

JUSTICE YETKA

No. 81-300

STATE OF MINNESOTA

IN SUPREME COURT

In Re

Modification of Canon 3A(7) of the
Minnesota Code of Judicial Conduct

WCCO Radio, Inc.; WCCO Television Inc.;
WCCO FM, Inc.; WTCN Television, Inc.;
United Television, Inc.-KMSP-TV; KTTC
Television, Inc.; Hubbard Broadcasting,
Inc.; Northwest Publications, Inc.;
Minneapolis Star and Tribune Company;
Minnesota Public Radio, Inc.; Twin
Cities Public Television, Inc.;
Minnesota Broadcasters Association;
Minnesota Newspaper Association;
Radio and Television News Directors
Association, Minnesota Chapter; and
Sigma Delta Chi/Society of Professional
Journalists, Minnesota Chapter,

Petitioners.

PETITIONERS'
BRIEF IN SUPPORT
OF THE APPOINT-
MENT OF A
COMMISSION AND
THE ISSUANCE OF
RULES OF PRACTICE

I. INTRODUCTION.

On March 18, 1981, WCCO Radio, Inc., WCCO Television Inc. and
WCCO FM, Inc. (WCCO), along with twelve other broadcast,
newspaper and journalism entities petitioned this Court to
allow broadcast and photographic coverage of the courts of
Minnesota. On July 14, 1981, this Court issued an Order to
Show Cause why it should not appoint a three-member
Commission to hold hearings on the media's petition and issue
findings and recommendations based on those hearings. The

1 Court also publicized proposed rules of practice before the
2 Commission.

3
4 WCCO and its co-petitioners support the Court's intention to
5 appoint a Commission to study their petition. This Court has
6 jurisdiction to appoint such a Commission. The Commission
7 will provide an efficient forum to study whether the media
8 may cover events in Minnesota courts.

9
10 II. THIS COURT HAS THE NECESSARY POWER TO APPOINT A
COMMISSION.

11 It cannot be disputed that petitioners in this case have the
12 right to petition for a modification of Canon 3A(7) of the
13 Minnesota Code of Judicial Conduct, nor can it be disputed
14 that the Supreme Court of Minnesota is the proper body to
15 consider such a petition.

16
17 Minnesota law vests the Minnesota Supreme Court with the
18 power to adopt rules of practice and procedure for
19 Minnesota's courts. Pursuant to Minn.Stat. §§480.051 and
20 480.059, the Supreme Court of Minnesota has "...the power to
21 regulate the pleadings, practice, procedure and the forms
22 thereof in civil actions in all courts of this state, other
23 than the probate courts..." and "...in criminal actions in
24 all courts of this state..." The Supreme Court specifically
25 noted that it had such power in Smith v. Valentine, 19 Minn.

1 452 (1873). Aside from an opinion of the state Attorney
2 General, interpreting the right of municipal courts to adopt
3 rules not in conflict with the Supreme Court's rules, Op.
4 Atty. Gen. 306A, the power of the Supreme Court to adopt
5 rules for all courts of this state has never been questioned
6 or challenged.

7
8 Minnesota law also provides a means by which changes can be
9 made to existing rules of practice and procedure in the
10 district, county and county municipal courts. Minn.Stat.
11 §480.054 provides that any person can file a petition with
12 the Supreme Court "specifying their suggestions concerning
13 any existing or proposed rule and request a hearing thereon."
14 The Supreme Court must grant a hearing within six months of
15 the filing of the petition if the petitioner is one of the
16 judges' associations and may grant a hearing if the
17 petitioner is not a judges' association.

18
19 The Minnesota Code of Judicial Conduct, adopted by the
20 Supreme Court in 1974, is a set of provisions which, among
21 other things, regulates the practice and procedure in the
22 state's courts. The Supreme Court had the statutory power to
23 adopt this Code, and the Supreme Court has the statutory
24 power to amend it. At the same time, the petitioners in this
25 case have a statutory right to petition the Supreme Court
26 suggesting changes in that Code.

1 Whether to adopt a proposed change in a rule of practice or
2 procedure is strictly a decision for the Supreme Court,
3 although the bench and bar may have some input into the
4 Supreme Court's decision. Minn.Stat. §480.054 states that
5 "before any rule for the district or municipal courts is
6 adopted, the Supreme Court shall distribute copies of the
7 proposed rule to the bench and bar of the state for their
8 consideration and suggestions and give due consideration to
9 such suggestions as they may submit..."

10
11 Copies of the petitioners' modification to Canon 3A(7) have
12 already been distributed to various legal and judicial
13 groups in the state, including the Minnesota State Bar
14 Association, the District Court Judges Association, the
15 Municipal Court Judges Association, the County Court Judges
16 Association, and the Minnesota Trial Lawyers Association.
17 All of these groups will have an opportunity to present their
18 comments and suggestions to the Commission which the Supreme
19 Court proposes to appoint to study. Should this Court
20 desire, those parties may also appear before it after the
21 Commission renders its report.

22
23 III. THE PROPOSED COMMISSION AND ITS RULES OF PRACTICE
24 PROVIDE AN EFFICIENT MEANS TO STUDY THE USE OF
BROADCAST AND PHOTOGRAPHIC EQUIPMENT IN MINNESOTA'S
COURTS.

25 This Court's Order to Show Cause dated July 14, 1981, in
26
27

1 proposing the appointment of a three-member Commission and
2 proposing to establish rules of practice before that
3 Commission, presents the most expeditious, efficient and
4 economic way of studying the issue of access of cameras and
5 broadcast technology to the Minnesota courts.
6

7 A. The Appointment of the Proposed
8 Commission Will Expedite This
9 Court's Study of The Relevant
10 Issues.

11 As previously stated, it is within the inherent power of the
12 Supreme Court to grant or deny the petition seeking an
13 amendment of Canon 3A(7). However, it would be burdensome to
14 this Court to ask it to review the literature now being
15 developed on the question of technological access to the
16 courts, and it would be exceedingly time consuming for the
17 entire Court to hear the testimony of those witnesses who may
18 have evidence to present to a factfinder.

19 The three-member Commission as proposed by the Supreme Court
20 will be able to expend the time necessary for a full airing of
21 the views of those people interested in the issues raised by
22 this petition. The Commissioners have no personal interest
23 or stake in the matter, and will not be responsible for the
24 final decision. Their study will be thoughtful and
25 extensive.
26
27
28

1 At the same time, the Minnesota Supreme Court does not
2 abdicate its authority by appointing the Commission. The
3 proposed rules of practice specifically provide for the
4 preparation of findings and recommendations by the
5 Commission. Presuming that the parties will have access to
6 the Supreme Court at a hearing on those findings and
7 recommendations, the Court will be fully apprised of the
8 matters aired during the hearing, will receive input from
9 interested parties, and will be able to make its decision
10 based on its review of those findings and recommendations.

11
12 B. The Proposed Rules of Practice Provide
13 For An Efficient Determination of This
Question, And Should Be Adopted.

14 The proposed rules of practice appended to the Order to Show
15 Cause dated July 14, 1981 are meant to secure the "just,
16 speedy and inexpensive determination" of the issues involved
17 in the petition now filed before this Court.

18
19 1. Rule 4-Establishment of an Agenda.

20 Rule 4 requires a conference of the Commission and all
21 interested parties to establish a final agenda and witness
22 list prior to the Commission hearings. Such a conference
23 will significantly decrease the actual time involved in
24 hearings, will limit the redundancy of evidence presented to
25 the Commission and will insure the full participation and
26 preparation by all parties. Conflicts will be resolved prior
27

1 to the hearing, since there is a right to an immediate
2 appeal. The efficiency of this process is obvious.

3
4 2. Rule 5-Expenses of the Commission.

5 The creation of a budget to be funded by the petitioners is
6 unusual. However, in the context of the other proposed rules
7 of practice, Rule 5 will assure that this budget is
8 economically used. An appropriate sum will first be reserved
9 to pay for those expenses which the Commission believes are
10 necessary to an adequate study of this matter. Thus, the
11 public interest aspect of the petition now before the Court
12 will be fully aired. Presuming that those expenses are
13 reserved at the time of the establishment of a final agenda,
14 available funds will be efficiently used to insure that
15 necessary testimony is brought before the Commission.

16
17 If petitioners and the opponents of this petition do not
18 believe that the issues are fully explored through the
19 witnesses called by the Commission, they both have access to
20 equal resources. Thus, a fair and equitable exploration of
21 the issues is contemplated. And, since the funds available
22 are limited, an economical presentation of evidence is
23 assured. There will be no spiraling escalation of expenses
24 or the number of witnesses to be presented to the Commission.

1 economical set of hearings. Before it makes its final
2 decision, this Court will have the full benefit of these
3 proceedings.

4
5 Petitioners respectfully request that this Court appoint the
6 members of The Minnesota Advisory Commission on Cameras in
7 the Courtroom, to be governed by the rules of practice
8 attached to the Court's Order dated July 14, 1981.

9
10 Dated: July 31, 1981

Respectfully submitted,

11 OPPENHEIMER, WOLFF, FOSTER,
12 SHEPARD AND DONNELLY

13 /s/ Paul R. Hannah

14 By _____

15 Paul R. Hannah
16 Catherine A. Cella
17 1700 First Bank Building
18 Saint Paul, Minnesota 55101
19 (612) 227-7271
20 ATTORNEYS FOR PETITIONERS
21
22
23
24
25
26
27