STATE OF MINNESOTA
IN SUPREME COURT

No. C4-84-2133

In re:

Supreme Court Advisory Committee
on Rules of Civil Appellate Procedure

Recommendations of Minnesota Supreme Court Advisory Committee on Rules of Civil Appellate Procedure

Final Report

January 30, 1998

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Summary of Committee Recommendations

Advisory Committee on
Rules of Civil Appellate Procedure

EXECUTIVE SUMMARY

Advisory Committee Process Summary

This Court's Advisory Committee on the Rules of Civil Appellate Procedure has met seven half-days (as well as at various sub-committee meetings) during 1997 to consider changes in appellate procedure. The Committee considered numerous drafts of the rules, and considered all comments it or the Court had received since the last rules amendments. Additionally, the Committee considered proposals for study or change brought forward by the Committee and its co-reporters. The Minnesota Rules of Civil Appellate Procedure were last reviewed and amended substantively in 1992, though various subsequent amendments have adjusted the provisions for filing fees and similar matters.

The Committee has carefully reviewed the operation of the appellate rules, and is pleased to report they are working well in practice. A few significant and recurring problems do exist, however, and these amendments seek to address those problems.

Summary of Advisory Committee Recommendations

The Committee's report comprises 14 separate recommendations. The changes range from the technical or ministerial to the very significant. Rule 103 is amended to clarify the rules on appealability and Rule 104 is amended to change the timing of appeals. These changes, and particularly the establishment of a standard 60-day timing rule for appeals from judgments and orders (though the trigger for commencing those 60-day periods will continue to differ), will have a dramatic impact on appellate practice in Minnesota. They will also address the most commonly heard complaint about how the rules now operate.

The recommendations of this report are summarized here:

Recommendation 1:	Revise Rule 103.03 to include appealable orders and judgments prescribed by case law or statute
Recommendation 2:	Revise Rule 103.04 to codify the requirement of post-trial motions to preserve certain issues for appellate review

Recommendation 3:	Revise Rule 104 to provide for a unified 60-day time period in which to appeal from orders and judgments (albeit still measured from different starting dates), and provide that post-trial motions extend the time for appeal
Recommendation 4:	Revise Rule 108 to clarify effect of appeal on enforcement proceedings, the need to obtain a supersedeas bond, and the procedure to be followed
Recommendation 5:	Adopt a new Rule 114 regarding original jurisdiction of Court of Appeals to review validity of administrative rules
Recommendation 6:	Revise Rule 115 to modify the procedure for certiorari review of administrative decisions of state agencies
Recommendation 7:	Revise Rule 117 to provide for the filing of a cross-petition for review, rather than a conditional petition
Recommendation 8:	Revise Rule 120 to eliminate need to name trial judge and otherwise clarify procedures
Recommendation 9:	Modify Rule 128 to include federal requirement of listing most apposite authorities in statement of issues; move provisions of Rule 132.01, subd. 5 regarding letter briefs to this Rule
Recommendation 10:	Clarify in Rule 131 the due dates for briefs, to more specifically provide procedures for extension of time to file briefs, and to reduce the number of copies of briefs that must be filed in the Court of Appeals
Recommendation 11:	Clarify in Rule 132 the requirement that typed material appear on only one side of the page and eliminate the requirement that parties retain in the Supreme Court the cover colors they used in the Court of Appeals
Recommendation 12:	Clarify in Rule 137 the procedures for enforcement of money judgments issued from Court of Appeals and Supreme Court
Recommendation 13:	Clarify procedure in Rule 139 for seeking attorneys' fees on appeal
Recommendation 14:	Adopt new provisions to define when *pro hac vice* admission is required and how it is obtained, to establish a procedure for

	withdrawal of counsel, and provide for certified student practitioners
Recommendation 15:	Make stylistic or minor phrasing amendments in some rules
Rule 103.01	Manner of Making Appeal
Rule 105.02	Content of Petition; Response
Rule 106	Respondent's Right to Obtain Review
Rule 107	Bond or Deposit for Costs
Rule 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
Rule 110.03	Statement of the Proceedings When No Report Was Made or When the Transcript Is Unavailable
Rule 130.01	Record Not to Be Printed; Appellant to File Appendix
Rule 132.01	Form of Briefs, Appendices, and Supplemental Records
Rule 134.09	Oral Argument—Place of Argument
Rule 136.01	Decision
Recommendation 16:	The forms should be updated to reflect these amendments
Form 133	Statement of the Case
Form 110A	Certificate as to Transcript
Form 110B	Certificate of Filing and Delivery
Form 115A	Petition For Writ of Certiorari
Form 115B	Writ of Certiorari
Form 120A	Petition for Writ of Prohibition
Form 120B	Order for Writ of Prohibition [DELETE]
Form 120C	Writ of Prohibition [DELETE]
Form 114	Petition for Declaratory Judgment
Form 139	Taxation of Costs and Disbursements

The report includes amendments to the official forms accompanying the rules where appropriate.

Matters Not Recommended for Action at This Time

The Committee also considered a number of suggestions which deserve further study. The most significant of these matters are: (1) rehearing in a Court of Appeals; and (2) post-trial motions.

The Committee considered at some length whether there should be a mechanism to allow rehearing or reconsideration in the Court of Appeals. Rule 140 now expressly prohibits rehearing in the Court of Appeals. Nothing in the current rules indicates whether parties are permitted to make motions to correct clear or clerical errors in opinions. *But see* MINN. R. CIV. APP. P. 127 (request for

an order or other relief from the court should be made by motion); MINN. APP. SPEC. R. PRACT. 6 (panels may make clerical changes in opinions). Most state appellate courts provide some mechanism for rehearing. *See* ROBERT STERN, APPELLATE PRACTICE IN THE UNITED STATES 441-42 & n.2 (2d ed. 1989). Notwithstanding the potential value of rehearing, the current rule saves significant judicial effort that would otherwise be spent considering motions for rehearing destined for near-certain denial. Changes to Rule 140 will require judicious allocation of significant resources and careful drafting so a new rule permits motions under exceptional circumstances, as opposed to every case. The Committee suggests this issue be reviewed in the future after further study of the need and resources questions.

The Committee also considered the recommendation of this Court's Advisory Committee on Rules of Civil Procedure that it examine possible amendments to the rules regarding post-trial motions and similar motions during trial, specifically MINN. R. CIV. P. 41, 50, 52. The federal counterparts to these rules were amended in 1991. This Committee recommends against adopting these federal rule amendments in Minnesota at this time. Although it continues to favor following federal rule practice where the federal rules would work in state court cases, the Committee believes that renaming motions for directed verdicts, judgment n.o.v. and dismissal will result in unnecessary confusion and expense. The existing rules work well in practice and the procedures under them are defined by years of Minnesota case law.

Effective Date

The Committee believes these amendments are ready for consideration by the Court, and recommends that a public hearing should be scheduled by the Court. Assuming that hearing and consideration by the Court can be accomplished during the second quarter of 1998, the Committee believes these rules can and should be made effective January 1, 1999. This will permit the amended rules to be communicated to lawyers and the courts.

Some of the changes made in these proposed rules significantly modify appellate procedure, including the questions of appealability and the timing and perfection of appeals. This Court should endeavor to ensure that it and the Court of Appeals apply the rules during the first year of effectiveness in a flexible way, to the extent consistent with existing limits of appellate jurisdiction.

Further Work of the Committee

The Committee did not consider two significant areas of concern, and agreed to take them up in subcommittee or other committee in the future. Matters relating to technology, including electronic submission of briefs and record materials, will be taken up during 1998. Similarly, issues arising from *pro se* appeals will be considered by a separate subcommittee during 1998. The Committee does not contemplate recommending rule changes other than in these two areas or on the subject of reconsideration in the Court of Appeals, within the next few years, and believes that Minnesota lawyers and litigants continue to be best served by rules of procedure that are not changed frequently or unnecessarily. The changes in this report are intended to encompass all changes now appropriate for consideration, with the three exceptions noted.

Respectfully submitted,

MINNESOTA SUPREME COURT
ADVISORY COMMITTEE ON
CIVIL RULES OF APPELLATE PROCEDURE

Recommendation 1: Revise Rule 103.03 to include appealable orders and judgments prescribed by case law or statute

Introduction

The Committee received expressions of concern from many corners over the fact that Rule 103.03 does not contain a complete list of the trial court decisions that are appealable. The existence of bases for appeal (either statutory or based on case law) that are independent of the appellate rules, and that are not identified in the appellate rules, leads to confusion and in some cases, the failure of a party to timely file an appeal where one might be allowed. On the other hand, there is also a concern that Rule 103.03 might be subject to repeated modification in the face of developing case law and statutory enactments. The Committee sought to strike an appropriate balance between these competing concerns by revising the rule to include language that would encompass the categories of appealable decisions that have been or may be created outside of the rule itself. The Committee also recommends a minor clarification that emphasizes that only final judgments are appealable.

Specific Recommendation

RULE 103 APPEAL—HOW TAKEN

* * *

RULE 103.03 APPEALABLE JUDGMENTS AND ORDERS

An appeal may be taken to the Court of Appeals:

(a) from a final judgment ~~entered in the trial court~~, 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, provided that the appeal must be taken within the time limited for appeal from an order; ~~and~~

(h) if the trial court certifies that the question presented is important and doubtful, from an order which denies a motion to dismiss for failure to state a claim upon which relief can be granted or from an order which denies a motion for summary judgment~~.~~; and

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

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 (1969) (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 so provide. *See, e.g.*, MINN. STAT. § 572.26, subd. 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.

Recommendation 2: Revise Rule 103.04 to codify the requirement of post-trial motions to preserve certain issues for appellate review.

Introduction

Minn. R. Civ. App. P. 103.04 provides that on appeal, 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." The rule further provides that, 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, the courts may review any order "involving the merits or affecting the judgment." Finally, the rule provides that the appellate courts may review "any other matter as the interests of justice may require."

Despite these broad statements, by judicial construction the scope of review may be significantly limited depending upon the course of the proceedings below. There is a concern that the current rule does not fairly warn parties of the fact that their actions or inactions in the trial court may limit the scope of appellate review. The proposed amendment highlights the judicial construction that has attached to the rule, which should be of benefit to litigants and, ultimately, the appellate courts.

Specific Recommendation

RULE 103. APPEAL—HOW TAKEN

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RULE 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.

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* MINN. CONST. art. 6, § 2.

Litigants often fail to recognize the importance of post-trial motions, and the sometimes dramatic consequences of the 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 § 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.

Recommendation 3: **Revise Rule 104 to provide for a unified 60-day time period in which to appeal from orders and judgments (albeit still measured from different starting dates), and provide that post-trial motions extend the time for appeal**.

Introduction

The current rules provide different time periods to appeal judgments and orders; moreover, the event that starts the time for appeal is different for judgments in civil cases and orders and final decisions in special proceedings. The differing time periods are a source of considerable confusion to litigants.

Additionally, there is no provision in the current rule for most appeals for a suspension of the time to appeal an otherwise "final" judgment during the time that the trial court considers motions that may impact that judgment. Rule 104.04 does include such a provision for family court matters. Under the current rule for general civil appeals, the time for taking an appeal from an order or judgment may run prior to the entry of a related order or judgment. The most common occurrence of this problem is when the trial court enters judgment immediately upon the filing of its findings of fact, conclusions of law and order for judgment (in either a court trial or a jury trial) and then does not decide post-trial motions within the time for an appeal from the judgment. If an appeal from the judgment is filed, the trial court loses jurisdiction to decide the pending motions.

The current rules do not account for the independent appealability of judgments and decisions on certain post-trial motions and some appeals from orders not following trials, nor do they deal with the effect of an appeal on the trial court's jurisdiction to rule on pending post-trial motions. These problems would be resolved by the adoption of a rule that specifically addresses the effect of post-decision motions on the time for appeal.

Specific Recommendation

RULE 104. TIME FOR FILING AND SERVICE OF NOTICE OF APPEAL

RULE 104.01 TIME FOR FILING AND SERVICE

Subd. 1. Time for Appeal. Unless a different time is provided by statute, an appeal may be taken from a judgment within ~~90~~ 60 days after its entry, and from an appealable order within ~~30~~ 60 days after service by any ~~the adverse~~ party of written notice of its filing. ~~unless a different time is provided by law.~~

An appeal may be taken from a judgment entered pursuant to Rule 54.02, Minnesota Rules of Civil Procedure, within ~~90~~ 60 days of the entry of the judgment only if the trial court makes an express determination that there is no just reason for delay and expressly directs the entry of a final judgment. The time to appeal from any other judgment entered pursuant to Rule 54.02 shall not begin to run until the entry of a judgment which adjudicates all the claims and rights and liabilities of the remaining parties.

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

(a) for judgment notwithstanding the verdict under Minn. R. Civ. P. 50.02;

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

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

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

(e) for relief under Minn. R. Civ. P. 60 if the motion is filed within the time 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 review pursuant to Rule 106.

RULE 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 ~~the~~ costs and disbursements~~. of the prevailing party.~~

~~RULE 104.03 SPECIAL PROCEEDINGS~~

~~Except as otherwise provided by statute, an appeal from the final order or judgment affecting a substantial right made in an administrative or other special proceeding must be taken within the time limited for appeal from an order.~~

~~RULE 104.04 MARITAL DISSOLUTION~~

~~**Subd. 1.** An appeal may be taken from a judgment and decree of dissolution within 90 days after its entry, from an amended judgment and decree of dissolution within 30 days after service by the adverse party of written notice of entry, and from an order within 30 days after service by the adverse party of written notice of filing unless a different time is provided by law.~~

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

~~(a) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted;~~

~~(b) to alter or amend the judgment;~~

~~(c) for modification of an order with respect to custody or visitation; or~~

~~(d) for modification of child support or of maintenance.~~

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

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 a 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.

Recommendation 4: **Revise Rule 108 to clarify effect of appeal on enforcement proceedings, the need to obtain a supersedeas bond, and the procedure to be followed**.

Introduction

The current provisions of Rule 108 relating to supersedeas bonds are confusing to many litigants. The rule should more clearly articulate the fact that the mere filing of an appeal does not, except where provided by statute, stay any of the proceedings in the trial court to enforce the judgment or order which has been appealed. The current rule also does not specify the procedure for obtaining a stay. Under existing case law, application for the stay is made in the first instance to the trial court, and not the appellate court, although appellate review of the trial court's action on a stay request is available under an abuse of discretion standard. The proposed amendments are intended to address these shortcomings of the existing rule.

Specific Recommendation

RULE 108. SUPERSEDEAS BOND; STAYS

RULE 108.01 SUPERSEDEAS BOND

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

Unless otherwise provided by law, ~~An~~ a proper and timely appeal ~~from~~ does not stay an order or judgment ~~shall stay~~ or enforcement proceedings in the trial court ~~and save all rights affected by it only if~~, but the appellant may obtain a stay by provid~~es~~ing a supersedeas bond or other security in the amount and form which the trial court shall order and approve, in the cases provided in this rule, or as otherwise provided by rule or statute.

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

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

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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.

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.

Recommendation 5: **Adopt a new Rule 114 regarding original jurisdiction of Court of Appeals to review validity of administrative rules**.

Introduction

By statute the Court of Appeals is granted original jurisdiction to review by declaratory judgment the validity of an administrative rule promulgated by a state agency. MINN. STAT. § 14.44 (1996). The statute contains no provisions regarding the procedure by which this review is to be accomplished. The Court of Appeals has 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. A new rule should be adopted to prescribe the procedure for obtaining review of administrative rules; a proposed rule to accomplish this follows.

Specific Recommendation

RULE 114. COURT OF APPEALS REVIEW OF ADMINISTRATIVE RULES

RULE 114.01 HOW OBTAINED

Review by the Court of Appeals of the validity of administrative rules pursuant to Minn. Stat. § 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 $250.00 to the clerk of the appellate courts, unless no fee is required pursuant to Rule 103.01, subdivision 3;

(c) serving the petition upon the attorney general and the agency or body whose rule is to be reviewed;

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

(e) filing a cost bond or other security with the agency or body, unless no bond is required pursuant to Rule 107, subdivision 2, or the agency or board waives the bond.

RULE 114.02 CONTENTS OF PETITION FOR DECLARATORY JUDGMENT

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

RULE 114.03 RECORD ON REVIEW OF PETITION FOR DECLARATORY JUDGMENT; TRANSMISSION OF RECORD

Subd. 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.

RULE 114.04 BRIEFING

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

RULE 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.

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. MINN. STAT. § 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 MINN. STAT. § 14.45 (1996). Only formally promulgated rules may be challenged in a pre-enforcement action under MINN. STAT. § 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 enforced against a particular party and the validity of the rule as applied to that party is adjudicated. The reasonableness of the rule as applied cannot be considered in a declaratory judgment action in the Court of Appeals, but it may be considered in a contested case proceeding. *Minnesota Ass'n of Homes for the Aging v. Department of Human Servs.*, 385 N.W.2d 65, 68 (Minn. App. 1986).

Recommendation 6: Revise Rule 115 to modify the procedure for certiorari review of administrative decisions of state agencies.

Introduction

The Court of Appeals and the Attorney General's office brought to the Committee's attention a number of problems that they experience in certiorari review of administrative decisions. These problems include failure of the party seeking review to properly serve the writ issued by the appellate court, questions regarding stays, and uncertainty regarding the composition and submission of the record for appellate review. The rule should be revised to reduce these uncertainties, and make the procedures more clear.

Specific Recommendation

RULE 115. COURT OF APPEALS REVIEW OF DECISIONS OF THE COMMISSIONER OF JOBS AND TRAINING ECONOMIC SECURITY AND OTHER DECISIONS REVIEWABLE BY CERTIORARI AND REVIEW OF DECISIONS APPEALABLE PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT

RULE 115.01 HOW OBTAINED; TIME FOR SECURING WRIT

Review by the Court of Appeals of decisions of the Commissioner of ~~Jobs and Training~~ Economic Security and other decisions reviewable by certiorari and review of decisions appealable pursuant to the Administrative Procedure Act may be had by securing issuance of a writ of certiorari ~~within 30 days after the date of mailing notice of the decision to the party applying for the writ, unless an applicable statute prescribes a different period of time~~. The appeal period and the acts required to invoke appellate jurisdiction are governed by the applicable statute.

*** * ***

RULE 115.03 CONTENTS OF THE PETITION AND WRIT; FILING AND SERVICE

Subd. 1. Contents and Form of Petition, Writ and Response. The petition shall definitely and briefly state the decision, judgment, order or proceeding which is sought to be reviewed and the errors which the petitioner claims. A copy of the decision and ~~two copies~~ an original and one copy of a completed statement of the case pursuant to Rule 133.03 shall be attached to the petition. The title and form of the petition and writ should be as shown in the appendix to these rules. The

respondent's statement of the case, if any, shall be filed and served within 10 days after ~~receiving~~ service of the petitioner's statement.

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

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

Subd. 3. Filing; Fees. The clerk of the appellate courts shall file the original petition and issue the original writ. The petitioner shall pay $250 to the clerk of the appellate courts, unless ~~a different filing fee is required by statute~~ no fee is required under Rule 103.01, subdivision 3, or by statute.

Subd. 4. Service~~; Time~~. The petitioner shall serve copies of the petition and the writ, if issued, upon the ~~court~~agency or body to ~~whom~~ which it is directed and upon ~~any~~ every party. ~~within 30 days after the date of mailing notice of the decision to the petitioner, unless an applicable statute prescribes a different period of time~~. Proof of service shall be filed with the clerk of the appellate courts within ~~5~~ five days of service. A copy of the petition and writ shall be provided to the attorney general ~~at the time of service~~, unless the state is neither a party nor the body to ~~whom~~ which the writ is directed.

RULE 115.04 THE RECORD ON REVIEW BY CERTIORARI; TRANSMISSION OF THE RECORD

Subd. 1. General Application of Rules 110 and 111. To the extent possible, the provisions of Rules 110 and 111 respecting the record and the time and manner of its transmission and filing or return in appeals shall govern upon the issuance of the writ and the parties shall proceed as though the appeal had been commenced by the filing of a notice of appeal, unless otherwise provided by this rule, the court or by statute. Each reference in ~~those r~~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 10 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 10 days after the transcript is ordered. The reporter shall file the original and first copy of the transcript with the agency or body, deliver a copy to the attorney for each party to the appeal separately represented, and file a certificate of filing and delivery pursuant to Rule 110.02, subdivision 2(b).

Subd. 3. Transmission of Record. Within 10 days after the due date for the filing of relator's brief, the agency or body shall transmit the entire record of the proceeding under review to the clerk of the appellate courts, pursuant to Rule 111.01.

* * *

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, MINN. STAT. §§ 14.63–.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, MINN. STAT. § 268.105, 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, MINN. STAT. §§ 606.01-.02 (1996) (issuance of writ and service of issued writ within 60 days after party applying for writ receives due notice of proceeding to be reviewed). The Rule has been modified to make clear that the applicable statutes will determine the time limitations and triggering events for review.

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

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

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

Recommendation 7: Revise Rule 117 to provide for the filing of a cross-petition for review, rather than a conditional petition.

Introduction

Under the current rule, a party who desires Supreme Court review only if the Court takes the case on petition of another party is required to file an anticipatory petition for further review. This "conditional petition" is effective only if a "non-conditional" petition is filed. The procedure creates considerable uncertainty and unnecessary expense for litigants. An alternative procedure which allows a responding party to seek review of additional issues will resolve these concerns. The rule should be revised to follow generally the procedure contained in Rule 29.04 of the Rules of Criminal Procedure.

Specific Recommendation

RULE 117. PETITION IN SUPREME COURT FOR REVIEW OF DECISIONS OF THE COURT OF APPEALS

* * *

Subd. 3. Petition Requirements. The petition for review shall not exceed five typewritten pages, exclusive of appendix, and shall contain:

(a) a statement of the legal issues sought to be reviewed, and the disposition of those issues by the Court of Appeals;

(b) a statement of the criteria relied upon to support the petition, or other substantial and compelling reasons for review;

(c) a statement of the case, including disposition in the trial court or administrative agency and the Court of Appeals, and of those facts not addressed by the Court of Appeals relevant to the issues presented for review, with appropriate references to the record; and

(d) a brief argument in support of the petition.

The appendix shall contain the decision and opinion of the Court of Appeals, the judgments, orders, findings of fact, conclusions of law, and memorandum decisions of the trial court or administrative agency, pertinent trial briefs, and any portion of the record necessary for an understanding of the petition.

~~Four~~ Eight copies of the petition and appendix shall be filed with the clerk of the appellate courts.

~~**Subd. 4. Conditional Petition for Review.** Any party who would seek review of designated issues if another party files a timely petition, may file a conditional petition for review. That conditional petition shall be considered and decided by the court only in the event of the filing of another party's petition. The conditional petition with proof of service shall be filed with the clerk~~

~~of the appellate courts within 30 days of the filing of the Court of Appeals' decision and shall comply with subd. 2 of this rule. A filing fee of $250 shall be paid to the clerk of the appellate courts only if another party files a petition for review. If only conditional petitions are filed to review a Court of Appeals' decision, none of those petitions will be operative or decided by the court.~~

Subd. ~~5~~ 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 a 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. ~~6~~ 5. Amicus Curiae. Any applicant to participate in the appeal as amicus curiae in the event the petition for review is granted shall, upon prior notice to the parties, seek permission from the Supreme Court within the time provided in subd. ~~5~~ 4 of this rule. The application shall, in other respects, comply with Rule 129.

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, thirty days from the date of filing the Court of Appeals' decision.

The rule has also been amended to increase the number of copies of the petition and response from four to eight, to accommodate changes in the internal processing of the petitions by the Supreme Court.

Recommendation 8: **Revise Rule 120 to eliminate need to name trial judge and otherwise clarify procedures**.

Introduction

The current rule lacks clarity, particularly with respect to the requirement of naming the trial judge as a party to the writ proceeding. The comparable federal appellate rule was amended to obviate suing the trial judge, and the Committee believes this change is desirable in state court practice. The rule should be revised to make the requirements of service and the proper parties to the proceedings more clear.

Specific Recommendation

RULE 120. WRITS OF MANDAMUS AND PROHIBITION DIRECTED TO A JUDGE OR JUDGES AND OTHER WRITS

RULE 120.01 PETITION FOR WRIT

Application for a writ of mandamus or of prohibition or for any other extraordinary writ in the Supreme Court directed to the Court of Appeals or in the Court of Appeals directed to a 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 precise relief sought; and

(c) a statement of the reasons why the extraordinary writ should issue.

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

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.

RULE 120.02 SUBMISSION OF PETITION; ~~ANSWER~~ RESPONSE TO THE PETITION

The petition ~~and a proposed writ~~ shall be served on all parties and filed with the clerk of the appellate courts, ~~captioned in the court in which the application is made, in the manner specified in Rule 120.04.~~ If the lower court is a party, it shall be served; in all other cases, it should be notified of the filing of the petition and provided with a copy of the petition and any response. All parties

other than the petitioner shall be deemed respondents and may answer jointly or separately within ~~5~~ 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 ~~5~~ five-day period, but the petition shall not thereby be taken as admitted.

* * *

RULE 120.04 FILING; FORM OF PAPERS; NUMBER OF COPIES

Upon receipt of a $250 filing fee, the clerk of the appellate courts shall file the petition. All papers and briefs may be typewritten and in the form specified in Rule 132.02. Four copies with proof of services shall be filed with the clerk of the appellate courts, but the reviewing court may direct that additional copies be provided. Service of all papers and briefs may be made by mail. ~~The petition shall be entitled as in the lower court.~~

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.

Recommendation 9: **Modify Rule 128 to include federal requirement of listing most apposite authorities in statement of issues; move provisions of Rule 132.01, subd. 5 regarding letter briefs to this Rule**.

Introduction

The advisory committee has experience with briefs following the form requirements for the United States Court of Appeals for the Eighth Circuit, and one provision in particular is worthy of adoption by this Court for state court appeals. Eighth Cir. R. 28A(i)(4) requires briefs to include in the statement of issues the citation of the most persuasive cases, not to exceed four, that support the party's position on the issue as well as any statutory or constitutional references that are appropriate. The rule provides useful information to the court and parties on first reading of the brief and does not require any unnecessary work to prepare, as the brief authors are presumably quite familiar with the authorities by the time the brief is filed. The following amendment would adopt this requirement for Minnesota briefs.

In addition, the provisions of Rule 132.01, subd. 5 regarding letter briefs have been moved to Rule 128.01 as a new subdivision. That rule addresses informal briefs, and the Committee felt that Rule 128 was the appropriate place for all of the different brief types to be addressed.

Specific Recommendation

RULE 128. BRIEFS

RULE 128.01. INFORMAL BRIEFS AND LETTER BRIEFS

Subd. 1. Informal Briefs. Informal briefs may be authorized by the appellate court and shall contain a concise statement of the party's arguments on appeal, together with the appendix required by Rule 130.01. The informal brief shall have a cover and may be bound informally by stapling.

Subd. 2. Reliance Upon Trial Court Memoranda. If counsel elects, in the statement of the case, to rely upon memoranda submitted to the trial court supplemented by a short letter argument, the submission shall be covered and may be informally bound by stapling. The trial court submissions and decision shall be attached as the appendix.

RULE 128.02 FORMAL BRIEF

Subd. 1. Brief of Appellant. The formal brief of the appellant shall contain under appropriate headings and in the form here indicated:

* * *

(b) A concise statement of the legal issue or issues involved, omitting unnecessary detail. Each issue shall be stated as an appellate court would state the broad issue presented. Each issue shall be followed by a concise statement of the trial court's ruling and a list of the most apposite cases, not to exceed four, and the most apposite constitutional and statutory provisions.

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.

Recommendation 10: **Clarify in Rule 131 the due dates for briefs, to more specifically provide procedures for extension of time to file briefs, and to reduce the number of copies of briefs that must be filed in the Court of Appeals**

Introduction

Parties are sometimes confused regarding the timing of briefs when there are multiple parties and when the method of transcript delivery differs. The rule should be revised to clarify the impact of personal delivery of the transcript versus delivery by mail, and to make clear when the time for filing responsive briefs begins in multi-party appeals. Finally, the rules only generally address requests for extensions of time to file briefs. The rule should be revised to make the procedure and grounds more clear.

Specific Recommendation

RULE 131. FILING AND SERVICE OF BRIEFS, THE APPENDIX, AND THE SUPPLEMENTAL RECORD

RULE 131.01 TIME FOR FILING AND SERVICE

Subd. 1. Appellant's Brief. The appellant shall serve and file a brief and appendix within 30 days after delivery of the transcript by the reporter or after the filing of the trial court's approval of the statement pursuant to Rules 110.03 and 110.04. If the transcript is delivered by United States Mail, three days are added to the briefing period, which is measured from the date the transcript was mailed. If the transcript is obtained prior to appeal or if the record on appeal does not include a transcript, then the appellant shall serve and file a brief and appendix with the clerk of the appellate courts within 30 days after the filing of the notice of appeal, the petition which initiates the appeal, the appellate petition for declaratory judgment, or the appellate court order granting review.

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

Subd. 3. Reply Brief. The appellant may serve and file a reply brief within ~~10~~ ten days after service of the respondent's brief or the last respondent's brief if there are multiple respondents.

Subd. 4. Supplemental Record. If a party prepares a supplemental record, the supplemental records shall be served and filed with that party's first brief.

RULE 131.02 APPLICATION FOR EXTENSION OF TIME

Subd. 1. Motion for Extension. No extension of the time fixed by Rule 131.01 for the filing of the appellant's brief and appendix and the respondent's brief will be granted except upon a motion pursuant to Rule 127 made within the time specified for the filing of the brief. The motion

shall be ~~heard and~~ considered by a justice, judge or a person designated by the appellate courts, acting as a referee, and shall be granted only for good cause shown. Only an original of the motion shall be filed.

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.

RULE 131.03 NUMBER OF COPIES TO BE FILED AND SERVED

Subd. 1. Number of Copies. Unless otherwise specified by the appellate court, the following number of copies of each brief, appendix, and supplemental record, if any, shall be filed with the clerk of the appellate courts:

(a) In an appeal to the Supreme Court, 14 copies. Two copies of the 14 shall be unbound.

(b) In an appeal to the Court of Appeals, ~~nine~~ seven copies. ~~Two copies~~ One copy of the ~~nine~~ seven shall be unbound.

If counsel has elected, in the statement of the case form, to rely on memoranda submitted to the trial court, supplemented by a short letter argument, the number of copies required by this rule shall be filed with the clerk of the appellate courts.

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.

Recommendation 11: **Clarify in Rule 132 the requirement that typed material appear on only one side of the page and eliminate the requirement that parties retain in the Supreme Court the cover colors they used in the Court of Appeals**

Introduction

There continues to be considerable uncertainty among litigants as to the proper method of binding briefs and appendices. The rule should be revised to make clear those methods that are not acceptable, and to provide some guidance to parties as to what methods are approved. The rule should also be modified to expressly include the courts' required practice of having written material appear on only one side of the paper. Finally, Rule 132.01, subd. 2 , creates confusion over cover color following the grant of a petition to review a decision of the Court of Appeals. The rule should be revised to eliminate that confusion.

Specific Recommendation

RULE 132. FORM OF BRIEFS, APPENDICES, SUPPLEMENTAL RECORDS, MOTIONS AND OTHER PAPERS

RULE 132.01. FORM OF BRIEFS, APPENDICES, AND SUPPLEMENTAL RECORDS

Subd. 1. Form Requirements. Any process capable of producing a clear black image on white paper may be used. All material other than footnotes must appear in at least 11 point type, or its equivalent of not more than 16 characters per inch, on unglazed opaque paper. Formal briefs and accompanying appendices shall be bound together by a method which ~~satisfies the published criteria of the Supreme Court~~ securely affixes the contents, and which is substantially equivalent to the list of approved binding methods maintained by the Clerk of Appellate Courts. Methods of binding which are not approved include stapling, continuous coil spiral binding, spiral comb bindings and similar bindings. Pages shall be 8½ by 11 inches in size with written matter not exceeding 6½ x 9½ inches. Written matter shall appear on only one side of the paper. The pages of the appendix shall be separately and consecutively numbered. Briefs and appendices submitted in typewritten form shall be double spaced. Carbon copies shall not be submitted.

Subd. 2. Front Cover. The front cover of the brief and appendix shall contain:

(a) the name of the court and the appellate court docket number, which number shall be printed or lettered in bold-face print or prominent lettering and shall be located one-half inch from the top center of the cover;

(b) the title of the case;

(c) the title of the document, e.g., Appellant's Brief and Appendix; and

(d) the names, addresses, and telephone numbers of the attorneys representing each party to the appeal, and attorney registration license numbers of the preparers of the brief.

The front cover shall not be protected by a clear plastic or mylar sheet.

If briefs are ~~produced by commercial printing or duplicating firms~~ formally bound, the cover of the brief of the appellant should be blue; that of the respondent, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. The cover of an amendment or supplement should be the same color as the document which it amends or supplements. ~~In the event the Supreme Court grants a petition for review of a decision of the Court of Appeals, the covers of the briefs shall be the same color as those filed by the party in the Court of Appeals.~~

* * *

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.

MINN. STAT. § 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 MINN. STAT. § 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."

Recommendation 12: **Clarify in Rule 137 the procedures for enforcement of money judgments issued from Court of Appeals and Supreme Court.**

Introduction

The current provisions of Rule 137 regarding execution on money judgments entered in the appellate courts are cumbersome and confusing. District courts are far better suited to issuance of process to collect money judgments, and the rule should be revised to make clear that requests for process should be made in that forum. The rule should also be revised to provide explicitly for the procedure to enforce money judgments granted by the appellate court in proceedings that did not originate in the district courts.

Specific Recommendation

RULE 137. ~~EXECUTION~~ ENFORCEMENT OF MONEY JUDGMENTS

~~An execution to enforce any judgment of the appellate court may issue to the sheriff of any county in which a transcript of the judgment is filed and docketed. The execution shall be returnable within 60 days from its receipt by the officer. On the return of an execution satisfied in due form of law, the trial court administrator shall enter the satisfaction in the record~~.

Subd. 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.

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, MINN. STAT. §§ 548.26–.33 (1996).

Recommendation 13: Clarify procedure in Rule 139 for seeking attorneys' fees on appeal

Introduction

The current rule does not establish a specific procedure for seeking an award of attorneys' fees on appeal. In practice, a variety of *ad hoc* procedures have been employed by litigants, and allowed by the appellate courts. The rule should be revised to set forth clearly the procedures to be followed in requesting fees on appeal, with careful consideration of the fact that any change in the rule would be procedural only, and would not provide any new or additional substantive ground for seeking such an award. The committee recommends the following amendments to accomplish these purposes.

Specific Recommendation

RULE 139. COSTS AND DISBURSEMENTS

* * *

RULE 139.06. ATTORNEYS' FEES ON APPEAL—PROCEDURE

Subd. 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.

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.

Recommendation 14: **Adopt new provisions to define when *pro hac vice* admission is required and how it is obtained, to establish a procedure for withdrawal of counsel, and provide for certified student practitioners.**

Introduction

The Committee considered a number of issues relating to the role of attorneys in the appellate process. The Committee recommends that a new subdivision of Rule 143 be adopted to establish a specific procedure for applying for admission *pro hac vice*. In addition, the rule specifies that *pro hac vice* is required of a non-admitted attorney seeking to argue a case in either the Minnesota Court of Appeals or Minnesota Supreme Court. The rule also establishes an explicit procedure for withdrawal of attorneys and admission of students certified to practice under the Minnesota Student Practice Rules.

Specific Recommendations

RULE 143. PARTIES; SUBSTITUTION; ATTORNEYS

* * *

RULE 143.05 ATTORNEYS

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

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

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

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

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

for leave to present oral argument must be filed no later than 10 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.

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* MINN. STAT. § 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.

Recommendation 15: Make stylistic or minor phrasing amendments in some rules

Introduction

The Committee also recommends a number of miscellaneous housekeeping amendments. None of these proposals will impact established procedural or substantive law, but they will, hopefully, make the established practices more clear and easier for counsel to follow. Each of the miscellaneous recommendations is self-explanatory.

Specific Recommendations

RULE 103. APPEAL—HOW TAKEN

* * *

RULE 103.01 MANNER OF MAKING APPEAL

Subd. 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:

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

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

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

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

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

(1) two copies of the notice of appeal,

(2) a certified copy of the judgment or order from which the appeal is taken,

(3) two copies of the statement of the case required by Rule 133.03, and

(4) a filing fee of $250~~;~~.

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

~~(5)~~ (1) a copy of the notice of appeal, and

~~(6)~~ (2) the cost bond required by Rule 107, or written waiver of it~~, and~~.

~~(7) the supersedeas bond, if any, required by Rule 108.~~

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.

RULE 105. DISCRETIONARY REVIEW

* * *

RULE 105.02 CONTENT OF PETITION; RESPONSE

** * *

A copy of the order from which the appeal is sought and any findings of fact, conclusions of law, ~~and~~ or memorandum of law relating to it shall be attached to ~~each~~ the petition. Any adverse party may, within ~~7~~ five days after service of the petition, serve and file with the clerk of the appellate courts four copies of a response to the petition. Any reply shall be served within two days after service of the response. All papers may be typewritten.

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

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 7 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.

RULE 106. RESPONDENT'S RIGHT TO OBTAIN REVIEW

A respondent may obtain review of a judgment or order entered in the same action which may adversely affect ~~him~~ respondent by filing a notice of review with the clerk of the appellate courts. The notice of review shall specify the judgment or order to be reviewed, shall be served and filed within 15 days after service of the notice of appeal, and shall contain proof of service. A filing fee of $100 shall accompany the notice of review.

Advisory Committee Comment—1998 Amendments

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

RULE 107. BOND OR DEPOSIT FOR COSTS

* * * *

Subd. 2. When Bond Not Required. No cost bond is required:

* * *

~~(f) the appeal has been remanded to the trial court or agency for further proceedings and, upon completion of those proceedings, the appeal is renewed; or~~

(~~g~~f) when the appellant is a party to a public assistance appeal pursuant to Minnesota Statutes, Chapter 256~~.~~; or

(~~h~~g) when the appellant is a~~n unemployment compensation~~ reemployment insurance benefits claimant pursuant to Minnesota Statutes, Chapter 268.

Advisory Committee Comment—1998 Amendments

Deletion of section (f) mirrors the deletion of the automatic waiver of the filing fee when an appeal is filed after a remand. *See* MINN. R. CIV. APP. P. 103.03, subd. 3(f). 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 (h) reflect the current terminology.

RULE 110. THE RECORD ON APPEAL

* * *

RULE 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

* * *

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; ~~and~~ a statement that satisfactory financial arrangements have been made for the transcription; and the court reporter's address and telephone number.

(b) Upon ~~delivery~~ filing of the transcript with the trial court administrator and delivery to ~~the appellant~~ counsel of record, the reporter shall file with the clerk of the appellate courts a certificate ~~evidencing the date~~ of filing and delivery. The certificate shall identify the transcript(s) delivered; specify the dates of filing of the transcript with the trial court administrator and delivery

to counsel; and shall indicate the method of delivery. The certificate shall also contain the court reporter's address and telephone number.

* * *

Subd. 4. Transcript Requirements. The transcript shall be typewritten on 8 ½ by 11 inch or 8 ½ by 10 ½ inch unglazed opaque paper with double spacing between each line of text, shall be bound at the left-hand margin, and shall contain a table of contents. To the extent possible, the transcript of a trial or other single court proceeding shall be consecutively paginated, regardless of the number of volumes. The name of each witness shall appear at the top of each page containing that person's testimony. A question and its answer may be contained in a single paragraph. The original and final copy of the transcript shall be filed with the trial court administrator and a copy shall be transmitted promptly to the attorney for each party to the appeal separately represented. All copies must be legible. The reporter shall certify the correctness of the transcript.

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

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 videotaped depositions must be transcribed unless the court reporter provides an existing transcript of the videotape testimony, verifying its accuracy.

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

RULE 110.03 STATEMENT OF THE PROCEEDINGS WHEN NO REPORT WAS MADE OR WHEN THE TRANSCRIPT IS UNAVAILABLE

If no report of all or any part of the proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may~~, within 15 days after service of the notice of appeal,~~ prepare a statement of the proceedings from the best available means, including recollection. The statement 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. ~~The statement shall be served on the respondent, who may serve objections or propose amendments within 15 days after service.~~ 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 statement and any objections or proposed amendments then shall be submitted to the trial court, and the statement as approved by the trial court shall be included in the record.~~ The trial court 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. ~~The trial court's approval of the statement shall be filed with the clerk of the appellate courts w~~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.

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 own recollection.

RULE 130. THE APPENDIX TO THE BRIEFS; SUPPLEMENTAL RECORD

RULE 130.01 RECORD NOT TO BE PRINTED; APPELLANT TO FILE APPENDIX

Subd. 1. Record; Portions. The record shall not be printed. The appellant shall prepare and file an appendix to its brief. The appendix shall be separately and consecutively numbered and shall contain the following portions of the record:

* * *

(h) the notice of appeal; and

(i) if the constitutionality of a statute is challenged, proof of compliance with Rule 144.04; and

(~~i~~j) the index to the documents contained in the appendix.

The parties shall have regard for the fact that the entire record is always available to the appellate court for reference or examination and shall not engage in unnecessary reproduction.

Advisory Committee Comment—1998 Amendments

Rule 144.04 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.

RULE 132. FORM OF BRIEFS, APPENDICES, SUPPLEMENTAL RECORDS,MOTIONS AND OTHER PAPERS

Rule 132.01. Form of Briefs, Appendices, and Supplemental Records

* * *

~~Subd. 5. Reliance Upon Trial Court Memoranda. If counsel elects, in the statement of the case, to rely upon memoranda submitted to the trial court supplemented by a short letter argument, the submission shall be covered and may be informally bound by stapling. The trial court submissions and decision shall be attached as the appendix.~~

Advisory Committee Comment—1998 Amendments

Subdivision 5 of this Rule has been moved to Rule 128.01, subd. 2.

RULE 134. ORAL ARGUMENT

* * *

RULE 134.09 ORAL ARGUMENT—PLACE OF ARGUMENT

* * *

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.

* * *

(b) Arguments on writs of certiorari to review decisions of the Commissioner of ~~Jobs and Training~~ Economic Security shall be heard as follows:

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 136 NOTICE OF DECISION; JUDGMENT; REMITTITUR

RULE 136.01 DECISION

Subd. 1. Written Decision.

(a) Each Court of Appeals disposition shall be written in the form of a ~~statement of the decision, accompanied by an opinion containing a summary of the case and the reasons for the decision; however if the appeal is dismissed for failure to comply with these rules or if the court determines that the contents of the statement of the decision sufficiently explain the disposition made, no written opinion need be prepared~~ published opinion, unpublished opinion, or an order opinion.

~~(b) An order statement of the decision without written opinion shall not be officially published and shall not be cited as precedent, except as law of the case, res judicata or collateral estoppel.~~

(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 Minn. Stat. § 480A.08, subd. 3 (1996).

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. (b) and treats both unpublished opinions and order opinions identically in the new subd. (b). It permits citation of these opinions in accordance with MINN. STAT. § 480A.08, subd. 3 (1996).

Recommendation 16: The forms should be updated to reflect these amendments.

Introduction

This recommendation should be self-explanatory. As other rules are amended, the forms that accompany them in the Appendix should be amended as well. Additionally, the forms are amended to incorporate their actual use in the courts. The Statement of the Case is made more detailed to provide more information to the courts.

Specific Recommendation

Amend the following forms as indicated below:

FORM 133	STATEMENT OF THE CASE
FORM 110A	CERTIFICATE AS TO TRANSCRIPT
FORM 110B	CERTIFICATE OF FILING AND DELIVERY
FORM 115A	PETITION FOR WRIT OF CERTIORARI
FORM 115B	WRIT OF CERTIORARI
FORM 120A	PETITION FOR WRIT OF PROHIBITION
FORM 120B	ORDER FOR WRIT OF PROHIBITION
FORM 120C	WRIT OF PROHIBITION
FORM 114	PETITION FOR DECLARATORY JUDGMENT
FORM 139	TAXATION OF COSTS AND DISBURSEMENTS

FORM 133. STATEMENT OF THE CASE

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

CASE TITLE:

_____ STATEMENT OF THE CASE OF (APPELLANT) (RESPONDENT)

Appellant,

TRIAL COURT CASE NUMBER:

vs.

_____ APPELLATE COURT CASE NUMBER:

Respondent.

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

2. Jurisdictional statement

(A) Appeal from district court.

Statute, rule or other authority authorizing appeal:

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

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

Date of filing any motion that tolls appeal time:

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

(B) Certiorari appeal.

Statute, rule or other authority authorizing certiorari appeal:

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

(C) Other appellate proceedings.

Statute, rule or other authority authorizing appellate proceeding:

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

(D) Finality of order or judgment.

Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees? Yes ( ) No ( )

If no:

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

If yes, provide date of order :

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

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

(E) Criminal only:

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

If no, cite statute or rule authorizing interlocutory appeal:

3. State type of litigation and designate any statutes at issue.

4. Brief description of claims, defenses, issues litigated and result below. For criminal cases, specify whether conviction was for a misdemeanor, gross misdemeanor, or felony offense.

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

6. Related appeals.

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

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

~~6.~~7. Contents of record.

Is a transcript ~~required~~ necessary to review the issues on appeal? Yes ( ) No ( )

If ~~so~~ yes, full ( ) or partial ( ) transcript?

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

If not, has it been ordered from the court reporter? Yes ( ) No ( )

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

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

~~7~~8. Is oral argument requested? Yes ( ) No ( )

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

If yes, state where argument is requested:

~~8. Are formal briefs necessary? _____ or~~

~~Are trial memoranda, supplemented by a short letter argument, sufficient? _____~~

~~(If the latter form is selected, it is the duty of counsel to provide the appellate court with the number of copies required by Rule 131.01 and in the form required by Rule 132.01, all endorsed with the appellate court docket number.)~~

9. Identify the type of brief to be filed.

Formal brief under Rule 128.02. ( )

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

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

~~9~~10. Names, addresses, zip codes and telephone numbers of attorney for appellant and respondent.

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

_____

SIGNATURE

OR, IF NOT REPRESENTED BY COUNSEL:

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

_____

SIGNATURE (OF APPELLANT) (OF RESPONDENT)

Dated:

(The Statement of Case is not a jurisdictional document, but it is important to the proper and efficient processing of the appeal by the appellate courts. The "jurisdictional statement" section is intended to provide sufficient information for the appellate court to easily determine whether the order or judgment is appealable and if the appeal is timely. The nature of the proceedings below and

the notice of appeal determine the jurisdiction of the appellate court. The sections requesting information about the issues litigated in the lower court or tribunal, and the issues proposed to be raised on appeal are for the court's information, and do not expand or limit the issues that might be addressed on appeal. Likewise, the section asking counsel to identify any prior or pending appeals from the same case, and any separate appeals that raise similar issues is intended to provide more information about the procedural history of the case and to ensure that the court has early notice of other pending related matters in case consolidation is appropriate.)

FORM 110A. CERTIFICATE AS TO TRANSCRIPT

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

STATE OF MINNESOTA
COUNTY OF _____

_____ DISTRICT COURT
~~_____ COUNTY COURT~~
_____ JUDICIAL DISTRICT

CASE TITLE:

Plaintiff,

vs.

Defendant.

CERTIFICATE AS TO TRANSCRIPT

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

TRIAL COURT CASE NUMBER:

TO: Clerk of the Appellate Courts
Minnesota Judicial Center
St. Paul, MN 55155

A transcript of the proceedings held on _____ (specify dates) in the above-entitled action was requested by counsel for the ~~defendant~~ (specify party) on (date) in accordance with Rule 110.02, subdivision 2 of the Rules of Civil Appellate Procedure. The estimated number of pages is (number) and the estimated date of completion is _____, a date not to exceed 60 days from the date of request.

Satisfactory financial arrangements have been made between counsel and the court reporter for the transcription.

DATED:

_____
SIGNATURE OF ATTORNEY

_____
ADDRESS AND TELEPHONE NUMBER

_____
SIGNATURE OF COURT REPORTER

ADDRESS AND TELEPHONE NUMBER

cc: Trial Court Administrator of Record
All Counsel of Record

(Rule 110.02, subdivision 2, requires a certificate as to transcript if any part of the proceedings are to be transcribed by a court reporter. The original copy of the certificate shall be filed with the clerk of the appellate courts, with a copy to the trial court administrator and all counsel of record and shall be filed with the clerk of the appellate courts within 10 days from the date the transcript was ordered.)

FORM 110B. CERTIFICATE OF FILING AND DELIVERY

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

STATE OF MINNESOTA
COUNTY OF _____

_____ DISTRICT COURT
_____JUDICIAL DISTRICT

CASE TITLE:

Plaintiff,

vs.

Defendant.

CERTIFICATE OF FILING AND DELIVERY

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

TRIAL COURT CASE NUMBER:

TO: Clerk of the Appellate Courts
Minnesota Judicial Center
St. Paul, MN 55155

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

DATED:

_____
SIGNATURE OF COURT REPORTER
ADDRESS AND TELEPHONE NUMBER

cc: Trial Court Administrator of Record
All Counsel of Record

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

FORM 115A. PETITION FOR WRIT OF CERTIORARI

STATE OF MINNESOTA
IN COURT OF APPEALS

CASE TITLE:

~~Employee~~
Relator,

vs.

~~Employer~~
Respondent,

~~Commissioner of Jobs and Training~~ (Agency or Body),
Respondent.

PETITION FOR WRIT OF CERTIORARI

COURT OF APPEALS NUMBER:

~~DEPARTMENT OF JOBS AND TRAINING~~ (AGENCY OR BODY) NUMBER:

DATE OF ~~MAILING NOTICE OF~~ DECISION:

DATE AND DESCRIPTION OF EVENT TRIGGERING APPEAL TIME (for example, mailing of decision, receipt of decision, or receipt of other notice):

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

The above-named relator hereby petitions the Court of Appeals for a Writ of Certiorari to review a decision of the ~~Commissioner of Jobs and Training~~ (agency or body) ~~filed and mailed~~ issued on the date noted above, upon the grounds that ~~it is not in conformity with the provisions of Minnesota Statutes, Chapter 268, and is unwarranted by the evidence~~ (specify grounds and statute authorizing certiorari review).

DATED:

NAME, ADDRESS, ZIP CODE, ~~AND~~ TELEPHONE NUMBER, AND ~~OF RELATOR:~~ ~~(~~ATTORNEY REGISTRATION LICENSE NUMBER ~~IF REPRESENTED BY COUNSEL)~~ OF ATTORNEY(S) FOR RELATOR:

_____
SIGNATURE OF ATTORNEY

OR, IF NOT REPRESENTED BY COUNSEL:

NAME, ADDRESS, ZIP CODE, AND TELEPHONE NUMBER OF RELATOR:

_____

SIGNATURE OF RELATOR

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

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

FORM 115B. WRIT OF CERTIORARI

STATE OF MINNESOTA
IN COURT OF APPEALS

CASE TITLE:	
	WRIT OF CERTIORARI
Relator,	
vs.	COURT OF APPEALS NUMBER:
Respondent,	
	~~DEPARTMENT OF JOBS AND TRAINING~~ (AGENCY OR BODY) NUMBER:
~~Commissioner of Jobs and Training~~ (Agency or Body), Respondent.	DATE OF ~~MAILING NOTICE OF~~ DECISION

TO: ~~Minnesota Department of Jobs and Training:~~
(Agency or Body)

You are hereby ordered to return to the Court of Appeals within ~~30 days from this date~~ 10 days after the date relator's brief is due the record, exhibits and proceedings in the above-entitled matter so that this court may review the decision of the ~~Commissioner of Jobs and Training filed and mailed~~ (agency or body) issued on the date noted above.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the ~~Commissioner of Jobs and Training~~ respondent (agency or body) and upon the ~~Employer-~~respondent or its attorney at:

_____

_____

(address)

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

DATED:
Clerk of Appellate Courts

(Clerk's File Stamp)

By: _____
Assistant Clerk

FORM 120~~A~~. PETITION FOR WRIT OF PROHIBITION

(Form is renumbered, without other change.)

~~FORM 120B. ORDER FOR WRIT OF PROHIBITION~~

~~STATE OF MINNESOTA~~
~~IN COURT OF APPEALS~~

~~CASE TITLE:~~

~~Petitioner,~~

~~vs.~~

~~APPELLATE COURT CASE NUMBER:~~

~~Respondent.~~

~~ORDER~~

~~Upon the petition of (name) for a writ of prohibition, IT IS HEREBY ORDERED:~~

~~1. That the writ be, and the same is, issued and that the _____ Court, _____ Division, County of _____, _____ Judicial District, upon receipt of the writ of prohibition, grant the relief requested in the petition.~~

~~2. The petitioner shall forthwith serve copies of this order on _____, attorney for respondent, and on _____, Judge of said _____ Court.~~

~~DATED:~~

~~BY THE COURT:~~

~~_____~~
~~Judge or Justice~~

FORM 120C. WRIT OF PROHIBITION

STATE OF MINNESOTA
IN COURT OF APPEALS

CASE TITLE:

Petitioner,

vs.

APPELLATE COURT CASE NUMBER:

Respondent.

WRIT OF PROHIBITION

The State of Minnesota to the Honorable _____, Judge of _____ Court, _____ Division, County of _____, _____ Judicial District:

WHEREAS, upon consideration of the petition of (name) and the answer of respondent (name) this Court has determined that petitioner is entitled to the relief requested in said petition,

NOW, THEREFORE, We do command and direct that you immediately upon receipt of a copy of this writ vacate and set aside your order of (date), and that you grant to said petitioner the relief requested in his petition of (date). Copies of this writ shall be served forthwith by mail by petitioner upon you and proof of service filed herein.

Witness the Honorable _____, Chief Judge of the Court of Appeals of the State of Minnesota, and the seal of this Court, this ____ day of _____, ____.

_____
Clerk of Appellate Courts

FORM 114. PETITION FOR DECLARATORY JUDGMENT

STATE OF MINNESOTA
IN COURT OF APPEALS

CASE TITLE:

Petitioner,	PETITION FOR DECLARATORY JUDGMENT
vs.	
	COURT OF APPEALS NUMBER:
Agency or Body,	
Respondent.	AGENCY OR BODY NUMBER:

TO: The Court of Appeals of the State of Minnesota

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

DATED:

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

_____

SIGNATURE

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

FORM 139-TAXATION OF COSTS AND DISBURSEMENTS

STATE OF MINNESOTA

☐ SUPREME COURT
☐ COURT OF APPEALS

CASE TITLE	*APPELLATE COURT CASE NUMBER:*	*NOTICE, STATEMENT AND CLAIM OF COSTS AND DISBURSEMENTS INCURRED BY PREVAILING PARTY*
		Prevailing Party: _____ ☐ *APPELLANT* ☐ *RESPONDENT* ☐ *RELATOR*

COSTS AND DISBURSEMENTS

Statutory Costs	$ 300.00	*Printing Appellant's brief and Appendix*	$ _____
Clerk of The Appellate Courts Filing Fee ($250.00) - Appellant only)	$ _____	*Postage and Express*	$ _____
Transcript of case used for appeal to Appellate Courts only	$ _____	*Premium on appeal bond*	$ _____
Printing of Respondent's brief	$ _____	*Other*	$ _____
		Total	$ _____

The above bill of Costs and Disbursements taxed and allowed _____
Dated

Frederick K. Grittner *Clerk of the Appellate Courts* BY _____ *Assistant Clerk*

STATE OF MINNESOTA

County of _____

Being duly sworn, I the attorney for the prevailing party in the above-entitled action, state that the above is a true and correct statement of costs incurred and disbursements made by the prevailing party in that action.

NOTARY STAMP, SIGNATURE AND DATE:	*Respectfully,*
_____ *Dated*	_____ *Attorney's Name*
_____ *Signature*	_____ *Address*
	_____ *Signature*

NOTICE TO ATTORNEY FOR ADVERSE PARTY(S):	***Costs and disbursements will be taxed pursuant to Rule 139.03 (Rules of Civil Appellate Procedure), objections thereto may be filed pursuant to Rule 139.04***
ADVERSE PARTY(S) BEING TAXED:	
_____ *ATTORNEY* *For* _____ *(Name of Party)*	_____ *ATTORNEY* *For* _____ *(Name of Party)*
_____ *ATTORNEY* *For* _____ *(Name of Party)*	_____ *ATTORNEY* *For* _____ *(Name of Party)*