

FILED

January 29, 2024

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8006

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

In a report dated June 28, 2023, the Minnesota Supreme Court Advisory Committee on the Rules of Civil Appellate Procedure proposed several amendments to the Rules of Civil Appellate Procedure. These include amendments to Rule 110.02, subds. 2 and 4, regarding transcripts; Rule 120.02 regarding service of extraordinary writs upon the trial court; Rule 127 regarding motions;¹ Rule 129.02 regarding the filing and service of amicus briefs; Rule 131.03 regarding the service of paper copies of briefs and addenda; Rule 143.05, subd. 3, regarding supervised practitioners; and Rule 144 regarding timelines for notifying the attorney general that a party is challenging the constitutionality of a statute and for the attorney general to file their intervention and brief. *See* Recommendations of Minnesota Supreme

¹ The Advisory Committee also provided recommendations in response to the Minnesota State Bar Association's (MSBA) petition to amend the appellate rules to permit an automatic extension of briefing deadlines and postponement of oral argument for certain personal, family, or medical reasons. That recommendation was put out for public comment in a separate order. Order Establishing Public Comment Period and Hearing on Proposed Amendments to Minnesota Rules of General Practice, Minnesota Rules of Civil Procedure, and Minnesota Rules of Civil Appellate Procedure, Nos. ADM09-8009, ADM04-8001, ADM09-8006 (Minn. filed Aug. 11, 2023). The amendment to Rule 127 is adopted here independent of the court's consideration of the MSBA's petition.

Court Advisory Committee on the Rules of Civil Appellate Procedure, No. ADM09-8006 (filed June 28, 2023).

By order filed on August 15, 2023, we established a period for the public to file written comments in response to the report filed by the committee. *See* Order Establishing Comment Period on Proposed Amendments to the Rules of Civil Appellate Procedure, ADM09-8006 (Minn. filed Aug. 15, 2023). No comments were received.

Having carefully considered the Advisory Committee’s recommendations, we agree with the proposed amendments. The Advisory Committee requested that these amendments be effective immediately upon adoption by the court. To allow time for the amendments to be codified and distributed, they will be effective on March 1, 2024.

IT IS HEREBY ORDERED that the attached amendments to the Rules of Civil Appellate Procedure are prescribed and promulgated, effective on March 1, 2024. The Advisory Committee comments that are included are done so for convenience and do not reflect court approval of the comments.

Dated: January 29, 2024

BY THE COURT:

A handwritten signature in black ink, appearing to read 'M. Chutich', written in a cursive style.

Margaret H. Chutich
Associate Justice

AMENDMENTS TO THE RULES OF CIVIL APPELLATE PROCEDURE

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

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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

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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 or self-represented party 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 14 days of the date the transcript was ordered. The certificate shall contain the date on which the transcript was requested; the estimated number of pages; the estimated completion date not to exceed 60 days; a statement that satisfactory financial arrangements have been made for the transcription; the court reporter's address and telephone number; and whether a self-represented party has requested a paper copy of a transcript under this paragraph. A self-represented party who orders a transcript may request a paper copy when ordering the transcript if the party does not have an email address to which the transcript can be delivered or does not have access to email.

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Subd. 4. Transcript Requirements. The transcript shall be formatted for 8½ by 11 inch or 8½ by 10½ inch paper with double spacing between each line of text and shall contain a table of contents. To the extent possible, the transcript of a trial or other single court proceeding shall be consecutively paginated, regardless of the number of volumes. The name of each witness shall appear at the top of each page containing that person's testimony. A question and its answer may be contained in a single paragraph. Compressed formats allowing more than one page of transcription to appear on a single page are not permitted for filed transcripts or for service on any party unless the party has consented to a compressed format.

In all appeals from the trial court, the court reporter shall file the transcript_ with the trial court administrator in electronic format acceptable to the trial court administrator. The court reporter shall promptly transmit an electronic copy of the transcript to the attorney for each party to the appeal separately represented and to any self-represented party_ by use of (a) the trial court's electronic filing and service system, if the recipient is a registered service recipient on the case being appealed, or (b) email, if the recipient is not a registered

~~service recipient on the case being appealed. unless the self-represented party qualifies for a paper copy of the transcript under subdivision 2(a) of this rule.~~ For a self-represented party who orders a transcript and requests a paper copy under subdivision 2(a) of this rule because the party does not have an email address to which the transcript can be delivered or does not have access to email, the court reporter shall provide notice by U.S. Mail to the self-represented party that the transcript has been filed with the trial court administrator and a paper copy of that transcript is available at the court administrator's office.

All copies must be legible. Other than with respect to transcripts for audio or video exhibits, the reporter shall certify the correctness of the transcript. The court reporter need not certify the correctness of a transcript of an audio or video exhibit.

The court reporter may correct any transcript prepared by a party for an audio or video exhibit, and must include the transcript of that exhibit with all other transcripts filed and provided for the appeal.

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Advisory Committee Comment—2024 Amendment

Rule 110.02, subdivision 2, is amended in 2024 to clarify that self-represented parties are responsible for preparing and signing the transcript certificate.

Rule 110.02, subdivision 4, is amended in 2024 to clarify how copies of transcripts are provided to parties.

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Rule 120. Writs of Mandamus and Prohibition Directed to a Judge or Judges and Other Writs

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120.02. Submission of Petition; Response to the Petition

The petition shall be served on all parties and filed with the clerk of the appellate courts. In criminal cases, the State Public Defender and the Attorney General for the State of Minnesota shall also be served. If the lower court is a party, it shall be served; in all other cases, it should be notified of the filing of the petition and provided with a copy of the petition and any response using the trial court's electronic filing and service system. All parties other than the petitioner shall be deemed respondents and may answer jointly or separately within 7 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 7-day period, but the petition shall not thereby be taken as admitted.

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Advisory Committee Comment—2024 Amendment

Rule 120.02 is amended in 2024 to clarify that petitions for extraordinary writs should be served upon the trial court using the trial court’s electronic filing and service system.

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Rule 127. Motions

Unless another form is prescribed by these rules, an application for an order or other relief shall be made by serving and filing a written motion for the order or relief. The filing of a motion shall not stay any time period or action specified in these rules unless ordered by the appellate court. The motion shall state with particularity the grounds and set forth the order or relief sought. If the motion is supported by briefs, affidavits or other documents, they shall be served and filed with the motion. Any party may file a response within 5 days after service of the motion. Any reply shall be served within 3 days, at which time the motion shall be deemed submitted. ~~The motion and all related documents may be typewritten.~~ Each document shall be filed with proof of service. Oral argument will not be permitted except by order of the appellate court.

As permitted by Rule 6.01(a)(2) of the Rules of Civil Procedure, the time periods in this rule do not include intermediate Saturdays, Sundays, or legal holidays.

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Rule 129. Brief of an Amicus Curiae

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129.02. Time for Filing and Service of Brief

Copies of an amicus curiae brief shall be served on all parties and filed with the clerk of the appellate courts with proof of service no later than 7 days after the time allowed for filing the brief of the party supported, or if in support of neither party, no later than 7 days after the time allowed for filing the petitioner's or appellant's brief.

Advisory Committee Comment—2024 Amendment

Rule 129.02 is amended in 2024 to clarify that an amicus brief in support of neither party must be filed no later than 7 days after the time allowed for filing the petitioner’s or appellant’s brief.

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Rule 131. Filing and Service of Briefs and Addenda

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131.03. ~~Number of Paper Copies to be Filed and Served~~

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

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

Advisory Committee Comment—2024 Amendment

Rule 131.03 is amended in 2024 to remove the requirement of serving paper copies of briefs and addenda on opposing counsel and parties who have been served electronic copies of such briefs and addenda via the appellate courts' e-filing system. The rule continues to provide that any requirement to file paper copies of briefs with the court may be established by standing order of the applicable appellate court or by other court order. This rule amendment does not alter the requirement that self-represented parties not registered or authorized to use the appellate courts' e-filing system must file and serve their briefs and addenda as set forth in Rule 125.

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

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143.05. Attorneys

Subd. 3. Certified ~~students~~ Law Students and Supervised Practitioners. A law student ~~or supervised practitioner~~ who is certified pursuant to the Minnesota Supervised 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 14 days before the date of the scheduled oral argument. The student ~~or supervised practitioner~~ may participate in oral argument only in the presence of the supervising attorney ~~of record~~.

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Advisory Committee Comment—2024 Amendment

Rule 143.05, subdivision 3, is amended in 2024 to add certified supervised practitioners as a category of individuals who may present oral argument with leave of the appellate court.

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Rule 144. Cases Involving Constitutional Questions Where State is Not a Party

When the constitutionality of an act of the legislature is questioned in any appellate proceeding to which the state or an officer, agency or employee of the state is not a party, the party asserting the unconstitutionality of the act shall promptly file and serve on the attorney general notice of that assertion ~~within time to afford an opportunity to intervene~~. Service of this notice on the attorney general may be effected by any means authorized by these rules. The attorney general has the opportunity to intervene within 30 days of that notice.

Advisory Committee Comment—2024 Amendment

Rule 144 is amended in 2024 to mirror Civil Rule of Procedure 5A by adding the term “promptly” to indicate the timeframe for notifying the attorney general of a constitutional challenge. The 2024 amendments also add a 30-day deadline for the attorney general to seek to intervene after that notice. These amendments are intended to provide clearer timeframes for notice and intervention, and are not intended to expand or contract substantive law.