

**FILED**

July 22, 2020

**OFFICE OF  
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8006

**ORDER PROMULGATING AMENDMENTS TO  
THE RULES OF CIVIL APPELLATE PROCEDURE**

Minnesota Statutes § 480A.08 (2018), addresses decisions of the Minnesota Court of Appeals in submitted appeals, including whether the opinion is published or unpublished. *Id.*, subd. 3(b)–(c). In 2020, the Minnesota Legislature amended subdivision 3 by deleting the criteria for published decisions. *See* Act of May 16, 2020, ch. 82, § 3.

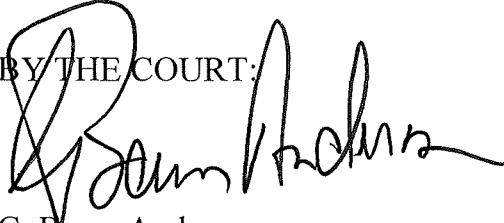
Based on this legislation, the court of appeals recommends amendments to the Rules of Civil Appellate Procedure, to articulate the criteria for designating the decision type (precedential, nonprecedential, or an order opinion), and to permit parties to address in their briefs what type of decision should be issued in the appeal. The court of appeals also recommends amendments to the rules in the nature of housekeeping. The court of appeals developed the recommended rule amendments with input from the Minnesota State Bar Association. This court also solicited and received input on the recommended amendments from members of the Advisory Committee for the Rules of Civil Appellate Procedure.

We have considered the court of appeals' recommended amendments and the advisory committee's input. The proposed amendments will provide notice to parties on the criteria for a particular type of decision, and will provide guidance to the parties who wish to address the decision type in formal briefs.

Based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the attached amendments to the Rules of Civil Appellate Procedure be, and the same are, prescribed and promulgated to be effective as of August 1, 2020. The rules as amended will be effective for appeals filed on or after the effective date.

Dated: July 22, 2020

BY THE COURT:  
  
G. Barry Anderson  
Associate Justice

## AMENDMENTS TO THE RULES OF CIVIL APPELLATE PROCEDURE

*[Note: in the following amendments, deletions are indicated by a line drawn through the words, and additions are indicated by a line drawn under the words.]*

### RULE 128. Briefs

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#### Rule 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) In briefs filed with the court of appeals, a party may include an optional statement as to whether the court's opinion should be precedential, nonprecedential, or an order opinion, and the party's reasons, with reference to Rule 136.01, subd. 1(b).

(g) 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.

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## **Rule 136. Notice of ~~Decision~~Opinion; Judgment; Remittitur**

### **136.01 ~~Decision~~Opinion**

#### **Subdivision 1. Written Decision Opinion of the Court of Appeals.**

(a) ~~Each Court of Appeals disposition shall be written in the form of a published opinion, unpublished opinion, or an order opinion. The panel deciding the merits of an appeal also determines the form of the written opinion, which may be a precedential opinion, nonprecedential opinion, or order opinion.~~

(b) In determining the written form, the panel may consider all relevant factors, including whether the opinion:

- (1) establishes a new principle or rule of law or clarifies existing caselaw;
- (2) decides a novel issue involving a constitutional provision, statute, administrative rule, or rule of court;
- (3) resolves a significant or recurring legal issue;
- (4) applies settled principles or controlling precedent;
- (5) involves an atypical factual record or procedural history;
- (6) includes an issue pending before the United States Supreme Court or the Minnesota Supreme Court; or
- (7) warrants a particular form based on the parties' arguments, including, but not limited to, the parties' statements allowed by Rule 128.02, subd. 1(f).

(c) Unpublished Nonprecedential opinions and order opinions are not precedential-binding authority except as law of the case, res judicata, or collateral estoppel, and may be cited only as provided in Minnesota Statutes 1996, section 480A.08, subdivision 3 but nonprecedential opinions may be cited as persuasive authority.

**Subd. 2. Notice of ~~Decision~~-Opinion.** Upon the filing of a ~~decision or order~~ an opinion 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.

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