Minnesota Rules of Civil Appellate Procedure

With amendments effective July 1, 2016

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.

Subd. 7. "Signed" with reference to a document filed or served using the appellate courts' electronic filing and service system requires that the document bear a facsimile of the filer's signature or a typographical signature of an attorney or declarant in the form: /s/ Pat L. Smith.

Such a document shall be deemed to be "signed" by the filer for all purposes, and any similar indication that the document has been signed shall be treated as a "signature." Notarization shall be accomplished in accordance with Rule 14.04(c) of the Minnesota General Rules of Practice.

(Amended effective July 1, 2014.)

Advisory Committee Comment—2014 Amendments

Subdivision 7 of Rule 101.02 is new, implementing part of the electronic filing and service system for the appellate courts. It is substantially similar to Rule 11.01 of the Minnesota Rules of Civil Procedure, applicable in civil proceedings in the district courts. For documents filed using the appellate courts' electronic filing system, the electronically filed document is the original document. There is no requirement that a paper version be physically signed and retained, and such a paper duplicate should not be separately filed with the court, other than pursuant to a court order as referenced in Minn. R. Civ. App. P. 131.03.

This rule functions, in part, to thwart any claim that an electronically filed document is somehow not "signed" because there is no india-ink-on-parchment signed version of the document in the court file. An indication such as "[signed]" or "/s/" is sufficient both to comply with a requirement that a document be signed and to subject the filer to responsibility for that signing. See Minn. R. Civ. P. 11.01, Adv. Comm. Cmt.—2012 Amends.

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 with the notice of appeal, file the following with the clerk of the appellate courts:

(1) a copy of the judgment or order from which the appeal is taken,
(2) the statement of the case required by Rule 133.03, and
(3) a filing fee of $550.

The appellant shall at the same time also file a copy of the notice of appeal with the trial court administrator.

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 253D; 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 an applicant for unemployment insurance benefits pursuant to Minnesota Statutes, chapter 268.

(Amended effective July 1, 2014.)

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.

Advisory Committee Comment—2014 Amendments

Rule 103.01 is amended in several important ways. Together these changes will streamline the appellate process and make it easier to perfect appeals. First, the requirement for filing a certified copy of the trial court order or judgment from which the appeal is taken is modified to remove the certification requirement. The appellant must still provide a copy of the as-filed order or judgment, as the case may be, but it is no longer necessary that either be certified as authentic by the court administrator. The filing of these uncertified documents, however, does carry the implied representation of the filing party or counsel that they are indeed true and correct copies of the documents on file with the tribunal issuing them.

The second change is the removal of the requirement that a cost bond be provided. This change is a part of the amendment of Rule 107.

Only a single copy of any statement of the case need be filed.

A copy of the notice of appeal must be filed with the trial court administrator to alert the trial court to the pendency of an appeal. For this filing, the trial court's filing rules should be followed. Because this copy of the notice of appeal is filed with the district court, it is permissible under Rule 125.01(d), as adopted at the time of these amendments, to effect

service of it on other parties by any means authorized by the trial court rules. This rule permits service by the trial court e-filing system, which should be useful for documents that may be filed with the trial court using the same system. Because that service would not result in proof of service being transmitted to the appellate courts' electronic filing system, separate proof of service must be filed with the clerk of the appellate courts.

Rule 103.01, subdivision 3, is amended to conform the terminology in the rule to that of the statutes governing the listed proceedings. This change is not intended to change the procedure under the rule.

103.02. Joint Appeals; Related Appeals; Consolidated 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. Related Appeals. After one party timely files a notice of appeal, any other party may seek review of a judgment or order in the same action by serving and filing a notice of related appeal. The notice of related appeal shall specify the judgment or order to be reviewed. The notice of related appeal shall be accompanied by:

(a) a filing fee of $100,

(b) a copy of the judgment or order from which the related appeal is taken if different than the judgment or order being challenged in the original appeal, and

(c) a statement of the case.

A cost bond is not required unless ordered by the court.

Subd. 3. Consolidated Appeals. Related appeals from a single trial court action or appeals in separate actions may be consolidated by order of the appellate court on its own motion or upon motion of a party.

(Amended effective July 1, 2014.)

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 July 1, 2014.)

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 proceeding), 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.

Advisory Committee Comment—2009 Amendments

Rule 103.02 is amended to add a new subdivision 2 to establish a new procedure for filing of a cross-appeal or another related appeal after any party has filed a notice of appeal. This rule applies in civil cases, as the Minnesota Rules of Criminal Procedure address the

right to file a cross-appeal in criminal cases. See Minn. R. Crim. P. 28.04, subd. 3. The new notice is denominated a "Notice of Related Appeal." See Appendix for form of Notice of Related Appeal (Form 103C). This procedure replaces the notice-of-review procedure formerly established by Rule 106. Existing subdivision 2 is renumbered as subdivision 3 and is amended to provide for consolidation of related appeals from a single trial court proceeding. This consolidation may be ordered by the court based on information in the statement of the case or may be ordered upon motion of any party to any related appeal.

Advisory Committee Comment—2014 Amendments

The change to Rule 103.02, subdivision 2, is simply to remove the requirement for certified copies of the orders or judgment appealed from, and is a companion change to the amendment to Rule 103.01, subdivision 1. The amended rule continues to require providing copies of the judgments or orders; it is no longer necessary that they be certified by the trial court administrator.

Similarly, only a single copy of the statement of the case is required under this rule, and a cost bond is not normally required. These changes conform the procedure for a party filing a notice of related appeal to that for the appellant.

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 and Notice of Related 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 as a matter of law 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 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)-(e).

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 related appeal pursuant to Rule 103.02, subdivision 2.

Subd. 4. Multiple Appeals. After one party timely files a notice of appeal, any other party may serve and file a notice of related appeal within 14 days after service of the first notice of

appeal, or within the time otherwise prescribed by subdivisions 1 and 2 of this rule, whichever period ends later.

(Amended effective January 1, 2010.)

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.

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.

Advisory Committee Comment—2006 Amendment

Rule 104.01, subd. 2(a) is amended to reflect the new name for a motion challenging the legal sufficiency of a verdict under Minn. R. Civ. P. 50.02. As a result of the amendment to Minn. R. Civ. P. 50.02, the former "motion for directed verdict" and "motion for judgment notwithstanding the verdict" are both now referred to as motions for "judgment as a matter of law." Rule 104.01, subd. 2(a) is amended to reflect this nomenclature. During the short transition period during which timely appeals might be taken from cases where either motions for judgment notwithstanding the verdict or motions for judgment as a matter of law may have been filed after the trial court decision, the court should consider the two motions fungible in determining whether an appeal is timely.

Advisory Committee Comment—2008 Amendments

The absence of motions for reconsideration or rehearing in the list of motions given tolling effect in Rule 104.01, subd. 2, is intentional. Neither requesting leave to file such a motion (as contemplated by Minn. Gen. R. Prac. 115.11), the granting of that request so the motion can be filed, nor the actual filing of the motion will toll or extend the time to appeal. A party seeking to proceed with a motion for reconsideration should pay attention to the appellate calendar and must perfect the appeal regardless of what progress has occurred with the reconsideration motion.

Failure to file a timely appeal may be fatal to later review. If a timely appeal is filed notwithstanding the pendency of a request for reconsideration in the trial court, the court of appeals can accept the appeal as timely, but stay it to permit consideration of the reconsideration motion. See Marzitelli v. City of Little Canada, 582 N.W.2d 904, 907 (Minn. 1998), where the court stated:

> *We note that requiring parties to file a timely appeal while a post-trial motion is pending does not deny the parties the opportunity to have the district court decide their motions. Rather, the parties may apply to the appellate court for a stay on the appeal to give the district court time to decide the pending post-trial motion. This procedure not only preserves the time limitation on appeals, but also helps to ensure that the district court hears and rules on the motion in an expedient manner. This is particularly important when the case involves a special proceeding. In such cases, the time for appeal is abbreviated to ensure "speedy and summary determination of matters passed upon by the court[.]"*

(Footnotes omitted.)

Advisory Committee Comment—2009 Amendments

Subdivision 4 of Rule 104.01 is a new provision. It is modeled on Fed. R. App. P. 4(a)(3) and, for respondents, replaces the notice of review under former Rule 106 of these rules. The amended rule explicitly recognizes that a party may elect to appeal an issue only after learning that another party has appealed. Where a prior appeal has been filed and remains pending, a subsequent notice of appeal should be denominated "Notice of Related Appeal" and will suffice to raise any issue arising from the same trial court action. See Appendix for form of Notice of Related Appeal (Form 103C). The rule permits a party to serve and file a subsequent notice of related appeal within 14 days of the service of the first notice of appeal by another party, even if that occurs on the last day to appeal; it does not shorten the normal appeal period even if a party serves and files an appeal on the first possible day.

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.)

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.

Petitioner must, within 30 days of the filing of the order:

1. serve a copy of the petition on the adverse party;
2. file the petition with the clerk of the appellate courts; and
3. pay a filing fee of $550 to the clerk of the appellate courts.

Petitioner shall also at the same time file a copy of the petition with the trial court administrator and file proof of that filing with the clerk of the appellate courts.

(Amended effective July 1, 2014.)

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 4,000 words, exclusive of the caption, signature block, and addendum, 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 included in an addendum, which shall be prepared as prescribed in Rule 130.02.

Any adverse party may, within 5 days after service of the petition, serve and file with the clerk of the appellate courts a response to the petition, which shall not exceed 4,000 words, exclusive of the caption, signature block, and addendum. Any reply shall be served within 3 days after service of the response and shall not exceed 2,000 words. All documents may be typewritten in the form prescribed in Rule 132.02. No additional memoranda may be filed without leave of the appellate court.

A copy of the response and any reply shall also be filed with the trial court administrator, and proof of that filing shall be filed with the clerk of the appellate courts.

The petition and any response or reply shall be accompanied by a Certificate of Document Length.

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

(Amended effective July 1, 2016.)

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.

Advisory Committee Comment—2016 Amendments

Rule 105 is amended to re-define the length limit to 4,000 words rather than the current five pages for petitions and responses, and 2,000 words rather than 5 pages for replies. This change, coupled with the requirement that a 13-point font be used, will have a practical effect of permitting petitions that are slightly longer, but will be more easily read, both in paper format and on computer screens.

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 then proceed as though the appeal had been noticed by filing an appeal.

The statement of the case shall be filed within 5 days of the order granting the petition. The time fixed by these rules for filing and serving the briefs shall run from the date of the entry of the order granting permission to appeal.

(Amended effective July 1, 2014.)

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.

Advisory Committee Comment—2014 Amendments

Rule 105 is amended to accommodate the changes brought about by use of electronic service and filing in the appellate courts. As part of these changes, and in anticipation of the expanding reliance on electronic records by the appellate courts, the courts have determined that multiple copies of many documents are no longer required.

Throughout these rules, the requirement for filing a statement of the case is now limited to a single copy, whether filed in electronic form or on paper. The amendment to Rule 105.03 applies this change to filings for discretionary review.

By amendment to Rule 107, cost bonds are not routinely required for appeals under these rules, and are not currently required for petitions under this rule. Rule 105.03 removes the requirement for a cost bond in the event the petition is granted.

The amended rule clarifies the duty to "provide" a copy of the petition to the trial court, requiring that it be filed with the trial court administrator. The same is required for any response or reply to the petition. Because this copy of the petition is filed with the trial court, it is permissible under Rule 125.01(d), as adopted at the time of these amendments, to effect service of it on other parties by any means authorized by the trial court rules. This rule permits service by the trial court e-filing system, which should be useful for documents that may be filed with the trial court using the same system. Because that service would not result in proof of service being transmitted to the appellate courts' electronic filing system, separate proof of service must be filed with the clerk of the appellate courts.

Only a single copy of the petition and addendum need be filed. The time for a reply has been extended from 2, to 3, days after service of a response.

Rule 105.03 is amended to remove a provision relating to timing for transmitting the record to conform the rule to practice within the appellate courts. The date for transmitting the record is not currently calculated from the date of granting the petition, so this provision is deleted.

Rule 106. Respondent's Right to Obtain Review

After an appeal has been filed, respondent may obtain review of a judgment or order entered in the same underlying action that may adversely affect respondent by filing a notice of related appeal in accordance with Rule 103.02, subdivision 2, and Rule 104.01, subdivision 4.

(Amended effective January 1, 2010.)

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.

Advisory Committee Comment—2009 Amendments

Rule 106 is amended to abolish the former notice of review, replacing it with the notice of related appeal for all situations where a respondent seeks appellate review of a trial court decision. The amendment avoids the limitations of the former notice of review that could be fatal to an attempt by a respondent to seek review. See, e.g., Leaon v. Wash. County, 397 N.W.2d 867, 872 (Minn. 1986) (holding that a respondent seeking appellate relief against parties other than the appellant may obtain review only by separate notice of appeal, but nonetheless considering issue raised improperly). As a practical matter, the amended rule serves only to give notice to a respondent that the proper procedure is no longer contained in this rule but is now found in Rule 103.02, subdivision 2, as to procedure, and Rule 104.01, subdivision 4, as to timing.

The amended rule is intended to create a single procedure that will allow a respondent seeking review to file a notice of related appeal. Under the amended rule a notice of related appeal should suffice to permit a respondent to obtain appellate review of any issues arising in the same trial court case but does not foreclose the right of any party to proceed by separate notice of appeal.

The new procedure is not intended to change the scope of appellate review. This notice of related appeal procedure is not meant to expand what can be reviewed on appeal or to limit that review. For example, the defendant's filing of an appeal under Minn. R. Crim. P. 28.02 does not currently create a right to file a cross-appeal or notice of review; and this amendment should not affect that result. See State v. Schanus, 431 N.W.2d 151, 152 (Minn. App. 1988). The court of appeals has recognized that the former notice of review could be used to seek review of an otherwise non-appealable order. See Kostelnik v. Kostelnik, 367 N.W.2d 665, 669 (Minn. App. 1985); see also Arndt v. Am. Family Ins. Co., 394 N.W.2d 791, 793-94 (Minn. 1986) (citing Kostelnik with apparent approval). The committee intends that the notice of related appeal be treated similarly and that an independent basis for jurisdiction not be required.

Rule 107. Bond or Deposit for Costs

107.01. No Cost Bond Required

Except as required by Rule 116 of these rules with respect to a certiorari appeal from the Workers' Compensation Court of Appeals, no cost bond is required for any appeal, unless ordered by the trial court on motion and for good cause shown.

(Amended effective July 1, 2016.)

Advisory Committee Comment—2016 Amendments

Rule 107.01 is amended to cross-reference the exception to the general rule that no cost bond is required for appeals unless ordered by the trial court. By statute, review of decisions of the Workers' Compensation Court of Appeals by certiorari requires a cost bond. See Minn. Stat. § 176.471, subd. 3. Rule 116.03, subdivision 2, recognizes this requirement and Rule 107 is not intended to modify it.

107.02. Request to Trial Court to Require a Cost Bond

The trial court may, upon motion of any respondent and a showing that extraordinary circumstances warrant the requirement of a cost bond, order that a bond be provided as follows:

(a) The bond shall be issued by a surety licensed to issue such bonds in the State of Minnesota and shall be conditioned upon the payment of all costs and disbursements awarded against the appellant on the appeal, not exceeding the amount of the bond, which shall not exceed $1,000;

(b) In lieu of a required bond, the appellant may deposit the required amount with the trial court administrator as security for payment; and

(c) The court may require the bond to be filed when the notice of appeal is filed, or within 10 days of the order requiring a bond, whichever date is later.

(Amended effective July 1, 2014.)

107.03. Cases For Which A Cost Bond May Not Be Required

The trial court may not require a bond in the following cases:

(a) a criminal case;
(b) a case arising in juvenile court;
(c) a proceeding pursuant to Minnesota Statutes, chapter 253B or 253D;
(d) when the appellant has been authorized to proceed in forma pauperis pursuant to Rule 109;
(e) when the appellant is the state or a governmental subdivision of the state or an officer, employee or agency thereof;
(f) when the appellant is a party to a public assistance appeal pursuant to Minnesota Statutes, chapter 256; or
(g) when the appellant is an applicant for unemployment benefits pursuant to Minnesota Statutes, chapter 268.

(Amended effective July 1, 2014.)

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.

Advisory Committee Comment—2014 Amendments

The change in Rule 107.01 removes the requirement of a cost bond for most appeals. The respondent may still ask the district court to require a cost bond, but must make a motion supported by a showing of good cause for the requirement of a bond. This amendment does not change the process for taxation of costs and disbursements, but the appellant is not normally required to incur the expense of obtaining and posting a bond (formerly set at $500). The rule requires that a respondent seeking to require a cost bond proceed by motion in the trial court and demonstrate good cause.

Rule 107.02 sets forth the requirements for a party seeking to obtain an order requiring the appellant to post a cost bond, drawn primarily from the language formerly part of Rule 107.01. Because the district court applies discretion to order a bond in extraordinary circumstances, the committee recommends that the amount of a bond be determined by the trial court, up to $1,000. The amount of bond should be lower in many cases under the new rules, as the measure of potential costs is the respondent's costs, not the appellant's, and all costs are expected to be reduced as fewer copies of paper briefs need to be prepared under the amended rules, the appendix is not allowed, and the cost of paper transcripts is not required for the court or for most parties.

Rule 107.03 retains the existing rule provisions that establish seven categories of cases for which a bond may not properly be required, even upon application to the trial court.

Rule 108. Stays Pending Appeal; Security

Rule 108.01. Effect of Appeal on Proceedings in Trial Court

Subdivision 1. Generally No Stay of Enforcement of Judgment or Order on Appeal. Except as otherwise provided by rule or statute, an appeal from a judgment or order does not stay enforcement of the judgment or order in the trial court unless that court orders relief in accordance with Rule 108.02.

Subd. 2. Suspension of Trial Court's Authority to Make Orders Affecting Judgment or Order on Appeal. Except in appeals under Rule 103.03(b), the filing of a timely and proper appeal suspends the trial court's authority to make any order that affects the order or judgment appealed from, although the trial court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from.

(Amended effective January 1, 2010.)

Advisory Committee Comment—2009 Amendments

Rule 108.01 is a new rule, but it is not intended to create new law. Its provisions are drawn from existing Rule 108.01, subdivision 1, and codify long-standing common law. Neither the filing of an appeal nor the posting of a cost bond required by Rule 107 stays the order or judgment appealed from. See, e.g., Anderson v. Anderson, 288 Minn. 514, 517, 179 N.W.2d 718, 721 (Minn. 1970) (stay available only upon filing of supersedeas bond, not cost bond). An appeal divests the trial court of jurisdiction over the matters appealed but only over matters necessarily involved in the order or judgment appealed from. See Spaeth v. City of Plymouth, 344 N.W.2d 815, 824 (Minn. 1984); State v. Barnes, 249 Minn. 301,

302-03, 81 N.W.2d 864, 866 (1957). The trial court retains jurisdiction over matters collateral to or supplemental to the order or judgment. See, e.g., Kellar v. Von Holtum, 605 N.W.2d 696, 700 (Minn. 2000) (trial court retained jurisdiction over motions for attorney fees and costs after appeal was perfected); Phillips-Klein Cos. v. Tiffany P'ship, 474 N.W.2d 370, 372 (Minn. App. 1991).

Rule 108.02. Motion for Stay or Injunction in Trial Court; Security

Subdivision 1. Motion in Trial Court. A party seeking any of the following relief must move first in the trial court:

(a) a stay of enforcement of the judgment or order of a trial court pending appeal;

(b) approval of the form and amount of security, if any, to be provided in connection with such a stay; or

(c) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending pursuant to Minn. R. Civ. P. 62.02.

Subd. 2. Security Required. Except as to cases in which a governmental body is the appellant or as otherwise provided by rule or statute, a trial court may grant the relief described in subdivision 1 of this rule if the appellant provides security in a form and amount that the trial court approves. The security provided for in this rule may be in one instrument or several. The appellant must serve proof of the security in accordance with Rule 125.02.

Subd. 3. Form of Security. The form of the security may be a supersedeas bond, a letter of credit, a deposit of cash or property with the trial court administrator, or any other form of security that the trial court approves as adequate under the circumstances. The appellant bears the burden of demonstrating the adequacy of any security to be given. Unless the trial court orders otherwise, a stay of an order or judgment does not take effect until any security ordered is filed and notice of filing is provided to all parties.

Subd. 4. Amount of Security.

(a) In all cases, the amount of the security, if any, must be fixed at such amount as the trial court determines will preserve the value of the judgment or order to the respondent during the pendency of appeal.

(b) When the judgment or order is for the payment of money not otherwise secured, the amount of the security normally must be fixed at such sum as will cover the unpaid amount of the judgment or order, costs on appeal (to the extent security for costs has not already been given under Rule 107), interest during the pendency of the appeal, and any other damages that may be caused by depriving the respondent of the right to enforce the judgment or order during the pendency of the appeal.

(c) When the judgment or order determines the possession, ownership, or use of real or personal property (such as in actions for replevin, foreclosure, or conveyance of real property), the amount of the security normally must be fixed at such sum as will compensate the respondent for the loss of use of the property during the pendency of the appeal, costs on appeal (to the extent security for costs has not already been given under Rule 107), interest during the pendency of the appeal, and any other damages (including waste) that may be caused by depriving the respondent of the right to enforcement of the judgment or order during the pendency of the appeal.

(d) If a party seeks to stay enforcement of only part of the judgment or order on appeal, the security must be fixed at such sum as the trial court determines is sufficient to secure that portion of the judgment or order on appeal.

Subd. 5. Providers Submit to Jurisdiction of District Court. If security is provided in the form of a bond, letter of credit, or undertaking with one or more sureties, each provider (whether surety, issuer, or other person liable for the security) submits to the jurisdiction of the district court. A provider's liability may be enforced on motion in the district court, served on the provider or providers in accordance with the Minnesota Rules of Civil Procedure as if the provider or providers were a party or parties to the action, without the necessity of an independent action.

Subd. 6. Review by Court of Appeals. On a motion under Rule 127, the Court of Appeals may review the trial court's determinations as to whether a stay is appropriate, the terms of any stay, and the form and amount of security pending appeal. The motion for review must:

(a) set forth the reasons for granting the relief requested and the facts relied on;

(b) include originals or copies of affidavits or other sworn statements supporting the facts that are subject to dispute; and

(c) include a copy of any submissions to the trial court, any order entered by the trial court relating to security pending appeal, and any other relevant parts of the record in the trial court.

If the Court of Appeals grants the motion, it may give relief on the same terms that a trial court may give relief under Rule 108.02, subds. 2, 3, and 4, and may require that any security that the appellant must provide be posted in the trial court.

(Amended effective January 1, 2010.)

Advisory Committee Comment—2009 Amendments

Rule 108.02, subdivision 1, requires that an application for stay of a judgment or order be brought in the trial court. Subdivision 6 of the rule provides for the trial court decision on the stay to be reviewed by the court of appeals and establishes the procedure for allowing the appellate court to conduct that review. Although the matter is raised by motion in the appellate court, the review is for abuse of fairly broad trial court discretion in these matters. See Axford v. W. Syndicate Inv. Co., 141 Minn. 412, 414, 168 N.W. 97, 97 (1918).

Subdivision 3 recognizes that security may be provided in any of several forms. The former rule's apparent limitation to a surety bond as security is expressly removed in favor of a wider array of potential security arrangements. In many cases, a deposit into court or posting of a letter of credit may be preferable and less expensive. Deposit into court is also allowed by statute as a means not only to stay enforcement of a judgment but to remove a docketed judgment's lien against real property. See MINN. STAT. § 548.12 (2008).

Subdivision 4 is intended to provide guidance to litigants and judges on the appropriate standards for the setting of required security for a stay. The rule addresses the amount of security required and establishes a guiding principle in subdivision 4(a) of an amount sufficient to preserve the value of the judgment or order during the appeal. For money judgments, the unpaid amount of the judgment, costs on appeal (less $500 if secured by a cost bond), and interest during the appeal will be the usual amount. This calculation is

consistent with the amount of security specified in statutes relating to supersedeas bonds. See MINN. STAT. § 550.36 (2008) (allowing stay upon posting of bond in the amount of judgment and interest or a lesser amount allowed by a court); MINN. STAT. § 548.12 (2008) (allowing a party to deposit money into court in amount of judgment, plus interest and costs). The determination of the amount of a bond ultimately lies in the discretion of the courts and can even be waived in its entirety, although the Minnesota Supreme Court has recognized that this discretion must be exercised sparingly. See No Power Line, Inc. v. Minn. Envtl. Quality Council, 262 N.W.2d 312, 330-31 (Minn. 1977).

Although not constrained by the rule, trial court discretion to determine the amount of required security may be limited by statute or common law. There are cases in which no stay may be available, regardless of the amount of security. Child custody orders take effect as directed by the trial court, notwithstanding an appealing party's willingness to post a bond for the purpose of obtaining a stay. See Petersen v. Petersen, 296 Minn. 147, 149, 206 N.W.2d 658, 659-60 (Minn. 1973) (stating, for the purpose of "future guidance of the bench and bar, . . . that orders changing the custody of children are not affected by supersedeas or cost bonds[,] but are to take effect at whatever date the trial court specifies"). For discussion of the factors to be weighed in deciding whether or not to change custody while an appeal is pending, see Clark v. Clark, 543 N.W.2d 685, 687 (Minn. App. 1996) (holding that trial court abused its discretion in denying a stay of custody modification order, in light of drastic changes to living arrangements that would result from modification and lack of endangerment or other exigency requiring immediate change). The court of appeals has addressed the criteria governing whether to grant a stay in the nature of an injunction pending a certiorari appeal in DRJ, Inc. v. City of St. Paul, 741 N.W.2d 141, 144 (Minn. App. 2007) (citing MINN. R. CIV. P. 62.02 as to injunctive relief pending appeal; two juvenile rules, one of which establishes a presumption that there will be no stay pending appeal and the other of which explicitly stays further proceedings; and a criminal rule that identifies criteria governing whether to grant release pending appeal). MINN. STAT. § 525.714 (2008) provides that the filing of an appeal stays a probate order, although an "additional bond" may be required to secure payment of any damages that may be awarded as a consequence of the appeal. But see In re Estate of Goyette, 376 N.W.2d 438, 441 (Minn. App. 1985) (holding that failure to post bond ordered by probate court precluded automatic stay of probate proceedings pending appeal).

Rule 108.03. 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 in accordance with these rules, and security has previously been given to stay proceedings in the trial court, the security shall remain in full force and effect during the pendency of review in the Supreme Court unless otherwise ordered by the Supreme Court. The Supreme Court may make any order appropriate to preserve the status quo or require security or additional security to any person who may suffer damage due to the continued stay of proceedings in the trial court during the pendency of review in the Supreme Court.

(Amended effective January 1, 2010.)

Advisory Committee Comment—2009 Amendments

Rule 108 is replaced by an entirely new rule. The changes are intended to provide greater guidance to parties, attorneys, and the courts on how stays of trial court orders and judgments can be obtained.

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.

Rule 109. Leave to Proceed *In Forma Pauperis*

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 any cost bond required under Rule 107 or Rule 116, and payment of costs for the transcript and reproducing briefs.

(Amended effective July 1, 2016.)

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 any required 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.

(Amended effective July 1, 2016.)

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.

(Adopted effective March 1, 2001.)

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.

(Adopted effective March 1, 2001.)

109.05. Suspension of Time Periods

The time periods for a party to pay the filing fee, post a cost bond if required under Rule 107 or Rule 116, and file a transcript certificate are suspended during the pendency of that party's timely motion to proceed *in forma pauperis*.

(Amended effective July 1, 2016.)

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. § 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. § 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.*

Advisory Committee Comment—2016 Amendments

Rule 109 is amended to clarify that, although the rules do not require the posting of a cost bond for most appeals, a bond may be required by the trial court upon motion, and is required by statute and Rule 116 for appeal proceedings seeking review of decisions of the Workers' Compensation Court of Appeals. In these circumstances where a bond may be required, the granting of an in forma pauperis motion would exempt the party from having to pay for the required bond.

Rule 110. The Record on Appeal

110.01. Composition of the Record on Appeal

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

(Amended effective July 1, 2014.)

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) If, within 10 days after the filing of a transcript certificate required by subdivision 2(a) of this rule, any party makes a written request to the designating counsel that a paper transcript be provided to that party in lieu of an electronic transcript, the appellant or designating attorney or party shall file with the clerk of the appellate courts an amended transcript certificate confirming that satisfactory financial arrangements have been made for the preparation of the transcript and any timely requested paper copy or copies. The amended transcript certificate shall not extend the estimated completion date.

(c) 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.

(d) The reporter's certificates required by sections (a) and (c) of this subdivision shall be filed electronically with the clerk of appellate courts using the appellate courts' e-filing and e-service system and shall be served on all attorneys and unrepresented parties. The reporter may, but need not, use that system to serve copies of these certificates on attorneys registered for use of the system, and need not provide separate proof of service for certificates served electronically.

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 formatted for 8½ by 11 inch or 8½ by 10½ inch paper with double spacing between each line of text 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. Compressed formats allowing more than one page of transcription to appear on a single page are not permitted for filed transcripts or for service on any party unless the party has consented to a compressed format.

In all appeals from the trial court, the court reporter shall file the transcript-with the trial court administrator in electronic format acceptable to the trial court administrator. The court reporter shall promptly transmit a paper copy of the transcript to the attorney for each party to the appeal separately represented who has timely requested a paper copy in lieu of an electronic copy. For all other parties, the court reporter shall promptly transmit an electronic copy of the transcript to the attorney for each party to the appeal separately represented. For civil appeals other than from

the district court, a paper transcript may be substituted for an electronic transcript if an electronic transcript is not available.

All copies must be legible. The reporter shall certify the correctness of the transcript.

The transcript shall 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 the portions that were replayed at trial, as part of the official trial transcript.

(Amended effective July 1, 2014.)

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.

Advisory Committee Comment--2008 Amendments

Rule 110.02, subd. 4, is amended to delete provision for filing a transcript in electronic form on 3½" diskettes. That format is obsolescent, and CD-ROM is the format best suited to this use and most convenient for the courts and the parties.

Advisory Committee Comment—2014 Amendments

The amendments in rule 110.02 serve a single purpose: to replace the presumed production of a paper transcript with an electronic transcript that becomes part of the record on appeal. The rule retains the provision for filing the transcript with the trial court, where it will become part of the record prepared for the appellate court. For districts and counties where electronic filing is in place, transcripts should be filed using the electronic filing system. In counties where electronic filing is not in use, the appellate court may require that the electronic transcript be filed on CD-ROM or other electronically accessible medium.

The rule presumes that all parties in civil appeals from the trial court will receive transcripts in electronic format, but permits them to request them in paper format by making a written request not later than the 10 days after service of the transcript certificate. A party is entitled to a transcript in only one format at the expense of the party ordering the transcript, so a party electing to receive a paper transcript will not receive an electronic transcript. If a party makes a timely request in writing for a paper transcript in lieu of the electronic transcript after the transcript certificate required by Rule 110.02, subdivision 2(a) has been filed, the appellant must prepare an amended transcript certificate confirming that adequate financial arrangements have been made for any paper copies that are timely requested and not originally provided for. Because this necessarily occurs early in the transcript-preparation period, the rule provides that changing the format does not affect the projected delivery date for the transcript. If unusual circumstances warrant, the appellant may move for an extension of the transcript due date. For civil appeals not from the trial court, including agency or other administrative body appeals, it is not necessary that an electronic transcript be prepared. The rule permits an electronic transcript for those agencies or bodies that are able to prepare a transcript in electronic form.

The committee does not contemplate that this rule would be made effective for criminal appeals for purposes of the presumptive delivery to the parties of an electronic transcript, at least not upon adoption in 2014. Paper transcripts are needed in criminal cases, and many clients lack access to devices that would permit them to read electronic transcripts.

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 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 by motion.

(Amended July 1, 2014.)

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 prepare the record and transmit it or make it electronically available to the clerk of the appellate courts, together with a numbered itemized list of all documents and exhibits contained in the record, identifying each with reasonable definiteness; each document and exhibit shall be endorsed with the 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 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.

(Amended effective July 1, 2014.)

Advisory Committee Comment—2014 Amendments

Rule 111.01 is amended to remove the requirement that the itemized list of the documents in the record be filed in quadruplicate. This change is consistent with the deletion of the requirement for filing multiple copies as part of the implementation of electronic filing. The last sentence of the rule is deleted because there is no longer any timing requirement or other rule provision that requires determination of the date of transmission of the record.

111.02. Exhibits and Models

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 after judgment has been entered by the appellate court.

(Amended effective July 1, 2016.)

Advisory Committee Comment—2016 Amendments

Rule 111.02 is amended to conform it to the current practice involving transmission of exhibits to the appellate courts and the ultimate disposition of them. Under the amended rule, exhibits and models are returned to the trial court administrator at the conclusion of the appeal, without regard to whether the appeal results in a new trial or other further proceedings on remand. Rule 128 of the Minnesota General Rules of Practice defines the procedure for retrieval of exhibits by attorneys or the ultimate disposition of them.

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 return any tangible portions of the record to the trial court administrator.

(Amended effective July 1, 2014.)

Advisory Committee Comment—2014 Amendments

Rule 111.04 is amended to remove the requirement that transcripts be forwarded to the State Law Library at the completion of an appeal. The reason for this change is simple: the State Law Library no longer needs them. The record itself will increasingly be provided to the appellate courts only as a set of directions from the trial court as to where the electronic version of filings can be located. The rule is therefore amended to limit the requirement of returning the record to the trial court administrator to the relatively small number of tangible things, such as physical evidence, original exhibits, and models that might have been transmitted to the appellate courts as part of the record. In most civil appeals from the trial courts, the record will be entirely electronic, and there will be no original materials to return to the trial court.

Rule 112. Confidential Information; Sealing of Portions of Record

Rule 112.01. Status of Confidential Record Material on Appeal

Subdivision 1. Materials Not Available to the Public. Materials that are filed in the trial court under seal or in another manner that makes the materials unavailable to the public pursuant to statute, court rule, or trial court order, as well as any documents containing restricted identifiers as defined in Rule 11 of the General Rules of Practice, will remain under seal or not available to the public on appeal unless either the trial court or appellate court orders otherwise.

Subd. 2. Sealing of Materials on Appeal. In situations where material in the record is confidential or trade-secret information that was not protected by a confidentiality order in the trial court, a party may move to have it filed under seal on appeal. The motion must demonstrate the need for sealing the information and must set forth the efforts made to maintain the confidentiality of the information before the motion was brought.

(Amended effective July 1, 2014.)

Advisory Committee Comment—2009 Amendments

Rule 112 is a new rule intended to codify existing practices relating to handling confidential information on appeal. The rule applies to information that is filed under seal pursuant to a court order for sealing, as well as to other information that is not available to the public by operation of law.

The general policy of the Minnesota courts is that court records are accessible to any member of the public. See Rule 2, Minnesota Rules of Public Access to Records of the Judicial Branch, reprinted in MINNESOTA RULES OF COURT: STATE 1083 (West 2009 ed.). This general policy is carried forward by Rule 4 governing accessibility of case records. Rule 4, subdivision 2, specifies that restricting access to case records is governed by court rules. Many statutes limit access to particular case types. See Rule 4, Minnesota Rules of Public Access to Records of the Judicial Branch, Advisory Committee Comment—2005, reprinted in MINNESOTA RULES OF COURT: STATE 1085-86 (West 2009 ed.) (collecting citations to statutes). In addition, Minn. Gen. R. Prac. 11 requires filing of personal identifying information in a separate document filed under seal.

The majority of orders restricting access to court records in civil cases are entered pursuant to Minn. R. Civ. P. 26.03(e) (limiting persons present during discovery), (f) (allowing court to order sealing of depositions), and (h) (allowing court to order parties to file other documents under seal). See generally Minneapolis Star & Tribune v. Schumacher, 392 N.W.2d 197 (Minn. 1986). Criminal case protective orders are governed by Minn. R. Crim. P. 25. See generally Minneapolis Star & Tribune v. Kammeyer, 341 N.W.2d 550 (Minn. 1983); Nw. Publ'ns, Inc. v. Anderson, 259 N.W.2d 254 (Minn. 1977).

The most common situation relating to sealed materials on appeal relates to the continued protection of materials filed under seal in the trial court. Subdivision 1 of Rule 112.01 restates the general rule that documents that are sealed in the trial court will remain sealed on appeal.

Rule 112.02. Handling of Confidential Portions of the Appellate Record

Any materials that are filed under seal or in another manner that makes the materials unavailable to the public and that need to be included in an addendum or appendix and shall be filed in a sealed envelope designated as "Filed under Seal pursuant to Order of the _____ Court dated _____" or in substantially similar form that describes the basis for the assertion of confidentiality. Documents filed electronically must be similarly segregated and designated.

(Amended effective July 1, 2014.)

Advisory Committee Comment—2009 Amendments

Rule 112.02 creates the required process for handling sealed records on appeal. The rule is intended to permit the ready handling of confidential documents by the court and to ensure that sealed information remains inaccessible to the public. Despite the additional expense that may be incurred, the duty to maintain confidentiality may require a more cumbersome process to permit the parties to advance their appellate arguments without compromising confidentiality rights that are recognized under law.

Rule 112.03. Duty to Maintain Confidentiality

Every party to an appeal must take reasonable steps to prevent the disclosure of confidential information, both in oral argument and in written submissions filed with the court, except in the manner prescribed in Rule 112.02. The court, on its own initiative or the motion of any party, may impose sanctions for the failure to comply with this rule, including the imposition of the costs of preparing appropriate documents for filing. Such a motion may be brought by a non-party to the appeal who is adversely affected by the failure to comply.

(Amended effective July 1, 2014.)

Advisory Committee Comment—2009 Amendments

Rule 112.03 imposes an affirmative duty on all parties to maintain the confidentiality of information that is protected by statute, rule, or court order.

If the inability to discuss confidential information in motion papers or briefs would cause substantial hardship or prevent the fair presentation of a party's argument, a party may seek leave to file separate "public" and sealed versions of the motion or brief, with confidential information redacted in the public version and stated as necessary in the sealed version. Each separately represented party would have to be served with both the "public" and sealed versions of any documents filed with the court and served on all parties. Other means to minimize the disclosure of confidential information include referring to parties by their initials or description rather than by name, or by describing this information in terms of its specific location in the confidential part of the record without disclosing the information itself.

Advisory Committee Comment—2014 Amendments

All participants in the appellate process must take reasonable measures to assure that confidential information is not exposed to public access by filing or discussion in open court. This requirement exists for traditional paper filings, but the consequences of its violation for documents filed electronically can be dramatic, and the filer violating the rules can be subjected to sanctions as well as exposed to liability.

Appellate court filers should realize that filings in the appellate courts are presumed to be accessible to the public. See generally Minnesota Rules of Public Access to Records of the Judicial Branch. The access rules also define categories of records that are not accessible to the public. Other rules and statutes define constraints on materials that should not be filed publicly. See, e.g., Minn. Gen. R. Prac. 11 (district court records); Minn. R. Juv. Del. P. 30; Minn. R. Juv. Prot. P. 8.04. Three compilations that illustrate additional bases for access to the records of the judicial branch and for limiting that access are available on the Judicial Branch website under the "Public Access" link. Those compilations do not provide comprehensive information on all categories or bases for access or confidentiality. Materials in any appeal dealing with records that are not accessible under the rules of an agency or trial court should be protected from public disclosure on appeal.

The rule intends that decisions about confidentiality should in most situations be made by the trial court, and that confidential records should be given appropriate protection in the trial court record. The appellate courts will then extend that protection to the materials sealed in the trial court during the pendency of the appeal. Materials not filed under seal in the trial court will rarely be sealed for the first time on appeal, but parties may move the appellate court to restrict access to confidential materials that were inadvertently or improperly filed without restrictions on public access. Filers redacting documents should be careful to ensure that the redaction removes the confidential information in a way that it cannot be retrieved. Masking it electronically may not fully remove it from the document, allowing it to be retrieved. Similarly, it may be contained in a document's metadata if it is not carefully removed.

In many situations the issues on appeal do not require submission of any confidential information to the appellate court. For example, there are many cases where a minor's birthdate is in the record, but has no relevance to the appellate issues, and a document containing this information can be simply excluded from the addendum or, at most, a redacted version can be included. For those cases where the information itself is germane to the appellate issues, it can be provided to the court under seal and redacted versions filed for public access.

This rule is amended to clarify the importance of these issues, and to provide a clear mandate that the parties attend to their obligation to avoid disclosure of any confidential materials. Rule 112.03 includes an express provision for the imposition of sanctions for the failure to use reasonable steps to prevent the disclosure of confidential materials. Recognizing that the failure to comply with the rule may injure individuals or entities that are not parties to the appeal, the rule expressly allows them to seek relief under the rule. Non-parties to the appeal would include parties to the underlying action who are not made parties to the appeal as well as third parties whose confidential information is for any reason made part of the record.

Rule 112.04. Oral Argument

Appellate arguments are public hearings.

(Adopted effective January 1, 2010.)

Advisory Committee Comment—2009 Amendments

Even in cases where portions of the record are confidential and filed under seal, the oral argument hearing will be in open court, open to the public, and possibly televised. The rule does not forbid closing a hearing to the public. Neither the Minnesota Supreme Court nor the Minnesota Court of Appeals has closed a hearing in the past.

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 $550 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; and
(d) filing proof of service with the clerk of the appellate courts.

No cost bond need be filed unless required upon motion for good cause pursuant to Rule 107.

(Amended effective July 1, 2014.)

Advisory Committee Comment—2014 Amendments

Rule 114.01 is amended to remove the requirement for filing a cost bond except if ordered by the agency. See Rule 107. ("Trial court" in Rule 107 is defined in Rule 101.02, subdivision 4, to include an agency from which an appeal is taken.)

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. The statement of the case pursuant to Rule 133.03 and a copy of the rule which is to be reviewed shall be filed with the petition. The title and form of the petition shall conform to that shown in the appendix to these rules.

(Amended effective July 1, 2014.)

Advisory Committee Comment—2014 Amendments

Rule 114.02 is amended to eliminate the requirement that an additional copy of the statement of the case be filed.

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. A copy of the itemized list shall be served on all parties.

(Amended effective January 1, 2010.)

114.04. Briefing

Petitioner shall serve and file a brief and addendum within 30 days after transmission of the record by the agency or body, and briefing shall proceed in accordance with Rule 131.01.

(Amended effective July 1, 2014.)

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.

(Adopted 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).

Advisory Committee Comment—2009 Amendments

Rule 114 is amended to alter the timing rules for briefing. The change is made to delay the first deadline for filing a brief to 30 days after the record is transmitted to the appellate courts and the itemized list is provided to all parties.

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 Department of Employment and Economic Development 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 Department of Employment and Economic Development 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 January 1, 2010.)

Advisory Committee Comment—2009 Amendments

Rule 115.01 is amended to change the reference, in both the title and body of the rule, to the Department of Employment and Economic Development, the current name of this agency. See Minn. Stat. § 15.01 (2008).

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 that is sought to be reviewed and the errors that the petitioner claims. A copy of the decision and the statement of the case pursuant to Rule 133.03 shall be included in an addendum prepared as prescribed by Rule 130.02. The title and form of the petition and writ shall be as shown in the appendix to these rules. The respondent's statement of the case, if any, shall be filed and served not later than 14 days after service of the petitioner's statement.

Subd. 2. Bond or Security. (a) No cost bond need be filed unless required upon motion for good cause pursuant to Rule 107.

(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 $550 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 a copy 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 5 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, 2014.)

Advisory Committee Comment—2009 Amendments

Rule 115.03, subdivision 1, is amended to change the timing for filing a statement of the case by a respondent to 14, rather than 10, days after service of the petitioner's statement of the case. This change makes the respondent's statement of the case due on the same day a notice of related appeal would be due. See Rule 104.01, subdivision 4, as amended.

Advisory Committee Comment—2014 Amendments

Rule 115.03 retains provision for the possibility of a cost bond being required, but in most cases no cost bond will be required because of the amendment to Rule 107 to require a bond only if one is ordered by the trial court. In an exceptional case, the appellate court could view the denial of a motion to require a bond to be an abuse of the trial court's broad discretion and would require a bond.

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 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. Notice of Contents of Record. Unless the time is extended by order of the court on a showing of good cause, the itemized list of the contents of the record as described in Rule 111.01 shall be served on all parties and filed with the clerk of the appellate courts by the agency or body within 30 days after service of the petition or 14 days after delivery of the transcript in accordance with subdivision 2 of this rule, whichever date is later. Service and filing shall be accomplished by notice of service and filing, as in Form 115C in the appendix to these rules, which shall constitute proof of service.

Subd. 4. Timing of Briefing. Relator shall serve and file a brief and addendum within 30 days after the service of the itemized list of contents of the record by the agency or body, and briefing shall proceed in accordance with Rule 131.01.

Subd. 5. Transmission of Record. The record shall be retained by the agency or body until the clerk of the appellate courts requests that it be transmitted to the court. The record shall thereupon be transmitted promptly to the clerk of the appellate courts with a copy of the itemized list of the contents, in quadruplicate.

(Amended effective July 1, 2014.)

Comment – 1983

See comment following Rule 115.06.

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 reviewed are the respondents.

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

Advisory Committee Comment—2009 Amendments

Rule 115.04 is amended to change the timing rules for certiorari proceedings. Subdivision 3 establishes a new Form 115C to ensure that the itemized list is provided to all parties and to determine the date and means of service and filing. One of the purposes of this amendment is to defer briefing until the contents of the record are known to the parties. Subdivision 4 establishes the timing requirements for briefing.

Subdivision 5 clarifies that the record itself is then to be retained by the agency or body until needed by the appellate court. This provision does not directly affect the litigants—it is primarily a matter of administration of the appellate court clerk's office. The rule requires that the record be accompanied by the itemized list of the contents in quadruplicate because that form is used to document receipt by the appellate courts and again to document receipt when the record is returned to the agency or body.

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.

Comment – 1983

See comment following Rule 115.06.

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.

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 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.

Comment – 1983

See comment following Rule 116.06.

116.02. Petition for Writ; How Secured

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

(Amended effective July 1, 2014.)

Comment – 1983

See comment following Rule 116.06.

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 that is sought to be reviewed and the errors that the petitioner claims. A copy of the decision and the statement of the case pursuant to Rule 133.03 shall be filed with 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 14 days after service of 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 $550 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 served on the Attorney General at the time of service.

(Amended effective July 1, 2014.)

Comment – 1983

See comment following Rule 116.06.

Advisory Committee Comment—2009 Amendments

Rule 116.03, subdivision 1, is amended to change the timing for filing a statement of the case by a respondent to 14, rather than 10, days after service of the petitioner's statement of the case. This change makes the respondent's statement of the case due on the same day a notice of related appeal would be due. See Rule 104.01, subdivision 4, as amended.

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.)

Comment – 1983

See comment following Rule 116.06.

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.

Comment – 1983

See comment following Rule 116.06

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.

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).

Advisory Committee Comment—2014 Amendments

Rule 116 is amended to clarify its intended operation. The former rule contained requirements that the petition and proposed writ be "presented" to the clerk of appellate courts and "provided to" the Attorney General. For the sake of clarity, the rule replaces "presented to" with "filed with" to align it with other rules requiring filing. Similarly, the process for "providing" something to another party throughout the rules is called "service." Rule 116 now incorporates that customary nomenclature.

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 $550 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 2,000 words, exclusive of the caption, signature block, and addendum, 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 addendum, if filed, may contain the decision and opinion of the Court of Appeals, and shall otherwise be prepared as prescribed by Rule 130.02.

The petition and addendum shall be filed with the clerk of the appellate courts and shall be accompanied by a Certificate of Document Length.

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, 2016.)

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 the 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.

Advisory Committee Comment - 2014 Amendments

Proof of service as required by Rule 117, subdivision 1, has traditionally been accomplished by an affidavit of service. For documents served using the appellate courts' electronic filing and service system, proof of service is generated by the system and electronically accompanies the served document; no separate proof of service is required.

Only a single copy of the petition and addendum need be filed.

Advisory Committee Comment—2016 Amendments

Rule 117 is amended primarily to re-define the length limit to 2,000 words rather than the current five pages. This change, coupled with the requirement that a 13-point font be used, will have a practical effect of permitting petitions that are slightly longer, but will be more easily read, both in paper format and on computer screens.

The addendum for Rule 117 petitions need not include the decision of the court of appeals, as every such decision is readily available in electronic form to the court for consideration with a petition. It is particularly useful to make inclusion of the appellate court decision optional to allow it to be omitted where it would be the only item in the addendum. Trial court decisions, however, if germane to the issues raised in a petition, may be helpful to the court in the addendum to the petition. The rule does not bar the filing of a court of appeals decision; it simply removes any requirement for it.

If the court grants further review, the addendum that accompanies the brief should include both the court of appeals and relevant district court orders and judgments pursuant to Rule 130.02.

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 filling 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 4,000 words, exclusive of the caption, signature block, and addendum, 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 addendum shall contain the judgments, orders, findings of fact, and conclusions of law, for which review is sought, and shall otherwise be prepared as prescribed ty Rule 130.002.

The petition and addendum shall be filed with the clerk of the appellate courts and shall be accompanied by a Certificate of Document Length.

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, 2016.)

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).

Advisory Committee Comment - 2014 Amendments

Only a single copy of the petition and addendum need be filed

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 trial court shall be made by petition. The petition shall specify the lower court decision 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.

A copy of any order or written action the application seeks to address and any findings of fact, conclusions of law, or memorandum of law relating to it shall be included in an addendum, which may include any portion of the record necessary for an understanding of the application.

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 July 1, 2014.)

Comment – 1983

See comment following Rule 121.03.

Advisory Committee Comment – 1998

See comment following Rule 120.04.

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. In criminal cases, the State Public Defender and the Attorney General for the State of Minnesota shall also be served. 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 January 1, 2009.)

Comment – 1983

See comment following Rule 121.03.

Advisory Committee Comment - 1998

See comment following Rule 120.04.

Advisory Committee Comment--2008 Amendments

Rule 120.02 is amended to add a single requirement for writ practice in criminal cases. The additional requirement of service on the public defender and attorney general is patterned on similar service requirements in the rules of criminal procedure. See, e.g., MINN. R. CRIM. P. 28.04, subd. 2(2)(appeal by prosecutor of pretrial order), subd. 6(1)(appeal of postconviction order), subd. 8(1)(appeal from judgment of acquittal, vacation of judgment after guilty verdict, or from order granting a new trial; Minn. R. Crim. P. 28.02, subd. 4. The requirement for notice in petitions for extraordinary writs is especially appropriate given the short time periods for writ practice. See generally State v. Barrett, 694 N.W.2d 783 (Minn. 2005) (discussing importance of service requirements).

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.

Comment – 1983

See comment following Rule 121.03.

120.04. Filing; Form of Papers; Number of Copies

Upon receipt of a $550 filing fee, the clerk of the appellate courts shall file the petition. All documents and briefs must be in the form specified in Rule 132.02. The petition and 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 documents and briefs may be made personally, by mail, or electronically if authorized or required by order of the Minnesota Supreme Court.

(Amended effective July 1, 2014.)

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.

Advisory Committee Comment—2014 Amendments

Rule 120.04 is amended to provide for electronic filing of extraordinary writ applications. The rule provides for service electronically using the appellate courts' e-filing and e-service system where authorized by supreme court order. As is true throughout these rules, only a single copy of any document is required to be filed, regardless of the method of filing.

Rule 120 is also amended to change references to "papers" to "documents." This change is not intended to change the interpretation of the rule, other than to recognize that not all appellate court filings are in paper format.

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.

(Adopted 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. § 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.

Advisory Committee Comment—2014 Amendments

Rule 120.04 is amended to provide for electronic filing of extraordinary writ applications. The rule provides for service electronically using the appellate courts' e-filing and e-service system where authorized by supreme court order. As is true throughout these rules, only a single copy of any document is required to be filed, regardless of the method of filing.

Rule 120 is also amended to change references to "papers" to "documents." This change is not intended to change the interpretation of the rule, other than to recognize that not all appellate court filings are in paper format.

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.

Comment - 1983

See comment following Rule 121.03.

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.)

Comment - 1983

See comment following Rule 121.03

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 $550 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, 1993.)

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).**

* Forms 120A, 120B, and 120C deleted effective January 1, 1999.

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

Documents required or authorized to be filed by these rules shall be filed with the clerk of the appellate courts within the time limitations contained in the applicable rule. Filing with the clerk of the appellate courts may be accomplished by one of the following means:

(1) By use of the appellate courts' electronic filing system if required by an order of the Minnesota Supreme Court.

(2) If electronic filing is not required by an order of the Minnesota Supreme Court,

A. By United States Mail addressed to the clerk of the appellate courts,

B. By use of the appellate courts' electronic filing system if permitted by an order of the Minnesota Supreme Court; or

C. By hand delivery to the clerk of appellate courts or use of a commercial courier service.

(b) Filing by facsimile or electronic means other than as authorized or required by an order of the Minnesota Supreme Court is not allowed in the appellate courts, except with express leave of the court.

(c) Filing shall occur at the time and date of:

(1) Electronic filing for any document electronically submitted for filing by 11:59 p.m. at the court's local time, so long as it is accepted by the clerk upon review;

(2) mailing by United States Mail addressed to the clerk of the appellate courts; or

(3) receipt by the clerk of the appellate courts during normal office hours for documents filed by hand delivery or by use of a commercial courier service.

(d) For any document that is required or permitted under these rules to be filed with the trial court, the filer may file or serve the document using the trial court's electronic service system or, except as otherwise excluded by Rule 125.03, any other means authorized by the trial court rules. Separate proof of such service must be filed with the clerk of the appellate courts. Any party to the trial court proceedings registered for use of the trial court's electronic service system shall be deemed to have consented to receive service in this manner.

(e) If a motion or petition requests relief that 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 of the appellate courts.

(f) All documents filed shall include the attorney registration license number of counsel filing the document and shall specify the appellate court docket number, if one has been assigned.

(Amended effective July 1, 2016.)

125.02. Service and Filing of All Documents Required

Copies of all documents 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. Documents 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.

(Amended effective July 1, 2014.)

125.03. Manner of Service

Unless otherwise required by Rule 114.01, service may be electronic by use of the appellate courts' electronic filing system if required or permitted by court order, personal, or by United States 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.

Electronic service is complete upon confirmation from the appellate courts' electronic filing system that it has been accomplished. Service by United States Mail is complete on mailing.

Whenever a party is required or permitted to do an act within a prescribed period after service and the document is served by United States Mail, 3 days shall be added to the prescribed period. If a document is served electronically or personally after 5:00 p.m. at the court's local time, 1 day shall be added to the prescribed period.

Personal service may be effected by use of a commercial courier service, and shall be effective upon receipt.

Service by facsimile or other electronic means other than as authorized or required by an order of the Minnesota Supreme Court is allowed only with the consent of the party to be served, and is effective upon receipt.

(Amended effective July 1, 2014.)

125.04. Proof of Service

Every document required by these rules to be served on other parties must be filed with proof of service contained on or affixed to the document. Service may be proven by any of the following means:

(a) Confirmation of service by authorized use of the appellate courts' electronic filing system, in which event separate proof of service need not be filed
(b) Written admission of service, or
(c) An affidavit or certificate of service.

The clerk of the appellate courts may permit documents to be filed without proof of service, but shall require proof of service to be filed promptly after filing the documents.

(Amended effective July 1, 2014.)

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.

Advisory Committee Comment—2008 Amendment

Rules 125.01 and .03 are amended to make clear the intent of the existing rule: that service and filing "by mail" under the rules requires use of the United States Mail. This clarification parallels a similar set of amendments to the Minnesota Rules of Civil Procedure. Compare Minn. R. Civ. P. 6.05 (amended in 2007 to specify U.S. Mail) with Minn. R. Civ. P. 4.05 (historically requiring use of first-class mail). The rule also makes it clear that it is permissible to use Federal Express, UPS, or other commercial courier for both filing and service, but delivery by that means is treated as any other hand delivery, and effective only upon receipt. Additional time for response to service by these services is thus neither required nor provided for, because the response period begins to run at the time of receipt.

These rules are also amended to make it clear that neither service nor filing by facsimile are ordinarily allowed in the appellate courts. In exigent circumstances the courts may request that courtesy copies of papers be provided by facsimile, but originals must be filed as provided in Rule 125.01. Service by facsimile is not generally permitted by rule, but if a party agrees to be served by facsimile it is permissible under the amended rule and is effective upon receipt. This provision recognizes that service by facsimile may be cost-effective and convenient for motions, notices, and other papers; it is unlikely to be used for briefs and appendices. The scope of any agreement to consent to service by facsimile should be carefully defined; it will be the unusual appeal where the parties really want their agreement to extend to the briefs and any appendices. The extension of this provision to service "by other electronic means" is intended to permit service by electronic mail, again only where the party to be served has agreed to it for the type of document involved.

Advisory Committee Comment—2014 Amendments

Rule 125 is amended to provide explicitly for filing and service of documents electronically.

While filing by facsimile or other electronic means is not permitted without an order from the court authorizing it, the parties may consent to service by facsimile or e-mail (the primary "other electronic means" that might be elected). Service by any means other than electronic service using the appellate courts' e-service system requires that proof of service be filed with the clerk of the appellate courts. The rule now authorizes the use of a certificate of service, which may be filed to verify based on facts stated that service has been effected using the specified means, but does not have to be made in the form of an affidavit on personal knowledge of the person serving the documents.

Rule 125.01(d) is a new provision that defines the interaction of the trial court rules for service with these rules. It permits documents that are to be filed in the trial court to be filed and served by any means authorized by the trial court rules. This rule is intended to permit parties to use the trial court's electronic filing and electronic service system for these documents. Because that filling would not result in proof of service being transmitted to the appellate courts' electronic filing system, separate proof of service must be filed with the clerk of the appellate courts. This proof might be provided, for example, by certificate of service that recites the fact of service and the fact of confirmation received from the district court system, attaching a copy of the confirmation message.

Rule 125 is also amended to change several references to "papers" to "documents." This change is not intended to change the interpretation of the rule, other than to recognize that not all appellate court filings are in paper format.

Advisory Committee Comment—2016 Amendments

Rule 125.01 is amended to include a cross-reference to Rule 125.03, which prohibits use of facsimile transmission for service of appellate pleadings except with the consent of the party to be served. That prohibition continues to apply even for the initial appellate documents (typically the notice of appeal or a petition), which are the only appellate documents that the rules require the parties to file in the district court. See Minn. R. Civ. App. P. 103.01, subd. 1(d).

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 documents, 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 3 days, at which time the motion shall be deemed submitted. The motion and all related documents may be typewritten. Each document shall be filed with proof of service. Oral argument will not be permitted except by order of the appellate court.

(Amended effective July 1, 2014.)

Advisory Committee Comment—2014 Amendments

Rule 127 is amended only to change references to "papers" to "documents." This change is not intended to change the interpretation of the rule, other than to recognize that not all appellate court filings are in paper format. The time to reply to a response to a motion is increased from 2 to 3 days.

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 addendum required by Rule 130.01. The informal brief shall have a cover and any paper copy may be bound 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 any paper copy may be bound by stapling. The trial court submissions and decision shall be included in the addendum.

(Amended effective July 1, 2014.)

Advisory Committee Comment—2014 Amendments

Rule 128.01 is amended to make it clear that documents that are served and filed electronically are not stapled—only paper versions of these documents are to be stapled.

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:

(1) a description of how the issue was raised in the trial court, including citations to the record;

(2) a concise statement of the trial court's ruling;

(3) a description of how the issue was subsequently preserved for appeal, including citations to the record; and

(4) 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 applicable standard of appellate review for each issue, 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 addendum required by Rule 130.02.

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 related appeal is filed pursuant to Rule 103.02, subdivision 2, the respondent's brief shall present the issues specified in the notice of related appeal. 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 July 1, 2014.)

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.

Advisory Committee Comment—2008 Amendments

Rule 128.02, subdivision 3, as amended, is a new rule, containing a new requirement for submission of an addendum. The rule requires the key trial court rulings, and permits up to 15 additional pages that would be helpful to reading the brief, to be bound with the brief. Presumably, the materials in the addendum would otherwise be contained in the appendix, so this rule really just reorganizes the location of the materials for the benefit of the parties and the appellate judges. The rule explicitly provides for inclusion of the relevant trial court orders or judgment in the addendum; it does not contemplate attachment of briefs of the parties. In the rare cases where memoranda of the parties are relevant to the appeal, they should be included in the appendix. The current subdivisions 3 and 4 of Rule 128.02 are re-numbered as subdivisions 4 and 5.

Advisory Committee Comment—2009 Amendments

Rule 128.02, subdivision 1(b), is amended to require specification of how each issue was raised in the record and preserved for appeal in the trial court, including citations to the record. These are matters that are important to many appeals and adding this requirement is intended to make it easier for the court to determine that each issue was properly raised, decided, and preserved for appeal. This requirement has been implemented by other courts, see, e.g., Iowa R. App. P. 6.14, and the committee believes this requirement will improve the quality of briefing in Minnesota appeals. For example, subparagraph 1 requires specification of where an evidentiary objection or offer of evidence was made, including a transcript citation, and subparagraph 3 where it was raised in a motion for new trial to preserve it for appeal. The rule does not expand what is required to raise or preserve an issue for appeal; it only requires that specific information be provided in the statement of issues in the appellant's brief about how these steps were taken.

Rule 128.02, subdivision 1(d), is amended to require that a brief address the applicable standard of appellate review. The standard of review is crucial to the analysis of every issue by the appellate court. A useful compendium of the standards of review for particular issues is Minnesota Court of Appeals, Standards of Review (Aug. 2008), available for review or download at http://www.lawlibrary.state.mn.us/casofrev.html. The rule does not dictate how the standard of review be set forth—whether in a separate section or at the beginning of the argument for an issue—although in most cases it is best handled at the beginning of the argument for each issue. The applicable standard of review must be addressed for each issue in an argument.

Subdivision 2 is amended to reflect the amendment of Rule 106 to abolish the notice of review and adoption of Rule 103.02, subdivision 2, to adopt the notice of related appeal.

Advisory Committee Comment—2014 Amendments

Rule 128.02 is modified primarily to delete references to the appendix, which is no longer permitted or required in any appellate proceeding. See Rule 130.01, subdivision 1. The appendix is replaced by an expanded addendum, as provided in Rule 130.

128.03. References in Briefs to Record

(a) Portions of Record Contained in Any Party's Addendum. Whenever a reference is made in the briefs to any part of the record that is reproduced in the addendum of any party, the reference shall be made to the specific pages of the addendum where the particular part of the record is reproduced.

(b) Portions of Record Not Contained in Any Party's Addendum. Whenever a reference is made to a part of the record that is not reproduced in the addendum of any party, the reference shall be made to the particular part of the record, suitably designated, and to the specific pages of it.

(c) Document Index Number. Whenever a reference is made to a part of the record, either in a brief or in the table of contents of an addendum, the reference should be made to the particular part of the record using the Document Index Number from the trial court Register of Actions, if available, and to the specific pages of it. Abbreviations that clearly direct the court to particular portions of the record, whether or not designated by a Document Index Number, are acceptable.

(Amended effective July 1, 2016.)

Advisory Committee Comment—2016 Amendments

Several developments in appellate practice in Minnesota militate in favor of modification of Rule 128 both to clarify it and make it more useful to litigants. The adoption of system-wide electronic filing makes the use of a uniform means of referencing electronically filed documents both more desirable and more readily accomplished. The abolition of the appendix in the 2014 amendments to these rules has resulted in increased need to refer to specific parts of the record without the convenience of citing to an appendix page, and word-count size limits for briefs may encourage opaque record citations. The establishment of a more uniform form of Register of Actions within the court system has made this index a useful way to identify documents filed with the district courts, and it is appropriate for the appellate courts to require its use.

The Register of Actions is maintained in all actions to identify documents filed with the court. An example of a Register of Actions entry, including the document index number, is:

1/14/2014 Motion for Summary Judgment Index # 50

Citation to page 3 of the motion might be simply "Doc. 50 at 3." If the motion were included in any party's addendum, citation to "Add.38" would suffice.

The rule is intended to provide guidance on how parties may concisely, but unambiguously, cite to the record. Where the transcript is consecutively paginated, no more than "Tr.x" is need to refer to page x of that transcript, and more is only distracting. Where it is necessary to cite to portions of the record not contained in any party's addendum, a similarly concise citation of "Doc. 11 at 21" would steer the reader to page 21 of document 11 in the Register of Actions. Examples of acceptable abbreviations include:

Doc. 11 at 21 (should be used if available)
Transcript at 135, or Tr. 135
Motion for Summary Judgment, filed 10/3/12, at 1

Exhibit 21 at 3, or Ex. 21 at 3
Add.41 or Add. 41
Resp. Add. 22 or R.Add.22
Oct. 1, 2013 Order at 17
Resp. Br. at 34

Similar abbreviations that clearly direct the court to particular portions of the record 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, that are not readily available in a publicly available electronic database or Minnesota law libraries, they shall be reproduced in the brief or addendum.

(Amended effective July 1, 2014.)

Comment - 1983

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

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 file a letter with the clerk of the appellate courts 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. Proof of service shall be made as defined by Rule 125.04. Any response must be made promptly and must be similarly limited.

(Amended effective July 1, 2014.)

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

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 March 1, 2001.)

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 March 1, 2001.)

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.

(Adopted effective March 1, 2001.)

129.04. Oral Argument

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

(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 authored 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. Addendum Required, Appendix Not Permitted

130.01. Record Not to be Printed; Appendix Not Permitted

Subdivision 1. Record; Portions. The record shall not be printed. No party may submit an appendix to its brief.

The parties shall have regard for the fact that the entire record is always available to the appellate court for reference or examination.

Subd. 2. Statement of the Proceedings or Agreed 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 addendum prepared as prescribed by Rule 130.02.

(Amended effective July 1, 2014.)

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.

Advisory Committee Comment—2014 Amendments

Rule 130.01 is amended to delete provisions requiring an appendix, as the appendix is no longer required or permitted for any appellate proceedings. The court has the entire

record available to it and the appendix is often bulky, expensive to produce, serve, and store, and is of limited value in most appeals.

130.02. Addendum

(a) Contents. Appellant must prepare an addendum and file it with the opening brief or petition. The addendum must include:

(1) a table of contents identifying each document included in the Addendum, including the Document Index Number from the Register of Actions, if available;

(2) a copy of any order, judgment, findings, or trial court memorandum in the action directly relating to or affecting the issues on appeal;

(3) any agreed statement of the record; and

(4) if the constitutionality of a statute is challenged, proof of compliance with Rule 144.

Unpublished decisions, if cited, shall not be included in the addendum, unless those opinions are not generally available in online databases or from Minnesota law libraries, but may be, if required or desired, provided to other parties by alternate means.

(b) Length. The addendum must not exceed 50 pages excluding:

(1) the orders and judgments or other materials required by section (a) of this rule;

(2) documents included pursuant to Rule 128.04; and

(3) unpublished decisions if permitted under section (a) of this rule.

The addendum must be incorporated into the back of the brief or petition, unless it includes a long trial court decision, in which event it may be bound separately.

(c) Respondent's Addendum. The respondent's brief or response to a petition may include an addendum not to exceed 50 pages, which must be incorporated into the back of the brief. If the addendum filed by appellant omits any material required by section (a) of this rule of pursuant to Rule 128.04, the respondent may include it in the respondent's addendum in addition to the 50 pages otherwise allowed.

(d) Other Addenda. Any addendum required other than with a formal brief shall also comply with the requirements of this rule.

(e) Non-Duplication. A party may not include in an addendum any material included in any other party's previously addendum.

(Amended effective July 1, 2016.)

Advisory Committee Comment—2014 Amendments

Rule 130.02 is amended to replace the provision calling for use of the appendix with reference to the addendum, as the appendix is no longer required or permitted.

Advisory Committee Comment—2016 Amendments

Rule 130.02 is amended to include a requirement that the addendum include a table of contents. The amended rule also requires use of the Document Index Number for documents filed with the district court, if it is available. Including the Document Index Number in the table of contents allows the court and other parties to locate the document and permits the abbreviated citation to the document by addendum page number.

The committee acknowledges that current statutory authority requires parties to provide each other with copies of unpublished opinions that are cited in the briefs. Unpublished opinions that are available to the appellate courts in online databases, or from Minnesota law libraries, are not to be included in an addendum and are not helpful to the court. Minn. Stat. § 480A.08, subd. 1, only requires that copies be provided to other parties, not to the court. For unpublished opinions that are not excluded by this rule, they may be included as part of the "required" portion of the addendum and need not be counted toward the 50-page limit contained in Rule 130.02(b)-(c). Parties should be aware that the appellate courts have access to online databases through Westlaw and, therefore, should include the appropriate citation for unpublished decisions available on that service.

The rule does not affect the obligation under Minn. Stat. § 480A.08, subd. 3, to provide copies of unpublished opinions to opposing parties or attorneys, but specifies that they should not be filed as part of the addendum. The statute does not require that they be filed with the court, and the court does not have use for copies given their ready availability online or from law libraries.

130.03. [Abrogated. July 1, 2014]

Advisory Committee Comment—2014 Amendments

Former Rule 130.03 authorized the filing of a supplemental record. Because the record is delivered electronically to the appellate courts for civil actions or by other means for some administrative appeals, the use of a supplemental record is no longer necessary or helpful to the court (and has been rarely used in any event). Accordingly, this rule is abrogated.

Rule 131. Filing and Service of Briefs and Addenda

131.01. Time for Filing and Service

Subdivision 1. Appellant's Brief. The appellant shall serve and file a brief and addendum 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, 3 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 addendum 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 addendum, 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. Briefing Schedule for Cross-Appeals; Form of Briefs in Cross-Appeals.

(a) Cross-Appeal Defined. A cross-appeal, for the purpose of this rule, exists when a notice of appeal and at least one notice of related appeal or separate notice of appeal are filed by parties adverse to each other on appeal. Multiple notices of appeal or related appeal filed by parties who are not adverse to each other do not create cross-appeals.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for the purposes of this rule. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) Schedule for Filing. In a case involving a cross-appeal, the appellant's principal brief shall be filed in accordance with Rule 131.01, subdivision 1, and the respondent/cross-appellant's principal brief shall be filed as one brief within 30 days after service of appellant's brief. Appellant/cross-respondent's response and reply brief shall be filed as one brief within 30 days after service of cross-appellant's brief. Respondent/cross-appellant's reply brief may be filed within 10 days after service of appellant/cross-respondent's response and reply brief.

(d) Form of Briefs in Cross-Appeals. In a case involving a cross-appeal:

(1) Appellant's Principal Brief. The appellant must file a principal brief in the appeal. That brief must comply with Rule 128.01 or Rule 128.02, subdivision 1.

(2) Respondent/Cross-Appellant's Principal and Response Brief. The respondent/cross-appellant must file a principal brief on the cross-appeal and may, in the same brief, respond to the appellant's principal brief. The respondent/cross-appellant's brief must comply with Rule 128.01 or 128.02, subdivision 1, as to the cross-appeal and Rule 128.02, subdivision 2, as to the appeal, except the brief need not include a statement of the case or a statement of the facts unless the respondent/cross-appellant is dissatisfied with the appellant's statement.

(3) Appellant/Cross-Respondent's Response and Reply Brief. The appellant/cross-respondent may file a brief that responds to the principal brief of the respondent/cross-appellant in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 128.02, subdivision 2, as to the response to the cross-appeal and Rule 128.02, subdivision 4, as to the reply on the original appeal.

(4) Respondent/Cross-Appellant's Reply Brief. The respondent/cross-appellant may file a brief in reply to the response in the cross-appeal. The brief must comply with Rule 128.02, subdivision 4, and must be limited to the issues presented by the cross-appeal.

(5) No Further Briefs. Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(6) Cover. If briefs are formally bound, the cover of the appellant's principal brief must be blue; the respondent/cross-appellant's principal and response brief, red; the appellant/cross-respondent's response and reply brief, yellow; the respondent/cross-appellant's reply brief, gray; and an intervenor's or amicus curiae's brief, green.

(7) Length limit.

(A) The appellant's principal brief is acceptable if it complies with the length limits of Rule 132.01, subdivision 3(a).

(B) The respondent/cross-appellant's principal and response brief is acceptable if:

(i) it contains no more than 16,500 words; or

(ii) it uses a monospaced font and contains no more than 1,500 lines of text.

(C) The appellant/cross-respondent's response and reply brief is acceptable if:

(i) it contains no more than 10,000 words; or

(ii) it uses a monospaced font and contains no more than 750 lines of text.

(D) The respondent/cross-appellant's reply brief is acceptable if it complies with the length limits of Rule 132.01, subdivision 3(b).

(Amended effective July 1, 2014.)

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.

Advisory Committee Comment—2009 Amendments

Rule 131.01, subdivision 5, is a new rule to establish alternative rules for briefing in cases where a cross-appeal is filed. The provisions are drawn from Fed. R. App. P. 28.1. The amended Minnesota rule operates as a default timing and brief-length rule; in any case the parties may seek alternate limits by motion, and the court may impose them on its own initiative.

The briefing process for cross-appeals under the amended rule is summarized as follows:

	Brief (in order of filing)	*Cover Color*	*Length limit (word count method)*
1	*Appellant's principal brief (unchanged)*	*Blue*	*14,000 words*
2	*Respondent/cross-appellant's principal and response brief*	*Red*	*16,500 words*
3	*Appellant/cross-respondent's response and reply brief*	*Yellow*	*10,000 words*
4	*Respondent/cross-appellant's reply brief*	*Gray*	*7,000 words (unchanged)*

Subdivision 5(a) makes it clear that only multiple appeals by adverse parties create cross-appeals. If several parties on the same side of a case file separate appeals that are not adverse to each other, the normal three-brief schedule of Rule 131.01 applies.

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.

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 July 1, 2014.)

Comment - 1983

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

131.03. Number of Paper Copies to be Filed and Served

Subdivision 1. Required Number, Due Date, and Manner of Filing Paper Copies of Briefs For paper copies, the required number, time, and manner of filing may be established either by standing order of the applicable appellate court or by other court order.

Subd. 2. Service. Two paper copies of each brief and addendum shall be served on the attorney for each party to the appeal separately represented and on each party appearing pro se. Proof of service shall be made as defined by Rule 125.04.

(Amended effective July 1, 2014.)

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.

Advisory Committee Comment—2014 Amendments

Rule 131 is amended in several places to change references to the appendix to refer to the addendum. The use of an appendix as it formerly existed is no longer either required or permitted in any appellate proceedings.

As part of the implementation of electronic filing in the appellate courts, the courts may adjust the number of paper copies of briefs to be provided to the courts. This may be accomplished by standing order or by order in individual appeals. That order may also modify the required timing for filing paper briefs or the place or manner of filing.

Subdivision 2 of Rule 131.03 is amended to provide notice that the courts may further reduce the number of required paper copies of briefs and addenda. The rule allows the appellate courts to change the number of copies, or other requirements for filed copies, including the deadline for filing paper copies or place of filing. The courts could make

these changes by order applicable to all appeals in that court, or by order with notice to the parties in a particular appeal or category of appeals.

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

132.01. Form of Briefs and Addenda

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 maximum 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 addenda shall be bound together by a method that 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 in briefs and addenda shall appear on only one side of the paper. The pages of the addenda 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 addendum 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 Addendum; 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 paper 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 paper addendum, 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. The cover of any other document separately prepared under this rule should be white.

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, and any addendum, 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, subdivision 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 July 1, 2014.)

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.

Advisory Committee Comment—2008 Amendments

Rule 132.01 is amended to permit, but not require, the preparation of appendices and supplemental records using two-sided copies. The rule's requirement for use of opaque paper is particularly important if a party elects to submit a two-sided appendix.

Advisory Committee Comment—2014 Amendments

Rule 132.01 is amended in several places to change references to the appendix to refer to the addendum. The use of an appendix as it formerly existed is no longer either required or permitted in any appellate proceedings.

132.02. Form of Motions and Other Documents

Subdivision 1. Form Requirements. Documents 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 13-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. Typed material shall be double spaced. Carbon copies shall not be submitted.

Subd. 2. Caption. Each document 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 document.

(Amended effective July 1, 2016.)

Advisory Committee Comment—2014 Amendments

Rule 132.02 is amended only to change references to "papers" to "documents." This change is not intended to change the interpretation of the rule, other than to recognize that not all appellate court filings are in paper format.

132.03. Form of Documents Filed Electronically

Any documents filed or served electronically shall be in searchable Portable Document Format (PDF), Word, or WordPerfect format. Addendum materials that cannot readily be rendered in searchable form may be in non-searchable PDF format.

(Amended effective July 1, 2014.)

Advisory Committee Comment—2014 Amendments

Rule 132.02 is a new rule to specify the format for documents filed electronically when authorized or permitted by court order or court rules. The rule permits searchable PDF, Word, or WordPerfect documents, although searchable PDF is the preferred format. The rule recognizes that documents for an addendum nay be difficult or impossible to prepare in searchable format, and for these documents, a non-searchable PDF document may be included. These documents would include photographs, advertisements, brochures, and medical records.

132.04. Signature

All briefs, motions, notices, and petitions filed with the appellate courts shall be signed by an individual authorized under Rule 143.06 and shall include the signer's name, address, telephone number, email address, and attorney registration license number, if applicable.

(Adopted effective July 1, 2016.)

Advisory Committee Comment—2016 Amendments

Rule 132.02 is amended in two ways to make it clearer. Provisions for signing documents are removed from Rule 132.02, subdivision 2, which deals with the caption of appellate pleadings, not signing. Rule 132.04 is a new rule that explicitly sets forth what is necessary for signing appellate documents and extends those requirements to all appellate pleadings.

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.

Unless exempted by the court for good cause shown, appeals in family law cases are subject to mandatory mediation. The court of appeals is authorized to issue special rules of practice governing the family law appellate mediation process. These special rules apply to appeals arising from marital dissolution actions; parentage actions; post-decree modification and enforcement proceedings, including civil contempt actions; child-support actions; and third-party custody and visitation actions.

(Amended effective for appeals commenced on or after January 1, 2011.)

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.

Advisory Committee Comment—2010 Amendment (effective 2011)

This rule is amended to add a second paragraph to provide expressly for the family law mediation pilot program initiated by the court of appeals in September of 2008 and made

permanent in 2010. The primary purpose of this rule is to provide notice to litigants that certain family law appeals are subject to mandatory mediation in the court of appeals.

Following a successful pilot project in which family law appeals were referred to mediation (over 50% of the appeals that were mediated in the pilot project were settled, resulting in substantial benefits to the litigants and the court), the court of appeals has recommended that the mediation requirement be made permanent. As part of the implementation of mediation as a standing requirement, the Special Rules of Practice for the Minnesota Court of Appeals Governing Family Law Appellate Mediation will include detailed guidance on the procedures involved in the mediation program. The program will be operated in accordance with the special rules of practice, which should be consulted by parties to family law appeals. The rules will be published as an adjunct to the Minnesota Rules of Civil Appellate Procedure and are accessible on the Minnesota Judicial Branch web site: www.mncourts.gov.

When those rules are adopted, this amendment to Rule 133.01 is appropriate to provide guidance to litigants of the existence of this program and the fact that it is generally mandatory. The rule includes reference to the possibility that good cause may exist for exemption from the mediation requirement. Exemption from mandatory mediation is governed by the Special Rules, and the Minnesota Court of Appeals Family Law Appellate Mediation Policies and Procedures provide explicitly for exemption in cases involving allegations of domestic violence. Other grounds for exemption from mandatory mediation may include making a convincing demonstration that post-trial ADR has been employed without success, geographical unavailability of a trained appellate mediator, persuasive arguments that appeal presents an unsettled legal issue upon which the court of appeals should rule, and other reasons.

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 addendum 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.

(Amended effective July 1, 2014.)

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.

Advisory Committee Comment—2014 Amendments

Rule 133.02 is amended to change a reference to the appendix to refer the addendum. The use of an appendix as it formerly existed is no longer either required or permitted in any appellate proceedings.

133.03. Statement of the Case

A statement of the case in the form prescribed by the appellate court shall be filed with any of the following:

(a) a notice of appeal pursuant to Rule 103.01;
(b) a notice of related appeal pursuant to Rule 103.02, subdivision 2;
(c) a petition for declaratory relief pursuant to Rule 114.02; or
(d) the petition for the writ of certiorari pursuant to Rules 115 or 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 14 days after service of the appellant's statement, the respondent may serve on all parties and file with proof of service 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.

(Amended effective July 1, 2014.)

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).

Advisory Committee Comment—2009 Amendments

Rule 133.03 is amended to change the timing for filing a statement of the case by a respondent or cross-appellant to 14, rather than 10, days after service of the notice of appeal. This change is intended to create a single response date upon which any notice of related appeal and respondent's statement of the case are due. The rule is also amended to make it clear that the 14-day period is measured from the date of service, not the date of receipt of the notice of appeal.

The rule is also amended to include reference to declaratory relief proceedings, which also require a statement of the case. Because certiorari proceedings under Rules 115 and 116 are commenced by petition, a reference to notices of appeal under those rules is deleted.

Rule 134. Oral Argument

134.01. Allowance of Oral Argument

Oral argument will be allowed unless:

(a) no request for oral argument has been made by either party in the statement of the case required by Rule 133.03; or

(b) a party has failed to file a timely brief as required by Rule 128.02; or

(c) the parties have agreed to waive oral argument pursuant to Rule 134.06; or

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

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

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

The 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

An appeal will be placed on a nonoral calendar and deemed submitted on the briefs on that calendar date in the following circumstances:

(a) When oral argument has not been requested;
(b) When oral argument once allowed has been waived by agreement of the parties and consent of the court; or
(c) If, pursuant to Rule 134.01(d), oral argument is not allowed.

Advisory Committee Comment—2008 Amendments

Rule 134.06 is amended to conform the rule to the uniform practice of the both the court of appeals and supreme court for cases to be submitted without argument. In all cases it is the practice of the courts to place these cases on an argument calendar for a specific date, noting that nonoral cases will be submitted without argument. The rule is simply amended to conform to this practice.

134.07. Trial Court Exhibits; Diagrams and Demonstrative Aids

Subdivision 1. Trial Court Exhibits. Counsel planning to use any trial court exhibits during oral argument must arrange before the day of argument with the clerk of appellate courts to have them placed in the courtroom before the court convenes on the date of the hearing.

Subd. 2. Diagrams and Demonstrative Aids. In cases where a plat, diagram, or demonstrative aid will facilitate an understanding of the facts or of the issues involved, counsel shall either:

(a) Provide a copy in the addendum to the brief;

(b) Provide individual copies to opposing counsel and the court before the argument;

(c) If necessary, have in court a plat, diagram, or demonstrative aid of sufficient size and distinctness to be visible to the court and opposing counsel; or

(d) In advance of oral argument make arrangements with the court for the set-up and removal of any video projection or audio playback equipment needed for presentation of trial electronic exhibits or demonstrative aids.

(Amended effective July 1, 2014.)

Advisory Committee Comment—2008 Amendments

Rule 134.07 is amended to broaden the rule and also to conform it to current court practices. Prior to amendment, Rule 134.07 spoke generally of "exhibits," referring either to trial court exhibits or possibly to demonstrative aids. As amended, subdivision 1 addresses trial court exhibits, and states the requirement that counsel seeking to use them in some way in argument must make arrangements for them to be in the courtroom. This is rarely necessary, as exhibits are available to the court and important exhibits are usually reproduced in a party's addendum or appendix. Subdivision 2 is revamped more extensively, to reflect the wider array of materials that might have a role at oral argument. Most importantly, the revised rule provides for what is probably the best way to provide demonstrative exhibits to the court: include them in the addendum or appendix, which makes them available to all judges both before and at argument or, if they are not included in the addendum or appendix, provide copies to the marshal for distribution to the judges or justices and to opposing counsel before the beginning of oral argument. "Blow-ups" of documents are notoriously ineffective at argument, as most typed documents—even if enlarged many times—are still difficult or impossible to read across a courtroom. The rule also makes it clear that in order to present video images or audio recordings at argument, whether for parts of the record or for demonstrative aids, counsel must arrange for the presence and operation of playback equipment. The inclusion of this provision is not to encourage the use of audio or video equipment at argument—it is often more distracting than useful—but there are circumstances where its use may be appropriate. The revised rule makes it clear how it may be used. The court will likely require that any equipment be set up before the first argument of the day or during a break, and removed at the end of the day or during a formal break.

Advisory Committee Comment—2014 Amendments

Rule 134.07 is amended to change a reference to the appendix to refer to the addendum. The use of an appendix as it formerly existed is no longer either required or permitted in any appellate proceedings.

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 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 134.10. Audio and Video Coverage of Appellate Court Proceedings

Subdivision 1. Unless notice is waived by the Chief Justice of the Supreme Court or the Chief Judge of the Court of Appeals, notice of intent to cover appellate court proceedings by either audio or video means shall be given by the media to the Court Information Office at least 24 hours prior to the time of the intended coverage.

Subd. 2. Camera operators, technicians, and photographers covering a proceeding must:

(a) avoid activity which might distract participants or impair the dignity of the proceedings;
(b) remain seated within the restricted areas designated by the Court;
(c) observe the customs of the Court;
(d) conduct themselves in keeping with courtroom decorum; and
(e) not dress in a manner that sets them apart unduly from the participants in the proceeding.

Subd. 3. All broadcast and photographic coverage shall be on a pool basis, the arrangements for which must be made by the pooling parties in advance of the hearing. Not more than one (1) electronic news gathering camera producing the single video pool-feed shall be permitted in the courtroom. Not more than two (2) still-photographic cameras shall be permitted in the courtroom at any one time. Motor-driven still cameras may not be used.

Subd. 4. Exact locations for all camera and audio equipment within the courtroom shall be determined by the Court. All equipment must be in place and tested 15 minutes in advance of the time the Court is called to order and must be unobtrusive. All wiring, until made permanent, must be safely and securely taped to the floor along the walls.

Subd. 5. Only existing courtroom lighting may be used.

(Amended effective July 1, 2014.)

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).

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

(Amended effective June 22, 2011.)

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 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 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 five days' written notice served and filed by the prevailing party. The costs and disbursements so taxed shall be inserted in the judgment. Failure to 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.

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 which are not relevant to the issues on appeal.

(Amended effective July 1, 2014.)

Advisory Committee Comment—2014 Amendments

Rule 139.05 is amended to change a reference to the appendix to refer to the addendum. The use of an appendix as it formerly existed is no longer either required or permitted in any appellate proceedings.

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.

(Adopted 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. The petition, in the format

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, 2014.)

Advisory Committee Comment—2014 Amendments

As part of the implementation of electronic filing in the appellate courts, the courts have reviewed the number of documents needed by the courts. Under the revised rule only a single copy is required, whether the document is filed electronically or by other means authorized by the rules.

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. Recusal

141.01. Recusal in Supreme Court.

(a) Motion. A motion seeking the recusal of a justice from a case pending before the court must be made in writing and must be filed and served as directed in Rule 125, Minnesota Rules of Civil Appellate Procedure. The motion, and any response, must comply with Rule 127, Minnesota Rules of Civil Appellate Procedure.

(b) Timing. Absent good cause demonstrating that the facts upon which the motion is based could not reasonably have been discovered sooner, the motion must be filed no later than 14 days after the filing of a notice of appeal or petition that initiates the case in the supreme court. In a case in which discretionary review is sought and the court grants review, the motion must be filed within 14 days of the date of the order of the court granting review. No hearing or oral argument shall be permitted on the motion.

A motion for recusal shall be decided promptly, but in any event within 3 days after the due date of any response, by the justice who is the subject of the motion, and shall be resolved by written order that, if denied, states the grounds upon which the motion is denied. The decision shall be filed with the clerk of the appellate courts.

(c) Review of Recusal Decision. If the motion is denied by the justice whose recusal is sought, the moving party may request review of that discretionary decision within 5 days of the filing of the order, by filing and serving a motion for review as directed in Minn. R. Civ. App. P. 125. A response, if any, must be filed and served within 3 days after service of the motion for review. The motion for review and response shall each be limited to 2,000 words, exclusive of the caption and signature. No further arguments or briefing shall be permitted with the motion for review.

Review shall be conducted by a three-member panel randomly selected from a list maintained by the clerk of the appellate courts of individuals designated as eligible to serve as acting justices solely for purposes of this rule. The panel shall file a binding written decision within 14 days after a motion for review is filed. No further review or reconsideration of the panel's decision will be permitted.

(Adopted effective July 1, 2016.)

Rule 141.02. Recusal in Court of Appeals.

(a) Motion. A motion seeking the recusal of a member of a panel assigned to a particular case must be made in writing and must be filed and served as directed in Rule 125, Minnesota Rules of Civil Appellate Procedure. The motion, and any response, must comply with Rule 127, Minnesota Rules of Civil Appellate Procedure.

(b) Timing. Absent good cause demonstrating that the facts upon which the motion is based could not reasonably have been discovered sooner, the motion must be filed no later than 7 days after the notice of oral argument or nonoral conference or, as to newly named members of a panel, the subsequent notice of substitution or other change in the composition of the panel is issued. No hearing or oral argument shall be permitted on the motion.

A motion for recusal shall be decided promptly, but in any event within 3 days after the due date of any response, by the judge who is the subject of the motion. If the judge decides to recuse, a notice of substitution shall be issued. If the judge decides not to recuse, a written order stating the grounds upon which the motion is denied shall be filed with the clerk of the appellate courts.

(c) Review of Recusal Decision. If the motion is denied by the judge whose recusal is sought, the moving party may request review of that discretionary decision within 5 days of the filing of the order, by filing and serving a motion for review as directed in Minn. R. Civ. App. P. 125. A response, if any, must be filed and served within 3 days after service of the motion for review. The motion for review and response shall each be limited to 2,000 words, exclusive of the caption and signature. No hearing or oral argument shall be permitted. The review shall be conducted by the chief judge and two randomly selected active judges of the court of appeals who are not designated to serve on the panel for the case in which review is sought. The panel shall file a binding written decision within 14 days after a motion for review is filed.

(Adopted effective July 1, 2016.)

Advisory Committee Comment—2016 Amendments

Rule 141 is a new rule intended to establish a uniform and public process for considering motions for recusal or disqualification of an appellate justice or judge from participation in a pending appeal. This rule is only a rule of procedure—it is not intended to address, establish, or modify any grounds for recusal, as those issues are well outside the scope of any rule of procedure. All appellate judges are subject to the Minnesota Code of Judicial Conduct, which is a primary source of standards that may permit or require recusal.

The rule creates different procedures for recusal in the supreme court and court of appeals because of the fundamental differences in how the courts hear cases—the supreme court sits en banc, so recusal generally results in argument to a court of fewer members. In the court of appeals, recusal results more readily in assignment of a replacement judge to hear the case. The rule also recognizes that it would be wasteful to require a motion to recuse to be brought in the court of appeals before it is known which judges are assigned to hear an appeal. Because this assignment occurs relatively late in the process, the recusal motion requirement is not triggered until the notice of assignment is made.

The rule requires that a recusal request be decided promptly by the justice or judge receiving it, but sets an outer limit of three days after a response, if any, would be due under Rule 125. In many instances a decision on recusal could be properly rendered without any response being required, but in some cases, the court might be helped by the views of the other parties.

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 addendum 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 July 1, 2014.)

Advisory Committee Comment—2014 Amendments

Rule 142.02 is amended to change a reference to the appendix to refer to the addendum. The use of an appendix as it formerly existed is no longer either required or permitted in any appellate proceedings.

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 related appeal pursuant to Rule 103.02, subdivision 2, the party opposing the related appeal may serve and file a motion for affirmance of the judgment or order specified in the notice of related appeal or for a dismissal of the respondent's

related appeal proceedings, subject to a motion to reinstate the related appeal proceedings in accordance with the criteria specified in Rule 142.02.

If the appellant fails or neglects to serve and file its brief in response to a respondent/cross-appellant's brief in support of a cross-appeal, the case shall be determined on the merits as to those issues raised by the cross-appeal.

(Amended effective January 1, 2010.)

Rule 143. Parties; Substitution; Attorneys; Signing of Appellate Pleadings

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. No attorney may sign appellate pleadings or 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 party can be served and the address and phone number at which the party 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.

(Amended effective July 1, 2016.)

143.06. Signature

All briefs, motions, notices, and petitions filed with the appellate courts must be signed by every self-represented litigant or by:

1. an attorney licensed to practice in this State; or
2. an attorney admitted pro hac vice to practice before the appellate courts.

(Adopted effective July 1, 2016.)

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.

Advisory Committee Comment—2014 Amendments

Rule 143.05 is amended to make it more explicit as to the specific documents requiring signature by an attorney. The former rule required signature for "pleadings," a term that is not otherwise defined in the rules. "Signed" is defined in new Rule 101.02, subdivision 7, and includes provision for signing of documents filed using the appellate courts e-filing and e-service system.

Advisory Committee Comment—2016 Amendments

Rule 143 is amended in two ways. Language relating to signing of appellate filings is removed from Rule 143.05 and replaced by a new Rule 143.06 that clarifies what documents must be signed and who may properly sign them. Including the signing requirements in a rule devoted to the caption of pleadings does not make it likely that the reader of the rules will locate the signing requirements. "Signed" is defined in Rule 101.02, subd. 7.

This amendment clarifies that pro hac vice admission is not required for an attorney to appear on a brief as one of several attorneys, but every attorney-signed appellate pleading must be signed by at least one attorney who is a member of the Minnesota bar or who has been admitted pro hac vice. Oral argument may only be presented by an attorney who is a member of the Minnesota bar or who is admitted pro hac vice.

Because self-represented litigants may sign only for themselves, all self-represented litigants must sign briefs, motions, notices, and petitions filed on their behalf. The requirement of signing for a represented party is met by the signing by any one of the counsel of record for a party.

The rule underscores the fact that pro hac vice admission in the trial courts does not carry over into the appellate courts. Rule 143.05 provides for admission pro hac vice in the appellate courts and is not amended as to that process. Similarly, separate motions for admission pro hac vice are required in the Minnesota Court of Appeals and the Minnesota Supreme Court if a case proceeds to that court.

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 file and serve on the attorney general notice of that assertion within time to afford an opportunity to intervene. Service of this notice on the attorney general may be effected by any means authorized by these rules.

(Amended effective July 1, 2014.)

Advisory Committee Comment—2014 Amendments

The amendment to Rule 144 is intended to clarify the existing rule and to adapt it to the e-service and e-filing environment. As amended, the rule makes it clear that notice of a

challenge to constitutionality should be served on all parties and the attorney general and also filed with the clerk of the appellate courts. The rule assumes that the Office of the Minnesota Attorney General will designate a means of service upon the office and consent to service using the appellate courts' e-filing and e-service system, which would be the easiest and fastest way to provide the notice required by this rule.

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.