

# **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, 2004

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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 and serving the notice on the adverse party or parties within the appeal period. The notice shall contain:

(a) a statement specifying the judgment or order from which the appeal is taken; and

(b) the names, addresses, and telephone numbers of opposing counsel, indicating the parties they represent.

The notice shall be accompanied by:

(c) proof of service on the adverse party or parties; and

(d) proof of filing with the administrator of the trial court in which the judgment or order appealed from is entered or filed.

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

(1) two copies of 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 \$500.

The appellant shall file the following simultaneously with the trial court administrator:

(1) a copy of the notice of appeal, and

(2) the cost bond required by Rule 107, or written waiver of it.

**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 been authorized to proceed without payment of the filing fee pursuant to Rule 109; 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 appellant is the state or a governmental subdivision of the state or an officer, employee or agency thereof; or

(e) 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

(f) the appellant is a party to a public assistance appeal pursuant to Minnesota Statutes, chapter 256; or

(g) 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; amended effective January 1, 1999; amended effective March 1, 2001; amended effective July 1, 2003, for all filings on or after that date.)

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).*

#### **Advisory Committee Comment - 1998 Amendments**

*The additional language in the first paragraph of the rule is intended to clarify the steps that must be taken to invoke appellate jurisdiction. Timely filing the notice of appeal with the clerk of the appellate courts and timely service on the adverse party are the jurisdictional steps required to initiate an appeal. Failure of an appellant to take any step other than the timely filing and service of the notice of appeal does not affect appellate jurisdiction, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal. The reference to supersedeas bonds previously*

*contained in the rule has been deleted, in light of the concurrent revisions made to Rule 108, which clarify the timing and procedure regarding filing supersedeas bonds.*

### 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 final judgment, or from a partial judgment entered pursuant to Minn. R. Civ. P. 54.02;

(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;

(h) from an order that grants or denies modification of custody, visitation, maintenance, or child support provisions in an existing judgment or decree;

(i) 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; and

(j) from such other orders or decisions as may be appealable by statute or under the decisions of the Minnesota appellate courts.

(Amended effective January 1, 1999; amended effective March 1, 2001.)

#### *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.*

### *Advisory Committee Comment - 1998 Amendments*

While Rule 103.03 contains a nearly exhaustive list of appealable orders and judgments, it is not the exclusive basis for appellate jurisdiction. See *In re State & Regents Bldg. Asbestos Cases*, 435 N.W.2d 521 (Minn. 1989); *Anderson v. City of Hopkins*, 393 N.W.2d 363 (Minn. 1986). In these and other cases, the Minnesota Supreme Court has recognized that there are certain instances in which an appeal may be allowed as a matter of right even though the ground for that appeal is not found expressly in the provisions of Rule 103.03. Such instances include:

*Orders granting or denying motions to dismiss or for summary judgment when the motions are based on the trial court's alleged lack of personal or subject matter jurisdiction, regardless of whether the motion seeks dismissal of the entire action. See McGowan v. Our Savior's Lutheran Church*, 527 N.W.2d 830, 833 (Minn. 1995) (order denying summary judgment is appealable when motion is based on district court's lack of subject matter jurisdiction); *Hunt v. Nevada State Bank*, 285 Minn. 77, 88-89, 172 N.W.2d 292, 298 (1996) (order denying motion to dismiss for lack of personal jurisdiction immediately appealable of right).

*Orders denying motions to dismiss or for summary judgment based on governmental immunity from suit, provided that the denial is not based on the existence of a question of fact. See Anderson*, 393 N.W.2d at 364 (order denying defendant's motion for summary judgment is appealable when motion is based on governmental immunity from suit); *Carter v. Cole*, 526 N.W.2d 209 (Minn. App. 1995), *aff'd*, 539 N.W.2d 241 (Minn. 1995) (affirming dismissal of appeal from order denying government official's motion for summary judgment based solely on the finding that there is a genuine issue of material fact whether the official committed the acts alleged; reserving question of appealability of an order denying summary judgment where the genuine issues of material fact identified by the trial court are related to the issue of immunity, and not to the merits of the claim); see also *Johnson v. Jones*, 515 U.S. 304, 115 S.Ct. 2151, 132 L.Ed.2d 238 (1995) (order denying summary judgment on immunity grounds not appealable where motion is denied because of genuine issue of material fact).

*Orders vacating final orders or judgments, when the orders are issued after the time to appeal the underlying orders or judgments has expired, or from orders refusing to vacate default judgments. See State & Regents*, 435 N.W.2d at 522 (order vacating final judgment is appealable); *Spicer v. Carefree Vacations, Inc.*, 370 N.W.2d 424 (Minn. 1985) (denial of a Rule 60 motion is appealable if the judgment is rendered *ex parte* against a party who has made no appearance). But see *Carlson v. Panuska*, 555 N.W.2d 745 (Minn. 1996) (Spicer exception applies only to true default judgments and not to "default" judgments entered after contested hearings for failure to comply with discovery orders).

In addition, certain statutes provide for appeals as a matter of right, even though Rule 103.03 does not expressly provide. See, e.g., Minnesota Statutes, section 572.26, subdivision 1 (listing appealable orders in arbitration proceedings, which are not "special" proceedings under Rule 103.03), *Pulju v. Metropolitan Property & Cas.*, 535 N.W.2d 608 (Minn. 1995).

These examples are not intended to be exhaustive, but rather to emphasize that there are limited grounds for appeal other than those set forth in Rule 103.03. See generally Scott W. Johnson, *Common Law Appellate Jurisdiction*, BENCH & BAR OF MINN., Sept. 1997, at 31.

### *Advisory Committee Comment - 2000 Amendments*

Rule 103.03 is amended to add a new subdivision (h) and renumber existing paragraphs (h) and (i) to become (i) and (j). The purpose of this amendment is to clarify that orders that grant or deny modification of custody, visitation, maintenance, and support provisions are appealable in accordance with *Angelos v. Angelos*, 367 N.W.2d 518 (Minn. 1985). These orders are appealable under paragraph (g) (final order in a special proceed-

ing), but because of the volume of such orders, as well as the frequent involvement of pro se litigants, the Committee believes an explicit provision will minimize confusion. This change is not intended to expand appealability of otherwise unappealable orders, but rather, is meant to have the rule correctly identify these orders as appealable.

#### **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. The scope of review afforded may be affected by whether proper steps have been taken to preserve issues for review on appeal, including the existence of timely and proper post-trial motions.

(Amended effective January 1, 1999.)

#### ***Advisory Committee Comment - 1998 Amendments***

*The rule has been changed to make clear that the scope of review can and often does depend upon the scope of the trial proceedings. As a general proposition, appellate review is limited to review of the facts and legal arguments that are contained in the trial record. The conduct of the trial proceedings will affect the scope of review on appeal. See Sauter v. Wasemiller, 389 N.W.2d 200 (Minn. 1986); Northwestern State Bank v. Foss, 287 Minn. 508, 511, 177 N.W.2d 292, 294 (1970). This is true notwithstanding the broad statement of the appellate courts' scope of review contained in Rule 103.04. See Minnesota Constitution, article 6, section 2.*

*Litigants often fail to recognize the importance of post-trial motions, and the sometimes dramatic failure to bring them. Though commentators have alerted lawyers to this issue, see 3 ERIC J. MAGNUSON & DAVID F. HERR, MINNESOTA PRACTICE: APPELLATE RULES ANNOTATED, section 103.17 (3d ed. 1996), problems associated with failure to file appropriate post-trial motions continues to be a significant, recurring problem. This rule amendment is intended to ameliorate the problem.*

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

#### **104.01 Time for Filing and Service**

**Subdivision 1. Time for Appeal.** Unless a different time is provided by statute, an appeal may be taken from a judgment within 60 days after its entry, and from an appealable order within 60 days after service by any party of written notice of its filing.

An appeal may be taken from a judgment entered pursuant to Rule 54.02, Minnesota Rules of Civil Procedure, within 60 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.

**Subd. 2. Effect of Post-Decision Motions.** Unless otherwise provided by law, if any party serves and files a proper and timely motion of a type specified immediately below, the time for appeal of the order or judgment that is the subject of such motion runs for all parties from the service by any party of notice of filing of the order disposing of the last such motion outstanding. This provision applies to a proper and timely motion:

- (a) for judgment notwithstanding the verdict under Minn. R. Civ. P. 50.02;
- (b) to amend or make findings of fact under Minn. R. Civ. P. 52.02, whether or not granting the motion would alter the judgment;

(c) to alter or amend the judgment under Minn. R. Civ. P. 52.02;

(d) for a new trial under Minn. R. Civ. P. 59;

(e) for relief under Minn. R. Civ. P. 60 if the motion is filed within the time frame for a motion for new trial; or

(f) in proceedings not governed by the Rules of Civil Procedure, a proper and timely motion that seeks the same or equivalent relief as those motions listed in (a)-(c).

**Subd. 3. Premature Appeal.** A notice of appeal filed before the disposition of any of the above motions is premature and of no effect, and does not divest the trial court of jurisdiction to dispose of the motion. A new notice of appeal must be filed within the time prescribed to appeal the underlying order or judgment, measured from the service of notice of filing of the order disposing of the outstanding motion. If a party has already paid a filing fee in connection with a premature appeal, no additional fee shall be required from that party for the filing of a new notice of appeal or notice of review pursuant to Rule 106.

(Amended effective January 1, 1999.)

#### **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 and Insertion of Costs into the 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 costs and disbursements.

(Amended effective January 1, 1999.)

#### **Advisory Committee Comment - 1998 Amendments**

*The 1998 amendments to this rule will significantly affect appellate practice. The rule is intended to simplify practice by establishing a 60-day period to effect appeals from both final judgments and appealable orders. This 60-day period will not necessarily result in an identical period to appeal from both an order and judgment, as the event that begins the running of the respective 60-day appeal periods usually will differ. However, the amendment will result in less confusion regarding the time period for appeal.*

*Subdivision 2 is new and enumerates the post-trial motions that will toll the running of the time to appeal. The rule serves two equally important purposes: to make it clear that an*

*appeal is not necessary until the proper motion is decided, and to avoid a party's erroneous assumption that an improper or unauthorized motion would prevent the running of an appeal deadline. The list is intended to be exhaustive for civil actions in the district courts. Rule 104.01, subd. 2(f), provides that the procedural counterparts of these motions will also prevent the running of the time to appeal until the motion is decided. The motions enumerated in this subdivision exclude "motions for reconsideration" because these motions are never required by the rules and are considered only if the trial court permits the motion to be filed. See MINN. GEN. R. PRAC. 115.11, amended in 1997, effective Jan. 1, 1998.*

*Counsel must carefully determine whether post-trial motions are authorized in certain proceedings. See Schiltz v. City of Duluth, 449 N.W.2d 439 (Minn. 1990) (in special proceedings there must be statutory authority for new trial motions, and in the absence of such provision, a "new trial" motion, even if considered by the trial court on the merits and denied, may not result in an appealable order) and Steeves v. Campbell, 508 N.W.2d 817 (Minn. App. 1993) (new trial motion in order for protection proceedings not authorized, and order denying such motion is not appealable). Subdivision 2 of Rule 104.01 replaces Rule 104.04 concerning post-trial and modification motions in marital dissolutions. Modification motions no longer extend the time in which to appeal. The affect of post-trial motions is clarified in subdivisions 2 and 3.*

#### **104.03 and 104.04 (Deleted effective January 1, 1999.)**

#### **Rule 105. Discretionary Review**

##### **105.01 Petition for Permission to Appeal; Time**

Upon the petition of a party, in the interests of justice the Court of Appeals may allow an appeal from an order not otherwise appealable pursuant to Rule 103.03 except an order made during trial, and the Supreme Court may allow an appeal from an order of the Tax Court or the Workers' Compensation Court of Appeals not otherwise appealable pursuant to Rule 116 or governing statute except an order made during trial. The petition shall be served on the adverse party and filed within 30 days of the filing of the order. The trial court should be notified that the petition has been filed and provided with a copy of the petition and any response. Four copies of the petition shall be filed with the clerk of the appellate courts, but the court may direct that additional copies be provided. A filing fee of \$500 paid to the clerk of the appellate courts shall accompany the petition for permission to appeal.

(Amended effective July 1, 1989; amended effective July 1, 1993; amended effective March 1, 2001; amended effective July 1, 2003, for all filings on or after that date.)

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 ten 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, or memorandum of law relating to it shall be attached to the petition. Any adverse party may, within five days after service of the petition, serve and file with the clerk of the appellate courts four copies of a response to the petition, which shall not exceed ten pages. Any reply shall be served within two days after service of the response and shall not exceed five pages. All papers may be typewritten in the form prescribed in Rule 132.02. No additional memoranda may be filed without leave of the appellate court.

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; amended effective January 1, 1999; amended effective March 1, 2001.)

#### *Advisory Committee Comment - 1998 Amendments*

*The rule has been amended to change the responsive time from seven to five days to be consistent with the time to file a response to a petition for an extraordinary writ and to a motion. See MINN. R. CIV. APP. P. 120.02, 127. The two-day period to file a reply is added to be consistent with the provision for a reply in the rule on motions. See MINN. R. CIV. APP. P. 127. Because intervening weekends and holidays are not counted when the time for response is less than seven days, the change will not shorten the time for response, and may actually lengthen it in some cases. See MINN. R. CIV. APP. P. 126.01.*

#### *Advisory Committee Comment - 2000 Amendments*

*Rule 105.01 is changed to authorize petitions to the Supreme Court seeking discretionary review of nonappealable orders of the Tax Court and the Workers' Compensation Court of Appeals. The Court has noted the advisability of such a provision. See Tarutis v. Commissioner of Revenue, 393 N.W.2d 667, 668-69 (Minn. 1986). The amendment to Rule 105.02 clarifies that the petition should not be accompanied by a separate memorandum of law; expands the page limit for the petition to ten pages and specifies page limits for the response and reply.*

#### **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 respondent 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; amended effective January 1, 1999.)

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).*

#### *Advisory Committee Comment - 1998 Amendments*

*This rule is amended to delete gender-specific language. This amendment is not intended to affect the interpretation and meaning of the rule.*

### **Rule 107. Bond or Deposit for Costs**

#### **Rule 107.01 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.

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999; amended effective March 1, 2001.)

#### **Rule 107.02 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 appellant has been authorized to proceed without a cost bond pursuant to Rule 109; or
- (e) when the appellant is the state or a governmental subdivision of the state or an officer, employee or agency thereof; or
- (f) when the appellant is a party to a public assistance appeal pursuant to Minnesota Statutes, chapter 256; or
- (g) when the appellant is a reemployment insurance benefits claimant pursuant to Minnesota Statutes, chapter 268.

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999; amended effective March 1, 2001.)

*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.*

*Advisory Committee Comment - 1998 Amendments*

*Under this rule as revised, the cost bond requirement is not automatically waived when an appeal is filed after a remand. Unless the cost bond from the first appeal remains on deposit, the respondent in the second appeal still needs the protection of a cost bond. Changes in (g) reflect the current terminology.*

**Rule 108. Supersedeas Bond; Stays****108.01 Supersedeas Bond**

**Subdivision 1. Effect of Appeal; Stay.** Except in appeals under Rule 103.03(b), or as otherwise provided by law, the filing of a proper and timely appeal suspends the authority of the trial court to make any order necessarily affecting the order or judgment appealed from. The trial court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from, and to enforce its order or judgment.

Unless otherwise provided by law, a proper and timely appeal does not stay an order or judgment or enforcement proceedings in the trial court, but the appellant may obtain a stay by providing a supersedeas bond or other security 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.

An application to approve a supersedeas bond, or for a stay on other terms, shall be made in the first instance to the trial court. Upon motion, the appellate court may review the trial court's determination as to whether a stay is appropriate and the terms of any stay.

A supersedeas bond, whether approved by the trial court or appellate court, shall be filed in the trial court.

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

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

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

**Subd. 5.** If the appeal is from a judgment directing the sale or delivery of possession of real property, the condition of the bond shall be the payment of the value of the use and occupation of the property from the time of the appeal until the delivery of possession of the property if the judgment is affirmed and the undertaking that the appellant shall not commit or suffer the commission of any waste on the property while it remains in the appellant's possession during the pendency of the appeal.

**Subd. 6.** In appeals brought pursuant to Rule 115, the trial court may upon motion grant a stay of the order, judgment or enforcement proceedings upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

**Subd. 7.** In cases not specified in subdivisions 2 to 6, filing the bond specified in Rule 107 shall stay proceedings in the trial court.

**Subd. 8.** 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; amended effective January 1, 1999.)

#### **Advisory Committee Comment - 1998 Amendments**

*The 1998 revisions to Rule 108 make explicit a number of principles regarding appellate jurisprudence previously found in case law: First, the mere filing of an appeal does not, except where provided by statute, rule, or case law, stay proceedings in the trial court to enforce the judgment or order which has been appealed. Second, while an appeal may (with some exceptions) suspend the authority of the trial court to modify the order or judgment appealed from, the suspension of the trial court's jurisdiction is not all-encompassing. Generally, the trial court retains authority to enforce the judgment, and to consider and rule on matters that are supplemental or collateral to the judgment. If there is uncertainty about the scope of the trial court's ongoing jurisdiction, a motion to resolve the question may be directed to the appellate court.*

*The posting of a supersedeas bond or a request for stay on other grounds is not required for an appeal to be perfected or proceed. However, because the order or judgment that is the subject of the appeal is not generally stayed automatically, a matter may, in some circumstances, become moot while the appeal is pending. Under prior practice, stays in appellate proceedings relating to administrative agency decisions were obtained under Minnesota Statutes, section 14.65 (1996).*

*The revisions also set out more clearly the procedure for obtaining a stay. Application for the stay is made in the first instance to the trial court, and not the appellate court. The bond, whether approved by the trial court, or upon review by the appellate court, is still filed in the trial court, and the rule now so specifies.*

#### **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. Leave to Proceed *In Forma Pauperis***

#### **Rule 109.01 Authorized Relief**

A party who is unable to pay the expenses of appeal may apply for leave to proceed *in forma pauperis*, which may include waiver of the filing fee and cost bond, and payment of costs for the transcript and reproducing briefs.

(Added effective March 1, 2001.)

#### **Rule 109.02 Motion for Leave to Proceed *In Forma Pauperis* in the Court of Appeals**

A party who desires to proceed *in forma pauperis* in the Court of Appeals shall file in the trial court a motion for leave so to proceed, together with an affidavit showing the party's inability to pay fees and costs and a copy of the party's statement of the case as prescribed by Rule 133.03, showing the proposed issues on appeal. Any such motion by a party initiating an appeal shall be filed on or before the date the appeal is commenced. The trial court shall rule on the motion within 15 days after it is filed, unless the Court of Appeals grants additional time. The party shall file a copy of the motion with the clerk of the appellate courts simultaneously with the notice of appeal or the petition that initiates the appeal.

The trial court shall grant the motion if the court finds that the party is indigent and that the appeal is not frivolous. If the motion is denied, the trial court shall state in writing the reasons for the denial. The party shall promptly file a copy of the trial court's order on the motion with the clerk of the appellate courts.

If the trial court grants the motion, the party may proceed *in forma pauperis* without further application to the Court of Appeals. If a transcript is to be prepared for appeal, the party shall file the certificate as to transcript required by Rule 110.02, subdivision 2(a), within 10 days from the date of the trial court administrator's filing of the order granting leave to proceed *in forma pauperis* or within 10 days after filing the notice of appeal, whichever is later.

If the trial court denies the motion, the party shall, within 10 days from the date of the trial court administrator's filing of the order, either:

(a) pay the filing fee, post the cost bond, and file a completed transcript certificate, if a transcript is required; or

(b) serve and file a motion in the Court of Appeals for review of the trial court's order denying *in forma pauperis* status. The record on the motion shall be limited to the record presented to the trial court.

(Added effective March 1, 2001.)

#### **Rule 109.03 Civil Commitment and Juvenile Proceedings**

A motion to proceed *in forma pauperis* on appeal from a civil commitment or juvenile proceeding may be granted based on the party's financial inability to pay appeal expenses alone. A finding that the appeal is not of a frivolous nature is not required.

(Added effective March 1, 2001.)

#### **Rule 109.04 Motion for Leave to Proceed *In Forma Pauperis* in the Supreme Court**

A party who desires to proceed *in forma pauperis* in the Supreme Court shall file in that court a motion for leave so to proceed. Any such motion by a party initiating an appeal shall be filed on or before the date the Supreme Court proceeding is commenced. The motion shall specify the fees and costs for which *in forma pauperis* relief is sought. The motion shall be accompanied by:

(a) a copy of the order, if any, granting the party leave to proceed *in forma pauperis* in the court whose decision is to be reviewed by the Supreme Court and an affidavit stating that the party remains indigent; or

(b) an affidavit showing the party's inability to pay the fees and costs for which relief is sought.

(Added effective March 1, 2001.)

#### **Rule 109.05 Suspension of Time Periods**

The time periods for a party to pay the filing fee, post a cost bond, and file a transcript certificate are suspended during the pendency of that party's timely motion to proceed *in forma pauperis*.

(Added effective March 1, 2001.)

#### ***Advisory Committee Comment - 2000 Amendments***

*Rule 109 is a new rule, adopted in 2000. It is intended to collect and harmonize various provisions that apply to the procedure for in forma pauperis appeals. It is not intended to establish or modify any substantive rights to proceed in forma pauperis.*

*The rule requires that the application to proceed in forma pauperis in the Court of Appeals be submitted to the trial court for appropriate factual determinations. This requirement is consistent with the long-standing practice of the Court of Appeals. See, e.g., Maddox v. Department of Human Servs., 400 N.W.2d 136, 139 n.1 (Minn. App. 1987). This requirement is consistent with the general preference of having trial courts, rather than appellate courts, make factual findings, and also obviates any appearance that the appellate court has prejudged the merits of the appeal before the transcript, record and briefs have been prepared. Even without a transcript or briefs, the trial court will be familiar with the issues raised by the parties and may be familiar with their financial resources, and is, therefore, better able to make the required findings early in the appellate process. MINN. STAT. section 563.01, subd. 3 defines "indigence" to include those receiving public assistance, being represented by a legal services attorney or volunteer attorney program on the basis of indigence, or having an annual income not greater than 125% of the poverty level. See 42 U.S.C. section 9902(2).*

*The requirement that a party seeking in forma pauperis relief establish that his or her appeal (or position on appeal, if such relief is being sought by a respondent) is "not frivolous" does not require a showing that the party is likely to prevail on appeal and does*

*not require the trial court to evaluate the likelihood of success on appeal. In forma pauperis status in civil commitment and juvenile proceedings is based solely on indigency, and an indigent party is not required to establish that the position to be taken in the appellate court is not frivolous.*

*Rule 109.04 establishes procedures for seeking leave to proceed in forma pauperis in the Supreme Court. It permits a motion based on an order granting in forma pauperis status from the court whose decision is to be reviewed if accompanied by an affidavit that the party remains indigent.*

*Rule 109.05 provides for the suspension of the time periods to pay the filing fee, post a bond and file the transcript certificate while the trial court considers a motion to proceed in forma pauperis. A party who has made a timely motion to proceed in forma pauperis must file a copy of that motion with the appeal papers. The trial court must rule on the motion promptly and the party must inform the appellate court of the ruling, so that the appeal can proceed without delay.*

## **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 Certificates.** (a) 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; a statement that satisfactory financial arrangements have been made for the transcription; and the court reporter's address and telephone number.

(b) Upon filing of the transcript with the trial court administrator and delivery to counsel of record, the reporter shall file with the clerk of the appellate courts a certificate of filing and delivery. The certificate shall identify the transcript(s) delivered; specify the dates of filing of the transcript with the trial court administrator and delivery to counsel; and shall indicate the method of delivery. The certificate shall also contain the court reporter's address and telephone number.

**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 or printed 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. To the extent possible, the transcript of a trial or other single court proceeding shall be consecutively paginated, regardless of the number of volumes. 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.

The transcript should include transcription of any testimony given by audiotape, videotape, or other electronic means unless that testimony has previously been transcribed, in which case the transcript shall include the existing transcript of testimony, with appropriate annotations and verification of what portions were replayed at trial, as part of the official trial transcript.

In any matter, the parties may stipulate to file with the clerk of the appellate courts, in addition to the typewritten or printed transcripts, all transcripts prepared for an appeal in electronic form. The electronic form shall be on three and one-half inch diskettes or compact discs formatted for IBM-compatible computers and shall contain the transcript in ASCII or other self-contained format accessible by Windows-compatible operating systems with no additional software. The label on the diskette or disc must include the case name and the case file number. One copy of the diskette or disc must be served on each party separately represented by counsel. The filing party must certify that the diskette or disc has been scanned for viruses and that it is virus-free.

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999; amended effective March 1, 2001.)

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).*

#### **Advisory Committee Comment - 1998 Amendments**

Subdivision 2 is divided into two sections to emphasize that the court reporter has to file both a transcript certificate and a certificate of filing and delivery, each with different requirements. Court reporters sometimes do not include their telephone number on the certificates, which makes it difficult for the clerk's office to contact them if there is a problem with the certificate. The proposed amendment includes the reporter's telephone number as one of the pieces of information that must be included on the certificate.

Currently, the delivery certificates filed by most reporters only specify the date that the transcript was filed with the trial court administrator, together with a general statement that the transcript was "transmitted promptly" to counsel. The clerk's office uses the filing date as the delivery date for the purpose of calculating the briefing period, which may not be accurate if the reporter does not deliver the transcript on the same day filed. In addition, the certificates usually do not indicate the method of delivery. This makes a difference for calculation of the briefing period, because if the transcript is delivered by mail, three days are added to the briefing period. See MINN. R. CIV. APP. P. 125.03. The amended rule introduces the certificate of filing and delivery, which must specify the dates the transcript was filed with the court administrator and delivered to counsel. This certificate may show delivery by hand, by courier, or may show mailing. The court reporter and counsel should insure that the certificate accurately reflects the date and method of delivery of the transcript, because those factors determine the due date of appellant's brief. See MINN. R. CIV. APP. P. 125.03, 131.01.

Subdivision 4 includes a new requirement that the transcript be paginated consecutively, to the extent possible. This requirement is intended to reduce the number of transcripts requiring complicated citation forms. The goal is to have consecutive pagination of the entire trial, and any pretrial proceedings that immediately precede the trial as well as any other portions of the transcript that are ordered at the same time. If multiple court reporters were involved in transcribing the proceedings, various segments of the transcript can be assigned blocks of numbers so that pagination will be consecutive, albeit with potential for "missing" numbers. In that event, the transcript should clearly show that the missing numbers are intentionally omitted and identify the correct following transcript page number. There may be situations where it is impossible to paginate the transcript in this manner, and the rule recognizes such occasions may exist. The Committee believes that consecutive pagination should become the norm for transcripts, however, and this rule should make consecutive pagination the standard practice of court reporters.

The rule also includes the requirement that any testimony given by audio, video or other electronic means must be transcribed unless the court reporter provides an existing transcript of the videotape testimony, verifying its accuracy. The requirement for transcription applies only to testimony offered as such at trial, and not to non-testimonial evidence such as ordinary audio or video recordings, witness statements used for impeachment, or other recordings received as exhibits. If an existing transcript exists, it must be submitted with the electronic testimony and it is made part of the record on appeal. The reporter at trial certifies that what is included in the transcript is what transpired at the trial, but does not need to certify the accuracy or quality of the previously-prepared transcription. This rule change does not affect the procedure for criminal appeals, as they are governed by MINN. R. CRIM. P. 28.02, subd. 9.

*See Appendix for form of certificate as to transcript and certificate of filing and delivery (Forms 110A and 110B).*

#### **Advisory Committee Comment - 2000 Amendments**

Rule 110.02, subd. 4 is amended to allow parties to file transcripts in electronic form. With increasing frequency, transcripts of trials and other proceedings are available to counsel and the courts in electronic format, in addition to the traditional typed or printed format. Electronic format offers some significant advantages in the areas of handling,

*storage, and use. There is no currently accepted standard for preparation of electronic transcripts, which are available in a variety of formats and software contexts. This amendment allows parties the opportunity to file an electronic version of transcripts in addition to the paper transcripts required under the rules; it does not permit this format to replace the traditional paper transcript. As technology advances, additional forms of media may become acceptable.*

### **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 prepare a statement of the proceedings from the best available means, including recollection. The statement is not intended to be a complete re-creation of testimony or arguments.

Appellant shall file the original proposed statement with the trial court administrator and the clerk of the appellate courts, and serve a copy on respondent, within 15 days after filing the notice of appeal. Within 15 days after service of appellant's statement, respondent may file with the trial court administrator and the clerk of the appellate courts objections or proposed amendments, and serve a copy on appellant.

The trial court may approve the statement submitted by appellant, or modify the statement based on respondent's submissions or the court's own recollection of the proceedings. The statement as approved by the trial court shall be included in the record. Within 60 days of the filing of the notice of appeal, the original trial court approval of the statement shall be filed with the trial court administrator and copies of the approval shall be served on counsel for the parties and filed with the clerk of the appellate court.

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999.)

#### ***Advisory Committee Comment - 1998 Amendments***

*The statement of the proceedings under Rule 110.03 may not be used if a transcript is available. The use of an agreed statement as the record under Rule 110.04 is restricted to situations where the parties agree on the essential facts and the portions of the record necessary for appellate review.*

*It was not clear under the former rule who was responsible for submitting the proposed statement and any objections to the trial court, or what the time period for the submission was. Under the amended rule, each party is responsible for filing their documents with the trial court administrator at the same time that the documents are served.*

*The amendment requires service of the proposed statement and objections on the clerk of the appellate courts, to allow the clerk's office to monitor whether the statement is being processed in a timely fashion. In addition, the amendment clarifies that the original approval is to be filed with the trial court administrator, with copies to counsel and the clerk of the appellate courts. Under the rule, the original statement and approval were filed with the clerk of the appellate courts. The amendment requires that the original be filed with the trial court administrator, because it is part of the record of the proceedings.*

*The amendment is also intended to clarify that the trial court is not bound by the parties' submissions but may modify the statement based on the court's recollection.*

### **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. Court of Appeals Review of Administrative Rules**

##### **114.01 How Obtained**

Review by the Court of Appeals of the validity of administrative rules pursuant to Minnesota Statutes, section 14.44 may be obtained by:

(a) filing a petition for declaratory judgment with the clerk of the appellate courts;

(b) paying the filing fee of \$500 to the clerk of the appellate courts, unless no fee is required pursuant to Rule 103.01, subdivision 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 with the agency or body, unless no bond is required pursuant to Rule 107, subdivision 2, or the agency or board waives the bond.

(Added effective January 1, 1999; amended effective July 1, 2003, for all filings on or after that date.)

##### **114.02 Contents of Petition for Declaratory Judgment**

The petition shall briefly describe the specific rule to be reviewed and the errors claimed by petitioner. An original and one copy of the completed statement of the case pursuant to Rule 133.03 and a copy of the rule which is to be reviewed shall be attached to the petition. The title and form of the petition should conform to that shown in the appendix to these rules.

(Added effective January 1, 1999.)

##### **114.03 Record on Review of Petition for Declaratory Judgment; Transmission of Record**

**Subdivision 1. Review of the Record.** Review of the validity of administrative rules shall be on the record made in the agency rulemaking process. To the extent possible, the description of the record contained in Rule 110.01 and the provisions of Rules 110.02, 110.05, and 111 shall apply to declaratory judgment actions.

**Subd. 2. Transmission of Record.** Unless the time is extended by order of the court on a showing of good cause, the record shall be forwarded by the agency or body to the clerk of the appellate courts with an itemized list as described in Rule 111.01 within 30 days after service of the petition.

(Added effective January 1, 1999.)

**114.04 Briefing**

Petitioner's brief and appendix shall be served and filed in accordance with Rule 131.01 and briefing shall proceed in accordance with that rule.

(Added effective January 1, 1999.)

**114.05 Participants**

Persons, other than the petitioner, agency, and attorney general, may participate in the declaratory judgment action only with leave of the Court of Appeals. Permission may be sought by filing a motion with the Court of Appeals pursuant to Rule 127 or Rule 129 and serving that motion upon all other parties. The motion shall describe the nature of the movant's participation below, the interest which would be represented in the declaratory judgment action, and the manner in which the rule affects the rights or privileges of the moving party.

(Added effective January 1, 1999.)

**Advisory Committee Comment - 1998 Amendments**

*By statute the Court of Appeals is granted original jurisdiction to review by declaratory judgment the validity of administrative rules promulgated by a state agency. Minnesota Statutes, section 14.44 (1996). The statute contains no provisions regarding the procedure by which this review is to be accomplished. The Court of Appeals promulgated MINN. APP. SPEC. R. PRACT. 10, effective October 25, 1991, to provide a procedural framework for such proceedings, but the Special Rules of Practice are not routinely referred to by the practicing bar when trying to determine matters of appellate procedure. To remedy this problem, a new rule, Rule 114, has been adopted.*

*A declaratory judgment action in the Court of Appeals is the proper method to challenge a rule prior to its application or enforcement. The grounds for challenging a rule, which must be described in the petition required by Rule 114.02, are prescribed by Minnesota Statutes, section 14.45 (1996). Only formally promulgated rules may be challenged in a pre-enforcement action under Minnesota Statutes, section 14.44. Minnesota Educ. Ass'n v. Minnesota State Bd. of Educ., 499 N.W. 2d 846, 849 (Minn. App. 1993). This pre-enforcement challenge must be distinguished from a contested case action in which a rule is applied to a particular party and the validity of the rule, as illustrated by the application in the individual case, may be considered. See Mammenga v. State Dep't of Human Servs., 442 N.W. 2d 786 (Minn. 1989).*

### 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 Economic Security and Other Decisions Reviewable by Certiorari and Review of Decisions Appealable Pursuant to the Administrative Procedure Act**

**115.01 How Obtained; Time for Securing Writ**

Review by the Court of Appeals of decisions of the Commissioner of Economic Security and other decisions reviewable by certiorari and review of decisions appealable pursuant to the Administrative Procedure Act may be had by securing issuance of a writ of certiorari. The appeal period and the acts required to invoke appellate jurisdiction are governed by the applicable statute.

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999.)

**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 an original and one copy 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 service of the petitioner's statement.

**Subd. 2. Bond or Security.** (a) The petitioner shall file with the agency or body the cost bond pursuant to Rule 107, unless no bond is required under Rule 107, subd. 2, or by statute, or the bond is waived under Rule 107, subd. 1.

(b) The agency or body may stay enforcement of the decision in accordance with Rule 108. Application for a supersedeas bond or a stay on other terms must be made in the first instance to the agency or body. Upon motion, the Court of Appeals may review the agency's or body's decision on a stay and the terms of any stay.

**Subd. 3. Filing; Fees.** The clerk of the appellate courts shall file the original petition and issue the original writ. The petitioner shall pay \$500 to the clerk of the appellate courts, unless no fee is required under Rule 103.01, subdivision 3, or by statute.

**Subd. 4. Service.** The petitioner shall serve copies of the petition and the writ, if issued, upon the agency or body to which it is directed and upon every party. Proof of service shall be filed with the clerk of the appellate courts within five days of service. A copy of the petition and writ shall be provided to the Attorney General, unless the state is neither a party nor the body to which 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; amended effective January 1, 1999; amended effective July 1, 2003, for all filings on or after that date.)

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

**Subdivision 1. General Application of Rules 110 and 111.** 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 this rule, the court or by statute. Each reference in Rules 110 and 111 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.

**Subd. 2. Transcript of Audiotaped Proceedings.** If a proceeding has been audiotaped and a record of the proceeding is necessary for the appeal, the relator shall order the transcript from the agency or body within ten days after the writ of certiorari is filed. The relator shall make appropriate financial arrangements with the agency or body for the transcription. The agency or body shall designate a court reporter or other qualified person to transcribe the audiotape. The agency or body shall serve and file a transcript certificate pursuant to Rule 110.02, subdivision 2(a) within ten days after the transcript is ordered. The reporter shall file the original and first copy of the transcript with the agency or body, deliver a copy to the attorney for each party to the appeal separately represented, and file a certificate of filing and delivery pursuant to Rule 110.02, subdivision 2(b).

**Subd. 3. Transmission of Record.** Within ten days after the due date for the filing of relator's brief, the agency or body shall transmit the entire record of the proceeding under review to the clerk of the appellate courts, pursuant to Rule 111.01.

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999.)

### *Advisory Committee Comment - 1998 Amendments*

*The amendments to this rule in 1998 update references to the Department of Economic Security, clarify that the time for appeal and jurisdictional acts are defined by statute, clarify the terms used to refer to the parties, and establish procedures for transcribing audiotapes of agency proceedings.*

*Because certiorari in Minnesota is a statutory remedy, the jurisdictional prerequisites for certiorari review are governed by the applicable statute, not by the appellate rules. Statutes governing various types of decisions reviewable by certiorari may establish different time limitations and contain different requirements for securing review by the Court of Appeals. Examples of different statutory requirements include: proceedings governed by the Administrative Procedure Act, Minnesota Statutes, sections 14.63 and 14.64 (1996) (service and filing of petition for writ of certiorari not more than 30 days after party receives final decision and order of agency; timely motion for reconsideration extends time until service of order disposing of motion); reemployment benefits proceedings, Minnesota Statutes, section 268.106, subd. 7 (1996) (service and filing of petition for writ of certiorari within 30 days of mailing of Commissioner of Economic Security's decision); and proceedings under the general certiorari statute, Minnesota Statutes, sections 606.01 and 606.02 (1996) (issuance of writ and service of issued writ within 60 days after party applying for writ receives due notice of proceedings to be reviewed). The Rule has been modified to make clear that the applicable statutes will determine the time limitations and triggering events for review.*

*The rule has been modified to clarify the procedure for obtaining a stay of the order for which review is sought. As with other appellate proceedings, requests for stays should be addressed in the first instance to the agency or body which has issued the challenged decision.*

*A party seeking certiorari review is a petitioner unless and until the court issues a writ of certiorari. After a writ has been issued, the party seeking review is called the relator. The adverse party or parties and the agency or body whose decision is to be reviewed are the respondents.*

*Finally, the revisions clarify and make more specific the procedures for preparation and submission of the record for appellate review.*

#### **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 \$500 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; amended effective July 1, 2003, for all filings on or after that date.)

### **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 \$500 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 courts.

**Subd. 4. Response and Request for Cross-Review.** 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. Any responding party may, in its response, also conditionally seek review of additional designated issues not raised by the petition. In the event of such conditional request, the party filing the initial petition for review shall not be entitled to file a response unless the court requests one on its own initiative.

**Subd. 5. Amicus Curiae.** A request for leave to participate in the appeal as amicus curiae is governed by Rule 129.

(Amended effective July 1, 1989; amended effective for appeals taken on or after January 1, 1992; amended effective July 1, 1993; amended effective January 1, 1999; amended effective July 1, 2003, for all filings on or after that date; amended effective December 1, 2003.)

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).*

#### ***Advisory Committee Comment - 1998 Amendments***

*The 1998 revisions to Rule 117 eliminate the provision for "conditional" petitions for review. In its stead, the revised rule allows parties to include in their responses a conditional request to the court to review additional issues only if the petition is granted. This procedure mirrors the procedure used in criminal appeals. See MINN. R. CRIM. P. 29.04, subd. 6 (appeals to Court of Appeals). The revised rule does not provide for any expansion of the five-page limit for the response in order to accommodate the conditional request for review of additional issues. By the same token, the amended rule does not allow a reply by the party initially seeking review, since that party has already indicated to the court that the case satisfies some of the criteria of Rule 117.*

*A party who wishes to have issues reviewed by the Supreme Court regardless of the court's actions on a previously filed petition should file a petition within the 30-day time limit from decision, since the court is unlikely to deny an initial petition but grant review of issues raised only conditionally in a response. Likewise, a party who would feel constrained by the page limit of a response which includes a conditional request for review of additional issues should file a separate petition for review within the time provided by Rule 117 for an initial petition, 30 days from the date of filing the Court of Appeals' decision.*

**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, the Tax Court, or the Workers' Compensation 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.

Petitioner shall attach a copy of the trial court decision challenged in the petition, and if necessary to an understanding of the issues, additional pertinent lower court documents.

The petition shall be titled "In re (name of petitioner), Petitioner," followed by the trial court caption, and shall be captioned in the court in which the application is made, in the manner specified in Rule 120.04.

(Amended effective January 1, 1999; amended effective March 1, 2001.)

#### **120.02 Submission of Petition; Response to the Petition**

The petition shall be served on all parties and filed with the clerk of the appellate courts. 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 five 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 five-day period, but the petition shall not thereby be taken as admitted.

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999.)

#### **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 \$500 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.

(Amended effective July 1, 1989; amended effective July 1, 1993; amended effective January 1, 1999; amended effective July 1, 2003, for all filings on or after that date.)

#### ***Advisory Committee Comment - 1998 Amendments***

*The primary purpose of these amendments is to modify extraordinary writ procedure to allow a party to seek relief without requiring that party to sue the trial court. This change follows in some respects the amendments made to the federal rules of appellate procedure in 1997. The rule, however, retains most of the remaining procedural requirements of the existing rule inasmuch as they work well in practice in Minnesota.*

*The rule eliminates any requirement that the trial court judge be named as a party. It is still possible to name the judge as a respondent in the writ proceeding, but this rule does not require it. This change is intended to make it less likely that the seeking of the writ will interfere with the orderly handling of ongoing proceedings in the trial court. The rule also eliminates the requirement that a proposed writ be filed because that document is of little use to the courts.*

*The forms relating to this rule are also amended as part of these changes.*

**Rule 120.05 Review in Supreme Court**

Denial of a writ under this rule or Rule 121 by the Court of Appeals is subject to review by the Supreme Court through petition for review under Rule 117. Review of an order denying an extraordinary writ should not be sought by filing a petition for a writ under this rule with the Supreme Court unless the criteria for issuance of the writ are applicable to the Court of Appeals order for which review is sought.

(Added effective March 1, 2001.)

***Advisory Committee Comment - 2000 Amendments***

*Rule 120 is amended to make explicit two aspects of extraordinary writ practice that some practitioners have overlooked. First, an extraordinary writ directed to the Tax Court or the Workers' Compensation Court of Appeals may be sought in the Supreme Court. See MINN. STAT. section 480.04 (1998). Second, the normal method of seeking review in the Supreme Court of a denial of an extraordinary writ by the Court of Appeals is by petition for review under Rule 117, not by petition for a writ under this rule. The same is true for review of denial of an emergency writ under Rule 121.*

**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 \$500 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; amended effective July 1, 2003, for all filings on or after that date.)

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 number 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 Briefs and Letter Briefs**

**Subdivision 1. Informal Briefs.** 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.

**Subd. 2. 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; amended effective January 1, 1999.)

### **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 and a list of the most apposite cases, not to exceed four, and the most apposite constitutional and statutory provisions.

(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.

(Amended effective January 1, 1999.)

NOTICE: 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

### *Advisory Committee Comment - 1998 Amendments*

*Rule 128.02 is amended in 1998 to add a requirement for listing the most apposite cases for each issue in the statement of issues. This rule is part of the briefing requirements for the United States Court of Appeals for the Eighth Circuit, and provides useful guidance on the issues. See 8th Cir. R. 28A(I)(4). MINN. R. CIV. APP. P. 128.02, subd. 2, does not expressly require a statement of issues in a responding brief, but if one is included, it should conform to this rule. In addition, the provisions concerning letter briefs formerly found in Rule 132.01, subd. 5, have been moved to Rule 128.01, subd. 2.*

### **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 128.05 Citation of Supplemental Authorities**

If pertinent and significant authorities come to a party's attention after the party's brief has been filed or after oral argument but before decision, a party may promptly advise the clerk of the appellate courts by letter, with a copy to all other parties, setting forth the citations. The letter must state without argument the reasons for the supplemental citations, referring either to the page of the brief or to the point argued orally. Any response must be made promptly and must be similarly limited.

(Added effective March 1, 2001.)

*Advisory Committee Comment - 2000 Amendments*

*Rule 128.05 is a new provision in the Minnesota Rules. It is patterned after FED. R. App. P. 28(j), and is intended to allow a party to submit additional authorities to the court without requiring a motion and without providing an opportunity for argument. The rule contemplates a very short submission, simply providing the citation of the new authority and enough information so the court can determine what previously-made argument it relates to. The submission itself is not to contain argument, and a response, if any, is similarly constrained. Because a response is limited to the citation of authority and cannot provide argument, a response most frequently will not be necessary or proper. A submission or reply that does not conform to the rule is subject to being stricken. See, e.g., Esicorp, Inc. v. Liberty Mut. Ins. Co., 193 F.3d 966, 972 (8th Cir. 1999) (granting motion to strike argumentative submission); Anderson v. General Motors Corp., 176 F.3d 488 (10th Cir. 1999) (unpublished) (same).*

**Rule 129. Brief of an Amicus Curiae****Rule 129.01 Request for Leave to Participate**

Upon prior notice to the parties, a brief of an amicus curiae may be filed with leave of the appellate court. The applicant shall serve and file a request for leave no later than 15 days after the filing of the notice of appeal, the petition which initiates the appeal, the appellate petition for declaratory judgment, or the appellate court order granting review. A request for leave shall identify whether the applicant's interest is public or private in nature, identify the party supported or indicate whether the amicus brief will suggest affirmance or reversal, and shall state the reason why a brief of an amicus curiae is desirable.

(Amended effective January 1, 1999; amended effective March 1, 2001.)

**Rule 129.02 Time for Filing and Service**

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 no later than seven days after the time allowed for filing the brief of the party supported, or if in support of neither party, no later than the time allowed for filing the petitioner's or appellant's brief.

(Amended effective January 1, 1999; amended effective March 1, 2001.)

**Rule 129.03 Certification in Brief**

A brief filed under this rule shall indicate whether counsel for a party authored the brief in whole or in part and shall identify every person or entity, other than the *amicus curiae*, its members, or its counsel, who made a monetary contribution to the preparation or submission of the brief. The disclosure shall be made in the first footnote on the first page of text.

(Added effective March 1, 2001.)

**Rule 129.04 Oral Argument**

An amicus curiae shall not participate in oral argument except with leave of the appellate court.

(Amended effective January 1, 1999; amended effective March 1, 2001.)

*Advisory Committee Comment - 2000 Amendments*

*Rule 129.01 is amended to delete a provision that provided for an automatic stay of a briefing period until a request for leave to participate as amicus curiae was decided. Under the revised rule, the parties proceed with the normal briefing schedule without regard to whether amici will participate. A party or a potential amicus curiae who believes a delay in the briefing schedule is necessary may move for a stay. Rule 129.03 is a new provision requiring disclosure, in the brief, of whether any counsel for a party authorized the brief in whole or in part and shall identify persons other than the amicus curiae who provided monetary contribution to its preparation or submission. This rule is patterned on Rule 37.6 of the Rules of the Supreme Court of the United States. This rule is intended to encourage participation of independent amici, and to prevent the courts from being misled about the independence of amici or being exposed to "a mirage of amicus support that really emanates from the petitioner's word processor." Stephen M. Shapiro, *Certiorari Practice: The Supreme Court's Shrinking Docket*, reprinted at 24 LITIGATION, Spring 1998, at 25, 74. The rule is not intended to discourage the normal cooperation between the parties to an action and the amici, including the providing of access to the record, the exchange of briefs in advance of submission, and other such activities that do not result in someone other than the amicus preparing the amicus brief.*

*The numbering of the rule is changed to conform it to the style predominantly used in the other rules. This change is not intended to modify the meaning or interpretation of the rule.*

**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;
- (i) if the constitutionality of a statute is challenged, proof of compliance with Rule 144; and
- (j) 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; amended effective January 1, 1999, with correction by court dated November 9, 1998.)

*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.*

*Advisory Committee Comment - 1998 Amendments*

*Rule 144 requires notice to be provided to the Attorney General when the constitutionality of a statute is challenged. The amended rule requires the party challenging the constitutionality to include in the appendix proof of compliance with the rule.*

**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 brackets the number of the original page at the place where the page begins. If the transcript is abridged, the pages and parts of pages of the transcript 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**

**Subdivision 1. Appellant's Brief.** 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 delivered by United States Mail, three days are added to the briefing period, which is measured from the date the transcript was mailed. 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, the petition which initiates the appeal, the appellate petition for declaratory judgment, or the appellate court order granting review.

**Subd. 2. Respondent's Brief.** The respondent shall serve and file a brief and appendix, if any, within 30 days after service of the brief of the appellant or the last appellant's brief, if there are multiple appellants, or within 30 days after delivery of a transcript ordered by respondent pursuant to Rule 110.02, subdivision 1, whichever is later.

**Subd. 3. Reply Brief.** The appellant may serve and file a reply brief within ten days after the later of the following:

(a) service of the respondent's brief or the last respondent's brief if there are multiple respondents; or

(b) service of the brief of an amicus curiae granted leave to participate under Rule 129.

**Subd. 4. Supplemental Record.** 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; amended effective January 1, 1999.)

*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**

**Subdivision 1. Motion for Extension.** No extension of the time fixed for the filing of a 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 considered by a justice, judge or a person designated by the appellate court, acting as a referee, and shall be granted only for good cause shown. Only an original of the motion shall be filed.

**Subd. 2. Procedure.** The date the brief is due shall be stated in the motion. The motion shall be supported by an affidavit which discloses facts showing that with due diligence, and giving reasonable priority to the preparation of the brief, it will not be possible to file the brief on time. All factual statements required by this rule shall be set forth with specificity.

(Amended effective January 1, 1999; amended effective March 1, 2001.)

*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.*

*Advisory Committee Comment - 2000 Amendments*

*Subdivision 1 of Rule 131.02 is amended to delete the reference to periods of time fixed by Rule 131.01. The requirement for a motion to extend time applies to any time requirement, whether established by rule or schedule order. The purpose of the amendment is to clarify the existing practice rather than to effect a significant change in practice.*

**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, seven copies. One copy of the seven 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; amended effective January 1, 1999.)

*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.*

*Advisory Committee Comment - 1998 Amendments*

*This rule has been revised to make more clear the event from which the due date of the opening brief is calculated, the due date for responsive briefs, and the procedure for obtaining extensions of time to file briefs. The amended rule also reduces the number of copies of briefs that must be filed in the Court of Appeals.*

*In instances where it is not necessary to await the preparation of a transcript, the time for the opening brief begins to run when the appellate proceedings are formally commenced. When review is not as a matter of right, but depends on some grant of leave from the appellate court, the time for the opening brief does not begin to run until that permission is granted.*

*If either party has ordered a transcript, the time for the opening brief runs from the date the transcript is delivered. Consistent with Rule 125.03, three days are added to the briefing period if the transcript was delivered by United States Mail. The revised rule makes that calculation clear.*

*Generally, service of appellant's brief begins the 30-day period for the filing of respondent's brief. If respondent has ordered a transcript pursuant to Rule 110.02, subd. 1, respondent's briefing period does not begin until delivery of the transcript, if the transcript is delivered after appellant's brief is served.*

*Specific grounds for any extension of a brief due date must be shown in the affidavit accompanying the motion. Extensions of time to file briefs are not favored.*

*The rule has also been changed to reduce the number of briefs to be filed in the Court of Appeals from nine to seven. While the rule previously required two unbound copies for the Court of Appeals, it now only requires one such copy. The number of bound and unbound copies required by the Supreme Court is unchanged.*

**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. Briefs shall be printed or typed on unglazed opaque paper. If a monospaced font is used, printed or typed material (including headings and footnotes) must appear in a font that produces a minimum of 10-1/2 characters per inch; if a proportional font is used, printed or typed material (including headings and footnotes) must appear in at least 13-point font. Formal briefs and accompanying appendices shall be bound together by a method which securely affixes the contents, and that is substantially equivalent to the list of approved binding methods maintained by the clerk of appellate courts. Methods of binding that are not

approved include stapling, continuous coil spiral binding, spiral comb bindings and similar bindings. Pages shall be 8-1/2 by 11 inches in size with written matter not exceeding 6-1/2 by 9-1/2 inches. Written matter shall appear on only one side of the paper. The pages of the appendix shall be separately and consecutively numbered. Briefs shall be double-spaced, except for tables of contents, tables of authorities, statements of issues, headings and footnotes, which may be single-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 formally bound, 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.

**Subd. 3. Length Limit.** Except for good cause shown and with permission of the appellate court, briefs, whether printed or typewritten, exclusive of pages containing the table of contents, tables of citations, any addendum containing statutes, rules, regulations, etc., and any appendix, shall not exceed 45 pages for principal briefs, 20 pages for reply briefs, and 20 pages for amicus briefs, unless the brief complies with one of these alternative measures:

(a) A principal brief is acceptable if:

(1) it contains no more than 14,000 words; or

(2) it uses a monospaced font and contains no more than 1,300 lines of text.

(b) A reply brief is acceptable if:

(1) it contains no more than 7,000 words; or

(2) it uses a monospaced font and contains no more than 650 lines of text.

(c) An amicus brief is acceptable if:

(1) it contains no more than 7,000 words; or

(2) it uses a monospaced font and contains no more than 650 lines of text.

A brief submitted under Rule 132.01, subd. 3(a), (b), or (c) must include a certificate that the brief complies with the word count or line count limitation. The person preparing the certificate may rely on the word or line count of the word-processing software used to prepare the brief. The certificate must state the name and version of the word processing software used to prepare the brief, state that the brief complies with the typeface requirements of this rule, and state either:

(1) the number of words in the brief; or

(2) the number of lines of monospaced font in the brief.

Application for filing an enlarged brief shall be filed at least 10 days prior to the date the brief is due.

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

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999; amended effective March 1, 2001.)

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.*

**Advisory Committee Comment - 1998 Amendments**

*Rule 132.01, subd. 1 has been modified to make clear the requirement that the written material in briefs should appear on only one side of the paper. The Clerk of Appellate Courts maintains a list of approved binding methods and this list is available upon request.*

*Rule 132.01, subd. 2 has been modified in two respects. First, the rule has been re-written to make clear that in all cases where formal bound briefs are submitted, the color coding requirements apply. The rule has also been changed to eliminate the provision regarding the color of brief covers in the Supreme Court. The rule previously provided that the parties would use the same color covers as they did in the Court of Appeals. This caused considerable confusion among the bar, and the requirement was dropped in favor of a rule that consistently requires the opening brief of the appellant to be blue, the opening brief of the party responding to that brief to be red and reply briefs to be gray. Rule 101.02, subd. 6 defines "appellant" to mean the party seeking review, including relators and petitioners.*

*Minnesota Statutes, section 480.0515, subd. 2 (1996), requires documents submitted by an attorney to a court of this state, and all papers appended to the document be submitted on paper containing not less than ten percent postconsumer material, as defined in Minnesota Statutes, section 115A.03, subd. 24b. The statute also provides that a court may not refuse a document solely because the document was not submitted on recycled*

*paper. Finally, subd. (3)(b) of the statute makes the entire section nonapplicable "if recycled paper is not readily available."*

*Subdivision 5 of this Rule regarding reliance upon trial court memoranda has been moved to Rule 128.01, subd. 2.*

#### **Advisory Committee Comment - 2000 Amendments**

*The rule has been amended to provide for an alternative measure of length of appellate briefs, based on word volume and not page count. This alternative allows parties to choose type size that is more readable than they might choose if endeavoring to satisfy the page limit requirement. The word volume measure has been derived from the analogous provisions of the Federal Rules of Appellate Procedure, and in general will not significantly alter the amount of text that a party may submit, regardless of the method chosen to determine brief length. The amended rule provides for a certification of brief length that will enable the appellate courts to verify that the brief complies with the rule. The rule also increases the minimum permissible font size for briefs and shortens the maximum permissible length of principal briefs that are not measured on a word or line count basis. These amendments only apply to formal briefs, not to motions, petitions for further review, or other pleadings.*

### **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 Economic Security shall be heard as follows:

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

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

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

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

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

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

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

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

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

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999.)

**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.*

**Advisory Committee Comment - 1998 Amendments**

*The rule has been amended to use the correct title of the Commissioner of Economic Security. The change is not intended to affect the meaning or interpretation of the rule.*

**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 written in the form of a published opinion, unpublished opinion, or an order opinion.

(b) Unpublished opinions and order opinions are not precedential except as law of the case, res judicata or collateral estoppel, and may be cited only as provided in Minnesota Statutes, section 480A.08, subd. 3 (1996).

(Amended effective January 1, 1999.)

**Advisory Committee Comment - 1998 Amendments**

*This rule is amended to remove any specific form requirements for Court of Appeals decisions. It embodies the different types of opinions issued by the court. The rule removes the prohibition against citation of order opinions in subd. 1(b) and treats both unpublished opinions and order opinions identically in the new subd. 1(b). It permits citation of these opinions in accordance with Minnesota Statutes, section 480A.08, subd. 3 (1996).*

**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 Supreme Court grants a petition for review, the clerk shall transmit the entire record on appeal, one copy of each brief on file, and the decision of the Court of Appeals to the Supreme Court unless the order granting review directs otherwise.

**Subd. 2. From the Supreme Court.** When judgment is entered, the clerk of the appellate courts shall either transmit the judgment to the 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. Enforcement Of Money Judgments**

**Subdivision 1. Cases Originating in the District Courts.** Upon transmittal as provided by Rule 136.03, money judgments entered in the appellate courts are enforceable in the district court action as though originally entered in that court.

**Subd. 2. Cases Not Originating in the District Courts.** Appellate court judgments in cases not originating in the district courts are enforceable in the manner provided by the Uniform Enforcement of Foreign Judgments Act.

(Amended effective January 1, 1999.)

*Advisory Committee Comment - 1998 Amendments*

*This rule is amended to improve and clarify the procedures for enforcement of money judgments following appeal. Non-money judgments from the appellate courts are enforced by the district court on remand according to the direction of the appellate court, while money judgments are enforced by execution. The change essentially takes the appellate courts out of the business of issuing process for the enforcement of money judgments, and provides for the performance of those tasks by the district courts. A money judgment from the appellate courts, whether for costs, damages or any other form of relief, is treated like any other judgment in the district court and transmittal as provided for by Rule 136.03 acts as its entry. As with any other district court judgment, an affidavit of identification of judgment debtor and docketing are required prior to enforcement.*

*Subdivision 2 of the rule is intended to obviate any confusion over the status of appellate court judgments entered in original or other proceedings not originating in the district courts. Enforcement of those judgments is available in the manner provided by the Uniform Enforcement of Foreign Judgments Act, Minnesota Statutes, sections 548.26-.33 (1996).*

**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 on the merits, costs in the amount of \$300;
- (2) upon a dismissal, \$10.

(Amended effective September 15, 1994; amended effective March 1, 2001.)

**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 submissions designated in Rule 128.01, subd. 2.

(Amended effective for appeals taken on or after January 1, 1992; amended effective March 1, 2001.)

**139.03 Taxation of Costs and Disbursements; Time**

Costs and disbursements shall be taxed by the clerk of the appellate courts upon 5 days' written notice served and filed by the prevailing party. The costs and disbursements so taxed shall be inserted in the judgment. Failure to file and serve a notice of taxation of costs and disbursements within 15 days after the filing of the decision or order shall constitute a waiver of taxation, provided that upon reversal in the Supreme Court, a prevailing party in that Court who did not prevail in the Court of Appeals may file and serve a notice for costs and disbursements incurred in both appellate courts within 15 days after the filing of the decision of the Supreme Court, separately identifying costs and disbursements incurred in each court.

(Amended effective March 1, 2001.)

**139.04 Objections**

Written objections to the taxation of costs and disbursements shall be served and filed with the clerk of the appellate courts within 5 days after service of the notice of taxation. Failure to serve and file timely written objections shall constitute a waiver. If no objections are filed, the clerk may tax costs and disbursements 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 and disbursements.

(Amended effective March 1, 2001.)

**Comment—1983**

*No appeal may be taken from the taxation of costs.*

**Advisory Committee Comment - 2000 Amendments**

*The amendment to Rule 139.01 clarifies the rule and, by deleting the statutory reference, makes an award of costs available in a greater variety of appellate proceedings. The amendment to Rule 139.03 allows a party who did not prevail in the Court of Appeals but obtains a reversal in the Supreme Court to seek costs and disbursements related to proceedings in both appellate courts. The notice must be served and filed within 15 days after the Supreme Court's decision. This allows the party who ultimately prevails in the Supreme Court to receive an award of costs and disbursements related to both appellate proceedings, whether or not the party initially prevailed in the Court of Appeals.*

**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 139.06 Attorneys' Fees on Appeal - Procedure**

**Subdivision 1. Request for Fees on Appeal.** A party seeking attorneys' fees on appeal shall submit such a request by motion under Rule 127. The court may grant on

its own motion an award of reasonable attorneys' fees to any party. All motions for fees must be submitted no later than within the time for taxation of costs, or such other period of time as the court directs. All motions for fees must include sufficient documentation to enable the appellate court to determine the appropriate amount of fees.

**Subd. 2. Response.** Any response to a motion for fees shall state the grounds for the objections with specificity and shall be filed within ten days of the date the motion is served, unless the appellate court allows a longer time. On the court's own motion or the request of a party, a request for attorneys' fees may be remanded to the district court for appropriate hearing and determination.

**Subd. 3. Applications for Pre-Decision Awards of Fees.** Where allowed by law, a pre-decision application for fees, and any response to such an application, may be made by motion as provided by Rule 127.

(Added effective January 1, 1999.)

#### *Advisory Committee Comment - 1998 Amendments*

*The rule has been amended to provide a procedure for seeking attorneys' fees in the appellate courts. The amendments are procedural only, and do not provide a substantive basis for claiming fees on appeal.*

*Attorneys' fees on appeal may be allowed as a matter of substantive law or as a sanction. If a party seeks an award of attorneys' fees for work done on the appeal, as opposed to seeking appellate court affirmance of an award made below, the party should seek the award in the appellate court. Johnson v. City of Shorewood, 531 N.W.2d 509, 511 (Minn. App. 1995). The appellate court may choose to remand the issue to the trial court for a determination of the fees, see Richards v. Richards, 472 N.W.2d 162, 166 (Minn. App. 1991); Katz v. Katz, 380 N.W.2d 527, 531 (Minn. App. 1986), aff'd, 408 N.W.2d 835, 840 (Minn. 1987); or may refuse such a suggestion, and make the determination itself. See State Bank v. Ziehwein, 510 N.W.2d 268, 270 (Minn. App. 1994); Norwest Bank Midland v. Shinnick, 402 N.W.2d 818 (Minn. App. 1987).*

*The request for fees must include sufficient information to enable the appellate court to determine the appropriate amount of fees. This generally will include specific descriptions of the work performed, the number of hours spent on each item of work, the hourly rate charged for that work, and evidence concerning the usual and customary charges for such work, or if the basis for the fees is other than hourly, information by which the court can judge the propriety of the request. Where appropriate, copies of bills submitted to the client, redacted if necessary to preserve privileged information and work-product, may be submitted with the motion.*

### **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; Attorneys**

**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.)

**143.05 Attorneys**

**Subdivision 1. Admission Required; Admission Pro Hac Vice.** All pleadings filed with the appellate courts must be signed by an attorney licensed to practice in this State, or admitted pro hac vice to practice before the appellate courts. No attorney may present argument to the appellate courts unless licensed to practice in this State or admitted pro hac vice to appear before the appellate court as provided for by this rule.

An attorney licensed to practice law in Minnesota may move for the admission pro hac vice of an attorney admitted to practice law in another state or territory. The motion shall be accompanied by an affidavit of the attorney seeking pro hac vice admission attesting that he or she is a member in good standing of the bar of another state or territory.

**Subd. 2. Withdrawal of attorneys.** (a) After a lawyer has appeared for a party in the appellate courts, withdrawal will be effective only if written notice of withdrawal is served on the client and all parties who have appeared, or their lawyers if represented by counsel, and is filed with the Clerk of Appellate Courts. The notice of withdrawal shall state the address at which the client can be served and the address and phone number at which the client can be notified of matters relating to the appeal and shall be accompanied by proof of service.

(b) Withdrawal of an attorney does not create any right to extend briefing deadlines or postpone argument.

**Subd. 3. Certified students.** A law student who is certified pursuant to the Minnesota Student Practice Rules may present oral argument only with leave of the

appellate court. A motion for leave to present oral argument must be filed no later than ten days before the date of the scheduled oral argument. The student may participate in oral argument only in the presence of the attorney of record.

(Added effective January 1, 1999.)

#### ***Advisory Committee Comment - 1998 Amendments***

*This rule is amended to provide explicitly for admission of out-of-state attorneys, withdrawal of attorneys, and appearance by certified students. Out-of-state attorneys may be admitted pro hac vice upon motion by a Minnesota attorney. Courts have the inherent power to establish rules for admission and regulation of lawyers appearing before them. This rule is consistent with that power. The Minnesota Legislature has specifically recognized that formal admission pro hac vice exempts the lawyer from any concern about the unauthorized practice of law. See Minnesota Statutes, section 481.02, subd. 6 (1996). This rule is generally consistent with the rules used in the trial courts. See MINN. GEN. R. PRAC. 5, though that rule does not mandate a specific procedure.*

*The revised rule specifically prescribes when out-of-state lawyers must be admitted pro hac vice. Attorneys seeking to argue orally and those actually signing pleadings or briefs must be admitted; others appearing on the brief may wish to seek admission, but admission is not mandatory.*

*The rule does not require the motion for admission pro hac vice be brought at any particular time, but it should be brought sufficiently in advance of the time that a brief is to be submitted or argument is to be made so as to allow the appellate court to consider the motion and act upon it. Similarly, the rule does not provide for any responsive papers. In the unusual case that a motion for pro hac vice admission is opposed, the party opposing the motion should submit the opposition within the time for responding to any other motion.*

*Although the amended rule permits withdrawal upon notice to the court, counsel, and client, withdrawal should not impose any additional burdens on opposing parties or the court. It is imperative that the notice provide basic information to allow the court and opposing counsel to notify and serve the party whose counsel withdraws. This procedure is consistent with the procedure under MINN. GEN. R. PRAC. 108. Just as parties may elect to proceed pro se in the first instance, they may continue to represent themselves where their lawyers have withdrawn. This rule establishes the procedure for withdrawal of counsel; it does not itself authorize withdrawal nor does it change the rules governing a lawyer's right or obligation to withdraw in any way. The rule does not affect or lessen a lawyer's obligations to the client upon withdrawal. Those matters are governed by the Minnesota Rules of Professional Conduct. See MINN. R. PROF. COND. 1.16.*

*The rule makes it clear that the withdrawal of counsel does not, in itself, justify extension of the appellate deadlines or the postponement of argument. The existence of these impending deadlines should, however, be considered by counsel in determining if withdrawal can be effected without prejudicing the client. Withdrawal or substitution of counsel may be part of a set of circumstances justifying the exercise of the court's discretion to grant an extension or postponement.*

*The Minnesota Student Practice Rules allow certified law students to perform all functions that an attorney may perform in representing and appearing on behalf of a client. See MINN. R. STUDENT PRAC. 1.01 & 2.01. A motion is required to argue orally in the appellate courts.*

#### **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
- 110A. Certificate as to Transcript
- 110B. Certificate of Filing and Delivery
- 114. Petition for Declaratory Judgment
- 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
- 118. Petition for Accelerated Review
- 120. Petition for Writ of Prohibition
- 128. Appellant's Formal Brief and Appendix
- 132. Certification of Brief Length
- 133. Statement of the Case
- 133A. Subject-Matter Index - Court of Appeals
- 133B. Subject-Matter Index - Supreme Court
- 139. Taxation of Costs and Disbursements

**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  
PLAINTIFFNAME, 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. 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 110A - 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  
\_\_\_\_\_ 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 held on \_\_\_\_\_ (specify dates) in the above-entitled action was requested by counsel for the (specify party) 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

\_\_\_\_\_  
ADDRESS AND TELEPHONE NUMBER

\_\_\_\_\_  
SIGNATURE OF COURT REPORTER  
ADDRESS AND TELEPHONE NUMBER

cc: Trial Court Administrator of Record  
All Counsel of Record

(Rule 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 administrator 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; amended effective January 1, 1999.)

**FORM 110B - CERTIFICATE OF FILING AND DELIVERY**

(to be filed with the clerk of the appellate courts  
promptly after filing and delivery of the transcript)

STATE OF MINNESOTA  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_ DISTRICT COURT  
\_\_\_\_\_ JUDICIAL DISTRICT

CASE TITLE:

Plaintiff,

CERTIFICATE OF FILING  
AND DELIVERY

vs.

\_\_\_\_\_ Supreme Court  
\_\_\_\_\_ Court of Appeals

Defendant.

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 held on (specify dates) in the above-entitled action was filed with the trial court administrator on (date). The transcript was delivered to counsel of record on (date) by (specify method of delivery). The transcript was delivered to the following recipients: \_\_\_\_\_

DATED:

\_\_\_\_\_  
SIGNATURE OF COURT REPORTER  
ADDRESS AND TELEPHONE NUMBER

cc: Trial Court Administrator of Record  
All Counsel of Record

(Rule 110.02, subd. 2(b), requires the filing of a certificate to document the filing and delivery of the transcript. The certificate must specify the date the transcript was filed with the trial court administrator and the date and method of delivery of the transcript to counsel of record. The original copy of the certificate shall be filed with the clerk of the appellate courts, with a copy to the trial court administrator and all counsel of record and shall be filed with the clerk of the appellate courts immediately after filing and delivery of the transcript.)

(Added effective January 1, 1999.)

**FORM 114 - 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,  
Respondent,**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, 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 rulemaking procedures).

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

---

**SIGNATURE**

(The procedure for obtaining a declaratory judgment on the validity of an administrative rule from the Court of Appeals is set forth in Rule 114, Rules of Civil Appellate Procedure. The rule prescribes the manner of obtaining review, contents of the petition, filing fees, and service requirements for obtaining review. An original and one copy of a completed statement of the case must accompany the petition.)

(Added effective January 1, 1999.)

**FORM 115A - PETITION FOR WRIT OF CERTIORARI****STATE OF MINNESOTA  
IN COURT OF APPEALS****CASE TITLE:****PETITION FOR WRIT  
OF CERTIORARI**

Petitioner,

vs.

**COURT OF APPEALS NUMBER:**

Respondent,

**(AGENCY OR BODY)  
NUMBER:****(Agency or Body),  
Respondent.****DATE OF DECISION:****DATE AND DESCRIPTION OF  
EVENT TRIGGERING APPEAL  
TIME (for example, mailing of  
decision, receipt of  
decision, or receipt of  
other notice);****TO: The Court of Appeals of the State of Minnesota:**

The above-named petitioner hereby petitions the Court of Appeals for a Writ of Certiorari to review a decision of the (agency or body) issued on the date noted above, upon the grounds that (specify grounds and statute authorizing certiorari review).

**DATED:****NAME, ADDRESS, ZIP CODE, TELEPHONE NUMBER, AND ATTORNEY  
REGISTRATION LICENSE NUMBER OF ATTORNEY(S) FOR PETITIONER:****SIGNATURE OF ATTORNEY****OR, IF NOT REPRESENTED BY COUNSEL:****NAME, ADDRESS, ZIP CODE, AND TELEPHONE NUMBER OF PETITIONER:****SIGNATURE OF PETITIONER**

(The procedure for obtaining a writ of certiorari from the Court of Appeals is set forth in the applicable statutes and in Rule 115, Rules of Civil Appellate Procedure. The applicable statutes prescribe the subject matter of writs in the Court of Appeals, time limitations, and requirements for service. The rule prescribes the manner of securing a writ, contents of the petition, bonds, filing and fees, and preparation of the record. An original and one copy of a completed statement of the case must accompany the petition.

The date of the event that triggered the appeal period must be indicated on the petition. The nature of this event varies, depending on the requirements of the statute authorizing certiorari review in the Court of Appeals. See MINN.R.CIV.APP.P. 115 comment.)

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999.)

## FORM 115B - WRIT OF CERTIORARI

STATE OF MINNESOTA  
IN COURT OF APPEALS

CASE TITLE:

|                      |                          |
|----------------------|--------------------------|
| Relator,             | WRIT OF CERTIORARI       |
| vs.                  | COURT OF APPEALS NUMBER: |
| Respondent,          | (AGENCY OR BODY)         |
| (Agency or Body),    | NUMBER:                  |
| Respondent.          | DATE OF                  |
|                      | DECISION:                |
| TO: (Agency or Body) |                          |

You are hereby ordered to return to the Court of Appeals within 10 days after the date relator's brief is due the record, exhibits and proceedings in the above-entitled matter so that this court may review the decision of the (agency or body) issued on the date noted above.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the respondent (agency or body) and upon the 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; amended effective January 1, 1999.)

**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  
REGISTRATION 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****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  
REGISTRATION 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.)

(Amended effective for appeals taken on or after January 1, 1992; amended effective March 1, 2001.)

**FORM 118 - PETITION FOR ACCELERATED REVIEW****STATE OF MINNESOTA  
IN SUPREME COURT**

CASE TITLE:

Petitioner,

**PETITION FOR  
ACCELERATED REVIEW**

vs.

**APPELLATE COURT  
CASE NUMBER:**

Respondent.

TO: The Supreme Court of the State of Minnesota:

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

1. 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 120 - 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; renumbered effective January 1, 1999.)

# 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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## APPENDIX AND ITS INDEX

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TABLE OF AUTHORITIES

Statutes (list applicable statutes and page where argument found)

Minnesota Statutes, section 518.58 (1982) 8

Cases (list applicable authorities and page where argument found)

Jones v. Olson, \_\_ N.W.2d \_\_ (Minn. 1982) 9

Smith v. Brown, \_\_ Minn. \_\_, N.W.2d \_\_ (1965) 14

Secondary Authorities

McCormick, Damages, section 83 (1935) 16

\*\*\*\*\*

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 132 - CERTIFICATION OF BRIEF LENGTH**

STATE OF MINNESOTA  
(IN SUPREME COURT  
OR  
IN COURT OF APPEALS)

CASE TITLE:

Appellant, CERTIFICATION OF BRIEF LENGTH  
vs.

Respondent. APPELLATE COURT CASE NUMBER:

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a [monospaced] [proportional] font. The length of this brief is . . . . [lines] [words]. This brief was prepared used [name and version of word processing software].

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

SIGNATURE  
(Added effective March 1, 2001.)

**FORM 133 - STATEMENT OF THE CASE**

STATE OF MINNESOTA  
IN (SUPREME COURT  
OR  
IN COURT OF APPEALS)

CASE TITLE

STATEMENT OF THE CASE OF  
(APPELLANT) (RESPONDENT)

Appellant,

TRIAL COURT CASE NUMBER:

vs.

APPELLATE COURT CASE NUMBER:

Respondent.

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

2. Jurisdictional statement.

(A) Appeal from district court.

Statute, rule or other authority authorizing appeal:

Date of entry of judgment or date of service of notice of filing of order from which appeal is taken:

Authority fixing time limit for filing notice of appeal (specify applicable rule or statute):

Date of filing any motion that tolls appeal time:

Date of filing of order deciding tolling motion and date of service of notice of filing:

(B) Certiorari appeal.

Statute, rule or other authority authorizing certiorari appeal:

Authority fixing time limit for obtaining certiorari review (cite statutory section and date of event triggering appeal time, e.g., mailing of decision, receipt of decision, or receipt of other notice):

(C) Other appellate proceedings.

Statute, rule or other authority authorizing appellate proceeding:

Authority fixing time limit for appellate review (cite statutory section and date of event triggering appeal time, e.g., mailing of decision, receipt of decision, or receipt of other notice):

(D) Finality of order or judgment.

Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees?

Yes (\_\_\_) No (\_\_\_)

If no:

Did the district court order entry of a final partial judgment for immediate appeal pursuant to MINN.R.CIV.APP.P. 104.01? Yes (\_\_\_) No (\_\_\_) or

If yes, provide date of order:

If no, is the order or judgment appealed from reviewable under any exception to the finality rule? Yes (\_\_\_) No (\_\_\_)

If yes, cite rule, statute, or other authority authorizing appeal:

(E) Criminal only.

Has a sentence been imposed or imposition of sentence stayed? Yes (\_\_\_\_) No (\_\_\_\_)

If no, cite statute or rule authorizing interlocutory appeal:

(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. For criminal cases, specify whether conviction was for a misdemeanor, gross misdemeanor, or felony offense.

5. List specific issues proposed to be raised on appeal.

6. Related appeals.

List all prior or pending appeals arising from the same action as this appeal. If none, so state.

List any known pending appeals in separate actions raising similar issues to this appeal. If none are known, so state.

7. Contents of record.

Is a transcript necessary to review the issues on appeal? Yes (\_\_\_\_) No (\_\_\_\_)

If yes, full (\_\_\_\_) or partial (\_\_\_\_) transcript?

Has the transcript already been delivered to the parties and filed with the trial court administrator? Yes (\_\_\_\_) No (\_\_\_\_)

If not, has it been ordered from the court reporter?

Yes (\_\_\_\_) No (\_\_\_\_)

If a transcript is unavailable, is a statement of the proceedings under Rule 110.03 necessary? Yes (\_\_\_\_) No (\_\_\_\_)

In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04? Yes (\_\_\_\_) No (\_\_\_\_)

8. Is oral argument requested? Yes (\_\_\_\_) No (\_\_\_\_)

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? Yes (\_\_\_\_) No (\_\_\_\_)

If yes, state where argument is requested:

9. Identify the type of brief to be filed.

Formal brief under Rule 128.02. (\_\_\_\_)

Informal brief under Rule 128.01, subd. 1 (must be accompanied by motion to accept unless submitted by claimant for reemployment benefits). (\_\_\_\_)

Trial memoranda, supplemented by a short letter argument, under Rule 128.01, subd. 2. (\_\_\_\_)

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

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

---

SIGNATURE

OR, IF NOT REPRESENTED BY COUNSEL:

NAME, ADDRESS, ZIP CODE AND  
TELEPHONE NUMBER OF  
(APPELLANT) (RESPONDENT)

---

SIGNATURE (OF APPELLANT)  
(OF RESPONDENT)

Dated:

(The Statement of Case is not a jurisdictional document, but it is important to the proper and efficient processing of the appeal by the appellate courts. The "jurisdictional statement" section is intended to provide sufficient information for the appellate court to easily determine whether the order or judgment is appealable and if the appeal is timely. The nature of the proceedings below and the notice of appeal determine the jurisdiction of the appellate court. The sections requesting information about the issues litigated in the lower court or tribunal, and the issues proposed to be raised on appeal are for the court's information, and do not expand or limit the issues that might be addressed on appeal. Likewise, the section asking counsel to identify any prior or pending appeals from the same case, and any separate appeals that raise similar issues is intended to provide more information about the procedural history of the case and to ensure that the court has early notice of other pending related matters in case consolidate is appropriate.)

(Amended effective January 1, 1999.)

**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
5. Attorney fees
6. Commercial Law
7. Constitutional Law (other than criminal)
8. Contracts
9. Corporations/Professional Associations/Partnerships
10. Criminal
  - a. Police Practices
    - arrest
    - search and seizure
    - electronic surveillance
    - confessions
    - identification procedures
    - administration of exclusionary rules
  - b. Pretrial procedures
    - prosecutorial discretion in charging
    - indictment and complaint
    - bail
    - discovery
    - joinder
    - speedy trial
    - venue
    - competency of defendant
    - continuances
    - omnibus hearing
  - c. Guilty Pleas
  - d. Trial - right to counsel
    - appointment of counsel
    - effective assistance of counsel
    - waiver of counsel
  - e. Trial - Conduct of Prosecutor
    - improper argument
    - improper elicitation of evidence
  - f. Evidentiary Rulings
  - g. Trial Court's Instructions
  - h. Defenses
  - i. Sufficiency of Evidence
  - j. Jury
  - k. Sentencing
  - l. Juveniles
  - m. Miscellaneous
11. Debtor-Creditor
12. Dissolution of Marriage
  - a. Attorney Fees
  - b. Child Custody, Support
  - c. Spousal Maintenance
  - d. Property Distribution
13. Dram Shop Act
14. Evidence

15. Governmental Immunity
16. Implied Consent Proceedings
17. Insurance
  - a. No-fault Benefits
  - b. Duty to Defend
  - c. Coverage
18. Juveniles
  - a. Dependency
  - b. Neglect
  - c. Termination of Parental rights
19. Landlord-Tenant
20. Malpractice
  - a. Legal
  - b. Medical
21. Mental Health Commitment
22. Municipalities
23. Negligence
  - a. Damages
  - b. Liability
  - c. Jury Instructions
  - d. Sufficiency of Evidence
24. Negotiable Instruments
25. Probate - Trust Administration
26. Property
  - a. Adverse Possession
  - b. Conveyances
  - c. Cancellation of Contracts
27. Public Officials - Duties
28. Schools
  - a. Districts
  - b. School Teacher - Employment
29. Statute at Issue \_\_\_\_\_(identify)
30. Torts
  - a. Identify
31. Unemployment Compensation
  - a. Voluntary termination
  - b. Misconduct
  - c. Other \_\_\_\_\_(identify)
32. Writs
33. Zoning
34. Miscellaneous \_\_\_\_\_(identify)

**FORM 133B - SUBJECT-MATTER INDEX - SUPREME COURT**

1. Criminal - Murder in the First Degree
2. Mortgages
3. Tax Court
4. Workers' Compensation
  - a. Apportionment
  - b. Attorney Fees
  - c. Computation of Award
  - d. Coverage of the Act
  - e. Procedure
  - f. Settlement Agreements
5. Miscellaneous \_\_\_\_\_(identify)

FORM 139 - TAXATION OF COSTS AND DISBURSEMENTS

FORM 139-TAXATION OF COSTS AND DISBURSEMENTS

|                                                                                                                                                                                                                               |                                     |                                                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>STATE OF MINNESOTA</b>                                                                                                                                                                                                     |                                     | <input type="checkbox"/> Supreme Court<br><input type="checkbox"/> Court of Appeals                                                                          |
| <b>Case Title</b>                                                                                                                                                                                                             | <b>Appellate Court Case Number:</b> | <b>NOTICE, STATEMENT AND CLAIM OF COSTS AND DISBURSEMENTS INCURRED BY PREVAILING PARTY</b>                                                                   |
|                                                                                                                                                                                                                               |                                     | <b>Prevailing Party:</b><br><input type="checkbox"/> Appellant <input type="checkbox"/> Respondent <input type="checkbox"/> Relator                          |
| <b>COSTS AND DISBURSEMENTS</b>                                                                                                                                                                                                |                                     |                                                                                                                                                              |
| Statutory Costs ..... \$ <u>300.00</u>                                                                                                                                                                                        |                                     | Printing Appellant's brief and Appendix ..... \$ _____                                                                                                       |
| Clerk of The Appellate Courts Filing Fee ..... \$ _____                                                                                                                                                                       |                                     | Postage ..... \$ _____                                                                                                                                       |
| Transcript of case used for appeal to Appellate Courts only ..... \$ _____                                                                                                                                                    |                                     | Premium on appeal bond ..... \$ _____                                                                                                                        |
| Printing of Respondent's brief ..... \$ _____                                                                                                                                                                                 |                                     | Other ..... \$ _____                                                                                                                                         |
| The above bill of Costs and Disbursements taxed and allowed _____ Dated _____                                                                                                                                                 |                                     |                                                                                                                                                              |
| _____<br>Frederick K. Grittner<br>Clerk of the Appellate Courts                                                                                                                                                               |                                     | By _____<br>Assistant Clerk                                                                                                                                  |
| <b>STATE OF MINNESOTA</b>                                                                                                                                                                                                     |                                     |                                                                                                                                                              |
| County of _____                                                                                                                                                                                                               |                                     |                                                                                                                                                              |
| Being duly sworn, I the attorney for the prevailing party in the above-entitled action, state that the above is a true and correct statement of costs incurred and disbursements made by the prevailing party in that action. |                                     |                                                                                                                                                              |
| <b>NOTARY STAMP, SIGNATURE AND DATE:</b>                                                                                                                                                                                      |                                     | Respectfully,                                                                                                                                                |
| Dated _____                                                                                                                                                                                                                   |                                     | _____<br>Attorney's Name                                                                                                                                     |
| Signature _____                                                                                                                                                                                                               |                                     | _____<br>Address                                                                                                                                             |
|                                                                                                                                                                                                                               |                                     | _____<br>Signature                                                                                                                                           |
| <b>NOTICE TO ATTORNEY FOR ADVERSE PARTY(S):</b>                                                                                                                                                                               |                                     | Costs and disbursements will be taxed pursuant to Rule 139.03 (Rules of Civil Appellate Procedure), objections thereto may be filed pursuant to Rule 139.04. |
| <b>ADVERSE PARTY(S) BEING TAXED:</b>                                                                                                                                                                                          |                                     |                                                                                                                                                              |
| _____<br>ATTORNEY                                                                                                                                                                                                             |                                     | _____<br>ATTORNEY                                                                                                                                            |
| For _____<br>(Name of Party)                                                                                                                                                                                                  |                                     | For _____<br>(Name of Party)                                                                                                                                 |
| _____<br>ATTORNEY                                                                                                                                                                                                             |                                     | _____<br>ATTORNEY                                                                                                                                            |
| For _____<br>(Name of Party)                                                                                                                                                                                                  |                                     | For _____<br>(Name of Party)                                                                                                                                 |

(Added effective January 1, 1999.)

## **Case Dispositional Procedures of the Supreme Court**

Adopted October 19, 1988

### **Table of Procedures**

Introduction

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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 docu-

mentation are circulated to the court one week in advance of the conference. Following discussion at the conference, the court decides whether to grant or deny the petition for review and, if the petition is granted, whether the case will be scheduled for oral argument or for consideration on briefs and whether the court will limit the issues in the case.

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

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

## **Certiorari**

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

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

## **Motion and Extraordinary Writ Practice**

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

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

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

## **Calendaring and Assignment**

The Commissioner prepares and distributes to the court for each month from September through June inclusive, a list of cases for submission to the court that

month. Cases are assigned to the calendar in the order of the filing of the last brief, although criminal cases are often given priority. The published calendar sets the date of oral argument only for cases assigned for submission in that fashion. Cases considered without oral argument do not appear on the published calendar.

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

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

The Commissioner also assigns cases to individual justices on a random, rotational basis with an effort to equalize the workload during the course of the term. After assignment, the individual justice's law clerk prepares a memorandum that thoroughly analyzes the factual and legal issues in the case and distributes that memorandum to all members of the court. Before oral argument, each justice reads the briefs and legal memoranda in each calendar 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, but any interested person may listen to, but not duplicate, the tapes at a location designated by the Clerk of the Appellate Courts. Tape recordings are not permanently retained and are routinely destroyed after final decision in the underlying matter—i.e., after the time for filing a petition for rehearing has expired if no petition is filed, after denial of a petition for rehearing or after disposition of the case if rehearing is granted, or, in the case of a court rule adoption or amendment proceeding, after the rule is promulgated. 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.

(Amended effective December 11, 1998.)

## 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.

## The Minnesota Supreme Court Rules of Decorum

Adopted October 15, 1996

### TEXT OF RULES

#### Rule 1:

The flags of the United States and the State of Minnesota shall be displayed at all times while the court is in session.

#### Rule 2:

No tobacco in any form, food or drink shall be permitted in the courtroom.

#### Rule 3:

No hats, caps or other headgear shall be worn in the courtroom. Overcoats and overshoes should be removed before entering the courtroom. No one may remain standing while court is in session.

#### Rule 4:

No signs or banners are allowed in the courtroom. There shall be no demonstrations of any kind in the courtroom while court is in session. There shall be no unnecessary conversation, loud whispering, newspaper or magazine reading in the courtroom while court is in session. In addition, pagers and cellular telephones must be turned off before entering the courtroom gallery. Any distracting or disconcerting activity will be grounds for removal from the courtroom.

#### Rule 5:

Tape recorders, video cameras and still cameras are prohibited from the courtroom without the prior consent of the Court. All public media-related equipment to be utilized during court proceedings, may be set up 45 minutes before court begins. Any equipment not set up 15 minutes before court begins, will not be allowed into the courtroom. No microphone wire or camera cable shall obstruct access to or egress from the courtroom or the podium.

#### Rule 6:

Children must be under the control and supervision of an adult at all times.

#### Rule 7:

Spectators in the gallery must remain seated during arguments. Spectators may leave or enter the court during times when the attorneys are approaching or leaving the podium.

#### Rule 8:

At the opening of each court day, the Court Marshal shall, by rap of the gavel, direct all present to stand, and shall clearly and distinctly say:

"All rise for the honorable justices of the Supreme Court of the state of Minnesota."

#### Rule 9:

It shall be the duty of the Court Marshal to maintain order at all times as attorneys and the public assemble in the courtroom. This duty shall include removing persons for distracting or discordant behavior, admitting persons to the courtroom and directing them to seats, and refusing admittance to the courtroom when the courtroom is filled to its seating capacity.

**Rule 10:**

Lawyers are officers of the court and shall at all times uphold the honor and maintain the dignity of the profession, maintaining at all times a respectful attitude toward the court and opposing counsel.

**Rule 11:**

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. They must check in with the Court Marshal and be prepared to begin whenever they are called. (Case Dispositional Procedures - Oral Arguments, Minn. R.Civ.App.P.)

**Rule 12:**

All lawyers and court personnel shall wear appropriate business attire to the courtroom.

**Rule 13:**

All lawyers accompanied by clients shall advise their clients of all of the formalities of the courtroom and courtroom appearances.

## **Special Rules of Practice for the Minnesota Court of Appeals**

Effective October 25, 1991

### **TABLE OF HEADNOTES**

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#### **Rule**

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- 2 Oral Argument
- 3 Panels
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- 5 Circulation of Opinions
- 6 Opinion Issuance
- 7 Procedures After Decision
- 8 Motion Procedure
- 9 Criminal Appeals
- 10 Recusal of Judges
- 11 Amicus Briefs
- 12 Remand from the Supreme Court
- 13 Full Court Conference

Revisor's Note: Former Rule 10, relating to the review of administrative rules, and the corresponding form, titled Petition for Declaratory Judgment, were deleted by court order dated October 1, 1999. The court order renumbered the subsequent rules.

### **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.<sup>1</sup> 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*.

<sup>1</sup> 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. 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, setting out the reasons for the request. Application of the principles governing recusal is ultimately the responsibility of the individual judge. If a judge recuses, the Chief Judge names a replacement to the panel.

(Adopted effective October 25, 1991; amended effective October 23, 1996; renumbered effective October 1, 1999.)

### **RULE 11. 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; renumbered effective October 1, 1999.)

### **RULE 12. 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; renumbered effective October 1, 1999.)

### **RULE 13. 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; renumbered effective October 1, 1999.)

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