File Copy 35395

SUPREME COURT
FILED
MAY 19 1980
JOHN McCARTHY
CLERK

STATE OF MINNESOTA

IN SUPREME COURT

NO. 35394-5

HEARING ON PROPOSED AMENDMENTS TO RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS AND MUNICIPAL COURTS

O R D E R

IT IS HEREBY ORDERED that a hearing on proposed amendments to the Rules of Civil Procedure for District Courts and Municipal Courts shall be held in the Supreme Court Chambers in the State Capitol, St. Paul, at 9:30 a.m. on Thursday, July 10, 1980.

It is proposed to amend Rule 3, Rule 5, and Rule 41 of the Rules of Civil Procedure as follows:

Adopt a new subsection to Minn. R. Civ. P. 3 as follows:

Rule 3.03 Filing of the Complaint. The complaint shall be filed with the court upon service thereof or within 10 days thereafter. If a party fails to ~~file said~~ complaint within 10 days after service upon the defendant, the court, on motion of any party to the action, or on its own motion, may order the complaint to be filed forthwith and if the order be not obeyed, the court may order the summons and complaint to be regarded as stricken and their service to be of no effect.

Delete the present language of Minn. R. Civ. P. 5.04(1) and (2) which state:

~~Rule 5.04(1) all pleadings, affidavits, bonds, and other papers in an action shall be filed with the clerk, unless otherwise provided by statute or by order of the court.~~

~~2) All pleadings shall be so filed on or before the second day of the term in which the action is noticed for trial, unless the court may continue the action or strike it from the calendar.~~

Amend Minn. R. Civ. P. 5.04 to read as follows:

5.04 Filing (1) Time. All pleadings and other papers after the complaint required to be served upon a party shall be filed with the court either before service or within ten days thereafter. But, unless filing is ordered by the court on motion of a party or upon its own motion, depositions upon oral examination and interrogatories and requests for admission and the answers thereto need not be filed unless and until they are used in the proceedings.

(2) Failure to File. If a party fails to file any pleading or paper under this rule, the court, on motion of any party to the action, or on its own motion, may order the papers to be filed forthwith and if the order be not obeyed, the court may dismiss the action without prejudice or strike the pleading or other paper and grant judgment against the defaulting party for costs and terms including reasonable attorneys' fees unless good cause is shown, for, or justice requires, the granting of an extension of time.

(3) Filing Prior to Hearing. All affidavits, notices and other papers designed to be used in any cause shall be filed prior to the hearing of the cause unless otherwise directed by the court.

(4) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of court except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

Amend Rule 41.02 to read as follows:

Involuntary Dismissal: Effect Thereof (1) The court may on its own motion or upon motion of a party, and upon such notice as it may prescribe, dismiss an action or claim for failure to prosecute or to comply with these rules or any order of the court.

(2) After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. In an action tried by the court without a jury the court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52.01.

(3) Dismissal on Court's Motion.

(A) Notice. In all civil cases wherein there has been no note of issue or certificate of readiness filed during the 24 months just past, the court shall mail notice to the attorneys of record setting a hearing within 30 days from the date of mailing such notice for the purpose of dismissing such case for want of prosecution. If an application in writing is not made to the court for good cause shown why it should be continued as a pending case before said hearing, or if none of the parties or their attorneys appear at the time and place set for said hearing, or if good cause is not shown, the court shall dismiss each such case without prejudice. If at or before said hearing it is shown that the failure to take steps or proceedings is not due to the plaintiff's fault or lack of reasonable diligence on his part, the action will not be dismissed. The court may then order the action set down for final disposition at a specified date, or place it on the calendar for trial or hearing in due course.

(B) Mailing Notice. The notice shall be mailed in every eligible case not later than 30 days before June 15th and December 15th of each year, and all such cases shall be presented to the court by the clerk for action thereon on or before June 30th and December 31st of each year. These deadlines shall not be interpreted as a prohibition against mailing of notice and dismissal thereon as cases may become eligible for dismissal under this rule.

~~(3)~~ (4) Unless the court in its order for dismissal otherwise specifies, a dismissal under this rule, except Rule 41.02(3), and any dismissal not provided for in this rule or in Rule 41.01, other than a dismissal for lack of jurisdiction, for forum non conveniens, or for failure to join a party indispensable under Rule 19, operates as an adjudication upon the merits.

IT IS FURTHER ORDERED that advance notice of the hearing be given by the publication of this order in the Supreme Court edition of FINANCE AND COMMERCE, ST. PAUL LEGAL LEDGER, and BENCH AND BAR.

IT IS FURTHER ORDERED that members of the bench and bar desiring to be heard shall file briefs or petitions setting forth their position and shall also notify the Clerk of the Supreme Court, in writing, on or before July 3, 1980, of their desire to be heard on the proposed amendments.

DATED: May 19th 1980.

BY THE COURT

Robert J. Sheran

Chief Justice

PIPER, SUNDE, OLSON AND WOLF
Attorneys at Law
108 ARMSTRONG BLVD. SO.
ST. JAMES, MINNESOTA 56081
PHONE 507-375-3352

LAMAR THOMAS PIPER*
STEVEN R. SUNDE
SUZANN M. OLSON

DANIEL P. WOLF

*ADMITTED IN IOWA

MADELIA OFFICE
15 CENTER AVE. NO.
PHONE 507-642-3158

June 6, 1980

CERTIFIED MAIL--RRR

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

RE: Hearing on Proposed Amendments to Rules of Civil Procedure
for District Courts and Municipal Courts
Court File No. 35394-5 35395

Dear Mr. McCarthy:

I wish to be heard in opposition to the proposed amendments above referenced. It is my understanding from the Order of May 19, 1980, that proponents or opponents of the proposed amendments can be heard by filing briefs (or petitions) and by writing to you on or before July 3, 1980.

I do wish to be heard on the proposed amendments, and I will file a brief prior to July 3, 1980. Incidentally, in various materials that I have seen, there is reference to the memo or other document offering rationale for the proposed amendments. I have not seen that document, and I would appreciate your assistance in locating a copy of any document that was relied on by those suggesting the proposed amendments to the Supreme Court.

Thank you for your courtesies in this matter.

Very truly yours,

LaMar Thomas Piper

LaMar Thomas Piper

jmm

6-9- - copy to each Justice

PIPER, SUNDE, OLSON AND WOLF
Attorneys at Law
108 ARMSTRONG BLVD. SO.
ST. JAMES, MINNESOTA 56081
PHONE 507-375-3352

LAMAR THOMAS PIPER*
STEVEN R. SUNDE
SUZANN M. OLSON

DANIEL P. WOLF

*ADMITTED IN IOWA

MADELIA OFFICE
15 CENTER AVE. NO.
PHONE 507-642-3156

May 28, 1980

Mr. Jerry Winter
Court Administrator
Fifth Judicial District
Watonwan County Courthouse
St. James, MN 56081

RE: Proposed Amendments to Civil Rules 3, 5.04, and 41.02

Dear Mr. Winter:

I am writing in response to your Memorandum of May 21, 1980, in regard to the proposed amendments of the above-listed rules. Although I am not going to take the time to determine precise figures, I would estimate that at any one time our office might have between 5 and 20 lawsuits commenced but not filed with the Clerk of the appropriate county. My estimate as to the number of complaints/summons which were served but not filed during 1979 would be the same.

After reviewing the proposed amendments, I really do not see the need for them. First of all, the cost impact throughout the state will be considerable, and it will be especially so in regard to sole practioners, small firms, and medium-size firms. The impact will also be great and adverse on firms doing collection work. The proposed amendment will guarantee that clients are going to have an extra (and possibly unnecessary) expense. And in those cases where the client is indigent or unable to advance or deposit money for filing fees, there will be an extra and unnecessary expense to the lawyer involved.

These concerns may not be significant to large firms or to those firms whose trial practice consists primarily of so-called large ticket lawsuits. Everybody is willing and able to advance $25.00 on a case that is worth $15,000.00 or $100,000.00, and everybody is willing to advance money for General Motors, a governmental unit, or some other client that is going to pass the ultimate cost onto another group of consumers. However, for many small law firms the added expense is going to be significant, and much of that expense may well be unrecoverable. There are literally thousands of small and medium-size cases that are settled prior to substantial discovery and well in advance of trial, and without the filing of the pleadings. To make everyone file those

papers is simply to create unnecessary administration, create unnecessary work, and to require unnecessary payments by those groups and classes of litigants least able to bear the impact.

Another effect of the proposed rule changes is going to be to put added pressures and expenses on lawyers and clients for the sole purpose of keeping a tidy docket. I recently had a bad experience in Federal Court that illustrates what I think is the irrationality of this type of rule making. In 1976, I started an action in Nicollet County District Court against an out-of-state corporation, and on behalf of a local resident. I had to start the action fairly promptly because it was an action for wages and commissions, and that type of action has a two-year statute of limitations. Upon the action being commenced, the case was removed to Federal District Court by the Defendant and discovery was commenced. To simplify the story, it is sufficient to say that there was a fair amount of activity on the file for about a year and a half, and then our discovery efforts were simply stymied and frustrated by the Defendant, and by a lack of money necessary to conduct discovery in Illinois and necessary to keep going back into Court on motions if the Defendant were to be compelled to yield information.

In 1978, the Federal Magistrate, in recognition of the discovery problems, made an order providing that the case would not be tried until six months after final settlement of a Federal Trade Commission action involving the same Defendant. The only way I could get any economy in my discovery was to use the Federal Trade Commission information available through the Freedom of Information Act. That information was first available in April of 1979 after a temporary or provisional consent decree and agreement had been entered into by the Defendant and the FTC. Nevertheless, the matter was not finally accepted by the Federal Trade Commission. In any event, a few weeks ago I received a call from the Judge's calendar clerk summarily putting the case on for trial at a date certain, in spite of the Magistrate's order and in spite of the fact that discovery was not completed. The Federal District Court denied a motion for continuance on the grounds that I had four years in which to complete discovery. The Court ignored the fact that the Federal Trade Commission had taken in excess of four years of pre-complaint discovery, with three lawyers on the case, and that the Defendant had had seven years of involvement with the issues and yet often got continuances from the FTC and successfully frustrated my investigation by claiming not to understand what I was seeking or by claiming that

documents could not be found or located. The Defendant had three lawyers and six legal assistants on the FTC matter, and a 100-lawyer firm in our case. The case was eventually settled at trial, but the Court's concern about cleaning its calendar cost my client and me a significant amount of money by short circuiting our discovery at a time when we were at last able to complete (and afford) discovery.

My experience in Federal Court illustrates the basic unsoundness of the two-year rule proposed. By having a rule that presumes the sufficiency of a two-year period of discovery, the beneficiaries will be the very large law firms and the powerful litigants who have such economic superiority so as to directly impact it on a case. The people that will be hurt will be individual citizens with limited assets, and litigants who cannot afford to hire firms and attorneys with high hourly rates, or cannot afford to hire attorneys who can underwrite the case.

The rule changes are designed to foster empire building in courts and to unnecessarily create additional red tape. Where constitutional issues are not involved, it is unwise and unfair to impose substantive results through the use of procedural rules. The proposed rules remind me of the librarian who was only happy when all of the books are on the shelf and not being read. They bear the imprint of a statistician, and no doubt will be used to illustrate to the legislature and the world the terrible and crushing burden on the Court system. That the burden is being self-imposed will probably be forgotten. Moreover, to the (average) people that God made so many of, the proposed rules smell of busy work. There are many good reasons why summonses and complaints are not filed immediately after service.

1. Non-filing saves the filing fee on those cases that are settled without substantial discovery or the need for trial.

2. Non-filing reduces the work load of clerks and secretaries, which is important unless one is trying to build an empire.

3. Non-filing keeps the dispute private for a longer period of time, which is important in dissolution of marriage matters, and many cases involving financial matters. This consideration is especially important in the rural areas.

4. Non-filing is especially important in small cases as it is often important for settlement to be able to assure the Defendant that the complaint is not a matter of public record yet, and that settlement or resolution of some kind can prevent the establishment of a public and embarrassing record.

5. Non-filing obviously saves thousands of dollars in time for employees of the courts and of law offices.

6. Non-filing does not artificially inflate the caseload of Courts.

7. Non-filing saves significant time and expense in those cases that are concluded without trial. If filing is required, then the Courts will surely want stipulations of dismissal filed at some point in time.

I could go on, but the point is that litigants and their attorneys ought to be able to make a few decisions on their own without a "tax" on litigation.

Further, it does not take much perception to see that the proposed rules will favor the very large law firms and the defense establishment. It is incredible how the ABA and other groups can talk pious nonsense about delivering legal services to people who fall in the economic middle class and below but yet continue to urge rule changes that make it more difficult for small and medium-size firms to efficiently and economically serve the public. All these rules are going to do is to create additional Court appearances to decide whether or not there is good cause for a case being over two years old. There are dozens of cases that naturally extend for two years or more because the attorney must pay attention to a few bread-and-butter matters along the way, and most lawyers and small firms do not have the luxury of knowing that their charges are going to be spread across their clients' consumers. Accordingly, they must be realistic in charging and they very seldom are able to "merit" $100.00 per hour, or $500.00 per trial day, and they are very seldom able to make use of sophisicated billing theories such as multipliers and risk factors. The 24-month rule is simply going to annoy the hell out of everybody by making people come into Court to explain the obvious. Further, it will favor defendants because it will in effect create a judicially imposed statute of limitations. Also, most defense firms being paid by insurance companies (and

litigants who can afford a little justice) will "find" it their moral and ethical duty to ask for dismissal or some type of penalty from the plaintiff if the rule has not been complied with. And there will be just enough Courts with a desire to clean their calendars so that there will be dismissals and resultant hardship further strengthening the monopolies that are growing in litigation.

I have been told that the rationale behind the proposed rule changes is that some attorneys do not follow through and get their cases tried in a timely fashion. I have also been told that an unfiled summons and complaint ipso facto constitutes an unfair or abusive use of the Court's power or prestige. The first rationale, if it is one, may be a legitimate concern, but it does not justify the proposed amendments. There are plenty of tools available to make attorneys get their cases filed and tried, and the proposed cure is worse than the illness. If cases are truly ready, litigants can use the Professional Responsibility Board to get the lawyer moving. I do not think that the Courts ought to take what is essentially an attorney--client problem and attempt to solve it through the imposition of a punitive and burdensome procedural rule. Also, I have served on the Sixth District Ethics Committee for the past several months, and there has never been one justified complaint about delay on a litigation matter. In fact, I believe there has only been one complaint about delay in a non-probate matter, and that complaint was determined to have been unjustified because of the complexity and difficulty of the litigation. There may be more complaints of delay in the Metropolitan area, but the analytical basis for the proposed amendments does not improve with an increase in instances of delay.

Most cases get tried because people have completed discovery and are ready to try them, and there are plenty of sanctions and tools available by the Court and by the Professional Responsibility Board to move people along if they are not serving their clients adequately.

As to the use of the Court's power or prestige in the cases of served but unfiled summonses and complaints, I would guess that at least 99 percent of those documents are examined or reviewed by attorneys for the Defendants. In short, I do not believe there is an epidemic of abuse of process in our state. I have handled several abuse of process cases, both for plaintiffs and defendants, and I think the existing legal theories and rules are

sufficient to control wrongful process. Also, the Courts naturally have control of attorneys as officers of the Court, and the Professional Responsibility Board is available to impose sanctions on people who improperly and knowingly start sham or groundless lawsuits. Again, to impose a whole superstructure of fees, motions, and Court appearances on the thousands of practicing attorneys in Minnesota is simply not wise or necessary.

I would also be quite surprised if most judges feel they need more to do in terms of management of cases, and I cannot imagine that there is such an abundance of free time available to trial judges that they would like to be hearing motions filed on the basis of the 24-month proposal. The proposed rules would broaden the Trial Court's role to an undesireable degree. The Trial Court would have increased opportunity (and some would say, obligation) to affect the outcome of litigation by its handling of the 24-month rule. And every time the Court ruled that a case should have been ready or should be ready, or that the case should be dismissed for lack of activity, the Court would be imposing its judgment in a most subjective area upon litigants and their attorneys. That judgmental tilt would probably further the concentration of power in the legal profession, and would probably accelerate the growing tendency towards consolidation of firms and practices. Anyone with any rudimentary knowledge of legal economics knows that many efficiencies are lost as firms get bigger, and while they may become more powerful, they also become more expensive and less accessible to the average litigant. Accordingly, the proposed rules would have an adverse effect on the delivery of legal services to private individuals. (Of course, a private individual with a serious personal injury will always find counsel. It is the less lucrative matters that suffer.)

Finally, it is distressing to see continued examples of the many philosophical inconsistencies within the legal community. The ABA and other groups, staffed by salaried people who are not in the business of providing on-line services to those in the middle class and below, and guided by attorneys who provide services to private citizens only as an occasional act of noblesse oblige, have been giving a great deal of lip service to the efficient delivery of legal services to the consuming public. Although I have never seen anyone write with very much insight on the problem, the basic problem is that the attorneys and attorneys' groups that make policy do not depend on their income by fur-

nishing legal services to private citizens on predetermined or limited incomes. The policy makers within the legal establishment generally are serving clients who can pass their legal costs onto other consumers. In short, they are financed by the general public, and as a consequence, they can charge more either as a matter of choice or as the result of being able to do a more thorough job. At the same time that the wealthiest part of the legal community goes about its business of earning fees subsidized by the buyers of automobiles and insurance policies, or by the buyers of breakfast food, the same people are continually urging (and successfully so) the expansion of law schools and the introduction into practice of more and more attorneys. The theory articulated is that the more attorneys that are available will result in the better service of the private citizen in the middle class (and below). The fact of the matter is that the burdens of continuing legal education, the threat of specialization, the increased dangers of malpractice, have all combined to make the survival of the sole practioner and the small and medium-sized firm a real accomplishment. As a practical matter, very few sole practioners or small firms have the ability and the experience to successfully compete in the marketplace. They cannot afford the necessary books, the necessary insurance coverage, and they cannot always do grade A work because they do not have clients that can pay for the necessary time and the necessary out-of-pocket expenses. The result is often an unhappy disparity between the practice of law as viewed by those who have the leisure to write about how the world should work, and as viewed by those who must make the world work. The proposed rule changes will increase legal costs at a time when every effort should be made to decrease them or at least hold them steady. The proposed rule changes will also create a new 24-month theory of malpractice, and will further the growing concentration of power in the profession and the simultaneous (and resultant) increase in costs for legal services.

In addition to the philosophical and practical objections to the proposed amendments, there are constitution objections. The proposed rules essentially impose a rule made tax in all situations where filing would have been otherwise unnecessary except for a desire to catalog cases and to keep track of the progress of the attorneys in the state. More serious constitutional objections involve the proposed 24-month period. Any enforcement by a Court would certainly run the grave risk of being an unconstitutional denial of equal protection by the state. Also, the proposed

rules essentially modify and amend statutes, and are objectionable on that ground also.

I personally suspect that most of the several thousand attorneys in Minnesota would like to represent General Motors as opposed to John Doe who is a janitor at the local Chevrolet garage. And I personally would prefer to have 10 or 12 large cases a year as opposed to 1 or 2 large cases and 300 or 400 relatively small files per year. Also, I would like to have at least one Vietnamese refugee working in our mailroom. And for good measure, it would be handy to have two law clerks for the summer. I would settle for one from Minnesota for political reasons, and one from Harvard or Yale for social reasons. All of these things would indeed be delightful and are to be desired and achieved if possible.

But at some point, one must suspend the business of philosophy and write an ironclad $50.00 will or draft a contract for deed on a $500,000.00 farm for $25.00. Those items must be done as quickly as possible so that I can drive to Minneapolis for an injury seminar in which I will learn how to refer all of my good cases to someone else's firm.

Most of the lawyers in this state have put up with a great deal of nonsense and posturing from the "top" of the legal establishment. The proposed rules are blessings that the Trial Bench, the Bar, and the public can do without. The proposed amendments are examples of overmanagement and unnecessary management, and the Bench and Bar in Minnesota have got to start thinking in terms of improvement in the substantive justice available to citizens, and have got to stop relying on rules and legal fictions to resolve difficult and complex problems. The proposed rules are simple in nature and concept, and they will do nothing to improve the lot of most litigants and their attorneys. They will simply make it easier for a Court to feel that the rules have been complied with and the matter can now be neatly closed. That may be efficiency in some quarters, but the cost is going to be borne by citizens and lawyers who depend upon the Courts for substantive justice and for justice that maintains more than a tenuous connection with commonly held concepts of right and wrong. The imposition of these rules will demonstrate to the vast majority of the Bar that the concern about the average citizen's day in Court, so often expressed, is something less than enduring and that the order of the future is to be procedure and a new kind of code pleading. The public, of course, will not know enough to

complain for a few years, but when they do understand the meaning of the rules, they certainly will not feel any better about lawyers and Courts.

The public might be more impressed by the legal profession if we could answer the puzzle of why so many probate fees, supposedly not to be based primarily on the size of the estate, turn out so amazingly close to 2 1/2 or 3 percent of the estate. The public might be more interest in knowing why there are so many lawyers and law schools in Minnesota and why so few of them are able to have any impact upon our system of justice. The public would probably rather know why so many attorneys need $100.00 per hour on relatively routine matters, or perhaps the public would like to have statistics on the number of DWI files that get lost or mislaid during the course of a normal year in the metropolitan areas. Of course, all of these trifles deal with substantive matters and are much more uncomfortable to discuss and investigate, and probably cannot be reduced so neatly to statistics as can the data which is sought by the proposed changes. The statistician's dream that is being sought is a nice little subject for somebody's dissertation in Court administration. But the guts of the law has historically been premised on the tried and tested concepts of right and wrong and common sense. And even though the law is primarily a matter of definition, the whole concept and process is demeaned and weakened by the growing domination of statistics, clerical matters, and procedural determinations. The proposed rule changes should never see the light of day, and if they do, it will only be evidence that there are no standards for parenthood.

I also note with some distress that the material indicates an unspecified hearing date and an implementation date about the 1st of July. I would hate to pre-judge the evenhandedness or the openness of any hearing, but it seems difficult to imagine having an implementation date unless a decision has already been made that there will be something to implement.

Our firm has discussed the proposed changes at considerable length. I am authorized to say that Mr. Sunde, Ms. Olson, and Mr. Wolf share in the opinions expressed in this letter. Attorneys Daniel Birkholz and Robert DeHenzel of St. James also are opposed to the proposed amendments and have authorized me to say so. Although the attorneys listed share my conclusions, they

have not had an opportunity to read this letter, and the language and analysis is mine alone. Best regards.

Very truly yours,

LaMar Thomas Piper

jmm

cc: ✓Laurence C. Harmon
State Court Administrator

James Hetland, Jr., Chairman
Supreme Court Advisory Committee

The Honorable Walter H. Mann
Chief Judge, Fifth Judicial District

The Honorable L.J. Irvine
Judge of District Court, Fifth Judicial District

The Honorable Harvey A. Holtan
Judge of District Court, Fifth Judicial District

The Honorable Noah Rosenbloom
Judge of District Court, Fifth Judicial District

The Honorable Miles B. Zimmerman
Judge of District Court, Fifth Judicial District

The Honorable David R. Teigum
Judge of County Court, Watonwan County

Law Offices

9 copies

ERICKSON, ZIERKE, KUDERER, MYSTER & MADSEN, P.A.

A Professional Association
114 West Second Street — P. O. Box 571
Fairmont, Minnesota 56031
507-238-4711

Fairmont Office
Chris L. Erickson
Charles R. Zierke
Elton A. Kuderer
Lloyd S. Myster
Mark A. Madsen
Robert D. Walker
Terry W. Viesselman

Truman Office
Truman, Minnesota 56088
Telephone 507-776-2641

Russ Utermarck 1933-1975

May 29, 1980

Mr. Jerry Winter
Court Administrator
Box 39? - Courthouse
St. James, MN 56081

Re: Proposed Amendments to Civil Rules 3, 5.04 and 41.02
Our File: EAK-Misc.

Dear Mr. Winter:

First, let me advise, on behalf of our entire office, that we oppose, as strongly as we can, the idea that a Summons and Complaint must be served with the Clerk of Court at any time, other than if the case actually goes to trial, or there is need for docketing, etc. We fail to see any justification whatsoever for imposing this additional cost burden, both time and filing fees, on party litigants, unless there is a need for court involvement.

In response to your request for information concerning summons and complaints, I have made a survey of our office, and we would estimate that in 1979 there were about 135 cases in which a suit was started, but the complaint was not filed with the court.

For 1980
~~In 1979~~, we would estimate that there are on hand approximately 65 summons and complaints in which the summons and complaint have been served but they have not been filed with the Clerk.

Most of these unfiled complaints have to do with "collection" matters. Service of a summons and complaint, without filing, seems to produce a resolution of these collection problems, and we fail to see why the Rules should be amended simply to discover the "recalcitrant attorney" who is not putting his cases on for trial. It seems to me that we have enough control with the Board of Professional Responsibility so that we do not need to amend the Rules of Civil Procedure in the manner contemplated.

Yours truly,

Elton A. Kuderer
FOR THE FIRM

EAK:bw

cc: Mr. Laurence C. Harmon
State Court Administrator

RUSSELL, RUSSELL & McLEOD
ATTORNEYS AT LAW
202 THORPE BUILDING
8085 WAYZATA BOULEVARD
GOLDEN VALLEY, MINNESOTA 55426

BRUCE E. RUSSELL
JAMES H. RUSSELL
R. JEFFREY MCLEOD
LEE W. MOSHER

TELEPHONE
(612) 545-5653

June 2, 1980

John McCarthy
Clerk of Supreme Court
State Capitol
St. Paul, MN 55155

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

Dear Mr. McCarthy:

I wish to direct the attention of the Court to proposed Minn.R.Civ.P. 5.04(1). The language therein provides for an exception to the filing requirement for depositions upon oral examination, interrogatories, requests for admission, and the answers thereto. No such exception is explicitly stated for Rule 26 Statements, Rule 31 Depositions Upon Written Questions, Rule 34 Documents and Other Things Produced Pursuant to Request, and Rule 35 Medical Disclosures.

I would request that the Court consider the inclusion of all discovery papers within the proposed Rule 5.04(1) exception to the filing requirement.

Thank you.

Very truly yours,

Lee W. Mosher

LWM/sjf

DANIEL A. UTTER
ATTORNEY AT LAW
ONE GROVELAND TERRACE
MINNEAPOLIS, MINN. 55403
(612) 377-0364

June 4, 1980

John McCarthy
Clerk of Supreme Court
State Capitol Building
St. Paul, Minnesota 55155

Re: Hearing on Proposed Amendments to Rules of Civil Procedure for District Courts and Municipal Courts
File No. 35394-5

Dear Mr. McCarthy:

I oppose the above said proposed rule changes.

I oppose the rule changes on the grounds that the costs of legal services to the general public will be increased without reason or necessity. Requiring the filing of complaints which would not otherwise be filed causes the following problems:

1. Filing fees are expended which are burdensome in small cases and entirely unnecessary if settled without substantial discovery or need for trial.

2. Unnecessary paperwork is created for the trial courts which are already burdened beyond their capacity to handle.

3. All cases are forced to be made a matter of public record even when that may be disadvantageous to one or more of the parties.

4. Filing will create additional and certainly unnecessary costs both for trial courts and for law offices.

5. Unnecessary filing will artificially inflate the caseload of the courts.

6. The unnecessary filing of complaints will also require the unnecessary filing of stipulations and dismissals.

The dismissal portion of the amendment is arbitrary, capricious and unreasonable. Again it is wholly unnecessary.

I will appear in the Supreme Court at 9:30 a.m. on Thursday, July 10, 1980. I request the opportunity to be heard in opposition to the proposed amendment.

Respectfully yours,

Daniel A. Utter

DAU/lb

cc: LaMar T. Piper

CABLE ADDRESS: NORCITY

Northern City National Bank

306 WEST SUPERIOR STREET, DULUTH, MINNESOTA 55801 PHONE 218/722-3301

TRUST DEPARTMENT

May 22, 1980

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

35394-5

Dear Sir:

At the regular May meeting of the 11th District Bar Association, the Association voted to recommend to the Supreme Court that the proposed amendments to Rules 3; 5.04; and 41.02 of the Minnesota Rules of Civil Procedure, not be adopted by the Court. The Association further voted to recommend to the Court that the proposed amendments to Rules 27.01 (4); and 49.01 (2) be adopted, together with the proposed amendment to County Court Appellate Rule 103.01.

Please convey to the Justices of the Minnesota Supreme Court the feelings of the 11th District Bar Association on these proposed amendments.

Yours very truly,

William C. Kuhlmann
Secretary of the 11th
District Bar Association

WCK:lmb

cc: Mr. Thomas R. Thibodeau
Mr. David P. Sullivan

Stewart & Zlimen, Ltd
ATTORNEYS AT LAW
1218 SECOND AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55403

June 5, 1980

NORMAN E. STEWART
ALLAN J. ZLIMEN

Telephone
371-3840

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

In Re: Proposed Amendments to Minnesota Rules Of Civil Procedure, Rule 3, Rule 5.04 and Rule 41.02 (Hearing date July 10, 1980)

35394-5

Dear Mr. McCarthy:

Pursuant to my conversation with you on the 3rd of June, I wish to give you this letter along with ten copies for distribution to the Justices of the Minnesota Supreme Court.

I have before me and I have carefully reviewed the Memorandum dated the 2nd of May from the Minnesota Supreme Court Advisory Committee on Rules of Civil Procedure. I agree with the recommendation of that Advisory Committee that the proposed amendments not be adopted by the Court for every reason contained in their comments with respect to that proposed amendment.

Additionally, I wish to point out further reasons why this proposed amendment should not be adopted by the Court.

I.

The Fair Credit Reporting Act (Federal) at the insistence of the Federal Housing Administration as well as other government agencies contains a provision that credit reporting services must report to credit grantors all judgments that are entered in record Courts throughout the United States and to continue to report those judgments for seven years following filing of the Satisfaction of Judgment. In the hearings on that Act, many prominent credit managers strongly urged against this, and our office participated in those hearings for reasons which I will detail later in this letter.

II.

In 1975 and 1976 our office worked with the Attorney General's Office for the State of Minnesota as well as the Legal Aid Society in working out the "Minnesota Garnishment Reform Act of 1976" as an amendment to our Garnishment and Execution Statutes. Our Statutes in that respect now are fair to credit grantors, commercial businesses as well as consumers. One of its most salient points is that 40 days after service of Summons and Complaint seeking a money judgment in the absence of responsive pleadings by the defendant garnishment process may issue without entry of judgment. In my appearances before the Judiciary Committee of both houses of the legislature, I pointed out that this office over the years, and particularly since the Fair Credit Reporting Act, has endeavored to avoid the needless entry of judgments. We represent a broad spectrum of credit grantors---more than 40 hospitals and other branches of the medical field, banks, retailers, loan companies, credit unions and so forth. Many of these claims are for non-elective credit. What purpose is served by filing an entry of judgment with the attendant costs against a defendant who admits the obligation and is frequently struggling to work out a way with our office and other creditors to pay that which is acknowledged? Patently, more judgments are going to be entered under required filings than has been the case in the past; this is extremely prejudicial to a segment of our consumer public and really serves no purpose. To adopt these rules would have the effect of stigmatizing even beyond satisfaction of the judgment a consumer public in this state; and it is common knowledge that Minnesota is an "oasis" in comparison to the remainder of the states of the union where the situation ranges all the way from hectic to chaotic. Over the past 40 years in three different localities in the State of Minnesota I have been affiliated with the credit reporting industry through the Associated Credit Bureaus of Minnesota as well as the American Collectors Association, and I know what I am talking about.

I repeat that I fully support the recommendation of the Advistory Committee and supply this further information which I indeed hope will be helpful to all of the Justices of the Minnesota Supreme Court.

Respectfully submitted,

STEWART & ZLIMEN, LTD.

N. E. STEWART

NES:jka

DONALD CULLEN
DISTRICT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

401 N. Main, Suite 202
Austin, Minnesota 55912

Tel. (507) 437-7741

File 35395

June 4, 1980

Mr. Dennis Howard
District Administrator
Beltrami County Courthouse
Bemidji, MN 56601

35394-5

Dear Dennis:

Here are the results of the survey we conducted in the Third Judicial District concerning the issue of the impact should there be compulsory filings in all civil cases. The method of determining the below information was each clerk of court contacted several leading law firms in their county. The lawyers gave them their best guess. The law firms used were primarily active in civil litigation.

Dodge County - (Pauline Huse) Range from 20% to 100% increase. No additional staff anticipated.

Fillmore County - (George Milne) Average estimated increase is 67%. Anticipate expanding part time employee from 3/5 time to full time.

Freeborn County - (William Aanerud) Estimated increase to be about 25%. No additional increase in staff anticipated.

Houston County - (Merle Schultz) Estimate 30% increase. No additional staff anticipated.

Mower County - (Joseph Morgan) Estimate 100% increase. One full time employee will be needed.

Olmsted County - (John McCally) Range from 20% to 100%. Additional employee would be anticipated.

Rice County - (Ray Sanders) Estimate 40% increase. One full time employee anticipated.

Steele County - (Gail Lipelt) Estimate 120% increase. No additional staff anticipated.

Wabasha County - (David Meyer) Estimate 35% increase. No additional staff anticipated.

Winona County - (Frank Kinzie) Estimate 33% increase. Additional one-half time employee needed.

Based on the information from the lawyers, the clerks gave me a prediction as to the impact on their current staff to handle the additional cases.

Sincerely,

Don

Donald Cullen
District Administrator

DC/mk
cc: Mr. Laurry Harmon

STATE OF MINNESOTA
SEVENTH JUDICIAL DISTRICT
CLAY COUNTY COURTHOUSE
MOORHEAD, MN 56560

JAMES P. SLETTE
DISTRICT ADMINISTRATOR

(218) 233-2781

June 5, 1980

Honorable Robert J. Sheran
Chief Justice
Minnesota Supreme Court
State Capitol
St. Paul, MN 55155

In re: Proposed Mandatory Filing Rule

Dear Chief Justice Sheran:

The following questionnaire was mailed to each law firm and individual practitioner within the Seventh Judicial District:

"Dear Bar Association Member:

The Supreme Court is presently considering a civil procedure rule change with respect to mandatory filing of pleadings in all civil cases. In connection with its investigation regarding this proposed change, Court Administrators have been asked to poll the attorneys in their district in an attempt to learn what effect such a rule change would have on the number of filings.

I request that each firm or individual practitioner indicate by a letter to me in what percentage of cases in suit being handled by that firm or practitioner are no papers ever filed. This would include cases whether you are acting as the Plaintiff's lawyer or the Defendant's lawyer. Your best estimate of the percentage of cases not filed is all that is requested. Information regarding the number of cases being handled is not needed and is preferred that that information not be included in such a letter as the letter may be used in presenting this information to the Court.

This report is to be presented to the Court early in June. Therefore, it is important that somebody on behalf of each firm respond to this request as soon as possible."

The results of this survey are shown in the following table:

Number of Responses	% Pleadings Not Filed
13	0-10%
8	11-20%
4	21-30%
8	31-40%
8	41-50%
4	over 50%
45 responses to survey	average % of pleadings not filed = 25+%

Although comments were not solicited, 12 responses were received - all with negative comments. Most often cited were additional costs and privacy.

It is the consensus of the Seventh Judicial District Clerks of Court that implementation of the proposed rule would not affect their offices significantly. Their collective thought is that an office that has been experiencing about 1,000 new files per year can anticipate an additional 250 new files per year or an average of one additional new filing per day. This translates into about 15 minutes or less of one person's time per day to record, index and file. The normal fluctuations of daily filing can accommodate this additional time without a noticeable effect.

The file on this subject is available from this office upon request.

Yours very truly,

James P. Slette
District Administrator
Seventh Judicial District

JPS:slm

cc: Chief Judge Paul Hoffman, Seventh Judicial District
Laurence Harmon, State Court Administrator
Dennis Howard, Ninth Judicial District Administrator

LAW OFFICES OF
SCHMIDT, THOMPSON & THOMPSON

HENRY W. SCHMIDT
JOE E. THOMPSON
WILLIAM W. THOMPSON
THOMAS G. JOHNSON

BANK OF WILLMAR BUILDING BOX 913 TELEPHONE 235-1980
WILLMAR, MINNESOTA 56201

June 5, 1980

The Honorable Robert J. Sheran
Chief Justice
Supreme Court
State of Minnesota
Minnesota State Capitol
Saint Paul, Minnesota 55101

Re: Proposed Amendments to Rules 3 and 5 of the Rules of Civil Procedure for District and Municipal Courts

Dear Justice Sheran:

On behalf of the Kandiyohi County Bar Association, we would request that you consider our position in reference to the proposed amendments to Rules 3 and 5 of the Rules of Civil Procedure for District and Municipal Courts. Our position is that we are opposed to amending those Rules. We discussed the proposed amendments at our last meeting and feel that such would result in an unnecessary and unjustified expense to clients whose cases are settled short of court proceedings.

Thank you very much for your consideration.

Respectfully,

Thomas G. Johnson
Secretary-Treasurer
Kandiyohi County Bar Association

cc: Mr. Milton Johnson
Court Administrator
8th Judicial District
Chippewa County Courthouse
11th Street and Washington Avenue
Montevideo, Minnesota 56265

LAW OFFICES OF ROGER A. NURNBERGER

Downtown Offices: 338-5344
1014 - Grain Exchange Building
400 South 4th Street
Minneapolis, Minnesota 55415

Evening "Wedge" Office: 825-1155
By Appointment or Emergency

July 3, 1980

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

Re: Proposed Amendments to Rules of Civil Procedure

353914-5

Dear Sir:

Pursuant to the Order of the Chief Justice of May 19, 1980, I am notifying you that I wish to be heard orally with respect to the proposed amendments, particularly proposed Rule 3.03 Filing of the Complaint.

I am preparing and will file with the Court at or prior to the hearing a brief opposing Rule 3.03 as proposed upon the grounds:

1. Of vagueness and ambiguity;

2. Of impossibility of compliance in practice;

3. Of prejudice and danger to plaintiffs;

4. Of giving rise to extensive litigation at trial and appellate levels.

Very truly yours,

Roger A. Nurnberger

RAN/arn

William A. Crandall
District 61A
Hennepin County
Committees:
Criminal Justice
Health and Welfare
Judiciary

Minnesota
House of
Representatives

Rodney N. Searle, Speaker

July 10, 1980

Mr. John McCarthy
Clerk of the Minnesota
Supreme Court
230 State Capital Building
St. Paul, Minnesota 55155

Dear Mr. McCarthy:

It is my understanding that the Supreme Court is considering the adoption of a rule which would require that all pleadings in any law suit be filed within twenty days after service of an answer on the Plaintiff's attorney. I have discussed this with several attorney's as well as members of the Minnesota State Legislature. I can see no value in such a requirement. As you may know often times cases are sued out and then settled prior to the matter being filed with the court. It would appear to me that this is just imposing an additional burden of filing fees upon the public unnecessarily. I would hope the court would reconsider this rule and decide instead not to impose such a rule of the public or the bar.

Yours very truly,

Wm A. Crandall

Representative William A. Crandall

WAC/kc

Reply to: ☐ 355 State Office Building, St. Paul, Minnesota 55155
☐ 5147 Columbus Ave. S., Minneapolis, Minnesota 55417

THE SUPREME COURT OF MINNESOTA
ST. PAUL

OFFICE OF
STATE COURT ADMINISTRATOR

40 North Milton Street
Suite 304
St. Paul, Minnesota 55104
June 5, 1980

John McCarthy
Clerk of the Supreme Court
State Capitol Building
Room 230
St. Paul, Minnesota 55155

Dear John:

On July 10, 1980, the Supreme Court is scheduled to hold hearings on changes to the Rules of Civil Procedure. The Trial Court Information System (TCIS) Advisory Committee supports the proposed changes. Accordingly, we would like the opportunity for a member of the committee to present our views to the Supreme Court.

The specific rules we would like to address are: 3.03; 5.04(1) - (4); 41.02; and 52.01. We would appreciate notification if our request is granted.

Sincerely,

David C. Osborne
Project Manager
Trial Court Information System

DCO:pe

THE SUPREME COURT OF MINNESOTA
ST. PAUL

OFFICE OF
STATE COURT ADMINISTRATOR

40 North Milton Street
Suite 304
St. Paul, Minnesota 55104
July 8, 1980

The Honorable Robert J. Sheran
Chief Justice
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55155

Dear Justice Sheran:

Enclosed is the report of the Trial Court Information System Advisory Committee on proposed amendments to Civil Rules 3.03 and 41.02.

Very truly yours,

David C. Osborne
Project Manager
Trial Court Information System

DCO:pe
enc.

cc: Supreme Court Justices
Laurence C. Harmon
James R. Rebo

bcc: TCIS Advisory Committee Members
Ex-Officio Members

MEMORANDUM

TO: Justices of the Minnesota Supreme Court

FR: Trial Court Information System Advisory Committee

DT: July 8, 1980

RE: Proposed Amendments to Minnesota Rules of Civil Procedure Rule 3, Rule 5.04, and Rule 41.02.

The Trial Court Information System (TCIS) project was instituted under the auspices of the Minnesota State Court Administrator. The objective of the project, funded by a federal grant to the Supreme Court, is to improve the effectiveness of court case recordkeeping and caseload management practices in the trial courts. It operates on the assumption that by managing court records effectively and moving the caseload expeditiously, the quality of justice will improve. The long-term goals of the project, in addition to those stated above, are: 1) to create recordkeeping practices consistent with the Minnesota Statutes and statewide court rules, 2) to improve the accuracy and accessibility of court records, 3) to institute control of the cost of clerking and court management, and 4) to make management information about the trial courts more effectively and economically available to all agencies who have a legitimate need for it.

The TCIS Advisory Committee was established to provide guidance for work performed by the TCIS project of the Information Systems Office of the Minnesota Supreme Court. The committee was created to draw upon the administrative expertise present in the Minnesota court system. The committee includes judges, administrators, and clerks of court from across the state. The current voting membership consists of ten members:

Honorable John J. Todd	Supreme Court Justice
Pete Archer	Supervisor of Assignment Division, Ramsey County Municipal Court
John McCally	Clerk of Court, Olmsted County
Dennis Chemberlin	Administrative Assistant, Fourth Judicial District
Gerald J. Winter	District Administrator, Fifth Judicial District
Larry Saur	Clerk of Court, Lake County
Honorable Roger Klaphake	County Court Judge, Stearns County
Paul Maatz	Clerk of Court, Lac Qui Parle County
Richard Monsrud	Clerk of Court, Roseau County
Honorable John Dablow	District Court Judge, Tenth Judicial District

In addition to the voting members, the committee has 18 ex-officio members--eight District Administrators, the four other TCIS pilot county clerks of court, three members of the Supreme Court staff, and other court personnel having special expertise.

The following comments have been prepared by the TCIS project staff. The content reflects the philosophical direction of the TCIS Advisory Committee. However, the comments have not yet been adopted by the committee.

Recommended Rule Amendments

The Court Administration Subcommittee of the Conference of Chief Judges and Assistant Chief Judges has proposed amendments of Minnesota Rules of Civil Procedure 3.03 and 41.02. The TCIS Advisory Committee has considered those proposals and approves of their intent. However, they suggest that the following proposals better facilitate management by the Clerks of Court and ought to be adopted.

1. Rule 3.03 should be amended by adopting a rule more similar to Rules 3 and 4(a) of the Federal Rules of Civil Procedure.

> "A civil action is commenced by filing a complaint with the court. Upon the filing of the complaint the clerk of court shall issue a summons for service. Upon request of the plaintiff, separate or additional summonses shall issue against any defendants."

2. Rule 5.04(4) should be amended to require filing with the clerk.

> (4) Filing With The Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of court. ~~except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.~~

3. Rule 41.02(3)(A) should be amended to make dismissals for want of prosecution permissive (rather than required) and to allow for review of the dismissal order.

(3) Dismissal on Court's Motion.

(A) Notice. In all civil cases wherein there has been no note of issue or certificate of readiness filed during the 24 months just past, the court shall mail notice to the attorneys of record setting a hearing within 30 days from the date of mailing such notice for the purpose of dismissing such case for want of prosecution. If an application in writing is not made to the court for good cause shown why it should be continued as a pending case before said hearing, or if none of the parties or their attorneys appear at the time and place set for said hearing, or if good cause is not shown, the court ~~shall~~ may dismiss each such case without prejudice. If at or before said hearing it is shown that the failure to take steps or proceedings is not due to the plaintiff's fault or lack of reasonable diligence on his part, the action will not be dismissed. The court may then order the action set down for final disposition at a specified date, or place it on the calendar for trial, ~~or~~ hearing, or review in due course.

Commentary

The TCIS Advisory Committee and staff urge the adoption of the above rules. The proposals correspond with the committee's belief that courts, not attorneys, should have the fundamental responsibility to manage litigation and invoke the authority of the judiciary.

Under the present system, attorneys have concocted a shadow legal system invoking the power of the courts without the courts' approval or knowledge. Currently, attorneys are able to draw up complaints and serve them on adverse parties without the court's sanction. The complaints, however, are on paper captioned with the name of the court, leading one to infer that the papers have the court's imprimatur. This erroneous assumption might coerce behavior or settlements without actual court involvement. The harm in this system is that the court's power is utilized to resolve disputes without the court's knowledge. Frivolous suits may be wrongfully given legitimacy because they bear the name of the court on the complaint.

Another reason for adopting the rule changes is to assure a uniform starting point for cases to enable a valid measure for delay. The State Judicial Information System (SJIS) is predicated upon the filing of the civil complaint as the commencement point of a civil case. Without the requirement of filing, SJIS has no

consistent indicator of the beginning of a case; consequently, there will be no uniform way to determine the age of the case or when it should proceed. Comparable statistics will be impossible to compile. Standard review for delay, incorporated in proposed Rule 41.02, is possible only if there is a standard initiation point.

It may be argued that the changes are unnecessary because no current abuses, other than the shadow legal system, exist. The logic behind this argument is flawed. It presupposes that reform is appropriate only to repair a system. Reform may also be necessary to protect or improve a system. Reform ought to be justified according to the potential for abuse, rather than because abuse has been demonstrated. The types of potential abuse might not be subject to review. If a party obtains an unfair settlement in the informal system, who will discover and rectify it?

The proposed changes are not earthshakingly new: the federal courts and a majority of states have implemented similar procedures without the presupposed deleterious effects. Some cases in Minnesota already have similar filing requirements, the proposal is merely an extension of existing practices. The Legislature has already required the filing of a complaint for initiation of proceedings in unlawful detainers, mechanics liens, and domestic abuse cases.

Similar reforms have been suggested for the past twenty-eight years. The adoption of the Minnesota Rules of Civil Procedure has caused several procedural and administrative improvements. The suggested changes are refinements of those improvements, facilitated by the availability of computer technology. They will enable the courts to track all cases, identify possible abuse situations, and provide remedies.

It may also be argued that adoption of the changes will not ensure that all cases are filed. That is true but it is of no import. The goal of the changes is not to require the filing of all disputes. The goal is to prohibit the invocation of the court's authority without the court's knowledge or approval, and to identify unduly prolonged litigation to facilitate curative measures.

It may also be argued that the requirements are merely designed to increase court revenues through increasing the number of filings and hence, filing fee revenues. This is not the intent of the reform. If it does appear to be a long-term side effect, the fee per filing could be lowered. However, not to implement the reforms because of that reason would be a mistake. The beneficial aspects of the reforms would be lost.

Our committee believes that it is time to judge the proposals on their merits and their ability to improve court management, and not to reject them for political reasons.

The TCIS Advisory Committee, in support of improved court management, respectfully requests that the Minnesota Supreme Court approve the proposed rule amendments as presented in this document.

THE SUPREME COURT OF MINNESOTA
ST. PAUL

OFFICE OF
STATE COURT ADMINISTRATOR

40 North Milton Street
Suite 304
St. Paul, Minnesota 55104
July 9, 1980

The Honorable Robert J. Sheran
Chief Justice
Minnesota Supreme Court
Room 230
State Capitol
St. Paul, Minnesota 55155

Dear Justice Sheran:

I am writing to advise the Court regarding the impact of the proposed amendments to the Rules of Civil Procedure would have on the State Judicial Information System (SJIS). Our office is specifically interested in the proposed Rule 3.03, requiring the filing of a complaint in civil cases. Although SJIS can and does operate without such a requirement, we respectfully request that you adopt the proposed rules.

If the proposals are not adopted, SJIS will continue to operate as it does at present. Because the system needs a uniform case initiation point, SJIS employs either of the following initiation points: a party's request for a trial by court or jury through applicable filing procedures, or a request for the court's intervention through the process of filing and serving motions. This method is inadequate. First, it is not uniform. Second, it does not allow the court to fulfill its statutory duty to expedite some cases (e.g., declaratory judgments, commitment proceedings, domestic abuse). Third, it frustrates SJIS's attempt to provide the court with a means to monitor unreasonable delay in processing cases.

In a practical sense, it then becomes an insurmountable task for the clerk of court to distinguish between those cases that should be expedited upon filing, and those that require action on the part of the parties to the case. We suggest that with the requirement of the filing of the petition or complaint in all civil matters, several desirable objectives would be accomplished:

1. The court under whose authority the matter is being brought is made aware of the existence of a case;

2. The court acquires a well-defined common standard for activating or initiating judicial processing of a case;

3. Designating a standard point of case initiation provides the court with a valid measurement of delay. The absence of such a measure diminishes any benefits that might be derived from the proposed changes to Rule 41.02;

4. The SJIS task of providing an automated method of managing the speedy disposition of matters brought before the court is significantly simplified.

In sum, adoption of the proposed rule changes would greatly improve the ability of the court and its administrative departments to manage the justice system. The requested changes are reasonable and have been proven successful in all other states in which they have been implemented.

Sincerely,

Jane F. Morrow

Jane F. Morrow
Project Manager
State Judicial Information System

JFM:pe

cc: Supreme Court Justices
Laurence C. Harmon
James R. Rebo

STATE OF MINNESOTA
DISTRICT COURT OF MINNESOTA
FOURTH JUDICIAL DISTRICT

CHAMBERS OF
JUDGE BRUCE C. STONE
COURT HOUSE
MINNEAPOLIS, MINN. 55415

July 2, 1980

Chief Justice Robert J. Sheran
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55155

Dear Chief Justice Sheran:

The Minnesota District Judges Association has requested I inform the Minnesota Supreme Court that the matter of required filing of complaints within 10 days after service came before the Association in Rochester and that the resolution that the proposal be disapproved passed unanimously, with no one recorded as being in favor of the required filing.

Kindest personal regards and best wishes.

Sincerely,

Bruce C. Stone

Bruce C. Stone
Judge of District Court
President, Minnesota
District Judges
Association

BCS/sjl

LEVANDER, ZIMPFER & ZOTALEY
A PROFESSIONAL ASSOCIATION
LAWYERS
720 NORTHSTAR CENTER (CARGILL BUILDING)
625 MARQUETTE AVENUE
MINNEAPOLIS, MINNESOTA 55402

BERNHARD W. LEVANDER
BERNARD G. ZIMPFER
BYRON L. ZOTALEY
JAMES G. VANDER LINDEN
ROBERT H. RYDLAND

TELEPHONE (612) 339-6841

July 2, 1980

The Honorable Robert Sheran,
Chief Justice of the Minnesota
Supreme Court, and
Members of the Court
State Capitol
St. Paul, Minnesota 55155

35394-5

RE: Amendments to Rules of
Civil Procedure.

Dear Chief Justice and Members of the Court:

I wish to register my opposition to the proposed change in the Rules of Civil Procedure which would require filing of a Complaint within ten days after the commencement of an action. I see no good reason why this rule should come into being and many reasons why it would be unsound.

I think the sentiment of the Bar is generally very much in opposition to this change.

If it is intended to eliminate frivolous litigation, I would much rather see toughening up on Rule 11 and generally more stringent sanctions to discourage abuse of the litigation process by members of the Bar.

Respectfully yours,

Bernhard W. LeVander

Bernhard W. LeVander

BWL/lp

10 copies

LAW OFFICES
LeVander, Gillen, Miller & Magnuson
402 DROVERS BANK BUILDING • 633 SOUTH CONCORD STREET
SOUTH ST. PAUL, MINNESOTA 55075 • TELEPHONE (612) 451-1831

HAROLD LEVANDER
ARTHUR GILLEN
ROGER C. MILLER
PAUL A. MAGNUSON
HAROLD LEVANDER, JR.
PAUL H. ANDERSON
TIMOTHY J. KUNTZ
DANIEL J. BEESON

July 3, 1980

The Honorable Robert Sheran,
Chief Justice of the Minnesota
Supreme Court, and
Members of the Court
State Capitol
St. Paul, Minnesota 55155

Re: File No. 35394 - Proposed Amendments to the Rules of Civil Procedure for District Court and Municipal Courts

Dear Chief Justice and Members of the Court:

I am dismayed and disappointed that our Supreme Court is spending its valuable time in proposing holding hearings and the comments on the proposed amendments which would require the filing of every complaint within 10 days after service. The only effect of this rule would be to vastly increase the income of the District Court clerks which would in turn be used for more paperwork, more bureaucracy, and take up valuable time of the courts that could be better used in trying cases and writing decisions. It will lead to more statistical gathering and a claim that the courts are disposing of many more cases than they can take credit for.

There are any number of cases where an action is started and the matter is settled without public disclosure of the circumstances which, if made public, would adversely effect character reputation and business. In my visiting with a number of well recognized lawyers on this proposed change, I have yet to find one who supports it.

If it is an attempt to follow some Federal procedure, I think the time would be better spent in trying to change the Federal procedure because not every Federal rule is worth following.

Another matter that gives me great concern is that if the Executive Office or the Legistative Office makes a mistake or an arbitrary decision, we have some recourse but my great concern is to whom do we appeal if the Supreme Court has made an unconstitutional arbitrary decision or one which in effect calls for taxation without representation. My other concern is that we're spending so much time in trying to improve the system that we don't let the system that we have work or operate. In this case, if a complaint is dismissed for not having been filed, all you have to do is start another complaint and pay another fee and increase the paperwork and enlarge the number of statistics of cases that had been disposed of.

I strongly urge the court to deny the proposed amendments.

Respectfully submitted,

Harold LeVander

Harold LeVander

HL:mf

RONALD B. SIELOFF
Senator 63rd District
1934 Rome Avenue
St. Paul, Minnesota 55116
(612) 690-4986
Office:
128 State Office Building
St. Paul, Minnesota 55155
(612) 296-4310

Senate
State of Minnesota

July 3, 1980

John C. McCarthy
Clerk of the Supreme Court
318 State Capitol
St. Paul, MN 55155

Dear Mr. McCarthy:

I understand that there will be a hearing on July 10, 1980, concerning the adoption of a proposed rule requiring the filing of all initial pleadings in civil actions within a fixed time after service.

Although I will not be able to attend the hearing, I am writing this letter to place on the record my opinions concerning this proposed rule. I would appreciate your transmitting this letter to the appropriate file so as to be made part of the record of the hearing.

I am strongly opposed to the proposed rule. I have spoken to several members of the House and Senate Judiciary Committees from both political parties and have received a uniform negative response to the proposed rule.

The consequences of the adoption of the rule will simply increase the cost of litigation by increasing filing fees, copy costs and postage. In some cases, such as dissolution or legal separation where a matter is settled through reconciliation shortly after service of the Summons and Petition, the proposed rule will simply make a public record of marriage problems that should just as well remain private. Also, the rule will increase the costs to the taxpayer for storage, filing and personnel in implementing the rule.

If the rule is adopted, I believe that there will be substantial changes in the filing fee schedule in the next legislative session or the Legislature may simply abrogate the rule on its own initiative.

Very truly yours,

Ronald B. Sieloff
State Senator

RBS:ef
cc: Senator Jack Davies
Representative Ray Faricy

COMMITTEES • General Legislation and Veterans Affairs • Judiciary • Transportation

LEONARD E. LINDQUIST
NORMAN L. NEWHALL
LAURESS V. ACKMAN
GERALD E. MAGNUSON
EDWARD M. GLENNON
MELVIN I. ORENSTEIN
ISRAEL E. KRAWETZ
EUGENE H. KEATING
JAMES P. MARTINEAU
RICHARD J. FITZGERALD
PHILIP J. ORTHUN
EDWARD J. PARKER
JOHN A. FORREST
WILLIAM E. FOX
JERROLD F. BERGFALK
WILLIAM T. DOLAN
JOHN H. STROTHMAN
DAVID G. NEWHALL
KURTIS A. GREENLEY
ROBERT V. ATMORE
HOWARD J. KAUFFMAN
JOHN B. WINSTON
LAURANCE R. WALDOCH
THOMAS H. GARRETT III

LINDQUIST & VENNUM

4200 IDS CENTER · 80 SOUTH 8TH STREET

MINNEAPOLIS, MINNESOTA 55402

TELEPHONE (612) 371-3211

CABLE ADDRESS: LINLAW

WAYZATA OFFICE
740 EAST LAKE STREET
WAYZATA, MINNESOTA 55391

DARYLE L. UPHOFF
DAVID J. DAVENPORT
MARK R. JOHNSON
RICHARD A. PRIMUTH
JEFFREY R. SCHMIDT
KRISTINE STROM ERICKSON
TIMOTHY H. BUTLER
ROBERT G. MITCHELL, JR.
J. MICHAEL DADY
J. KEVIN COSTLEY
ROBERT J. HARTMAN
JOSEPH G. KOHLER
PAUL H. TIETZ
JACK A. ARNOLD
RICHARD D. McNEIL
ALAN C. PAGE
JAMES P. McCARTHY
STEVEN J. JOHNSON
LYNN M. ANDERSON

OF COUNSEL
THOMAS VENNUM
DENNIS M. MATHISEN
DAVID M. LESEDOFF

July 2, 1980

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

Dear Mr. McCarthy:

I have just been informed by Mr. Fredin that a hearing is scheduled at 9:30 a.m. on July 10, 1980, before the Supreme Court on the matter of adoption of a rule requiring the filing of Complaints within a specified period after service of process. As the co-chairman of the Minnesota Bar Association Committee on Judicial Administration, I herewith request an opportunity to appear at that hearing. My remarks, if allowed, would be mercifully brief.

Yours very truly,

Edward J. Parker (Empl.)

EJP/mjh

Minnesota State Bar Association

100 MINNESOTA FEDERAL BUILDING • MINNEAPOLIS, MINNESOTA 55402 • PHONE: 612 335-1183

President
FRANK CLAYBOURNE
1500 First National Bank Bldg.
St. Paul, MN 55101
(612) 291-9333

July 1, 1980

Mr. John McCarthy
Clerk of Supreme Court
State Capitol
St. Paul, MN 55155

Dear Mr. McCarthy:

In setting your schedule for appearances before the Court on the proposed amendments, which are grouped under your file number 35394, will you please note the proposed appearance of myself as President of the Minnesota State Bar Association and Mr. Ronald E. Martell as Chairman of the Court Rules Committee of the Bar Association.

Neither of us plans to make any lengthy appearance, and neither of us sees the necessity for filing a petition or brief in advance unless a request for such material should come from you or the Court.

Yours very truly,

Conrad M. Fredin

Conrad M. Fredin,
President

CF/dp

File - 35395

MERLE H. SCHULTZ

CLERK OF DISTRICT COURT

CLERK OF COUNTY COURT

CALEDONIA, MINNESOTA 55921

HOUSTON COUNTY
COURTHOUSE

DIAL
(507) 724-5211

June 25, 1980

Mr. John McCarthy
State Capitol Building
St. Paul, MN 55103

Dear Mr. McCarthy:

It is my understanding that on July 10, 1980, at 9:30 a.m. o'clock, a hearing on the proposed changes to the Rules of Civil Procedure will be held at the State Capitol Building, St. Paul.

The Minnesota Association for Court Administration respectfully requests that delegates representing this body be heard as to recommended changes that have been endorsed by this association.

This letter is sent as an original with nine (9) copies per your instructions to insure our being placed on the agenda on July 10, 1980.

Yours truly,

Merle H. Schultz

Merle H. Schultz
Clerk of Courts

MHS/ljb

6-30

File no 35395

BLETHEN, GAGE, KRAUSE, BLETHEN, CORCORAN, BERKLAND & PETERSON
ATTORNEYS AND COUNSELORS

SAMUEL B. WILSON (1873-1954)
ARTHUR H. OGLE (1916-1975)

WILLIAM C. BLETHEN
KELTON GAGE
RAYMOND C. KRAUSE
BAILEY W. BLETHEN
RICHARD J. CORCORAN
RANDALL C. BERKLAND
DAVID T. PETERSON
JAMES H. TURK
STEPHEN P. ROLFSRUD

NORTHWESTERN NATIONAL BANK BUILDING
206 HICKORY STREET
P.O. BOX 3049
MANKATO, MINNESOTA 56001

TELEPHONE 345-1166
AREA CODE 507

June 24, 1980

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

35394-5

Dear Mr. McCarthy:

Our law firm is opposed to the proposed amendments to Minnesota Rules of Civil Procedure 3.03 and 5.04. We support the proposed amendment to Rule 41.02.

We understand that the compulsory filing requirement is sought to enable the Court Administrator to track all pending cases in the judicial information system. We can understand why it is necessary to track those cases which the Courts will be called upon to adjudicate in one way or another. The question is when does a dispute have sufficient indications of becoming a Court problem so that it should be included in the information system. Lawyers deal with many disputes which are never sued. Should these be included in the system? Sometimes when negotiations prove fruitless, lawyers sue some of these disputes without ever really intending to take them to Court. Only when it becomes apparent to the lawyer that trial of the case may be necessary does he file the Complaint. The majority of cases are settled, or simply expire, so the Summons and Complaint is never filed. Why should it be? These cases do not represent a potential burden on the Court system any more than do the disputes resolved in lawyers' offices without suit.

Many lawsuits are started because a litigant is very angry. The present system gives the angry litigant a cooling off period in which to reconsider the prudence of litigating the question. Requiring these cases to be filed would impose a large bureaucratic burden on the Court, Court Administrators and lawyers in keeping track of inactive cases that nobody really wanted to try.

The present system also permits a litigant to start a suit without public disclosure where the subject matter of the lawsuit is confidential. Under the proposed Rule, such cases would have to be filed meaning that the Plaintiff would have to negotiate without the psychological value of starting suit.

Finally, no one is deprived of access to the Courts under our present system. A Defendant can always file his Answer if the Plaintiff refuses to file the Complaint. Under the present system, filing of the pleadings by one of the parties is a good indiciation that there are significant issues among the parties which will require judicial determination. Until a case reaches the filing stage, it may be supposed that it will settle, because most of them do. Therefore, the filing of the papers under the present system is the most reliable indicator of the necessity for judicial intervention. The new Rule compels filing of all cases which will mean that the system must deal with many cases which will never be adjudicated in any way. Thus, does bureaucracy flower.

Sincerely yours,

Kelton Gage

Kelton Gage

KG:ajs

STUART A. BECK
DISTRICT ADMINISTRATOR
COURT HOUSE
DULUTH, MINNESOTA 55802

SIXTH JUDICIAL DISTRICT

PHONE 723-3708

June 6, 1980

Hon. Robert J. Sheran
Chief Justice
Minnesota Supreme Court
State Capitol
St. Paul, MN 55155

35394-5

Re: Mandatory Filing

Dear Chief Justice Sheran:

At our meeting of May 12, 1980, at Spring Hills, you requested that the Administrators poll the attorneys in their respective districts to obtain some indication of the number of cases in which service is made but no papers are filed with the Clerk of Court. I believe you also requested what the impact might be on the Clerk's offices in our district.

In regards to the question of the number of cases in which service is obtained but not filed with the Clerk of Court, I contacted the secretaries of the local Bar Associations and requested they mail this question to the members of their Association, and as of this date, I have received 38 replies.

It would appear, from the information received, that 38.6 percent of the cases in which service is obtained are not filed with the Clerk of Court, assuming that this sampling is a true indication of the percentage of cases not filed where service has been made. It would follow, based upon information received from Joseph Lasky, Clerk of Court, St. Louis County, (copy of letter enclosed) that during the year 1979, 2,181 cases were opened in District Court and 1,663 in County Court. A mandatory filing rule would result in 2,417 additional cases filed in the County of St. Louis. This does not take into account those cases which attorneys may presently have in their files in which service was made but not filed.

I have discussed this matter thoroughly with the various Clerks of Court in this district, and based upon their comments and as is stated in the enclosed letter of Mr. Lasky, additional help will be required in St. Louis County and Carlton County to handle the substantially increased workload.

If I may be of any further assistance, please let me know.

Very truly yours,

Stuart A. Beck
District Administrator

SAB/jam

copies: Hon. Donald C. Odden
Mr. Laurence C. Harmon

St. Louis County

OFFICE OF CLERK OF DISTRICT & COUNTY COURT

CLERK OF COURT
JOSEPH
Court House • Duluth, Minn. 55802

May 15, 1980

35394-5

Mr. Stuart Beck
Court Administrator
6th Judicial District
Court House
Duluth, MN 55802

Re: Filing of Civil Action Complaint

Dear Stu:

Pursuant to our conversation in regard to the proposed rule changes, I did a couple of things:

I had my Administrative Assistants check the number of filings in each of the offices and have found that in the Duluth office of District Court we had 1,619 cases filed, in the Virginia office we had 305 filed and in the Hibbing office there were 257 cases filed in the year 1979.

In the Duluth office of the County Court we had 451 cases filed, in the Virginia office we had 814 cases filed, and in the Hibbing office there were 398 cases filed.

Next I checked with some of the law firms and inquired of them as to the number of civil files or percent of civil files that would be filed if the rules were changed. Almost to a person, the figure used was 50 to 60% more filings.

I realize that the sample I used was quite small, but I believe it projects quite accurately in what would be found in the larger counties of the state.

Taking into consideration the minimum amount of time it takes to open and process each file and trying to project this to each one of the offices, I believe that it would be necessary to employ at least two persons in the Duluth office of the District Court, a part-time person in each of the District Court offices in Virginia and Hibbing, and in the County Court I believe it would be necessary

to employ a part-time person in the Duluth office and one person in the Virginia office, and a part-time person in the Hibbing office.

Further, we in St. Louis County have some problems which will directly affect our requests to the County Board of Commissioners for these additional employees. It has been said that if the President's budget removes all or even part of the revenue sharing monies, St. Louis County will lose approximately $4 million dollars of which $2 million will come directly from personnel cuts for the year 1981. Department Heads will be asked to reduce personnel by about 9 to 10%. This projects itself in my offices to about 10 persons. If this happens, and our request for additional employees falls on deaf ears, you can see the dilemma we would be facing in St. Louis County.

In summary, I would like you to know that I am not personally for or against these rule changes, but will do whatever the Supreme Court orders, in whatever manner will be possible at that time. If it happens, it is probable the system will manage us rather than the reverse.

Sincerely,

Joseph M. Lasky
Clerk of Court

JML:ms

MICHAEL J. HEALEY Attorney at Law
Ninth Floor, Commerce Building
Saint Paul, Minnesota 55101
(612) 291-8044

May 30, 1980

Honorable Robert Sheran
Supreme Court
State Capitol
St. Paul, Minnesota 55155

30394
7-10-80

Dear Judge Sheran:

As an attorney practising primarily civil personal injury law I would like to express my opposition to the proposed amendments to Rule 3.03, 5.04, and 41.02.

There are still a substantial number of lawsuits that are settled at or near the time the pleadings are issued. These are primarily small matters where the insurer settles because they do not want to incur the cost of defense and they finally realize that the claimant is not going to drop the claim. I see no reason why the parties should be burdened with filing these pleadings. Filing fees are roughtly $38.00 at the present time, and have been rising rapidly in the last few years.

I see no public need to be served by the filing of these pleadings, and I suspect someone is interested in raising more funds for the operation of the courts.

I also regard the amendment relating to automatic consideration for dismissal after issue has been joined for twenty four months to be onerous, unnecessary, and simply creating more work for both the courts and the attorneys involved in litigation.

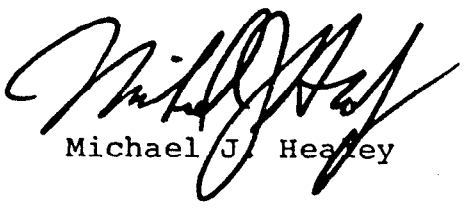
If a party feels that the claim against him should be dismissed for lack of prosecution he is certainly within his rights to make a motion to the Court on that basis. There are numerous good reasons why particularly complicated cases have not gone to trial within twenty four months and I see no reason why the Court should interfere in the matter on its own motion when no one has requested such interference.

I am presently serving a subcommittee of the State Bar Association attempting to streamline the rules so as to effect economies in the cost of litigation which is becoming burdensome for all parties.

The proposed rule changes presently being considered are in my opinion operating in direct conflict with the goals of that committee.

We simply don't need changes in the Rules which are only going to increase costs and make more work for both attorneys and the courts.

Very truly yours,



Michael J. Healey

MJH:lp

STATE OF MINNESOTA

IN SUPREME COURT

* * * * * * * * * * * * * * * * * * * *

In the Matter of the Proposed Amendment to Paragraphs 3, 5, & 41.02 of the Rules of Civil Procedure for the District Courts and Municipal Courts.

BRIEF IN OPPOSITION

* * * * * * * * * * * * * * * * * * * *

The undersigned respectfully notes opposition to a portion of the proposed amendments to the Rules of Civil Procedure for the District Courts and Municipal Courts of the State of Minnesota, ~~for~~ on the following grounds, and in the following respects:

I

PROPOSED FILING REQUIREMENTS

1) Requiring filing of every action brought within the State of Minnesota within ten days after it has been served will increase paper work in the clerk's office and further burden filing capacity already strained to accommodate paper work filed under the existing rules.

2) Procedures to dismiss inactive cases, though desirable in themselves, will unnecessarily add to the burden on the trial judiciary if, to the number of cases potentially involved in such proceedings, ~~these~~ presently commenced, but never filed, are added. There is reason for the Court to inquire into the posture of matters recorded with it but no reason, whatever, to inquire into matters that have not attained that status. The theory of repose is an important attribute of the adversary system. We think it appropriate that rights not brought to litigation within the applicable Statute of Limitation loose enforceability (even though we recognize just claims are often thereby defeated). Even claims pressed to judgment require further affirmative action by the judgment creditor by way of action to renew within ten years to retain enforcement vitality. The rationale implicit in those arrangements is inconsistent with a requirement that each action commenced be filed. Indeed, the only difference between an action brought, but never filed nor otherwise pressed, and an action brought to judgment which is not renewed nor satisfied within ten years, is that, in the former instance, the parties reach a practical adjustment

to reality without need to burden the court system in any way while, in the latter, they reach the same conclusion only after obtaining an unenforceable judgment. Similarly, notions of improper conduct inherent in the concept that certain actions are improper "champerty and maintenance" reflect an underlying notion that unnecessary litigation ought not be provoked or encouraged. Nor should the court system be burdened with need to record and monitor the existence of dispute which falls so short of need for litigation that the parties would not, but for a change in the Court rules, desire to file their papers.

3) Parties should be able to use the legal system without actual resort to litigation. Cases brought but not filed or, though filed, not noted for trial, represent matters where at least one of the parties has made the judgment trial is not then required and may never be. Why should the court system intrude itself into the situation to second-guess that judgment? Why should court personnel be burdened with the need to do so? There are available remedies in motion practice to force cases on for trial if the judgment is an improvident objectionable one. Time enough for the court system to involve itself with that aspect when asked to do so by a party in interest.

4) It is said that we need data on the total case load in order to sensibly allocate judicial personnel and other trial resources. It is true accurate trial load data is required for sensible and efficient management of those resources. However, the data from which those management decisions are effectively made is based on note of issue filings because that represents the case load over which we have trial jurisdiction. Keeping book on cases which have not attained that status is meaningless for purposes of case load analysis. In this connection, I am unaware of any proposal to change present rules or overrule decisional precedents which require filing a note of issue in a pending cause before the Court has trial jurisdiction over it.

5) It is suggested that mandatory filing of all cases commenced is necessary to bring statistical data generated within the State by SJIS into comparability with like data from other states which now require such filing. A correction factor which would adequately render Minnesota statistics comparable with other SJIS data can be developed at less cost than will be imposed upon the system, and the litigants who use it, if the rules are changed.

II

FILING OF DISCOVERY MATERIAL

6) As to the proposed amendment of MRCP 5.04 (1), it is inappropriate and unfair

that depositions upon oral examination be included among those items which need not be filed "unless and until they are used". The proposal conflicts with MRCP 30.06 which requires filing by the officer before whom the deposition is taken without apparent delay. It will promote additional delay in the filing of depositions by parties who will defer their transcription hoping to avoid cost. Then, when the deposition is needed, reporter's notes or the reporter himself, may be unavailable, and the trial may be delayed, and trial court burdened with added motion practice, to work out associated problems.

7) If parties are encouraged not to file original transcripts until "needed" then, even where a transcript has been promptly prepared, an ambiguity has been introduced into its usage. Presence of the original in the clerk's office where it is public record and not subject to alteration, safeguards the integrity of the original record. If that original is not in the clerk's office but elsewhere, possibilities for abuse are introduced. Additionally, parties who do not participate in the deposition or persons who are not party to the record but are interested in the litigation may have legitamate need and reason to look at discovery depositions. If not on file, they are deprived of that opportunity.

8) If storage capacity for court records is a factor, the situation is better addressed by purging old files of transcript material than by discouraging the filing of new transcripts. Changes in transcript format to increase words per page or per sheet and diminish page size are better expedients to meet storage problems equally within the court's rule-making powers.

III

FILING WITH THE COURT

9) The provisions of proposed MRCP 5.04 (4) permitting filing papers with the ~~Court~~ judge for transmission to the clerk are undesirable. The trial ~~courts~~ judges of this state are not set up to perform public filing purposes. Items filed are public record but documents filed with the ~~Court~~ judge in this fashion would not be available to the public until transmitted to the clerk. The clerk is the only proper custodian of public documents under our system consistent with ~~the~~ public record requirements and public access to such records. The ~~courts~~ judges are neither equipped, nor should they be burdened with those responsibilities, nor should courts be potentially faced with the public disapproval that a seeming deprivation of public ~~interest~~ access in a controversial case may create. In any procedure of consequence, the clerk will be available to receive documents presented for filing without need to burden the trial court with that procedure.

For all these reasons, and because the mandatory filing procedure will amount to a revenue measure by court rule imposed on the trial bar and their clients in the State of Minnesota, I am opposed to the proposed changes to Minnesota Rules of Civil Procedure for the District Court and Municipal Court in the respects noted.

DATED: July 2, 1980.

/s/ Noah S. Rosenbloom

NOAH S. ROSENBLOOM
Judge of District Court

DISTRIBUTION:

Orig - Clerk of Courts, Supreme Court of MN, State Capitol, St. Paul, MN 55155
Copy - Honorable Otis Godfrey, Chairman, Rules Committee, MN Dist. Judges Assoc., Ramsey County Courthouse, St. Paul, MN 55100
Honorable Walter H. Mann, L.J. Irvine, Harvey A. Holtan, Miles B. Zimmerman, Milton D. Mason (Retired), Judges of 5th District Court
File