9.9 PRIVACY CONSIDERATIONS AS LIMITING DISCOVERY

The courts have generally recognized that an individual's legitimate interest in privacy and associational relationships may limit discovery. In *Caucus Distributors, Inc. v. Commissioner of Commerce*,[1] the court recognized that the compelled disclosure of the name of campaign contributors through discovery may amount to an intrusion into First Amendment rights of privacy, association, and belief. The court approved the requested discovery only after finding that a compelling state interest was involved and that the subjects of the disclosure had been afforded maximum protection available by a protective order. Similarly, in *County of Ramsey v. S.M.F.*,[2] the court held that interrogatories dealing with a person's history of sexual relations involved a well-established zone of privacy. Such discovery can only be justified by a legitimate, important state interest and the intrusion must be by the least intrusive means.[3]

In *Humenansky v. Minnesota Board of Medical Examiners*,[4] the Minnesota Court of Appeals upheld the constitutionality of Minnesota Statute, section 147.091, subdivision 6, allowing the Board to order a physician to submit to mental and physical examinations in order to determine the physician's fitness to continue treating patients. The court construed the statute as allowing mental examinations if such examination was the least intrusive means of determining a physician's mental condition.[5] While the court recognized that the examinations infringed on some privacy expectations, the court found these expectations did not outweigh the government's compelling interest in the safety of its people.[6]

Overly broad discovery interrogatories eliciting more than the required information are objectionable when a privacy or associational interest is involved.[7] A number of courts have also included an individual's private financial data within the protected zone of privacy.[8] Although the Minnesota court has not specifically considered the question of the protection to be afforded personal financial data, it has recognized the right of privacy as a limitation on discovery.[9] When an administrative law judge determines that the need for

1 422 N.W.2d at 268; *see also* NAACP v. Alabama, 357 U.S. 449, 462-63 (1958); Jones v. Unknown Agents of the Fed. Election Comm'n, 513 F.2d 864, 874 (D.C. Cir. 1979); Fed. Election Comm'n v. The LaRouche Campaign, 644 F.Supp. 120, 123 (S.D.N.Y. 1986).

2 298 N.W.2d 40 (Minn. 1980).

3 *Id*. at 42; *see also* Seattle Times Co. v. Rhinehart, 467 U.S. 20, 32 (1984); State v. Gray, 413 N.W.2d 107, 111 (Minn. 1987); City of Grand Forks v. Grand Forks Herald, Inc., 307 N.W.2d 572, 578-79 (N.D. 1981); Fults v. Superior Court, 88 Cal. App. 3d 899, 904, 152 Cal.Rptr. 210 (1979).

4 525 N.W.2d 559 (Minn. Ct. App. 1994).

5 *Id*. at 567.

6 *Id*. at 568.

7 Cnty. of Ramsey v. S.M.F., 298 N.W.2d 40, 42 (Minn. 1980).

8 Fraternal Order of Police, Lodge 5 v. City of Philadelphia, 812 F.2d 105, 115 (3rd Cir. 1987); Barry v. City of New York, 712 F.2d 1554, 1559 (2d Cir. 1982); Plante v. Gonzalez, 575 F.2d 1119, 1132-33 (5th Cir. 1978).

9 *S.M.F.*, 298 N.W.2d at 42; Caucus Distrib., Inc. v. Comm'r of Commerce, 422 N.W.2d 264, 268 (Minn. Ct. App. 1988).

the protected information outweighs the individual's privacy or associational interests, he or she should enter an appropriate protective order.[10]

[10] Erickson v. MacArthur, 414 N.W.2d 406, 409-410 (Minn. 1987); *Caucus Distrib.*, 422 N.W.2d at 268-69; *see* May Ctrs. Inc. v. S.G. Adams Printing, 153 Ill. App. 3d 1018, 1021-23, 506 N.E.2d 691, 694-95 (Ill. App. 1987) (discussing appropriateness of protective order throughout); Moskowitz v. Superior Court, 137 Cal. App. 3d 313, 317-19, 187 Cal. Rptr. 4, 7-9 (Cal. App. 1983) (same).