

sought. Rule 38 also provides that failure to serve and file written demand within the required time frame constitutes a waiver of the right to a jury trial. Waiver under Rule 38 applies when parties fail to make a timely demand for a jury trial even when such failure is "inadvertent, unintended and regardless of the explanation or excuse." *Scharnhorst v. Independent Sch. Dist. No. 710*, 686 F.2d 637, 641 (8th Cir.1982), *cert. denied*, 462 U.S. 1109 (1983). Additionally, Rule 38 makes no exceptions for *pro se* litigants. *King v. Patterson*, 999 F.2d 351, 353 (8th Cir.1993) (denying a *pro se* plaintiff's untimely jury demand); *Scharnhorst*, 686 F.2d at 641 (denying a *pro se*, Title VII plaintiff's untimely jury demand).

In the present case, the DVA filed an answer to Plaintiffs' complaint on October 20, 2008, constituting the last pleading directed to the issue for which Johns seeks trial by jury. Accordingly, John's demand for a jury trial filed on January 12, 2009 was out of time. Because Plaintiffs have waived their right to a jury trial, the case will be set for a bench trial.

IT IS SO ORDERED THIS 16TH DAY OF JANUARY, 2009.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE