Changes would conform to federal time-limit rules

By Barbara L. Jones
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The first Monday in October is the start of the U.S. Supreme Court term, but the Minnesota high court also issued some clear back-to-work instructions in the form of a crop of proposed new rules. If enacted, they would change the way time periods are counted, change the standard for disqualification of judges and expand the reach of the Alternative Dispute Resolution Ethics Board.

Rules of Civil Procedure

Get your calendars out—the methods of calculating time limits in the rules may soon change. This is a change in the rules that was first recommended to the court by the Supreme Court Advisory Committee on the Rules of Civil Procedure in 2009. Its purpose is to promote uniformity with the federal rules.

Proposed changes to the civil procedure rules would amend the timing provisions of the rules to count all days, including weekends and holidays, in calculating time periods, and make appropriate adjustments to time periods.

Is individual insurance market worth preserving?

2 key leaders say yes but differ over path

By Kevin Featherly
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After a long delay, the federal government approved the “innovation waiver” needed to implement the state’s $542 million reinsurance plan. Passed in 2017, the bill was meant to defray insurers’ costs for the most expensive patients while restraining premium spikes for individually purchased health plans.

But the waiver comes at a cost. In exchange for its approval, the feds want to chop $369 million from MinnesotaCare, the state’s low-income health plan. That has some, notably DFL gubernatorial candidate Rep. Tina Liebling, DFL-Rochester, questioning whether the waiver should have been accepted.

But there is an even more fundamental question: Is the private, individual insurance market in Minnesota worth preserving at all?

To answer that question, we went to two of the Legislature’s primary health-policy leaders. Rep. Greg Davids, R-Preston, is the House Taxes Committee chair and author of the 2017 reinsurance package, which the Commerce Department says prevented insurers from tacking on an additional 20 percent rate hike on 2018 individual plan premiums.

Sen. Tony Lourey, DFL-Kerrick, is the former Senate Health and Human Services Finances subcommittee chair and a legislative architect of the MNsure health exchange.

Both men think the individually purchased insurance market should be preserved. But they have very different ideas on how to keep it.

Minnesotan sees red over Disney film

Complaint alleges infringement, breach of contract

By Todd Nelson
Special to Minnesota Lawyer

The movie’s portrayal of Anger along with Joy, Sadness, Fear and Disgust also triggered a reaction in Denise Daniels, a Minnesota-based child-development expert who alleges that the Walt Disney Co. and Pixar misappropriated the concept of anthropomorphized emotions and the characters from original material she had pitched to studio executives.

In Daniels’ work, the Anger character—one of five, single-emotion, color-coded characters—also is red and “most likely to blow her top,” with lightning bolts exploding with sparks from her head when she becomes furious.

Disney-Pixar, meanwhile, had never before used anthropomorphized emotions as characters, according to Daniels’ suit.

Daniels is seeking unspecified damages from Disney-Pixar for breach of implied-in-fact contract for allegedly using her materials without compensation and copyright infringement of her company’s mood-based characters.
Ronald J. Schutz worked with children affected by terrorist attacks, continuing to work with children, Schutz said. "Denise is a pioneer in dealing with children's emotions," he said.

The breach-of-contract count in Daniels' amended complaint is a "Disney claim based on a California Supreme Court opinion in which writers have been able to claim breach of an implied-in-fact contract when producers have used their ideas for movies or TV shows without compensation," Schutz said. "The contract does not have to be in writing; it can be oral and it can be implied by the conduct of the parties that corresponds with the course of doing business.

"It's basically the way business is done in California," Schutz said. "It's all about whether the defendant had access to the original information and if that information was used, or whether the production company takes your idea and runs with it that they're going to compensate you."

Tom Cotter, Briggs Morgan professor of law at the University of Minnesota Law School, said the plaintiff in such a case typically has to prove that there was an agreement express or implied that the recipient of the information would not use the information without consent or would keep it confidential or compensate for the use.

Cotter said, "I'm sure the defendants will argue there are similarities as to ideas, that they didn't actually literally copy the characters. … If there's any copyright protection as such in a idea of a character that's colored red and that symbolizes anger, it's the compilation and the combination of various elements that creates an original selection or arrangement."  

Under the copyright claim, one issue is whether the defendant had access to original copyright work, Schutz said. Daniels developed and copyrighted extensive materials—an outline of characters, settings and other elements known in the entertainment industry as a "bible"—that she shared with Disney executives. Daniels alleges that the "bible" of the copyright characters used by Disney and that these misappropriated the copyright for the individual characters," Schutz said.

To prevail in copyright cases, a plaintiff must prove that the defendant did copy some original expression or selection or arrangement belonging to the copyright owner and that the resulting product would appear substantially similar from the standpoint of an ordinary observer.

Proving access to copyright work is necessary because people sometimes come up with ideas that are very similar but do so independently, Cotter said. "I think the copyright dispute will depend on whether the court or if it goes to trial the jury believes that the Pixar characters are substantially similar to the plaintiff's characters," Cotter said. "It's hard to judge how that will go."

Cotter said, "Certainly there are some similarities between the plaintiff's characters and the characters used in 'Inside Out.'"

"I'm sure the defendants will argue that all of those similarities are merely similarities as to ideas, that they didn't actually literally copy the characters. … Even though there's no copyright protection as such in a idea of a character that's colored red and that symbolizes anger, it's the compilation and the combination of various elements that creates an original selection or arrangement."

"Such cases often hinge on the way the court or the jury applies the standards for finding substantial similarity," Cotter said.

"Overall at least according to the arguments raised in the complaint, I think there are other cases in which plaintiffs sometimes have succeeded in proving copyright infringement that are somewhat analogous," Cotter said.