

RULES OF APPELLATE PROCEDURE

Minnesota Rules of Civil Appellate Procedure

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STATE OF MINNESOTA IN SUPREME COURT

ORDER PROMULGATING AMENDMENTS TO THE

RULES OF CIVIL APPELLATE PROCEDURE

WHEREAS, the Supreme Court Advisory Committee on the Rules of Civil Appellate Procedure has recommended certain amendments to the Rules of Civil Appellate Procedure, and

WHEREAS, the Supreme Court held a hearing on the recommended amendments on June 7, 1983, and is fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED, that the annexed amended Rules of Civil Appellate Procedure and the appendix of forms be, and the same are prescribed and promulgated for the regulation of practice and procedure in civil matters in the appellate courts of the State of Minnesota. The comments are those of the Advisory Committee and this Court does not pass on their accuracy or reliability.

IT IS FURTHER ORDERED that these amended rules shall govern all appeals taken on or after August 1, 1983. Appeals and other proceedings pending in the Supreme Court on July 31, 1983, will be governed by the former Rules of Civil Appellate Procedure.

IT IS FURTHER ORDERED that, during the transition period from the effective date of these rules, August 1, 1983, to the actual operational establishment of the Court of Appeals, November 1, 1983, the implementation of the following rules will be delayed until November 1, 1983: Rules 105, 120, 121, 127 and 131.02. Those rules, in their present form, will remain effective until that date and the current practices and procedures of the Supreme Court will remain in effect during the period of delayed implementation.

IT IS FURTHER ORDERED that the Advisory Committee continue to serve to monitor said rules and amendments and to hear and accept comments for further changes, to be submitted to the Supreme Court when appropriate.

Dated: June 17, 1983

BY THE COURT:

-s-Douglas K. Amdahl
Chief Justice

**STATE OF MINNESOTA
IN SUPREME COURT
A-1**

**Order Promulgating Amendments to the
Rules of Civil Appellate Procedure**

WHEREAS, by order dated June 17, 1983, the Supreme Court prescribed and promulgated amendments to the Rules of Civil Appellate Procedure and the appendix of forms; and

WHEREAS, by order of that same date, the Supreme Court delayed the implementation of Rules 105, 120, 121, 127 and 131.02 from August 1, 1983 to November 1, 1983, the date of the actual operational establishment of the Court of Appeals; and

WHEREAS, the Supreme Court has determined that additional minor amendments to the Rules of Civil Appellate Procedure were required;

IT IS HEREBY ORDERED that the amended Rules of Civil Appellate Procedure, as prescribed and promulgated on June 17, 1983, and including the subsequent minor amendments, be prescribed and promulgated for the regulation of practice and procedure in civil matters in the appellate courts of the State of Minnesota. The rules which were the subject of the delayed implementation are now fully effective in their amended form.

IT IS FURTHER ORDERED that these amended rules shall govern all appeals taken on or after August 1, 1983. Appeals and other proceedings pending in the Supreme Court on July 31, 1983, will be governed by the former Rules of Civil Appellate Procedure.

IT IS FURTHER ORDERED that the Advisory Committee continue to serve to monitor said rules and amendments and to hear and accept comments for further changes, to be submitted to the Supreme Court when appropriate.

DATED: November 10, 1983

BY THE COURT

-s-Douglas K. Amdahl
Chief Justice

STATE OF MINNESOTA IN COURT OF APPEALS

In Re: INTERPRETATION OF MINNESOTA STATUTES SECTION 480A.08, SUBDIVISION 3, (1986) CONCERNING LIMITATION OF TIME IN WHICH TO ISSUE DECISIONS OF THE COURT

WHEREAS, this court is required by statute to render decisions "within 90 days after oral argument or after the final submission of briefs or memoranda by the parties, whichever is later," Minn. Stat. section 480A.08, subd. 3 (1986); and

WHEREAS, the 90-day limitation may be waived, for good cause shown, by the chief judge, id.; and

WHEREAS, although "the normal number of judges" for the court, as that term is defined by statute, is 21, the court is currently comprised of only 13 judges, one additional judge having been authorized by the 1987 Legislature, although the court requested additional judges; and

WHEREAS, the ability to meet the 90-day standard by a court of reduced size is doubtful. As experience has shown, the court's efforts to do so have been limited by health problems of various judges caused by overwork and excessive stress; and

WHEREAS, the problem is especially acute in deciding cases where no oral argument is held, and a decision is due within 90 days after the filing of the last brief, see Minn. Stat. section 480A.08, subd. 3; Minn. R. Civ. App. P. 134.06, subd. 2, and if no respondent's brief is filed, at least 30 days pass before the court becomes aware that briefing is complete and the case is ready for assignment; and

WHEREAS, allowing time for the assignment and preparation process, a nonoral case may not be ready for conference by the assigned panel until an additional 20 to 30 days have passed, for a total elapsed time since the last brief of up to 65 days; and

WHEREAS, following the nonoral conference, a draft opinion with concurring and dissenting opinions must be prepared and circulated to the entire court pursuant to our internal rules, which may require an additional 30 days; and

WHEREAS, these time constraints would be lessened if the 90-day limitation for issuance of a decision was calculated from the date of the nonoral panel conference, paralleling the statutory submission date of argument and conference for oral cases;

THEREFORE, IT IS HEREBY ORDERED THAT:

1. For good cause shown, the 90-day period for this court to issue an opinion pursuant to Minn. Stat. section 480A.08, subd. 3 on cases submitted without oral argument shall hereafter be computed from the date on which a panel conference is held.

2. The State Court Administrator shall make the necessary computer program changes to effect this policy change on July 1, 1987.

Dated: June 30, 1987

BY THE COURT

-s-Peter S. Popovich
Chief Judge

**STATE OF MINNESOTA
IN SUPREME COURT**

**ORDER PROMULGATING AMENDMENTS TO THE
RULES OF CIVIL APPELLATE PROCEDURE**

Upon action of the court,

IT IS HEREBY ORDERED that the following Rules of Civil Appellate Procedure are amended to reflect increases in the required filing fees for appellate review:

Rules 103.01, subd. 1; 105.01; 106; 115.03, subd. 3; 116.03, subd. 3; 117, subd. 1; 118, subd. 1; 120.04; 121.03; and 140.02.

The amended rules attached hereto shall govern all appeals taken on or after July 1, 1989.

IT IS FURTHER ORDERED that these amendments shall have statewide application, without exception, from and after their effective date.

Dated: June 28, 1989

BY THE COURT

-s-Peter S. Popovich
Chief Judge

Minnesota Rules of Civil Appellate Procedure

Adopted June 17, 1983

Effective August 1, 1983

With amendments received through July 1, 1990

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These rules govern procedure in the Supreme Court and the Court of Appeals of Minnesota in civil appeals; in criminal appeals insofar as the rules are not inconsistent with the Rules of Criminal Procedure; in proceedings for review of orders of administrative agencies, boards or commissions; and on applications for writs or other relief in civil proceedings which the Supreme Court, the Court of Appeals or a justice or judge thereof is competent to give.

101.02 Definitions

Subdivision 1. When used in these rules, the words listed below have the meanings given them.

Subd. 2. "Appellate court" means the Supreme Court pursuant to Minnesota Statutes, Chapter 480, or the Court of Appeals pursuant to Minnesota Statutes, Chapter 480A.

Subd. 3. "Judge" means a justice of the Supreme Court or a judge of the Court of Appeals.

Subd. 4. "Trial court" means the court or agency whose decision is sought to be reviewed.

Subd. 5. "Clerk of the appellate courts" means the clerk of the Supreme Court and the Court of Appeals.

Rule 102. Suspension of Rules

In the interest of expediting decision upon any matter before it, or for other good cause shown, the Supreme Court or the Court of Appeals, except as otherwise provided in Rule 126.02, may suspend the requirements or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

TITLE II. APPEALS FROM JUDGMENTS AND ORDERS

Rule 103. Appeal - How Taken

103.01 Manner of Making Appeal

Subdivision 1. Notice of Appeal. An appeal shall be made by filing a notice of appeal with the clerk of the appellate courts. The notice shall contain:

- (a) proof of service on the adverse party or parties;
- (b) proof of service on the clerk of the trial court in which the judgment or order appealed from is entered or filed;
- (c) a statement specifying and describing the judgment or order from which the appeal is taken;
- (d) the names, addresses, and telephone numbers of opposing counsel and the parties they represent.

The appellant shall file the following with the clerk of the appellate courts:

- (1) the notice of appeal,
 - (2) a certified copy of the judgment or order from which the appeal is taken,
 - (3) a statement of the case required by Rule 133.03, and
 - (4) a filing fee of \$200,
- and shall file the following with the clerk of the trial court:
- (5) a copy of the notice of appeal,
 - (6) the cost bond required by Rule 107, or written waiver of it, and
 - (7) the supersedeas bond, if any, required by Rule 108.

Subd. 2. Relief. When a party in good faith files and serves a notice of appeal from a judgment or an order, and omits, through inadvertence or mistake, to proceed further with the appeal, or to stay proceedings, the appellate court may grant relief on such terms as may be just.

Subd. 3. When Filing Fee Not Required. The filing fees set out in Rule 103.01, subdivision 1, shall not be required when:

- (a) the appellant has previously been determined to be indigent by the trial court, and the attorney for the appellant certifies to the clerk of the appellate courts that the appellant remains indigent; or
- (b) the appellant is represented by a public defender's office or a legal aid society; or
- (c) the appellant is a party to a proceeding pursuant to Minnesota Statutes, Chapter 253B; or
- (d) the trial judge finds that the appellant is indigent and that in the interest of that party's right to appeal, no filing fee will be required; or
- (e) the appellant is the state or governmental subdivision of the state or an officer, employee or agency thereof; or
- (f) the appeal has been remanded to the trial court or agency for further proceedings and, upon completion of those proceedings, the appeal is renewed; or
- (g) the appellant is a party to a public assistance appeal pursuant to Minnesota Statutes, Chapter 256.

(Amended effective July 1, 1989.)

See **Appendix** for form of notice of appeal (**Forms 103A and 103B**) and statement of the case (**Form 133**).

103.02 Joint Appeals

Subdivision 1. Joint Appeals. If two or more parties are entitled to appeal from a judgment or order or to petition for certiorari in the same action and their interests are such as to make joinder practicable, they may file a joint notice of appeal or petition, or may join in the appeal after filing separate timely notices of appeal or petitions for certiorari, and they may then proceed on appeal as a single appellant.

Subd. 2. Consolidated Appeals. Appeals in separate actions may be consolidated by order of the appellate court on its own motion or upon motion of a party.

103.03 Appealable Judgments and Orders

An appeal may be taken to the Court of Appeals:

- (a) from a judgment entered in the trial court;
- (b) from an order which grants, refuses, dissolves or refuses to dissolve, an injunction;
- (c) from an order vacating or sustaining an attachment;
- (d) from an order denying a new trial, or from an order granting a new trial if the trial court expressly states therein, or in a memorandum attached thereto, that the order is based exclusively upon errors of law occurring at the trial, and upon no other ground; and the trial court shall specify such errors in its order or memorandum, but upon appeal, such order granting a new trial may be sustained for errors of law prejudicial to respondent other than those specified by the trial court;
- (e) from an order which, in effect, determines the action and prevents a judgment from which an appeal might be taken;
- (f) from a final order or judgment made or rendered in proceedings supplementary to execution;
- (g) except as otherwise provided by statute, from a final order, decision or judgment affecting a substantial right made in an administrative or other special proceeding, provided that the appeal must be taken within the time limited for appeal from an order; and
- (h) if the trial court certifies that the question presented is important and doubtful, from an order which denies a motion to dismiss for failure to state a claim upon which relief can be granted or from an order which denies a motion for summary judgment.

103.04 Scope of Review

The appellate courts may reverse, affirm or modify the judgment or order appealed from or take any other action as the interest of justice may require.

On appeal from or review of an order the appellate courts may review any order affecting the order from which the appeal is taken and on appeal from a judgment may review any order involving the merits or affecting the judgment. They may review any other matter as the interest of justice may require.

Rule 104. Time for Filing and Service of Notice of Appeal

104.01 Time for Filing and Service

An appeal may be taken from a judgment within 90 days after its entry, and from an order within 30 days after service by the adverse party of written notice of filing unless a different time is provided by law.

An appeal may be taken from a judgment entered pursuant to Rule 54.02, Minnesota Rules of Civil Procedure, within 90 days of the entry of the judgment only if the trial court makes an express determination that there is no just reason for delay and expressly directs the entry of a final judgment. The time to appeal from any other judgment entered pursuant to Rule 54.02 shall not begin to run until the entry of a judgment which adjudicates all the claims and rights and liabilities of the remaining parties.

104.02 Effect of Entry of Judgment

No order made prior to the entry of judgment shall be appealable after the expiration of time to appeal from the judgment. Time to appeal from the judgment pursuant to this section shall not be extended by the subsequent insertion therein of the costs and disbursements of the prevailing party.

104.03 Special Proceedings

Except as otherwise provided by statute, an appeal from the final order or judgment affecting a substantial right made in an administrative or other special proceeding must be taken within the time limited for appeal from an order.

Rule 105. Discretionary Review

105.01 Petition for Permission to Appeal; Time

Upon the petition of a party, the Court of Appeals, in the interest of justice, may allow an appeal from an order not otherwise appealable pursuant to Rule 103.03 except an order made during trial. The petition shall be served on the adverse party and filed within 30 days of the filing of the order. The trial court should be notified that the petition has been filed and provided with a copy of the petition and any response. Four copies of the petition shall be filed with the clerk of the appellate courts, but the court may direct that additional copies be provided. A filing fee of \$200 paid to the clerk of appellate courts shall accompany the petition for permission to appeal.

(Amended effective July 1, 1989.)

See **Appendix** for form of petition for discretionary review (**Form 105**).

105.02 Content of Petition; Response

The petition shall be entitled as in the trial court, shall not exceed five typewritten pages, and shall contain:

- (a) a statement of facts necessary to an understanding of the questions of law or fact determined by the order of the trial court;
- (b) a statement of the issues; and
- (c) a statement why an immediate appeal is necessary and desirable.

A copy of the order from which the appeal is sought and any findings of fact, conclusions of law, and memorandum of law relating to it shall be attached to the petition. Any adverse party may, within 7 days after service of the petition, serve and file with the clerk of the appellate courts four copies of a response to the petition. All papers may be typewritten.

The petition and any response shall be submitted without oral argument unless otherwise ordered.

105.03 Grant of Permission - Procedure

If permission to appeal is granted, the clerk of the appellate courts shall notify the clerk of the trial court and the appellant shall pay the filing fee, file the bond as required by these rules, and then proceed as though the appeal had been noticed by filing an appeal. Two copies of a completed statement of the case shall be filed within five days of the order granting the petition. The time fixed by these rules for transmitting the record and for filing the briefs and appendix shall run from the date of the entry of the order granting permission to appeal.

Rule 106. Respondent's Right to Obtain Review

A respondent may obtain review of a judgment or order entered in the same action which may adversely affect him by filing a notice of review with the clerk of the appellate courts. The notice of review shall specify the judgment or order to be reviewed, shall be served and filed within 15 days after service of the notice of appeal, and shall contain proof of service. A filing fee of \$100 paid to the clerk of appellate courts shall accompany the notice of review.

(Amended effective July 1, 1989.)

See **Appendix** for form of notice of review (**Form 106**).

Rule 107. Bond or Deposit for Costs

Subdivision 1. When Bond Required. Unless the appellant is exempt by law, a bond shall be executed by, or on behalf of, the appellant. The bond shall be conditioned upon the payment of all costs and disbursements awarded against the appellant on the appeal, not exceeding the penalty of the bond which shall be \$500. In lieu of the bond, the appellant may deposit \$500 with the clerk of the trial court as security for the payment.

Prior to filing the notice of appeal, the appellant may move the trial court for an order waiving the bond or setting a lesser amount or deposit. Upon the appellant's filing of the required cost bond or deposit, the respondent may move the trial court for an order requiring a supplemental bond or deposit.

The bond or deposit may be waived by written consent of the respondent, which consent shall be filed with the clerk of the trial court.

Subd. 2. When Bond Not Required. No cost bond is required:

- (a) in a criminal case; or
- (b) in a case arising in juvenile court; or
- (c) in a proceeding pursuant to Minnesota Statutes, Chapter 253B; or
- (d) when the trial judge finds:
 - (i) that the party is indigent, and
 - (ii) that in the interest of that party's right to appeal, no cost bond shall be required; or
- (e) when the appellant is the state or a governmental subdivision of the state or an officer, employee or agency thereof; or
- (f) the appeal has been remanded to the trial court or agency for further proceedings and, upon completion of those proceedings, the appeal is renewed; or
- (g) the appellant is a party to a public assistance appeal pursuant to Minnesota Statutes, Chapter 256.

Rule 108. Supersedeas Bond; Stays

108.01 Supersedeas Bond

Subdivision 1. An appeal from an order or judgment shall stay proceedings in the trial court and save all rights affected by it if the appellant provides a supersedeas bond in the amount and form which the trial court shall order and approve, in the cases provided in this rule.

Subd. 2. If the appeal is from an order, the condition of the bond shall be the payment of the costs of the appeal, the damages sustained by the respondent in consequence of the appeal, and the obedience to and satisfaction of the order or judgment which the appellate court may give if the order or any part of it is affirmed or if the appeal is dismissed.

Subd. 3. If the appeal is from a judgment directing the payment of money, the condition of the bond shall be the payment of the judgment or that part of the judgment which is affirmed and all damages awarded against the appellant upon the appeal if the judgment or any part of it is affirmed or if the appeal is dismissed.

Subd. 4. If the appeal is from a judgment directing the assignment or delivery of documents or personal property, the condition of the bond shall be the obedience to the order or judgment of the appellate court. No bond pursuant to this subdivision is required if the appellant places the document or personal property in the custody of the officer or receiver whom the trial court may appoint.

Subd. 5. If the appeal is from a judgment directing the sale or delivery of possession of real property, the condition of the bond shall be the payment of the value of the use and occupation of the property from the time of the appeal until the delivery

of possession of the property if the judgment is affirmed and the undertaking that the appellant shall not commit or suffer the commission of any waste on the property while it remains in the appellant's possession during the pendency of the appeal.

Subd. 6. In cases not specified in subdivisions 2 to 5, filing the bond specified in Rule 107 shall stay proceedings in the trial court.

Subd. 7. Upon motion, the trial court may require the appellant to file a supersedeas bond if it determines that the provisions of Rule 108 do not provide adequate security to the respondent.

108.02 Judgments Directing Conveyances

If the appeal is from a judgment directing the execution of a conveyance or other instrument, its execution shall not be stayed by an appeal until the instrument is executed and deposited with the clerk of the trial court to abide the judgment of the appellate court.

108.03 Extent of Stay

When a bond is filed as provided by Rule 108.01, it shall stay all further proceedings in the trial court upon the judgment or order appealed from or the matter embraced in it; but the trial court may proceed upon any other matter included in the action and not affected by the judgment or order from which the appeal is taken.

108.04 Respondent's Bond to Enforce Judgment

Notwithstanding an appeal from a money judgment and security given for a stay of proceedings thereon, the trial court, on motion and notice to the adverse party, may grant leave to the respondent to enforce the judgment upon his filing the bond herein provided, if it be made to appear to the satisfaction of the trial court that the appeal was taken for the purpose of delay. The bond shall be executed by, or on behalf of, the respondent and shall be conditioned that, if the judgment is reversed or modified, the respondent will make any restitution the appellate court directs.

108.05 Joinder of Bond Provisions; Service on Adverse Party

The bonds provided for in Rule 107 and Rule 108.01 may be in one instrument or several, at the option of the appellant, and shall be served on the adverse party.

108.06 Perishable Property

If the appeal is from a judgment directing the sale of perishable property, the trial court may order the property to be sold and the proceeds deposited or invested to abide the judgment of the appellate court.

108.07 Effect of Proceedings in Supreme Court

Where a petition to the Supreme Court for review of a decision of the Court of Appeals is filed or a case is transferred to the Supreme Court pursuant to these rules, and a supersedeas bond has previously been filed to stay the trial court proceedings, the bond shall remain in full force and effect during the pendency of the review unless otherwise ordered by the Supreme Court. The Supreme Court may make any other order appropriate to preserve the status quo or to promote the effectiveness of any judgment which may subsequently be entered.

Rule 109. (Reserved for Future Use.)

Rule 110. The Record on Appeal

110.01 Composition of the Record on Appeal

The papers filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.

110.02 The Transcript of Proceedings; Duty of Appellant to Order; Notice to Respondent if Partial Transcript is Ordered; Duty of Reporter; Form of Transcript

Subdivision 1. Duty to Order Transcript. Within 10 days after filing the notice of appeal, the appellant shall:

(a) pursuant to subdivision 2 of this rule, order from the reporter a transcript of those parts of the proceedings not already part of the record which he deems necessary for inclusion in the record; or

(b) file a notice of intent to proceed pursuant to Rule 110.03 or Rule 110.04; or

(c) notify the respondent in writing that no transcript or statement will be ordered or prepared.

If the entire transcript is not to be included, the appellant, within the 10 days, shall file and serve on the respondent a description of the parts of the transcript which he intends to include in the record and a statement of the issues he intends to present on appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary, he shall order, within 10 days of service of the description or notification of no transcript, those other parts from the reporter, pursuant to subdivision 2 of this rule, or serve and file a motion in the trial court for an order requiring the appellant to do so.

Subd. 2. Transcript Certificate. If any part of the proceedings are to be transcribed by a court reporter, a certificate as to transcript signed by the designating counsel and by the court reporter shall be filed with the clerk of the appellate courts, with a copy to the trial court and all counsel of record within ten days of the date the transcript was ordered. The certificate shall contain the date on which the transcript was requested; the estimated number of pages; the estimated completion date not to exceed 60 days; and a statement that satisfactory financial arrangements have been made for the transcription. Upon delivery of the transcript to the appellant, the reporter shall file with the clerk of the appellate courts a certificate evidencing the date of delivery.

Subd. 3. Overdue Transcripts. If any party deems the period of time set by the reporter to be excessive or insufficient, or if the reporter needs an extension of time for completion of the transcript, the party or reporter may request a different period of time within which the transcript must be delivered by written motion to the appellate court pursuant to Rule 127, showing good cause therefor. A justice, judge or a person designated by the appellate court shall act as a referee in hearing the motion and shall file with the appellate court appropriate findings and recommendations for dispositional order. A failure to comply with the order of the appellate court fixing a time within which the transcript must be delivered may be punished as a contempt of court. The appellate court may declare a reporter ineligible to act as an official court reporter in any court proceeding and prohibit the reporter from performing any private reporting work until the overdue transcript is filed.

Subd. 4. Transcript Requirements. The transcript shall be typewritten on 8 1/2 by 11 inches or 8 1/2 by 10 1/2 inches unglazed opaque paper with double spacing between each line of text, shall be bound at the left-hand margin, and shall contain a table of contents. The name of each witness shall appear at the top of each page containing his testimony. A question and its answer may be contained in a single paragraph. The original and first copy of the transcript shall be filed with the clerk of the trial court and a copy shall be transmitted promptly to the attorney for each party to the appeal separately represented. All copies must be legible. The reporter shall certify the correctness of the transcript.

See Appendix for form of certificate as to transcript (Form 110).

110.03 Statement of the Proceedings When No Report Was Made or When the Transcript is Unavailable

If no report of all or any part of the proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 15 days after service of the notice of appeal, prepare a statement of the proceedings from the best available means,

including his recollection. The statement shall be served on the respondent, who may serve objections or propose amendments within 15 days after service. The statement and any objections or proposed amendments then shall be submitted to the trial court, and the statement as approved by the trial court shall be included in the record. The trial court's approval of the statement shall be filed with the clerk of the appellate courts within 60 days of the filing of the notice of appeal.

110.04 Agreed Statement as the Record

In lieu of the record as defined in Rule 110.01, the parties may prepare and sign a statement of the record showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only the facts averred and proved or sought to be proved which are essential to a decision of the issues presented. The agreed statement shall be approved by the trial court with any additions the trial court may consider necessary to present the issues raised by the appeal and shall be the record on appeal. The trial court's approval of the statement shall be filed with the clerk of the appellate courts within 60 days of the filing of the notice of appeal.

110.05 Correction or Modification of the Record

If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and determined by the trial court and the record made to conform. If anything material to either party is omitted from the record by error or accident or is misstated in it, the parties by stipulation, or the trial court, either before or after the record is transmitted to the appellate court, or the appellate court, on motion by a party or on its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be approved and transmitted. All other questions as to the form and content of the record shall be presented to the appellate court.

Rule 111. Transmission of the Record

111.01 Transmission of Record; Time

Within 10 days after the due date for the filing of the respondent's brief, the clerk of the trial court shall transmit the record to the clerk of the appellate courts, together with an itemized list in triplicate of all documents and exhibits contained in the record, identifying each with reasonable definiteness; each document and exhibit shall be endorsed with the appellate court docket number and corresponding number from the itemized list. The clerk of the trial court shall send a copy of this list to all parties. A party having possession of exhibits shall transmit them with an itemized list in triplicate to the clerk of the appellate courts within 10 days after the due date for the filing of the respondent's brief. A party shall make advance arrangements with the clerk for the delivery of bulky or weighty exhibits and for the cost of transporting them to and from the appellate courts. Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the appellate courts.

111.02 Exhibits and Models

The title of the case and the appellate court docket number shall be endorsed upon all exhibits sent to the clerk of the appellate courts. Exhibits and models will be returned to the clerk of the trial court with the remittitur when a new trial or further proceedings are ordered, but if the judgment of the appellate court is final and neither a new trial nor further proceedings are ordered, the clerk of the appellate courts may destroy all exhibits and models unless called for by the parties within 30 days after entry of the judgment of the appellate court.

111.03 Record for Preliminary Hearing in the Appellate Courts

If prior to the time the record is transmitted, a party desires to make a motion for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the trial court at the request of any party shall transmit to the appellate court those parts of the original record which the party designates.

111.04 Disposition of Record after Appeal

Upon the termination of the appeal, the clerk of the appellate courts shall transmit the original transcript to the State Law Library and may transmit the remainder of the record to the clerk of the trial court.

Rules 112 to 114. (Reserved for Future Use.)

**TITLE III. DECISIONS REVIEWABLE BY CERTIORARI TO THE COURT OF
APPEALS OR THE SUPREME COURT**

Rule 115. Court of Appeals Review of Decisions of the Commissioner of Economic Security and Other Decisions Reviewable by Certiorari and Review of Decisions Appealable Pursuant to the Administrative Procedure Act

115.01 How Obtained; Time for Securing Writ

Review by the Court of Appeals of decisions of the Commissioner of Economic Security and other decisions reviewable by certiorari and review of decisions appealable pursuant to the Administrative Procedure Act may be had by securing issuance of a writ of certiorari within 30 days after the date of mailing notice of the decision to the party applying for the writ, unless an applicable statute prescribes a different period of time.

115.02 Petition for Writ; How Secured

The petition and a proposed writ of certiorari shall be presented to the clerk of the appellate courts. The writ issued shall be in the name of the court.

115.03 Contents of the Petition and Writ; Filing and Service

Subdivision 1. Contents and Form of Petition, Writ and Response. The petition shall definitely and briefly state the decision, judgment, order or proceeding which is sought to be reviewed and the errors which the petitioner claims. A copy of the decision and a completed statement of the case pursuant to Rule 133.03 shall be attached to the petition. The title and form of the petition and writ should be as shown in the appendix to these rules. The respondent's statement of the case, if any, shall be filed and served within ten days after receiving the petitioner's statement.

Subd. 2. Bond or Security. The petitioner shall file the bond or other security required by statute or by the Court of Appeals.

Subd. 3. Filing; Fees. The clerk of the appellate courts shall file the original petition and issue the original writ. The petitioner shall pay \$200 to the clerk of the appellate courts, unless a different filing fee is required by statute.

Subd. 4. Service; Time. The petitioner shall serve copies of the petition and writ upon the court or body to whom it is directed and upon any party within 30 days after the date of mailing notice of the decision to the petitioner, unless an applicable statute prescribes a different period of time. Proof of service shall be filed with the clerk of the appellate courts within 5 days of service. A copy of the petition and writ shall be provided to the Attorney General at the time of service, unless the state is neither a party nor the body to whom the writ is directed.

(Amended effective July 1, 1989.)

115.04 The Record on Review by Certiorari; Transmission of the Record

To the extent possible, the provisions of Rules 110 and 111 respecting the record and the time and manner of its transmission and filing or return in appeals shall govern upon the issuance of the writ and the parties shall proceed as though the appeal had been commenced by the filing of a notice of appeal, unless otherwise provided by the court or by statute. Each reference in those rules to the trial court, the clerk of the trial court, and the notice of appeal shall be read, where appropriate, as a reference to the body whose decision is to be reviewed, to the clerk or secretary thereof, and to the writ of certiorari respectively.

115.05 Costs and Disbursements

Costs and disbursements may be taxed by the prevailing party but not for or against the body to whom the writ is directed. If a writ appears to have been brought for the purpose of delay or vexation, the Court of Appeals may award double costs to the prevailing party.

115.06 Dismissal Costs

If any writ of certiorari is issued improperly or is not served as required by these rules, the party against whom it is issued may have it discharged on motion and affidavit showing the facts and shall be entitled to allowable costs.

See **Appendix** for form of the petition for a writ of certiorari (**Form 115A**) and of the writ of certiorari (**Form 115B**).

Rule 116. Supreme Court Review of Decisions of the Workers' Compensation Court of Appeals, Decisions of the Tax Court, and of Other Decisions Reviewable by Certiorari

116.01 How Obtained; Time for Securing Writ

Supreme Court review of decisions of the Workers' Compensation Court of Appeals, decisions of the Tax Court, and of other decisions reviewable by certiorari may be had by securing issuance of a writ of certiorari within 30 days after the date the party applying for the writ was served with written notice of the decision sought to be reviewed, unless an applicable statute prescribes a different period of time.

116.02 Petition for Writ; How Secured

The petition and a proposed writ of certiorari shall be presented to the clerk of the appellate courts. The writ issued shall be in the name of the court.

116.03 Contents of the Petition and Writ; Filing and Service

Subdivision 1. Contents and Form of Petition, Writ and Response. The petition shall definitely and briefly state the decision, judgment, order or proceeding which is sought to be reviewed and the errors which the petitioner claims. A copy of the decision and a completed statement of the case pursuant to Rule 133.03 shall be attached to the petition. The title and form of the petition and writ should be as shown in the appendix to these rules. The respondent's statement of the case, if any, shall be filed and served within ten days after receiving the petitioner's statement.

Subd. 2. Bond or Security. The petitioner shall file the bond or other security required by statute or by the Supreme Court.

Subd. 3. Filing; Fees. The clerk of the appellate courts shall file the original petition and issue the original writ. The petitioner shall pay \$200 to the clerk of the appellate courts, unless a different filing fee is required by statute.

Subd. 4. Service; Time. The petitioner shall serve copies of the petition and writ upon the court or body to whom it is directed and upon any party within 30 days after the petitioner was served with written notice of the decision to be reviewed, unless an applicable statute prescribes a different period of time. Proof of service shall be filed with the clerk of the appellate courts within 5 days of service. A copy of the petition and writ shall be provided to the Attorney General at the time of service.

(Amended effective July 1, 1989.)

116.04 The Record on Review by Certiorari; Transmission of the Record

To the extent possible, the provisions of Rules 110 and 111 respecting the record and the time and manner of its transmission and filing or return in appeals shall govern upon the issuance of the writ, and the parties shall proceed as though the appeal had been commenced by the filing of a notice of appeal, unless otherwise provided by the court or by statute. Each reference in those rules to the trial court, the clerk of the trial court, and the notice of appeal shall be read, where appropriate, as a reference to the body whose decision is to be reviewed, to the clerk or secretary thereof, and to the writ of certiorari respectively.

116.05 Costs and Disbursements

Costs and disbursements may be taxed by the prevailing party but not for or against the body to whom the writ is directed. If a writ appears to have been brought for the purpose of delay or vexation, the Supreme Court may award double costs to the prevailing party.

116.06 Dismissal Costs

If any writ of certiorari is issued improperly or is not served as required by these rules, the party against whom it is issued may have it discharged on motion and affidavit showing the facts and shall be entitled to allowable costs.

See **Appendix** for form of the petition for a writ of certiorari (**Form 116A**) and of the writ of certiorari (**Form 116B**).

Rule 117. Petition for Review of Decisions of the Court of Appeals

Subdivision 1. Filing of Petition. Any party may petition the Supreme Court for review of a decision of the Court of Appeals. 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. A filing fee of \$200 shall be paid to the clerk of the appellate courts.

Subd. 2. Discretionary Review. Review of any decision of the Court of Appeals is discretionary with the Supreme Court. The following criteria may be considered:

- (a) the question presented is an important one upon which the Supreme Court should rule; or
 - (b) the Court of Appeals has ruled on the constitutionality of a statute; or
 - (c) the lower courts have so far departed from the accepted and usual course of justice as to call for an exercise of the Supreme Court's supervisory powers; or
 - (d) a decision by the Supreme Court will help develop, clarify, or harmonize the law; and
- (1) the case calls for the application of a new principle or policy; or
 - (2) the resolution of the question presented has possible statewide impact; or
 - (3) the question is likely to recur unless resolved by the Supreme Court.

Subd. 3. Petition Requirements. The petition for review shall not exceed five type-written pages, exclusive of appendix, and shall contain:

- (a) a statement of the legal issues, and the disposition of those issues by the Court of Appeals;
- (b) a statement of the criteria relied upon to support the petition, or other substantial and compelling reasons for review;
- (c) a statement of the case, including disposition in the trial court or administrative agency and the Court of Appeals, and of those facts not addressed by the Court of Appeals relevant to the issues presented for review, with appropriate references to the record; and
- (d) a brief argument in support of the petition.

The appendix shall contain the decision and opinion of the Court of Appeals, the judgments, orders, findings of fact, conclusions of law, and memorandum decisions of the trial court or administrative agency, pertinent trial briefs, and any portion of the record necessary for an understanding of the petition.

Nine copies of the petition and appendix shall be filed with the clerk of the appellate courts.

Subd. 4. Response. An opposing party may file with the clerk of the appellate courts a response to the petition within 20 days of service. The response shall comply with the requirements set forth for the petition and shall contain proof of service.

(Amended effective July 1, 1989.)

See **Appendix** for form of petition or review (**Form 117**).

Rule 118. Accelerated Review by the Supreme Court Prior to a Decision by the Court of Appeals

Subdivision 1. Filing Requirements. Any party may petition the Supreme Court for accelerated review of any case pending in the Court of Appeals upon a petition which shows, in addition to the criteria of Rule 117, subdivision 2, that the case is of such imperative public importance as to justify deviation from the normal appellate procedure and to require immediate determination in the Supreme Court. The petition for accelerated review with proof of service shall be filed with the clerk of the appellate courts together with a filing fee of \$100. The filing of a petition for accelerated review shall not stay proceedings or extend the time requirements in the Court of Appeals.

Subd. 2. Petition Requirements. The petition for accelerated review shall not exceed ten typewritten pages, exclusive of appendix, and shall contain:

- (a) a statement of the issues;
- (b) a statement of the case, including all relevant facts, and disposition in the trial court or administrative agency; and
- (c) a brief argument in support of the petition.

The appendix shall contain the judgments, orders, findings of fact, conclusions of law, and memorandum decisions of the trial court or administrative agency, pertinent trial briefs, and any portion of the record necessary for an understanding of the petition.

Four copies of the petition and appendix shall be filed with the clerk.

Subd. 3. Notice. If the Supreme Court orders accelerated review, whether on the petition of a party, on certification by the Court of Appeals pursuant to Minnesota Statutes, Section 480A.10, or on its own motion, notice of accelerated review shall be given by the clerk of the appellate courts to all parties.

(Amended effective July 1, 1989.)

See **Appendix** for form of petition for accelerated review (**Form 118**).

Rule 119. (Reserved for Future Use.)

TITLE V. EXTRAORDINARY WRITS

Rule 120. Writs of Mandamus and Prohibition Directed to a Judge or Judges and Other Writs

120.01 Petition for Writ

Application for a writ of mandamus or of prohibition or for any other extraordinary writ in the Supreme Court directed to the Court of Appeals or in the Court of Appeals directed to a lower court shall be made by petition. The petition shall specify the lower court and the name of the judge and shall contain:

- (a) a statement of the facts necessary to an understanding of the issues presented by the application;
- (b) a statement of the issues presented and the relief sought; and
- (c) a statement of the reasons why the extraordinary writ should issue.

If necessary to an understanding of the issues, pertinent lower court documents shall be attached to the petition.

120.02 Submission of Petition; Answer to the Petition

The petition and a proposed writ shall be served on all parties and filed with the clerk of the appellate courts, captioned in the court in which the application is made, in the manner specified in Rule 120.04. The lower court should be notified of the filing of the petition and provided with a copy of the petition and any response. All parties other than the petitioner shall be deemed respondents and may answer jointly or separately within 5 days after the service of the petition. If a respondent does not desire to

respond, the clerk of the appellate courts and all parties shall be advised by letter within the 5-day period, but the petition shall not thereby be taken as admitted.

120.03 Procedure Following Submission

If the reviewing court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it may:

- (a) issue a peremptory writ, or
- (b) grant temporary relief and direct the filing of briefs.

There shall be no oral argument unless the reviewing court otherwise directs.

120.04 Filing; Form of Papers; Number of Copies

Upon receipt of a \$200 filing fee, the clerk of the appellate courts shall file the petition. All papers and briefs may be typewritten and in the form specified in Rule 132.02. Four copies with proof of service shall be filed with the clerk of the appellate courts, but the reviewing court may direct that additional copies be provided. Service of all papers and briefs may be made by mail. The petition shall be entitled as in the lower court.

(Amended effective July 1, 1989.)

Rule 121. Mandamus and Prohibition - Emergency Situations

121.01 Communication to the Court

If an emergency situation exists and the provisions of Rule 120 are impractical, the attorney for a party seeking a writ of mandamus or of prohibition directed to a lower court may orally petition the reviewing court for such relief by telephoning or by personally contacting the Supreme Court Commissioner, if application is made in the Supreme Court, or the Chief Staff Attorney, if application is made in the Court of Appeals, who will communicate with the reviewing court relative to an early or immediate consideration of the petition. If the Commissioner or Chief Staff Attorney is unavailable, the oral petition may be made to a justice or judge of the reviewing court.

121.02 Procedure

Except as provided in Rule 121.03, no written petition or other document need be filed unless the reviewing court so directs. If the reviewing court is of the opinion that no emergency exists, it shall deny the petition and direct the party to proceed under Rule 120. Otherwise, after affording all parties an opportunity to be heard, it may:

- (a) issue a peremptory writ, or
- (b) grant such other relief as the interest of justice requires.

121.03 Filing Fee

The attorney orally petitioning for a writ shall immediately transmit to the clerk of the appellate courts a \$200 filing fee with a letter specifying:

- (a) the name of the case,
- (b) the lower court and the name of the judge, and
- (c) the type of writ sought.

(Amended effective July 1, 1989.)

See **Appendix** for form of petition for a writ of prohibition (**Form 120A**), the order for the writ (**Form 120B**), and the writ of prohibition (**Form 120C**).

Rules 122 to 124. (Reserved for Future Use.)**TITLE VII. GENERAL PROVISIONS****Rule 125. Filing and Service****125.01 Filing**

Papers required or authorized by these rules shall be filed with the clerk of the appellate courts within the time limitations contained in the applicable rule. Filing may be accomplished by mail addressed to the clerk of the appellate courts, but filing shall not be timely unless the papers are deposited in the mail within the time fixed for filing. If a motion or petition requests relief which may be granted by a single judge, the judge may permit the motion or petition to be filed with him, in which event he shall note the date of filing on it and shall thereafter transmit it to the clerk. All papers filed shall include the attorney registration license number of counsel filing the paper and, if filed subsequent to the notice of appeal, shall specify the appellate court docket number.

125.02 Service and Filing of All Papers Required

Copies of all papers filed by any party shall be served by that party, at or before the time of filing, on all other parties to the appeal or review. Papers shall be filed with the clerk of the appellate courts at the time of service or immediately thereafter. Service on a party represented by counsel shall be made on the attorney.

125.03 Manner of Service

Service may be personal or by mail. Personal service includes delivery of a copy of the document to the attorney or other responsible person in the office of the attorney, or to the party, if not represented by counsel, in any manner provided by Rule 4, Minnesota Rules of Civil Procedure. Service by mail is complete on mailing; however, whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, 3 days shall be added to the prescribed period.

125.04 Proof of Service

Papers presented for filing shall contain either a written admission of service or an affidavit of service. Proof of service may appear on or be affixed to the papers filed. The clerk of the appellate courts may permit papers to be filed without proof of service, but shall require proof of service to be filed promptly after filing the papers.

Rule 126. Computation and Extension or Limitation of Time**126.01 Computation**

In computing any period of time prescribed or allowed by these rules, by order of court or by any applicable statute, the method of computation specified in Rules 6.01 and 6.05, Minnesota Rules of Civil Procedure, shall be used.

126.02 Extension or Limitation of Time

The appellate court for good cause shown may by order extend or limit the time prescribed by these rules or by its order for doing any act, and may permit an act to be done after the expiration of that time if the failure to act was excusable under the circumstances. The appellate court may not extend or limit the time for filing the notice of appeal or the time prescribed by law for securing review of a decision or an order of a court or an administrative agency, board, commission or officer, except as specifically authorized by law.

Rule 127. Motions

Unless another form is prescribed by these rules, an application for an order or other relief shall be made by serving and filing a written motion for the order or relief. The motion shall state with particularity the grounds and set forth the order or relief

sought. If the motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response within 5 days after service of the motion. Any reply shall be served within 2 days, at which time the motion shall be deemed submitted. The motion and all relative papers may be typewritten. Four copies of all papers shall be filed with proof of service. Oral argument will not be permitted except by order of the appellate court.

Rule 128. Briefs

128.01 Informal Brief

Informal briefs authorized by a prehearing conference judge shall be in the form designated in the prehearing conference order and shall contain a concise statement of the party's arguments on appeal, together with the appendix required by Rule 130.01.

128.02 Formal Brief

Subdivision 1. Brief of Appellant. The formal brief of the appellant shall contain under appropriate headings and in the order here indicated:

(a) A table of contents, with page references, and an alphabetical table of cases, statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(b) A concise statement of the legal issue or issues involved, omitting unnecessary detail. Each issue shall be stated as an appellate court would state the broad issue presented. Each issue shall be followed by a concise statement of the trial court's ruling.

(c) A statement of the case and the facts. A statement of the case shall first be presented identifying the trial court and the trial judge and indicating briefly the nature of the case and its disposition. There shall follow a statement of facts relevant to the grounds urged for reversal, modification or other relief. The facts must be stated fairly, with complete candor, and as concisely as possible. Where it is claimed that a verdict, finding of fact or other determination is not sustained by the evidence, the evidence, if any, tending directly or by reasonable inference to sustain the verdict, findings or determination shall be summarized. Each statement of a material fact shall be accompanied by a reference to the record, as provided in Rule 128.03.

(d) An argument. The argument may be preceded by a summary introduction and shall include the contentions of the party with respect to the issues presented, the analyses, and the citations to the authorities. Each issue shall be separately presented. Needless repetition shall be avoided.

(e) A short conclusion stating the precise relief sought.

(f) The appendix required by Rule 130.01.

Subd. 2. Brief of Respondent. The formal brief of the respondent shall conform to the requirements of Rule 128.02, subdivision 1, except that a statement of the issues or of the case or facts need not be made unless the respondent is dissatisfied with the statement of the appellant. If a notice of review is filed pursuant to Rule 106, the respondent's brief shall present the issues specified in the notice of review. A respondent who fails to file a brief either when originally due or upon expiration of an extension of time shall not be entitled to oral argument without leave of the appellate court.

Subd. 3. Reply Brief. The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to new matter raised in the brief of the respondent.

Subd. 4. Additional Briefs. No further briefs may be filed except with leave of the appellate court.

128.03 References in Briefs to Record

Whenever a reference is made in the briefs to any part of the record which is reproduced in the appendix or in a supplemental record, the reference shall be made to the specific pages of the appendix or the supplemental record where the particular part of the record is reproduced. Whenever a reference is made to a part of the record which

is not reproduced in the appendix or in a supplemental record, the reference shall be made to the particular part of the record, suitably designated, and to the specific pages of it, e.g., Motion for Summary Judgment, p. 1; Transcript, p. 135; Plaintiff's Exhibit D, p. 3. Intelligible abbreviations may be used.

128.04 Reproduction of Statutes, Ordinances, Rules, Regulations, Etc.

If determination of the issues presented requires the study of statutes, ordinances, rules, regulations, etc., or relevant parts of them, they shall be reproduced in the brief or in an addendum, or they may be supplied to the court in pamphlet form.

See **Appendix** for form of formal brief (**Form 128**).

Rule 129. Brief of an Amicus Curiae

Upon prior notice to the parties, a brief of an amicus curiae may be filed with leave of the appellate court. A request for leave shall identify whether the applicant's interest is public or private in nature and shall state the reason why a brief of an amicus curiae is desirable. Copies of an amicus curiae brief shall be served on all parties and filed with the clerk of the appellate courts with proof of service. An amicus curiae shall not participate in oral argument except with leave of the appellate court.

Rule 130. The Appendix to the Briefs; Supplemental Record

130.01 Record Not to be Printed; Appellant to File Appendix

Subdivision 1. Record; Portions. The record shall not be printed. The appellant shall prepare and file an appendix to his brief which shall contain the following portions of the record:

- (a) the relevant pleadings;
- (b) the relevant written motions and orders;
- (c) the verdict or the findings of fact, conclusions of law and order for judgment;
- (d) the relevant post trial motions and orders;
- (e) any memorandum opinions;
- (f) if the trial court's instructions are challenged on appeal, the instructions, any portion of the transcript containing a discussion of the instructions and any relevant requests for instructions;
- (g) any judgments;
- (h) the notice of appeal; and
- (i) the index to the documents contained in the appendix.

The parties shall have regard for the fact that the entire record is always available to the appellate court for reference or examination and shall not engage in unnecessary reproduction.

Subd. 2. Statement. If the record includes a statement of the proceedings made pursuant to Rule 110.03 or an agreed statement made pursuant to Rule 110.04, the statement shall be included in the appendix.

130.02 Respondent May File Appendix

If the respondent determines that the appendix filed by the appellant omits any items specified in Rule 130.01, he may prepare and file an appendix to his brief containing the omitted items.

130.03 Party May File Supplemental Record; Not Taxable Cost

A party may prepare and file a supplemental record, suitably indexed, containing any relevant portion of the record not contained in the appendix. The original pagination of each part of the transcript set out in the supplemental record shall be indicated by placing in brackets the number of the original page at the place where the page begins. If the transcript is abridged, the pages and parts of pages of the transcript omit-

ted shall be clearly indicated following the index and at the place where the omission occurs. A question and its answer may be contained in a single paragraph. The cost of producing the supplemental record shall not be a taxable cost.

Rule 131. Filing and Service of Briefs, the Appendix, and the Supplemental Record

131.01 Time for Filing and Service

The appellant shall serve and file his brief and appendix within 30 days after delivery of the transcript by the reporter or after the filing of the trial court's approval of the statement pursuant to Rules 110.03 and 110.04. If the transcript is obtained prior to appeal or if the record on appeal does not include a transcript, then the appellant shall serve and file his brief and appendix with the clerk of the appellate courts within 30 days after the filing of the notice of appeal or order granting review. The respondent shall serve and file his brief and appendix, if any, within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 10 days after service of the respondent's brief. If a party prepares a supplemental record, the supplemental record shall be served and filed with his first brief.

131.02 Application for Extension of Time

No extension of the time fixed by Rule 131.01 for the filing of the appellant's brief and appendix and the respondent's brief will be granted except upon a motion pursuant to Rule 127 made within the time specified for the filing of the brief. The motion shall be heard and considered by a justice, judge or a person designated by the appellate courts, acting as a referee, and shall be granted only for good cause shown. Only an original of the motion shall be filed.

131.03 Number of Copies to be Filed and Served

Subdivision 1. Number of Copies. Unless otherwise specified in a prehearing conference order, the following number of copies of each brief, appendix, and supplemental record, if any, shall be filed with the clerk of the appellate courts:

(a) In an appeal to the Supreme Court, 14 copies. Two copies of the 14 shall be unbound.

(b) In an appeal to the Court of Appeals, nine copies. Two copies of the nine shall be unbound.

If counsel has elected, in the statement of the case form, to rely on memoranda submitted to the trial court, supplemented by a short letter argument, the number of copies required by this rule shall be filed with the clerk of the appellate courts.

Subd. 2. Service. Two copies of each brief, appendix, and supplemental record, if any, shall be served on the attorney for each party to the appeal separately represented and on each party appearing pro se. The clerk shall not accept a brief, appendix or supplemental record for filing unless it is accompanied by admission or proof of service as required by Rule 125.

Rule 132. Form of Briefs, Appendices, Supplemental Records, Motions and other Papers

132.01 Form of Briefs, Appendices, and Supplemental Records

Subdivision 1. Form Requirements. Any process capable of producing a clear black image on white paper may be used. All material other than footnotes must appear in at least 11 point type, or its equivalent, on unglazed opaque paper. Briefs and accompanying appendices shall be bound together by any binding method which satisfies the published criteria of the appellate courts. Pages shall be 8 1/2 by 11 inches in size with typewritten matter not exceeding 6 1/2 by 9 1/2 inches. The pages of the appendix shall be separately numbered. Briefs and appendices submitted in typewritten form shall be double spaced. Carbon copies shall not be submitted.

Subd. 2. Front Cover. The front cover of the brief and appendix shall contain:

(a) the name of the court and the appellate court docket number, which number shall be printed or lettered in bold-face print or prominent lettering and shall be located one-half inch from the top center of the cover;

- (b) the title of the case;
- (c) the title of the document, e.g., Appellant's Brief and Appendix; and
- (d) the names, addresses, and telephone numbers of the attorneys representing each party to the appeal, and attorney registration license numbers of the preparers of the brief.

The front cover shall not be protected by a clear plastic or mylar sheet.

If briefs are produced by commercial printing or duplicating firms, the cover of the brief of the appellant should be blue; that of the respondent, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. The cover of an amendment or supplement should be the same color as the document which it amends or supplements. In the event the Supreme Court grants a petition for review of a decision of the Court of Appeals, the covers of the briefs shall be the same color as those filed by the party in the Court of Appeals.

Subd. 3. Page Limit. Except for good cause shown and with permission of the appellate court, principal briefs, whether printed or typewritten, shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents; tables of citations; any addendum containing statutes, rules, regulations, etc.; and any appendix. Application for filing an enlarged brief shall be filed at least 10 days prior to the date the brief is due. All briefs of amicus curiae shall be limited to 20 pages.

Subd. 4. Supplemental Records. Supplemental records shall be bound in separate volumes and shall, in all other respects, comply with this rule.

Subd. 5. Reliance Upon Trial Court Memoranda. If counsel elects, in the statement of the case, to rely upon memoranda submitted to the trial court supplemented by a short letter argument, the submission shall be bound and shall, in all other respects, comply with this rule.

132.02 Form of Motions and Other Papers

Subdivision 1. Form Requirements. Papers not required to be produced in the manner prescribed by Rule 132.01 shall be 8 1/2 by 11 inches in size with typewritten matter not exceeding 6 1/2 by 9 1/2 inches. Any process capable of producing a clear black image on white paper may be used. All material must appear in at least 11 point type, or equivalent, on unglazed opaque paper. Pages shall be bound or stapled at the top margin and numbered at the center of the bottom margin. Typewritten matter shall be double spaced. Carbon copies shall not be submitted.

Subd. 2. Caption. Each paper shall contain a caption setting forth the name of the court, the title of the case, the appellate court docket number, and a brief descriptive title of the paper; and shall be subscribed by the attorney preparing the paper together with the preparer's address, telephone number, and attorney registration license number.

Criteria for binding of briefs and appendices.

By its order of September 28, 1983, amended February 1, 1984, the Supreme Court set the following criteria.

1. Briefs and appendices filed in the appellate courts in the state of Minnesota shall be bound in such a way that the contents are bound securely. Briefs or appendices which are not so bound may be rejected by the Office of the Clerk of the Appellate Courts.

2. The following types of binding are approved for binding of briefs and appendices:

- a. Velo-Bind or 3M Clincher Model 1000 Binding
- b. Continuous Coil Spiral Binding
- c. GBC Therm-A-Bind

- d. Xerox Company "Cheshire" Perfect Binding
- e. GBC "wrap-around" Spiral Comb Binding
- f. Standard Bindfast Binding System

3. The following vendors are among those who utilize the approved binding services. Other vendors whose products comply with the specifications of paragraph 2 are also approved.

- a. Bachman Printing, 609 Second Avenue South, Builders Exchange Building, Minneapolis, MN 55402.
- b. Execuform, 2353 Rice Street, Roseville, MN 55113.
- c. General Binding Company, 7218 Washington Avenue South, Eden Prairie, MN 55344.
- d. People Pack-It, Inc., Cambridge, MN 55008.
- e. Wahl & Wahl, Inc., 4405 East Lake Street, Minneapolis, MN 55406.
- f. Standard Duplicators, Inc., 2200 Minnehaha Avenue, Minneapolis, MN 55404.

Rule 133. Prehearing Conference; Calendar

133.01 Prehearing Conference

The appellate courts may direct the parties, or their attorneys, to appear before a justice, judge or person designated by the appellate courts, either in person or by telephone, for a prehearing conference to consider settlement, simplification of the issues, and other matters which may aid in the disposition of the proceedings by the court. The justice, judge or person designated by the appellate courts shall make an order which recites the agreement made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admission or agreement of counsel.

133.02 Calendar

No case shall be placed on the calendar for argument, except by special order of the appellate court, until there has been filed in the appellate court the appellant's brief and appendix and the respondent's brief. If either the appellant or the respondent fails to file the required brief within the time provided, or an extension of that time, the case shall be disposed of in accordance with Rule 142.

No changes may be made on the calendar except by order of the court on its own motion or in response to a motion filed by counsel. No case scheduled for argument shall be withdrawn after being placed upon the calendar except upon a showing of extreme emergency.

133.03 Statement of the Case

Two copies of a statement of the case in the form prescribed by the appellate court shall be filed with the notice of appeal pursuant to Rule 103.01 or with the petition for the writ of certiorari or notice of appeal pursuant to Rules 115 and 116. The appellant shall serve the attorney for each party separately represented and each party appearing pro se and shall file proof of service with the clerk of the appellate courts.

Within 10 days after receiving the appellant's statement, the respondent may serve on all parties and file with proof of service two copies of its statement clarifying or supplementing the appellant's statement. If the respondent agrees with the particulars set forth in the appellant's statement, no additional statement need be filed. If a party desires oral argument, a request must be included in the statement of the case. If a party desires oral argument at a location other than that provided by Rule 134.09, subdivision 2(a) to (e), the location requested shall be included in the statement of the case.

See **Appendix** for form of the statement of the case (**Form 133**) .

An order by the supreme court provides:

STATE OF MINNESOTA
IN APPELLATE COURTS
NOTICE TO ATTORNEYS AND LITIGANTS

(Notice of Appeal and Petition for Writ of Certiorari

must be accompanied by Statement of the Case

before filing can be accepted)

Effective August 1, 1984, the Clerk of the Appellate Courts will no longer accept for filing a Notice of Appeal or Petition for Writ of Certiorari in noncriminal matters which does not include a statement of the case as required by Rule 133.03 of the Minnesota Rules of Civil Appellate Procedure. A Notice of Appeal or Petition for Writ of Certiorari filed in noncriminal matters which is not accompanied by a statement of the case will be returned to the sender, postage due. The date of the filing of a Notice of Appeal or Petition for Writ of Certiorari which fails to comply with the requirements of these rules shall not be preserved for purposes of computing the time for taking an appeal or petitioning for a writ of certiorari.

Pursuant to Rule 7 of the Minnesota Court of Appeals Internal Rules, a statement of the case, as prescribed by Rule 133.03, must be filed in all appeals taken under Rule 28, Minnesota Rules of Criminal Procedure.

Rule 134. Oral Argument

134.01 Allowance of Oral Argument

Oral argument will be allowed unless:

- (a) no request for oral argument has been made by either party in the statement of the case required by Rule 133.03; or
- (b) a party has failed to file a timely brief as required by Rule 128.02; or
- (c) the parties have agreed to waive oral argument pursuant to Rule 134.06;

or

(d) the appellate court, in the exercise of its discretion, determines that oral argument is unnecessary because:

- (1) the dispositive issue or set of issues has been authoritatively settled;

or

(2) the facts and legal arguments could be adequately presented by the briefs and record and the decisional process would not be significantly aided by oral argument.

The clerk of the appellate courts shall notify the parties when it has been determined that a request for oral argument has been denied. A party aggrieved by the decision may, within 5 days after the receipt of the notification and pursuant to Rule 127, request the court to reconsider its decision.

134.02 Notice of Hearing; Postponement

The clerk of the appellate courts shall notify all parties of the time and place of oral argument. A request for postponement of the hearing must be made by motion filed immediately upon receipt of the notice of the date of hearing.

134.03 Time Allowed for Argument

Subdivision 1. Time Allowed. In the Court of Appeals, the appellant shall be granted time not to exceed 30 minutes and the respondent 20 minutes for oral argument. The appellant may reserve a portion of that time for rebuttal. In the Supreme Court, the appellant shall be granted time not to exceed 35 minutes and the respondent 25 minutes

for oral argument. The appellant may reserve a portion of that time for rebuttal. If multiple parties to the appeal all wish to participate in oral argument, they shall mutually agree to divide the allotted time among themselves.

Subd. 2. Additional Time. If counsel is of the opinion that additional time is necessary for the adequate presentation of argument, additional time may be requested at the prehearing conference, if one is held, or by a motion filed in advance of the date fixed for hearing.

Subd. 3. Argument Limit. The appellate court may increase or reduce the time for argument on its own motion.

134.04 Order and Content of Argument

The appellant is entitled to open and conclude the argument. It is the duty of counsel for the appellant to state the case and facts fairly, with complete candor, and as fully as necessary for consideration of the issues to be presented. The appellant shall precede the statement of facts with a summary of the questions to be raised. Counsel should not read at length from the record, briefs or authorities.

134.05 Nonappearance of Counsel

If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appears for any party, the case will be decided on the briefs unless the court shall otherwise order.

134.06 Submission on Briefs

Subdivision 1. Waiver by Agreement. Oral argument once allowed may be waived by agreement of the parties and consent of the court, and the matter shall be deemed submitted on the briefs 10 days after the completion of the briefing or on the date the appellate court consents to the waiver of oral argument, whichever is later.

Subd. 2. Case Submitted. When no oral argument has been requested, the case shall be considered submitted 10 days after the completion of the briefing.

Subd. 3. Oral Argument Disallowed. If, pursuant to Rule 134.01(d), oral argument is not allowed, the case shall be deemed submitted to the court at the time of notification of the denial of oral argument.

134.07 Exhibits; Plats

Subdivision 1. Exhibits. If any exhibits are to be used at the hearing, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the hearing. Counsel will also see that all photographic exhibits are in court for the oral argument.

Subd. 2. Plats. In cases where a plat or diagram will facilitate an understanding of the facts or of the issues involved, counsel shall have in court a plat or diagram of sufficient size and distinctness to be visible to the court. The plat or diagram may be drawn on the courtroom blackboard.

134.08 Submission When Member of Appellate Court Not Present

Except in exigent circumstances, the oral argument shall be heard in the Court of Appeals before the full panel to which the case has been assigned or in the Supreme Court before the court sitting en banc. Whenever any member of the appellate court is not present at the oral argument of a case, the case shall be deemed submitted to that member of the court on the record and briefs. When, during the consideration of a case, there is a change in the personnel of the court, the case shall be deemed submitted to the new member or members on the record and briefs.

134.09 Oral Argument - Place of Argument

Subdivision 1. Supreme Court. Argument to the Supreme Court shall take place at the State Capitol in St. Paul or at any other place designated by the Supreme Court.

Subd. 2. Court of Appeals. Argument to the Court of Appeals shall take place as provided in this rule.

(a) Argument in appeals from trial courts shall be heard:

(1) in appeals from trial courts in Hennepin and Ramsey Counties, at a session of the Court of Appeals in Hennepin or Ramsey County;

(2) in appeals from trial courts in other counties, at a session of the Court of Appeals in the judicial district in which the county is located at a location convenient to the place of trial or counsel.

(b) Arguments on writs of certiorari to review decisions of the Commissioner of Economic Security shall be heard as follows:

(1) if the claimant for benefits is a real party in interest in the proceedings and resides in Hennepin or Ramsey County, in one of those counties;

(2) if the claimant for benefits is a real party in interest in the proceedings and resides elsewhere in the state, in the judicial district of the claimant's residence;

(3) otherwise, at a place designated by the court.

(c) Arguments on petitions to review the validity of administrative rules, pursuant to Minnesota Statutes, Section 14.44, shall be in Hennepin or Ramsey County.

(d) Arguments on petitions to review decisions of administrative agencies in contested cases, pursuant to Minnesota Statutes, Sections 14.63 to 14.68, shall be heard:

(1) if the petitioner resides outside of Hennepin and Ramsey Counties, but within Minnesota, either at the session of the Court of Appeals in Hennepin or Ramsey County or at a session of the Court of Appeals in the judicial district in which the petitioner resides, as designated by the petitioner in the petition for review;

(2) if the petitioner resides in Hennepin or Ramsey County, or outside of Minnesota, at a session of the Court of Appeals in Hennepin or Ramsey County.

(e) In all other cases, any oral argument shall be heard at a session of the court in Hennepin or Ramsey County.

(f) Upon the joint request of the parties and with the approval of the court, an argument may be heard at a location other than that provided in this rule. The request pursuant to this subsection shall be included in the statement of the case.

Rule 135. En Banc and Nonoral Consideration by the Supreme Court

Cases scheduled for oral argument in the Supreme Court shall be heard and decided by the court en banc. Cases submitted on briefs may be considered by a nonoral panel of three or more members of the court assigned by the Chief Justice. The disposition proposed by the panel shall thereafter be circulated to the full court for review.

Rule 136. Notice of Decision; Judgment; Remittitur

136.01 Decision

Subdivision 1. Written Decision.

(a) Each Court of Appeals disposition shall be in the form of a statement of the decision, accompanied by an opinion containing a summary of the case and the reasons for the decision; however if the appeal is dismissed for failure to comply with these rules or if the court determines that the contents of the statement of the decision sufficiently explain the disposition made, no written opinion need be prepared.

(b) A statement of the decision without a written opinion shall not be officially published and shall not be cited as precedent, except as law of the case, res judicata or collateral estoppel.

Subd. 2. Notice of Decision. Upon the filing of a decision or order which determines the matter, the clerk of the appellate courts shall mail a copy to the attorneys for the parties and to the trial court. The mailing shall constitute notice of filing.

136.02 Entry of Judgment; Stay

Unless the parties stipulate to an immediate entry of judgment, the clerk of the appellate courts shall enter judgment pursuant to the decision or order not less than 30 days after the filing of the decision or order. The service and filing of a petition for review to, or rehearing in, the Supreme Court shall stay the entry of the judgment. Judgment shall be entered immediately upon the denial of a petition for review or rehearing.

136.03 Remittitur

Subdivision 1. From the Court of Appeals. The clerk of the appellate courts shall transmit the judgment to the clerk of the trial court when judgment is entered. If the Supreme Court grants a petition for review, the clerk shall transmit the entire record on appeal, one copy of each brief on file, and the decision of the Court of Appeals to the Supreme Court unless the order granting review directs otherwise.

Subd. 2. From the Supreme Court. When judgment is entered, the clerk of the appellate courts shall either transmit the judgment to the clerk of the trial court or notify the Court of Appeals if the matter is remanded to the Court of Appeals with special instructions.

Rule 137. Execution

An execution to enforce any judgment of the appellate court may issue to the sheriff of any county in which a transcript of the judgment is filed and docketed. The executions shall be returnable within 60 days from its receipt by the officer. On the return of an execution satisfied in due form of law, the clerk of the trial court shall enter the satisfaction in the record.

Rule 138. Damages for Delay

If an appeal delays proceedings on a judgment of the trial court and appears to have been taken merely for delay, the appellate court may award just damages and single or double costs to the respondent.

Rule 139. Costs and Disbursements**139.01 Costs**

Unless otherwise ordered by the appellate court, the prevailing party shall recover costs as follows:

- (1) upon a judgment in his favor on the merits, \$25;
- (2) upon a dismissal, \$10.

139.02 Disbursements

Unless otherwise ordered by the appellate court, the prevailing party shall be allowed his disbursements necessarily paid or incurred. The prevailing party will not be allowed to tax as a disbursement the cost of preparing informal briefs.

139.03 Taxation of Costs and Disbursements; Time

Costs and disbursements shall be taxed by the clerk of the appellate courts upon 5 days' written notice served and filed by the prevailing party. The costs and disbursements so taxed shall be inserted in the judgment. Failure to tax costs and disbursements within 15 days after the filing of the decision or order shall constitute a waiver of taxation.

139.04 Objections

Written objections to the taxation of costs and disbursements shall be served and filed with the clerk of the appellate courts within 5 days after service of the notice of taxation. Failure to serve and file timely written objections shall constitute a waiver. If no objections are filed, the clerk may tax costs in accordance with these rules. If objections are filed, a person designated by the appellate courts, after conferring with the appropriate appellate court, shall determine the amount of costs and disbursements to be taxed. There shall be no appeal from the taxation of costs.

139.05 Disallowance of Costs and Disbursements

The appellate court upon its own motion may disallow the prevailing party's costs or disbursements or both, in whole or in part, for a violation of these rules or for other good cause. The prevailing party will not be allowed to tax as a disbursement the cost of reproducing parts of the record in the appendix which are not relevant to the issues on appeal.

Rule 140. Petition for Rehearing in Supreme Court

140.01 Petition for Rehearing

No petition for rehearing shall be allowed in the Court of Appeals.

A petition for rehearing in the Supreme Court may be filed within 10 days after the filing of the decision or order unless the time is enlarged by order of the Supreme Court within the 10-day period. The petition shall set forth with particularity:

- (a) any controlling statute, decision or principle of law; or
- (b) any material fact; or
- (c) any material question in the case which, in the opinion of the petitioner, the Supreme Court has overlooked, failed to consider, misapplied or misconceived.

140.02 Service; Filing

The petition shall be served upon the opposing party who may answer within 5 days after service. Oral argument in support of the petition will not be permitted. Fourteen copies of the petition, produced and sized as required by Rule 132.01, shall be filed with the clerk. A filing fee of \$100 shall accompany the petition for rehearing.

(Amended effective July 1, 1989.)

140.03 Stay of Judgment

The filing of a petition for rehearing shall stay the entry of judgment until disposition of the petition. It does not stay the taxation of costs. If the petition is denied, the party responding to the petition may be awarded attorney fees to be allowed by the court in the amount not to exceed \$500.

Rule 141. (Reserved for Future Use.)

Rule 142. Dismissal; Default

142.01 Voluntary Dismissal

If the parties to an appeal or other proceeding execute and file with the clerk of the appellate courts a stipulation that the proceedings be dismissed, the matter may be dismissed upon the approval of the appellate court.

142.02 Default of Appellant

The respondent may serve and file a motion for judgment of affirmance or dismissal if the appellant fails or neglects to serve and file his brief and appendix as required by these rules. If the appellant is in default for 30 days and the respondent has not made a motion under this rule, the appellate court shall order the appeal dismissed without notice, subject to a motion to reinstate the appeal. In support of the motion, the appellant must show good cause for failure to comply with the rules governing the service and filing of briefs, that the appeal is meritorious, and that reinstatement would not substantially prejudice the respondent's rights.

142.03 Default of Respondent

If the respondent fails or neglects to serve and file his brief, the case shall be determined on the merits. If a defaulting respondent has filed a notice of review pursuant to Rule 106, the appellant may serve and file a motion for affirmance of the judgment or order specified in the notice of review or for a dismissal of the respondent's review proceedings.

Rule 143. Parties; Substitution**143.01 Parties**

The party appealing shall be known as the appellant and the adverse party as the respondent. The title of the action shall not be changed in consequence of the appeal.

143.02 Death of a Party

If any party dies while an appeal is pending in the appellate court, the surviving party or the legal representative or successor in interest of the deceased party, shall file with the clerk of the appellate courts an affidavit showing the death and the name and address of the legal representative or successor in interest by or against whom the appeal shall thereafter proceed. If the deceased party has no representative, any party may inform the clerk of the appellate courts of the death and proceedings shall then be had as the appellate court may direct. If a party against whom an appeal may be taken dies after the entry of a judgment or an order in the trial court but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. If a party entitled to appeal dies before filing a notice of appeal, the notice of appeal may be filed by his personal representative or, if he has no personal representative, by his attorney of record within the time prescribed by these rules. After the notice of appeal is filed, substitution shall be effected in the appellate court in accordance with this rule.

143.03 Substitution for Other Causes

If substitution of a party in the appellate court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed by Rule 143.02.

143.04 Public Officers

If a public officer dies, resigns or otherwise ceases to hold office during the pendency of an appeal or other appellate proceeding to which he is a party in his official capacity, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

Rule 144. Cases Involving Constitutional Questions Where State is Not a Party

When the constitutionality of an act of the legislature is questioned in any appellate proceeding to which the state or an officer, agency or employee of the state is not a party, the party asserting the unconstitutionality of the act shall notify the attorney general within time to afford him an opportunity to intervene.

Rule 145. Appendix of Forms

The sample forms contained in the appendix to these rules satisfy the requirements of the rules.

Rule 146. Title

These rules may be known and cited as Rules of Civil Appellate Procedure.

Rule 147. Effective Date

These rules are effective on August 1, 1983 and govern all civil appeals and proceedings brought after that date.

FORM 103A - NOTICE OF APPEAL (Court of Appeals)

STATE OF MINNESOTA

COUNTY OF _____

_____ DISTRICT COURT

_____ COUNTY COURT

_____ JUDICIAL DISTRICT

CASE TITLE:

Plaintiff,

vs.

Defendant.

TO: Clerk of the Appellate Courts
230 State Capitol, St. Paul, MN 55155

Please take notice that the above-named defendant appeals to the Court of Appeals of the State of Minnesota from an order (judgment) of the court filed (entered) on the date shown, denying defendant's motion for a new trial.

DATED:

NAME, ADDRESS, ZIP CODE,
TELEPHONE NUMBER OF
ATTORNEY(S) FOR PLAINTIFF

NOTICE OF APPEAL

TO

COURT OF APPEALS

TRIAL COURT CASE NUMBER:

DATE OF ORDER:

OR

DATE JUDGMENT ENTERED:

NAME, ADDRESS, ZIP CODE,
TELEPHONE NUMBER, AND
ATTORNEY REGISTRATION
NUMBER OF ATTORNEY(S)
FOR DEFENDANT:

SIGNATURE

(The trial court caption is used on the notice of appeal. Subsequent documents shall bear the appropriate appellate court caption. RCAP 103.01, subd. 1 specifies the contents of the notice of appeal and filings required to perfect an appeal, including filing fees. RCAP 103.03 sets forth judgments and orders which are appealable to the Court of Appeals. RCAP 104.01 specifies time limits for filing and service of the notice of appeal. RCAP 107 provides for bond or deposit for costs. RCAP 108.01 provides for a supersedeas bond. This document must be accompanied by two copies of a completed statement of the case. RCAP 133.03.)

FORM 103B - NOTICE OF APPEAL (Supreme Court)

STATE OF MINNESOTA

COUNTY OF _____

_____ DISTRICT COURT

_____ JUDICIAL DISTRICT

CASE TITLE:

Plaintiff,

vs.

Defendant.

NOTICE OF APPEAL
TO
SUPREME COURT
TRIAL COURT CASE NUMBER:
DATE OF FINAL JUDGMENT
OF CONVICTION/ORDER:

TO: Clerk of the Appellate Courts
230 State Capitol, St. Paul, MN 55155

Please take notice that the above-named defendant appeals to the Supreme Court of the State of Minnesota from defendant's final judgment of conviction, date noted above, for the crime of murder in the first degree.

DATED:
NAME, ADDRESS, ZIP CODE,
TELEPHONE NUMBER OF
ATTORNEY(S) FOR PLAINTIFF

NAME, ADDRESS, ZIP CODE,
TELEPHONE NUMBER, AND
ATTORNEY REGISTRATION
NUMBER OF ATTORNEY(S)
FOR DEFENDANT:

SIGNATURE

(The trial court caption is used on the notice of appeal. Subsequent documents shall bear the appropriate appellate court caption. Minnesota Statutes, Section 632.14 provides that appeals from a final judgment of conviction of the crime of murder in the first degree are taken directly to the Supreme Court. Rule 29, subdivision 1 of the Rules of Criminal Procedure specifies the procedure for service and filing of the notice of appeal; subdivision 2 itemizes the contents of the notice of appeal; subdivision 3 defines the time for taking an appeal; and subdivision 4 cites other relevant procedures in first-degree murder appeals.)

FORM 105 - PETITION FOR DISCRETIONARY REVIEW
STATE OF MINNESOTA

IN COURT OF APPEALS

CASE TITLE:

Petitioner,
vs.

Respondent.

PETITION FOR
DISCRETIONARY REVIEW
TRIAL COURT CASE NUMBER:
DATE OF FILING ORDER:

TO: The Court of Appeals of the State of Minnesota:

The petitioner (name) requests discretionary review of the (date) order of the
_____ Court.

- 1. Statement of facts necessary to an understanding of the issues presented.
- 2. Statement of the issues.
- 3. Statement why immediate review of interlocutory or otherwise nonappeal-
able order necessary.

WHEREFORE, the petitioner requests an order of the court granting the peti-
tion for discretionary review.

DATED:

NAME, ADDRESS, ZIP CODE,
TELEPHONE NUMBER, AND
ATTORNEY REGISTRATION
NUMBER OF ATTORNEY(S)
FOR PETITIONER

SIGNATURE

(The content requirements of the petition for discretionary review are found in RCAP 105. A memorandum of law and pertinent lower court documents should be attached to the petition. The submission and the requirements for filing, form and the number of copies are contained in RCAP 105.02.)

**FORM 106 - RESPONDENT'S NOTICE OF REVIEW
STATE OF MINNESOTA**

IN COURT OF APPEALS

CASE TITLE:

Plaintiff-Respondent,
vs.

Defendant-Appellant.

RESPONDENT'S
NOTICE OF REVIEW
TRIAL COURT CASE NUMBER:
COURT OF APPEALS NUMBER:
DATE OF ORDER:
DATE JUDGMENT ENTERED:

TO: Clerk of the Appellate Courts
230 State Capitol, St. Paul, MN 55155

Please take notice that the respondent will seek review of the order (judgment) of the _____ Court, which was filed (entered) on the date noted above, denying respondent's motion for a new trial on the issue of damages.

DATED:

NAME, ADDRESS, ZIP CODE,
TELEPHONE NUMBER, AND
ATTORNEY REGISTRATION
NUMBER OF ATTORNEY(S)
FOR RESPONDENT

SIGNATURE

(RCAP 106 describes the procedures by which respondent obtains review in the Court of Appeals of judgments or orders which are the subject of the appeal and which may adversely affect the respondent. The rule addresses contents of the notice of review, and filing and service requirements.)

FORM 110 - CERTIFICATE AS TO TRANSCRIPT
(to be filed with the clerk of the appellate courts within

ten days from the date the transcript was ordered)

STATE OF MINNESOTA
COUNTY OF _____

_____ DISTRICT COURT
_____ COUNTY COURT
_____ JUDICIAL DISTRICT

CASE TITLE:

Plaintiff,
vs.
Defendant.

CERTIFICATE AS
TO TRANSCRIPT
_____ Supreme Court
_____ Court of Appeals
APPELLATE COURT
CASE NUMBER:
TRIAL COURT CASE NUMBER:

TO: Clerk of the Appellate Courts
230 State Capitol, St. Paul, MN 55155

A transcript of the proceedings in the above-entitled action was requested by counsel for the defendant on (date) in accordance with Rule 110.02, subdivision 2 of the Rules of Civil Appellate Procedure. The estimated number of pages is (number) and the estimated date of completion is _____, a date not to exceed 60 days from the date of request.

Satisfactory financial arrangements have been made between counsel and the court reporter for the transcription.

DATED:

SIGNATURE OF ATTORNEY

SIGNATURE OF COURT REPORTER
ADDRESS AND TELEPHONE NUMBER

cc: Trial Court of Record
All Counsel of Record

(RCAP 110.02, subdivision 2, requires a certificate as to transcript if any part of the proceedings are to be transcribed by a court reporter. The original copy of the certificate shall be filed with the clerk of the appellate courts, with a copy to the trial court and all counsel of record and shall be filed with the clerk of the appellate courts within ten days from the date the transcript was ordered.)

**FORM 115A - PETITION FOR WRIT OF CERTIORARI
STATE OF MINNESOTA**

IN COURT OF APPEALS

CASE TITLE:

Employee-Relator,

vs.

Employer-Respondent,
Commissioner of Economic Security,

Respondent.

TO: The Court of Appeals of the State of Minnesota:

The above-named relator hereby petitions the Court of Appeals for a Writ of Certiorari to review a decision of the Commissioner of Economic Security filed and mailed on the date noted above, upon the grounds that it is not in conformity with the provisions of Minnesota Statutes, Chapter 268, and is unwarranted by the evidence.

DATED:

**PETITION FOR WRIT
OF CERTIORARI
COURT OF APPEALS NUMBER:
DEPARTMENT OF ECONOMIC
SECURITY NUMBER:**

**DATE OF MAILING NOTICE
OF DECISION:**

**NAME, ADDRESS, ZIP CODE,
AND TELEPHONE NUMBER
OF RELATOR: (ATTORNEY
REGISTRATION NUMBER IF
REPRESENTED BY COUNSEL)**

SIGNATURE

(The procedure for obtaining a writ of certiorari from the Court of Appeals is set forth in Rule 115, Rules of Civil Appellate Procedure. The rule prescribes the subject matter of writs in the Court of Appeals, the manner of securing a writ, time limitations, contents of the petition, bond or security, filing and fees, and requirements for service. Two copies of a completed statement of the case must accompany the petition.)

FORM 115B - WRIT OF CERTIORARI
STATE OF MINNESOTA

IN COURT OF APPEALS

CASE TITLE:

Relator,

vs.

Respondent,
Commissioner of Economic Security,

Respondent.

TO: Minnesota Department of Economic Security:

You are hereby ordered to return to the Court of Appeals within 30 days from this date the record, exhibits and proceedings in the above-entitled matter so that this court may review the decision of the Commissioner of Economic Security filed and mailed on the date noted above.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the Commissioner of Economic Security and upon the Employer-Respondent or its attorney at:

(address)

Proof of service shall be filed with the clerk of the appellate courts.
DATED: WAYNE O. TSCHIMPERLE
Clerk of Appellate Courts

(Clerk's File Stamp)

By: _____
Assistant Clerk

**FORM 116A - PETITION FOR WRIT OF CERTIORARI
STATE OF MINNESOTA****IN SUPREME COURT****CASE TITLE:**

**PETITION FOR WRIT
OF CERTIORARI****Employee-Relator,****vs.****SUPREME COURT NUMBER:
WORKERS' COMPENSATION
COURT OF APPEALS NUMBER:****Employer-Respondent,****DATE OF SERVICE OF WRITTEN
NOTICE OF DECISION:****Insurer-Respondent.**

TO: The Supreme Court of the State of Minnesota:

The above-named relator hereby petitions the Supreme Court for a Writ of Certiorari to review a decision of the Workers' Compensation Court of Appeals, upon the grounds that it is not in conformity with the terms of the Workers' Compensation Act and is unwarranted by the evidence.

DATED:**NAME, ADDRESS, ZIP CODE,
TELEPHONE NUMBER, AND ATTORNEY
REGISTRATION NUMBER OF
ATTORNEY(S) FOR EMPLOYEE-
RELATOR:**

SIGNATURE

(The procedure for obtaining a writ of certiorari from the Supreme Court is set forth in RCAP 116. The rule prescribes the subject matter of writs in the Supreme Court, contents of the petition, bond or security, filing and fees, and requirements for service. Two copies of a completed statement of the case must accompany the petition.)

FORM 116B - WRIT OF CERTIORARI
STATE OF MINNESOTA

IN SUPREME COURT

CASE TITLE:

Employee-Relator,

vs.

Employer-Respondent,

Insurer-Respondent.

TO: The Workers' Compensation Court of Appeals:

You are hereby ordered to return to the Supreme Court within 30 days from this date the record, exhibits and proceedings in the above-entitled matter so that this court may review the decision of the Workers' Compensation Court of Appeals.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the Secretary of the Workers' Compensation Court of Appeals and upon the Employer-Respondent(s) above-named or their attorney(s) at:

WRIT OF CERTIORARI

SUPREME COURT NUMBER:
WORKERS' COMPENSATION
COURT OF APPEALS NUMBER:

DATE OF SERVICE OF WRITTEN
NOTICE OF DECISION:

(address)

Proof of service shall be filed with the clerk of the appellate courts.
DATED: WAYNE O. TSCHIMPERLE

Clerk of Appellate Courts

(Clerk's File Stamp)

BY: _____
Assistant Clerk

**FORM 117 - PETITION FOR REVIEW OF DECISION OF COURT OF
APPEALS
STATE OF MINNESOTA
IN SUPREME COURT**

CASE TITLE:

Petitioner,

PETITION FOR REVIEW OF
DECISION OF COURT OF
APPEALS

vs.

APPELLATE COURT
CASE NUMBER:

Respondent.

DATE OF FILING OF COURT
OF APPEALS DECISION:

TO: The Supreme Court of the State of Minnesota:

The petitioner (name) requests Supreme Court review of the above-entitled decision of the Court of Appeals upon the following grounds:

1. Statement of facts and procedural history.

(The statement should be a concise summary because the decisions of the lower courts must be attached.)

2. Statement of legal issues and their resolution by the Court of Appeals.

3. Arguments.

(The petitioner shall address the applicable criteria of RCAP 117, subd. 2; identify and address the critical portion of the Court of Appeals decision; and discuss the likelihood of success on the merits.)

For these reasons, the petitioner seeks an order granting review of the decision of the Court of Appeals.

DATED:

NAME, ADDRESS, ZIP CODE,
TELEPHONE NUMBER, AND
ATTORNEY REGISTRATION
NUMBER OF ATTORNEY(S)
FOR PETITIONER

SIGNATURE

Appendix

(The content requirements of the petition are found in RCAP 117. The rule emphasizes that Supreme Court review is discretionary. The decisions of the Court of Appeals and trial court or agency must be attached as an appendix. The petition should not exceed 5 typewritten pages, exclusive of appendix.)

FORM 118 - PETITION FOR ACCELERATED REVIEW
STATE OF MINNESOTA

IN SUPREME COURT

CASE TITLE:

Petitioner,
vs.

PETITION FOR
ACCELERATED REVIEW
APPELLATE COURT
CASE NUMBER:

Respondent.

TO: The Supreme Court of the State of Minnesota:

The petitioner (name) requests accelerated review by the Supreme Court of the above-entitled matter upon the following grounds:

1. Status of appeal.

(The petitioner should identify the status of the case—including the stage of the proceedings on the date of this petition—and the date of filing of the notice of appeal.)

2. Statement of facts.

(This should be a concise statement of the facts necessary to the Supreme Court's decision to accelerate the appeal.)

3. Statement of legal issues to be raised.

4. Arguments.

(The petitioner should discuss the applicable criteria of RCAP 117, subd. 2; and the question of why immediate review by the Supreme Court is necessary.)

For these reasons, the petitioner requests an order granting accelerated review of this appeal now pending in the Court of Appeals.

DATED:

NAME, ADDRESS, ZIP CODE,
TELEPHONE NUMBER, AND
ATTORNEY REGISTRATION
NUMBER OF ATTORNEY(S)
FOR PETITIONER

SIGNATURE

Appendix

(This petition shall not exceed 10 typewritten pages, exclusive of appendix, and shall comply with the requirements of RCAP 118, subd. 2.)

**FORM 120A - PETITION FOR WRIT OF PROHIBITION
STATE OF MINNESOTA**

IN COURT OF APPEALS

CASE TITLE:

Petitioner,
vs.

Respondent.

PETITION FOR
WRIT OF PROHIBITION
TRIAL COURT CASE NUMBER:
APPELLATE COURT CASE NUMBER:

TO: The Court of Appeals of the State of Minnesota:

The petitioner (name) requests a writ of prohibition restraining the _____
County District Court from enforcing its order of (date).

1. Statement of facts necessary to an understanding of the issues presented.
2. Statement of the issues.
3. Argument and statement of the reasons extraordinary relief necessary.

WHEREFORE, the petitioner requests an order granting the petition for a writ of prohibition and the issuance of the writ.

DATED:

NAME, ADDRESS, ZIP CODE,
TELEPHONE NUMBER, AND
ATTORNEY REGISTRATION
NUMBER OF ATTORNEY(S)
FOR PETITIONER

SIGNATURE

Appendix

(The content requirements of the petition for extraordinary relief are found in RCAP 120 and 121. A memorandum of law and pertinent lower court documents should be attached to the petition. The submission of the petition and time to respond are detailed in RCAP 120.02 and the requirements for filing, form and the number of copies are contained in RCAP 120.04.)

**FORM 120B - ORDER FOR WRIT OF PROHIBITION
STATE OF MINNESOTA**

IN COURT OF APPEALS

CASE TITLE:

Petitioner,
vs.
Respondent.

APPELLATE COURT CASE NUMBER:

ORDER

Upon the petition of (name) for a writ of prohibition, IT IS HEREBY ORDERED:

1. That the writ be, and the same is, issued and that the _____ Court, _____ Division, County of _____, _____ Judicial District, upon receipt of the writ of prohibition, grant the relief requested in the petition.
2. The petitioner shall forthwith serve copies of this order on _____, attorney for respondent, and on _____, Judge of said _____ Court.

DATED:

BY THE COURT:

Judge or Justice

**FORM 120C - WRIT OF PROHIBITION
STATE OF MINNESOTA**

IN COURT OF APPEALS

CASE TITLE:

Petitioner,
vs.
Respondent.

APPELLATE COURT CASE NUMBER:

WRIT OF PROHIBITION

The State of Minnesota to the Honorable _____, Judge of _____ Court, _____ Division, County of _____, _____ Judicial District:

WHEREAS, upon consideration of the petition of (name) and the answer of respondent (name) this Court has determined that petitioner is entitled to the relief requested in said petition,

NOW, THEREFORE, We do command and direct that you immediately upon receipt of a copy of this writ vacate and set aside your order of (date), and that you grant to said petitioner the relief requested in his petition of (date). Copies of this writ shall be served forthwith by mail by petitioner upon you and proof of service filed herein.

Witness the Honorable _____, Chief Judge of the Court of Appeals of the State of Minnesota, and the seal of this Court, this ____ day of _____, ____.

Clerk of Appellate Courts

**Form 128 - APPELLANT'S FORMAL BRIEF AND APPENDIX
(Cover)**

APPELLATE COURT CASE NUMBER

STATE OF MINNESOTA

IN COURT OF APPEALS

CASE TITLE:

Respondent,
vs.
Appellant.

APPELLANT'S BRIEF AND APPENDIX

JOHN BROWN
Attorney for Respondent
(address, zip code, and
telephone number)

SMITH & JONES
By John Jones
Attorney for Appellant
(address, zip code, telephone
number, and attorney
registration number)

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LEGAL ISSUES

I. (Precise statement of each legal issue)

Trial court held: _____

II.

STATEMENT OF FACTS

(The facts should be stated in compliance with RCAP 128.02, subd. 1(c), accompanied by appropriate citations to the appendix and the transcript.)

ARGUMENT

I. (Each legal issue should be argued separately. RCAP 128.02, subd. 1(d).)

CONCLUSION

(The conclusion shall contain a statement of the precise relief sought.)

Respectfully submitted,
SMITH & JONES
By John Jones
Attorney for Appellant
(address, zip code,
telephone number, and
attorney registration number)

APPENDIX AND INDEX

(The index should precede the appendix and the pages of the appendix should be separately numbered. RCAP 130.)

FORM 133 - STATEMENT OF THE CASE
STATE OF MINNESOTA

IN SUPREME COURT

OR

IN COURT OF APPEALS

CASE TITLE

STATEMENT OF THE CASE OF
(APPELLANT) (RESPONDENT)

Appellant,
vs.

TRIAL COURT CASE NUMBER:
APPELLATE COURT CASE NUMBER:

Respondent.

1. Court or agency of case origination and name of judge or hearing officer who presided.

2. Jurisdictional statement.

(State whether appeal is from a judgment or order, including date of entry of judgment or filing of order. If appeal is from order, state date of service of written notice of filing thereof and which clause of RCAP 103.03 or which statute authorizes the appeal.)

3. State type of litigation and designate any statutes at issue.

(Example: marital dissolution - property distribution, Minn. Stat., section 518.58 (1982); spousal maintenance, Minn. Stat., section 518.552 (1982). Case designation shall be taken from the subject-matter index included in the appendix as Forms 133A and 133B.)

4. Brief description of claims, defenses, issues litigated and result below.

5. Issues proposed to be raised on appeal.

6. Is transcript required? ____ If so, full or partial transcript? ____

7. Is oral argument requested? ____ If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? (Where)

8. Are formal briefs necessary? _____ or

(Are trial memoranda, supplemented by a short letter argument, sufficient? _____)

(If the latter form is selected, it is the duty of counsel to provide the appellate court with the number of copies required by Rule 131.03 and in the form required by Rule 132.01, all endorsed with the appellate court docket number.)

9. Names, addresses, zip codes and telephone numbers of attorney for appellant and respondent.

DATED:

NAME, ADDRESS, ZIP CODE,
TELEPHONE NUMBER, AND
ATTORNEY REGISTRATION
NUMBER OF ATTORNEY(S)
FOR (APPELLANT)
(RESPONDENT)

SIGNATURE

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 - c. Scope of Review
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Case Dispositional Procedures of the Supreme Court

Adopted October 19, 1988

Introduction

The establishment of the Court of Appeals in 1983 resulted in significant changes in the jurisdictional structure and the decisional process of the Supreme Court. This document has been prepared to assist the public and practicing bar in understanding the process by which the Supreme Court performs its judicial business. The court continually reviews and refines its internal operating procedures to accomplish its goal of efficient and effective processing of the growing volume of judicial and administrative responsibilities. As a result, this document is intended to be informational only, does not bind the court and may be changed at any time without prior notice.

Court Schedule

The court has established a monthly schedule for its consideration and disposition of cases during its annual term from September through June. While it generally adheres to the established schedule, the court remains free to supplement or otherwise modify the calendar as its workload requires.

Term of September through June:

- a. En Banc Oral Arguments and En Banc Nonoral Cases —
First Week of the Month: Monday through Thursday
Second Week: Thursday
- b. Court Meeting —
Second Week: Thursday
- c. En Banc Special Term Review Conferences —
Second Week: Friday
Third Week: Wednesday
Fourth Week: Wednesday
- d. Panel Motion and Nonoral Case Conferences —
Second Week: Friday
Third Week: Wednesday
Fourth Week: Wednesday

July and August:

- a. Court Meeting —
As necessary
- b. En Banc Special Term Review Conferences —
Second Week: Friday
Third Week: Wednesday
Fourth Week: Wednesday
- c. Panel Motion and Nonoral Case Conferences —
Second Week: Friday
Third Week: Wednesday
Fourth Week: Wednesday

Jurisdiction

The Minnesota Constitution, in Article VI, section 2, confers upon the Supreme Court original jurisdiction in remedial cases as prescribed by law, appellate jurisdiction in all cases and supervisory jurisdiction over all courts of the state. The court's supervi-

sory jurisdiction includes the authority to regulate procedural and evidentiary matters. Moreover, the court has the authority to consider all petitions and motions relating to the exercise of its jurisdiction.

The court's original jurisdiction in remedial cases is invoked by the filing of a petition for certiorari or for an extraordinary writ, such as prohibition or mandamus. The court exercises its jurisdiction by granting the petition or issuing other relief sought by the parties.

The court's appellate jurisdiction is invoked by filing a notice of appeal in those matters which are directly appealable to the Supreme Court from the trial court (e.g., first-degree murder convictions), by the filing of a petition for further review of a decision of the court of appeals, by the filing of a petition for accelerated review or by certification and request for approval by the Court of Appeals of a case there pending. The court exercises its appellate jurisdiction by hearing the appeal, by granting either of the petitions or approving the certification. In exercising its appellate jurisdiction over appeals that are heard initially by the Court of Appeals, the court considers the criteria contained in Minn.R.Civ.App.P. 117 and 118 and other factors.

Obtaining Discretionary Review

A party dissatisfied with a decision of the Court of Appeals has 30 days from the filing of the appellate court decision to petition the Supreme Court for further review. The responding party has 20 days thereafter to file a response. Petitions, responses, and any appendices are forwarded to the Commissioner's office for analysis prior to the court's consideration. As a general rule, petitions are considered by the court within 40 days after the initial filing of the petition for further review. The court meets en banc on an average of three times per month to consider the petitions, responses and memoranda and recommendation formulated by the Commissioner's office. The recommendation generally is limited to whether the court should grant or deny the petition, but occasionally, the Commissioner will make a recommendation to limit the issues on appeal or to consider the matter on the briefs without the oral argument.

Three times each month, the court meets en banc to consider the petitions for further review. Generally, the reports and recommendations with appropriate documentation are circulated to the court one week in advance of the conference. Following discussion at the conference, the court decides whether to grant or deny the petition for review and, if the petition is granted, whether the case will be scheduled for oral argument or for consideration on briefs and whether the court will limit the issues in the case.

A petition for review is granted upon the affirmative vote of three or more members of the court. Thereafter, the Commissioner prepares an order setting forth the court's petition decision and arranges for the issuance of the order by the office of the Clerk of Appellate Courts. If the petition is granted, the order specifies the court's limitation of issues, if any, and the briefing schedule. Generally, the parties are directed to file new briefs in the Supreme Court without incorporation by reference of the briefs already submitted at the Court of Appeals.

This same procedure attends the court's consideration of petitions for accelerated review and certification.

Motion and Extraordinary Writ Practice

The Supreme Court has supervisory authority over all actions in the trial courts and the Court of Appeals. It does not normally issue supervisory writs concerning matters pending in the trial courts, as the Court of Appeals also has supervisory authority over those proceedings. Instead, applications for extraordinary relief are generally in the nature of seeking review of decisions of the Court of Appeals in other than the fashion authorized pursuant to Minn.R.Civ.App.P. 117. Those petitions are considered by a rotating panel of the Chief Justice and two Associate Justices assigned monthly. The panel meets approximately three times per month to consider any pending petitions.

Similarly, motions are submitted to a three-justice panel. In these instances, the Commissioner provides a recommendation and written analysis of each motion to the panel for its decision. If the panel agrees with the recommendation, the Commissioner is directed to prepare the appropriate order and the staff in the clerk's office is responsible for notifying the parties of the disposition.

In the event an emergency motion or petition is filed with the court, the Chief Justice calls a meeting of the special term panel for its prompt consideration of the request of relief. If the request has been made orally, no formal order generally issues; however, if a formal written petition has been filed, the court will issue an order in response.

Calendaring and Assignment

The Commissioner prepares and distributes to the court for each month from September through June inclusive, a list of cases for submission to the court that month. Cases are assigned to the calendar in the order of the filing of the last brief, although criminal cases are often given priority. The published calendar sets the date of oral argument only for cases assigned for submission in that fashion. Cases considered without oral argument do not appear on the published calendar.

Generally, cases are assigned for oral argument unless it appears from the issues or the briefs that argument would not sufficiently enhance the decisional process. At least 30 days prior to the first day of argument on the monthly calendar, the office of the Clerk of Appellate Courts makes the calendar available to the public and distributes a copy of it to the court, to the parties to the cases on the calendar, and to others who have arranged with the clerk to receive it.

As soon as each calendar is distributed, the briefs for each case are made available to each justice.

The Commissioner also assigns cases to individual justices on a random, rotational basis with an effort to equalize the workload during the course of the term. After assignment, the individual justice's law clerk prepares a memorandum that thoroughly analyzes the factual and legal issues in the case and distributes that memorandum to all members of the court. Before oral argument, each justice reads the briefs and legal memoranda in each calendared case.

Oral Argument

Unless otherwise noted in a specific calendar, oral arguments on days assigned begin at 9:00 a.m. All attorneys in all cases are to be present and prepared to argue at 9:00 a.m. A marshal is available in the court room to take the names of counsel present. When a case is called by the Chief Justice, counsel are to take their places immediately.

It is extremely difficult for the court to reschedule a case once it has been placed on the formal calendar. Counsel is advised to anticipate the calendaring on the first available calendar after the respondent's brief is filed and to notify the Commissioner in advance as soon as potential conflicts are identified.

The appellant is allowed 35 minutes and the respondent 25 minutes or such other time period as the court may authorize, to present argument clarifying or supplementing those matters presented in their briefs. Additionally, counsel should be prepared to answer any questions directed by the individual justices. Oral arguments are tape recorded by the marshal for the court's exclusive use and the tapes are retained for a period of 90 days following the issuance of the court's formal opinion. Upon prior court approval, cameras and microphones may be permitted in the court's chambers provided that at no time should such arrangements disrupt the proceedings and the formality of the courtroom.

Postargument Conference

Following each day's oral arguments, the court meets in the conference room behind the court chamber to discuss the cases argued on that day. Additionally, it may discuss any en banc nonoral cases assigned to that day's calendar. The Chief Justice pre-

sides at the conference, conducts the court's discussion and calls for the vote on the decision of each case. The justice to whom the case was assigned for presentation first provides an analysis and recommendation and the court discussion follows. Votes of members of the court are taken, in descending order of seniority with the Chief Justice speaking last. While the court reaches a tentative decision in each of the cases argued on a particular day, the vote is preliminary and awaits the circulation of a formal opinion. Following that preliminary discussion and decision, any justice may request a second court conference for further discussion of the case.

Opinion

The justice assigned to an individual case is responsible for drafting the opinion of the court. If, after discussion and the preliminary voting at conference, it appears that there will be a dissent, the Chief Justice may direct that the opinion circulate to one of the dissenting justices first rather than in the standard circulation method.

The majority opinion is generally released for circulation among the other members of the court within 60 days after the case conference. A cover sheet is attached to the opinion to which each justice affixes a signature either joining the majority, concurring specially or dissenting.

In the event of a dissent or special concurrence, the justice generally informs the assignment justice that an opinion has been held. Thereafter, writing the dissent or special concurrence is one of the highest priorities in a justice's opinion workload. If, after full circulation of the opinion, any justice requests an en banc reconference, one is scheduled at the direction of the Chief Justice.

Decision

Decisions of the Supreme Court are issued each Friday of the month with prior mailing to parties and any members of the media who have made arrangements for the receipt of opinions. A decision is issued by the court when it is formally filed with the office of the Clerk of Appellate Courts. Any concurring or dissenting opinions are attached to the majority opinion of the court. Finally, the office of the clerk arranges for the publication of the opinion in the official publications of the court.

Rehearing

Within ten days of the filing of the court's official opinion, parties may petition the court for rehearing. All members of the court consider the petition and an affirmative vote of a majority of the justices is necessary to grant rehearing. The grounds for rehearing are extremely narrow and, as a result, rehearing is seldom granted.

Remittitur, Costs and Disbursements

The Office of Clerk of Appellate Courts transmits to the Court of Appeals or to the district court the mandate and opinion of the court together with the record in the case within 30 days after the filing of the official opinion if no petition for rehearing has been made or granted. In all other cases, remittitur is made promptly upon the court's decision denying a petition for rehearing.

Minnesota Court of Appeals Internal Rules

Effective November 1, 1983

With amendments received through July 1, 1990

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TEXT OF RULES

1. INTRODUCTION

The judicial process and decisionmaking is significantly affected by procedure. The Court of Appeals procedures originate from the Constitution, statutes, Rules of Appellate Procedure and rules of this Court. Many less formal practices or procedures arise from experience in other state courts and from studies made by legal scholars. Many practices grow by trial and error and custom as a court does its work.

The Court of Appeals is an intermediate appellate court. It is primarily decisional and error correcting rather than a legislative or doctrinal court. Its primary function is the correction of error by application of legal principles. Its task is to find the law, to state it and to apply it to the facts. Only when there are no statutory or judicial precedents to follow will the Court of Appeals make new law.

The procedures and practices outlined in these rules are designed to perform those functions as accurately, expeditiously and fairly as possible.

The purpose of these rules is informational. They are complementary to the appellate rules. Every lawyer should be familiar with those new rules. These rules may be subject to change with experience and without prior notice. The internal rules enable lawyers to understand the mechanics of the Court's procedure; provide a basis for evaluation and improvement of the administration of the court; and promote public understanding of the judicial deliberative process.

2. ORAL ARGUMENT

2.1 Availability of Oral Argument

Rule 134.01 of the Rules of Civil Appellate Procedure delineates circumstances in which oral argument will be disallowed. Wherever possible, however, and consistent with the rule, the Court will provide oral argument in all cases. Panels will meet continuously throughout the year, with allowances for vacations and sick leave.

2.2 Setting Cases

Placement on the calendar is generally in order of filing. However, certain cases may be prioritized, such as those involving child custody (including termination of parental rights), criminal matters and unemployment compensation. Cases involving similar subject matter or the same attorney may be grouped. The oral argument calendar is arranged by the calendar clerk in coordination with the Commissioner/Chief Attorney and reviewed by the Chief Judge. The Clerk of the Appellate Courts will notify Counsel approximately one month in advance of the hearing date. This notification will specify the location of oral argument, if allowed, but will not identify the judges who are tentatively assigned to hear the case.

2.3 Postponement

A motion to reset or postpone argument must be made in writing, with a copy to opposing counsel, in accordance with Rule 134.02 of the Rules of Civil Appellate Procedure. Reasons for the request must be stated. The Court will reset a case no more than once, and then only upon a showing of extreme emergency. The Court may reschedule cases on its own motion.

(Amended September 25, 1987.)

2.4 Presiding Judge

The Chief Judge will assign a presiding judge for each panel. All briefs submitted will be read in advance of oral arguments by the participating judges.

(Amended September 25, 1987.)

2.5 Time

Arguments will commence promptly as scheduled. Cases will be scheduled on the assumption that only exceptional cases will require the time allowed by Rule 134.03, subdivision 1 of the Rules of Civil Appellate Procedure.

(Amended September 25, 1987.)

2.6 Place

Arguments will be held in courtrooms in St. Paul, Minneapolis and at appropriate locations in each of the other eight judicial districts, as provided in Rule 134.09, subdivision 2 of the Rules of Civil Appellate Procedure.

2.7 Visitors

Visitors are welcome during oral arguments. When large groups desire to be in attendance, seating will be governed by the available accommodations. Taking of photographs and videotaping of proceedings will be with prior approval of the Chief Judge

or presiding judge. The media may cover the proceedings in accordance with the rule adopted by the supreme court.

(Amended September 25, 1987.)

2.8 Waiver of Argument

Nonappearance at oral argument constitutes waiver of argument. If counsel for one party does not appear, opposing counsel may argue and the case shall be submitted on briefs as to the attorney not appearing. Oral argument may also be waived in accordance with Rule 134.01 of the Rules of Civil Appellate Procedure.

2.9 Eligibility to Argue

Members of the Minnesota Bar and specially admitted out-of-state attorneys may argue before the Court. If a litigant is without counsel, the case shall be submitted on briefs without oral arguments by any party, unless the Chief Judge or presiding judge orders otherwise.

(Amended September 25, 1987.)

2.10 Record of Argument

Arguments are tape-recorded by the Court for internal use only. Tapes are retained until the opinion is released. No one may tape oral arguments without prior approval of the Chief Judge or presiding judge.

(Amended September 25, 1987.)

2.11 Exhibits and Graphic Aids

Counsel may use exhibits and graphic aids during oral argument. Arrangements must be made for use of blackboards or easels with the Court's receptionist when the hearing is in St. Paul. When hearings are held at other courtrooms, such arrangements shall be made with the clerk of court in the applicable courthouse. It is the responsibility of counsel to ensure that any exhibit or portion of the trial court file desired for argument or for examination during deliberation has been obtained from the clerk of the trial court and is available at the time of argument.

3. DECISIONAL PROCESS, OPINION ISSUANCE AND PUBLICATION

3.1 Panels

Oral and nonoral cases will be assigned to panels under the supervision of the Chief Judge. Except in unusual circumstances, panels of the Court shall consist of at least three judges.

The judges who have heard the case will normally be involved in the decisionmaking process. When an assigned panel judge does not participate or discontinues participation at any stage, the Chief Judge will assign another judge to the panel. The Chief Judge presides at argument when sitting with a panel.

The Chief Judge designates the presiding judge of each panel. The presiding judge will assign the case for opinion authorship during the conference of the panel.

The Chief Judge shall designate a special term panel to consider motions and requests for extraordinary remedies in addition to its share of oral and nonoral cases. (Amended September 25, 1987.)

3.2 Postargument Conference

Immediately following oral arguments, the panel will meet informally to review the cases just heard. Panels also meet regularly to decide nonoral cases. The judges discuss their first impressions and a tentative vote is taken to determine their inclinations. There is no commitment by virtue of the tentative vote and positions may change before the issuance of an opinion and after additional research and reconferencing. A

judge who represents the apparent majority view at the conference will be assigned preparation of the opinion. The opinion writing judge proceeds to draft an opinion in accordance with the decision of the panel unless, after research, the opinion writing judge may arrive at a different conclusion, whereupon another judge may be assigned to write the opinion previously expressed by the majority. The draft opinion will state the nature of the case, the principal questions involved, the decision of the panel and the reasons for that decision. The draft opinion shall be prepared for circulation within 45 days after the date of assignment.

(Amended September 25, 1987.)

3.3 Draft Circulation

When the draft opinion has been prepared, the authoring judge shall transmit it to other members of the Court for their information and it shall not be filed until the noted return date. Any comments shall be returned within ten days.

If a judge of the panel intends to write a concurring or dissenting opinion, the proposed majority opinion must be circulated to the panel. Within seven days the other panel members may either concur or dissent. Concurring and dissenting opinions submitted by any member of the panel to the authoring judge shall be transmitted with the majority opinion to all other judges for their information.

If a draft opinion is not agreed to by a majority of the panel, the presiding judge of the panel shall, within 60 days after assignment to the authoring judge, call a meeting of the panel to discuss the matter in detail. The case may be assigned to another member of the panel to write the opinion. If concurrence of a majority of the judges of the panel cannot be achieved, the case, together with all proposed opinions, shall be submitted to full Court conference.

If a member of the panel is unable to attend a scheduled conference, the presiding judge is notified. The absent member may circulate a memorandum reflecting comments, concurrence or disagreement to other members of the panel by the day preceding the scheduled conference. Each judge on the panel shall be afforded an opportunity to express agreement or disagreement with each draft opinion and to suggest changes. The writer of an opinion may change the draft in accordance with the comments received. If changes are substantial, a revised draft should be circulated and considered at a subsequent panel conference. The revised opinion shall have priority over other cases and shall be submitted at the next scheduled meeting of the panel which shall be prepared to vote on the revised opinion. Concurrence of a majority of judges of a panel is required for a decision.

(Amended September 25, 1987.)

3.4 Recall of an Opinion

An opinion that has been filed with the opinion clerk may be recalled for reconsideration only if the opinion has not been released to the parties.

Once filed, an opinion may be withdrawn only by the opinion writing judge or a member of the majority of the panel or, in their absence, by the Chief Judge for delivery to the panel. A dissenter may not withdraw an opinion unless the dissent becomes the majority view.

However, after release, clerical changes may be made in an opinion by the panel any time *ex parte*.

(Amended September 25, 1987.)

3.5 Memorandum Opinions

When the panel agrees on the analysis and the law is clear and an opinion would have no precedential value but that it would be desirable to identify the ground for decision, the judge may decide a case by memorandum opinion. That opinion may be a condensed, short statement of the facts, the question involved and decision and citation of the statute, case or other authority. Separate opinions may also be filed.

(Amended September 25, 1987.)

3.6 Full Opinion

A full, signed opinion will be issued when, based upon the complexity and importance of the issues:

(1) an opinion would have precedential value, because the decision involves an unstated or undecided issue of law; or

(2) an opinion would have precedential value, because the decision requires an application of established principles of law to new, novel or exceptionally illustrative facts; or

(3) a reversal or modification requires more than a summary statement of the reasons; or

(4) issues of unusual public concern are presented.

When a case presents more than one assignment of error, not all of which merit explicit published analysis according to these criteria, issues which warrant an opinion will be discussed and the others will not.

3.7 Concurring Opinion

A concurring opinion may be submitted by a judge who agrees with the result and reasoning of the Court's opinion but desires to propound additional reasons for the result. A special concurring opinion may be submitted by a judge if that judge disagrees with the reasons for the Court's opinion but desires to concur in the result.

3.8 Dissenting Opinion By Panel Member

A dissenting opinion may be submitted by a judge of the panel when a judge disagrees with the result announced by the majority. A judge may dissent without opinion when he disagrees for reasons the judge chooses not to express.

(Amended September 25, 1987.)

3.9 Opinion Issuance

The majority opinion and any accompanying concurring or dissenting opinions shall be submitted to the Clerk of the Appellate Courts for filing and distribution. The original of each opinion, including concurrences and dissents, shall bear the signature of the author. Except in extraordinary circumstances, opinions will be filed only as of Tuesday of each week, and shall be mailed to counsel on the previous Friday, and shall be available to the media on the Monday preceding filing. Opinions may not be released by the media prior to 12:01 A.M. on the filing date. News personnel are prohibited from contacting counsel in, or parties to, an appeal prior to 8:30 A.M. on the filing date. In some cases, packets of opinions may contain orders and other documents filed previously. The date of filing is controlling. If the date has passed, news personnel may use the material at any time.

(Amended April 2, 1984; amended September 25, 1987.)

3.10 Transmission of Judgment; Return of Trial Court Record

Following the decision and filing of the opinion and the passage of the 30-day period to petition for review, the Clerk of Appellate Courts shall transmit the judgment to the clerk of the trial court and return the trial record. The Clerk of the Appellate Courts shall also tax costs and disbursements pursuant to Rule 139.03 of the Rules of Civil Appellate Procedure.

3.11 Remand from the Supreme Court

When the Supreme Court remands a case to the Court of Appeals for further proceedings, the matter will be referred to staff attorneys to prepare a memorandum analyzing the decision and directions to the appropriate panel. The panel may request additional briefing and direct that oral arguments be heard, proceed to consider the Supreme Court opinion, or take other appropriate action.

3.12 Abeyance Awaiting Supreme Court Decision

When it appears that a case pending in the Supreme Court will be dispositive of a case pending before the Court of Appeals, the Chief Judge may order deferral of consideration of that case until the Supreme Court has acted. Counsel will be informed of this decision and the reasons therefor. Counsel are encouraged to inform the Court if they believe that a case may be controlled by another case on review by the Supreme Court.

3.13 Publication

West Publishing Company is authorized to publish opinions, but such publication is not to be regarded as containing the true and correct text of the Court's opinions. If a change is made on West advance sheets or galleys, the change shall also be made on the official opinion filed in the Office of the Clerk of the Appellate Courts. The official publications of the Court of Appeals for purpose of notice to the public and the legal profession shall be Finance and Commerce and the St. Paul Legal Ledger. Notices may be published elsewhere in the discretion of the Chief Judge.

(Amended September 25, 1987.)

4. CONFERENCES

4.1 Deleted effective September 25, 1987.

4.1 Presubmission

Presubmission or settlement conferences may be held in the discretion of the Chief Judge. The staff attorney/commissioner's office may recommend particular cases for settlement discussion.

(Former Rule 4.2 renumbered and amended September 25, 1987.)

4.2 En Banc Consideration

A case may be initially assigned by the chief judge for decision by the court sitting en banc. A matter considered en banc shall be shown as such on the title page of the opinion when it is issued.

(Added September 25, 1987.)

4.3 Deleted effective September 25, 1987.

4.3 Necessary Concurrence

A majority of the participating en banc judges is required for a decision. If the court is evenly divided whether the judgment should be affirmed, reversed or modified, a decision is issued affirming the lower court result without an opinion by an equally divided court.

(Added September 25, 1987.)

4.4 Deleted effective September 25, 1987.

4.4 Full Court Conference

The entire court of appeals meets on the first Friday of each month throughout the entire year. If a holiday should occur on that day, the conference will be held on the first Thursday. Such conferences may also be held at the call of the chief judge. In addition to administrative and policy matters, the agenda will include: (1) opinions overruling prior decisions of the court; and (2) opinions referred by panels or the chief judge for discussion.

(Added effective September 25, 1987.)

4.5 Deleted effective September 25, 1987.**4.5 Confidentiality**

Panel and full court conferences are confidential. Information and comments respecting the assignment of cases, the status and content of opinions, and the individual views of judges are not to be disclosed to any person other than members of the court and the judges' staff.

This section does not prohibit the general discussion of the workings of the court, provided that reference is not made to the assignment or status of specific pending cases.

(Former Rule 4.10 renumbered September 25, 1987.)

4.6 Deleted effective September 25, 1987.**4.7 Deleted effective September 25, 1987.****4.8 Deleted effective September 25, 1987.****4.9 Deleted effective September 25, 1987.****5. MOTIONS****5.1 In General**

The form, content and time periods for motions are prescribed by Rule 127 of the Rules of Civil Appellate Procedure.

5.2 How Determined

Motions and requests for extraordinary remedies may be disposed of by the Court or by a special term panel thereof. The Commissioner/Chief Attorney or staff may prepare a memorandum to aid the Court in the disposition of special term matters. Routine motions, including dismissals, case exceptions, postponements, extensions of time to file briefs, etc. may be disposed of by the Chief Judge.

(Amended September 25, 1987.)

5.3 After Submission

A motion made after submission, but prior to decision, shall be referred to the panel to which the case was assigned. Motions after decisions are reviewed by the judge who wrote the opinion, by the full panel, or by the Chief Judge.

5.4 Availability of Oral Argument

Oral argument may be, but is rarely allowed on a motion. The Chief Judge or the presiding judge of a panel may request informal oral argument on a motion, or submission of supplemental information or memoranda.

5.5 Disposition

Notification of disposition of motions shall be filed and mailed by the Clerk of the Appellate Courts.

5.6 Amicus Briefs

Where the same attorney or law firm represents a party and a potential amicus curiae, leave to file an additional brief as amicus curiae will not be granted unless the amicus brief will truly represent a position not already before the court or the interests of justice so require.

(Added September 25, 1987.)

6. RECUSAL AND DISQUALIFICATION JUDGES

6.1 Specific Rules

Court of Appeals judges are subject to the Code of Judicial Conduct adopted by the Supreme Court. Canons require disqualification where impartiality might be questioned. A judge is obligated to promote public confidence, judicial integrity and impartiality.

6.2 Responsibilities for Recusal

Application of principles governing disqualification shall be the duty of each judge individually.

(Amended September 25, 1987.)

6.3 Time for Recusal

Recusal may occur whenever the disqualifying facts become apparent to the individual judge. Normally it is effected prior to argument. A judge may discontinue participation during argument or even after submission.

6.4 Counsel Requests

Upon filing a notice of appeal, if a possible disqualification exists, counsel shall direct a letter to the particular judge and to the Chief Judge, setting out the reasons. If a judge chooses to withdraw, the Chief Judge shall be notified for a replacement. Parties may stipulate that a judge's relationship may be so immaterial or financial interest so insubstantial that a judge need not consider disqualification. It is each individual judge who finally determines recusal or disqualification.

(Amended September 25, 1987.)

6.5 Consequences of Disqualification

Once a judge is recused, there will be no further participation by that judge in the case. The disqualified judge may withdraw or, as a matter of convenience, remain present but not participate. If disqualification occurs after submission of a case and the disqualified judge sat for oral argument, nonparticipation may be noted in the opinion. If the Chief Judge disqualifies himself, he may designate a judge to act in his place.

(Amended September 25, 1987.)

6.6 Substitution of Judges

If a judge declines assignment of a case, the Chief Judge may designate another judge to sit. If a judge is substituted, the substituted judge shall have available all materials of the case.

(Amended September 25, 1987.)

7. CRIMINAL APPEALS

7.1 Statement of the Case

A statement of the case shall be filed as prescribed by Rule 133.03, Minnesota Rules of Civil Appellate Procedure, in all appeals taken under Rule 28, Minnesota Rules of Criminal Procedure.

7.2 Form

Form 133A, found in the Appendix of the Minnesota Rules of Civil Appellate Procedure (1986 Desk Copy, West Publishing Company), shall be used in complying with Section 7.1 of these Internal Rules.

(Amended September 25, 1987.)

8. STAFF

8.1 Chief Judge

The Chief Judge is responsible for the administration of the Court. The responsibilities include:

1. After each reapportionment, the Chief Judge shall designate a judge for each of the new congressional districts.
2. The Chief Judge, subject to the authority of the Chief Justice, shall exercise general administrative authority over the Court of Appeals.
3. The Chief Judge shall make assignments of judges to serve on the panels of the Court.
4. The Chief Judge shall designate the places at which the panels will hear arguments.
5. In assigning judges to panels, the Chief Judge shall rotate assignments so that as nearly as practicable, each judge serves a proportionate amount of time with each of the other judges.
6. The Chief Judge shall also rotate assignments to various locations for hearings.
7. The Chief Judge may waive the 90-day limitation, which requires a decision to be made within that period, after oral argument or final submission, for any proceeding before the Court of Appeals for good cause shown.

8.2 Commissioner/Chief Attorney

The duties shall be those assigned by the Chief Judge, which include communicating and implementing orders and directions of the Chief Judge. The Commissioner will effectively cooperate with judges, the State Court Administrator, the Appellate Clerk and other staff attorneys to efficiently dispose of the Court's work.

8.3 Presiding Judge

Each presiding judge is responsible for the management and case flow of appeals and proceedings for the panel over which the judge presides. The presiding judge is appointed by the Chief Judge; presides over panel hearings; and assists in processing decisions and opinions of cases assigned to the panel for disposition.

8.4 Clerk of the Appellate Courts

The Clerk shall perform the duties of the office as prescribed by law and the Rules of Civil Procedure, and such additional duties as prescribed by the Chief Justice of the Supreme Court and the Chief Judge. The Clerk has custody of the records and papers of the Court and shall not permit any original record to be taken from the custody of employees of the Court of Appeals except as authorized by the Chief Judge or his designee. The Clerk shall file decisions and opinions of the Court, provide for their public issuance, file and issue all orders of the Court and perform such other duties as may be assigned.

8.5 Central Legal Staff

The central legal staff attorneys shall serve the Court as a whole and their responsibilities are institutional. Their primary function is to provide professional assistance as house counsel to the judges and efficiently and effectively process matters pending before the Court before, during and through the decisionmaking stages. The central legal staff shall be headed and supervised by the Commissioner/Chief Attorney. The central legal staff shall, prior to calendaring, determine whether the Court has jurisdiction. If in doubt about jurisdiction, a jurisdictional memorandum shall be immediately forwarded to the Chief Judge. If jurisdiction is in doubt, the parties shall be notified and granted ten days to file appropriate memoranda. Opinions of panels shall be circulated among staff attorneys for identification of conflicts or potential conflicts in panel decisions. Inconsistencies shall be immediately reported to the Chief Judge and the opinion writing judge. The staff shall review petitions for writs and requests for tempo-

rary relief and other matters and prepare recommendations and a proposed order for the Chief Judge or the appropriate presiding judge of a panel.
(Amended September 25, 1987.)

8.6 Law Clerk

The law clerk serves as the personal, professional assistant to a particular judge and shall perform such tasks as are assigned by that judge. The work includes legal research, memorandum drafting, citation checking, editorial work, and review of appeal record.

8.7 Legal Secretaries

Each legal secretary shall serve as a professional assistant to a particular judge and perform such tasks as are assigned. Legal secretaries are also assigned to the central staff and shall perform such tasks as assigned by the Commissioner/Chief Attorney or the particular staff attorney assigned.

8.8 State Court Administrator

The State Court Administrator's office shall provide such services to the Court of Appeals as may be required. The Chief Justice of the Supreme Court and the Chief Judge of the Court of Appeals shall supervise the work of this office.

9. REVIEW OF ADMINISTRATIVE RULES

9.1 How Obtained

Review by the Court of Appeals of the validity of administrative rules pursuant to Minn. Stat. section 14.44 (1984) may be obtained by: (a) filing a petition for declaratory judgment with the Clerk of the Appellate Courts, (b) payment of \$50 to the Clerk of the Appellate Courts and \$10 to the clerk of the agency or body which issued the rule to be reviewed, unless no fee is required pursuant to Rule 103.01, subd. 3, (c) serving the petition upon the attorney general and the agency or body whose rule is to be reviewed, (d) filing proof of service with the Clerk of the Appellate Courts, and (e) filing a cost bond or other security, unless waived by the agency pursuant to Rule 107.
(Added September 25, 1987.)

9.2 Contents of Petition for Declaratory Judgment

The petition shall describe briefly the rule to be reviewed and the errors claimed by petitioner. Two copies of a completed statement of the case pursuant to Rule 133.03 and a copy of the rule which is to be reviewed shall be attached to the petition. The title and form of the petition should conform to that shown in the appendix to these rules.
(Added September 25, 1987.)

9.3 Record on Review of a Petition for Declaratory Judgment; Transmission of Record

Subd. 1. Review of the Record. Review of the validity of administrative rules shall be on the record made in the agency rulemaking process. To the extent possible, the description of the record contained in Rule 110.01 and the provisions of Rules 110.05 and 111 shall apply to declaratory judgment actions.

Subd. 2. Transmission of Record. If a record of the rulemaking proceedings is prepared before the petition for declaratory judgment is filed, the record shall be forwarded by the clerk of the agency or body to the Clerk of the Appellate Courts with an itemized list as described in Rule 111.01 within 30 days of the filing of the petition.

Subd. 3. Record Not Available When Petition Filed. If the record has not been prepared, or is unavailable, the agency or body shall so notify the Court of Appeals, in writing, within 10 days after service of the petition. The agency shall describe the available record, estimate the date by which the record can be prepared, or propose an alternative means of providing a record to the Court of Appeals, such as preparation of an agreed statement pursuant to Rule 110.04 or submission of affidavits. The notice must be served upon all parties, who may file their responses with the Court of Appeals within five days after service.

(Added September 25, 1987.)

9.4 Briefing

If the record is prepared before the petition is filed, petitioner's brief and appendix shall be served within 30 days after the filing of the petition for declaratory judgment. Remaining briefs shall be filed in accordance with Rule 131.01.

(Added September 25, 1987.)

9.5 Participation of Other Persons

Persons, other than the petitioner, agency, and attorney general, who participated in the rulemaking process below may participate in the declaratory judgment action only with leave of the Court of Appeals. Permission may be sought by filing a motion with the Court of Appeals and serving that motion upon all other parties. The motion shall describe the nature of the movant's participation below, the interest which would be represented in the declaratory judgment action, and the manner in which the rule interferes with or impairs the rights or privileges of the moving party.

(Added September 25, 1987.)

10. NONPUBLICATION OF OPINIONS

10.1 Legislative Provision

In addition to decisions of the court not published in accordance with Minn. R. Civ. App. P. 136, the 1987 legislature amended Minn. Stat. section 480A.08, subd. 3 to provide that the court may publish only those decisions that would:

- a. establish a new rule of law;
- b. overrule a previous court of appeals decision not reviewed by the Minnesota Supreme Court;
- c. provide important procedural guidelines in interpreting statutes or administrative rules;
- d. involve a significant legal issue; or
- e. significantly aid in the administration of justice. All other opinions would be unpublished.

The amendment also provided that unpublished opinions would not be considered precedential and should not be cited unless copies are provided to other counsel at least 48 hours before its use at any pretrial conference, hearing or trial. If an unpublished opinion is cited in a brief or memorandum, copies shall be provided to all other counsel at the time the brief or memorandum is served. Other counsel may then respond.

(Added September 25, 1987.)

10.2 Implementation

The determination whether to publish shall be made by the panel majority at the conference where the preliminary decision on the matter is decided and the case is assigned. When the opinion is circulated to other members of the court for their information, the circulation form shall indicate the panel's decision on publication. Other members of the court, if responding to the circulated opinion, may indicate on the form whether the opinion should be published or not. Final decision shall rest with the panel majority.

(Added September 25, 1987.)

10.3 Undecided Panel

If a panel majority has not decided whether to publish an opinion, the proposed opinion shall still be circulated to other members of the court. The circulation form may provide that other members of the court may recommend whether the proposed opinion should be published or not. The recommendations of other members of the court shall be advisory only.

(Added September 25, 1987.)

10.4 Opinion Notation

If it is determined that an opinion should not be published, the opinion on its face shall carry the following notation:

“This opinion will be unpublished and may not be cited except as provided by Minn. Stat. section 480A.08, subd. 3.”

It shall then be filed with the clerk of the appellate courts and shall be released weekly by the clerk in a separate packet to those who subscribe to receive opinions from the clerk’s office as opinions are released. It is still considered a public document.

(Added September 25, 1987.)