

APPELLATE PROCEDURE

Minnesota Rules of Civil Appellate Procedure

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Minnesota Rules of Civil Appellate Procedure

Effective August 1, 1983

With amendments received through August 1, 1996

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Revisor's Note: Supreme Court Order, dated June 17, 1983, promulgating amendments to the Rules of Civil Appellate Procedure provide, in part:

"The comments are those of the Advisory Committee and this Court does not pass on their accuracy or reliability."

TEXT OF RULES**TITLE I. APPLICABILITY OF RULES****Rule 101. Scope of Rules; Definitions****101.01 Scope**

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.

Subd. 6. "Appellant" means the party seeking review including relators and petitioners.

(Amended effective for appeals taken on or after January 1, 1992.)

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 and Filings. 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 trial court administrator 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) two copies of the statement of the case required by Rule 133.03, and
- (4) a filing fee of \$250,

and shall file the following with the trial court administrator:

- (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; or

(h) the appeal is taken by a claimant for unemployment compensation benefits pursuant to Minnesota Statutes, chapter 268.

(Amended effective July 1, 1989; amended effective for appeals taken on or after January 1, 1992; amended effective July 1, 1993.)

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

Comment—1983

Filing the notice of appeal with the clerk of the appellate courts, in addition to service on the adverse party, is required to initiate an appeal.

A substantial change has been made in Rule 103.01. Under the new rule service alone no longer initiates an appeal. The notice of appeal served on both the adverse party and the clerk of the trial court and filed with the clerk of the appellate courts is required in order to vest jurisdiction in the Court of Appeals.

Proof of service, a certified copy of the judgment or order from which the appeal is taken, and the statement of the case (described at Rule 133.03) must accompany the notice of appeal when it is filed. For purposes of these rules, filing is timely if the notice of appeal is deposited in the mail within the time fixed for filing. See Rule 125.01.

A change has been made in the amount of the filing fee and to which courts it is paid.

Since prehearing conferences will be held only if the court so directs, within 10 days after filing the notice of appeal the appellant must send to the clerk of the appellate courts a written order for the transcript or a notice of intent to proceed on a statement of the proceedings. See Rule 110.02.

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.

Comment—1983

An order for judgment is not an appealable order. There is a right of appeal only from a judgment or an order enumerated in Rule 103.03. An appeal from any order not specifically included in Rule 103.03 is discretionary, and permission must be sought by petition as provided in Rule 105.

Two substantial changes have been made in Rule 103.03. The deletion from clause (a) of "order for judgment" marks a return to former practice: a judgment is appealable; an order for judgment is not appealable. Because of the uncertainties resulting from its broad, unspecific language, former clause (d) "From an order involving the merits of the action or some part thereof" has also been deleted. Review of any order not specifically enumerated in Rule 103.03 is discretionary only, and permission to appeal must be sought pursuant to Rule 105.

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.

Comment—1983

The time for taking an appeal from a final judgment or an order remains unchanged.

The clerk of the appellate courts is authorized to reject the filing of a notice of appeal from a judgment after the expiration of the 90-day period.

The second paragraph follows federal practice with respect to judgments ordered pursuant to Rule 54.02, Minnesota Rules of Civil Procedure. An early right of appeal is provided as to those summary judgments that dispose of less than all claims against all parties if, but only if, the trial court expressly determines that there is no just reason for delay and expressly directs the entry of judgment. If an appeal is not taken within 90 days after entry of such a

judgment, it becomes final and is not subject to later review. A judgment disposing of less than all claims against all parties entered pursuant to an order which does not contain the express determination and directions prescribed by Rule 54.02 is not appealable until entry of the final judgment disposing of all remaining claims of all parties.

This limited right of appeal recognizes that the trial court's use of the language prescribed by Rule 54.02 is likely to be confined to two situations: (1) where early review of the applicability of a rule of law may obviate a retrial, or (2) where the party obtaining judgment should not be required to await the conclusion of the case as to other parties and issues before the time for appeal begins to run.

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.

104.04 Marital Dissolution

Subdivision 1. An appeal may be taken from a judgment and decree of dissolution within 90 days after its entry, from an amended judgment and decree of dissolution within 30 days after service by the adverse party of written notice of 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.

Subd. 2. The time for appeal shall run from service by the adverse party of written notice of filing of an order denying a new trial or granting or denying any of the following motions:

- (a) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted;
- (b) to alter or amend the judgment;
- (c) for modification of an order with respect to custody or visitation; or
- (d) for modification of child support or of maintenance.

A notice of appeal filed during the pendency of any of the above motions shall be premature and shall not divest the district court of jurisdiction to dispose of the motion. A new notice of appeal must be filed within the prescribed time measured from service by the adverse party of written notice of filing of the order disposing of the motion as provided above and no additional fee shall be required for such filing. In the event a respondent is a party aggrieved by the order disposing of the motion, a notice of review pursuant to Rule 106 may be filed within the prescribed time measured from the filing of the new notice of appeal. If a notice of review has been filed, the appeal shall not be dismissed without the approval of the appellate court. (Added effective for appeals taken on or after March 1, 1992.)

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 pro-

vided. A filing fee of \$250 paid to the clerk of appellate courts shall accompany the petition for permission to appeal.

(Amended effective July 1, 1989; amended effective July 1, 1993.)

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

Comment—1983

A petition for discretionary review must be filed with the clerk of the appellate courts within 30 days after filing of the order.

Because a request for discretionary review of an interlocutory or other nonappealable order is usually prompted by some exigency and because it is not customary to give notice of making and filing of nonappealable orders, a petition for review must be served and filed with the clerk of the appellate courts within 30 days after the order was filed with the clerk of the trial court.

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 each 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.

(Amended effective for appeals taken on or after January 1, 1992.)

105.03 Grant of Permission – Procedure

If permission to appeal is granted, the clerk of the appellate courts shall notify the trial court administrator and the appellant shall 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.

(Amended effective for appeals taken on or after January 1, 1992.)

Comment—1983

The filing of 2 copies of a completed statement of the case is required within 5 days from the date of the order granting the petition for discretionary review.

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 shall accompany the notice of review.

(Amended effective July 1, 1989; amended effective for appeals taken on or after January 1, 1992; amended effective September 15, 1994.)

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

Comment—1983

A respondent must file a notice of review with the clerk of the appellate courts within 15 days after service on the respondent of the notice of appeal.

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 trial court administrator 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 trial court administrator.

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.
 - (h) the appellant is an unemployment compensation claimant pursuant to Minnesota Statutes, chapter 268.
- (Amended effective for appeals taken on or after January 1, 1992.)

Comment—1983

A cost bond in the amount of \$500 or a stipulation waiving the bond must be filed with the notice of appeal. See Rule 103.01, subdivision 1(d)(6). Rule 107 provides a mechanism for securing, prior to appeal, an order from the trial court waiving the bond or setting a bond in a lesser amount. It also affords the respondent a mechanism for securing a supplemental bond or deposit. Finally, it enumerates the categories of appeals in which a cost bond is not required.

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 only 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, or as otherwise provided by rule or statute.

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 ap-

peal, 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.

(Amended effective for appeals taken on or after January 1, 1992.)

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 trial court administrator to abide the judgment of the appellate court.

(Amended effective for appeals taken on or after January 1, 1992.)

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 are deemed 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 appellant intends to include in the record and a statement of the issues intended to be presented on appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary, respondent 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. A copy of any order of the trial court affecting the transcript shall be filed by the appellant with the clerk of the appellate courts.

Subd. 2. Transcript Certificate. If any part of the proceedings is 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 10 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 a 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 inch or 8 1/2 by 10 1/2 inch 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 that person's 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 trial court administrator 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.

(Amended effective for appeals taken on or after January 1, 1992.)

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

Comment—1983

The transcript must be ordered within 10 days after the notice of appeal is filed.

Since a prehearing conference will be held only if the court so directs, within 10 days after filing the notice of appeal the appellant must order the transcript or file a notice of intent to proceed on a statement of the proceedings pursuant to Rule 110.03 or Rule 110.04 or notify the respondent that no transcript or statement will be ordered or prepared.

Rule 110.02, subdivision 2, introduces the certificate as to transcript, which includes a statement that financial arrangements satisfactory to the reporter and counsel have been made (see appendix for form). Rule 110.02, subdivision 3, provides sanctions in addition to contempt in the event of the reporter's failure to make timely delivery of the transcript. The certificate must be filed with the clerk of the appellate courts within 10 days after the date the transcript was ordered.

The typewritten transcript requirement of Rule 110.02, subdivision 4, is intended to authorize the use of legible computerized or mechanically produced transcripts.

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 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. (Amended effective for appeals taken on or after January 1, 1992.)

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.

Comment—1983

Within 10 days after filing the notice of appeal the appellant must file notice of intent to proceed under either Rule 110.03 or Rule 110.04. The trial court's approval of the statement must be filed with the clerk of the appellate courts within 60 days after filing of the notice of appeal. The time for filing the appellant's brief and appendix begins to run with the filing of the trial court's approval. See Rule 131.01.

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 appellant's brief, the trial court administrator shall transmit the record to the clerk of the appellate courts, together with a numbered itemized list in quadruplicate 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 trial court administrator shall send a copy of this list to all parties. A party having possession of exhibits shall transmit them with an itemized list in quadruplicate 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 trial court administrator mails or otherwise forwards the record to the appellate courts.

(Amended effective for appeals taken on or after January 1, 1992.)

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 trial court administrator 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.

(Amended effective for appeals taken on or after January 1, 1992.)

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 trial court administrator at the request of any party shall transmit to the appellate court those parts of the original record which the party designates.

(Amended effective for appeals taken on or after January 1, 1992.)

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 trial court administrator.

(Amended effective for appeals taken on or after January 1, 1992.)

Rule 112. (Reserved for Future Use.)

Rule 113. (Reserved for Future Use.)

Rule 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 Jobs and Training 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 Jobs and Training 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.

(Amended effective for appeals taken on or after January 1, 1992.)

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 two copies of 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 10 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 \$250 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; amended effective for appeals taken on or after January 1, 1992; amended effective July 1, 1993.)

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 trial court administrator, and the notice of appeal

shall be read, where appropriate, as a reference to the body whose decision is to be reviewed, to the administrator, clerk or secretary thereof, and to the writ of certiorari respectively. (Amended effective for appeals taken on or after January 1, 1992.)

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**).

Comment—1983

Rule 115 sets out the procedure for securing review by the Court of Appeals of decisions of the Commissioner of Jobs and Training, decisions appealable pursuant to the Administrative Procedure Act, and other decisions reviewable by certiorari to the Court of Appeals. The procedures are similar to those provided by former Rule 115 except that the time limitations set out in the rule have been shortened to conform with the time limitations presently provided in the statute governing review of unemployment compensation decisions. The rule cautions that statutes governing review of the various types of decisions reviewable by certiorari may establish different time limitations.

Proof of service of the petition and the writ must be filed with the clerk of the appellate courts within 5 days after service. A copy of the petition and the writ must be provided to the attorney general whenever the state or a department or agency of the state is a party or the body to whom the writ is directed.

A completed statement of the case shall be attached to the petition (Form 133).

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

NOTE: For procedure to be followed for the filing of a petition for declaratory judgment to determine the validity of an administrative rule pursuant to Minnesota Statutes, section 14.44, see Rule 10 of the Special Rules of Practice for the Minnesota Court of Appeals.

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 two copies of 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 10 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 \$250 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; amended effective for appeals taken on or after January 1, 1992; amended effective July 1, 1993.)

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 trial court administrator, and the notice of appeal shall be read, where appropriate, as a reference to the body whose decision is to be reviewed, to the administrator, clerk or secretary thereof, and to the writ of certiorari respectively.

(Amended effective for appeals taken on or after January 1, 1992.)

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**).

Comment—1983

Rule 116 sets out the procedures for securing review by the Supreme Court of decisions of the Workers' Compensation Court of Appeals, decisions of the Tax Court, and other decisions reviewable by certiorari to the Supreme Court. The procedures are similar to those provided by former Rule 115 except that the time limitations set out in the rule have been shortened to conform with the time limitations presently provided in the statute governing review of workers' compensation decisions. The rule cautions that statutes governing review of the various types of decisions reviewable by certiorari may establish different time limitations.

Proof of service of the petition and writ must be filed with the clerk of the appellate courts within 5 days after service. A copy of the petition and the writ must also be provided to the attorney general.

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 in Supreme Court for Review of Decisions of the Court of Appeals

Subdivision 1. Filing of Petition. Any party seeking review of a decision of the Court of Appeals shall separately petition the Supreme Court. The petition with proof of service shall be filed with the clerk of the appellate courts within 30 days of the filing of the Court of Appeals' decision. A filing fee of \$250 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 typewritten pages, exclusive of appendix, and shall contain:

(a) a statement of the legal issues sought to be reviewed, 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.

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

Subd. 4. Conditional Petition for Review. Any party who would seek review of designated issues if another party files a timely petition, may file a conditional petition for review. That conditional petition shall be considered and decided by the court only in the event of the filing of another party's petition. The conditional 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 and shall comply with subdivision 2 of this rule. A filing fee of \$250 shall be paid to the clerk of the appellate courts only if another party files a petition for review. If only conditional petitions are filed to review a court of appeals' decision, none of those petitions will be operative or decided by the court.

Subd. 5. 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.

Subd. 6. Amicus Curiae. Any applicant to participate in the appeal as amicus curiae in the event the petition for review is granted shall, upon prior notice to the parties, seek permission from the Supreme Court within the time provided in subdivision 5 of this rule. The application shall, in other respects, comply with Rule 129.

(Amended effective July 1, 1989; amended effective for appeals taken on or after January 1, 1992; amended effective July 1, 1993.)

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

Comment—1983

This entirely new rule establishes the procedure for obtaining Supreme Court review of a decision of the Court of Appeals. Review is discretionary with the Supreme Court. While the rule enumerates criteria which may be considered by the court in exercising its discretion, they are intended to be instructive and are neither mandatory nor exclusive. The petition should be accompanied by any documents pertinent to the Supreme Court's review.

See Appendix for form of petition for 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).

Comment—1983

This rule authorizes a party to request by-pass of the Court of Appeals in favor of immediate review by the Supreme Court. The decision to permit accelerated review is discretionary with the Supreme Court, and the rule contemplates that leave will be granted only in extraordinary cases.

There is statutory authority for certification of a case by the Court of Appeals and for transfer of a case by order of the Supreme Court.

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. If the lower court is a party, it shall be served; in all other cases, it 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.

(Amended effective for appeals taken on or after January 1, 1992.)

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 \$250 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; amended effective July 1, 1993.)

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 either no emergency exists or no relief is available, it may either deny the oral petition or may 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.
- (Amended effective for appeals taken on or after January 1, 1992.)

121.03 Filing Fee

In the event the oral petition is granted, the attorney orally petitioning for a writ shall thereafter immediately transmit to the clerk of the appellate courts a \$250 filing fee with a letter specifying:

- (a) the name of the case,
- (b) the lower court and the name of the judge,
- (c) the type of writ sought, and
- (d) the name, address, telephone number and attorney registration license number of each attorney.

No filing fee or transmission of documents shall be required in the event the oral petition is denied.

(Amended effective July 1, 1989; amended effective for appeals taken on or after January 1, 1992; amended effective July 1, 1993.)

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**).

Comment to Rules 120 and 121—1983

These two rules have been amended to reflect the judicial restructuring accomplished by the creation of the Court of Appeals. Jurisdiction to issue extraordinary writs directed to trial courts or other lower tribunals, previously existing in the Supreme Court, is vested by these rules in the Court of Appeals. Once the Court of Appeals has acted on an application for an extraordinary writ, review by the Supreme Court is discretionary under Rule 117. Extraordinary relief in the Supreme Court pursuant to these rules relates solely to actions taken by the Court of Appeals in matters other than those arising under Rules 120 and 121.

The basic procedures and requirements remain the same in both courts as they were under the prior rules with the exception that the filing fee has been increased. The filing of a petition for extraordinary relief does not automatically stay the proceedings in the lower court.

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).

Rule 122. (Reserved for Future Use.)

Rule 123. (Reserved for Future Use.)

Rule 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 accept the document for filing, in which event the date of filing shall be noted on it and it shall be thereafter transmitted to the clerk. All papers filed shall include the attorney registration license num-

ber of counsel filing the paper and, if filed subsequent to the notice of appeal, shall specify the appellate court docket number.

(Amended effective for appeals taken on or after January 1, 1992.)

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 and the paper is served by mail, 3 days shall be added to the prescribed period.

(Amended effective for appeals taken on or after January 1, 1992.)

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.

Comment—1983

The filing of all papers must be made within the time designated in the applicable rule.

Filing by mail addressed to the clerk of the appellate courts is authorized but must be accomplished by deposit in the mail, first class postage prepaid, within the designated time period. To the extent practical, all papers shall include the appellate court docket number and attorney registration license numbers.

The clerk of the appellate courts is not authorized to file any papers unless and until the appropriate fee has been paid (Minnesota Statutes, section 357.08 (1983)) or the documents are accompanied by a written statement of the reason no fee is required.

Proof of service must be filed with the clerk of the appellate courts at the time the notice, petition or motion is filed or immediately thereafter.

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.

Comment—1983

This rule specifically incorporates the method of computation specified in Rules 6.01 and 6.03, Minnesota Rules of Civil Procedure.

Rule 126.02 requires the showing of good cause for an extension or limitation of time prescribed by the rules. To obtain relief from a failure to act within the time prescribed, it is necessary to establish that the failure was excusable under the circumstances. The appellate court may not extend or limit the time for filing the notice of appeal or for petitioning for review.

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 filing of a motion shall not stay any time period or action specified in these rules unless ordered by the appellate court. 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.

(Amended effective for appeals taken on or after January 1, 1992.)

Rule 128. Briefs**128.01 Informal Brief**

Informal briefs may be authorized by the appellate court and shall contain a concise statement of the party's arguments on appeal, together with the appendix required by Rule 130.01. The informal brief shall have a cover and may be bound informally by stapling.

(Amended effective for appeals taken on or after January 1, 1992.)

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.

NOTE: STATE OF MINNESOTA

IN SUPREME COURT

C4-84-2133

ORDER REGARDING BINDING OF BRIEFS AND APPENDICES.

WHEREAS, Rule 132.01 of the Minnesota Rules of Civil Appellate Procedure requires the Supreme Court to promulgate criteria for the binding of briefs and appendices,

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Formal briefs and appendices required by Rule 128.02 to be filed in the appellate courts in the State of Minnesota shall be bound in such a way that the contents are secured. Briefs or appendices not bound securely 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. GBC Therm-A-Bind,

c. Zerox Company "Cheshire" Perfect Binding,

d. Standard Bindfast Binding System.

3. The Office of the Clerk of the Appellate Courts may maintain an informal list of vendors whose binding services satisfy the criteria of this order.

IT IS FURTHER ORDERED that this order is effective for all formal briefs and appendices filed on or after January 1, 1992.

Dated: December 6, 1991

BY THE COURT

-s-A. M. Keith

Chief Justice

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**).

Comment—1983

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 its brief. The appendix shall be separately and consecutively numbered and 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.

(Amended effective for appeals taken on or after January 1, 1992.)

Comment—1983

This rule no longer requires the inclusion of the trial court's instructions in the appendix unless they are challenged on appeal. In addition, it is now mandatory to provide an index to the documents contained 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, only those omitted items may be included in an appendix to the respondent's brief.

(Amended effective for appeals taken on or after January 1, 1992.)

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 brack-

ets 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 omitted 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 a 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 a 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 a 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 or the last respondent's brief if there are multiple respondents. If a party prepares a supplemental record, the supplemental record shall be served and filed with that party's first brief.

(Amended effective for appeals taken on or after January 1, 1992.)

Comment—1983

Times for filing all briefs have been shortened.

This rule reduces the time for the filing of the appellant's brief from 60 to 30 days. The commencement of the briefing will depend upon a number of variables. If a transcript is ordered, the 30-day period begins with its delivery. If a transcript has been prepared prior to the appeal or the granting of a petition for review, or if no transcript is contemplated or necessary, the time runs from the date the notice of appeal was filed or the petition was granted. If a statement pursuant to either Rule 110.03 or 110.04 is submitted in lieu of a transcript, the time begins to run upon filing of the trial court's approval.

The time for filing the respondent's brief has been shortened from 45 to 30 days. All parties now have equal time for the preparation of their briefs.

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.

Comment—1983

This rule has been clarified to make explicit that a request for an extension of time to file a brief must be made within the time specified by rule or court order for the filing.

131.03 Number of Copies to be Filed and Served

Subdivision 1. Number of Copies. Unless otherwise specified by the appellate court, 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. (Amended effective for appeals taken on or after January 1, 1992.)

Comment—1983

Fourteen copies of all briefs, appendices, and supplemental records must now be filed in the Supreme Court and nine copies in the Court of Appeals. Two unbound copies must be supplied to either court.

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 of not more than 16 characters per inch, on unglazed opaque paper. Briefs and accompanying appendices shall be bound together by any binding method which satisfies the published criteria of the Supreme Court. 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 and consecutively 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 covered and may be informally bound by stapling. The trial court submissions and decision shall be attached as the appendix. (Amended effective for appeals taken on or after January 1, 1992.)

NOTE: STATE OF MINNESOTA

IN SUPREME COURT

C4-84-2133

ORDER REGARDING BINDING OF BRIEFS AND APPENDICES.

WHEREAS, Rule 132.01 of the Minnesota Rules of Civil Appellate Procedure requires the Supreme Court to promulgate criteria for the binding of briefs and appendices,

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Formal briefs and appendices required by Rule 128.02 to be filed in the appellate courts in the State of Minnesota shall be bound in such a way that the contents are secured. Briefs or appendices not bound securely 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. GBC Therm-A-Bind,

c. Xerox Company "Cheshire" Perfect Binding,

d. Standard Bindfast Binding System.

3. The Office of the Clerk of the Appellate Courts may maintain an informal list of vendors whose binding services satisfy the criteria of this order.

IT IS FURTHER ORDERED that this order is effective for all formal briefs and appendices filed on or after January 1, 1992.

Dated: December 6, 1991

BY THE COURT

—s—A. M. Keith

Chief Justice

Comment—1983

There are page limitations on all briefs.

The form of briefs, appendices, and supplemental records to be submitted has been changed. Commercial typographical printing is no longer required; instead any process capable of producing a clear black image on white paper is acceptable. Spiral spine binding is also no longer required. The appellate courts will publish criteria for permitted binding methods.

The color coding system introduced is only applicable if commercially produced briefs are submitted.

The appellant and the respondent's briefs are limited to 50 pages exclusive of tables of contents and authorities, addenda, and appendices. Reply briefs shall not exceed 25 pages and briefs of amicus curiae are restricted to 20 pages. Any request to file an enlarged brief must be filed at least 10 days before the brief is due.

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 its equivalent of not more than 16 characters per inch, on unglazed opaque paper. Pages shall be bound or stapled at the top margin and numbered at the center of the bottom margin. Typewritten matters 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.

(Amended effective for appeals taken on or after January 1, 1992.)

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.

Comment—1983

Prehearing conferences are still authorized by this rule, but it is anticipated that they will be held in very few cases and will be governed by internal operating procedures established by each of the appellate courts.

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.

Comment—1983

This rule indicates that no case will be scheduled for argument until all briefing is completed. The significant amendment is that once placed on the calendar, a case may not be rescheduled except upon motion or by the court and only 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 ten 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**).

Comment—1983

Any request for oral argument must be made in the statement of the case.

The former prehearing conference statement has now been replaced by a form entitled "Statement of the Case" as found in the appendix. The appellant must file 2 copies of it with the notice of appeal and 2 copies of the respondent's statement, if any, must be filed within 10 days of service. Any request for oral argument at a location other than that specified in Rule 134.09 must be included in the statement.

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

Rule 134. Oral Argument

NOTE: Electronic and print media are monthly notified by the Supreme Court Commissioner that anyone interested in video or audio tape recording a specific case in the Supreme Court must send a written request to the Clerk of the Appellate Courts, Room 245, Minnesota Judicial Center, 25 Constitution Avenue, St. Paul, MN 55155, a request which must be received at least two working days prior to the date scheduled for the 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 appellate court 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.

(Amended effective for appeals taken on or after January 1, 1992.)

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 ten 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 ten 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 or Minnesota Judicial Center 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 in the Minnesota Judicial Center in St. Paul or as specifically 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 Jobs and Training 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.

(Amended effective for appeals taken on or after January 1, 1992.)

Comment—1983

This rule designates the place of oral argument in the Supreme Court and the Court of Appeals. In cases arising in counties other than Hennepin or Ramsey, the Court of Appeals will hear argument within the judicial district in which the county is located, to the extent practical, at a site convenient to either the place of trial or counsel.

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.

Comment—1983

Judgment will not be entered for 30 days after the filing of a decision or order to allow the filing of a petition for review to, or rehearing in the Supreme Court. In the event either petition is made and denied, judgment will be entered immediately.

136.03 Remittitur

Subdivision 1. From the Court of Appeals. The clerk of the appellate courts shall transmit the judgment to the trial court administrator when judgment is entered. If the Su-

preme 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 trial court administrator or notify the Court of Appeals if the matter is remanded to the Court of Appeals with special instructions. (Amended effective for appeals taken on or after January 1, 1992.)

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 execution 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 trial court administrator shall enter the satisfaction in the record. (Amended effective for appeals taken on or after January 1, 1992.)

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, statutory costs in the amount of \$300, Minnesota Statutes, section 549.02, subdivision 2 (1993);

(2) upon a dismissal, \$10.

(Amended effective September 15, 1994.)

139.02 Disbursements

Unless otherwise ordered by the appellate court, the prevailing party shall be allowed that party's disbursements necessarily paid or incurred. The prevailing party will not be allowed to tax as a disbursement the cost of preparing informal briefs or briefs designated in Rule 132.01, subd. 5.

(Amended effective for appeals taken on or after January 1, 1992.)

139.03 Taxation of Costs and Disbursements; Time

Costs and disbursements shall be taxed by the clerk of the appellate courts upon five 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 five 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.

Comment—1983

No appeal may be taken 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.

No petition for reconsideration or rehearing of a denial of a petition for review provided by Rule 117, or of a petition for accelerated review provided by Rule 118, shall be allowed in the Supreme Court.

(Amended effective for appeals taken on or after January 1, 1992.)

Comment—1983

No petition for rehearing is allowed in the court of appeals.

140.02 Service; Filing

The petition shall be served upon the opposing party who may answer within five 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 its 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. (Amended effective for appeals taken on or after January 1, 1992.)

142.03 Default of Respondent

If the respondent fails or neglects to serve and file its 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, subject to a motion to reinstate the review proceedings in accordance with the criteria specified in Rule 142.02.

(Amended effective for appeals taken on or after January 1, 1992.)

Rule 143. Parties; Substitution

143.01 Parties

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

(Amended effective for appeals taken on or after January 1, 1992.)

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 the decedent's personal representative or, if there is no personal representative, by the 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.

(Amended effective for appeals taken on or after January 1, 1992.)

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 the officer is a party in an official capacity, the action does not abate and the successor in office 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.

(Amended effective for appeals taken on or after January 1, 1992.)

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 an opportunity to intervene.

(Amended effective for appeals taken on or after January 1, 1992.)

Rule 145. Appendix of Forms

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

Comment—1983

The appendix of forms is intended to guide counsel in the preparation of any application for relief in either of the appellate courts. For consistency of illustration the defending party has been designated as the appellant or petitioner in all forms. Accordingly, appropriate adjustment must be made when the plaintiff or claimant is the party seeking relief in an appellate court. The attorney registration license number of the attorney-preparer of each form is required to permit the computerized tracking of all cases in the appellate courts. While there is no other requirement for strict adherence to the forms, an inclusion of the information contained in them is viewed as a prerequisite to obtaining an informal decision from the appellate court.

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.

Comment—1983

The revised rules are effective on August 1, 1983, the effective date of Minnesota Statutes, section 480A.06, which establishes the jurisdiction of the Court of Appeals, and will govern all civil appeals and proceedings initiated in either the Supreme Court or the Court of Appeals after that date. Appeals and other proceedings pending in the Supreme Court on July 31, 1983, will be governed by the former rules.

APPENDIX OF FORMS**Form**

- 103A. Notice of Appeal (Court of Appeals)
- 103B. Notice of Appeal (Supreme Court)
- 105. Petition for Discretionary Review
- 106. Respondent's Notice of Review
- 110. Certificate as to Transcript
- 115A. Petition for Writ of Certiorari
- 115B. Writ of Certiorari
- 116A. Petition for Writ of Certiorari
- 116B. Writ of Certiorari
- 117. Petition for Review of Decision of Court of Appeals or Conditional Petition for Review
- 118. Petition for Accelerated Review
- 120A. Petition for Writ of Prohibition
- 120B. Order for Writ of Prohibition
- 120C. Writ of Prohibition
- 128. Appellant's Formal Brief and Appendix
- 133. Statement of the Case
- 133A. Subject-Matter Index – Court of Appeals
- 133B. Subject-Matter Index – Supreme Court

FORM 103A – NOTICE OF APPEAL (Court of Appeals)STATE OF MINNESOTA
COUNTY OF __________ DISTRICT COURT
_____ COUNTY COURT
_____ JUDICIAL DISTRICT**CASE TITLE:**

Plaintiff,

**NOTICE OF APPEAL TO
COURT OF APPEALS**

vs.

TRIAL COURT CASE NUMBER:

Defendant.

**DATE OF ORDER:
OR
DATE JUDGMENT ENTERED:****TO:** Clerk of the Appellate Courts
Minnesota Judicial Center
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****NAME, ADDRESS, ZIP CODE, TELEPHONE NUMBER, AND ATTORNEY REG-
ISTRATION LICENSE 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 2 copies of a completed statement of the case. RCAP 133.03.)

(Amended effective for appeals taken on or after January 1, 1992.)

FORM 103B – NOTICE OF APPEAL (Supreme Court)

STATE OF MINNESOTA
 COUNTY OF _____

_____ DISTRICT COURT
 _____ JUDICIAL DISTRICT

CASE TITLE:

Plaintiff,

NOTICE OF APPEAL TO
 SUPREME COURT

vs.

TRIAL COURT CASE NUMBER:

Defendant.

DATE OF FINAL JUDGMENT
 OF CONVICTION/ORDER:

TO: Clerk of the Appellate Courts
 Minnesota Judicial Center
 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 LICENSE 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.)

(Amended effective for appeals taken on or after January 1, 1992.)

FORM 105 – PETITION FOR DISCRETIONARY REVIEW**STATE OF MINNESOTA
IN COURT OF APPEALS****CASE TITLE:**

Petitioner,

**PETITION FOR
DISCRETIONARY REVIEW**

vs.

TRIAL COURT CASE NUMBER:

Respondent.

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 nonappealable order necessary.

WHEREFORE, the petitioner requests an order of the court granting the petition for discretionary review.

DATED:**NAME, ADDRESS, ZIP CODE, TELEPHONE NUMBER, AND ATTORNEY REGISTRATION LICENSE 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.)

(Amended effective for appeals taken on or after January 1, 1992.)

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
Minnesota Judicial Center
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 LICENSE 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.)

(Amended effective for appeals taken on or after January 1, 1992.)

FORM 110 – CERTIFICATE AS TO TRANSCRIPT

(to be filed with the clerk of the appellate courts within
10 days from the date the transcript was ordered)

STATE OF MINNESOTA
COUNTY OF _____

_____ DISTRICT COURT
_____ COUNTY COURT
_____ JUDICIAL DISTRICT

CASE TITLE:

Plaintiff,

**CERTIFICATE AS
TO TRANSCRIPT**

vs.

Defendant.

_____ Supreme Court
_____ Court of Appeals
APPELLATE COURT
CASE NUMBER:

TRIAL COURT CASE NUMBER:

TO: Clerk of the Appellate Courts
Minnesota Judicial Center
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 10 days from the date the transcript was ordered.)

(Amended effective for appeals taken on or after January 1, 1992.)

FORM 115A – PETITION FOR WRIT OF CERTIORARI**STATE OF MINNESOTA
IN COURT OF APPEALS****CASE TITLE:**Employee–
Relator,**PETITION FOR WRIT
OF CERTIORARI**

vs.

COURT OF APPEALS NUMBER:Employer–
Respondent,**DEPARTMENT OF JOBS AND
TRAINING NUMBER:**Commissioner of Jobs and Training,
Respondent.**DATE OF MAILING NOTICE
OF DECISION:****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 Jobs and Training 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:**NAME, ADDRESS, ZIP CODE, AND TELEPHONE NUMBER OF REALTOR: (ATTOR-
NEY REGISTRATION LICENSE 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.)

(Amended effective for appeals taken on or after January 1, 1992.)

FORM 115B - WRIT OF CERTIORARI**STATE OF MINNESOTA
IN COURT OF APPEALS****CASE TITLE:**

Relator,

vs.

Respondent,

Commissioner of
Jobs and Training,
Respondent.**WRIT OF CERTIORARI****COURT OF APPEALS NUMBER:****DEPARTMENT OF JOBS AND
TRAINING NUMBER:****DATE OF MAILING NOTICE
OF DECISION:****TO:** Minnesota Department of Jobs and Training:

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 Jobs and Training 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 Jobs and Training and upon the Employer-Respondent or its attorney at:

(address)

Proof of service shall be filed with the clerk of the appellate courts.

DATED:Clerk of Appellate Courts
(Clerk's File Stamp)**By:** _____

Assistant Clerk

(Amended effective for appeals taken on or after January 1, 1992.)

FORM 116A – PETITION FOR WRIT OF CERTIORARI**STATE OF MINNESOTA
IN SUPREME COURT****CASE TITLE:****Employee–
Relator,****PETITION FOR WRIT
OF CERTIORARI****vs.****SUPREME COURT NUMBER:****Employer–
Respondent,****WORKERS' COMPENSATION
COURT OF APPEALS NUMBER:****Insurer–
Respondent.****DATE OF SERVICE OF WRITTEN
NOTICE OF DECISION:****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 REG-
ISTRATION LICENSE NUMBER OF ATTORNEY(S) FOR EMPLOYEE-REALTOR:**

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.)

(Amended effective for appeals taken on or after January 1, 1992.)

FORM 116B – WRIT OF CERTIORARI**STATE OF MINNESOTA
IN SUPREME COURT****CASE TITLE:**Employee–
Relator,

vs.

Employer–
Respondent,Insurer–
Respondent.**WRIT OF CERTIORARI****SUPREME COURT NUMBER:****WORKERS' COMPENSATION
COURT OF APPEALS NUMBER:****DATE OF SERVICE OF WRITTEN
NOTICE OF DECISION:****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:

(address)

Proof of service shall be filed with the clerk of the appellate courts.

DATED:

Clerk of Appellate Courts
(Clerk's File Stamp)

By: _____

Assistant Clerk

(Amended effective for appeals taken on or after January 1, 1992.)

**FORM 117 – PETITION FOR REVIEW OF DECISION OF COURT OF
APPEALS OR CONDITIONAL PETITION FOR REVIEW****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 legal issues and their resolution by the Court of Appeals.
2. Statement of the criteria of the rule relied upon to support the petition.
3. Statement of the case (facts and procedural history).

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

4. A brief argument in support of petition.

(The petitioner shall 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 REG-
ISTRATION LICENSE 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.) A conditional petition shall follow this same form.

(Amended effective for appeals taken on or after January 1, 1992.)

FORM 118 – PETITION FOR ACCELERATED REVIEW

**STATE OF MINNESOTA
IN SUPREME COURT**

CASE TITLE:

Petitioner,

vs.

Respondent.

**PETITION FOR
ACCELERATED REVIEW**

**APPELLATE COURT
CASE NUMBER:**

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. Statement of legal issues.
2. Statement of the case.

(This should be a concise statement of the facts necessary to the Supreme Court's decision to accelerate the appeal; a summary of the trial court or agency's decision; and 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.)

3. A brief argument.

(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 LICENSE 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.)

(Amended effective for appeals taken on or after January 1, 1992.)

FORM 120A – PETITION FOR WRIT OF PROHIBITION**STATE OF MINNESOTA
IN COURT OF APPEALS****CASE TITLE:****PETITION FOR
WRIT OF PROHIBITION****Petitioner,****TRIAL COURT CASE NUMBER:****vs.****APPELLATE COURT CASE NUMBER:****Respondent.****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 LICENSE NUMBER OF ATTORNEY(S) FOR PETITIONER**

SIGNATURE**Appendix**

(The content requirements of the petition for extraordinary relief are found in RCAP 120. 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.)

(Amended effective for appeals taken on or after January 1, 1992.)

FORM 120B – ORDER FOR WRIT OF PROHIBITION

**STATE OF MINNESOTA
IN COURT OF APPEALS**

CASE TITLE:

Petitioner,

vs.

APPELLATE COURT CASE NUMBER:

Respondent.

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.

APPELLATE COURT CASE NUMBER:

Respondent.

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 license number)

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TABLE OF AUTHORITIES

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argument found)

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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 license number)

APPENDIX AND INDEX

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

(Amended effective for appeals taken on or after January 1, 1992.)

FORM 133 – STATEMENT OF THE CASE**STATE OF MINNESOTA
IN SUPREME COURT
OR
IN COURT OF APPEALS****CASE TITLE**

Appellant,

vs.

Respondent.

**STATEMENT OF THE CASE OF
(APPELLANT) (RESPONDENT)****TRIAL COURT CASE NUMBER:****APPELLATE COURT CASE NUMBER:**

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, Minnesota Statutes, section 518.58 (1982); spousal maintenance, Minnesota Statutes, 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 LICENSE NUMBER OF ATTORNEY(S) FOR (APPELLANT) (RESPONDENT)

SIGNATURE

(Amended effective for appeals taken on or after January 1, 1992.)

FORM 133A – SUBJECT–MATTER INDEX – COURT OF APPEALS

1. Administrative Law – Administrative Procedure Act
2. Agency
3. Appeal and Error
 - a. Jurisdictional Question
 - b. Standard of Review
 - c. Scope of Review
4. Arbitration
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6. Commercial Law
7. Constitutional Law (other than criminal)
8. Contracts
9. Corporations/Professional Associations/Partnerships
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 - prosecutorial discretion in charging
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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 con-

ference, 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.

Special Rules of Practice for the Minnesota Court of Appeals

Effective October 25, 1991

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TEXT OF RULES

INTRODUCTION

These rules are informational for the practitioner and directive for the court. They are complementary to the Rules of Civil Appellate Procedure. These rules are subject to change without prior notice.

The special 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.

(Adopted effective October 25, 1991.)

RULE 1. SCHEDULING CASES

Placement on the calendar is in order of filing, except that cases involving child custody or the termination of parental rights will be given priority. Other cases may be expedited for good cause. Cases are scheduled as soon as one responsive brief is filed.

If a case pending in the Supreme Court will be dispositive of a case pending before the Court of Appeals, the Chief Judge may order that scheduling be deferred until the Supreme Court has acted. Counsel should inform the court if they believe a case may be controlled by a case pending in the Supreme Court.

Counsel must advise the clerk, in writing before the case is scheduled, of any conflicts which will limit their availability for argument. The Clerk of the Appellate Courts will notify counsel approximately one month in advance of the conference or hearing date, specifying the location of oral argument, if any, and the identity of the panel members assigned to the case.

(Adopted effective October 25, 1991.)

RULE 2. ORAL ARGUMENT

Members of the Minnesota Bar and attorneys admitted pro hac vice by the Court of Appeals may argue before the court. If any litigant is without counsel, the case will be submitted on the briefs and record, without oral arguments by any party. Minn. R. Civ. App. P. 134.01 sets out circumstances in which oral argument will not be allowed. Waiver of argument is governed by Minn. R. Civ. App. P. 134.05 and 134.06.

Appellants are allowed 15 minutes to present their principal arguments, respondents are allowed 15 minutes (to be divided, in cases involving multiple respondents), and appellants are allowed 5 minutes for rebuttal. Arguments are held in the Judicial Center in St. Paul and at appropriate locations in other judicial districts, as provided in Minnesota Statutes, section 480A.09, subdivision 1 and Minn. R. Civ. App. P. 134.09, subd. 2.

A motion to reset or postpone oral argument must be made in writing, with a copy to opposing counsel, in accordance with Minn. R. Civ. App. P. 134.02. Reasons for the request must be stated. The court will reset a case only upon a showing of extreme emergency and no more than once. However, the court may reschedule cases on its own motion.

Counsel may use exhibits and graphic aids during oral argument. Counsel must make arrangements prior to hearing with the court's receptionist or with the local court administrator for the use of blackboards or easels. It is the responsibility of counsel to ensure that any trial exhibit to be used is obtained prior to argument.

Arguments are tape-recorded by the court for internal use only. Tapes are retained only until the opinion is released. Prior approval of the Chief Judge or presiding judge is required to take photographs or to record or videotape oral argument. The media may cover proceedings in accordance with rules adopted by the Supreme Court.

(Adopted effective October 25, 1991.)

RULE 3. PANELS

Oral and nonoral cases will be assigned to panels of at least three judges as set forth in Minnesota Statutes, section 480A.08. One of the judges will be named by the Chief Judge to preside. If a judge assigned to the panel does not participate, the Chief Judge will assign another judge to the panel. Panels decide cases immediately following oral arguments and hold scheduled conferences to decide nonoral cases. After a decision is made, the presiding judge assigns preparation of the opinion to a member of the panel.

(Adopted effective October 25, 1991.)

RULE 4. OPINIONS

Opinions state the nature of the case and the reasons for the decision. The panel will decide at its conference whether to publish an opinion. The publication decision is guided by Minnesota Statutes, section 480A.08, subdivision 3, which provides for publication of opinions which establish a new rule of law, overrule a previous Court of Appeals decision not reviewed by the Minnesota Supreme Court, provide important procedural guidelines in interpreting statutes or administrative rules, involve a significant legal issue, or significantly aid in the administration of justice. All other opinions are unpublished.

Unpublished opinions are not precedential and may not be cited unless copies are provided to other counsel at least 48 hours before their use at any pretrial conference, hearing, or trial. If an unpublished opinion is cited in a brief or memorandum, copies must be provided to all other counsel at the time the brief or memorandum is served.

Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(a), the panel may decide to issue an order opinion.

(Adopted effective October 25, 1991.)

RULE 5. CIRCULATION OF OPINIONS

When a draft opinion has been prepared, the authoring judge will circulate it to all other members of the court for their information and comments. Comments must be returned within ten days.

(Adopted effective October 25, 1991.)

RULE 6. OPINION ISSUANCE

Except in extraordinary circumstances, opinions will be filed on Tuesday of each week. Copies will be mailed to counsel on the Friday preceding filing, and will be available to the media on the Monday preceding filing. In exchange for access to opinions before the date of filing, news personnel agree that they will not release the decision prior to 12:01 a.m. on the filing date.¹ News personnel also agree not to contact the attorneys on an appeal before 3:00 p.m. on Monday, or to contact the parties prior to 8:30 a.m. on the filing date. The date of filing is controlling.

The official publications of the Court of Appeals, for the purpose of notice to the public and the legal profession, are Finance and Commerce and the St. Paul Legal Ledger. Notices may be published elsewhere at the discretion of the Chief Judge.

After release, the panel may make clerical changes in an opinion at any time *ex parte*.

¹ The supreme court's October 1, 1984 news embargo rule and subsequent amendments are on file with the Clerk of the Appellate Courts.

(Adopted effective October 25, 1991.)

RULE 7. PROCEDURES AFTER DECISION

The Clerk of the Appellate Courts taxes costs and disbursements pursuant to Minn. R. Civ. App. P. 139.03. After expiration of the 30-day period to petition for review, the Clerk of Appellate Courts will transmit the judgment to the trial court administrator and return the trial record.

(Adopted effective October 25, 1991.)

RULE 8. MOTION PROCEDURE

The form, content, and time periods for motions are prescribed in Minn. R. Civ. App. P. 127.

Motions and requests for extraordinary remedies are disposed of by the Chief Judge or by a special term panel designated by the Chief Judge. Routine motions, such as voluntary dismissals, case exceptions, postponements, and extensions of time to file briefs, are disposed of by the Chief Judge. Motions made after submission of a case will be referred to the panel to which the case is assigned.

(Adopted effective October 25, 1991.)

RULE 9. CRIMINAL APPEALS

In all appeals taken under Minn. R. Crim. P. 28, a statement of the case shall be filed as prescribed by Minn. R. Civ. App. P. 133.03.

(Adopted effective October 25, 1991.)

RULE 10. REVIEW OF ADMINISTRATIVE RULES

How Obtained

Review by the Court of Appeals of the validity of administrative rules pursuant to Minnesota Statutes, section 14.44 is obtained by: (a) filing a petition for declaratory judgment with the Clerk of the Appellate Courts; (b) paying \$200 to the Clerk of the Appellate Courts, unless no fee is required pursuant to Minn. R. Civ. App. P. 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 Minn. R. Civ. App. P. 107.

Contents of Petition

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 prepared pursuant to Minn. R. Civ. App. P. 133.03 and a copy of the rule to be reviewed must be attached to the petition. The title and form of the petition should conform to that shown in the appendix to these rules.

The Record

(1) **Review of the Record.** Review of the validity of administrative rules is on the record made in the agency rulemaking process. To the extent possible, the description of the record contained in Minn. R. Civ. App. P. 110.01 and the provisions of Minn. R. Civ. App. P. 110.05 and 111 apply in declaratory judgment actions.

(2) **Transmission of Record.** If a record of the rulemaking proceedings is prepared before the petition for declaratory judgment is filed, the record must be forwarded by the clerk of the agency or body to the Clerk of the Appellate Courts with an itemized list as described in Minn. R. Civ. App. P. 111.01 within 30 days of the filing of the petition.

(3) **Record Not Available When Petition Filed.** If the record has not been prepared or is unavailable, the agency or body must notify the Court of Appeals of that fact, in writing, within ten days after service of the petition. The agency must 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 Minn. R. Civ. App. P. 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.

Briefing

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

Participants

Persons who participated in the rulemaking process below, other than the petitioner, agency, and attorney general, may participate in the declaratory judgment action only with leave of the Court of Appeals. Permission is sought by filing a motion with the Court of Appeals and serving that motion upon all other parties. The motion must describe the nature of the movant's participation below, the interest that 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.

(Adopted effective October 25, 1991.)

RULE 11. RECUSAL OF JUDGES

Court of Appeals judges are subject to the Code of Judicial Conduct adopted by the Supreme Court. Counsel may request that a member of the panel assigned to the case recuse, by writing to the particular judge and to the Chief Judge, setting out the reasons for the request, within ten days after receiving notice of the panel. Application of the principles governing recusal is ultimately the responsibility of the individual judge, in consultation with the Chief Judge. If a judge recuses, the Chief Judge names a replacement to the panel.

(Adopted effective October 25, 1991.)

RULE 12. AMICUS BRIEFS

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

(Adopted effective October 25, 1991.)

RULE 13. REMAND FROM THE SUPREME COURT

When the Supreme Court remands a case to the Court of Appeals, the court may request additional briefing, direct that oral arguments be heard, or take other appropriate action.

(Adopted effective October 25, 1991.)

RULE 14. FULL COURT CONFERENCE

The Chief Judge, subject to the authority of the Chief Justice, exercises general administrative authority over the court. All matters passed on by the bench shall be considered policy matters to be carried out and implemented by the Chief Judge.

The judges of the Court of Appeals meet on the first Friday of each month. If a holiday occurs on that day, the conference is held on the first Thursday. Conferences are also held at the call of the Chief Judge or a majority of the judges.

(Adopted effective October 25, 1991.)

APPENDIX**FORM****PETITION FOR DECLARATORY JUDGMENT****STATE OF MINNESOTA
IN COURT OF APPEALS****CASE TITLE:**

Petitioner,

**PETITION FOR DECLARATORY
JUDGMENT**

vs.

COURT OF APPEALS NUMBER

Agency or Body.

AGENCY OR BODY NUMBER**TO:** The Court of Appeals of the State of Minnesota:

The above-named petitioner hereby petitions the Court of Appeals pursuant to Minnesota Statutes, section 14.44 (1986) for a declaratory judgment determining the validity of a rule adopted by (agency) on (date), upon the grounds that the rule (is unconstitutional/exceeds the statutory authority of the agency/was adopted without compliance with statutory rule-making procedures).

DATED:

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

(The procedure for obtaining a declaratory judgment on the validity of an administrative rule from the Court of Appeals is set forth in Rule ____, Rules of Civil Appellate Procedure. The rule prescribes the manner of obtaining review, the contents of the petition, the filing fees, and service requirements for obtaining review. Two copies of a completed statement of the case must accompany the petition.)