STATE OF MINNESOTA

IN SUPREME COURT

C6-84-2134

In Re Amendments to the Minnesota Rules of Civil Procedure

ORDER FOR PUBLIC HEARING

WHEREAS, on March 24, 1988, the Minnesota Supreme Court Advisory Committee on Civil Procedure filed with this court proposed amendments to the Rules of Civil Procedure,

NOW, THEREFORE, it is hereby ordered that a hearing be held in the Supreme Court Chambers at the State Capitol in St. Paul at 9:00 a.m. on Wednesday, June 22, 1988 to consider the amendments to the Minnesota Rules of Civil Procedure.

IT IS FURTHER ORDERED that any person wishing to obtain a copy of the petition write to the Clerk of the Appellate Court, 230 State Capitol, St. Paul, Minnesota, 55155.

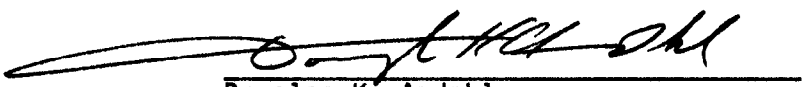
IT IS FURTHER ORDERED that:

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 10 copies of such statement with the Clerk of the Appellate Courts, 230 State Capitol, St. Paul, Minnesota 55155, on or before June 10, 1988, and

2. All persons desiring to make an oral presentation at the hearing shall file 10 copies of the material to be so presented with the aforesaid Clerk together with 10 copies of a request to make the oral presentation. Such statements and requests shall be filed on or before June 10, 1988, and

Dated: April 25, 1988.

BY THE COURT



Douglas K. Amdahl
Chief Justice

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A PROFESSIONAL ASSOCIATION

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REPLY TO:

St. Paul

July 15, 1988

Clerk of Appellate Courts
230 State Capitol
Saint Paul, MN 55155

Re: Proposed Amendments to Rules of Civil Procedure
C6-84-2134

Dear Clerk:

I wrote on June 13 suggesting language changes in the proposed summons.

Enclosed are highlighted copies of pages 6, 266, and 435 from A Dictionary of Modern Legal Usage by Brian A. Garner, which more eloquently supports my suggested changes.

Sincerely,

Robert J. Huber

RJH/bhl
Enclosures
(6417h)

above-made is an unnecessary word, and an ugly one. E.g., "The following decisions of this court fully sustain the *above-made* statements [read *these statements* or *the above statements*]."

above-quoted, above-styled, above-mentioned, above-captioned, and other such compounds must be hyphenated; one sees the tendency nowadays to spell *above-quoted* and *above-mentioned* as single words. Actually, it is best to avoid these compounds altogether when possible by using more specific terms of reference: i.e., instead of writing *the above-mentioned court,* one should name the court (or, if it has just been named, write *the court, that court,* or some similar identifying phrase).

above-referenced. See **reference,** v.t.

abridge; violate. Constitutional and other rights are often said to be *abridged* or *violated.* A connotative distinction is possible, however. *Violate* is the stronger word: when rights are *abridged,* they are merely diminished; when rights are *violated,* they are flouted outright. Following are examples of the milder term: "The provision of a new and sanitary building does not ensure that it will be operated in a constitutional way; the first amendment can be *abridged* in the cleanest quarters."/ "A statute denying nonresidents the privilege of serving as trustees of living trusts might be unconstitutional as *abridging* the privileges and immunities of citizens of the United States."

abridg(e)able. The shorter form is preferred in the U.S. and generally in British legal writing, although the *OED* prefers the longer form.

abridg(e)ment. The British usually spell it with the *-e-,* and the Americans always without it. Armed with this knowledge, an American writer should not defend his "misspelling" on grounds that he prefers the BrE form. Cf. **acknowledg(e)ment & judg(e)ment.**

abrogate; obrogate; arrogate. *Abrogate,* far more common than *obrogate,* means "to abolish (a law or established usage) by authoritative or formal action; annul; repeal." *Abrogate* is occasionally confused with *arrogate* (= to usurp). The proper use of *abrogate* is illustrated here: "Texas courts will *abrogate* school district policies only when they clearly violate statutory provisions."

Obrogate is a civil-law term meaning "to repeal (a law) by passing a new one" (*OED*).

Arrogate (= to usurp) is properly used in the following sentence: "Courts may *arrogate* the authority of deciding what the individual may say and may not say, and there may be readily brought about the very condition against which the constitutional guaranty was intended as a permanent protection." See **arrogate.**

abscond is both transitive ("to hide away, conceal (anything)" [*OED*]) and intransitive ("to depart secretly or suddenly; to hide oneself"). The latter is more common in modern contexts: "Abram *absconded* about December 20, 1928, and his whereabouts are unknown."

abscondence; abscondment; absconsion. The second and third are NEEDLESS VARIANTS rarely found; *abscondence* is the preferred nominal form corresponding to the verb *abscond,* q.v.

absent (= in the absence of; without) is commonly used as a preposition in legal writing. It can be effective if sparingly used. E.g., "The statute, in permitting a verdict of guilty *absent* a finding of a design to effect death, allows the imputation of intent from one defendant to another."/ "*Absent* a clear manifestation of a contrary intent, it is presumed that the settlor intended the trustee to take a fee simple so that in selling he could pass title as owner rather than as donee of a power."

absentee, used as an adverb, is a new and useful linguistic development. E.g., "Our inquiry as to [read *into*] why the defendants took Alaniz and her son and daughter to vote *absentee* has to begin with whether or not the request came from Alaniz herself." It would be cumbersome in that context to have to write, "to vote as absentees." *W3* records *absentee* as a noun only, but the adverbial usage is increasingly widespread. The word may function also as an adjective, as in *absentee landlord.*

ABSOLUTE CONSTRUCTIONS. Nominative absolutes, increasingly rare in modern prose, allow the writer to vary his syntax while concisely subordinating incidental matter. Such phrases do not bear an ordinary

words have distinct meanings, however; and in any event, *hereafter* could hardly be cheered as a plain-language triumph over *hereinafter*.

Hereafter = (1) henceforth; (2) at some future time. The existence of these two meanings may make the word ambiguous, for example in legislation that is said to be *effective hereafter*. A more precise rendering of the intended meaning is *effective with the passage of this Act* or *after the day this Act takes effect*. Sense (1) is the more usual meaning of *hereafter*. A similar ambiguity plagues *heretofore*. See **hitherto**.

Hereinafter = in a part of this document that follows. E.g., "The parties have stipulated that an interchange of telegrams *hereinafter* referred to constitutes the contract." Mellinkoff warns: "While ordinarily *hereinafter* should point to the right instead of the left, below rather than above, it is a loose word, loosely used; and in at least two recorded instances judges have saved a cause if not the draftman's reputation for alertness by interpreting *hereinafter* to mean *hereinbefore*." D. Mellinkoff, *The Language of the Law* 316 (1963).

As with *herein*, the legal writer is best advised to make the reference exact, by stating, e.g., *in this will* or *this paragraph* rather than *hereinafter*. Moreover, in introducing abbreviated names, *hereinafter* is redundant: rather than *Gulf Oil Corporation (hereinafter "Gulf")*, one should write *Gulf Oil Corporation ("Gulf")*. See **hereinabove.**

hereby is often a FLOTSAM PHRASE that can be excised with no loss of meaning; *I hereby declare* has no advantages over *I declare*.

hereditable = subject to inheritance. "'Children' is not a word of limitation; it does not point to *hereditable* succession." Apart from its use in the phrase *hereditable succession*, *hereditable* is a NEEDLESS VARIANT of *inheritable*. See **heritable.**

hereditament(s). This term suggests a relation in meaning to *inheritance*, which is misleading even though originally it did mean "things capable of being inherited." Today it means merely "land, real property," and should be avoided as an obscurantist LEGALISM. Here it is utterly redundant: "No tenant and no person claiming through any tenant of any land or *hereditament* of which he has been let into possession is, till he has given up possession, permitted to deny that the landlord had, at the time when the tenant was let into possession, a title to such land or *hereditament*." (Eng.) The word is best accented on the second rather than the third syllable */hĕ-red-i-tă-mĕnt/*.

Traditionally, the law distinguished between *corporeal hereditaments* (= tangible items of property, such as land or buildings) and *incorporeal hereditaments* (= intangible rights in land, such as easements). In England, *hereditament* has the additional sense "a unit of land that has been separately assessed for rating purposes" (*CDL*). See **corporeal hereditaments.**

hereditary. See **heritable.**

heredity for *inheritance* or *inheritability*, though once possible, is today confusingly legalistic. *Heredity* has now been confined largely to biological senses in nonlegal writing; hence legal writing need not perpetuate an archaic sense of the word. "The decedent's many prolonged affairs make the problems of *heredity* [read *inheritability*] quite complex." The nonlegal reader would interpret the quoted sentence as addressing bastardy rather than inheritance.

herein (= in this) is a vague word in legal documents, for the reader can rarely be certain whether it means *in this subsection*, *in this section* (or *paragraph*), or *in this document*. A more precise phrase, such as any of the three just listed, is preferable. See **herewith.**

hereinabove is almost always unnecessary for *above*. E.g., "I am of the opinion that defendant is liable by virtue of the express provisions of Act 34 of 1926, as I have related elsewhere *hereinabove* [read *above*]."/ "For lack of the essential findings *hereinabove discussed* [read *discussed above*], the judgment is reversed." See **above** (B), **hereafter, & hereinbefore.**

hereinafter. See **hereafter.**

hereinbefore; hereinafter. In legislative DRAFTING, these words should be avoided, because amendments and repeals may effect a reordering of the statute, and make either of these words inaccurate or misleading. The better practice is to be specific and write *in this act* or *in this section*. See **hereafter & hereinabove.**

prior; previous. The adjective *prior* or *previous* for *earlier* is within the stylist's license; *prior to* and *previous to* in place of *before* are not. See **previous to & prior to.**

prioritize is a cant word to be avoided. See -IZE.

prior restraint = censorship before publication. E.g., "The photo processor thus becomes the censor of the nation's photographers; worse yet, his actions become a particularly obnoxious form of *prior restraint*: he condemns the photo before anyone, including the photographer or a neutral magistrate, has had an opportunity to see the final print."

prior to is a terribly overworked lawyerism. Only in rare contexts is it not much inferior to *before*. Even the U.S. Supreme Court has suggested that the phrase is "clumsy," noting that "[l]egislative drafting books are filled with suggestions that *prior to* be replaced with the word *before*." *United States v. Locke*, 471 U.S. 84, 96 n.11 (1985). Nevertheless, examples abound in virtually any piece of legal writing: "*Prior to* [read *Before*] hearing in the Appellate Division, we certified the cause on our own motion."/ "*Up to December 24, 1936, and for many years prior thereto* [read *For many years up to December 24, 1936*], petitioner and his wife were domiciled in the State of Oklahoma."/ "There is no evidence that *prior to* [read *before*] being made a party to this suit the Tennessee Higher Education Authority ever used its authority in any way to facilitate desegregation in these institutions."

As Bernstein has pointed out, one should feel free to use *prior to* instead of *before* if one is accustomed to using *posterior to* for *after*. T. M. Bernstein, *The Careful Writer* 347 (1979). Cf. **previous to & subsequent to.**

prise. See **prize.**

privation. See **deprivation.**

privileges and immunities; privileges or immunities. The former phrase appears in Article 4, Section 2 of the U.S. Constitution; the latter in the fourteenth amendment to the Constitution.

privity; privy. To laymen, a *privity* is something that is kept secret. To a lawyer, it is a relationship between two parties that is recognized by law, usually a mutual interest in a transaction or thing ⟨in privity of contract⟩.

Privy likewise has different associations for layman and lawyer. To the former it is an adjective meaning "secret, private," or a plural noun meaning "outhouse; toilet." Lawyers mean no harm in calling other people *privies;* a *privy* in law is one who is a partaker or has any part or interest in any action, matter, or thing. E.g., "Respondents cite the portion of *Stiller* in which the New York court (the new forum) acknowledged that the Ohio court (the original forum that issued the injunction) lacked jurisdiction over the New York respondents who were *privies* with the enjoined party."

The word is also used adjectivally in this legal sense: "Admissions may be made on behalf of the real party to any proceeding by any party who is *privy* in law, in blood, or in estate to any party to the proceeding on behalf of that party." (Eng.) Still, *privy* is used in its lay senses in legal writing, and the legal reader must be adept at discerning which sense is intended: "The jury was not *privy* to the parties' settlement negotiations."

prize; prise. The second is the better spelling in the sense "to pry or force open," although in AmE *prize* often appears in this sense. The DIFFERENTIATION is worth promoting, however. *Prize* is the spelling for all other senses.

pro and con; pro et con(tra). The English rendering is preferred. The phrase may be used nominally: "We are satisfied that the Commission adequately considered the *pros and cons* of the new grants of authority with a view toward the industry's economic well-being." Or it may be adverbial: "A number of affidavits are filed *pro and con*, which it is not necessary to consider." Or, again, it may be adjectival: "A number of *pro and con* briefs have been filed." One should not depart from the SET PHRASE: "Now we are obliged to advert to those elements of proof and legal concepts *pro and contra* [read *pro and con*] bearing on the validity of the instrument in question." *In re Powers's Estate*, 134 N.W.2d 148, 151 (Mich. 1965).

Pro and con has also been used as a verb phrase ⟨to pro-and-con the issue⟩, and although today this use sounds somewhat odd, it has the sanction of long standing. The *OED Supp.* and *W3* record another use not here recommended: the phrase has been used prepo-

Duane M. Peterson, Ltd.

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PHONE (507) 454-5710

June 9, 1988

Minnesota Supreme Court
State Capitol Building
St. Paul, MN 55155

Re: Proposed Rule Changes

Gentlemen:

I would like to file a comment on the proposed Rule 3.01 change in the Rules of Civil Procedure.

I oppose the change. While the present system may have some defects, the change proposed will likely effect any real change in the problems created by the present system.

The net effect of the proposed change would, in my view, simply raise the cost of litigation even higher. The lawyers and the courts are now burdened by too much, rather than too little, administrative control. We undoubtedly have twice as many court administrators as we used to have clerks of court.

I remember Justice Kelley's observations about the administrative detail dumped onto the trial courts when the court administration system replaced the old clerk of court system. We all had to fill out and file twice as many forms as before.

Lawyers from other states envy our Minnesota system because it costs less. Often when I sue a case, the insurer asks for an extension of time to file the Answer so it can negotiate a settlement. Sometimes we do and sometimes we don't. If you change the rule, you are adding one more burdensome cost and administrative headache to the practice. In the end, it costs more and the client ultimately pays. Is it any wonder that an alternate private court system is becoming a flourishing business?

Please note my opposition to the change.

Very truly yours,

DUANE M. PETERSON, LTD.

Duane M. Peterson

DMP/mw

RUSSELL
McLEOD
MOSHER&
PEZALLA

In The Practice Of Law

A Partnership Including
Professional Associations

JAMES H. RUSSELL*

R. JEFFREY McLEOD*

LEE W. MOSHER*

STEPHAN A. PEZALLA

*A Professional Association

June 10, 1988

Clerk of Appellate Courts
Room 230 State Capital
St. Paul, MN 55155

Re: Proposed Amendments to Rules of Civil Procedure

Dear Sirs and Mesdames:

I recently attended a seminar regarding proposed changes to the Minnesota Rules of Civil Procedure. I am concerned that any changes in the Rules allow at least 30 days from adoption to the effective date. If the Court determines that actions will be commenced by filing, I suggest that the official form of summons be modified and that substantial compliance with the official form be allowed. Different forms of the summons may be appropriate for marriage dissolution, quiet title, title registration, and lien foreclosure actions.

I believe that changes should be made to the official form of summons that is proposed. (These comments assume that filing of the complaint is mandated.) My comments are as follows:

1. Case type indicator.

Rule 10 refers to the "case type indicator" set forth in "the subject matter index." This information should no longer be required generally because it would appear on the complaint and the case type would be noted by the clerk when the complaint is filed.

2. Case Number.

The federal form summons calls it the "file number." The Minnesota Bankruptcy form summons calls it the "number." If there is no significant difference between a case number and a file number, economy would call for assigning a "number" without deciding whether it is for the case or the file.

135 VALLEY SQUARE OFFICE CENTER 7575 GOLDEN VALLEY ROAD GOLDEN VALLEY, MINNESOTA 55427 612·545·5653

3. Salutation.

"The State of Minnesota" may be eliminated from the salutation. It is redundant. "State of Minnesota" appears on the top line of the pleading. The seal of the court and the signature of the administrator at the bottom of the summons indicates that the pleading comes from the State and is an official document.

If the salutation reads as proposed, a hyphen may be added between "above" and "named," as found in Federal summons form 1. A more facile salutation may be that as found in Minnesota Bankruptcy summons form 204, which uses the simple, "To the defendant(s) named above:"

4. Operative language.

This could be simplified greatly by using verbiage generally from Minnesota Bankruptcy form 204, as follows:

> You are hereby summoned and required to serve upon the attorney for plaintiff(s), whose name and address are subscribed to the annexed complaint, an answer to the complaint which is herewith served upon you within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

The committee has added the words "without further notice" to the proposed form. That caveat does not appear necessary or desirable. Some attorneys may provide further notice to the defendant even though not required. The language of the summons should not allow the defendant to complain that because he received further notice default judgment should not have been entered

against him.

The form summons also refers to "Attorney ID Number." The number requested is properly an attorney license number. The license document does not contain a photograph or other means of identification; the document does not contain the word "identification." It does recite a license number. Accordingly, any reference to the number contained on the attorney card should be referred to as an attorney license number.

5. Plain English explanation.

If an explanation is required, it should be simple. The verbiage proposed makes it complicated. Eliminate "the above is a legal notice that" so what remains is "you are being sued by plaintiff."

Eliminate this language: "If you do not serve and file your response on time, you may loose your wages, money or property." In many cases involving real estate, defendants are made parties only to foreclose possible claims that have no real value. The proposed statement may be misleading in many instances.

Eliminate the following: "There are other legal requirements. You may wish to call an attorney." These statements are vague. If necessary, replace them with "This summons is an important legal document. If you do not understand it, consult an attorney."

6. Filed prior to service.

What does "Filed" refer to? Presumably it refers to the complaint, but that is not clear. The complaint may be filed prior to the date the summons is issued. The date of filing for the complaint will show on the complaint. The date on the summons should refer to the date of issuance of the summons. Accordingly, eliminate "Filed prior to service in the above named court on:"

Conclusion

I urge you to allow at least 30 days for members of the bar to become familiar with the new rules after they are adopted and before they become effective. If you require filing to commence an action, I urge you to make the official summons closer in content to Minnesota Bankruptcy summons form 204, and to allow for minor variations in the form of the official summons.

Thank you for your consideration.

Very truly yours,

Lee W. Mosher

Lee W. Mosher

nkc
30001

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June 14, 1988

Supreme Court - Advisory Committee
Clerk of Appellate Courts
ATTN: Mr. Herr
230 State Capitol
St. Paul, MN 55155

RE: Rules of Civil Procedure

Dear Mr. Herr:

I learned earlier today about a proposed change that would require filing of all suit documents.

I am enclosing an objection to the adoption of such a Rule, and I would appreciate being designated as a speaker in opposition to the Rule at the hearing, which I understand is scheduled for 9:00 a.m. on June 22, 1988, in the Supreme Court Chambers.

Thank you.

Respectfully Submitted,

STEWART & ZLIMEN, LTD.

Allan J. Zlimen

AJZ/lk

enc.

IN RE: Mandatory Filing of Court Documents

OBJECTION TO ADOPTION OF MANDATORY FILING OF PLEADINGS

AFFIDAVIT OF ALLAN J. ZLIMEN

STATE OF MINNESOTA)
)SS:
COUNTY OF HENNEPIN)

Allan J. Zlimen, being duly sworn on oath, deposes and says:

I.

1. That he is an attorney generally admitted to practice in the State of Minnesota on November 1, 1971.

2. That your affiant is the sole shareholder and President of Stewart & Zlimen, Ltd., Attorneys at Law.

3. That a significant volume of the legal work of Stewart & Zlimen, Ltd. is in the field of creditors' rights; that the work centers around consumer collections.

II.

THE PROPOSED RULE REQUIRING THE FILING OF ALL PLEADINGS IN DISTRICT COURT CASES WOULD WORK A SIGNIFICANT HARDSHIP TO CONSUMERS WHO ARE DEBTORS.

a. That, of the approximately 300 District Court lawsuits commenced each month by Stewart & Zlimen, Ltd., only 10 percent are disputed or not settled by an amicable payment arrangement.

b. That, in your affiant's opinion, a very significant portion of consumer debtors sued by this

office, suffer from a lack of sufficient income to pay debts and obligations; many are marginal wage earners.

c. That, a mandatory filing fee would result in the taxing of costs needlessly against the consumer; that the consumer is already burdened by a greater debt load then he can handle.

d. That, a majority of the consumers subject to debt collection do not have other Court judgments against them.

e. That the mandatory filing would provide public notice to other creditors and/or debt collectors, who would almost certainly be forced to seek a judgment in order to obtain either a legal or a motional legal position with the consumer debtor.

f. That the consumer's credit rating would, as a direct result of the filing of Court documents, be adversely affected; the debtor would experience restricted credit, and would be forced to seek Chapter 13 or other similar protection afforded by the Bankruptcy Code.

g. That all parties involved in the collection process would be adversely affected; the consumer would suffer directly; creditors and the other consuming public would face rising costs implemented to compensate for increased bankruptcy losses or by additional filing fees, which creditors are unwilling or unable to absorb, and this would be passed on in the form of higher price.

III.

NEGATIVE IMPACT ON ALL CONSUMERS

4. Other additional detrimental effects would be felt by the consuming public because a direct impact would require creditors to elect between paying significant Court costs for filing fees, or abandoning efforts to collect claims because the prospect of recovering filing fees would be negative. A creditor's only recourse is to pass those costs on to other members of the consuming public.

IV.

INCAPABILITY WITH CURRENT CREDITORS'S RIGHTS LAWS

5. A mandatory filing rule is not compatible with existing creditors' rights laws. Under current law, Minnesota creditors can commence a lawsuit and garnish wages if necessary, without need to file pleadings or other documents with the Court. This procedure is prescribed by Minnesota Statute 571.41 describing garnishment procedures. A procedural and substantive provisions of this Statute were implemented in 1969, 1974, and 1975, when the legislature found merit and a value to society as a whole, and particularly to the consuming public by not forcing matters into the formal Court structure. Arguments before the various committees of the legislature hearing the issue, and which were adopted by the legislature, included findings that the consumers would suffer by a mandatory filing requirement, that judgments would needlessly be entered against the consumer for no valid reason other than compliance with ministerial statutory requirements; and found that direct harm would be suffered by the

consuming public. In addition to negative effects on credit ratings, consumers would be required to pay Court filing fees, which are taxable costs under our statutory scheme. To require mandatory filing at this time would be inconsistent with the existing statutory mode.

V.

DISADVANTAGES TO CREDITORS

6. A mandatory filing fee would not work to the best interest of creditors. Creditors would be required to pay significant legal filing fees, even though 90 percent of the cases in which they were involved will be settled without the need for formal Court action. The result will be cost outlays by creditors. A negative effect will placed upon debtors.

VI.

NO VALID PUBLIC PURPOSE

7. There is no valid public purpose to be served by mandatory filing requirements. Minnesota Statutes and particularly Minn. Stat. 541 provide a scheme of creditors rights that is complete and which is working efficiently. There is no purpose to be served by mandatory filing. The Court system will be burdened needlessly, when hundreds and perhaps thousands of cases are filed simply for the purpose of complying with filing requirements. Consumers who are debtors would suffer a direct negative impact.

The writer is unaware of any deficiency in the current system, and is unaware of any problem or concern which should be

rectified by mandatory filing. Instead, we are faced only with negative results and a negative impact to all parties concerned.

VII.

AN EXCLUSION SHOULD BE MADE FOR DEBT COLLECTION ACTIONS

8. Any mandatory filing rule should exclude debt collection action. As stated above, there is no positive effect nor any advantage to anyone as a result of mandatory filing of debt collection suits. These are customarily high volume suits, and the writer's experience leaves him to believe that there are more then 2,000 cases in Hennepin County which would be filed in the debt collection area alone each month. This requires additional work on the part of the Court, requires extensive outlays of filing fees by creditors, and imposes a significant and intolerable burden on consumers.

Respectfully Submitted,

STEWART & ZLIMEN, LTD.

Allan J. Zlimen
Attorney at Law

Subscribed and Sworn to before
me this 14th day of June, 1988.

Linda Klocek
Notary Public

LINDA KLOCEK
NOTARY PUBLIC—MINNESOTA
HENNEPIN COUNTY
My Commission Expires Nov. 11, 1993

MINNESOTA FREELANCE COURT REPORTERS ASSOCIATION

MFCRA

Box 2089 / Loop Station / Minneapolis, MN 55402
Telephone (612) 338-3530

June 9, 1988

Clerk of Appellate Courts
230 State Capitol
St. Paul, Minnesota 55155

OFFICE OF APPELLATE COURTS
JUN 9 1988
FILED

C6-84-2134

Re: Amendments to the Minnesota Rules of Civil Procedure

Dear Clerk:

The Minnesota Freelance Court Reporters Association, whose 150 plus members represent the overwhelming majority of freelance reporting firms in Minnesota, supports the proposed amendment to Rule 28.03 and opposes the proposed amendment to Rule 30.06(1).

It has always been important to all sides of litigation that the verbatim reporter of the testimony and custodian of exhibits remain an impartial officer of the court. Indeed, our own national code of ethics requires that we avoid even "the appearance of partiality." With the advent of insurance companies entering into exclusive contracts with reporting firms, our long-respected and valued impartiality has been called into question.

While we wish that this issue would have been solved as it was by Hawaii's Supreme Court, by specifically prohibiting the taking of any deposition by a reporter or reporting firm who has an exclusive contract with a party, attorney, or person with an interest in the action, we nonetheless support the current amendment because it at least addresses the issue for the first time in Minnesota.

Proposed Rule 30.06(1) comes about as a result of a fear that some attorneys have that these exclusive contracts are being entered into at their expense; in other words, that the reporter will enter into a contract for a low price but will charge higher fees to the non-contracting parties. The mere fact that such an amendment is proposed is testimony that the reporter's impartiality is called into question where these contracts exist.

However, if it were the reporter's intention to make up a low contract bid by charging the non-contracting parties more, Rule 30.06(1), as proposed, would not prevent this. The reporter could simply lower the charge for the original while charging more for all copies. Therefore, we oppose the proposed amendment to Rule 30.06(1) since it cannot accomplish what it hopes to as it is presently worded.

Sincerely,

Linda G. Oman

Linda G. Oman, President
Minnesota Freelance Court Reporters Association

STATE OF MINNESOTA
DISTRICT COURT OF MINNESOTA
FOURTH JUDICIAL DISTRICT

JACK M. PROVO
COURT ADMINISTRATOR
12TH FLOOR COURTS TOWER
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487

June 8, 1988

Clerk of Appellate Court
230 State Capitol Building
St. Paul, MN 55155

Re: Mandatory Filing C6-84-2134

Dear Sirs:

On June 6, 1988, the Judges of the Fourth Judicial District, State of Minnesota, adopted the following resolution with regard to the proposed changes to the Civil Rules of Procedure:

> The Judges of the Fourth Judicial District support the implementation of mandatory filing.

Kindest regards,

Jack M. Provo
Court Administrator

JMP:ps

KARON, JEPSEN & DALY, P.A.
TRIAL ATTORNEYS
AMERICAN NATIONAL BANK BUILDING
FIFTH & MINNESOTA STREET, SUITE 1600
ST. PAUL, MINNESOTA 55101

612-292-0044

Stanley E. Karon
William E. Jepsen
Leo M. Daly

Shawn M. Bartsh
Kathy A. Tatone

June 10, 1988

Clerk of Supreme Court
Supreme Court
230 State Capitol Bldg.
St. Paul, MN 55155

Dear Sir or Madam:

Enclosed is my letter directed to the Justices of Supreme Court.

Would you kindly see that each letter is distributed to each of the Justices as soon as possible.

Your assistance is greatly appreciated.

Sincerely yours,

KARON, JEPSEN & DALY, P.A.

W. E. Jepsen

William E. Jepsen

WEJ:cyz
Enclosures

KARON, JEPSEN & DALY, P.A.
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Stanley E. Karon
William E. Jepsen
Leo M. Daly

Shawn M. Bartsh
Kathy A. Tatone

June 10, 1988

Honorable Justices of the
Minnesota Supreme Court
230 State Capitol Building
St. Paul, MN 55155

In Re: Proposed Addition of Rule 30.02(8) to the Minnesota Rules of Civil Procedure

Dear Justices:

The Board of Governors of the Minnesota Trial Lawyers Association has reviewed the proposed addition to the Minnesota Rules of Civil Procedure, Rule 30.02(8), and unanimously adopted a resolution opposing the adoption of this rule or any rule which would place or tend to place arbitrary limitations upon the rights of a party to free and open discovery. On behalf of the Board of Governors, I convey this resolution to you.

The proposed rule with the proposed commentary highlights the fact that there are already existing provisions within the rules to address abuses of discovery. The problem is the under-utilization of the existing provisions in the rules by the parties and the courts.

This rule with its commentary professes to maintain free and open discovery. However, with the passage of time, the commentary or the substance of the rule can be changed. As such, the rule could be the first step in placing arbitrary limits upon discovery. The arbitrary limitation or the potential of establishing an arbitrary limitation on the right of a party to discovery should be avoided at all costs.

The judiciary should feel free to take stronger steps in using the already available provisions of the Rules of Civil Procedure to control discovery and eliminate its abuse.

On behalf of the Minnesota Trial Lawyers Association, we urge you to reject this proposed new rule and adopt a strong statement that the judiciary use the already existing provisions within the rules to control any abuse of the discovery process.

Respectfully submitted,

KARON, JEPSEN & DALY, P.A.

W. E. Jepsen

William E. Jepsen

WEJ:cyz

cc: Kathy Kisson
Jane Tschida

VETERANS ADMINISTRATION
OFFICE OF DISTRICT COUNSEL (02)
112 FEDERAL BUILDING, FORT SNELLING
SAINT PAUL, MINNESOTA 55111
(612) 725-3122 (FTS)

May 27, 1988

MN Supreme Court Advisory Committee on Civil Procedure
Clerk of the Appellate Court
230 State Capitol
St. Paul, Minnesota 55155

C6-84-2134

RE: Proposed Amendment of Minnesota Rule of Civil Procedure 3.01

Dear Sir or Madam:

The Veterans Administration (VA) Office of District Counsel favors amending Rule 3.01 of the Minnesota Rules of Civil Procedure so that it conforms with Rule 3(a) of the Federal Rules of Civil Procedure by providing that an action is commenced by filing the complaint with the court rather than by service of the complaint upon the defendant. Rule 3.01 of the Minnesota Rules of Civil Procedure currently permits an action to be commenced and settled without any public record of its existence. This situation creates problems for the VA which are stated herein.

Under federal law, this office is responsible for recovering bills incurred at VA hospitals by veterans who are injured under circumstances creating tort liability on another party or by those who carry no-fault insurance which will allow the VA to recover its cost of care. See 42 U.S.C. 2651 et seq. and 38 U.S.C. 629. The VA must currently rely upon the veterans' attorneys to provide information sufficient to allow intervention and recovery by the U.S.

While many attorneys cooperate with this office in its collection efforts, it is surprising how frequently a veteran's attorney refuses to even acknowledge correspondence which requests information about the pending lawsuit. We have even had cases in which the attorney intentionally ignored our requests for information until after he had settled the case because "he did not want the U.S. involved in the action."

Because the veteran has indicated in these cases that he is represented by counsel, this office cannot contact him directly to obtain the information necessary to recover the VA's bill. If the veteran's attorney refuses to cooperate, the VA's only recourse is to contact the Clerk of District Court in the appropriate county to inquire whether a civil action has been filed. If the action is served but not filed, the VA is precluded from recovery because of Rule 3.01.

This office currently collects approximately $2 million annually on behalf of the Minneapolis and St. Cloud VA Medical Centers. We have no way of knowing how much more might have been collected if we had been able to consult the Clerks of District Court for the existence of civil actions rather than being forced to rely upon the whim of the veteran's attorney.

Dale E. Parker

DALE E. PARKER
District Counsel

Law Offices

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(A Merger of Levin & Harris and Halpern, Roers, Quigley & Aspnes, P.A.)

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Mailing Address:
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Alan D. Harris
Mark D. Stephenson
James W. Bly

Maurice L. Halpern (1907-1981)

June 16, 1988

Clerk of The Appellate Courts
230 State Capitol
St. Paul, MN 55155

Chief Justice Douglas Amdahl
State Capitol Building
St. Paul, MN 55155

Re: Mandatory Filing of Civil Actions

TO THE MEMBERS OF THE COURT:

I am writing to present comments in opposition to the proposed change in Rule 3.01 of the Rules of Civil Procedure, which would require the plaintiff to file its Complaint with the Court Administrator at the commencement of the action.

The firm I practice with primarily handles actions involving creditor's remedies, including a large number of collection matters. Our current policy, which I believe is shared by other firms which handle collection cases, is to delay filing of the Complaint until such time as there is a default or the case becomes contested. A substantial number of these cases are eventually resolved without need for participation by the Court. As a result, commencement by filing would likely result in a large increase in the number of cases which must be handled by the court system. The administrators' offices in some counties, most notably those in the metropolitan area, are strained by the current volume of cases in the system. It is conceivable that several thousand additional files would be injected into the process annually if filing becomes mandatory.

Because many cases are resolved after service of the Complaint, the parties avoid the expense of the filing fee. If forced to pay the filing fee in order to commence suit, many creditors may decide to write off smaller claims as bad debts in lieu of serving a Complaint. If the rule changes and a creditor does sue, the filing fee will most certainly be passed on to the debtor, a cost which is often avoided under current practice.

An additional advantage of the current practice is that it often avoids a public record of the suit. Frequently, the filing of the first action against a financially distressed debtor has a "snowball" effect in that other creditors will race to the courthouse to attempt to protect their interests. If a debtor is able

to resolve the first action without filing, it may provide additional breathing time to work out its financial problems.

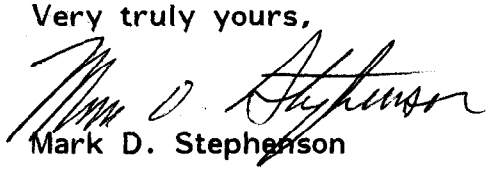
There are specific concerns relating to practice in Hennepin County under the proposed rule. What impact will mandatory filing have on the "block" system? Will all cases be blocked at the outset, including several thousand which will eventually proceed by default? If so, will all post-judgment proceedings need to be scheduled before the Judge assigned to the case, further taxing the Judge's motion calendar?

In many cases, the parties will reach a payment arrangement which will not become final until more than twelve months have passed. As a result, more parties will be forced to seek extensions from the court to avoid the automatic one-year dismissal under Rule 4.03 of the Special Rules, Fourth Judicial District.

In view of the foregoing, we urge the Court to carefully consider the impact of the proposed change in Rule 3.01.

In closing, I apologize for submitting this statement at a late date. However, we recently became aware of the proposed change and feel that it is important these issues be addressed by the Court.

Very truly yours,



Mark D. Stephenson

MDS:pr

KENNETH·E·KEATE
·ATTORNEY AT LAW·

June 15, 1988

Clerk, Minnesota Supreme Court
230 State Capitol Building
Saint Paul, Minnesota 55155

RE: Proposed New Rules of Civil Procedure

Dear Justices of the Supreme Court:

I am a sole practitioner attorney in general practice. I strongly oppose the proposed amendment to the Rules of Civil Procedure which would require that cases be filed before they may be served.

I base this on the following reasons:

1. **The new amendment does not address its applicability to those extra-judicial proceedings which require that notices be served "as a civil action," those proceedings which modify the general Rules of Civil Procedure.**

   Mortgage foreclosures by advertisement, cancellations of contract for deed, and some actions require that in the District Court notices be served in the same manner as a summons, and often make reference to the requirement of service for commencement of the action. The proposed modification of the Rules of Civil Procedure in effect change these Statutes in a manner which is thoroughly unclear. Will cancellations of a contract for deed and mortgage foreclosures by advertisement now have to be filed with the court before they can be commenced? The notices prescribed by the Commissioner of Commerce all are on legal size paper, which cannot be filed with the court. The proposed modification will throw all these actions into a state of chaos. Additionally, the forms do not address the special thirty day notice requirement in a proceeding for a dissolution of marriage, or the specialized summons that are required in land registration actions, mechanics lien actions, and possibly other proceedings.

2. **The proposed change does not benefit the poor people.**

   The advocates of the change requiring commencement by filing have pointed out that some of the poor are confused by the present form of the summons. If this be true, the modified form of the summons can easily be adopted by the Supreme

C:\WS2000\KEATE\RCP.ULT

Suite G
1102 Grand Avenue
Saint Paul, Minnesota 55105
(612) 224-5079

Court without requiring commencement by filing. I believe that the proposed summons form is a good idea. By adopting the form (modified to not show the requirement of filing), attorneys can be free to adapt it to marriage dissolution proceedings, mechanic's lien proceedings, land registration proceedings, and other specialized actions.

On the other hand, often times poor plaintiffs do not have the requisite $62.00 filing fee to start an action to recover $250.00 or $2,250.00. While conciliation court is a possibility, if the defendant lives in another part of the State, it is often cheaper to commence the case in District Court so the plaintiff need not travel across the State to testify in the lawsuit. While the committee reporting the revision expresses "hope" that filing fees may be lowered in the future, the filing fees are set by statute, and the Legislature has not been in the habit of lowering filing fees.

I also represent a number of poor clients. None of my clients have ever confessed confusion regarding the receipt of a summons and complaint. In this day and age, it is very rare for a stranger to make a personal appearance at someone's doorstep. They know that the personal service is important. Although the current form of the summons could be modified, it is very clear that a lawsuit has been started by looking at the pages. While clients of mine have experienced hope that this really does not mean a commencement of a lawsuit, all have know that one actually has been commenced. No client of mine has ever told me that they were not aware of the commencement of a lawsuit.

3. **The judicial system need not be enriched by unnecessary filing fees.**

I do a number of bankruptcies. I see no reason why any major creditor should be required to pay a $62.00 filing fee in order to start commencement of a legal action against someone when a significant percentage of the time the debtors simply file bankruptcy, or the debtor and the creditor are able to work something out. The argument is put forth that those utilizing the judicial system should pay for it. However, if the suits are settled without filing, no judicial resources whatsoever are used by those in a lawsuit. People writing their legislature are not required to pay fees to the legislator for exercising their right to petition for grievences. People seeking the help of the police

are not required to pay fees every time there is a police call. Unless someone actually utilizes the judicial resources by getting a judgment or by seeking the determination of a judge, there seems to be no reason to require them to pay a fee. There is no good reason to increase the staff of the court administrators' office to take care of filings and pleadings that do not require the court's attention. I see no reason why even major corporate creditors or small consumers seeking a determination by the judicial system should be required to pay a filing fee when they are eventually going to be able to settle their disputes outside of court or the claim will be discharged in bankruptcy.

4. **The goals of a singular tolling of the Statute of Limitations can be solved through other methods.**

One of the reasons put forth for the proposition that an action should be commenced by filing rather than service is so that the Statute of Limitations will be tolled at the same time for each defendant, and the commencement of the action will be the same date as to each defendant. If this court would adopt a rule adding commencement by filing with service within a 120 days as one of the ways to toll the statute of limitations, these objections could be readily obtained. The argument is put forth that this would make Minnesota unique among the fifty states. I live, work, and practice in Minnesota because it is unique. Allowing the alternative commencement by filing or by service would take care of all the objections of everyone except the news media who always want to be able to peer into all the filings. Those who want to file can file. Those used to the Federal system moving to Minnesota will not be prone to errors. The traps for the unwary in filing in Federal court and not serving will disappear. Those wishing privacy can have it. Those wishing to settle their disputes without having to go to court can also realize their goals. The court can still adopt a standard summons form, and allow it to be signed by either an attorney or a court administrator.

Thank you for considering my input.

Sincerely yours,

Kenneth E. Keate

KEK/pah

C:*WS2000*KEATE*RCP.ULT

GACKLE, JOHNSON & RODENBURG

ROGER W. GACKLE*
BRUCE D. JOHNSON
CLIFTON G. RODENBURG**
KEITH J. TRADER
*ALSO ADMITTED MINN.
**ALSO ADMITTED MINN., MONT., NEB., S.D., & WISC.

ATTORNEYS AT LAW
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MOORHEAD, MINNESOTA 56560

May 17, 1988

Clerk of Minnesota Court
of Appeals
State Capitol, Room 230
St. Paul, Minnesota 55155

Re: Amendments to Rule of Civil Procedure
File No.: C6-84-2134

I am writing to comment on the proposed alternate amendment to Rule 3 which would require filing of a complaint with the court before an action would be deemed commenced.

I practice in six states with the bulk of my cases in Minnesota followed closely by North Dakota. Most of my cases are commercial and retail collection cases. In three of the states (Minnesota, North Dakota and South Dakota), "hip-pocket" service is permitted. In the other three states (Montana, Nebraska and Wisconsin), the complaint must be filed before a summons can be served.

Has the Advisory Committee on Civil Procedure done any surveys or studies on how many litigation cases are settled between the parties without the necessity of court involvement? I would estimate that at least 50% of the cases I handle are settled without the necessity of court filing. This is done either by a stipulation for payments or by full payment of the amount owing before judgment.

If the rules were to be changed to mandate filing (and to pay a $60-$65 filing fee) for each case, this would be the result:

1. Judgment debtors who are often times consumer debtors with low and moderate incomes, would have to pay not only the debt but also the filing fee of $60-$65. This is not necessary where a case is not filed.

2. The court administrators' offices would have a tremendous increase in filing space requirements, paper work and would also need more employees.

3. The district court judges would be spending a lot more time signing dismissal orders and the court administrators would have to be serving them on parties in all collection cases settled after an answer is filed but before judgment.

4. Many creditors would be more restrictive in their credit terms with businesses if they were forced to pay a filing fee on every commercial collection litigation case. As it stands, most commercial creditors know that a substantial number of commercial collection litigation cases will settle without the necessity of court filing. If filing is mandated before each suit, then this cost will be passed on to all creditors in the form of more restrictive credit terms. And most out-of state creditors and many in-state creditors do not find conciliation court cost-effective or practical. So that is not an alternative.

The reasons put forth for change by half of the committee do not appear to be persuasive. So what if other jurisdictions require filing before service? Maybe they should not.

The argument is also put forth that all the people that use the court's resources should share in the cost of the facilities. I would submit that in fact the collection plaintiffs already pay a disproportionate share of cost for court facilities. Most of these cases are by default judgment. The instances of trial are rare and jury trial is almost non-existent. For $60-$65, the court makes some clerical entries in the record and usually neither a judge nor a jury will ever see the case again.

Contrast this with a divorce case or personal injury case. A couple of years ago we estimated that our firm spent about $15,000 in filing fees in Minnesota courts in a year's time. What does the average personal injury firm spend in a year for filing fees and how much of the court's resources are they utilizing through their motion practice and jury trials?

I submit that if Rule 3 is changed to require filing before

service, the courts are going to find a large and unanticipated increase in costs of administration of justice with very little benefit to anyone.

Sincerely,

GACKLE, JOHNSON & RODENBURG

Clifton Rodenburg

CR:rl
Enc. 10 copies of this letter

LAW OFFICES

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1896-1970

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OF COUNSEL:
MARIANNE M. MILLOY

June 15, 1988

Clerk of the Appellate Courts
230 State Capitol
St. Paul, MN 55155

Re: Proposed Amendments to the Minnesota Rules of Civil Procedure

The Honorable Members of the Supreme Court:

This statement is sent for your consideration in the matter of the proposed change to Rule 3 providing for commencement of an action. I recently attended a seminar and learned of the proposed change that would require the filing of a complaint in order to commence the action. I would like to voice my strenuous objection to this change and hope that you review my comments, although untimely filed. The basis for my objection is as follows:

1. I practice exclusively in the area of creditor's rights and remedies. I routinely process hundreds of suits against individuals who do not pay their bills. These actions are disposed of promptly, fairly and efficiently. Nearly 9 out of 10 actions are resolved without the use of District Court services. Requiring these routine matters to be filed would unnecessarily require the time and attention of District Court Judges, Court clerks, filing clerks, and additionally burden creditor's and debtor's attorneys.

To require plaintiff's to pay a filing fee on every case and make a trip to a Courthouse to commence an action, is an unnecessary financial burden. This cost will be passed on to already financially troubled consumer debtors. Creditors with just claims will naturally require that any settlement include payment of this additional filing fee.

With the increase in the number of suits filed, each

District Court will have an increased paper burden. Personnel will have to file, process and store papers which may never require judicial assistance in reaching a fair and prompt resolution of the dispute. This all seems especially ridiculous when many courts already do not have the space to accept discovery materials for filing.

2) Requiring that every case be filed in order to commence an action, will lead to artificially inflated litigation statistics. The mere commencement of an action should never be the benchmark for such statistics.

3) It has been argued that filing to commence a suit will create a readily determined date however, the current procedure of commencement upon service creates a readily ascertainable date from the affidavit of service. This information is easily discoverable.

4) The argument that the Summons as now written is frequently misunderstood by uneducated persons, but that a Court sealed Summons would be more comprehensible is absurd. No one has demonstrated a single case where a defendant did not understand a Summons and it's implications. If a change is believed necessary, it can be implemented by changing the required Summons format presently utilized.

In conclusion, the District Court system is available to all parties requesting it's assistance in resolving a case. To require District Court personnel to participate in claims that otherwise would naturally be resolved, is a poor use of limited resources. I give my unqualified support to the Advisory Committee Comments in favor of the retention of present Rule 3.01.

Respectfully,

M. G. Greer

Michele G. Greer

MGG:bg

FABYANSKE, SVOBODA, WESTRA & DAVIS

A PROFESSIONAL ASSOCIATION

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THOMAS R. OLSON
JUDITH E. KROW
HOLLY A. RATHS
KAREN M. EDWARDS
JEFFREY C. APPELQUIST
STANLEY J. DURAN

REPLY TO:

St. Paul

June 13, 1988

OFFICE OF APPELLATE COURTS

JUN 13 1988

FILED

Clerk of Appellate Courts
230 State Capitol
Saint Paul, Mn 5 5155

Re: Proposed Changes in Minnesota Rules of Civil Procedure

Dear Clerk:

I am writing to endorse almost all of the proposed changes in the Rules, but I would recommend one modification to the videotape rule and I would recommend modifying the language (not the substance) of the new form of Summons (Form 23).

1. Videotape.

I believe that videotape depositions should be allowed only (1) by consent of both parties and the witness, or (2) by order of the court. A videotape can be intimidating, and many witnesses have trouble enough with just a court reporter. Additionally, it will increase litigation costs and lead to abuses.

2. Summons.

I recommend the following changes in the proposed summons which I believe will delete the legalese and make it more readable:

1) delete "above named" in the address, as it is completely unnecessary -- the caption already identifies the defendants and there is no risk that any of the defendants will believe that "defendants" in the first line refers to anyone but them;

2) modify the first paragraph to eliminate "hereby" and "herewith" (both antiquated terms) and to make the paragraph more readable and understandable;

3) modify the second paragraph by substituting "THIS" or "THIS SUMMONS" for "THE ABOVE"; and

4) modify the administrator's certification by substituting "before" for "prior to" (all authorities on writing decry the use of "prior to") and substituting "this" for "above named".

Enclosed is a proposed form incorporating the changes.

Although modified in recent years, too many of the approved forms still contain "legalese" and other language which is a discredit to the profession. "Comes now," "said" (as an adjective), "herewith," "hereinafter," "as to," "prior to," "above-named," etc., are either poor English, stilted, and/or unnecessary. Most of them do nothing but clutter a pleading, yet they still appear regularly in the standard forms. Since the forms are followed diligently by young lawyers, they propogate language which the Supreme Court and the Advisory Committee should be seeking to eliminate.

Thank you for considering my recommendations.

Sincerely

Robert J. Huber

RJH/bhl
Enclosure
(6128h)

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

Subject Matter* _____

_____,

Plaintiff,

vs.

_____,

Defendant(s).

Case Number _____

SUMMONS

THE STATE OF MINNESOTA TO THE DEFENDANT(S):

You are summoned and required to serve upon plaintiff's attorney (name and address)

Attorney ID Number _____
an answer to the accompanying complaint within twenty (20) days after service of this summons upon you (exclusive of the day of service). If you fail to do so Judgment will be taken against you for the relief demanded in the complaint without further notice to you.

THIS SUMMONS IS A LEGAL NOTICE THAT YOU ARE BEING SUED BY PLAINTIFF. You have 20 calendar days after this summons is served on you to serve a copy of a typewritten response on the plaintiff's attorney. The original must be filed with this court. A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not serve and file your response on time, you may lose your wages, money or property.

There are other legal requirements. You may want to call an attorney.

Filed before service with this court:

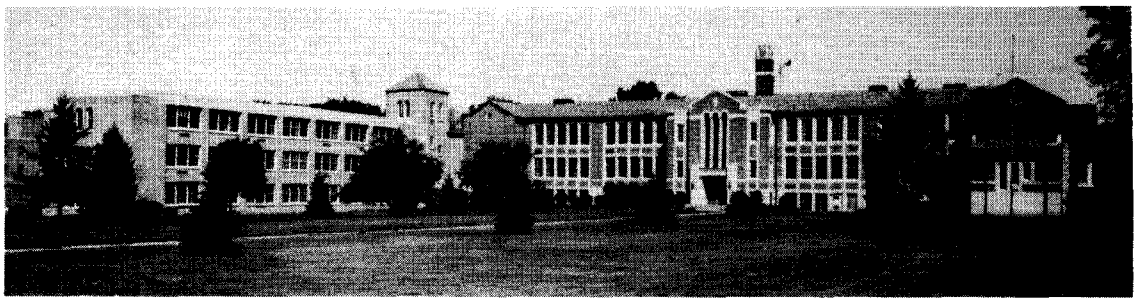
_____
Date

_____
Administrator

By_____
Deputy

Court Seal

WILLIAM MITCHELL
College of Law



875 SUMMIT AVENUE □ ST. PAUL, MINNESOTA 55105 □ (612) 227-9171

June 20, 1988

The Honorable Douglas K. Amdahl
Chief Justice
Minnesota Supreme Court
State Capitol Bldg.
St. Paul, MN 55155

Dear Mr. Chief Justice:

I write in support of the amendments to the Minnesota Rules of Civil Procedure proposed by the Supreme Court Advisory Committee. I would appreciate an opportunity to appear at the public hearings and explain my position and answer any questions the Court may have. Please schedule me, if the time is not too late to do so, for an appearance. I support all the proposed changes. I believe the proposed changes are needed to eliminate deficiencies in current Minnesota practice and to conform Minnesota practice with federal practice. The advantages to be gained by the amendments substantially outweigh disadvantages. Recent opposition to some of the rules, including positions voiced during the Minnesota State Bar Convention, have not advanced any significant problems with the amendments that are not easily resolvable in practice.

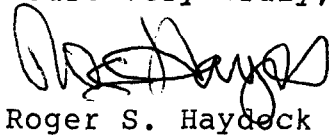
One rule that has received some opposition is the commencement of action rule. The primary objection to the amendment is that attorneys should control litigation and not the judicial system. I strong oppose that position. If a party decides to initiate a lawsuit and take advantage of relief available in our judicial system, it is the administrators of that system, the judges, who ought to and must control the litigation. Early and timely filing will permit many more cases to be resolved by mediation and arbitration administered by the court. Those few cases that involve privacy rights can be resolved through "courtesy" complaints provided the opposing party before filing. All other jurisdictions, but a few, operate effective and more efficient

litigation systems as a result of the requirement that actions to be commenced must be filed.

Another rule that has received some opposition is the videotape deposition rule. In my work as an author and CLE lecturer, I receive a substantial number of questions regarding videotaped depositions. The amendments to the rule are necessary to conform the current rules to present Minnesota practice. The majority of lawyers agree to take videotaped depositions without a court order. However, too many lawyers object to this procedure, forcing the attorney to take a stenographic deposition or to bring a motion to obtain such relief. After the motion is served, the opposing lawyer may change his or her mind, resulting in a waste of time and money for the lawyer seeking the deposition. A few judges' law clerks have called me regarding authority for the proposition that videotaped depositions ought to be allowed. While in the few cases that I know of judges have allowed videotaped depositions, there ought to be no burden on the party seeking the videotaped deposition. The amendment shifts the burden to the party opposing the videotaped deposition, which is the way it ought to be. The more often a videotaped deposition occurs, the less expensive and more common it will become. The advantages of videotaped depositions, along with a stenographic transcript, far outweigh testimony preserved only in transcript form. Another substantial practical argument exists in support of the change. It is my experience, and the experience of many practicing attorneys, that a videotaped deposition reduces the chances that the opposing lawyer will act inappropriately, and increases the chances that the deponent will be better prepared to answer questions. The videotaped deposition makes the attorney and deponent more accountable for what happens and what is said. These reasons, alone, are sufficient to support a change in the present rule. Videotaped depositions are to be strongly encouraged. As more law firms obtain their own video equipment, videotaped depositions will become standard practice. The next generation of lawyers will look back at stenographic recording of depositions and wonder why such an archaic system was used when much more accurate and equally economic means were available to record the deposition.

Thank you for your consideration.

Yours very truly,



Roger S. Haydock
Professor of Law

RSH:ad

MINNESOTA CONFERENCE OF CHIEF JUDGES
317D STATE CAPITOL
SAINT PAUL, MINNESOTA 55155

June 20, 1988

Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

Dear Clerk:

On behalf of the Conference of Chief Judges, I am requesting permission to appear before the Supreme Court, at its June 22, 1988 hearing on proposed amendments to the Rules of Civil Procedure, to address the issue of mandatory filing of civil complaints.

The Conference of Chief Judges met on Tuesday, June 14, and passed a resolution endorsing the concept of mandatory filing, to the effect that commencement of an action shall not be complete unless the action is filed with the court within 90 days following service of the summons and complaint. It is the position of the Conference that this approach will serve to accomplish the goal of improved caseflow management while, at the same time, addressing the issue of privacy and other concerns raised by those in opposition to mandatory filing. A copy of the Conference's resolution and applicable rule amendments are attached.

Respectfully,

Bruce Douglas /by Michael B. Johnson

Hon. Bruce Douglas
Chair, Conference of Chief Judges

STATE OF MINNESOTA

IN SUPREME COURT

C6-84-2134

In re Proposed Amendments to the
Minnesota Rules of Civil Procedure

Position of the Minnesota Conference of Chief Judges
Concerning Proposed Amendments to Rules of Civil Procedure

The Conference of Chief Judges met in conference on June 14, 1988, at the Radisson Hotel, Duluth, Minnesota, and adopted the following resolution concerning the Proposed Amendment to the Minnesota Rules of Civil Procedure, Rule 3.01:

That Minnesota Rules of Civil Procedure, Rule 3.01 be amended to provide, in effect, that a civil action is not commenced unless filing with the court is completed within 90 days of service of the summons and complaint.

The purpose of this amendment is to improve the caseflow management of civil actions while, at the same time, addressing the issue of privacy and other concerns raised by those in opposition to mandatory filing of civil complaints.

The Conference proposes the following language to amend Rule 3.01:

Rule 3.01. Commencement of the Action

~~A civil action is commenced against each defendant:~~

(a) A civil action is commenced by:

(i) service of the summons pursuant to (c) (i), (ii), or (iii), and

(ii) filing a copy of the complaint with the court within 90 days after service of summons.

(b) Immediately upon filing the complaint with the court the plaintiff shall serve notice of the filing on the defendant. Failure to serve notice of filing shall not affect the validity of the filing.

(c) If the complaint is filed within 90 days after service the action shall be deemed commenced against each defendant for the purpose of compliance with the applicable statute of limitations:

(i) ~~(a)~~ when the summons is served upon that defendant, or

(ii) ~~(b)~~ at the date of acknowledgment of service if service is made by mail, or

(iii) ~~(c)~~ when the summons is delivered to the sheriff in the county where the defendant resides for service; but such service shall be ineffectual unless within 60 days thereafter the summons be actually served on him or the first publication thereof be made.

(d) If the complaint is not filed within the 90 day period, the service of summons shall be deemed to be ineffective and void without notice.

The Conference of Chief Judges recognizes that it is

necessary to also amend the Rules of Civil Procedure, Rules 12.01 and 14.01 in order to adopt the above recommendation. Recommended amendments are as follows:

Rule 12.01. When Presented

Defendant shall serve his answer within 20 days after service of ~~the summons~~ notice of filing of the complaint upon him unless the court directs otherwise pursuant to Rule 4.043. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows unless a different time is fixed by order of the court: (1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after service of notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

Rule 14.01 When Defendant May Bring in Third Party

Within 90 days after service of the ~~summons~~ notice of

filing of the complaint upon him, and thereafter either by written consent of all parties to the action or by leave of court granted on motion upon notice to all parties to the action, a defendant as a third-party plaintiff may serve a summons and complaint, together with a copy of plaintiff's complaint upon a person, whether or not he is a party to the action, who is or may be liable to him for all or part of the plaintiff's claim against him and after such service shall forthwith serve notice thereof upon all other parties to the action. Copies of third-party pleadings shall be furnished by the pleader to any other party to the action within 5 days after request therefor. The person so served, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12 and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party

plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and crossclaims as provided in Rule 13. A third-party defendant may proceed under this rule against any person who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

The Conference of Chief Judges further recognizes that, although the above recommendations would affect the operation of Rules of Civil Procedure 23.03, 26.06, 30.01, 31.01, 33.01, 34.02, and 36.01, no further amendments are necessary.

C6-84-2134

Minnesota State Bar Association

MINNESOTA BAR CENTER • SUITE 403, 430 MARQUETTE AVE. • MINNEAPOLIS, MN 55401 • PHONE 612-333-1183
In-state 1-800-292-4152
TDD 612-333-1216

June 20, 1988

President
HELEN I. KELLY
1800 International Center
900 Second Avenue South
Minneapolis, MN 55402
(612) 349-8242

Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

On Friday, June 17, acting on the recommendations of its Court Rules Committee, the General Assembly of the Minnesota State Bar Association adopted the following positions on the amendments to the Rules of Civil Procedure, as proposed by the Minnesota Supreme Court Advisory Committee on Civil Procedure:

a. The Minnesota State Bar Association General Assembly voted to support the deletion of gender specific language in the Rules of Civil Procedure.

b. Rule 3.01, Commencement of the Action

The Minnesota State Bar Association voted to oppose the alternate rule proposed by the Minnesota Supreme Court Advisory Committee on Civil Procedure, which would provide that a civil action is commenced by filing a complaint with the court. The MSBA opposes mandatory filing because doing so without requiring simultaneous service of the complaint upon the defendant would allow the commencement of an action without the defendant's knowledge; because mandatory filing interferes with the litigant's privacy, of special concern in sensitive matters such as sexual abuse and sexual harassment cases; because fruitful settlement negotiations may be frustrated by court involvement at such an early stage; and because it is unclear what effect the proposed alternate rule would have on statutes of limitations in certain instances. No data is presented to justify the claimed need for judicial intervention to administer private actions.

c. Rule 5.05, Facsimile Transmission

The Minnesota State Bar Association voted to support the proposed new Rule 5.05, which would provide that documents may be filed with the court by facsimile in accordance with any order that may be promulgated by the Minnesota Supreme Court and any orders that may be adopted by local rule, and which would provide that any such document has the full force and effect of an original. The MSBA agrees with the Advisory Committee that the proposed Rule would enhance accessibility to limited judicial resources and facilitate the efficient and inexpensive handling of litigation within the court system and for litigants.

d. Rule 10.01, Names of Parties

The Minnesota State Bar Association voted to support the amendment to Rule 10.01 if the proposed alternate Rule 3.01 is adopted.

e. Rule 28.03, Disqualification for Interest

The Minnesota State Bar Association voted to support the amendment to Rule 28.03, which makes clear the individuals who may be disqualified for interest during depositions. The MSBA agrees with the Advisory Committee's amendment, which is intended to prevent abuse of the discovery process.

f. Rule 30.02, Notice of Examination: General Requirements: Special Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization; Telephone Depositions

The Minnesota State Bar Association voted to oppose any amendment to Rule 30.02(4) relating to videotaping of depositions. The MSBA believes the current Rules are adequate.

g. Rule 30.02(7), Telephone Depositions

The Minnesota State Bar Association voted to support the amendment to Rule 30.02(7), which would allow telephone depositions. The MSBA agrees with the Advisory Committee that the amendment would result in savings of litigation expense and time.

h. Rule 30.02(8), Three Deposition Limit

The Minnesota State Bar Association voted to oppose the amendment to Rule 30.02(8), which would provide that whenever a total of three depositions on oral examination has been noticed or taken in any pending

action by a party, that party shall not notice additional oral depositions until a discovery conference pursuant to Rule 26.06 has been held. The MSBA believes that abuses in the discovery process which this amendment is designed to address can be better handled by existing Rules, motion practice and pretrial conference practices. The MSBA also believes that the amendment would create unfair advantages to certain litigants in multiple party litigation.

i. Rule 30.06, Certification; Copies

The Minnesota State Bar Association voted to oppose the amendment to Rule 30.06, which is designed to assure that parties to litigation are treated fairly with respect to the cost of obtaining deposition transcripts. The MSBA believes that the amendment is not necessary because there is no evidence of widespread abuse under the current Rule.

j. Rule 32.05, Use of Videotape Depositions

The Minnesota State Bar Association voted to support the proposed new Rule 32.05, which makes it clear that video depositions may be used in court proceedings to the same extent as stenographically recorded depositions.

k. Rule 52.01, Effect

The Minnesota State Bar Association voted to support the amendment to Rule 52.01, which would conform the Rules to the decision of the United States Supreme Court in Anderson v. City of Bessemer City relating to the proper standard for review of findings based on documentary evidence. The MSBA agrees with the report of the Advisory Committee that the standard of review ought to be the same in state and federal cases.

l. Form 1, Summons

The Minnesota State Bar Association voted to oppose the proposed new Form 1, Summons. The MSBA believes that the form is inconsistent with current Rules, statutes and case law. The MSBA believes that the proposed form contains several good ideas, but that it needs to be further studied and refined.

We do not request time for an oral presentation. If you have any questions, please contact Mary Jo Ruff, MSBA staff, or Dan Gislson, chairperson of the Court Rules Committee.

Sincerely,

Tim Groshens

Tim Groshens
Executive Director

TG:lb

Supreme Court No: C6-84-2134

Hearing Date: June 22, 1988
9:00 a.m.
Supreme Court Chambers

NAME		DATE WRITTEN SUMMARY FILED	ORAL PRESENTATION YES	ORAL PRESENTATION NO	ORDER OF ARGUMENT	ALLOTTED TIME
James L. Hetland, Jr.	Chair, Advisory Committee	Proposed Amend. filed 4-20-88				
Clifton Rodenburg	Attorney	5-19-88		X		
Dale E. Parker	District Counsel, Veterans Administration	6-1-88		X		
Linda G. Oman	President, Minn. Freelance Court Reporters Assoc.	6-10-88				
Jack M. Provo	Hennpin County District Court Administrator	6-10-88	X Judge Pro			
William E. Jepsen	Board of Governors of the Minn. Trial Lawyers Assoc.	6-10-88		X		
Robert J. Huber	Attorney	6-13-88		X		
Duane M. Peterson	Attorney	6-13-88		X		
Lee W. Mosher	Attorney	6-13-88		X		
Allan J. Zlimen	Attorney	6-14-88	X			
Michele G. Greer	Attorney	6-16-88		X		
Kenneth E. Keate	Attorney	6-16-88		X		
Mark D. Stephenson	Attorney	6-17-88		X		
Hon. Bruce Douglas	Chair, Conference of Chief Judges	6-20-88	X			
Stephen E. Forestell	Recording Secretary, Minn. District Judges Assoc.	6-20-88		X		
Roger S. Haydock	Professor of Law, William Mitchell	6-20-88	X			
Tim Groshens	Executive Director, Minn. State Bar Assoc.	6-20-88		X		