statute is limited to claims only, it does not apply to proceedings in which the litigant has been brought into court by another party and has filed counter-claims or third-party claims.

Most importantly, the limitations on access to the courts by unrepresented persons in California was enacted pursuant to a *legislative* process which presumably included committee hearings, public legislative debates, legislative votes for which elected representatives can be held accountable AND a realistic opportunity to challenge the legislation in the courts. By creating a judicial rule which accomplishes the same result as this statute, the people of Minnesota will not have the same

opportunity that Californians had to question the need for limits on *pro se* litigants in their *own* state, the impact of specific provisions of the proposed rule will not be fully vetted, and, the effect will be that the *courts* will be establishing rules that limit their own jurisdiction over certain claims, rather than relying on the legislature or the constitution to determine the jurisdiction of the courts.

The Order provides for written comments to be received by November 20, 1998, and oral presentations at a hearing scheduled for November 24, 1998. Apparently, the aforementioned Order is the only public notice of the proposed rule changes. By the terms of the Order, there will be no other public forum in which it will be possible for members of the general public, the bench and the bar to comment upon the changes which will have a significant impact upon the rights of ordinary people to have access to the courts. I respectfully request an opportunity to present my comments orally at the hearing on November 24, 1998.

My comments are directed to three major sets of issues: (A) general principles relating to the present state of access to the courts and utilization of court resources; (B) procedural issues regarding the promulgation and consideration of the proposed rule; (C) the specific provisions of the proposed rule.

COMMENTARY

A. My comments are premised upon the following general principles:

(1) The courts of the State of Minnesota are public bodies that exist primarily for the benefit of the general public who have disputes that come within the jurisdiction of the state courts, not for the convenience of judges, lawyers or court personnel.

(2) Recent studies by the ABA and others have clearly established that the vast majority of ordinary people do not have meaningful access to the courts because of the high costs of employing counsel and other litigation costs arising from the complexity of the legal system. This is a serious issue in Minnesota, and elsewhere, that requires far more resources to be devoted to providing legal assistance at low cost ,and to educating general public in the use of a court system which is, of course, supported by the tax dollars of that general public.

(3) The present need for a wide range of programs designed to increase access to the courts is referenced in the article cited as a rationale for this rule change, Hon. John M. Stanoch, *Working with Pro-se Litigants: The Minnesota Experience*, 24 Wm. Mitchell L. Rev. 297 (1998). (It is important to note that the thrust of this article is directed to the problem of court access, NOT to "frivolous" *pro se* litigation. None of the access issues suggested in the article were addressed in the Advisory Committee Report.)

(4) By far, the vast majority of court resources are devoted to complex litigation that is driven by attorneys employed by clients who have the resources to make full use of the procedures available to them. A good example, but only one example of many, was the recent tobacco litigation in which well financed litigants made it necessary to expend vast amounts of publicly financed court resources.

(5) There has been no showing in the Stanoch article, in the Advisory Committee Report, or elsewhere, that the problem of "frivolous" *pro se* litigation is of sufficient magnitude to justify the risk of closing the courts to categories of the general public because one or more public servant judges have been vexed or discomfited by the actions of particular litigants.

(6) Sufficient remedies already exist to respond to individuals who may misuse the courts, either intentionally or unintentionally, including: dismissal of the case, civil contempt, criminal contempt, limitations on discovery, limitations upon the presentation of evidence, judicially imposed time limits, directed verdicts, criminal charges, etc. There has been no showing that existing remedies are not sufficient to cope with any problems of "frivolous" *pro se* litigation that do presently exist.

(7) Perhaps the most serious consideration is that courts must continue to be an avenue for challenging existing legal and constitutional doctrines, or the "law reform' function of the courts will be seriously compromised. Very often it is citizens who first raise these issues and, like lawyers who can argue for a change in the law, the right of citizens to do so is no less important to our legal system.

In summary, the entire premise of the new rule stands reality on its head. The courts of the State of Minnesota should be open relatively equally to ALL members of the public, which is not the present situation. *See generally*, Stanoch, *supra*. The real problem facing our courts is that most working people cannot afford an attorney to represent them properly and that the legal system is too complex for most *pro se* litigants to use in a meaningful way. The risks of allowing judges to further exclude or reduce the ability of ordinary people to make full use of the court system far outweighs any benefit that might result for the public officials who are employed by that system.

B. Procedural issues related to the promulgation and consideration of the proposed rule:

(1) The notice and hearing procedure established by the Order of November 2, 1998 is completely inadequate given the broad impact of such a rule. The members of the public who will be most affected by the proposed rule are effectively precluded from responding to the proposed rule.

a. The Order has not received any publicity in the general media, and

has not been widely promulgated or discussed even within the legal community.

b. The eighteen (18) day comment period is much too short to allow meaningful consideration of the definitions and other provisions of the proposed rule by either the legal community of the general public.

c. The scheduling of the only hearing to take place 22 days after the promulgation of the Order, and the limitation of oral presentations to members of the bench and bar who have submitted written comments effectively prevents the general public from any meaningful input in the consideration of the proposed rule.

d. The recommended implementation date of January 1, 1999 much too soon to allow for full consideration and comment by the parties who have the greatest interest in the rule, the majority our society who are presently unable to afford full access to our legal system.

(2) The notice of the proposed rule change, as set forth in the Order of November 2 is inconsistent with the recommendation of the Advisory Committee Report of October 19, 1998 that the Minnesota Supreme Court should "ensure that notice of the proposed rules be given to the public and the bar". Neither the public, nor the bar has received adequate notice with respect to this significant alteration of the relationship between citizens and the court system.

(3). The promulgation of a judicial rule that purports to limit the jurisdiction of the courts, rather than proceeding through the legislative process as was done in California, may be seen as an attempt to exclude the possibility of full consideration of policy considerations, and raises the possibility that separation of powers issues may arise in the future.

C. Consideration of specific provisions of the proposed rule:

(I) Definitions: "Frivolous Litigant(s)"

a. Under the proposed rule (Rule 9.07(a) and Rule 9.07(b)(1)) a "frivolous litigant" is defined as a "person" (thus implying this rule may not pertain to "frivolous" corporations, governmental bodies or other entities?) who has either filed a civil complaint, or has responded to a lawsuit with a counter-claim or a third-party claim in either state or federal court, and received an "adverse" final determination in three cases during a five year period. The inequities inherent in this definition are manifold.

First, it focuses solely on the legal strategies of unrepresented individuals and excludes all represented individuals, corporations and governmental bodies from its reach. Thus, three failed pleadings subjects individuals to penalties and fails to

address similar "adverse" final determinations by any other category of litigants. Even unrepresented DEFENDANTS, who have been brought into court by others, can be found "frivolous" under the proposed rule.

Second, it fails to define that constitutes "a litigation" that has been "finally determined adversely". Thus, leaving a wide range of discretion to a trial judge to impose sanctions without clearly identifying the nature of the previous proceeding or the basis for the outcome in the previous cases. May cases on appeal be considered "frivolous" because of one or more "adverse final decisions" by the trial court.

Third, it imposes a standard of success in litigation that few attornies would be willing to have applied to their own practice. I suspect that the bar in Minnesota would not be willing to accept sanctions based upon three losses as a plaintiff or a defendant in a five year period.

b. OR, a "frivolous litigant" may also be a person who "repeatedly relitigates or attempts to relitigate" the "validity" of cases against the same parties that have already been "finally determined"; or legal claims and facts that have already been "finally determined". (Rule 9.07(b)(2)). As the Supreme Court is aware, the doctrines of *collateral estoppel* and *res judicata* have, since the days of the English Common Law, allowed the court to dismiss such actions upon a showing by the defendant that the case or facts had been previously litigated. Because of the lack of clarity in the term "finally determined adversely", the rule could be read to allow sanctions for exercising legitimate rights of appeal, or to legitimately contest the reach of *res judicata* or *collateral estoppel.*

c. OR, (under Rule 9.07(b)(3)) a "frivolous litigant" may be an unrepresented person who has "repeatedly" filed "frivolous" documents (thus using the word "frivolous" to define itself); OR who "conducts unnecessary discovery" (thus allowing the court an additional reason to foreclose discovery to unrepresented individuals, in addition to normal limitations related to relevance, that does not apply to attorneys or other entities); OR other tactics "intended to cause delay" (not only is it impossible to determine the "intention" behind a particular strategy, but , at times "delay" is a completely appropriate strategy that is employed by attorneys, either intentionally or not).

d. OR, a "frivolous litigant" may be a person who has been "declared" frivolous by any other state or federal court in a "similar" case (Rule 9.07(b)(4). Thus, unrepresented litigants in Minnesota are open to being declared "frivolous" because a county judge, or a justice of the peace, in Mississippi, New York, or elsewhere said so, at any time in the past for any reason.

(2) The procedure for determining "frivolous litigant" status.

Under proposed Rule 9.01 and 9.04, at any time prior to final judgment, a party or the court may force an unrepresented individual to respond to a motion asking that the opponent be declared "frivolous" as defined above. The filing of such a motion will suspend the proceeding until the issue is decided by the court following a hearing with proper notice. In that hearing the court may consider all material evidence, including witness testimony.

If the court determines that the opponent (a) meets one the foregoing definitions, and (b) there is not a "reasonable probability" of the opponent "prevail(ing) in pending litigation", the unrepresented opponent will be required to post "security" either in cash or bond in an amount sufficient to cover the opposing party's "reasonable expenses, including attorneys fees and not limited to taxable costs" (Rule 9.07(d)(1)). (Note: only corporations can deduct the costs of litigation). Although, this finding is not intended to be a "determination of any issue...or the merits" (Rule 9.02), such a finding may result in a dismissal of the case with prejudice, depending upon posting cash or a bond, and it has the same effect as a decision "on the merits".

Curiously, there is no penalty imposed upon a represented litigant who repeatedly brings such a motion, and who does not prevail, no matter how many times the litigant loses the "frivolous litigant" issue.

a. This procedure significantly increases the burdens upon unrepresented parties by putting opposing parties in the position of being able to force significant expenditures in time and resources on issues not related to the substance of the litigation. Because there is no disincentive to file and litigate such a "frivolous litigant" motion, well-financed litigants can create substantial obstacles that prevent litigation of the underlying claims.

b. There has been no showing that existing powers of the court to control litigation is insufficient to address any problems of abuse. It is already quite possible for an allegedly aggrieved defendant to dispose of the case through pre-answer motions, motions for summary judgement, sanctions for discovery violations, including dismissal of the case, motions for a directed verdict, etc.

c. Unfounded "frivolous litigant" motions can be used by represented plaintiffs OR defendants to accomplish the same ends that the Rule seeks to foreclose to unrepresented litigants, such as delay, additional discovery into matters not related to the pending litigation, unnecessary additional costs, additional court time and resource. And can be used as a threat to force settlement or "chill" the assertion of a defendant's legitimate counter-claims or third-party claims.

d. In situations in which a party is entitled to a jury trial, the finding of a "no reasonable probability of prevailing", when linked with the requirement of posting a significant bond, deprives less well-off litigants from any meaningful way of protecting their rights to a jury trial. In essence, wealthy "frivolous litigants" would be able to post the required bond and less well-off "frivolous litigants" would not, thus violating equal protection in a manner that may not even pass the "rational basis" test.

e. Prohibiting "frivolous litigants" from even filing new lawsuits without the permission of the chief judge (Rule 9.05(a) may well infringe on the "privileges and immunities" granted to all persons and creates significant disincentives to incur the displeasure of the judiciary, which may also have first amendment implications.

f. The creation of a list of "frivolous litigants", which will be retained by the State and "disseminated to each court administrator", proposes to create a "secret list" held solely by court personnel to which these special provisions would apply. It is unlikely that legislation that attempted such categorization of particular individuals would survive scrutiny under the first amendment, equal protection, prohibitions against Bills of Attainder, etc. and should not be adopted by the court of Minnesota.

Conclusion

The proposed changes to the civil rules are significant and wide-ranging. They raise serious constitutional issues as well as fairness issues with respect to the rights of all litigants to have access to the courts. There has been virtually no notice, no public discussion and the parties most effected by the proposed rule have been foreclosed from commenting upon their content. Most importantly, there has been no demonstrated need for such draconian measures. If such procedures are to be justified, either constitutionally or logically, there must be a demonstrated need for the additional rules to address a *significant* problem with respect to *pro se* litigants. Even if such a significant problem were to be demonstrated, which it has not, the promulgation of the proposed, admittedly "drastic " limitation on access to the public courts, without FULL public consideration, preferably through the legislature, cannot be justified in a system in which sovereignty continues to reside in the people.

There is no question that the "drastic" rule will have a "chilling" effect upon rights that many Minnesotans hold dear. Before impinging upon the right to equal access to the courts that is held by *all* the people, the Supreme Court, and other governmental bodies in the State should move slowly, deliberately and publicly.

Respectfully submitted on behalf of:
the Minnesota Chapter of the
NATIONAL LAWYERS GUILD

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c/o William Mitchell College of Law
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(612) 290-6394
Bar No. 3124291 (Ill.)

612 Lincoln Avenue #301
St. Paul, MN 55102

November 19, 1998

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Dear Mr. Grittner:

Enclosed are twelve (12) copies of comments submitted concerning Proposed Rule 9 of the Minnesota General Rules of Practice for the District Court.

I wish to make an oral presentation at the hearing.

Thank you for your consideration.

Sincerely,

Michael Ravnitzky

COMMENTS SUBMITTED CONCERNING
PROPOSED RULE 9
MINNESOTA GENERAL RULES OF PRACTICE FOR THE DISTRICT COURT

November 19, 1998
Michael Ravnitzky

It would seem inadvisable to adopt the proposed Rule 9 on Frivolous Litigation for the following reasons:

1) Such a rule is evidently targeted specifically at two or three specific persons who have been troublesome to state courts. The Advisory Committee itself has stated that this problem is "infrequent" and is associated with only a few pro se parties. It is inappropriate to use such a drastic measure to deal with the relatively tiny number of instances of this type that arise. Rather, it is more appropriate to address these situations on an individual basis.

Moreover, when such rules are passed in the statutory setting, they would likely raise issues of constitutionality as possible Bills of Attainder because they are targeted at a very specific handful of individuals, whether named or simply implied. It is inappropriate to establish Bills of Attainder under the authority of the Court for rules that might be deemed unconstitutional if passed as laws.

2) If frivolous pro se litigants were an endemic and continuing problem within the courts, it would be more appropriate to seek a fair solution through the legislature by statute. I do not believe that the presence of frivolous pro se litigants constitutes an endemic problem within the courts.

3) At very least, there should be a true opportunity for notice and comment. The Advisory Committee itself stated that "because of the nature of the proposed rule on frivolous litigation , the committee recommends tha the court consider holding a public hearing on these rules and ensure that notice of the proposed rules be given to the public and the bar." A quick canvas of the local bar and local academic community finds that there has been no such notice that has reached their attention. Nor has the public been notified. This hearing has had insufficient notice for proper comment, and thus smacks of "secret law".

4) Pro se litigants should not be discriminated against because they cannot afford or choose not to hire an attorney. Such actions drive a destructive wedge between the bar and the remainder of the public by indicating a perception from the courts that lawyers are to be trusted more than non-lawyers.

5) While recognizing that attorneys are potentially subject to Rule 11 sanctions for frivolous lawsuits and motions, such sanctions are rarely applied in practice. It would be far more appropriate to add appropriate sanctions to Rule 11 that apply to pro se litigants and attorneys alike rather than to create a preclusive bar that prevents access by individuals to the courts.

6) The proposed Rule is a preclusive bar. Preclusive bars are generally disfavored in the courts for good reason: they can lead to unfair results, and they may be misused.

November 19, 1998

7) There are certain circumstances where pro se litigants may be arguing in good faith for a reinterpretation of the law before a time when such claims are widely accepted. In fact, it is such pro se litigants that help our common law system to evolve by continuing to challenge existing dogma and push the envelope. Such litigants may make reasonable errors in light of their lack of legal training---such errors could easily lead them to being barred under the proposed Rule. It is not the policy of Minnesota Courts to use any technical error or misinterpretation of the law committed by a pro se litigant to bar that litigant from seeking justice.

8) There are many cases that would not reasonably allow the hiring of an attorney due to the nature of the remedy sought, yet might be portrayed as frivolous in nature. For example, I am familiar with pro se claims for data access in several states that were cases of first impression. On the one hand an agency might be prone to portray such claims as frivolous, but an outside observer might be inclined to view such claims as ground-breaking, novel and meritous. Some such claims might not be worth the costly hiring of an attorney due to the non-monetary nature of the claim. In many cases, hiring an attorney for such non-monetary claims is impracticable for most state citizens because people of modest means (or even comfortable means) generally hire attorneys on a contingent fee basis.

9) Just because a Rule is appropriate or has proven successful in California does not mean it should be adopted in Minnesota. California has a substantially different legal system than Minnesota. This Rule is overkill--using a sledgehammer to kill a mosquito.

10) The proposed Rule 9 would establish a secret record of frivolous litigants regularly disseminated within the state court system. This seems inconsistent with information privacy policy as generally followed within Minnesota branches of government.

For those reasons, I ask for disapproval of Rule 9, or at very least a more substantial opportunity for public notice and comment.

Michael Ravnitzky
3-L, William Mitchell College of Law
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651-224-8447

LEGAL SERVICES ADVOCACY PROJECT

(41)

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(651) 222-3749 Fax: (651) 603-2750

November 20, 1998

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

RE: HEARING ON PROPOSED FRIVOLOUS LITIGATION AMENDMENT TO MINNESOTA GENERAL RULES OF PRACTICE

Dear Mr. Grittner:

I write on behalf of legal aid offices across the state to raise some concerns regarding the proposed rule on frivolous litigation scheduled for hearing on November 24, 1998.

Our overriding concern is for victims of domestic violence and how they may be adversely impacted if determined to be a "frivolous litigant" under the proposed rule. It is not uncommon for domestic violence victims to file for an order for protection (OFP) and then, for various reasons, fail to show up at the hearing. There are many reasons for this. A victim might reconcile with the abuser, or the abuser may have threatened to kill her if she proceeds with the OFP.

Given our experience working with victims of domestic violence, we think there may be the occasional victim who would file for an OFP and fail to show three times in five years. Or, a victim may have filed two OFP's and one conciliation court case and failed to appear for all of them. Because the vast majority of OFP's are filed pro se, under proposed Rule 9.07(b)(1) and (2) either of these scenarios may result in a "frivolous litigant" determination.

The courts clearly do not want to prevent or inhibit legitimate filing of claims, especially when they concern matters of safety, as orders for protection do. Requiring furnishing of security and/or requiring the chief judge's approval before a filing is allowed, may prove sufficiently prohibitive that some domestic violence victims will not pursue an order for protection.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Nancy Mischel
Staff Attorney

Gregory G. Kipp
P.O. Box 583581
Minneapolis, MN 55458
(612) 377-6637

November 20, 1998

Mr. Fredrick Grittner
Clerk of Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

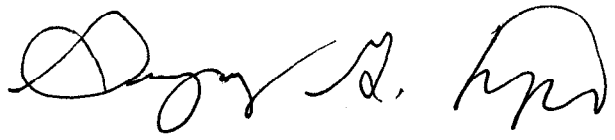
Re: Pro Se Litigants, Proposed Gen. R. Prac 9 Amendment
Written Statement and Respectful Request for Oral Presentation

Dear Mr. Grittner and Court:

Thank you for publishing the proposed rule changes from the Minnesota Supreme Court Advisory Committee on General Practices on the World Wide Web. Regarding the committee's proposed change amending MN Gen. R. Prac. to add Rule 9 pertaining to pro se litigants, I wish to present both written and oral considerations to the Court.

Respectfully enclosed for the Court are my comments regarding the proposed change. I pray the Court will not view my comments as an ostentatious lay appearance, but rather, a necessity born of sincere concern for the profound affects the proposed rule may have to public rights and to due process. I thank you and the Court for the opportunity to share my concerns.

Very truly yours,



Gregory G. Kipp

STATE OF MINNESOTA
IN SUPREME COURT

In re Contemplation of:

Amendment to Minnesota
Gen R. Prac. 9,
by
The Minnesota Supreme Court
Advisory Committe.

Gregory G. Kipp
PRO SE AMICUS CURIAE
BRIEF
CX-89-1863

Pursuant to App. Proc. R. 129, your amicus pleader's interest in the captioned proceeding is of a public nature, requesting leave of the Court to contest the proposed amendment to MN Gen R. Prac. by the Minnesota Supreme Court Advisory Committee introducing proposed Gen R. Prac. Rule 9. Amicus briefs are assumed welcomed by invitation of public hearing persuant to the Order of the Court dated November 2, 1998.

STATEMENT OF THE CASE

The aforementioned committee presumes to ameliorate the purported burdens of pro se litigation through limitations on unrepresented parties outlined in the October 19, 1998 report attached hereto by electronic reference: http genrules.htm at www courts.state.mn.us published by the Court.

ARGUMENT

The committee proposal is constitutionally infirm, abridged as follows:

1. No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land.
2. Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely

and without purchase, completely and **without denial**, promptly and without delay.

It takes little observation of the average trial court calendar to understand the good faith efforts of the amendment proposed by the advisory committee. Only cursory review is often afforded at the trial court level, even to complex cases. Embattled litigants rarely express appreciation for the trial court judge who has to split the preponderance of his/her conscience in one direction to serve the law, while sacrificing the 49% of his/her heart that may empathize with the other party. Such systemic ingratitude leaves little room for tolerance of the pesky pro se party who may know, with fervor, why he is propagating litigation, but has no clue to his legal responsibilities or the reasonableness of his pleadings. It is no surprise that an advisory panel with seven judges would come to this recommendation..

Our society is fraught with real and perceived examples of "frivolous" litigation. But, in consideration of this question, we are compelled to examine the fundamental purpose of Court, per se. That is, the maintenance of peace through a civilized forum to air grievances, unresolvable by the parties. However burdensome, this process provides society with a favorable alternative to the abysmal "might-makes-right" system that has plagued humanity throughout history. In considering "frivolous" pro se litigants, the context of the advisory report suggests that the discussion focuses on litigants who are not just crossing the edge of reasonableness, but may be on the edge of rationality. In such cases, the Court may consider remedies such as 72-hour psychiatric holds or contempt. In less egregious cases, the trial court may opt for summary judgment and/or Rule 11 sanctions. Whatever the situation, the trial court already has a wide range of tools to control proceedings which apply to both represented and unrepresented parities. In most cases though, even if only heard briefly, the plaintiff derives a sense of justice from having "his day in court." Thus, the trial court promotes peace.

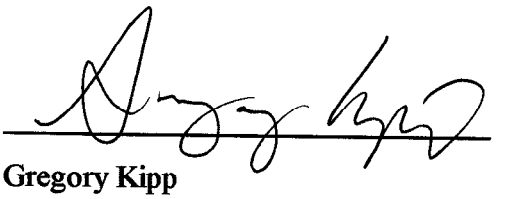
People have rights to equal protection under the law regardless of representation. Frivolous litigants should be dealt with in the same manner whether represented or pro se. In no instance should there be a separate set of court rules for represented petitioners versus pro se petitioners.
In the words of the late Peter Tosh, "There is no peace without justice." It is better to tolerate the occasional bothersome frivolous litigant or apply existing controls that apply to all litigants than to

promulgate special rules that foster the public perception that judicial system is inherently affected by representation beyond the expertise brought to bear by the trained, licensed advocate.

CONCLUSION

I ask that the Court not adopt proposed Gen. R. Prac. 9.

RESPECTFULLY SUBMITTED.



Gregory Kipp

THE SUPREME COURT OF MINNESOTA
RESEARCH AND PLANNING
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Michael B. Johnson
Staff Attorney

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Facsimile (651) 296-6609

November 5, 1998

Mr. Fred Grittner
Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

RE: CX-89-1863 PROPOSED AMENDMENTS TO GEN. R. PRAC.

COMMENTS OF HON. STEPHEN ALDRICH

Dear Mr. Grittner:

On behalf of the Honorable Stephen Aldrich, Fourth Judicial District, I hereby submit twelve (12) copies of the following comments about the proposed new rule 9 regarding frivolous litigation:

> "I wonder whether the frivolous litigation rule is apt for counterclaims and for cross claims against parties already in a suit. That is, somebody has already involved the court with a suit to which the defendant must respond. There are already sufficient rules (Rule 11 especially) to cover a case which has already be begun by another. I see the rule as primarily aimed at preventing the initiation of vexatious litigation. There is room for abuse and unnecessary confusion where a legitimate case has been brought and there is a claim of a vexatious counterclaim."
>
> "The rule could reasonably apply to joinder motions where some new party would be grossly inconvenienced by being dragged in to an existing suit."

Judge Aldrich does not desire to make an oral presentation.

Sincerely yours

Michael B. Johnson

FAX TRANSMITTAL

Dated Dec 23rd 98

Pages 11
time 12:45
cc: AP-Bill Wernz
222-4821/F 222-2208
Bus-464-1723

To:

Jesse Ventura For Governor
Mae Schunk For Lt. Governor

Jesse Ventura

Serving The People, Not The Parties

Mae Schunk

We Won! You Won! Thank You For Your Support!

This web site was originally intended to serve Jesse "The Candidate" Ventura. It is now being reworked to serve Jesse "The Governor" Ventura. The old stuff remains here for your viewing pleasure (see links below). The entire campaign site, as it existed just after election day, will be preserved and posted in an online subdirectory for future reference. Watch this site for more cool stuff from Jesse Your Governor Ventura!

Soon after Jesse and Mae won the election, traffic to this site soared to the point that it crashed the server. This emergency prompted a quick and unplanned change to another host. That change and the new need for an industrial strength approach for the now high volume site raised a number of technical and content issues that are now being addressed. Please bear with us as we plan and reconstruct the site.

See Update for more post-election info about this site.

Contact Information For Governor-Elect Ventura's Office is:

To

B5 Capitol Building
75 Constitution Ave.
Saint Paul, MN 55155
Voice: (651) 297-9500
Fax: (651) 297-9531

If you are seeking a job in the Ventura/Schunk administration, do not submit resumés to the campaign committee's e-mail address. They will not be accepted. Send hard copies via U.S. Mail to the above address.

From JENN RICHARDSON

Join The Jesse Net!

Telf 651-776-5835

Receive Up-To-The Minute News From Jesse & Mae
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TO GOVERNOR ELECT

HON. JESSE VENTURA

"OPEN LETTER"
Dec. 22nd, 1998

If you look in MINNESOTA STATUTES 1996 COURT RULES VOL.15 pages 134-143 under CRIMINAL and CIVIL PROCEDURE pages 433-440 over 700 STATUTES have been Superceded by Court Rules.

The RULES you will see are offentimes taken from (ABA/STANDARD) and not even by the Judicial Branch. It is time for a repeal of the Rule-Making Power of the Courts.

It is Unconsitutional Law for the Judiciary to repeal STATUTES. The COURT RULES are not in line with the Separation of Powers. Exhibit 'A' tells us -REPEAL-

Yours for Integrity in Government,

/s/John J. Richardson
1674 Marion St.
St. Paul, Minn. 55117

/s/ Sharon L. Anderson
Notary Public
Commission Expires Jan.20,2000

SHARON L. ANDERSON
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Jan 21 2000

MEMORANDUM OF LAW/EXHIBITS

Exhibit 'A'	**1925 (ABA) Report**	**pages: 549 -550**
Exhibit'B'	**1933 (ABA)Report Vol 58**	**pages: 197-198**
Exhibit'C'	**1935 (ABA)Report Vol 60**	**page: 188**
Exhibit'D'	**1936 (ABA)Report Vol 61**	**page: 436**
Exhibit'F'	**Civil Procedure Rule Statute Superseded M.S.A. 1971**	**page: 433**
Exhibit'G'	**Criminal Rules**	**pages: 139-140**

but they have been too patriotic to do it. The objection is as unworthy as it is unfounded because it places the small practitioner in the attitude of being willing to defeat improvement in the administration of justice for the sake of his personal convenience or profit, as has been pointed out, a sentiment that we feel assured will be promptly repudiated when brought to their attention.

UNIFORMITY WILL BE MADE POSSIBLE AND ATTRACTIVE.

Another objection is that attention was first directed to the improvement of the procedure of the federal courts instead of to that of the state courts. It is obvious that the federal courts were first given consideration by the Bar for profoundly logical reasons that will not be set out: (a) The conceded failure of the efforts of the federal courts to conform to the practice of the state courts (Bank *vs.* Halstead, *supra.*) demonstrated the necessity for a change. (b) A second and greater reason is that a simple scientific correlated system of rules, such as will be prepared and promulgated by the Supreme Court of the United States for use in the federal district courts, will prove an attractive model for the respective states to adopt for their courts.

THE BENEFITS TO BE DERIVED.

The benefits to be derived from this course may be summed up as follows, viz.: (1) A modernized, simplified, scientific correlated system of federal procedure meeting the approval of the Federal Supreme Court and participated in by the judges and lawyers. (2) The improvement of state court procedure through the adoption of the federal system as a model. (3) The possibility and the probability of state uniformity through the same course. (4) The institution of court rules in lieu of the statutory or common law procedure or common law procedure modified by statute, and (5) the foundation for fixed interstate judicial relations, as permanent and correlated as interstate commercial relations. (6) The advantage of the personal participation of the lawyers and judges in the creation and gradual perfecting of a scientific system of rules. (7) The certainty of immediately detecting an imperfection and the promptness with which it can be corrected. (8) The doing away with the long time now necessary for the simplest relief at the hands of Congress because of the multitude of other business pressing for attention upon that great body of statesmen. (9) The doing away with the force of law now possessed by every procedural statute and the substitution therefor of a system of flexible judge-made rules, not liable to reversible error if justice be done by the judgment entered.

Exhibit 'A' page 1

1925

(10) It is the only way that nation-wide uniformity is possible, and yet not compulsory, the psychology of which is important where state pride is an element. (11) It will awaken a keen sense of responsibility and a new and an unselfish participation on the part of the members of the Bench and Bar. (12) It will create an equable division of power and duty between the legislative and judicial departments of government.

An Analysis of the Effect of the Statute.

The trouble with the procedure of the courts is due to the fact that coordination between these two departments of government has been destroyed by exclusive legislative control. The proposed bill would vest in the Supreme Court the exclusive power to prepare for the trial courts all necessary rules and regulations and gradually perfect them. It divides all judicial procedure into two classes, viz.: (a) Jurisdictional and fundamental matters and general procedure and (b) the rules of practice directing the manner of bringing parties into court and the course of the court thereafter. The first class goes to the very foundation of the matter and may aptly be denominated the legal machine through which justice is to be administered, as distinguished from the actual operation thereof and lies exclusively with the legislative department. It prescribes what the courts may do, who shall be the parties participating, and fixes the rules of evidence and all important matters of procedure. The second concerns only the practice, the manner in which these things shall be done; that is, the details of their practical operation. Concisely stated, the first or legislative class provides what the courts may do, while the second or judicial class regulates how they shall do it. *It is desired to be emphasized that the statute will necessitate no alteration of the present procedure upon any jurisdictional or fundamental matter; that the Congress can repeal it at its pleasure and that the proposed rules will not have the effect of a statute.*

Post Bellum Court Burdens.

Its predictions having been already vindicated, your committee asks permission to again repeat a portion of its 1918 report, by way of accentuating the necessity for *prompt legislative action* in simplifying the procedure of the courts. Additional judges will partially, but they cannot wholly, relieve the situation.

> American courts face substantially increased tasks and responsibilities growing out of the war and the hasty preparation therefor, as well as from new theories that may become permanently engrafted, that must be expeditiously and properly met immediately upon the declaration of peace. There will arise enormous problems of reconstructing industrial, social and political conditions and the

Exhibit A Page 2

1925

Chairman Thompson:

The Committee on Administrative Law, Mr. Louis G. Caldwell, of Washington, D. C.

Mr. Caldwell:

Our committee, having been born only last May, is still very much in its swaddling clothes. In spite of its youth it finds itself faced with about as thorny a set of problems as has fallen to the lot of any of the Association's committees. It finds, furthermore, that some of these problems—and not always the easier—are pressing for the earliest possible attention.

Historians may some day describe the present era as the most golden moment in a golden age of administrative tribunals, particularly in the federal government. A little later I may attempt partially to define an administrative tribunal; for the present let us assume that it is something that looks like a court and acts like a court but somehow escapes being classified as a court whenever you attempt to impose any limitations on its power. Incidentally, our committee has already decided that for obvious practical reasons, we must, for the present at least, limit our studies and activities to federal tribunals.

The first session of the 73d Congress, which seems by its accomplishments to have attracted a fair measure of notice at this meeting, left more than the usual quota of footprints in the field assigned to our committee. In fact, last spring witnessed a more formidable legislative output of administrative machinery than has ever before found its way into the statutes at large in time of peace. The list of the new agencies (which, of course, does not reflect the vast new powers and duties delegated to agencies which were already in existence) includes the National Recovery Administration, the Agricultural Adjustment Administration, the Farm Credit Administration, the Emergency Administration of Public Works, the Emergency Relief Administration, the Director of Emergency Conservation Work, the Federal Coordinator of Transportation, the Tennessee Valley Authority, the Home Owners' Loan Corporation, the Corporation of Foreign Security Holders, the St. Lawrence Bridge Commission, and the Federal Deposit Insurance Corporation. In our report you will find a modest attempt to summarize the more noteworthy ad-

ministrative features of this large progeny. It is significant that practically every important measure relied primarily on administrative machinery to accomplish its purpose.

This avalanche of new agencies was really unnecessary for the purpose of giving our committee enough work to keep it busy. A census taken at Washington just before March 4, last would have enumerated over 30 independent commissions, bureaus or boards, including such establishments as the Interstate Commerce Commission, the Federal Trade Commission, and the Board of Tax Appeals, each with its own architect following his own peculiar style of architecture; it would have included an almost astronomical number of bureaus functioning as administrative tribunals scattered through the 10 departments of the government; it would have shown a number of examples of that almost unclassifiable creature known as the government corporation, such as the Inland Waterways Corporation, the Emergency Fleet Corporation, and the Reconstruction Finance Corporation; it would have included the so-called legislative courts such as the Court of Claims and the Court of Customs and Patent Appeals and those peculiar hybrid courts of the District of Columbia which sit one moment as constitutional courts and the next moment as legislative courts, all in the course of a day's work.

The principal problems that outline themselves in the midst of this confusion are not new. Their seeds were sown years ago. Now, however, they have become acute. The significant developments of the last few months by themselves have elevated the subject of administrative law from the rank of mere importance to one of crucial importance. For example, before March 4, that typical device of the administrative system, the license—under which the carrying on of a business or calling is forbidden except under license from an administrative official who may later revoke the license after notice and hearing—was limited to a few businesses or callings of a very special character. Under the National Industrial Recovery Act this license system is potentially extended to all industries, trades and pursuits—and there are some who assert that it applies to the professions. The President is given broad power not only to prescribe such licenses

The condition of the various bar associations throughout the country today is just that. The Bar Association of Massachusetts is not giving a damn for that of Mississippi and the Bar Association of Texas is not giving a damn for that of Minnesota, and a vast majority of the lawyers in the country are not giving a damn for any bar association.

What would you think of an army that went out to battle with each division, each brigade, each battalion, each regiment, even each company, going into the fight under his own separate independent command, with his own independent plan of battle, irrespective of the plans of every other unit in the army?

The lawyers of this country today, those lawyers who look upon their license to practice law not as a means of making a livelihood only, not as a mere opportunity of making money, but as a call to public service, a call for the work of their profession and of their country, these men, whether in or out of the Bar Association, are never going to be able to win their fight under the conditions that exist today.

Exhibit C

Now, what is their fight? First we want to raise the standard of qualification for admission to the Bar. Over 10,000 young men in this country yearly are admitted to the Bar, many of them unprepared, many of them with not sufficient pre-legal education, many of them of a low standard of moral character. And what is the result? Unable to obtain business, inevitably they drift into evil practices. We wish to raise the standard of conduct of those men who have already been admitted to the practice of the law.

We want to do another thing, and that is to raise the standard of the Bench in this country. To that end we should do away with the damnable system of selection of judges by primary election. In the primary system there is no such thing as the office seeking the man. The races are free for all, for any and everybody who wants to run. Down in my state, if there is a vacancy on the Supreme Court Bench to be filled, any lawyer, and any kind of lawyer may become a candidate.

Harry Knight, Jeff Chandler, and the other members of the Committee on Coordination, in the past few years have rendered a service not only to the American Bar Association, not only to their profession, but to the country and to the people, that is hard to estimate.

[redacted] 1935

approved by the President on June 19, 1934, in the form proposed by Mr. Taft and approved by this Association.

It should here be noted that in the passage of this measure, Congress went beyond the scope of the canon of procedural reform above quoted. It turned over to the Supreme Court the whole province of practice and procedure in civil actions and withdrew from that field. It declared that after the promulgation of the rules, "all laws in conflict therewith shall be of no further effect."

I do not need to tell this audience of what has been done since the passage of the act of June 19, 1934, but it may be desirable to refresh your memories as to the significant words contained in an order of the Supreme Court of the United States entered of record June 3, 1935, from which I now quote:

> Pursuant to Section 2 of the Act of June 19, 1934 . . . the court will undertake the preparation of a unified system of general rules for cases in equity and actions at law . . . so as to secure one form of civil action and procedure for both classes of cases. . . .

Exhibit D

Since the determination of this important question by the court, the advisory committee appointed by the court has proceeded with all possible diligence and its preliminary draft of rules has been in your hands for about two months.

Pursuant to the invitation of the committee, a multitude of suggestions have come in from members of the Bar in nearly every state of the union and even from England and Germany. The mass of these suggestions is even greater than the volume of the rules, and yet the process has by no means come to an end. As was to be expected the suggestions of individuals have come in more promptly than those of the various committees, only relatively few of which have submitted their reports. This second wave, however, is likely to be greater than the first. It will be our duty to analyze and consider these suggestions, incorporate into our next draft all those which prove of value and also to summarize and make all of them available to the court so that the court may finally decide upon their merit.

No such nation-wide participation of the bar in the formation of procedural law, and no such cooperation between the bar and the Court, has ever been seen before. We believe that it points the way for the perfection of judicial procedure in the future.

1736

Appendix B(1)*

List of Rules Superseding Statutes

Rule		Statute Superseded M.S.A. 1971	
2.01		540.01	
3.01		541.12	
		543.01	
3.02		543.04	1st sentence
4.01		543.02	
4.02		543.03	
4.03			
	(a)	543.05	
	(b)	540.15	the clause "and the summons may be served on one or more of them"
		540.151	the clause "and the summons may be served on one or more of them"
	(c) 1st sentence:	543.08	1st paragraph, 1st sentence of 3d paragraph, and 4th paragraph
	(c) 2d sentence:	543.08	2d clause of 1st sentence of 3d paragraph
		543.09	
		543.10	
	(d)	543.07	
	(e)	543.06	
		365.40	superseded to extent inconsistent
		373.07	superseded to extent inconsistent
		411.07	superseded to extent inconsistent
4.04		543.11	
		543.12	
		543.15	last clause of 1st sentence
4.042		543.04	2d and 3d sentences
4.043		543.13	
4.044		557.01	3d sentence through "but" following semicolon
4.05		None	484.03, 586.05 and 587.02 contain same provision
4.06		543.14	
4.07		544.30	superseded in part
		544.32	superseded in part
		544.34	superseded in part
5.01		543.16	
5.02		543.09	last sentence
		543.10	last sentence
		543.17	
		543.18	
		557.01	clause following semicolon in 3d sentence
		Dist. Ct. Rule 25	
5.04		544.35	
6.02		544.32	superseded in part
		544.34	superseded in part
6.03		544.32	superseded in part

substantially the similar provisions of Minnesota Statutes, section 631.34 (1971). The requirement that a challenge for cause to an individual juror shall be made before the juror is sworn but for good cause may be made before all the jurors are sworn adopts subtantially the provisions of Minnesota Statutes, section 631.26 (1971). As to when jeopardy attaches, see Comment to Rule 25.02.

Rule 26.02, subd. 5(3) (By Whom Challenges for Cause are Tried) provides that if a party objects to a challenge for cause, it shall be tried by the court. The rule abolishes exceptions to and denials of the challenge (Minnesota Statutes, section 631.34 (1971)) by the triers of fact (Minnesota Statutes, section 631.34 (1971)) (Minnesota Statutes, section 631.35 (1971)).

Rule 26.02, subd. 6 (Peremptory Challenges) changes the number of peremptory challenges allowed by Minnesota Statutes, section 631.27 (1971) when the offense is punishable by life imprisonment from 20 for the defendant and ten for the state to 15 and nine. The provision of section 631.27 giving the defendant five and the prosecution three peremptory challenges in the trial of other offenses is continued. The provision for additional peremptory challenges when there is more than one defendant comes from F.R.Crim.P. 24.

Rule 26.02, subd. 6a (Objections to Peremptory Challenges) is intended to adopt and implement the equal protection prohibition against purposeful racial discrimination in the exercise of peremptory challenges established in Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712 (1986) and subsequent cases. In applying this rule, the bench and bar should thoroughly familiarize themselves with the case law which has developed, particularly with respect to meanings of the terms "prima facie showing," "race–neutral explanation," "pretextual reasons," and "purposeful discrimination" used in the rule. See Batson, supra; Ford v. Georgia, ...U.S....; 111 S.Ct. 850 (1991); Powers v. Ohio, ...U.S...., 111 S.Ct. 1364 (1991); Hernandez v. New York, ...U.S...., 111 S.Ct. 1859 (1991); Edmonson v. Leesville Concrete Co., ...U.S...., 111 S.Ct. 2077 (1991); Georgia v. McCollum, ...U.S...., 112 S.Ct. 2348 (1992); State v. Moore, 438 N.W. 2d 101 (Minn. 1989); State v. Everett, 472 N.W. 2d 864 (Minn. 1991); State v. Bowers, 482 N.W. 2d 774 (Minn. 1992); State v. Scott, 493 N.W. 2d 546 (Minn. 1992); and State v. McRae, 494 N.W. 2d 252 (Minn. 1992).

Rule 26.02, subd. 7 (Order of Challenges) prescribes the order in which challenges shall be made: first, to the panel; second, to an individual juror for cause; and third, peremptorily to an individual juror. It supersedes the requirement of Minnesota Statutes, section 631.39 (1971) that challenges for cause be made for (1) general disqualification, (2) implied bias, and (3) actual bias, in that order.

Rule 26.02, subd. 8 (Alternate Jurors) is based on F.R.Crim.P. 24(c) and ABA Standards, Trial by Jury, 2.7 (Approved Draft, 1968) and displaces Minnesota Statutes, section 546.095 (1971). It places no limitations on the number of alternate jurors and permits no additional peremptory challenges and differs in those respects from the federal rule and section 546.095.

Rule 26.03, subd. 1(1) (Presence Required) is taken from F.R.Crim.P. 43. See also Rules 14.02 and 27.03, subd. 2. The interpreter requirement is based upon Rule 5.01 and Minnesota Statutes, sections 611.31 to 611.34 (1992).

Rule 26.03, subd. 1(2) (Continued Presence Not Required) is based upon Proposed F.R.Crim.P. 43(b) (1971) 52 F.R.D. 472, Allen v. Illinois, 397 U.S. 337, 90 S.Ct. 1057 (1970) and Minnesota Statutes, section 631.015 (1971). If a defendant fails to be present at the trial, the court may proceed with the trial unless it appears that the defendant's absence was involuntary. The defendant may move for a new trial on the ground any absence was involuntary.

Rule 26.03, subd. 1(3) (Presence Not Required), permitting the defendant's absence from proceedings in the case of misdemeanors, is drawn from proposed F.R.Crim.P. 43(c) (1971) 52 F.R.D. 472 (See also Rules 14.02 and 27.03, subd. 2.) In addition, in the case of felonies and gross misdemeanors, it permits the court to excuse defendant's presence from any proceeding except arraignment, plea, trial, and imposition of sentence.

Rule 26.03, subd. 1(3)4 is based upon the recommendation of the Minnesota Supreme Court Criminal Courts Study Commission. The purpose of the rule is to facilitate the hearings in nondispositive, uncontested, and ministerial hearings whenever counsel, court, and defendant agree.

Rule 26.03, subd. 2 (Custody and Restraint of Defendants and Witnesses) is taken from ABA Standards, Trial by Jury, 4.1(a), (b), (c) (Approved Draft, 1968). Refusal of a defendant to put on or wear nondistinctive attire of a prisoner that has been made available shall constitute a waiver of this provision and shall not be grounds for delaying the trial.

Rule 26.03, subd. 3 (Use of Courtroom) comes from ABA Standards, Fair Trial and Free Press 3.5(a) (Approved Draft, 1968).

Rule 26.03, subd. 4 (Preliminary Instructions) is adapted from ABA Standards, Trial by Jury 4.6(a) (Approved Draft, 1968) and Minn.R.Civ.P. 39.03.

Rule 26.03, subd. 5(1) (Sequestration of Jury in Discretion of Court) permits sequestration of the jury in the discretion of the court.

Rule 26.03, subd. 5(2) (Sequestration on Motion) directing sequestration on motion of either party when prejudicial publicity may come to the attention of the jurors, comes from ABA Standards, Fair Trial and Free Press 3.5(b) (Approved Draft, 1968).

Rule 26.03, subd. 6 (Exclusion of Public From Hearing or Arguments Outside the Presence of the Jury) is based on Minneapolis Star and Tribune Company v. Kammeyer, 341 N.W.2d 550 (Minn. 1983) which established similar procedures for excluding the public from pretrial hearings. See the Comments to Rule 25.01 concerning those procedures. When the record of proceeding from which the public is excluded is made available, the court may order that names be deleted or substitutions therefor made for the protection of innocent persons. This rule for exclusion of the public is not intended to interfere with the power of the court, in connection with any hearing held outside the presence of the jury, to caution those present that dissemination of specified information by any means of public communication, prior to the rendering of the verdict, may jeopardize right to a fair trial by an impartial jury. (See ABA Standards, Fair Trial and Free Press 3.5(d) (Approved Draft, 1968).) An agreement by the news media not to publicize matters heard until after completion of the trial could afford the basis for a determination by the court that there is no substantial likelihood of interfering with an overriding interest, including the right to a fair trial, by permitting the news media or the public to be present. Re provision for appellate review, see Comment to Rule 25.01.

Rule 26.03, subd. 7 (Cautioning Parties, Witnesses, Jurors and Judicial Employees; Insulating Witnesses) comes from ABA Standards, Fair Trial and Free Press, 3.5(c) (Approved Draft, 1968).

Rule 26.03, subd. 8 (Admonitions to Jurors) adopts the substance of ABA Standards for Criminal Justice 8–3.6(a) (1985). In any case that appears likely to be of significant public interest, an admonition in substantially the following form, suggested by ABA Standards for Criminal Justice 8–3.6(e) (1985), may be given before the end of the first day if the jury is not sequestered:

"During the time you serve on this jury, there may appear in the newspapers or on radio or television reports concerning this case, and you may be tempted to read, listen to, or watch them. Please do not do so. Due process of law requires that the evidence to be considered by you in reaching your verdict meet certain standards; for example, a witness may testify about events personally seen or heard but not about matters told to them by others. Also, witnesses must be sworn to tell the truth and must be subject to cross–examination. News reports about the case are not subject to these standards, and if you read, listen to, or watch these reports, you may be exposed to information which unduly favors one side and to which the other side is unable to respond. In fairness to both sides, therefore, it is essential that you comply with this instruction."

If the process of selecting a jury is a lengthy one, such an admonition may also be given to each juror as selected. At the end of each subsequent day of the trial, and at other recess periods if the court deems necessary, an admonition in substantially the following form suggested by Standard 3.5(e) may be given:

"For the reasons stated earlier in the trial, I must remind you not to read, listen to, or watch any news reports concerning this case while you are serving on this jury."

Rule 26.03, subd. 9 (Questioning Jurors About Exposure to Potentially Prejudicial Material in the Course of a Trial) adopts ABA Standards, Fair Trial and Free Press, 3.5(f) (Approved Draft, 1968).

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Hearing on Proposed Amendments to the General Rules : November 24, 1998

A hearing has been set for November 24, 1998 at 2:30 PM in Courtroom 300 of the Minnesota Judicial Center to consider two proposed rules changes to the Rules of General Practice for the District Courts. The Advisory Committee on General Rules recommends (1) a new Rule 9 that deals with repetitive frivolous litigation by pro se parties; and (2) An amendment to Rule 114.09(e)(1) to include a reference to the statutory requirement for payment of a filing fee. For information on the hearing and the proposed amendments, please click here for:
HTML file or Word file or RTF file

Minnesota State Courts - Annual Report 1997

The Minnesota State Courts - Annual Report 1997 is available for viewing or downloading in Adobe Portable Document Format (PDF). For viewing or printing, please download a suitable Reader from Adobe's website.

1998 Interest Rates on State Court Judgments & Aribitration Awards

M.S. 549.09 directs the State Court Administrator to determine the annual interest rate applicable to certain state court judgments, verdicts, and arbitration awards. For judgments and awards governed by section 549.09 the interest rate for calendar year 1998 shall be 5%.

M.S. 548.091, subd. 1a, provides that the interest rate applicable to child support judgments shall be the rate provided in M.S. 549.09,

Recommendations of Minnesota Supreme Court
Advisory Committee on General Rules of Practice

Final Report

October 19, 1998

Hon. James Gilbert, Chair

Suzanne Alliegro, Saint Paul
Hon. G. Barry Anderson, Saint Paul
Steven J. Cahill, Moorhead
Hon. Lawrence T. Collins, Winona
Daniel A. Gislason, New Ulm
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Janie S. Mayeron, Minneapolis
Hon. John T. Oswald, Duluth
Leon A. Trawick, Minneapolis

David F. Herr, Minneapolis
Reporter

Michael B. Johnson, Saint Paul
Staff Attorney

Summary of Advisory Committee Recommendations

The two recommendations contained in this report are summarized as follows:

1. Create a new Rule 9 and corresponding form to establish an explicit procedure for dealing with the infrequent, but occasionally quite burdensome, problems of repetitive frivolous litigation by a few *pro se* parties.

2. Amend Rule 114.09(e)(1) to include a reference to the statutory requirement for payment of a filing fee in order to obviate confusion.

Other Issues

The committee considered three other matters, and recommends that no action be taken on them at this time. First, the committee revisited the issues surrounding notice to the Commissioner of Human Services required by Minn. Stat. § 524.3–801(d)(1) & (3), and possible rule amendments relating to the statute. These matters were discussed in detail in this advisory committee's Supplement to Final Report, dated November 3, 1997. The committee believes this issue is not ripe for any rule at this time. Similarly, the committee considered a suggestion that service by publication be authorized by rule for conciliation court actions, and the committee concluded this development would be fraught with danger of creating more problems than it might solve, and should not be adopted.

Finally, the committee considered again problems relating to 1st District policies imposing fines on

STATE OF MINNESOTA
IN SUPREME COURT
CX-89-1863

Sharon "QuiTam" Anderson, Relator
Registered Voter, Minnesota Citizen,
Attorney Pro Se-CandidateState Attorney
General-Private Attorney General- R-Candidate
State Senate(64), Sharon Scarrella , Publications
Electronic Commerce, http://mh102.mfi.net/~quitam
http://firms.findlaw.com/quitam
http://home.infospace.com/sharonqt1

Relator-Petitioners

vs.

Minnesota Attorney General Hubert Humphrey
MS 8.01, Rule 24.04 Constitutionality
Minnesota House & Senate MN Const.Art.III,

Associate Justice Kathleen Blatz, MS2.724,
Advisory Committe on General Rules of Practice,
Chair Justice James Gilbert, Judge John M. Stanoch
Publications-Electronic Commerce www.courts.state.mn.us
False PublicationsScarrella for Associate Justice 221NW2d562
Finance & Commerce Vol no247 (1988)WL95550, all other
publications et al

NOTICE OF APPEARANCE

DEMAND
ORAL ARGUMENT
JURY DEMAND ART.I
BILL OF RIGHTSsec.2

CONSTITUTIONALITY OF
MS 2.724 RE: RULE (9)

OBJECTIONS TITLE
18s1951 RICO1512/13
18s1581/2510

NOTICE OF MOTION AND MOTION
NOTICE OF APPEARANCE

Comes now, Sharon L. Anderson aka Mrs. James. R. Anderson, aka Sharon Peterson-Chergosky aka Scarrella, Pro Se Candidate for Minnesota Attorney General, R Candidate for Minnesota Senate 64, request Permissive Intervention Rule 24.02 03 with Oral Argument Nov.24th,98 at 2:30 p.m. in courtroom 300 of Minnesota Supreme Court, held at the Minnesota Judicial Center , in the matter of Constitutional "taking" "restricting" Pro Se's 1st Amend. Right to Petition the Judicial Branch of Government .

AUTHORITY

MS 2.724, Art.VIs2 Original Jurisdiction. of Supervisiory Nature. Rule 607 Who May Impeach. State v. Saporen, 205 Minn. 358,285 N.W. 898 (1939),

Rule 24.04 Notice to Attorney General, "Constitutionality of MS 2.724 & Rule 9"

NOTICE OF OBJECTION OR CERTIFY QUESTIONS OF REVIEW
TO THE UNITED STATES SUPRREME COURT

1. Does the Recommendation 1: * * * new Rule 9 * * * Form * * mechanism * * controlling * * Pro Se Litigation "abuse, repeated ,frivolous, post security/prohibiting redress without permission of Chief Judge of district?

a. Violate not only Minnesota Constitution Art. III Separation of Powers Doctrine, Art.I Bill of Rights 1 thro 17, Art. IV Leg. Dept. sec.23 . Approval of bills by Governor, Art.V. Executive Dept. 3. "He shall take care that the laws be faithfully executed"

b. Violate Art. VII Elective Franchise sec. 1Vote sec.8 Eligibility Scarrella for Associate Justice 221NW2d562, False Publications to mislead the voting public that Pro Se Candidates cannot be in the Judicial Branch (License Requirements).

c. Violate Art. XII Special Legislation Local Government re:sec.1 Prohibition * * *"Legislature shall pass no law* * * changing the law of descent* * *affecting estates disability, granting divorces * * * granting to any private corporation association or individual any special or exclusive privilege, immunity or franchise whatever* * *.
sec.5 Charter commissioner Appointment by judges.

QUESTIONS FOR UNITED STATES SUPREME COURT REVIEW

Has the Minnesota Supreme Court by & thro appointed Licensed Lawyers Judges, Court Administrators Conference of Chief Judges MS2.724, and created by its Pro Se Implementation Committee, and "Hon.John M. Stanoch" copyright Committe REport at 15 Working with Pro Se Litigants: The Minnesota Experience, 24 Wm. Mitchell L. Rev. 297,301-02 (1998) covertly with Libel/ Malice Times vs. Sullivan & Near vs. Minnesota, creating Heinous, Repugnant, deprivations of non-lawyers litigatants, thereby depriving al others similarily situated Pro Se Litigants of United States Constitutional Rights under the 1st 5th, and 14th Amendments at 42 USCS s 1983?

Is it class Discrimination and deprivation of the US Constitutional Rights at 42 USCSs1983 to implement a Rule 9 to unduly influence legislation without named pro se parties, dealing with infrequent, but occasionally quiteburdensome, by a few pro se parties?

Is it Anti-Trust Violations by the court to unjustly require fee's from the Poor, contrary to the State & Federal Commerce Clause Full Faith & Credit, US Const. Art. IV , from Executive Branch Appeals re: Dept. of Human Services Committments without disclosure of this Advisory Boards, Committment Panels, for public scrunity, disclosure? False Publications Scarrella 221NW2d562, Quast v. Prudential Property NW2d493 (1978), Bullock vs. Minnesota 611Fed2d, 258,79-1959, taking: REIators Homestead Finance & Commerce Vol.no.247,1988

WL95550, by the court in "Patterned Enterprise" for over 20 years. to Monopolize, Conspire, Clayton-Sherman Act 15 USC, Title 18 sec. 1951, Interference with the work product of Pro Se's, religious preference, Church of Justice Reform at 1058 Summit/Box 4384, St. Paul, Minn. 55104-0384, "taken" by Prejudicial Judges in Ramsey County, on the graves of tenants in common, tying and bribing the Homeowners Husband & Wife Mr. & Mrs. James R. Anderson of $110,000.00. "taking' 4 other bldgs, reducing to poverty Title 18s1581,1591. 1961.1503

MEMORANDUMN OF LAW

The Pattern of Restriction of denial of due process for years by Judges implementing/forcing their Fraud upon the Public for High Pensions, Health Care, Huge Salarys, Unjust Enrichment mandates either a Pro Se Court Structure, Non-Lawyer Judges, Full Disclosure re: Board member Suzanne Alliegro aka Mrs. James Rismi, they falsified Tax records, Had to Pay over $10,000 fine.

> **"Private defendant acts under color of state law for purposes of 1983 when he is willfull participant in joint action with state or its agents."Malak v. Assoc. Phusicians, Inc. (1986CA Ind.) 784F2d277**

Hon. Margaraet M. Marrinan called the sheriff, when we inquired if her conflict of interest , Lawyer Husband Robert Betterworth Chair of St. Paul Charter Commission, claims of False Realestate REcords, Conveyance False Medical Records, Billings, OverBillings material fact questions of Judicial, Legal Mal-practice Mn. R. Civ. P .607 Offerdahl v. U. Of M. Hosps. & Clinics,426 NW.2d 425,427 (Minn.1988), Ramsey County, mandates Federal Investigation, Susan Haigh Chair County Board, married to Judge Greg Johnson.

"One who submits a report in good faith under MS148B.07 is immune from civil or criminal liability. MS148B.08subd.1 (1996)

Is it a denial of due process MS626.556 subd 3 A 1966 when Pro Ses give Notice thro Litigation of Criminal Wrondoings and is it not Criminal Violations by the Judiciary when not referred to Local Police Authorities.

THEREFORE;Heinous, Repugnant, Judicial Titles of Nobility and conflict of the implementation of Rule (9) conflicting with the Mission Statement of the courts, State & Federal Constitutional Mandates guaranteed to all citizens of Minnesota regardless of Race, Color, Creed, Freedom Of Association Free Speech, Free Press, 1st Amend. Rights to Petition without License Requirements. Judicial Fiat making Law thro case law and rule for their own benefits, unjust enrichment, commerce profits, is criminal intent to disenfrancise the public/pro se's taxpayers from redress.

Huge corruption of the Legal System by the Oath of the Person to defend: Starr Report/ President Clinton.

zone of danger rule pro se's must show direct invasion of their rights such as defamation Bohdan v. Alltool Mfg. Co., 411f NW2d 902,907 (Mn. App. 1987)
Pro Se's Claim negligent infliction of emotional distress,
Election of Non-Lawyer Jesse Ventura Canvass Report re: Chair James H. Gilbert.

In Good Faith and not for Delay ,Public Notice via Electronic Commerce RElators
Web Sites used as evidence.http://mh102.infi.net/~quitam http://firms.findlaw.com/quitam http://home.infospace.com/sharonqt1 and as www.courts.state.mn.us Budget which doesn't appear to include the heinous cost to the public of committments/salarys of public defendar, double salarys of county attorneys in the committment process Title 18s2510.

Mrs Sharon Scarrella Anderson

/s/Mrs. Sharon Scarrella Anderson, Attorney Pro Se, Private AG,QuiTam Relator, Legal Domicile 1058 Summit/Box 4384, St. Paul, Mn. 55104-0384 telfx: 651-776-5835 cell: 651-274-5835 e-mail: quitam@justicemail.com

Dated: May 20 th 1998

THEREFORE THESE WORK PRODUCT DOCUMENTS UNDER THE PENALITY OF PERJURY, Hand Delivered 12 copies to Clerk Mn. Supreme Crt. Fred Grittner,at theMinn. Jud. Center 25 Constitution Av. St. Paul, Mn. 55155 tel: 297-5529 Fx: 651-297-4149 web www.courts.state.mn.us e-mail: traci.johnson@courts.state.mn.us and State Attorney General Hubert Humphrey 102 State Cap. St. Paul, Mn. 55155 tel 651-296-6196 fx: 651-297-4139 e-mail: attorney.general@state.mn.us Hand Delivered State Capitol Clerk of the House Ed Burdick 211 State Capitol 651-296-2314 Secretary of the Senate Patrick Flavahan 651-296-2344 fx:651-296-6511 By Fax: US Attorney Minn. Todd Jones 300 S. 4th St. #600 Mpls Federal Bldg. Mpls., Mn. 55415 tel: 612-664-5600 fx: 612-644-5787 e-mail: minneapolis@fbi.gov
cc: all others as their interests appear.

/s/ Sharon Scarrella Anderson

faces many challenges: an annual caseload of nearly two million cases, an increase in serious juvenile crime, the strong connection between drug addiction and crime, and the need to resolve dissolution, custody, and child support issues in a way that promotes the well-being of children. Despite the increasing demands placed on trial courts to meet these challenges, I am pleased to report that the state court system continues to serve the citizens of the state well. The court system is responding to these challenges with innovative ideas that promise to improve the quality of justice.

Strategic Plan Implemented

The development of a strategic plan for the state court system is [illegible] system that has made enormous strides. The leadership of the courts at all levels is outstanding, with judges realizing the importance of administration in making the wheels of justice turn. Our rules of practice are current and consistent statewide, while and community centers, as well as at courthouses.

Community involvement is a key challenge that must be addressed. The court system is discussing a range of opportunities for community involvement with the courts, such as community advisory councils and focus groups. We want to regularly engage in active outreach programs aimed at improving the public's understanding of the role, function, and limitations of the court system. It is imperative that the justice system work with citizens in our collective search for solutions to community problems.

The court system must be accountable to the citizens of Minnesota. The Conference of Chief Judges is working on establishing a formal mechanism for periodic review of trial court administrative practices, procedures, rules, programs, and organizational structures to identify changes that

Kathleen A. Blatz

1997 Cost of Judicial Branch

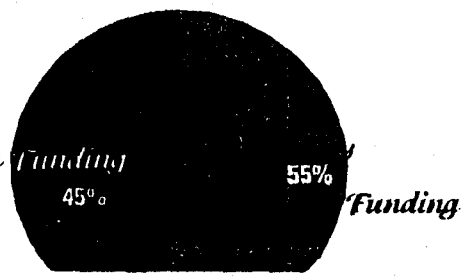
1997 Judicial Branch Annual Operating Budget

The state court system's annual operating budget includes all three levels of the court system plus the state law library and other services.

*Estimate based on 3% inflationary increase over 1995

Supreme Court	$ 3,944,157
Civil Legal Services	5,895,899
State Court Administration	8,426,164
Community Dispute Resolution/Victim Offender Medication	244,399
State Law Library	1,760,792
Court of Appeals	5,860,381
Trial Courts	68,398,794
Total State Funding	94,530,586
County Funding (Est.)**	**$ 76,706,000**
Total	**$ 171,236,586**

State/County Burden 1997
The judicial branch's operating budget is made up of state and county funding.



MINNESOTA'S ATTORNEY GENERAL
VOTE SHARON ANDERSON

MISSION STATEMENT

Sherman Anti-Trust "Monopolize-Conspire-Felony..." 15 U.S.C mandates Licensed Lawyers "Officers of the Court" be tried .
I Pledge to support Free Speech-First Amendment Rights & Privledges
Enforce Minnesota Constitution Art.III Separation of Powers Doctrine

OPEN LETTER

Title 18sec. 1951 RICO, Interference with commerce, mandates tobacco settlement to the citizenery.

Repeal MS 518 No Fault Divorce, Criminal Rule 20.01, & .02 , MS 2.724 commerce by Judicial Fiat, contrary to MS 481.02 Unauthorized practice of Law.

End Court Secrecy/Promote Justice Reform, Expose Medicare Fraud/

That all Citizens must not suffer any reprisals for "QuiTam" Whistleblowing Title 31.

Homegrown Braham/Mora , Retired realestate entrepreneuer

If you have comments or suggestions, email me at: quitam@pioneerplanet.infi.net

1058 Summit/Box 4384
St. Paul, MN 55104-0384
telefax: 651-776-5835
cell: 651-274-5835

Hot Links Directory of Electronic Public Access:

http://www.pioneerplanet.infi.net/~quitam or http://mh102.infi.net/~quitam	SHARON QUITAM ANDERSON
http://www.uscourts.gov/PubAccess.html & http://www.ssa.gov	SOCIAL SECURITY
http://www.firstamendment.org	FIRST AMENDMENT PLEDGE
http://.atr.org	AMERICANS FOR TAX REFORM
http://www.barwood.com	Cand. Sec. State Ariz (MENTAL HEALTH ISSUES)
http://www.gunowners.org	GUN OWNERS OF AMERICA
http://www.mfc.org	MINNESOTA FAMILY INSTITUTE
http://www.angelfire.com/biz/spectrumimages	WEDDINGS - PORTRAITS

QUI TAM CONSTITUTIONAL ISSUES

McKenna & Cuneo, L.L.P.

Client Bulletin

Article III Standing Of *Qui Tam* Relators

In the continuing debate over the constitutionality of the *qui tam* provisions of the False Claims Act ("FCA"), another federal court of appeals has ruled that the *qui tam* provisions pass constitutional muster. In United States ex rel. Walsh v. General Electric Co., 41 F.3d 1032 (6th Cir. 1994), the Sixth Circuit Court of Appeals considered General Electric's ("GE") argument that the *qui tam* provisions violate the principle of separation of powers and the provisions of Article II's Appointments Clause. In rejecting GE's challenge, the Sixth Circuit stated that it was joining the Ninth Circuit's decision in United States ex rel. Kelly v. Boeing Co., 9 F.3d 743 (9th Cir. 1993), cert. denied, 114 S. Ct. 1125 (1994), which rejected a similar constitutional challenge. The Sixth Circuit thus becomes the third federal court of appeals, along with the Ninth and Second Circuits, (United States ex rel. Kreindler v. United Technologies Corp., 985 F.2d 1148 (2d Cir.), cert. denied, 113 S. Ct. 2962 (1993)), to uphold the constitutionality of the FCA *qui tam* provisions.

In another area of the law, however, the constitutionality of the *qui tam* mechanism was struck down. In Hall v. Tribal Dev. Corp., 38 F.3d 1442 (7th Cir. 1994), a case brought by two non-Indians under the *qui tam* provisions of the Indian Traders Licensing Agreement (ITLA), the Seventh Circuit affirmed the district court's decision that the relators lacked Article III standing to bring the suit. The Seventh Circuit determined that the relators, because of their non-Indian status, were not within the "zone of interests" covered by ITLA and thus had no standing to file suit. In so holding, the court rejected the relators' argument that, as *qui tam* relators, they are entitled to rely on the injury suffered by the federal government (acting as trustee of the Indians) for Article III purposes. The Seventh Circuit's holding in this case directly contravenes the considerable Article III jurisprudence in the *qui tam* area which holds that *qui tam* relators may rely on the government's injury for Article III purposes. Perhaps realizing the import of its decision in other areas, the Seventh Circuit has vacated its published opinion in Hall and ordered an en banc rehearing of the case.

State Immunity From *Qui Tam* Suits

In United States ex rel. Fine v. Chevron, U.S.A., Inc., 39 F.3d 957 (9th Cir. 1994), the Ninth Circuit Court of Appeals held that a state university is not entitled to immunity from a *qui tam* suit under the Eleventh Amendment. The Eleventh Amendment prohibits citizens from suing states in federal court, unless the state has waived its immunity, but does not prohibit the federal government from suing states. The Ninth Circuit held that because the United States is the real party in interest in *qui tam* litigation, the Eleventh Amendment provided the state university with no protection. The Ninth Circuit's holding helps to clarify a somewhat muddled area. The Fourth Circuit also has held that a state agency does not enjoy Eleventh Amendment immunity in the *qui tam* context. United States ex rel. Milam v. University of Texas M.D. Anderson Cancer Center, 961 F.2d 46 (4th Cir. 1992). However, the federal district court for the eastern district of Michigan held that a state university is entitled to Eleventh Amendment immunity from a *qui tam* suit, and that the FCA does not abrogate the state's sovereign immunity from citizen suits. United States ex rel. Moore v. University of Mich., 860 F. Supp. 400 (E.D. Mich. 1994). Implicit in the court's ruling is the assumption that individual relators are the real parties in interest in *qui tam* suits, and not the United States.

The conflict in these decisions is significant, since the question of who is the real party in interest in a *qui tam* suit impacts issues such as whether the government, as the real party in interest in a *qui tam* suit, must participate in party discovery.

Hatch names Judge Stanoch as one of top assistants

JACK B. COFFMAN STAFF WRITER

Attorney General-elect Mike Hatch named his top assistants today and they include a current district court judge who was once a political foe.

Hatch picked Hennepin County District Judge John Stanoch as chief deputy for public policy and criminal justice. Stanoch, assistant chief judge in the state's largest county, has served eight years on the district bench and was one of the final appointments by the late Gov. Rudy Perpich before he left office in early January of 1991. Stanoch was Perpich's campaign manager in 1990 when Hatch unsuccessfully challenged Perpich in the DFL gubernatorial primary.

``In an era where most lawyers relish the lifetime prestige and security of a judgeship, Judge Stanoch demonstrates unparalleled commitment to public service by resigning his judgeship to accept the appointment," Hatch said in a prepared statement.

Stanoch will not step down until after Gov.-elect Jesse Ventura is sworn in, a move that will provide the new governor with his first judicial appointment opportunity.

Also named to top posts in Hatch's office were Kristine Eiden, a law partner with Hatch for eight years who will be deputy attorney general specializing in regulatory matters and Alan Gilbert, a top figure in the administration of Attorney General Hubert H. [illegible] will retain his title of solicitor general and

Of his appointments, Hatch stated, ``One brings expertise in court administration, juvenile justice and criminal justice. Another brings expertise in administrative agency management and regulatory law. The third brings expertise in civil litigation and has an institutional knowledge of the office."

Hatch's statement indicated that his will be an activist administration.

``I believe the message of this election was one of personal empowerment," he said. ``People don't want 'government as usual', and they don't want institutions to be arrogant. They want their government to act on their [illegible]

St. Paul Truth-In-Sale of Housing Disclosure Report

(Carefully read this entire report)

Address

1058 Summit
Box 4384
St. Paul,
Min
55104-0389

SINGLE FAMILY - PRO
L-$ 275,000 S-
BR : 4 TBA: TB: 2 TR
TRM: FHA,VA,CON,CIN,C
MT : 9 OMD:
1058 SUMMI
MUN ST PA

IN THE
Supreme Court of the United States
OCTOBER TERM 1987

No. ______

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Right Rev. Sharon L. Anderson aka Scarrella, husband James R. Anderson, Intestate Decedent Bernice A. Peterson, and wife, Church of Justice Reform Inc. heirs and assigns,

APPELLANTS

Supreme Court, U.S.
FILED
JAN 9 1988
JOSEPH F. SPANIOL, JR.
CLERK

RECEIVED
AUG 18 1989
CLERK, U.S. DIST. C.
ST. PAUL, M.

United States of America, and Elliott agencies U.S. Attorney Eleanor Fauntner, Attorney Minnesota and all its agencies, State of Minnesota, political divisions, municipal corporations, TRUSTEES, Attorney General Hubert ESKIP. C Humphrey III, Richard S. Slowes, James Donnelly, wife Sharon F., former A.O. Thomas H. Jensen dba Foster & Jensen Commissioner of Taxation, Tom Triplet, Commissioner of Natural Resources, Joe Alexander, City of St. Paul, County of Ramsey and its County Attorney Tom Fo, Commissioner James Finley, Land Comm Commissioner Anthony J. Belter, Auditor Tom Kenna, District Court Judge Harold Land Records Tom C. Ostoff, Regist, John McLaughlin, 1st Grand Bank, Land (acct. 69-593-27) Sheila Hofland husband and wife, the ... John Doe and Mary Roe: ... APPELLE

INFO.

59

LIQUOR CONTROL DIVISION
190 5th St. E., St. Paul, MN 55101
(612) 296-6430 TDD (612) 297-2100

SEP 1 [illegible]

OFF-SALE INTOXICATING LIQUOR LICENSE APPLICATION OR THE RENEWAL OF AN OFF-SALE INTOXICATING LIQUOR LICENSE

APPLICATION TYPE — CHECK ONE
- [X] NEW OR TRANSFER - COMPLETE SECTIONS 1, 2, AND 4
- [ ] RENEWAL - COMPLETE SECTION 1, 3 AND 4

New 6135
CTAMBS
#58 45

6. RIC
8-31-95

For help or questions call 612-296-6430 or 612-296-6434 for application

Licensees must have a $20 Retailers Buyers Card renewable each year. New Licensees call 296-6181 or 1-800-657-3777 for information.

CENSREI'S SALES AND USE TAX ID NUMBER 4002630921 To apply for sales tax number call 296-6181 or 1-800-657-3777

If a corporation, an officer shall execute this application. If a partnership, a partner shall execute this application.

SECTION 1

Licensee Name (Individual, Corporation, Partnership) JAMES CURTIS MANTHEI 8/22/46	Trade Name or DBA MANTHEI'S
License Location (Street Address & Block No.) HCR 3 Box 70	License Period From 7-1-95 To 6-30-96
City HIBBING	State MN
Name of Store Manager	Business Phone Number 218 885 3535
If a corporation, state name, date of birth, address, title, and shares held by each officer. If a partnership, state names, address and date of birth of each partner. JAMES CURTIS MANTHEI	Applicant's Home Phone 885-3535
	Zip Code 55746
	Date of Birth (individual applicant) 8/22/46

INSURANCE MARKETING CENTER 14500 BURNHAVEN DRIVE SUITE 135
BURNSVILLE, MINNESOTA 55306-6199, PHONE 612/435-1606, FAX 612/435-1693
WATS 800/245-0023

CERTIFICATE OF INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES LISTED BELOW.

INSRD NAME: JIM MANTHEI DBA: MANTHEI'S
LIC HOLDER: JIM MANTHEI DBA MATHEI'S
INSRD ADD : ST RTE 3, BOX 70
INSRD CITY: HIBBING MN 55746

INSURANCE COMPANY AFFORDING COVERAGE
PARK GLEN NATIONAL INSURANCE COMPANY

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOT WITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES.

TYPE OF INSURANCE:	LIQUOR LIABILITY
POLICY NUMBER:	MNLL9[illegible]54
EFFECTIVE FROM:	06/16/9[illegible]
TO EXPIRATION DATE:	01/01/96

14 14

LIABILITY LIMITS:
$ 500,000 BODILY INJURY EACH PERSON, $ 500,000 EACH COMMON CAUSE
$ 500,000 PROPERTY DAMAGE EACH COMMON CAUSE
OR WRONGFUL DEATH OR SUPPORT EACH PERSON, $ 500,000 EACH COMMON CAUSE

Sharon Anderson's , Homepage

MINNESOTA ATTORNEY GENERAL
VOTE SHARON QUITAM ANDERSON'
QuiTam "who sues on behalf of the king as well as for himself" is a provision of the Federal Civil False Claims Act , allows private citizen's to file suit as private attorney general, attorney pro se in the name of the U.S. Government.

NOTICE OF ELECTION CONTEST
Sept. 15th,1998 Primary
CONSTITUTIONAL CHALLENGE MS2.724-INDICTMENTS
Based upon MS211B.16 County attorneys to prosecute, convene Grand Jury re: Published web site www.pioneerplanet.infi.net/~quitam, titled:
State of Minnesota thro Hubert Humphrey AG-Plaintiff
Sharon QuiTam Anderson QuiTam Contestant-Relator
vs.
Charles Weaver,Michael Hatch, Chief Justice Kathleen Blatz MS.2.724, Sec.of State Growe,Judges Anderson,Finley, Campbell, Republican Party, CEO Bill Cooper et al.
That Serious,deliberate,material issues of election fraud, for 22 yrs re: Scarrella for Associate Judges 221NW2d562, disenfranching the non- lawyer for elective judgships is contrary to the commerce full faith credit clause of the State & Federal Constitutions.Minnesota Constitution Art. III SEPARATION OF POWERS DOCTRINE

The Vote Fraud in the State of Minnesota must certify, Original Jurisdiction of the United State Supreme Court with Oversight by Congress..
Under the Penality of Perjury Sharon has been denied the First Amendment to Petition, Free Speech for 30 years. Now Closure is Demanded

SAMPLE BALLOT

STATE PARTISAN PRIMARY BALLOT
RAMSEY COUNTY, MINNESOTA
SEPTEMBER 15, 1998

INSTRUCTIONS TO VOTERS
MINNESCTA ELECTION LAW PERMITS YOU TO VOTE FOR THE CANDIDATES OF ONLY ONE POLITICAL PARTY IN A STATE PARTISAN PRIMARY ELECTION.

TO VOTE, COMPLETE THE ARROW(S) POINTING TO YOUR CHOICE(S) LIKE THIS: ←

DEMOCRATIC-FARMER-LABOR PARTY

FEDERAL OFFICES

UNITED STATES REPRESENTATIVE DISTRICT 4 (VOTE FOR ONE)

BRUCE F. VENTO

STATE OFFICES

STATE REPRESENTATIVE

* SEE LISTING *

GOVERNOR AND LIEUTENANT GOVERNOR (VOTE FOR ONE TEAM)

MARK DAYTON and JULIE JANSEN

MIKE FREEMAN and RUTH JOHNSON

HUBERT H. "SKIP" HUMPHREY III and ROGER D. MOE

DOUG JOHNSON and TOM FOLEY

TED MONDALE and DEANNA WIENER

OLE SAVIOR and RON MOSENG

SECRETARY OF STATE (VOTE FOR ONE)

"DICK" FRANSON

EDWINA GARCIA

GREGG A. IVERSON

JEN MATTSON

STATE AUDITOR (VOTE FOR ONE)

JIM HANSEN

NANCY A. LARSON

DONALD M. MOE

STATE TREASURER (VOTE FOR ONE)

JOHN A. FRANZEN

CAROL JOHNSON

ROBERT R. (BOB) JOHNSON

BETSY O'BERRY

ATTORNEY GENERAL (VOTE FOR ONE)

MIKE HATCH

EMBER REICHGOTT JUNGE

DAVID LILLEHAUG

SAMPLE BALLOT

TO VOTE, COMPLETE THE ARROW(S) POINTING TO YOUR CHOICE(S) LIKE THIS: ←

REPUBLICAN PARTY

FEDERAL OFFICES

UNITED STATES REPRESENTATIVE DISTRICT 4 (VOTE FOR ONE)

DENNIS R. NEWINSKI

STATE OFFICES

STATE REPRESENTATIVE

* SEE LISTING *

GOVERNOR AND LIEUTENANT GOVERNOR (VOTE FOR ONE TEAM)

NORM COLEMAN and GEN OLSON

BILL DAHN and JAMES R. KANE SR.

SECRETARY OF STATE (VOTE FOR ONE)

MARY KIFFMEYER

DON KOENIG

STATE AUDITOR (VOTE FOR ONE)

JUDI DUTCHER

STATE TREASURER (VOTE FOR ONE)

DAVID ARTHUR PEARLY ANDERSON

JUAL C. CARLSON

KEVIN KNIGHT

JOAN SIERS

ATTORNEY GENERAL (VOTE FOR ONE)

SHARON ANDERSON

CHARLIE WEAVER

SAMPLE BALLOT

TO VOTE, COMPLETE THE ARROW(S) POINTING TO YOUR CHOICE(S) LIKE THIS: ←

REFORM PARTY

STATE OFFICES

STATE REPRESENTATIVE DISTRICT 52B (VOTE FOR ONE)

WILLIAM HELGESON

STATE REPRESENTATIVE DISTRICT 67A (VOTE FOR ONE)

ANDY LAMOTTE

GOVERNOR AND LIEUTENANT GOVERNOR (VOTE FOR ONE TEAM)

JESSE VENTURA and MAE SCHUNK

SECRETARY OF STATE (VOTE FOR ONE)

ALAN SHILEPSKY

STATE TREASURER (VOTE FOR ONE)

JAMES N. (JIM) DUNLOP

ATTORNEY GENERAL (VOTE FOR ONE)

JIM MANGAN

SAMPLE BALLOT

Proof Ballot - do not use to vote in an official election

VOTE FRONT AND BACK SIDES OF BALLOT

The State of Minnesota
and
Blue Cross/Blue Shield of Minnesota
vs.
Philip Morris Inc., et al

Case File #62-C1-94-008565

Orders Filed as of December 18, 1997

CLAD #	Description	Filing Date
	The CLAD numbers listed below are based on the electronic filing system used in this case.	
	MINNEAPOLIS DOCUMENT DEPOSITORY LEASE TERM, ADMINISTRATOR, SECURITY AND ALLOCATION OF COSTS.	September 27, 1995
	PROPOSED ORDER AMENDING THE TECHNOLOGY ORDER, CONVENTIONAL FILING WITH THE CLERKS'S OFFICE	
	PARTIES AGREEMENT FOR CONVENTIONAL/EL[illegible]	
	SO ORDERED, 10/9/95 [illegible]	
		1996
	[illegible] WITH RESPECT TO	February 20, 1996
	[illegible] AGEMENT ORDER WITH RESPECT TO DOCUMENT [illegible] DATION, AND FACT DEPOSITIONS	March 20, 1996
	[illegible] ORDER REFERING TO CLAD DOCKET NUMBER 322	March 22, 1996
	[illegible] TO PROTECTIVE ORDER FOR HIGHLY SENSITIVE MATERIAL OR [illegible]	June 4, 1996
	[illegible] STIPULATED ORDER RELATING TO PREDESIGNATION OF DEPOSITION [illegible]	June 7, 1996
	[illegible] WITH RESPECT TO DOCUMENT PRODUCTION BY B.A.T. INDUSTRIES, P.L.C.	June 7, 1996
	[illegible] ORDER REGARDING INDICES	June 7, 1996
	[illegible] CLAD DOCKET NUMBER 428.	June 11, 1996

1. Summary and request for oral argument or waiver.

COMES NOW, Appellants as "directly injured parties" with standing , injury in-fact by and thro the 1.duty,2.Breach of duty,3. proximate cause, 4. suffer, comes to the 8th Circuit by way of the United States Constitution Annotations to June 30

PEROT 96 CAMPAIGN ORGANIZATION FILES SUIT AGAINST CLINTON & DOLE CAMPAIGNS, GOP, DEMS AND FEC

November 5, 1997

REFORM PARTY
P.O. Box 9
Dallas, Texas 75221
Phone (972) 450-8800 Fax (972) 450-8821

Although the Democratic and Republican nominees for the 1996 Presidential race will not be selected until this summer, current advertising expenditures by the two national parties are no less contributions to the campaign of the respective front-runners than those that will be made in the fall.

**U.S.Supreme Court Justice
John Paul Stevens, in
Colorado Republican Federal
Campaign Committee v. FEC**

SAN FRANCISCO, CA- In a prepared statement, Perot '96 Campaign Chairman Russell J. Verney today stated:

"Perot '96 is filing suit today against the campaign of President Bill Clinton and Vice President Al Gore, and against the Presidential Campaign of Senator Bob Dole and Congressman Jack Kemp. We are also suing the National and California Democratic and Republican Parties and the Federal Election Commission (FEC), to set right what we believe are massive violations of campaign finance law by the two major parties and their candidates, and to see that these violations are not repeated.

"The only recourse for citizens provided by Congress in the Federal Election Campaign Act (FECA) against campaign finance violations affecting citizens' Constitutional rights - such as when a political party funnels money beyond legal limits to its Presidential candidate's campaign, as we believe occurred in 1996-is to complain to the FEC. But the FEC is controlled by 6 commissioners, all of whom have always been Republicans or Democrats, and all of whom are chosen, we believe, because they are Republicans or Democrats. In our opinion, history shows that because of the bipartisan structure, the FEC cannot and will not act against wrongdoing by Republicans and Democrats. Typically, the FEC does nothing to solve even small matters, much less critical matters such as ours.

State of Minnesota

SECRETARY OF STATE

PUBLIC DISCLOSURE BOARD

We, the undersigned legally constituted State Canvassing Board, as required by law, canvassed on September 22, 1998, the certified copies of the statements made by the County Canvassing Boards of the votes cast at the September 15, 1998 State Primary Election for nomination for United States Representative, State Representative, State Constitutional Offices, and Supreme Court Associate Justice. We have specified in the following report the names of persons receiving such votes and the number received by each in the several counties in which they were cast. The candidate in each case who received the highest number of votes is hereby declared to be the nominee.

Joan Anderson Growe
Joan Anderson Growe
Secretary of State

Kathleen A. Blatz
Kathleen A. Blatz, Chief Justice of the Supreme Court

Paul H. Anderson
Paul H. Anderson, Associate Justice of the Supreme Court

John T. Finley
John T. Finley, Judge of the District Court, Second District

James M. Campbell
James M. Campbell, Judge of the District Court, Second District

B

State of Minnesota

SECRETARY OF STATE

We, the undersigned legally constituted State Canvassing Board, as required by law, canvassed on November 17, 1998, the certified copies of the statements made by the County Canvassing Boards of the votes cast at the November 3, 1998 General Election for United States Representative, State Representative, Constitutional Officers, Constitutional Amendments and State Judicial Offices. We have specified in the following report the names of persons receiving such votes and the number received by each in the several counties in which they were cast. The candidate in each case who received the highest number of votes is hereby declared to be elected.

Joan Anderson Growe
Secretary of State

Edward C. Stringer, Associate Justice of the Supreme Court

James H. Gilbert, Associate Justice of the Supreme Court

Daniel H. Mabley, Judge of the District Court, Fourth District

Phillip D. Bush, Judge of the District Court, Fourth District

Skip Humphrey and the Criminal Abuse of Power

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by Philip Valenti
and a New Federalist Investigative Team

Updated with new information, including Appendix on the Humphrey Institute & OBE

January 1994

SHARON ANDERSON

MINNESOTA'S ATTORNEY GENERAL
VOTE SHARON ANDERSON

TAXPAYERS PROTECTION PLEDGE
"I SHARON "QUITAM" ANDERSON, PLEDGE TO THE TAXPAYERS/VOTERS OF THE STATE OF MINNESOTA THAT I WILL OPPOSE & CONSTITUTIONALY VETO ANY & ALL EFFORTS TO INCREASE TAXES.

Mission Statement
Sherman Anti-Trust "Monopolize Conspire" Title 15 U.S.C.mandates Licensed Lawyers be tried for Felony....Minn.Const.III Separation of Powers Doctrine.

OPEN LETTER
Title 18sec.1951 RICO, Interference with commerce, mandates tobacco settlem to the citizenery, Sharon is constitution the only certified sane/qualified candidat Repeal of MS 518 No Fault Divorce, repeal Crim Rules 20.01 & 02 & MS 2.724 commerc by Judicial Fiat. Take the Grand Jury away from the County Attorney MS388
I AM NOT A LAWYER, LIAR, MINNESOTA HOMEGROWN. I LOVE YOU MINNESOTA

1058 Summit/Box4384
St. Paul, Minn. 55104-0384
651-776-5835 cell: 651-274-5835
quitam@pioneerplanet.infi.net
www.pioneerplanet.infi.net/~q

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