

RULES OF APPELLATE PROCEDURE

Case Dispositional Procedures of the Supreme Court

Adopted October 19, 1988

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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: Monday through Wednesday
- 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 supervisory 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 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.

Certiorari

Once a writ of certiorari to review decisions of the Workers' Compensation Court of Appeals and the Tax Court has been filed in this court, together with a statement of the case, the Commissioner's office reviews the documentation available and recommends to the court whether the matter should be considered on the en banc oral, en banc nonoral or nonoral panel calendar. The criteria employed in that recommendation include whether the issue is new or novel, whether it is a case of first impression and whether oral argument will significantly enhance the decisional process.

If the court agrees with the recommendation or the recommendation is altered after conference, the Commissioner notifies the parties by letter that the briefing schedule contained in the Rules of Civil Appellate Procedure commenced as of the time of the issuance of the writ of certiorari. The parties are also notified as to the type of consideration the case will receive.

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 for 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 courtroom 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 presides 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.

Supreme Court and Court of Appeals News Embargo Rule

Supreme Court Order

WHEREAS, the Supreme Court and the Court of Appeals have determined that it is in the best interests of both courts, counsel and parties to appellate proceedings, the public and news media that certain rules be promulgated regarding the issuance and release of appellate court opinions; and

WHEREAS, each appellate court has decided that it is appropriate that the opinions issued and released by it shall have a certain embargo date, which date shall govern the right of the media to make such opinions known to any audience in any form, including parties to the appeal, their counsel and the public generally; and

WHEREAS, the Supreme Court and the Court of Appeals are anxious to acquaint personnel in both the electronic and print media with embargo dates and penalties for their violation,

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

Supreme Court opinions will usually be filed only as of Friday of each week. Court of Appeals opinions generally will be filed only as of Tuesday of each week.

Supreme Court opinions will be mailed to counsel appearing on the appeal on Wednesday of each week. Court of Appeals opinions will be mailed to counsel appearing on the appeal on Friday of each week.

Opinions may not be released by the media prior to 12:01 a.m. on the filing date. Failure to observe this embargo may result in such sanctions as the appellate courts direct.

News personnel are prohibited from contacting counsel in, or parties to, an appeal prior to 8:30 a.m. on the filing date.

News personnel may use court files and contact Supreme Court justices or Court of Appeals judges to assist in preparation of stories but may not in any way make public the opinions of either court prior to the release time and date noted above.

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.

Dated: October 1, 1984

Supreme Court Order

WHEREAS, the Supreme Court, in an order dated April 5, 1989, authorized a three-month experimental modification of the Supreme Court opinion news embargo rule dated October 1, 1984, and extended the experiment until July 1, 1990, in an order dated July 12, 1989; and

WHEREAS, the Supreme Court believes that the news media, the courts and the public have been well-served by the practice of allowing reporters to contact attorneys the day prior to the release of the opinion for additional information,

NOW, THEREFORE, IT IS ORDERED effective July 1, 1990:

1. The news media may contact the attorneys involved in Supreme Court opinion cases after 3 p.m. on Thursday for background information. The information shall not be released until 12:01 a.m. Friday.

2. The news media may contact the attorneys involved in Court of Appeals opinion cases after 3 p.m. on Monday for background information. The information shall not be released until 12:01 a.m. Tuesday.

3. In all other respects the order dated October 1, 1984, is continued and in effect.

Dated: June 14, 1990

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 15, 1991

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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 reconfering. 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.)

Supreme Court and Court of Appeals

News Embargo Rule

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3. In all other respects the order dated October 1, 1984, is continued and in effect.

Dated: June 14, 1990

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.)

**SUGGESTIONS FOR APPELLATE PRACTICE
BEFORE THE COURT
Modified November 1, 1990**

Issued by D.D. Wozniak, Chief Judge

INTRODUCTION. The court of appeals intends to process its growing volume of cases promptly. The assistance of counsel is essential. All counsel must familiarize themselves with the Rules of Civil Appellate Procedure and the court's Internal Rules. See 1990 Minnesota Rules of Court, pp. 357-394 and 409-418. Failure to comply with the rules can diminish the effectiveness of the appeal, and result in the imposition of sanctions, including dismissal. With the cooperation of the bar, this court will continue to meet the expectations for which it was established.

1. RECOMMENDED READING. Wozniak & Lehr, *Avoiding Practice Errors Before the Minnesota Court of Appeals*, 13 Hamline L.Rev. 1 (1990); Wozniak, Lehr, & Arrigoni, *Common Errors in Appellate Practice*, Finance & Commerce, Dec. 24, 1987, at 28 (reprinted in 13 Minn.Trial Lawyer, no. 2, Spring 1988, at 17); Popovich & Miller, *Oral Argument in the Court of Appeals*, Bench & Bar of Minn., May-June 1986, at 18; Popovich & Niles, *A Practitioner's Guide to Bringing an Appeal in the Minnesota Court of Appeals*, 11 Wm. Mitchell L.Rev. 627 (1985); M. Houts & W. Rogosheske, *Art of Advocacy—Appeals*, chs. 20, 40 (1985); 3 E. Magnuson, D. Herr, & R. Haydock, *Minnesota Practice* (2d ed. 1985).

2. FILINGS. With the notice of appeal, parties must file (a) proof of service on the adverse party and the trial court administrator, (b) a certified copy of the judgment or order appealed from, and (c) two copies of a statement of the case with proof of service pursuant to Minn.R.Civ.App.P. 133.03. Minn.R.Civ.App.P. 103.01, subd. 1. Appellant must also include the \$200 filing fee, unless waived by trial court order or by operation of Rule 103.01, subd. 3.

All briefs, motions, and other documents must be filed with the Clerk of the Appellate Courts, 245 Minnesota Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155. Minn.R.Civ.App.P. 125.01. Papers should *not* be submitted directly to the court. All filings must include counsel's name, address, telephone number, and attorney registration number. Proof of service of all papers must be filed promptly. Minn.R.Civ.App.P. 125.04. All filings, including briefs, must include the full title and file number assigned by the clerk of the appellate courts. Papers in consolidated cases should include all file numbers.

3. NOTICE OF CASE FILING. Upon the filing of an appeal, the clerk of the appellate courts will forward the parties a notice of case filing, which identifies the appellate case name and number and notifies the parties of filing or procedural deficiencies. Counsel must promptly remedy any deficiencies identified or the court may *impose sanctions*.

4. MOTIONS. Requests for relief must be made by motion, *not* by letter. Minn.R.Civ.App.P. 127. Counsel must provide *four* copies of motion papers and *proof of service*.

5. TRANSCRIPTS. Counsel must insure that transcripts are timely ordered, certificates as to transcripts are timely filed with the clerk of the appellate courts, transcripts are timely delivered, and certificates of delivery are properly filed with the clerk of the appellate courts by the court reporter. Minn.R.Civ.App.P. 110.02, subds. 1 and 2. Transcripts must be filed with the trial court administrator and a copy provided to each party. *Id.*, subd. 4. It is *counsel's* responsibility to assure the court reporter's compliance with all rules.

6. RECORD. If the record is to include a statement of proceedings or an agreed statement pursuant to Minn.R.Civ.App.P. 110.03 or 110.04, appellant must file a notice of intent to proceed pursuant to those rules within 10 days of filing the appeal. Minn.R.Civ.App.P. 110.02, subd. 1(b). The proposed statement must be timely served on the parties and the trial court, and the trial court's approval must be filed with the

clerk of the appellate courts within 60 days of filing of the appeal. Minn.R.Civ.App.P. 110.03, 110.04. Counsel should notify the trial court of the deadline for filing its approval with the clerk of the appellate courts.

7. EXHIBITS. Exhibits will be listed and forwarded by the trial court administrator. Minn.R.Civ.App.P. 111.01. Counsel must review the list sent by the administrator for completeness. Parties having possession of exhibits must itemize and transmit them as provided by the rule. Bulky exhibits should not be forwarded without prior permission of the clerk of the appellate courts.

8. SCOPE OF REVIEW/STANDARD OF REVIEW. The court is generally not permitted to conduct de novo review. Counsel should identify the scope of this court's appellate inquiry and the standard to be met to obtain reversal before filing an appeal. *The standard of review must be explicitly discussed at the beginning of the argument section of the brief and must be applied to each issue. Failure to do so may result in the court disregarding the brief.*

9. BRIEFS AND ARGUMENTS. Counsel must submit nine copies of briefs, properly covered and with an approved binding. Minn.R.Civ.App.P. 131.03 subd. 1(b), 132.01, subd. 2. The *specific* methods are listed in the 1990 Minnesota Rules of Court following Rule 132.01. Only specified methods offered by a particular vendor are acceptable. For instance, the GBC Therm-A-Bind and "Wrap-Around" Spiral Comb Binding methods are approved, but other GBC bindings will not be accepted. Informal and short-letter briefs must also be covered and bound and must contain an appendix.

The average length of briefs filed in this court is 17 pages. *We suggest no more than 20 pages.* The number of issues discussed should rarely exceed three. Issues should be neutrally stated. Minn.R.Civ.App.P. 128.02, subd. 1(b). Particular attention should be directed to the scope and standard of review on appeal. Facts should be objectively stated and limited to those needed for appellate review. References to the transcript must identify specific pages. Minn.R.Civ.App.P. 128.03. Legal arguments should be limited to the argument section of the brief. String citations should be avoided. All cases should be shepardized and all citations proofread.

The appendix to a brief must include the notice of appeal, order or judgment appealed from, statement of the case, and excerpts from *relevant* trial court documents. Minn.R.Civ.App.P. 130.01, subd. 1. The trial court record is available to this court. The parties should avoid needless duplication of the file, and motions and memoranda previously filed by the parties are rarely helpful. If copies of trial court orders, motion papers, or affidavits are included, they must be signed and dated. All materials must be clearly legible. The appendix *must be indexed and each page must be numbered.* Respondent's appendix should not duplicate materials already included in appellant's appendix.

If a respondent will not file a brief, or an appellant will not file a reply brief, the clerk of the appellate courts and opposing counsel *must be* promptly notified in writing.

10. REMEDY ORDERS. Counsel may be ordered to file memoranda on jurisdiction questions or to remedy deficiencies. Counsel *must* promptly reply to these orders, in writing, to the clerk of the appellate courts. Failure to do so may result in *sanctions.*

11. ORAL ARGUMENT. Any party who does not timely request argument or timely file a brief waives oral argument. Minn.R.Civ.App.P. 134.01, 128.02, subd. 2.

If parties prefer to have oral argument at a location other than in the judicial district from which the appeal arose, the parties (including all respondents) must jointly request (in the statement of the case) that the court schedule the argument at the preferred location. Minn.R.Civ.App.P. 134.09, subd. 2(f).

Oral arguments are scheduled upon receipt of a responsive brief. If counsel has a specific schedule which *cannot* be changed and which may conflict with the scheduling of argument, counsel shall include a letter with that information *when briefs are filed.* Motions for postponement of oral argument are seldom granted in the absence of extreme emergency. Minn.Ct.App.Internal R. 2.3.

Counsel should appear one-half hour before their argument is scheduled. One purpose of oral argument is to respond to questions of the court, and counsel should not needlessly repeat arguments already presented in the briefs.

Appellant is normally granted 20 minutes for argument and may reserve a portion of that time for rebuttal. Respondents are collectively allowed 15 minutes. If there is more than one respondent who intends to argue, the 15 minute time period must be apportioned. Minn.R.Civ.App.P. 134.03, subd. 1.

12. CRIMINAL APPEALS. Filing fees are required in criminal appeals unless the appellant is represented by a public defender, or fees have been waived by trial court order or by operation of Rule 103.01, subd. 3. Two copies of a statement of the case must be filed with the notice of appeal as prescribed by Rule 133.03. Minn.Ct.App.Internal R. 7.1.

13. SANCTIONS/ATTORNEY FEES. The court may impose appropriate sanctions and attorney fees for frivolous appeals, or for failure to comply with the rules or court orders. Minn.Stat. section 549.21, subd. 2 (1988) *does not* require that a party be aware the position asserted is frivolous. *See also* Minn.R.Civ.App.P. 138.

14. QUESTIONS. Inquiries may be directed to Chief Staff Attorney Cynthia Lehr (297-1025) and the clerk of the appellate courts (296-2581). However, counsel should carefully review the rules before inquiring about the court's procedures. Counsel are expected and required to know the rules and it is not the responsibility of the clerk's office or the Chief Staff Attorney to educate secretaries, law clerks, or counsel on applicable rules.