

CASE NO. A06-1943

---

STATE OF MINNESOTA  
IN COURT OF APPEALS

---

GARY REYNOLDS,

*Appellant,*

v.

MINNESOTA DEPARTMENT OF HUMAN SERVICES and  
DAKOTA COUNTY EMPLOYMENT AND ECONOMIC ASSISTANCE,

*Respondents.*

---

RESPONDENTS' BRIEF AND APPENDIX

---

Southern Minnesota Regional Legal  
Services, Inc.

Paul Onkka #82612  
Charles Thomas  
712 Canterbury Road  
Shakopee, MN 55379  
(952) 401-9868

*Attorneys for Appellant*

Dakota County Employment and  
Economic Assistance

James C. Backstrom #3797  
Suzanne W. Schrader #183131  
Dakota County Judicial Center  
1560 Highway 55  
Hastings, MN 55033-2392  
(651) 438-4438

Minnesota Department of  
Human Services  
Robin Christopher Vue-Benson #33408X  
Assistant Attorney General  
445 Minnesota Street #900  
St. Paul, MN 55101  
(651) 296-8714

*Attorneys for Respondents*

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
I. STATEMENT OF LEGAL ISSUE .....	1
II. STATEMENT OF THE CASE AND THE FACTS .....	1
III. STANDARD OF REVIEW .....	1
IV. ARGUMENT .....	2
CERTIFICATION OF BRIEF LENGTH .....	16
INDEX TO APPENDICES.....	17

## TABLE OF AUTHORITIES

### CASES

<i>Davis v. Minn. Dept. of Human Rights</i> , 352 N.W.2d 852 (Minn. App. 1984) .....	2
<i>D.F.C. v. Minn. Commissioner of Health</i> , 693 N.W.2d 451 (Minn. App. 2005).....	7, 8, 10, 14
<i>E.N. v. Special School District No.1</i> , 603 N.W.2d 344 (Minn. App. 1999) .....	10
<i>Flame Bar, Inc. v. City of Minneapolis</i> , 295 N.W.2d 586 (Minn. 1980).....	8, 9
<i>Harms v. Oak Meadows</i> , 619 N.W.2d 201 (Minn. 2000).....	1
<i>Holm v. Casino Resource Corp.</i> , 632 N.W.2d 238 (Minn. App. 2001).....	9
<i>In re Conservatorship of Klawitter</i> , 2004 Minn. LEXIS 135, 2-3 (Minn. 2004), (also attached as Respondents' Appendix, page A-2.) .....	1, 7, 10
<i>Kenzie v. Dalco Corp.</i> , 245 N.W.2d 207 (Minn. 1976) .....	8, 9
<i>Lerro v. Quaker Oats Co.</i> , 84, F.3d 239 (7 <sup>th</sup> Cir. 1996).....	12, 13
<i>Schroeder v. Schroeder</i> , 658 N.W.2d 909 (Minn. App. 2003) .....	2
<i>State of Minnesota v. Ronald Scott Hugger</i> 640 N.W.2d 619 (Minn. 2002) .....	11, 12, 13, 15
<i>Ullman v. Lutz</i> , 238 Minn. 21, 24, 55 N.W.2d 57 (1952) .....	2
<i>Wilkins v. City of Glencoe</i> , 479 N.W.2d 430 (Minn. App. 1992).....	9

### STATUTES, REGULATIONS AND RULES

Minn. Stat. § 256.045, subd. 7 (2005) .....	<i>passim</i>
Minn. Stat. § 340.135 (1978).....	8
Minn. Stat. § 572.19, subd. 2 (2000) .....	9
Minn. Stat. § 645.15 (2005).....	5

Minn. Stat. § 645.16 (2005) .....	4
Minn. R. Civ. App. P. 117 (2004).....	6, 7
Minn. R. Civ. App. P. 125.03 (2004).....	7
Minn. R. Civ. P. 6.05 (2005).....	<i>passim</i>
Minn. R. Civ. P. 12.08(c) (2005) .....	2
Minn. R. Crim. P. 34.04 (2005) .....	11, 12
Fed. R. Civ. P. 6(e) (2001) .....	12

**OTHER SOURCES**

1 David F. Herr & Roger S. Haydock, Minnesota Practice § 6.8 (2002) .....	6, 10
---	-------

## I. STATEMENT OF LEGAL ISSUE

WHETHER APPELLANT FAILED TO TIMELY SERVE HIS NOTICE OF APPEAL UPON THE COMMISSIONER AND THE COUNTY PURSUANT TO MINN. STAT. § 256.045, SUBD. 7, DEPRIVING THE DISTRICT COURT OF SUBJECT MATTER JURISDICTION.

The district court held in the affirmative, determining that Appellant did not serve his notice of appeal within the time allowed by subdivision 7 and rejecting Appellant's claim that Minn. R. Civ. P. 6.05 required an expansion of the time to appeal because the Commissioner's decision was served by mail.

Minn. Stat. § 256.045, subd. 7.

*In re Conservatorship of Klawitter*, 2004 Minn. LEXIS 135, 2-3 (Minn. 2004), (attached as Respondents' Appendix, page A-2.)

## II. STATEMENT OF THE CASE AND THE FACTS

Respondents accept the Statement of Case and Facts contained in Appellant's brief, as supplemented by the contents of the Affidavit of Service by Mail, attached as Respondents' Appendix, page A-1, demonstrating that Appellant placed his notice of appeal to Respondents in the mail on December 19, 2005.

## III. STANDARD OF REVIEW

The district court dismissed Appellant's appeal of the Commissioner of Human Services' Order for lack of jurisdiction because the appeal was not timely. Jurisdiction is a question of law that the Court reviews de novo. *Harms v. Oak Meadows*, 619 N.W.2d 201, 202 (Minn. 2000).

#### IV. ARGUMENT

**APPELLANT DID NOT TIMELY SERVE HIS NOTICE OF APPEAL UPON ADVERSE PARTIES PURSUANT TO MINN. STAT. § 256.045, SUBD. 7, AND THE DISTRICT COURT THEREFORE LACKED SUBJECT MATTER JURISDICTION TO HEAR THE APPEAL.**

Appellant failed to comply with the time limits specified under Minn. Stat. § 256.045, subd. 7, and he bases this appeal on his claim that three days should have been added to his appeal period pursuant to Minn. R. Civ. P. 6.05. The district court dismissed Appellant's appeal as untimely under Minn. Stat. § 256.045, subd. 7, determining that Minn. R. Civ. P. 6.05 did not extend the appeal period by three days because the 30-day appeal period commenced upon "issuance," not "service" of the commissioner's order. (Appellant's Appendix, page A-2).

This Court has held "the failure of an aggrieved party to commence an appeal of a state agency decision within the time limits in the statute governing such appeals properly results in dismissal for lack of jurisdiction." *Davis v. Minn. Dept. of Human Rights*, 352 N.W.2d 852, 854 (Minn. App. 1984). Minn. R. Civ. P. 12.08(c) (2005) provides that [w]hensoever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." *Id.* Jurisdiction cannot be conferred by waiver or consent. *Schroeder v. Schroeder*, 658 N.W.2d 909, 912 (Minn. App. 2003). An appellate court "cannot assume or acquire jurisdiction by extending the time for appeal." *Ullman v. Lutz*, 238 Minn. 21, 24, 55 N.W.2d 57, 59 (1952). Because the district court acts in an appellate capacity in

cases appealed under Minn. Stat. § 256.045, subd. 7, the principles of *Ullman* apply to this matter.

It should be clarified that the issue concerning the application of an additional three-day time period for mailing under Minn. R. Civ. P. 6.05 arises in two different contexts under Minn. Stat. § 256.045, subd. 7. First, Appellant claims that Rule 6.05 applies to the beginning of his appeal period, thereby tolling the commencement of his 30-day appeal period by three days because the decision of the Commissioner of Human Services (“commissioner”) was mailed to him. Appellant asserts that the mailing of the decision should be treated as a “service by mail.” Respondents strongly oppose this interpretation.

Second, Appellant claims that Minn. R. Civ. P. 6.05 is applied at the end of Appellant’s appeal period, as Appellant is required under Minn. Stat. § 256.045, subd. 7, to “serve” adverse parties of his notice of appeal. Under the rule, if Appellant served his notice by mail, he could have placed the appeal notices in the mail on the 30<sup>th</sup> day, thereby adding up to three days before the notice would be received by the adverse parties.<sup>1</sup> These two different applications of Minn. R. Civ. P. 6.05 are important to distinguish. Both applications of Minn. R. Civ. P. 6.05, at the beginning and end of the 30-day appeal period, are addressed below.

---

<sup>1</sup> However, Appellant did not place his notice in the mail until the 34th day after the date of the commissioner’s order. *See* Affidavit of Service of Service By Mail (Respondents’ Appendix page A-1).

- A. **Minn. R. Civ. P. 6.05 did not apply to the beginning of Appellant’s appeal period, and therefore did not toll the commencement of the 30-day appeal period by three days. The 30-day appeal period began to run immediately upon the date of the commissioner’s order denying reconsideration.**

This case involves the statutory construction of Minn. Stat. § 256.045, subd. 7 (2005), as well as construction of Minn. R. Civ. P. 6.05 (2005). Minn. Stat. § 645.16 (2005) governs statutory construction, and states in part as follows:

Legislative intent controls. The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions. When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

*Id.* The relevant portion of Minn. Stat. § 256.045, subd. 7, states as follows:

Subd. 7. Judicial review. Except for a prepaid health plan, any party who is aggrieved by an order of the commissioner of human services, . . . may appeal the order to the district court of the county responsible for furnishing assistance, . . . by serving a written copy of a notice of appeal upon the commissioner and any adverse party of record within 30 days *after the date the commissioner issued the order*, the amended order, or order affirming the original order, and by filing the original notice and proof of service with the court administrator of the district court. Service may be made personally or by mail; service by mail is complete upon mailing. . .

*Id.* Minn. R. Civ. P. 6.05 allows for three days to be added to the required time period “[w]hen a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party.” *Id.* (*emphasis added*). Giving meaning to all provisions of this rule according to Minn. Stat. § 645.16 set forth above, this rule is clearly limited to situations where “service” of a notice is required.

Under Minn. Stat. § 256.045, subd. 7, the only reference to “service” applies to the method upon which Appellant would provide notice of his appeal to the adverse parties. In fact, the statute specifically elaborates that the service by the appealing party “may be made personally or by mail; service by mail is complete upon mailing.” *Id.* If the legislature had intended that the commissioner “serve” his decision upon the parties<sup>2</sup>, why would it use the word “issued” instead of “served,” when considering that the same statute clearly required Appellant to “serve” his notice on adverse parties? Respondents assert that the plain meaning of the statute shows that there is no requirement that the commissioner’s decision be “served” upon the Appellant, and therefore Minn. R. Civ. P. 6.05 does not apply. Appellant’s appeal period therefore expired “30 days after date the commissioner *issued* the order.”<sup>3</sup> *Id.* (*emphasis added*).

The “date the commissioner issued the order” referred to in Minn. Stat. § 256.045, subd. 7, was November 15, 2005, which was the date of the commissioner’s letter denying Appellant’s request for reconsideration (Appellant’s Appendix, page A-3).<sup>4</sup> The 30-day period for appealing to district court thereby started to run on November 16, 2005, and ended on December 15, 2005. Because

---

<sup>2</sup> At the time of Appellant’s appeal proceedings, the Minnesota Commissioner of Human Services was Kevin Goodno.

<sup>3</sup> This period would have been extended under Minn. Stat. § 645.15 (2005), if the 30<sup>th</sup> day had fallen on a weekend or holiday.

<sup>4</sup> Appellant does not claim that the date of issuance was not also the date the final agency decision was placed in the mail to him.

December 15, 2005, did not fall on a weekend or holiday, it served as an absolute deadline for Appellant to serve his notice of appeal on adverse parties.

The authors of Minnesota Practice, a treatise on Minnesota law, make the following clarification regarding Minn. R. Civ. P. 6.05:

[i]t is important to understand that Rule 6.05 extends the applicable time period *only if that time is calculated from the date of service* of a notice or other document or if service is required a specified number of days before an event. If a time period runs from the date of filing or date of judgment, then Rule 6.05 does not serve to extend the time period.

1 David F. Herr & Roger S. Haydock, Minnesota Practice § 6.8 (2002) (emphasis added). This instruction is insightful because it distinguishes definite acts where dates can easily be ascertained, such as dates of filing and entry of judgment as well as the date of issuance of a Commissioner's final decision, from acts that require "service" upon a party, where such dates cannot be ascertained without further reference as to how the service was accomplished. Similarly, in the present case, the "date the commissioner issued the order" under Minn. Stat. § 256.045, subd. 7, can easily be ascertained by noting the date of the order, as opposed to viewing a postmark or affidavit of service, which otherwise must be generated to calculate the applicable time period if Minn. R. Civ. P. 6.05 were applicable.

This issue was also addressed by the Minnesota Supreme Court in a case where the Court denied a petition for appellate review as being untimely. The rule under review was Minn. R. Civ. App. P. 117 (2004), which states that "[a]ny party seeking review of a decision of the Court of Appeals shall separately petition the Supreme Court. The petition with proof of service shall be filed with the clerk of the

appellate courts *within 30 days of the filing* of the Court of Appeals' decision.” *Id.* (emphasis added). The party requesting review argued that Minn. R. Civ. P. 6.05 effectively added three days to her appeal time, because she received notice of the Court of Appeals’ decision by mail. In rejecting her argument, the Court stated as follows:

Petitioner also argues that the petition for review was timely filed, asserting that under Minn. R. Civ. P. 6.05 . . . she was entitled to an additional three days to file her petition for review because the court of appeals opinion was sent to the parties by mail. However, the three additional days allowed under Rule 6.05 applies only where "a party \*\*\* is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party, and the notice or paper is *served* upon the party by mail." (emphasis added.) *See also* Minn. R. Civ. App. P. 125.03 (allowing three extra days to respond where paper is "served" by mail). Because it is the *filing* of the decision by the court of appeals and not service or notice of the decision that triggers the 30-day period under Minn. R. Civ. App. P. 117, a party is not entitled to an additional three days to file a petition for review under Minn. R. Civ. P. 6.05.

*In re Conservatorship of Klawitter*, 2004 Minn. LEXIS 135, 2-3 (Minn. 2004), (attached as Respondents’ Appendix, page A-2.) Similarly, in the present case, Appellant claims that because the commissioner’s decision was mailed to him, Rule 6.05 ought to apply. However, the date the Commissioner “issued” his order is akin to a “filing” of an order by a court, and therefore, as clarified in *Conservatorship of Klawitter*, the additional three-day period did not apply to toll the commencement of Appellant’s 30-day appeal period.

Appellant has cited the case of *D.F.C. v. Minn. Commissioner of Health*, 693 N.W.2d 451 (Minn. App. 2005), where this Court concluded that the 30-day appeal period under Minn. Stat. § 256.045, subd. 7, did not commence because the appellant

was not notified of the decision. However, *D.F.C.* pertained to a unique situation where the commissioner failed to mail the notice to the appellant (sending it only to the appellant's attorney) and then claimed that the appellant's appeal was not timely. This court concluded that because no notice was provided to the appellant, the thirty-day appeal period could not be deemed to commence upon the date of the commissioner's order. *D.F.C.* does not support Appellant's allegations that a three-day period should be added after the date of the commissioner's order under Minn. R. Civ. P. 6.05, as *D.F.C.* did not address that issue. Appellant does not allege nor suggest any evidence exists that the Commissioner of Human Services did not mail the order to Appellant on the date of the order.

In the case of *Flame Bar, Inc. v. City of Minneapolis*, 295 N.W.2d 586 (Minn. 1980), cited by Appellant, the pertinent statute, Minn. Stat. § 340.135 (1978), directed that reviews of decisions must be commenced within 30 days after "service by mail" of the decision upon the parties. Because that statute specifically required service by mail, the Court logically determined that three days must be added to the 30-day period. *Flame Bar* does not support Appellant's arguments in this case.

*Kenzie v. Dalco Corp.*, 245 N.W.2d 207 (Minn. 1976), cited by Appellant, is distinguishable from the present case because it pertained to a statute that specifically required a review of a decision of the commissioner of employment services to be commenced within 30 days after the date of mailing of the notice of the decision. The Court held that Minn. R. Civ. P. 6.05 should apply because the statute used the specific language regarding the "date of mailing" of notice. Similarly, the case of

*Wilkins v. City of Glencoe*, 479 N.W.2d 430 (Minn. App. 1992), cited by Appellant, pertained to a Minn. Stat. § 487.30, subd. 9 (1990), a statute allowing a 20-day period to appeal a conciliation court judgment. As in *Kenzie*, that statute also specified that the appeal period commenced upon the “date the court administrator mailed notice.” *Id.* The Court again determined that Minn. R. Civ. P. 6.05 should apply because it interpreted the language requiring “mailing” of the notice to equate with “service by mail.”

Appellant also cites *Holm v. Casino Resource Corp.*, 632 N.W.2d 238 (Minn. App. 2001), which addressed a statute stating that the applicable time period in question would commence within 90 days of “delivery” of an arbitration award. *See* Minn. Stat. § 572.19, subd. 2 (2000). The Court in *Holm* determined that “delivery” meant the same thing as “service,” and that therefore Minn. R. Civ. P. 6.05 would apply to add three days to the front end of the required time period.

Contrary to the language of the statutes interpreted in *Flame Bar*, *Wilkins*, *Kenzie* and *Holm*, the 30-day appeal period under Minn. Stat. § 256.045, subd. 7, specifically starts on the date the order is issued, as opposed to including any reference to when it was provided to Appellant. Further, in the commissioner’s letter to Appellant dated November 15, 2005, which denied appellant’s request for reconsideration, the commissioner specifically instructed Appellant that “[i]f you so choose, you can start an appeal in the district court within 30 days of this letter’s date.” Appellant’s Appendix, page A-3 (emphasis added). This statement should

have eliminated any potential confusion Appellant may have had as to when the 30-day appeal period commenced.

Although this Court in *D.F.C.* determined that the word “issued” in Minn. Stat. § 256.045, subd. 7, implies that the decision must be communicated to Appellant, the Court did not reach a decision about whether the 30-day period commences on the date the commissioner mails the decision or the date the decision is received by an appellant. Similarly, the supreme court determined in *In re Conservatorship of Klawitter*, set forth above, that the time period in question commenced with the filing of the decision as opposed to when the decision was mailed to the party. The commentary to Minnesota Practice discussed above also clarifies that Rule 6.05 does not apply when the time period commences on the date of filing or the date of entry of judgment. It is important to recognize that by commencing a time period from the date of filing a document, entry of judgment, or issuing an order, this does not mean the parties have not been notified of that event; it means only that the relevant time period commences *on the date of the specified event* rather on the date notice is provided to the parties. It must be presumed that the date the commissioner “issued” the decision under Minn. Stat. § 256.045, subd. 7, is also the date of the commissioner’s order.

Appellant has also cited *E.N. v. Special School District No.1*, 603 N.W.2d 344 (Minn. App. 1999), as an authority stating that Rule 6.05 applies to the decisions of administrative bodies. Respondents do not dispute that this general principal would be true, except where a more specific statute applies. In the present case,

Minn. Stat. § 256.045, Subd. 7, precludes the application of Minn. R. Civ. P. 6.05 to the commencement of Appellant's appeal period.

**B. Although Minn. R. Civ. P. 6.05 allowed Appellant to serve his notice of appeal by placing his notice in the mail on the 30<sup>th</sup> day after the date of the commissioner's order, Appellant's appeal was untimely because he did not place his appeal notice in the mail until the 34<sup>th</sup> day after the date of the commissioner's order.**

Respondents do not contest that Appellant could serve his notice of appeal on adverse parties under Minn. Stat. § 256.045, subd. 7, by placing the notices of appeal in the mail on the 30<sup>th</sup> day, December 15, 2005. But Appellant did not place his notice in the mail until December 19, 2005, *34 days* after the date of the Commissioner's Order, (*See* Respondents' Appendix, page A-1), and this did not comply with the jurisdictional requirements of Minn. Stat. § 256.045, subd. 7. Minn. R. Civ. P. 6.05 requires that the notice be served by placing it in the mail on the 30<sup>th</sup> day; it does not allow the notice to be *placed in the mail* on the 33<sup>rd</sup> day. The additional three days are only added to allow for time to travel through the mail. Under 6.05, the three additional days are added to the time period for the recipient to respond to something mailed. Subdivision 7 clearly provides for a definite appeal period, not subject to expansion.

In *State of Minnesota v. Hugger*, 640 N.W.2d 619 (Minn. 2002), the Minnesota Supreme Court addressed the issue of when the three additional days commence under the service-by-mail rule. Although *Hugger* addressed the *criminal* procedure rule under Minn. R. Crim. P. 34.04, the Court noted the rule's similarity to

Minn. R. Civ. P. 6.05. Both the criminal and civil rules allow for three additional days for service by mail using virtually the same language, as follows:

Rule of Criminal Procedure 34.04. Additional Time After Service by Mail.

Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon the party and the notice or other paper is served upon the party by mail, three days shall be added to the prescribed period.

Rule of Civil Procedure 6.05. Additional Time After Service by Mail . . .

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party, and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period.

The court in *Hugger* also noted the commonality between the Minnesota rules quoted above and Fed. R. Civ. P. 6(e), which also provides for three additional days when service is made by mail. *Hugger* determined that the time period in which an appeal must be taken (in this case 30 days) must first be calculated with respect to weekends and holidays to determine the effective date upon which service must be made. If service is then made by mail, the 3-day period must be added to the effective date of service to allow for travel through the mail.

The *Hugger* decision quoted the case of *Lerro v. Quaker Oats Co.*, 84, F.3d 239 (7<sup>th</sup> Cir. 1996), which pertained to Fed. R. Civ. P. 6(e). *Hugger* stated as follows:

In *Lerro*, the Seventh Circuit Court of Appeals pointed out the absurdity of applying a method of computation that operates to defeat the purpose of the additional-time-for-mailing rule:

Rule 6(e) is designed to give a litigant approximately the *same effective time to respond* whether papers are served by hand or by mail. If service is by hand, then the time to respond starts

immediately; if service is by mail, the party receives three extra days as an approximation of the time required for mail delivery, and on average *should have the same number of days to act as he would have had following service in hand.*

*Hugger* at 624, quoting *Lerro* at 242 (7<sup>th</sup> Cir. 1996) (emphasis added).

The same rationale of *Hugger* and *Lerro* applies in this case. Because Minn. Stat. § 256.045 required Appellant to “serve” his notice of appeal upon adverse parties within 30 days of the date of the commissioner’s order, Appellant was therefore allowed to serve his notice by mail, provided he placed the notice in the mail no later than the 30<sup>th</sup> day. To allow Appellant to add three days *prior* to placing the notice in the mail, thereby placing his notice in the mail on the 33<sup>rd</sup> day, would defeat the purpose of the service-by-mail rule by granting Appellant a greater period of time in which to appeal than if he had served his notice in person, and this interpretation would run afoul of *Hugger*.

The date of the commissioner’s order in this case was November 15, 2005, and Appellant’s 30-day period in which to appeal ended on December 15, 2005, which was a Thursday, not a weekend or holiday. December 15 then became the due date upon which Appellant should have served his notice of appeal by placing it in the mail. Pursuant to *Hugger*, an additional three days would then be added after placing the appeal notice in the mail, allowing the date for receipt of the notice to be December 18, 2005, but because this date fell on a Sunday, it would be extended to Monday, December 19, 2005. But Appellant did not place the notice in the mail

until the 34<sup>th</sup> day, and therefore the district court did not have subject matter jurisdiction over Appellant's appeal.

**C. The plain language of Minn. Stat § 256.045, subd. 7, provides a fair and reasonable opportunity for a person to appeal a decision of the Commissioner of Human Services.**

When the Commissioner of Human Services issues a decision in a matter, the affected parties have 30 days from the date of the commissioner's decision to make an appeal to the district court. Therefore, assuming the commissioner's decision would take up to three days to reach the parties by mail, the parties would then have approximately 27 days in which to make an appeal.<sup>5</sup> This is certainly a reasonable amount of time when considering that the only action the party must take to initiate an appeal is to serve a one- or two-page notice of intent to appeal upon the adverse parties. No memorandum would be required at this point. After the transcript is received, the appealing party may then take the time to prepare a memorandum and set the matter on for hearing, serving notice of the hearing on all parties.

No evidence has been presented to show that the commissioner's decisions in actions under Minn. Stat. § 256.045, subd. 7, are delivered to the parties by any means other than by regular mail. *See also, D.F.C. v. Minn. Commissioner of Health*, footnote 3. Therefore, there is no need to add three days to extend the appeal time for those receiving decisions by mail, as the parties in all such cases already have the same amount time in which to serve a notice of appeal. Because the commissioner has a uniform method of

---

<sup>5</sup> There is no allegation that the Commissioner did not immediately issue his decision to Appellant in this case.

communicating his orders, the effect of adding three days does not serve the purpose of Rule 6.05, but only changes the statutory appeal period from 30 days to 33 days from the date the commissioner issues his decision. *See State v. Hugger*, 640 N.W.2d 619 (Minn. 2002).

### CONCLUSION

Respondents respectfully request that this Court uphold the ruling of the district court and hold that Appellant did not timely appeal the commissioner's decision pursuant to Minn. Stat. § 256.045, subd. 7, and that therefore, the district court lacked subject matter jurisdiction, and the appeal was properly dismissed.

Respectfully submitted,

Dated: Dec. 11, 2006

JAMES C. BACKSTROM  
DAKOTA COUNTY ATTORNEY

By Suzanne W. Schrader  
Suzanne W. Schrader #183131  
Assistant County Attorney  
Dakota County Judicial Center  
1560 Highway 55  
Hastings, MN 55033  
Telephone: (651) 438-4438

## CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirement of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with Times New Roman font. The length of this brief is 345 lines and 4,255 words. This brief was prepared using Microsoft Windows XP Professional Version 2002.

Dated: Dec. 11, 2006

JAMES C. BACKSTROM  
DAKOTA COUNTY ATTORNEY

By Suzanne W. Schrader  
Suzanne W. Schrader #183131  
Assistant County Attorney  
Dakota County Judicial Center  
1560 Highway 55  
Hastings, MN 55033  
Telephone: (651) 438-4438

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).