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FORMERLY
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WALTER V. DORLE
OF COUNSEL

May 28, 1974

The Honorable Robert J. Sheran
Chief Justice
Minnesota Supreme Court
Federal Building, Room 760
316 North Robert Street
St. Paul, Minnesota 55101

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

Dear Chief Justice Sheran:

The Court Rules Committee of the Minnesota State Bar Association on May 4, 1974 discussed proposed amendments to the Rules of Civil Procedure and the minutes of that meeting reflect the recommendations of the Committee concerning changes to be made in the amendments as proposed by the Minnesota Supreme Court Advisory Committee. I understand the recommendations of the Court Rules Committee have been approved by the Board of Governors of the Minnesota State Bar Association and that B. C. Hart, Chairman of the Court Rules Committee, will file a copy of the minutes of the May 4, 1974 meeting with the Supreme Court and that Chairman Hart has asked Wright Brooks, Greer Lockhart and myself to join him in presenting to the Court the recommendations of the State Bar Association.

Specifically I have been asked to comment upon amendments to Rules 36.01, 37.02(2), 37.03 and 37.04. These suggestions and comments concerning amendments to those Rules are enclosed.

On behalf of the Court Rules Committee of the Minnesota State Bar Association, I respectfully request to be heard on these suggestions and comments at the hearing on June 7, 1974.

Respectfully yours,

Ronald E. Martell

REM/jl
Enclosure
cc: John McCarthy
B. C. Hart
Wright Brooks
Greer Lockhart
James L. Hetland, Jr.

MINNESOTA SUPREME COURT
PROPOSED AMENDMENTS TO RULES OF CIVIL PROCEDURE
FOR DISTRICT AND MUNICIPAL COURTS
SUGGESTIONS AND COMMENTS CONCERNING
RULES 36.01, 37.02(2), 37.03 and 37.04

The changes which the Bar Association recommends being made in the proposals of the Advisory Committee with respect to Rules 36.01, 37.02(2), 37.03 and 37.04 are that requests for admissions and sanctions for failure to make admissions under Rules 36.01 and 37.03 should be limited to matters of fact and further that sanctions for failure to make discovery under Rules 37.02(2) and 37.04 should also include sanctions for the failure of an employee as well as the failure of an officer, director or managing agent of a party.

The text of the changes as proposed by the Bar Association appear in the minutes of the meeting of the Court Rules Committee of the Minnesota State Bar Association of May 4, 1974 and will not be repeated here.

ADMISSIONS

The Bar Association recommends that requests for admissions under Rule 36 be limited to matters of fact and the genuineness of any relevant documents as is the practice under Rule 36 presently in force in the State of Minnesota. The Advisory Committee recommends broadening the scope of admissions to include matters of opinion, conclusion and mixed questions of law and fact.

In the report of the Court Rules Committee presented to the 1971 Convention of the Minnesota State Bar Association, the Committee explained its reasoning as follows:

> "As Hetland and Adamson have observed in 2 Minnesota Practice, b. 85(A70) 'Rule 36 is not a typical discovery device in the sense of attempting to elicit fact information, but is a pre-trial device designed primarily to simplify the trial by permitting one party to determine what facts and what instruments will in fact be controverted at the time of trial.' It seems more desirable to have Rule 36 parallel the language of Rule 16 [Pre-trial Procedure; Formulating Issue] whereby the court may consider:
>
> '***
>
> '(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.'
>
> "Since the intent of Rule 36.02 is to make the admissions a judicial admission the same as the allegations of a pleading, there seems less reason to broaden the scope of the Rule to include all matters which, if revealed by other discovery methods, would be considered only evidentiary admissions. Such a fundamental change in the scope of matters subject to requests for admission should be considered as a part of changes in pleading requirements or in pre-trial procedures and not as an amendment to follow the scope of discovery rules.
>
> "Further, the sanction under Rule 37.03 for failure to make an admission may result in the award of attorney's fees to the prevailing party at trial. There is little dispute over the award of attorney's fees as a sanction for the failure to admit a fact or the genuineness of a document which is not subject to substantial controversy. If extensive use of Rule 36 were made by all parties seeking requests of all possible facts, opinions and mixed questions of law and fact, such could well lead to the more frequent award of attorney's fees to prevailing parties than currently is the case.
>
> "While this fundamental change in philosophy may be desirable, our present practice of not awarding attorney's fees to the prevailing party permits easy access to our courts. Such a change, if desired, should be made with a full appreciation of the social significance of a shift in philosophy and

not be considered simply as a change in the scope of matters subject to requests for admission. While statutory causes of action under non-diversity jurisdiction or statutory provisions of different states in diversity cases may make the award of attorney's fees more equitable in federal courts, our practice has not favored this result.

"Retaining the present scope of matters subject to requests for admissions will not hamper legitimate discovery since Rule 33 interrogatories may be served seeking the same information which will give rise to evidentiary admissions but will not give rise to the possibility of the award of attorney's fees at trial as a sanction."

The Bar Association believes that the fundamental differences between requests for admissions and the other discovery devices, including the sanctions that would be imposed for a failure to admit, justify limiting requests for admissions to matters of fact and genuineness of documents while still preserving an expanded scope of discovery under other procedures to permit inquiry into opinions, conclusions and mixed questions of law and fact.

SANCTIONS FOR FAILURE OF EMPLOYEES TO MAKE DISCOVERY

The Bar Association recommends that sanctions for failure to make discovery be equally available against employees of a party as it is against officers or managing agents of those parties. Accordingly it is recommended that the word "employee" be inserted after the word "director" in the first sentence of Rule 37.02(2) and Rule 37.04. The Bar Association believes this change to be warranted and desirable and should help free the trial court from the type of controversy presented in cases such as Alsleben v. Oliver Corporation, 254 Minn. 197, 94 N.W. 2nd 354 (1959); Hemze v. County of Wrenville, 255 Minn. 115, 95 N.W. 2nd 596 (1959); and the cases cited in each of those decisions.

Respectfully submitted,

Ronald E. Martell

Comments to proposed Rule changes for Civil Procedure C6-84-2134

MINUTES OF THE MEETING
OF THE COURT RULES COMMITTEE
MINNESOTA BAR ASSOCIATION
MAY 4, 1974

A meeting of the Court Rules Committee of the Minnesota State Bar Association was held on May 4, 1974 at 9:00 a.m. at the Minneapolis Athletic Club. The meeting was called to order by Chairman B. C. Hart with the following members present Ron Martell, Wright Brooks, Neal Lano, Gary Leonard, John Norton, Marvin Lundquist, Richard Mahoney, Bob Stone, Randall Berkland, Harold D. Field, Jr., John Killen, Bob Bowen, Charlie Hvass, Richard Allen, Bill Green, James Baillie, Bob Holtze, Solly Robins, Allan Saeks, Greer Lockhart and G. Marc Whitehead.

After calling the meeting to order Chairman Hart reviewed the work of the Court Rules Committee under the chairmanship of Greer Lockhart following the adoption in July of 1970 of the Federal Courts of new discovery rules. The Court Rules Committee studied those rules and submitted its report to the Minnesota State Bar Association Convention recommending certain changes in the discovery rules and requesting adoption of the report.

The Minnesota State Bar Association at its 87th Annual Convention in St. Paul in June of 1971 adopted the report.

Chairman Hart reported that in October of 1973 the Minnesota Supreme Court Advisory Committee submitted its report to the Supreme Court recommending changes in the Rules of Civil Procedure and in certain cases the Supreme Court Advisory Committee chose not to accept the recommended change adopted by the Minnesota State Bar Association. Prior to the meeting on May 4th, Chairman Hart had requested subcommittees of three members each review a part of the proposed Supreme Court Advisory Committee Report and recommend adoption of the change suggested by the Supreme Court Advisory Committee or adherence to the action of the Minnesota State Bar Association.

The full Committee discussed each proposed amendment. In those cases where the amendment proposed by the Supreme Court Advisory Committee is identical to the amendment recommended by the State Bar Association and in those cases where the Court Rules Committee believed that the Supreme Court Advisory Committee had suggested a more desirable amendment than had the Minnesota State Bar Association and concurred in it, no specific mention will be made in these minutes. Hereafter follow the recommendations of the Court Rules Committee to the Board of Governors of the Minnesota State Bar Association with respect to proposed amendments to the Rules of Civil Procedure wherein the Court Rules Committee believes that the action taken by the Minnesota

State Bar Association in 1971 including certain modifications set forth are preferable to the recommendations of the Supreme Court Advisory Committee. The following recommendations were all adopted by motion duly made, seconded and carried by majority vote. Special directions to the Secretary also appear.

It was moved, seconded and carried that the second sentence of the second paragraph of Rule 26.02(3) be amended by inserting the words "or a party," so that the same shall read "***upon request, a person not a party, or a party, may obtain without the required showing a statement concerning the action or its subject matter previously made by that person who is not a party." The Secretary was instructed to record a unanimous vote in favor of such change. The Committee unanimously and steadfastly believed that the Rules should be clear that a party has a right to obtain a statement made by a non-party witness. The alternative would be for the party who does not have the statement to contact the witness directly and have the witness request a copy of the statement. If the party in possession of the statement then refused, a motion would be necessary which would be routinely granted.

Upon motion duly made, seconded and carried, the Committee proposed to delete from Rule 30.02(3) the words "upon ex-party motion" so that the same shall read "for cause shown the Court may change the time at which a deposition will be taken." The primary reason for the proposed change is to permit the party noticing a deposition to have an equal opportunity to explain to the Court why a deposition was set at a particular time. The Committee believed that provisions of the Rules which permit shortening the notice upon which a motion can be made will permit both parties to explain their position to the Court before a change is made in a time set in a notice of taking deposition.

Upon motion duly made and carried, the Committee adopted rejecting the proposed language of Rule 30.02(4) suggested by the Supreme Court Advisory Committee and replacing it with the language adopted by the Minnesota State Bar Association as follows:

> "(4) The court may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense."

The Supreme Court Advisory Committee would make mandatory the taking of a stenographic transcript in all cases where some other method of recording a deposition could have been agreed upon either by stipulation or by order; thus, of course,

increasing the cost in all cases even though the primary reason for using a different method may have been to reduce the cost. Further, of course, a stenographic transcription can be made at any time of a videotape recording or even of a tape recording if care is taken in the manner of the recording. Further, the proposal of the Minnesota State Bar Association nonetheless makes it clear a party may have a deposition stenographically recorded and transcribed at his own expense if that is the party's wish.

By motion duly made, seconded and carried, the Committee moved that the proposed amendment to Rule 30.02(5) be deleted and that the following language adopted by the Minnesota State Bar Association be inserted:

> "The notice to a party deponent may include or be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request."

The Committee believed that the ten day or less requirement of the proposal of the Advisory Committee would become unworkable in practice and might trigger the automatic service of objections to production of documents in cases where the major problem would simply be a time problem of permitting location and review of the documents. The Committee further believes that in those cases where the documents could be produced in less than thirty days permitting depositions to be taken sooner counsel can agree to such procedure. The experience of many members of the Committee indicates that trying cases on behalf of non-resident parties would simply not permit a considered response within ten days since normally documents requested from a party far exceed documents requested from a non-party pursuant to a Rule 45 subpoena.

Upon motion duly made, seconded and carried, it was recommended to delete the amendment to Rule 30.03 as proposed by the Supreme Court Advisory Committee and to insert instead therein the amendment adopted by the Minnesota State Bar Association as follows:

> "30.03 Examination and Cross-Examination; Record of Examination; Oath; Objections.
>
> "Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 43.02. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by some one acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision 30.02(4) of this rule. and If requested by one of the parties, the testimony shall be transcribed. ~~unless the parties agree otherwise.~~

"All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties ~~served with notice of taking a deposition~~ may transmit serve written ~~interrogatories~~ questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim."

Primarily the action was taken to insure the complete understanding of all concerned that the status of a witness should be determined as of the time of the taking of the deposition as is recognized in Rule 32.03 and that parties should not have to wait until the time of trial to determine whether questions would be permitted under Rule 43.03. Further, the Committee previously acted to delete the requirement of stenographic recordings which the Advisory Committee had recommended.

Upon motion duly made, seconded and carried, it was recommended that the last sentence of the first paragraph of Rule 30.06(1) be amended by reinstating the phrase "or, if the deposition was taken under Rule 32.04 to an arbitrator" so that the same shall read:

"The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then place the deposition in an envelope endorsed with the title of the action and marked 'Deposition of (here insert the name of witness)' and shall promptly deliver or mail it to the clerk of the court in which the action is pending, or, if the deposition was taken under Rule 32.04 to an arbitrator."

The Committee, as will be mentioned in the comment to the change proposed in Rule 32.04, believes that present practice with respect to taking of depositions in arbitrations should not be changed at this time inasmuch as procedures under No-Fault Insurance will require attention to resolve proper procedure for discovery in arbitration matters.

Upon motion duly made, seconded and carried, it was recommended that Rule 32.01(2) as recommended by the Advisory Committee be amended to insert the word "employee" so that the same shall read:

"(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, employee or managing agent or a person designated under Rule 30.02(6) or 31.01 to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose."

The change was made primarily to recognize the fact that in discovery procedures Minnesota has traditionally treated an employee of a party the same as an officer, director or managing agent. In Minnesota the Bar has been able to eliminate the vexatious type of motion that has occurred elsewhere seeking to determine whether a given employee was "a managing agent" or not. The Committee noted that the Bar feels strongly that employees of an adverse party should all be treated the same irrespective of whether they would be regarded officers, managing agents or employees.

The Committee further noted that at various points in the proposed amendments the Advisory Committee had in some cases e.g. Rule 32.01(2) used the "a public or private corporation, partnership or association or governmental agency" while elsewhere e.g. Rule 33.01(4) had used the phrase "the state or a corporation or a partnership or an association" and by motion duly made, seconded and carried it was recommended that wherever such language appears it be made uniform in the following language:

"The state, political subdivision, governmental agency, public or private corporation, partnership or association."

By motion duly made, seconded and carried, the Committee recommended renumbering Rule 32.04 as numbered by the Advisory Committee Rule 32.05 and inserting as Rule 32.04 the Rule as recommended by the Minnesota State Bar Association in the following form:

"32.04 Depositions in Arbitration.

"The deposition of a witness whose testimony is wanted for use as evidence in a controversy submitted to arbitrators may be taken if the witness is at a greater distance than 100 miles from the place of hearing, or is about to go out of the state, not intending to return in time for the hearing, or is unable to attend or testify because of age, sickness, or infirmity. The deposition shall be taken in accordance with Rules 27.01, 27.03, 27.05, 27.06, 28, 29, 32.04(4) and 32.02. Rules 37.01 and 37.02 shall likewise apply to the taking of such depositions insofar as the provisions thereof are applicable. The attendance of witnesses may be compelled by use of subpoena as provided in Rule 45. By leave of court, the deposition of a person confined in prison may be taken on such terms as the court prescribes."

The Committee believed that no change should be made in the Rules of Civil Procedure at this time that might be deemed to be of significance with respect to limited discovery in arbitration matters particularly in view of arbitration requirements for proposed no-fault insurance procedures. The Committee believes it would be preferable to have a specific study made of discovery in arbitration procedures and to determine what, if any, reference to discovery in arbitration should be made in the Rules of Civil Procedure as a result of such specific inquiry. The amendment as proposed by the Bar Association merely retains the substance of Rule 26.07 which has existed for a number of years in Minnesota without difficulty being encountered by the Bench or Bar.

Upon motion being duly made, seconded and carried, it was recommended that Rule 33.01(1) as proposed by the Supreme Court Advisory Committee be further amended by deleting therefrom the words "good cause" and substituting instead the words "substantial need" so that the same shall read:

> "(1) Any party may serve upon any other party written interrogatories. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of action, and upon any other party with or after service of the summons and complaint upon that party. No party may serve more than a total of 50 interrogatories upon any other party unless permitted to do so by the court upon motion, notice and a showing of substantial need. In computing the total number of interrogatories each subdivision of separate questions shall be counted as an interrogatory."

The Minnesota State Bar Association had recommended this change to strengthen the policy of limiting interrogatories to 50 interrogatories and subparts. The Bar believes the 50 interrogatory rule to be most desirable but was fearful that the phrase "good cause" is not strong enough to implement the policy of the 50 interrogatory rule.

Upon motion duly made, seconded and carried, it was recommended that Rule 33.01(4) of the Advisory Committee Report be amended to read:

> "Answers to interrogatories shall be stated fully in writing and shall be signed under oath by the party served or, if the party is the state, a political subdivision, governmental agency, public or private corporation, partnership or association, by an officer or agent who shall furnish such information as is available to the party. A party shall restate the interrogatory being answered immediately preceding the party's answer to that interrogatory."

The changes are recommended to conform the reference to parties to other Rules of Civil Procedure and to make clear that it is the obligation of the person signing the answers to interrogatories to furnish such information as is available to the party and is not merely limited to an obligation to furnish information which is available to the individual.

Upon motion being duly made, seconded and carried, it was recommended that the words "except as provided in Rule 30.02(5)," be deleted from proposed Rule 34.01 as being unnecessary. The Committee noted that Judge Nicholson believed that Rule 34.03 could be clarified; however, the Committee upon discussion believed that Rule 34.03 as proposed by the Supreme Court Advisory Committee is acceptable.

It was duly moved, seconded and carried that Committee recommend deletion of Rule 36.01 as recommended by the Advisory Committee and substitute in its stead Rule 36.01 as proposed by the Minnesota State Bar Association as follows:

"36.01 Request for Admission.

"~~After-commencement-of-an-action~~ A party may serve upon any other party a written request for the admission, for purposes of the pending action only, ~~by-the-latter~~ of the truth of any relevant matters of fact set forth in the request of including the genuineness of any relevant documents described ~~in and-exhibited-with~~ the request. ~~or if-a-plaintiff-desires to-serve-a-request-within-10-days-after-commencement-of-the action-leave-of-court,-granted-with-or-without-notice,-must be-obtained. Copies-of-the-documents-shall-be-served-with-the request-unless-copies-have-already-been-furnished.~~ Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

"Each ~~of-the-matters~~ matter of fact of which an admission is requested shall be separately set forth. ~~shall-be-deemed~~ The matter of fact is admitted unless, within ~~a-period-designated in-the-request,-not-less-than-10~~ 30 days after service thereof of the request, or within such shorter or longer time as the court may allow ~~on-motion-and-notice~~ the party to whom the request is directed serves upon the party requesting the admission ~~either-(1)-a-sworn-statement-denying~~ a written answer or

objection addressed to the matter of fact, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the ~~matters-of-which-an-admission-is-requested~~ matter of fact or ~~setting~~ set forth in detail the reasons why he the answering party cannot truthfully admit or deny ~~those-matters~~ the matter of fact. ~~or-(2)-written-objections-on-the-ground-that-some-or all-of-the-requested-admissions-are-privileged-or-irrelevant or-that-the-request-is-otherwise-improper-in-whole-or-in-part, together-with-a-notice-of-hearing-the-objections-at-the-earliest practicable-time. If-written-objections-to-a-part-of-the-request are-made,-the-remainder-of-the-request-shall-be-answered-within the-period-designated-in-the-request.~~ A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a ~~part or a qualification~~ of a the matter of fact of which an admission is requested, he shall specify so much of it as is true and qualify or deny only the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of fact of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37.03, deny the matter of fact or set forth reasons why he cannot admit or deny it.

"The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter of fact is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37.01(4) apply to the award of expenses incurred in relation to the motion."

The reasons for limiting requests for admissions to matters of fact or genuineness of documents appear in the Rules Committee comments in its report given to the Minnesota State Bar Association in 1971. The Committee believes it is undesirable to include a rule that obligates a party to seek information so as to make binding judicial admissions concerning mixed questions of law and fact or statements of opinion or conclusion

under sanction of paying attorneys' fees or other expenses following trial on the merits.

The subcommittee of Solly Robins, the Honorable C. A. Rolloff and Donald Rudquist recommended that Rule 36.02 as presently contained in the Rules of Civil Procedure be retained. However, the Committee felt that inasmuch as the Bar Association had recommended an amendment to Rule 36.02 which is identical to the change recommended by the Supreme Court Advisory Committee that no change be recommended in the Advisory Committee Report concerning Rule 36.02.

Upon motion duly made, seconded and carried, it was recommended that the word "employee" be inserted in Rule 37.02(2) first sentence so that the same shall read:

> "If a party or an officer, director, employee or managing agent of a party or a person designated under Rule 30.02(6) or Rule 31.01 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision 37.01 of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:***"

Upon motion being duly made, seconded and carried, it was recommended that the words "of fact" be inserted in the first sentence of Rule 37.03 as recommended by the Supreme Court Advisory Committee so the same shall read:

> "If a party fails to admit the genuineness of any documents or the truth of any matter of fact as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter of fact, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36.01, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit."

Upon motion being duly made, seconded and carried, it was recommended that the word "employee" be inserted in Rule 37.04 as proposed by the Supreme Court Advisory Committee so that the same shall read:

"If a party or an officer, director, employee or managing agent of a party or a person designated under Rule 30.02(6) or 31.01 to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (a), (b), and (c) of subdivision 37.02(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.***"

The foregoing recommendations having been made it was duly moved, seconded and carried that Chairman B. C. Hart be directed to place these recommendations before the Board of Governors of the Minnesota State Bar Association and that with the concurrence of the said Board of Governors B. C. Hart be directed to take such steps as he deems necessary to place these recommendations before the Minnesota Supreme Court in conformity with its Order dated March 12, 1974.

There being no further business the meeting was adjourned at 1:15 p.m.

Respectfully submitted,

Ronald E. Martell

Ronald E. Martell, Temporary Secretary