

A-07-278

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**STATE OF MINNESOTA  
IN SUPREME COURT**

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IN RE STATE OF MINNESOTA, PETITIONER:

IN RE THE MARRIAGE OF:

CHRISTINA M. DEAL, PETITIONER/RESPONDENT

AND

RYAN S. DEAL, RESPONDENT/RESPONDENT

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**APPELLANT'S BRIEF**

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## LEGAL ISSUES

- I. Should a criminal defendant, charged with criminal sexual conduct involving a minor child, be allowed to depose his alleged victim in a civil proceeding regarding the allegations surrounding his criminal charges before the criminal case has been resolved?**

The trial court and Court of Appeals both determined that the criminal defendant could conduct a discovery deposition of his alleged victim, a minor child, in his divorce proceeding, with the limitation that the criminal defendant could not be personally present when the deposition was taken.

- II. Should a criminal defendant, charged with criminal sexual conduct, be allowed to depose his alleged victim in a civil proceeding regarding the allegations surrounding his criminal charges before the criminal case has been resolved?**

The trial court and Court of Appeals both determined that the criminal defendant could conduct a discovery deposition of his alleged victim in his divorce proceeding, with the limitation that the criminal defendant could not be personally present when the deposition was taken.

- III. Should a criminal defendant be allowed to depose his alleged victim in a civil proceeding regarding the allegations surrounding his criminal charges before the criminal case has been resolved?**

The trial court and Court of Appeals both determined that the criminal defendant could conduct a discovery deposition of his alleged victim in his divorce proceeding, with the limitation that the criminal defendant could not be personally present when the deposition was taken.

- IV. Should a criminal defendant be allowed to depose witnesses against him in a civil proceeding regarding the allegations surrounding his criminal charges before the criminal case has been resolved?**

The trial court and Court of Appeals both determined that the criminal defendant could conduct a discovery deposition of witnesses against him in his divorce proceeding.

## STATEMENT OF THE CASE

Appeal has been taken from an Order of the Court of Appeals denying Appellant's request for a Writ of Prohibition prohibiting the Trial Court from allowing discovery depositions to occur. Respondent Ryan Deal, a defendant in a criminal action alleging that he sexually abused his 14 year-old step-daughter, is attempting to conduct discovery depositions of the step-daughter and her brother. The Trial Court issued an Order stating that Appellant did not have standing to permissively intervene in this matter, and issued a limited Protective Order which only prohibited Mr. Deal from being present when the step-daughter was deposed. The Court of Appeals ruled that Appellant had standing to request a Writ of Prohibition, but declined to issue said Writ. Appellant is the State of Minnesota/Traverse County. Respondents are Christina Deal and Ryan Deal, the parties to the dissolution of marriage proceeding.

## STATEMENT OF FACTS

Christina Deal and Ryan Deal are in the midst of a dissolution of marriage proceeding in Traverse County. The parties have one minor child together, T.D., and are each seeking custody of him. Christina Deal has three children from other relationships residing with them. Mr. Deal is presently being prosecuted by the Appellant, for acts of criminal sexual conduct against the 14 year-old minor child of Christina Deal, B.N.Q. (Appendix A-1). Mr. Deal is now attempting to depose B.N.Q., and her brother, C.Q.,<sup>1</sup> in the dissolution of marriage proceeding. Mr. Deal insists that the purpose of his taking their depositions is to obtain information relating the issue

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<sup>1</sup>Appellant also sought to prevent the deposition of Christina Deal, but her deposition was allowed to go forward by the Trial Court after the Court of Appeals denied Appellant's Petition for Writ of Prohibition.

of custody of their minor child pursuant to the “best interests” factors found in M.S.A. 518.17. However, Mr. Deal also intends to question the deponents about the issues surrounding B.N.Q.’s allegations of criminal sexual conduct.

Appellant sought permissive intervention pursuant to Minn. R. Civ. P. 24.02, and asked that the Trial Court prohibit the taking of the depositions of any party who could appear as a witness in the criminal prosecution as violative of Minn. R. Crim. P. 21.01 which prohibits discovery depositions in criminal matters (Appendix A-6 - A-9). Christina Deal, through her own attorney, sought to have the deposition subpoenas for her minor children quashed, or, in the alternative, to have the Trial Court issue a Protective Order limiting the depositions in certain ways (Appendix A-10 - A-17). Mr. Deal objected to both pleadings (Appendix A-18 - A-25).

On January 16, 2007, the Trial Court issued an Order denying Appellant’s attempt to intervene and denying the requests to have the subpoenas quashed (Appendix A-26 - A-31). The Trial Court did issue a limited Protective Order prohibiting Mr. Deal from being present in the room when B.N.Q. was being deposed. The Trial Court in this matter also presides over Mr. Deal’s criminal prosecution file.

On February 3, 2007, Appellant petitioned the Court of Appeals for a Writ of Prohibition seeking an Order (1) allowing Appellant to intervene permissively in the dissolution of marriage proceeding and (2) prohibiting the Trial Court from allowing the discovery depositions to occur. On March 13, 2007, the Court of Appeals issued an Order stating that Appellant had standing to request a Writ of Prohibition (not addressing the issue of permissive intervention), but denying the request to proscribe the discovery depositions (Appendix A-32 - A-34). A Petition for Review was filed on April 13, 2007, and was accepted on May 30, 2007 (Appendix A-35).

## ARGUMENT

### A. Basis for Writ of Prohibition

Writs of prohibition are issued to prevent inferior courts or tribunals from exercising judicial or quasi-judicial power, not authorized by law, that will result in injury for which there is no adequate remedy (by motion, trial, appeal, certiorari or otherwise). Richardson v. School Board I.S.D. No. 271, 210 N.W.2d 911 (Minn. 1973). It is a “not a writ of right, but issues in the discretion of the court and only in extreme cases,” and it must be used “with great caution and forbearance to further justice and secure order in regularity in state’s subordinate tribunals.” Craigmile v. Sorenson, 62 N.W.2d 846, 851 (Minn. 1954). A Writ of Prohibition may also issue to restrain the trial court from abusing its discretionary power in a matter over which it has jurisdiction. State ex rel. Hierl v. District Court, Seventh Judicial District, 54 N.W.2d 5 (Minn. 1952). Appellant has standing to seek a Writ of Prohibition even though it was not granted party status by the Trial Court. Austin Daily Herald v. Mork, 507 N.W.2d 854, 856 (Minn.App. 1993).

A party may seek a Writ of Prohibition in situations where the Trial Court has ordered production of information that is clearly not discoverable. State v. Turner, 550 N.W.2d 622 (Minn. 1996). Minn. R. Crim. P. 21.01 and 21.06, Subd. 1 clearly state that discovery depositions may not be conducted by a criminal defendant unless the victim or witness to be deposed will be unavailable for said trial. *See* State v. Rud, 359 N.W.2d 573 (Minn. 1984) (“A discovery device that is not provided a defendant by rules is the discovery deposition, since taking of depositions of a prospective witness is allowed only upon a showing of reasonable probability that witness will be unavailable, i.e., the rule allows depositions not for discovery purposes but to preserve testimony.”)

While there is a gap between the civil rules and the criminal rules in this area, in that the civil rules do not contain language limiting discovery depositions while there is also an ongoing criminal proceeding, the correct interpretation of the criminal rules should be that while a criminal proceeding is ongoing, the criminal defendant may not conduct discovery depositions of the witnesses against him in a concurrent civil matter. Permitting otherwise would allow a criminal defendant to completely eviscerate not only the criminal rules prohibition against discovery depositions, but other limits on discovery as well.

**B. Trial Court Has Abused Its Discretion**

An appellate court reviews district court discovery decisions under an abuse of discretion standard. Montgomery Ward & Co. v. County of Hennepin, 450 N.W.2d 299, 305-06 (Minn. 1990). The district court will not be reversed unless it abused its discretion, exercised its discretion in an arbitrary or capricious manner, or based its ruling on an erroneous view of the law. Id. at 306. The district court also has broad discretion to fashion protective orders and to order discovery only on specified terms and conditions. Erickson v. MacArthur, 414 N.W.2d 406, 407 (Minn. 1987).

As stated above, the Minnesota Rules of Criminal Procedure and prior appellate court decisions clearly state that a criminal defendant can only conduct a deposition to be used at trial if the victim or witness to be deposed will be unavailable for said trial. A criminal defendant is therefore limited to the discovery allowed by the following provisions of the Minnesota Rules of Criminal Procedure: “Rule 9 (the primary discovery rule); Rules 7.01 and 19.04, subd. 6(1) (*Rasmussen* notice of evidence obtained from the defendant and of identification procedures);

Rules 7.02 and 19.04, subd. 6(2) (*Spreigl* notice of other-crime evidence to be offered at trial); and Rule 18.05 (record of testimony of grand jury witnesses). Together these rules ‘are intended to give the defendant and prosecution as complete discovery as is possible under constitutional limitations.’ Minn.R.Crim.P. 9, comment.” *Id.* at 578.

The Minnesota Rules of Civil Procedure contain no language automatically prohibiting, or even limiting, the taking of discovery depositions in a civil proceeding while a concurrent criminal prosecution is occurring. Minn. R. Civ. P. 26.03 does allow for Protective Orders, which could allow for the limiting of a discovery deposition, under the following circumstances:

Upon a motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (a) that the discovery not be had;
- (b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (e) that discovery be conducted with no one present except persons designated by the court;
- (f) that a deposition, after being sealed, be opened only by order of the court;
- (g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or
- (h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

The Trial Court in this matter has abused its discretion in not prohibiting the discovery

depositions sought in this matter by Mr. Deal of B.N.Q. and C.Q. Minor children should never be subjected to a discovery deposition to begin with, since in all probability they would be talking with the Trial Court *in camera* during a divorce proceeding, and not be made to testify in open court subject to cross-examination. That is why custody evaluators and Guardians at Litem exist - to afford minor children the opportunity to discuss relevant issues with a neutral third party, and not be interrogated by a biased interrogator representing one of the parents.

The fact that one of the minor children to be deposed in this case is purportedly the victim of sexual abuse from the person seeking the deposition is also demonstrative of how the Trial Court abused its discretion. Victims of sexual assault, at any age, should not have to be subjected to a discovery deposition while the criminal prosecution is ongoing. Particularly for a minor child, the probability is too great that the victim would, under pressure and duress at the deposition, give unclear or conflicting testimony that could subsequently be used to impeach her at the criminal trial. If allowed to go forward in this situation, the State could see the criminal case against Mr. Deal crumble not because the truth came out, but because a minor child folded under the withering pressure of a deposition.

In its Order, the Trial Court stated that there was no “good cause” for allowing Appellant to intervene or for issuing a protective order beyond keeping Mr. Deal out of the room when B.N.Q. was deposed.<sup>2</sup> However, it is a prosecutor’s job to protect witnesses, particularly a purported child victim of sexual abuse, from experiencing the undue emotional burden of having to recount acts of sexual abuse against her more than is necessary, where the potential for

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<sup>2</sup>It should be noted that at the motion hearing, both Appellant and Mrs. Deal asked the Trial Court to consider all of the options listed in Rule 26.03, not just the one provision that the Trial Court ordered.

embarrassment, harassment, or oppression exists. Forcing a purported child victim to speak about these details at a deposition which is ostensibly for a civil trial (a civil trial that the Trial Court even admitted in its own Order was unlikely to occur prior to the criminal trial) falls under this category. There is no reason why the Trial Court could not have allowed the deposition of B.N.Q. and C.Q. to go forward with at least the proviso that no inquiry into the sexual assault allegation were made. This would have still allowed Mr. Deal to question both children about the 17 “best interest of the child” factors that he ostensibly gives as the basis for the deposition.<sup>3</sup>

The Trial Court has also abused its discretion by not following one of several lesser restrictive alternatives that it could have followed, short of the relief Appellant is seeking. Doing so would have protected both the child victim and witness from being subjected to oppression, embarrassment, or undue burden as contemplated by Minn. R. Civ. P. 26.03, would have prevented circumvention of the Rules of Criminal Procedure, and would have protected Mr. Deal’s civil discovery rights in seeking custody of his minor child, T.D.

The first of these is to simply ensure that the trial in the dissolution matter concerning custody is not held until after the criminal prosecution has concluded, and prohibit any discovery depositions from occurring until after the trial. If Mr. Deal is convicted, then that would save the time and expense of preparing for a custody trial, including obviating the need for discovery depositions. If Mr. Deal is acquitted, then there would be no bar from his conducting discovery depositions at that time, and he would have already had the potential witnesses in his dissolution

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<sup>3</sup>The fact that Mr. Deal did not voluntarily agree to limit his questioning is demonstrative of his true intention for seeking the depositions - to obtain information that he would not be able to get in the criminal file, and to hope that he could force the witnesses into making impeachable statements that could assist him in obtaining an acquittal.

questioned under oath during his criminal trial. He could also use their testimony as the basis for discovery depositions of these witnesses or others who did not testify in the criminal proceeding.

Another alternative was to prohibit deposing the purported child victim, but allow depositions of the other witnesses, as the child victim's testimony would most likely be duplicative of other family members. The Court could also have allowed the information to be gained through written deposition, prohibited the discussion of the criminal sexual conduct charges and only allowed inquiry into other "best interest of the child" factors, and/or allowed the depositions but ordered them sealed to prevent a copy from being used at this criminal proceeding, as contemplated under Minn. R. Civ. P. 26.03. All of these suggestions were made to the Trial Court in either pleadings or at the January 11, 2007, hearing, but rejected.

Based upon these things, the Trial Court should have prohibited Mr. Deal from being allowed to conduct civil discovery depositions that are clearly prohibited by the Rules of Criminal Procedure.

### **C. Mr. Deal Is Attempting To Circumvent Criminal Rules of Procedure**

Mr. Deal's attempt to conduct discovery depositions is violative of the Minnesota Rules of Criminal Procedure, even though being conducted under the auspices of his marriage dissolution proceeding. While Mr. Deal asserts that the minor child and other witnesses he seeks to depose possess information vital to his custody request, his real purpose is to find beneficial evidence for his criminal proceeding, not the dissolution proceeding. It is clear that he intends to use this opportunity to ask probing questions concerning the criminal sexual conduct charges against him, and obtain information he would not otherwise be entitled to. He should not be

allowed to circumvent the criminal rules discovery deposition prohibition.

Mr. Deal has much more to gain in being successful in his criminal proceeding than seeking custody, and through deposing the purported child victim of his sexual abuse he would have much to gain from her becoming embarrassed, oppressed, and/or burdened to a point where she may very well recant her accusations, or at least make contradictory statements that could be used to impeach her at his criminal trial. While this is speculative, such a possibility (nay, probability for a 14 year-old girl) is precisely what the prohibition against discovery depositions in criminal cases is designed to protect against, particularly involving the purported child victims of sexual abuse.

As stated by the Trial Court in its Order, it is unlikely that the Defendant's divorce trial will take place until after the criminal trial has occurred. And for good reason - if the divorce action were to occur first, Mr. Deal would be at great pains to testify in that matter, as whatever evidence he presented, including his own testimony, could be used against him at the criminal trial. Alternatively, Mr. Deal could invoke his Fifth Amendment rights to not testify, but that would undoubtedly torpedo any chance in obtaining custody of the minor child he has with Mrs. Deal.

A recent federal case dealt with simultaneous proceedings in federal and state courts. Stewart v. Beaufort County, 481 F.Supp.2d 483 (D.S.C. 2007). There the Court held that since the federal civil court was being asked to make a factual determination identical to a state criminal court regarding whether a deputy has assaulted a detainee, proceeding with the civil case "might embarrass and interfere with the state proceedings." Id. at 495. In staying the civil proceedings until completion of the criminal proceedings, the Court recognized that a finding by

the criminal court that an assault had taken place would be binding on the civil court and preclude the deputy from making the same defense twice. Id.

In making this argument, Appellant recognizes that it has not previously raised the issue of staying the civil proceedings until the criminal proceedings are completed. However, the law pertaining to staying the civil matter during simultaneous proceedings is applicable because the natural result in staying civil discovery depositions until after the criminal trial can be to stay the civil proceeding. *See Afro-Lecon, Inc. v. U.S.*, 820 F. 2d 1198, 1202-04 (Fed. Cir. 1987).

Courts customarily consider the following factors, among others, in deciding whether to stay a civil proceeding pending the resolution of a criminal case: (1) the extent to which the issues in the civil and criminal proceedings overlap; (2) the status of the criminal proceeding, (3) the plaintiff's interests in expeditious civil proceedings weighed against the prejudice to the plaintiff caused by the delay, (4) the hardship on the defendant, including the burden on the defendant if the cases go forward in tandem, (5) the convenience of both the criminal and the civil courts, and (6) the interests of third parties and the public. Microfinacial, Inc. v. Premier Holidays Int'l, Inc., 385 F.3d 72, 78 (1st Cir. 2004); Maloney v. Gordon, 328 F. Supp. 2d 508, 511 (D. Del. 2004); Bell v. Todd, 206 S.W.2d 86 (Tenn.App. 2005).

A similar analysis could be made here regarding the postponing of Mr. Deal's discovery depositions: (1) the divorce and criminal proceedings have an overlapping issue that is crucial to both cases - whether Mr. Deal sexually molested his step-daughter; (2) the criminal proceeding is set for trial at the end of October; (3) there is no prejudice to Mr. Deal in delaying discovery depositions because the victim and witness he wishes to depose will both testify at the criminal trial, and if Mr. Deal is convicted in the criminal matter that would obviate the need for discovery

depositions in the dissolution matter; (4) there is no hardship to Mr. Deal in having both matters proceed while delaying discovery depositions; he can conduct other means of discovery that are not being challenged here and still prepare other aspects of his custody battle; (5) although the Trial Court Judge is the same in both proceedings here, it is more convenient to have the criminal matter tried first than the dissolution matter; and (6) the interests of the victim and witness not to be subjected to a discovery deposition are served by having them delayed.

**D. All Civil Discovery Depositions Should Be Prohibited Until Completion of Criminal Trial.**

Without a clear line prohibiting discovery depositions of witnesses for criminal proceedings in a civil proceeding by the criminal defendant, those defendants with the money and opportunity to initiate litigation against an alleged accuser or witness would be able to act outside of the criminal discovery rules. Surely, the Minnesota Supreme Court, when promulgating the rules of civil procedure and criminal procedure, did not intend to provide such a gap between them so as to allow the criminal procedural rules to be circumvented by the use of the civil procedural rules.

If this were allowed to occur, then there would be no protection for victims of crime from being harassed by defendants. It would allow criminal defendants the ability to attempt to intimidate their victims or the witnesses to their criminal acts in the hope of their recanting or refusing to testify at trial out of fear. Allowing a criminal defendant charged with child molestation to depose the purported child victim in a divorce proceeding would be tantamount to permitting the defendant to depose the child victim in the criminal matter.

In addition to situations involving intrafamilial sexual abuse, wherein an alleged abuser could simply initiate divorce proceedings and attempt discovery depositions through that proceeding, criminal defendants could initiate defamation actions against their accusers and witnesses. A person who committed a criminal offense while on his own property could sue others who had come onto his property for trespass. A person who committed a criminal offense while operating a motor vehicle that resulted in a car accident could initiate legal proceedings regarding the damage done to his vehicle. There are numerous possibilities to abuse the system.

The rights granted to the victim in the criminal system should be imputed into the civil process, and the taking of a civil deposition while a criminal case is pending should be absolutely prohibited. Other forms of discovery, like use of interrogatories and requests for admissions, could still be used in a civil proceeding while the criminal proceeding is ongoing, and the discovery deposition could still occur after the criminal trial has concluded. The confrontational aspect of a discovery deposition, with its great potential for harming the State's case in a criminal prosecution, should be delayed until after the criminal case has been concluded.

**E. Federal Law Allows for the Delaying of Civil Discovery Until Completion of Criminal Trial.**

As Minnesota has no case law addressing this specific issue, and Fed. R. Civ. P. 26(c) is the counterpart to Minn. R. Civ. P. 26.03, it is appropriate to look to federal case law for guidance on how the courts should address the intersection between civil and criminal rules of discovery. Steven J. Kirsch, *Methods of Practice* § 6.131 (Minn.Practice Series 3d ed.). In addition to the civil deposition rules being similar, Minnesota and federal criminal discovery

deposition rules are also similar, in that both are very limiting in their scope. *Compare* Minn. R. Crim. P. 21.01 (allowing discovery depositions only upon court approval when witness will be unavailable for trial) with Fed. R. Civ. P. 15 (allowing discovery depositions only upon court approval “because of exceptional circumstances and in the interest of justice.”)

Beginning with Campbell v. Eastland, 307 F.2d 478 (5th Cir. 1962), federal courts have held that civil discovery should not be used as a way of contravening the protections granted to a victim in the criminal process:

A litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit as a dodge to avoid the restrictions on criminal discovery and thereby obtain documents he would not otherwise be entitled to for use in his criminal suit. Judicial discretion and procedural flexibility should be utilized to harmonize the conflicting rules and to prevent the rules and policies applicable to one suit from doing violence to those pertaining to the other.

Id. at 487.

Federal courts have also allowed prosecutors to intervene in civil cases to apply for protective orders to prevent civil discovery where it would affect a criminal case:

There is clear precedent for allowing a State to intervene in a federal civil action when there is a pending state criminal action involving common questions of law or fact. *See* Finnan v. I.S.C.I. Ltd., No. 80 Civ. 0371 (PNL) (S.D.N.Y. Jan. 4, 1982) (allowing permissive intervention of District Attorney to apply for protective order); *see also* S.E.C. v. Chestman, 861 F.2d 49, 50 (2d Cir.1988) (“The [U.S. Attorney] had a discernable interest in intervening in order to prevent discovery in the civil case from being used to circumvent the more limited scope of discovery in the criminal matter.”); First Merchant's Enterprises, Inc. v. Shannon, 1989 WL 25214, 1989 U.S. Dist. LEXIS 2512 (S.D.N.Y.1989) (allowing United States Attorney to intervene in civil action); SEC v. United States Realty and Improvement Co., 310 U.S. 434, 460, 60 S.Ct. 1044, 1055, 84 L.Ed. 1293 (1940) (the government “has a sufficient interest in the maintenance of its statutory authority and the performance of its public duties to entitle it” to intervene).

Fed. Reserve System v. Pharaon, 140 F.R.D. 634, 638 (S.D.N.Y. 1991) (holding that civil discovery should be delayed during pendency of Grand Jury investigation to “preserve the secrecy of Grand Jury proceedings and [to] ensure that relevant evidence is not disclosed prematurely”).

The test that has been developed by the federal courts involves a balancing between the government’s interests and the harm to the litigant in not allowing the discovery. *Id.* at 638-41. The government’s policy reasons for the more limited provisions of criminal discovery are as follows:

Traditionally, the narrow scope of discovery in criminal litigation is justified by three considerations which are said to be peculiar to criminal law. First, there has been a fear that broad disclosure of the essentials of the prosecution's case would result in perjury and manufactured evidence. Second, it is supposed that revealing the identity of confidential government informants would create the opportunity for intimidation of prospective witnesses and would discourage the giving of information to the government. Finally, it is argued that since the self-incrimination privilege would effectively block any attempts to discover from the defendant, he would retain the opportunity to surprise the prosecution whereas the state would be unable to obtain additional facts. This procedural advantage over the prosecution is thought to be undesirable in light of the defendant's existing advantages. The validity of each of these objections must be appraised in each of the situations in which the defendant may seek discovery and must be weighed against the importance to the defendant of the disclosure.

*Developments in the Law-Discovery*, 74 Harv. L. Rev. 940, 1052 (1961). Additionally, victims in Minnesota have rights to refuse defense interviews and depositions, as discussed above. This test, with its consideration of the interests of the government and victim in limiting discovery in the civil case, may be useful in protecting a child victim from depositions in a Minnesota matrimonial case.

As stated above, the State's interest in preventing the discovery depositions in the dissolution proceeding is very high, as allowing the victim and other witnesses to be deposed will (1) give Mr. Deal access to more information than the criminal rules of procedure allow for; (2) affords Mr. Deal the opportunity to intimidate, annoy, or harass the victim and other witnesses, which may result in their unwillingness to testify at the criminal trial; and (3) Mr. Deal may be able to obtain contradictory or inconsistent statements from the victim and other witnesses, solely due to the stress of the deposition, to use for impeachment purposes at the criminal trial.

Conversely, the harm to Mr. Deal's case for custody of his minor child, T.D., would not be harmed in the least in the discovery depositions being put off until after the criminal trial. His dissolution trial will not occur until after the criminal trial is complete, so the delay itself will not affect his case. Mr. Deal could still serve interrogatories and requests for admissions, and make motions for temporary relief as need be, so the divorce process itself would not be stopped. And when the criminal trial is completed, and if Mr. Deal were acquitted, he could still depose the victim or other witnesses, and he could use the testimony adduced at the criminal trial as the starting point for his depositions.

## CONCLUSION

The Trial Court abused its discretion by not prohibiting Mr. Deal from taking the deposition of B.N.Q., whom he is accused of sexually abusing, and her brother, C.Q., who will be both be witnesses for the State in the criminal prosecution against him. The Court should issue a Writ of Prohibition preventing Mr. Deal from conducting discovery depositions in the dissolution proceeding of these and any other people who will be appearing as witnesses against him in his criminal prosecution, especially of the purported victim, B.N.Q., until completion of the criminal trial.

Respectfully submitted,

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