

## **FILING AN UNEMPLOYMENT APPEAL**

The purpose of this packet is to help unemployment-benefits applicants file an appeal without an attorney. Staff from the Clerk of the Appellate Courts office can answer basic questions, but they cannot fill out the forms or give legal advice.

There are three parts to this packet: (1) an explanation of the appeal process; (2) a checklist; and (3) forms you need for the appeal.

### **PRO SE UNEMPLOYMENT APPEAL PACKET EXPLANATION**

These materials are important if you wish to appeal a final decision of the unemployment law judge (ULJ) regarding a claim for unemployment benefits. The ULJ's order *ruling on a request for reconsideration* is the final decision. You cannot appeal the ULJ's initial decision unless a timely request for reconsideration was made.

If you are or will be represented by an attorney, please give him or her this material.

If you will be handling the appeal yourself, please read this material carefully. It includes copies of the forms you need.

### **THE PARTIES**

You, as the appealing party, are called the "relator." The other parties are called the "respondents." The respondents are:

- (1) The employer (if any), and
- (2) The Department of Employment and Economic Development (the department).

### **MINNESOTA RULES OF CIVIL APPELLATE PROCEDURE**

These rules apply to all appeals. While we have given you a simplified version of what you need to do, you should read the rules yourself for more information. You can find these rules at the Minnesota State Law Library, Room G25, Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155 (651-296-2775), at public libraries, and at the state courts website: [www.mncourts.gov](http://www.mncourts.gov)

Here is more information about some of the terms we use.

### **FILING**

"Filing" means giving documents to the office of the clerk of appellate courts. You may file documents by hand-delivering them to the clerk's office or by placing the documents in the United States mail, first-class postage prepaid, within the time required to file the document.

**If you do not file the petition for the writ of certiorari within 33 days after the ULJ's decision on reconsideration was mailed, or within 30 days after the decision was sent to you by electronic transmission, your appeal will be dismissed. This time cannot be extended.**

### **SERVICE**

You must give a copy of all appeal papers to all respondents (usually the employer and the department) either personally or by mail. This is called "service." Service by mail is made by depositing the papers in the United States mail, first-class postage prepaid, within the appeal period. If you decide to have the papers served personally, this may be done by the sheriff or another person 18 years or older who is not a party to the appeal. Because you are a party to the appeal, **you may not personally serve the papers yourself on a respondent who does not have an attorney. If a respondent has an attorney, you may personally serve the attorney. The petition for the writ of certiorari must be served on either the ULJ or the Commissioner of Employment and Economic Development, and on the employer.**

**If you do not serve the petition for the writ of certiorari on all of the respondents within 33 days after the ULJ's decision was mailed, or within 30 days after the decision was sent to you by electronic transmission, your appeal will be dismissed. This time cannot be extended.**

### **TIME PERIODS**

You have 30 days to appeal from the time the review judge's decision on reconsideration was *sent* to you. If the ULJ's decision was mailed to you, you have an extra three days to appeal. If the ULJ's decision was sent to you by electronic transmission, then you do not get the extra three days for mailing.

To figure out when the period of time to file and serve a document ends, apply the following rules. When you start counting the days, do not count the day that the event occurred that started the time period, but start counting the next day. For example, if the decision was mailed to you, the day after the ULJ's decision was mailed to you is the first day of your 33-day appeal period. If the decision was sent by electronic transmission, the day after the decision was transmitted is the first day of the 30-day appeal period. Continue counting calendar days. Do not skip weekends or legal holidays, UNLESS the last day of the period falls on a Saturday, Sunday, or legal holiday. Then the deadline is the next business day.

Legal holidays for the appellate courts are New Year's Day (January 1); Martin Luther King, Jr.'s birthday (the third Monday in January); Presidents' Day (the third Monday in February); Memorial Day (the last Monday in May); Independence Day (July 4); Labor Day (the first Monday in September); Veterans' Day (November 11); Thanksgiving Day (the fourth Thursday in November); the Friday after Thanksgiving; and Christmas Day (December 25).

The appellate courts are open on Christopher Columbus Day, which falls on the second Monday in October. However, Christopher Columbus Day is a legal holiday for the purpose of determining a time period. If the last day of the period falls on Christopher Columbus Day, then the period is extended until the next day.

## **AFFIDAVIT OF SERVICE**

You must file proof with the Clerk of the Appellate Courts showing that you have served the appeal papers and briefs on respondents. This can be done by filing a completed affidavit of service. (There is a form in this packet.) You must complete this form and have it notarized. The Clerk of the Appellate Courts can notarize the affidavit at no charge, but you must appear personally at that office and sign the affidavit at that time. Most banks also have a notary who can do this for a small fee. An affidavit is required for *every* document you file with the court, to prove that you have given copies to all the other respondents. You may file one affidavit listing multiple documents if you serve those documents on the same date and on the same parties. We have given you only one copy of this form, so you will have to make extra copies.

## **FILING FEES AND COST BONDS**

An applicant appealing the denial of unemployment benefits does not have to pay a filing fee or provide a cost bond. (An employer who appeals must pay a \$550 fee and furnish a cost bond in the amount of \$500 (*see* Rules 103.01, subd. 1, and 107 of the Minnesota Rules of Civil Appellate Procedure), to be filed with the Department of Employment and Economic Development.)

## **THE RECORD**

The record that the court of appeals will look at includes the evidence submitted at the evidentiary hearing before the ULJ, and the new evidence, if any, submitted to the ULJ on reconsideration, if a new evidentiary hearing was requested. The department will send the record to the court of appeals. You may not give new evidence on appeal without first getting permission from the court of appeals. The court of appeals generally does not accept new evidence.

If testimony was given at the evidentiary hearing, the department will prepare a transcript of the audiotape of the hearing free of charge. A transcript is a typed copy of what all of the parties and the ULJ said at your hearing. If you request it, the department will also send you a copy of all exhibits introduced into evidence.

## **BRIEFS**

The brief is your written argument on appeal. You must file seven copies of the brief with the Clerk of the Appellate Courts, and serve two copies on each of the respondents. *See* Minn. R. Civ. App. P. 131.03. You must also file proof of service for the brief. (See above.)

The department will prepare an itemized list of the contents of the record, which may include a transcript of the evidentiary hearing before the ULJ. The department is required to serve on all parties the itemized list of the contents of the record within 30 days after service of the petition for certiorari (the appeal papers) or 14 days after delivery of the transcript, whichever is later. Your brief is due within 30 days after the department serves the itemized list of the contents of the record on you. If the department serves the itemized list by mail, then you have 33 days after the date that the list was mailed to serve and file your brief. *See* Minn. R. Civ. App. P. 115.04, subd. 4.

As the relator (appealing party), you must file a brief, or your appeal will be dismissed. *See* Minn. R. Civ. App. P. 142.02. You may file either a formal or an informal brief, or you may use a memorandum of law that you gave to the ULJ with a short letter argument. Most claimants for benefits file informal briefs.

A formal brief includes a table of contents, a statement of the legal issues, a statement of the case and the facts, an argument, a conclusion, an addendum, and an appendix. *See* Minn. R. Civ. App. P. 128.02. A formal brief must be bound. *See* Minn. R. Civ. App. P. 132.01 (includes the supreme court's order regarding acceptable types of binding).

An informal brief may be stapled, and must include a written argument and appendix. *See* Minn. R. Civ. App. P. 128.01, subd. 1.

A memorandum and short letter argument may also be stapled and must include an appendix. *See* Minn. R. Civ. App. P. 128.01, subd. 2. (This may only be filed if you submitted a written memorandum of law to the ULJ. You may then submit as your brief that memorandum to the ULJ *and* a short letter argument that addresses the ULJ's decision.)

Regardless of the type of brief you file, you must include an appendix to your brief that contains, at a minimum, a copy of the petition and writ of certiorari and a copy of the ULJ's decision that you are appealing. *See* Minn. R. Civ. App. P. 130.01.

### **TIME EXTENSIONS OR OTHER REQUESTS**

If you cannot serve and file your brief within 30 days and you need more time, or if you want any other relief from the court, you must serve and file a written motion asking the court for the relief you need. Your motion should be made before the deadline you wish to extend. The requirements for a motion are found in rule 127. The motion must state the relief requested and your reasons for the request. You must serve the written motion on the department and the employer and file an affidavit of service for the motion together with four copies of the motion. **Caution: As previously stated, the court of appeals cannot extend the time to serve and file the petition for writ of certiorari.**

### **HOW YOUR CASE WILL BE DECIDED**

After the parties have filed their briefs, your appeal will be submitted to a panel of the Court of Appeals consisting of three judges. If you are not represented by an attorney, the Court of Appeals will not allow oral argument by any party. *See* Minn. App. Spec. R. Pract. 2. You will receive notice of the date of oral argument or nonoral consideration by the panel, and the names of the judges assigned to decide your case.

After the appeal has been submitted to the panel, the court of appeals will issue a written decision within 90 days. If you are dissatisfied with the result, you have 30 days after the filing of the court of appeals decision to file a petition requesting review by the Minnesota Supreme Court. *See* Minn. R. Civ. App. P. 117.

The mailing address, phone number, and work hours for the clerk's office are:

Clerk of the Appellate Courts  
305 Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Boulevard  
St. Paul, MN 55155

(651) 296-2581

8:00-4:30 Monday - Friday

Web address: [www.mncourts.gov](http://www.mncourts.gov)

## CHECKLIST

These are the steps that you must follow to begin your appeal. Please follow the directions exactly. If you do not do so, you may miss an important step and you could lose your opportunity to appeal.

1. **First, fill out the following forms, filling in all the blanks.** We have given you a copy of each of these forms. If you do not fill out all the blanks, we may have to send the forms back to you and it might then be too late for you to appeal.

\_\_\_\_\_ Petition for writ of certiorari  
(This is the form that tells us that you want to appeal)

\_\_\_\_\_ Writ of certiorari  
(This is the form that we will sign and give back to you)

\_\_\_\_\_ Statement of the case  
(This is just an outline of your case that **summarizes** the reasons why you think the decision by the ULJ was wrong. You can make detailed arguments in the brief that you will file with this court later. It is not necessary to attach any other documents to this form. If you want, you can attach documents that are already part of the record to your brief.)

2. **Next, you must file with Clerk of the Appellate Courts the following completed forms within 33 days after the date the ULJ's decision on reconsideration was mailed to you, or within 30 days after the ULJ's decision was sent by electronic transmission.** "Filing" means that you must mail or hand-deliver these documents to this office. We are located at Clerk of the Appellate Courts Office, 305 Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., Suite 305, St. Paul, MN 55155. **If you do not file the petition for writ of certiorari within 33 days after the ULJ's decision on reconsideration was mailed, or within 30 days after the decision was sent by electronic transmission, your appeal will be dismissed.**

\_\_\_\_\_ Petition for writ of certiorari

\_\_\_\_\_ Writ of certiorari

\_\_\_\_\_ One original statement of the case and one copy of the statement of the case

\_\_\_\_\_ A copy of the ULJ's decision that you are appealing

3. **In addition, you must serve the following on all respondents within 33 days after the ULJ's decision on reconsideration was mailed to you, or within 30 days after the decision was sent to you by electronic transmission.** "Serving" means that you must mail these papers or have them given in person to the respondents. **If you do not serve the petition for the writ of certiorari within 33 days after the date the ULJ's decision on reconsideration was mailed to you, or within 30 days after the decision was sent to you by electronic transmission, your appeal will be dismissed.** The respondents are the Department of Employment and Economic Development *and* the employer.

\_\_\_\_\_ The Department of Employment and Economic Development  
E-200 First National Bank Building  
332 Minnesota Street  
St. Paul MN 55101

\_\_\_\_\_ The employer

If the employer has an attorney, you must serve the attorney, either by mail or personally. If the employer does not have an attorney, you must serve the employer. You can do so by mail, but you cannot personally hand deliver the documents to the employer. If you decide to have the documents hand-delivered, rather than mailed, you must have the sheriff or a person 18 years or older serve them.

**Serve the department (either the ULJ or the commissioner) and the employer with the following completed forms:**

\_\_\_\_\_ A copy of the petition for writ of certiorari

\_\_\_\_\_ A copy of the unsigned writ of certiorari

\_\_\_\_\_ A copy of the statement of the case

\_\_\_\_\_ A copy of the ULJ's decision that you are appealing

4. **After serving the documents listed in step 3, you must promptly file affidavits of service with the Clerk of the Appellate Courts for all documents.** An affidavit of service is a sworn, notarized statement saying that you served the documents. This packet includes one copy of an affidavit of service, and you must make any more copies that you need. The clerk's office can notarize the affidavit of service at no charge. Most banks also have a notary who can notarize the affidavit of service for you for a small charge.

\_\_\_\_\_ Affidavits of service to prove that you have served the department and the employer with the petition for the writ, the unsigned writ of certiorari, the statement of the case, and a copy of the ULJ's decision that you are appealing.

5. **After you file your papers with Clerk of the Appellate Courts, we will sign the writ of certiorari that you gave us. Once the clerk's office signs the writ, it is considered "issued." We will then give you copies of the issued writ. You must then also serve a copy of the issued writ on the following respondents:**

\_\_\_\_\_ The Department of Employment and Economic Development

\_\_\_\_\_ The employer

6. **You must also serve the following documents on the Minnesota Attorney General at the following address:**

900 Bremer Tower  
445 Minnesota Street  
St. Paul, MN 55101

\_\_\_\_\_ A copy of the completed petition for writ of certiorari

\_\_\_\_\_ A copy of the signed writ of certiorari.

7. **Your next step is to file a brief with this court.** A brief is a written argument explaining why you believe the decision by the ULJ was wrong.

**If testimony was given at the hearing before the ULJ,** the department will mail you a copy of the transcript of your hearing. A transcript is a typed copy of what all of the parties and the ULJ said at your hearing.

The department will send you an itemized list of the contents of the department's record. Your brief is due within 30 days after the department sends you the itemized list. If the department sends the list by mail, then your brief is due 33 days after the date that the list was mailed.

\_\_\_\_\_ File *seven* copies of your brief with the Clerk of the Appellate Courts Office.

\_\_\_\_\_ Serve *two* copies of your brief on the Department of Employment and Economic Development.

\_\_\_\_\_ Serve *two* copies of your brief on the employer (if it does not have an attorney), or on the employer's attorney.

STATE OF MINNESOTA

IN COURT OF APPEALS

CASE TITLE:

\_\_\_\_\_  
**Relator (your name)**

**PETITION FOR WRIT OF  
CERTIORARI**

vs.

COURT OF APPEALS #:

1) \_\_\_\_\_,  
**Respondent (employer's name),**

DEPARTMENT OF  
EMPLOYMENT & ECONOMIC  
DEVELOPMENT #:

2) Department of Employment & Economic  
Development,  
Respondent

DATE OF DECISION:

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

\_\_\_\_\_ (your name) hereby petitions the Court of Appeals  
for a Writ of Certiorari pursuant to Minn. Stat. § 268.105, subd. 7, to review a decision of the  
unemployment law judge issued on the date noted above, upon the grounds that \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Summarize why you are appealing. You will make a detailed argument in your brief that you  
will be filing later.)

**DATED:** \_\_\_\_\_

\_\_\_\_\_  
**(Signature of you or your attorney)**

\_\_\_\_\_  
**(Print your name)**

\_\_\_\_\_  
**(Address)**

\_\_\_\_\_  
**(Telephone number)**

STATE OF MINNESOTA

IN COURT OF APPEALS

CASE TITLE:

\_\_\_\_\_

**Relator (your name)**

**WRIT OF CERTIORARI**

vs.

COURT OF APPEALS #:

1) \_\_\_\_\_,  
**Respondent (employer's name),**

DEPARTMENT OF  
EMPLOYMENT & ECONOMIC  
DEVELOPMENT #:

2) Department of Employment & Economic  
Development,  
Respondent.

DATE OF DECISION:

TO: Department of Employment & Economic Development:

You are hereby ordered to return to the Court of Appeals and serve on all parties in accordance with rule 115.04, subdivision 3, within 30 days after service of the petition or 14 days after delivery of a transcript, whichever is later, an itemized statement of the record, exhibits and proceedings in the above-entitled matter so that this court may review the decision of the unemployment law judge issued on the date noted above.

You are further directed to retain the actual record, exhibits, and transcript of proceedings (if any) until requested by the Clerk of the Appellate Courts to deliver them in accordance with rule 115.04, subdivision 5.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the respondent Department of Employment & Economic Development and upon the respondent or its attorney at:

\_\_\_\_\_

\_\_\_\_\_  
**(address of employer or its attorney if it has one)**

Proof of service shall be filed with the Clerk of the Appellate Courts.

DATED: \_\_\_\_\_

Clerk of the Appellate Courts

By: \_\_\_\_\_

Assistant Clerk

STATE OF MINNESOTA

IN COURT OF APPEALS

CASE TITLE:

\_\_\_\_\_,  
**Relator (your name)**

**STATEMENT OF CASE OF  
RELATOR**

vs.

COURT OF APPEALS #:

\_\_\_\_\_,  
**Respondent (employer's name),**

DEPARTMENT OF  
EMPLOYMENT & ECONOMIC  
DEVELOPMENT #:

Department of Employment & Economic  
Development,  
Respondent.

1. Agency of case origination.  
Department of Employment and Economic Development
2. Jurisdictional statement.  
Certiorari appeal.  
Statute authority authorizing certiorari appeal and fixing time limit for appeal:  
Minn. Stat. § 268.105, subd. 7(a)
3. State type of litigation and designate any statutes at issue.  
Unemployment insurance, Minn. Stat. ch. 268
4. Short description of issues raised to the unemployment law judge:  
  
\_\_\_\_\_  
\_\_\_\_\_.
5. Short description of issues you are raising in this appeal. (This is meant to be a short outline of your argument. You can make a detailed argument in the brief you will file with this court later.)  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

6. List any other related appeals.

\_\_\_\_\_

7. Was testimony given at the hearing conducted by the unemployment law judge?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

If testimony was given, the Department of Employment and Economic Development will send you a transcript. If no testimony was given, there is no transcript to send.

8. Oral argument.

Only attorneys can make oral arguments. If you do not have an attorney, neither you nor respondents will have oral argument.

If you have an attorney, is oral argument requested? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, state where oral argument is requested: \_\_\_\_\_

9. Identify the type of brief to be filed:

( ) Formal brief under rule 128.02

A formal brief includes a table of contents, a statement of legal issues, a statement of the case, facts, an argument, a conclusion, and an appendix (*see* rule 128.02). A formal brief must be bound (*see* rule 132.01).

( ) Informal brief under rule 128.01, subd. 1

An informal brief contains a concise statement of your argument. It may be stapled.

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

All briefs must contain an appendix that includes at least a copy of the petition and writ of certiorari and a copy of the decision that you are appealing.

10. Names, addresses, zip codes and telephone numbers of relator and respondent (or attorneys, if any).

Relator:

Print name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_

Employer (or attorney):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Atty. Reg. #: \_\_\_\_\_

DEPARTMENT OF EMPLOYMENT & ECONOMIC DEVELOPMENT

E200 First National Bank Building

332 Minnesota Street

St. Paul, MN 55101

MINNESOTA ATTORNEY GENERAL

900 Bremer Tower

445 Minnesota Street

St. Paul, MN 55101-2127

**You must make as many copies of this form as you need.**

STATE OF MINNESOTA  
IN COURT OF APPEALS

CASE TITLE:

\_\_\_\_\_  
**Relator (your name)**

COURT OF APPEALS #

vs.

**RELATOR'S AFFIDAVIT  
OF SERVICE BY MAIL**

1) \_\_\_\_\_,  
**Respondent (employer's name),**

2) Department of Employment & Economic  
Development,  
Respondent

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

I, \_\_\_\_\_ (**Your name**), being first duly sworn, depose and say that on \_\_\_\_\_ (**Date**), I served the attached petition and writ of certiorari and the statement of the case, on the following parties by mailing to each of them a copy thereof, enclosed in an envelope, postage pre-paid, and by depositing the same in the United States Mail, directed to said party as follows:

1. \_\_\_\_\_ (**Name & address of employer OR  
employer's attorney.**)  
\_\_\_\_\_  
\_\_\_\_\_

2. **Department of Employment & Economic Development  
E200 First National Bank Building  
332 Minnesota Street  
St. Paul, MN 55101**

I have also provided a copy of the Petition and Writ to the  
**Minnesota Attorney General  
900 Bremer Tower  
445 Minnesota Street  
St. Paul, MN 55101-2127**

\_\_\_\_\_  
**(Your signature)**

**Dated:** \_\_\_\_\_

**Notary:** \_\_\_\_\_