

FILED

December 13, 2024

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8006

ADM10-8050

**IN RE AMENDMENTS TO THE MINNESOTA RULES OF
CIVIL APPELLATE PROCEDURE AND MINNESOTA RULES
OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH**

O R D E R

Under the Minnesota Rules of Public Access, appellate briefs have been among those materials the Clerk of the Appellate Courts has been prohibited from making remotely publicly accessible. Minn. R. Pub. Access 8(h)(3). Instead, it is the State Law Library that has authorization to provide remote access to appellate court briefs, if it has the resources to do so, and if it ensures that non-public data is redacted. *Id.*

In a January 29, 2024 order, we announced that we sought to amend the Minnesota Rules of Civil Appellate Procedure and Minnesota Rules of Public Access to Records of the Judicial Branch to allow remote public access to appellate court briefs. *See* In re Proposed Amendments to the Minnesota Rules of Civil Appellate Procedure, ADM09-8006 (Minn. filed Jan. 29, 2024). In doing so, we also sought to clarify that the responsibility to prevent the disclosure of non-public information in appellate court filings rests with the parties. Consistent with those goals, we prepared draft amendments to Minnesota Rules of Civil Appellate Procedure 112, 114, 115, and 116, as well as amendments to Rule 8 of the Minnesota Rules of Public Access.

In a January 12, 2024 order, we also announced a proposed amendment to Minnesota Rule of Civil Appellate Procedure 129, to parallel United States Supreme Court Rule 37.1, providing that “[a]n *amicus curiae* brief may be filed only by an attorney admitted to practice before this Court as provided by Rule 143.05.” *See* In re Proposed Amendments to the Minnesota Rules of Civil Appellate Procedure, ADM09-8006 (Minn. filed Jan. 12, 2024).

These proposed amendments to Minnesota Rules of Civil Appellate Procedure 112, 114, 115, 116, and 129, as well as amendments to Rule 8 of the Minnesota Rules of Public Access, were referred to the Advisory Committee on the Rules of Civil Appellate Procedure.

The Advisory Committee filed its report and recommendations on May 31, 2024. The committee determined that no changes were needed to our proposed amendments to Minnesota Rules of Civil Appellate Procedure 114, 115, 116, and 129, or to Rule 8 of the Minnesota Rules of Public Access. The Advisory Committee did, however, recommend some reorganization to Rule 112 of the Appellate Rules, as well as some substantive modification to the categories of information that are deemed non-public.

In a June 20, 2024 order, we established a period for the public to file written comments in response to the report filed by the Advisory Committee. *See* Order Establishing Public Comment Period for Proposed Amendments to the Minnesota Rules of Civil Appellate Procedure, ADM09-8006 (Minn. filed June 20, 2024). One comment was filed by the Office of the Minnesota Appellate Public Defender (OMAPD). OMAPD supported the Advisory Committee’s proposed amendments to Minnesota Rule of Civil Appellate Procedure 112, but disagreed that names of witnesses—other than the victim of a criminal or juvenile act—should be categorically non-public.

Having carefully considered the Advisory Committee's recommendations and the public comment received from OMAPD, we adopt the proposed amendments, along with the Advisory Committee's reorganization of Rule 112 of the Appellate Rules. One of the reasons for revising Rule 112 is to put the primary responsibility for preventing the public disclosure of non-public materials and information on the parties to the appeal. The reorganization to Rule 112 offered by the Advisory Committee—which includes practicing attorneys—will help provide greater clarity to the members of the bar who will have the primary responsibility to ensure non-public materials are not publicly disclosed.

As to the substantive issue of what categories of information are deemed non-public, we accept OMAPD's recommendations, with some modification. There was full consensus that Social Security, employer identification, and financial account numbers must not be included in written filings to the appellate courts. As to the identity of people in appellate filings, we amend the rule to provide that jurors, minors, and non-deceased victims of a criminal or delinquent act must not be specifically identified but may be referred to by initials or a descriptive term. As to the disclosure of home street addresses, personal email addresses, personal phone numbers, and the identify of non-expert witnesses, in order to address privacy concerns created by remote access—and without limiting any other applicable laws or court rules—we amend the rule to recommend that the disclosure be limited to what is necessary and relevant for the purpose of the written appellate filing.

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

IT IS HEREBY ORDERED that the attached amendments to the Minnesota Rules of Civil Appellate Procedure and the Minnesota Rules of Public Access to Records of the Judicial Branch are prescribed and promulgated, effective as of April 1, 2025. The Advisory Committee comments are included for convenience and do not reflect court approval of the comments.

Dated: December 13, 2024

BY THE COURT:

A handwritten signature in black ink, appearing to read "Natalie E. Hudson". The signature is written in a cursive, flowing style.

Natalie E. Hudson
Chief Justice

**AMENDMENTS TO THE MINNESOTA
RULES OF CIVIL APPELLATE PROCEDURE**

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

~~**Rule 112.— Confidential or Sealed Information; Sealing of Portions of Record**~~

~~**Rule 112.01.— Status of Confidential or Sealed Record Material on Appeal**~~

~~**Subdivision 1. Materials Not Available to the Public.**—Materials that are filed in the trial court as “confidential” or “sealed” as defined in Rule 14 of the General Rules of Practice or in another manner that makes the materials unavailable to the public pursuant to statute, court rule, or trial court order, as well as any documents containing restricted identifiers as defined in Rule 11 of the General Rules of Practice, will remain under restricted access on appeal unless either the trial court or appellate court orders otherwise.~~

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

~~(Amended effective September 1, 2019.)~~

~~**Rule 112.02.— Handling of Confidential or Sealed Portions of the Appellate Record**~~

~~Any materials that are filed under seal or in another manner that makes the materials unavailable to the public and that need to be included in an addendum shall be segregated and designated as such, with a description of the basis for asserting the sealed or non-public status.~~

~~(Amended effective September 1, 2019.)~~

~~**Rule 112.03.— Duty to Maintain Confidentiality**~~

~~Every party to an appeal must take reasonable steps to prevent the disclosure of confidential information, both in oral argument and in written submissions filed with the~~

~~court, except in the manner prescribed in Rule 112.02. The court, on its own initiative or the motion of any party, may impose sanctions for the failure to comply with this rule, including the imposition of the costs of preparing appropriate documents for filing. Such a motion may be brought by a non-party to the appeal who is adversely affected by the failure to comply.~~

~~(Amended effective July 1, 2014.)~~

~~Rule 112.04. Oral Argument~~

~~Appellate arguments are public hearings.~~

~~(Adopted effective January 1, 2010.)~~

Rule 112. Non-Public Materials and Information on Appeal

Rule 112.01. Treatment of Non-Public Materials and Information on Appeal

Subdivision 1. Presumption of Public Access. Appellate case records are presumptively public, unless a specific statute, court rule, or court order directs otherwise.

Subd. 2. Duty to Maintain Confidentiality. Every party to an appeal must take reasonable steps to prevent the public disclosure of non-public materials and information in appellate case records.

Rule 112.02. Determining Whether Materials are Non-Public on Appeal

Subdivision 1. Non-Public Designation in Trial Court Automatically Retained on Appeal. Materials filed in the trial court as “confidential” or “sealed” pursuant to Rules 11 or 14 of the General Rules of Practice, or in another manner that made the materials unavailable to the public, will remain non-public on appeal without the need for a motion, unless the trial court or appellate court orders otherwise.

Subd. 2. Non-Public Designation Automatically Required by Specific Statute, Court Rule, or Court Order. Materials required to be designated “confidential” or “sealed” by a specific statute, court rule, or court order may be filed on appeal in a separately designated confidential addendum without the need for a motion.

Subd. 3. Motion Otherwise Required. If a party seeks to restrict public access to materials filed on appeal beyond the materials covered by subdivisions 1 and 2, the party must file a motion seeking a non-public designation. The motion must be filed publicly and must identify the specific rule or other authority for restricting public access to the

materials. The motion must be accompanied by an addendum, filed separately and designated as non-public, containing the materials for which the party seeks a non-public designation.

Rule 112.03. Determining Whether Information is Non-Public on Appeal

Information contained only in materials designated as non-public under Rule 112.02 must be treated as non-public on appeal, unless a specific statute, court rule, or court order directs otherwise. Information contained in non-public materials that has been disclosed in publicly accessible documents in the trial court record must be treated as public on appeal, unless a specific statute, court rule, or court order directs otherwise.

Rule 112.04. Treatment of Non-Public Materials in Addenda

Any non-public materials under Rule 112.02 that a party wishes to file with the appellate court must be filed separately in a confidential addendum. The separate confidential addendum must include a brief statement explaining why each of the materials is non-public.

Rule 112.05. Treatment of Non-Public Materials and Information in Other Written Filings

Subd. 1. Duty to Make Appellate Filings Publicly Accessible if Possible. To the extent possible, every party on appeal must prepare briefs and other written filings other than separately designated confidential addenda in a manner such that they can be publicly accessible.

Subd. 2. Specific Non-Public Information. Social Security, employer identification, and financial account numbers must not be included in written filings to the appellate courts. If Social Security, employer identification, or financial account numbers are strictly necessary to the legal issue being addressed, they must be fully redacted or referred to by a descriptive term. Jurors, minors, and non-deceased victims of a criminal or delinquent act must not be specifically identified but may be referred to by initials or a descriptive term.

Without limiting any other applicable laws or court rules, and in order to address privacy concerns created by remote access, it is recommended that the disclosure of home street addresses, personal email addresses, personal phone numbers, and the identify of non-expert witnesses be limited to what is necessary and relevant for the purposes of the written filing to the appellate courts.

Subd. 3. Seeking Leave to File Redacted and Unredacted Versions of Written Filings. If the inability to disclose non-public information in a written filing other than a separately designated confidential addendum would preclude a party from a fair

presentation of the party’s argument, the party may move for leave to file a redacted version of a written filing for public access and an unredacted, non-public version. Any such motion must demonstrate that the proposed redactions are strictly limited to non-public information under Rule 112.03 or Rule 112.05, subd. 2. The motion must be accompanied by the proposed redacted and unredacted versions of the written filing.

Rule 112.06. Treatment of Non-Public Materials and Information at Oral Argument

Appellate arguments are public hearings. Parties must take reasonable steps to avoid disclosing non-public materials or information at oral argument. Such steps include referring to people whose identities are non-public information by their initials or description rather than by name or describing confidential information in terms of its specific location in the separately designated confidential addendum without disclosing the information itself.

Rule 112.07. Failure to Comply

Any party or non-party may bring a violation of Rule 112 to the attention of the preparer of the filing on appeal. If the violation is not promptly corrected, the violation must be brought to the attention of the clerk of the appellate courts first, followed by the service and filing of a prompt motion to strike or redact. At the direction of the appellate courts, the clerk of the appellate courts may restrict public access until a motion to strike or redact has been decided. The appellate court, on its own initiative or on motion, may impose sanctions for the failure to comply with Rule 112.

Advisory Committee Comment—2025 Amendment

Rule 112 was substantially amended in 2025 to facilitate remote access to appellate briefs and to clarify parties’ responsibilities regarding the filing of non-public material and information on appeal.

Rule 112.01, subd. 1, clarifies that appellate case records are presumptively public, unless a specific statute, court rule—such as the Minnesota Rules of Public Access or Rules 11 and 14 of the Minnesota General Rules of Practice for the District Courts—or a court order directs otherwise. Subdivision 2 clarifies that parties are responsible for taking reasonable steps to prevent public disclosure of non-public materials and information on appeal.

Rule 112.02 provides that materials designated as non-public in the district court, as well as materials required to be non-public by a specific statute, court rule, or court order, may be filed on appeal in a separately designated confidential addendum without the need for a motion. A motion is required to restrict public access to any other materials on appeal.

Rule 112.03 provides that information contained only in non-public materials must be treated as non-public on appeal, unless such information has been disclosed in publicly accessible documents in the trial court record.

Rule 112.04 provides that any non-public materials a party wishes to file with the appellate court must be separately filed in a confidential addendum. The separately filed confidential addendum must include a brief statement explaining why each of the materials is non-public. That statement may be included in the table of contents of the addendum, on a separate page, or on a cover page before each document.

Rule 112.05 governs the treatment of non-public materials and information in appellate briefs and other written filings. Subdivision 1 provides that parties must prepare briefs and other written filings in a manner that allows them to be publicly accessible. For example, when practicable, parties are encouraged to use descriptive terms such as “Victim 1,” “Trade Secret A,” or “health condition,” to maintain the confidentiality of non-public information while allowing a filing to be publicly accessible. Subdivision 2 governs specific types of non-public information. Subdivision 3 outlines the procedure for filing redacted and unredacted versions of written filings.

Rule 112.06 governs the treatment of nonpublic materials and information at oral argument.

Rule 112.07 governs violations of Rule 112.

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Rule 114. Court of Appeals Review of Administrative Rules

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114.03. Record on Review of Petition for Declaratory Judgment; Transmission of Record; Non-Public Material

Subdivision 1. Review of the Record. Review of the validity of administrative rules shall be on the record made in the agency rulemaking process. To the extent possible, the description of the record contained in Rule 110.01 and the provisions of Rules 110.02, 110.05, ~~and~~ 111, and 112 shall apply to declaratory judgment actions.

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Advisory Committee Comment—2025 Amendment

Rule 114.03, subd. 1, was amended in 2025 to include a cross reference to Rule 112.

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Rule 115. Court of Appeals Review of Decisions of the Department of Employment and Economic Development and Other Decisions Reviewable by Certiorari and Review of Decisions Appealable Pursuant to the Administrative Procedure Act

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115.04. The Record on Review by Certiorari; Transmission of the Record; Non-Public Material

Subdivision 1. General Application of Rules 110 and 111. To the extent possible, the provisions of Rules 110, ~~and 111,~~ and 112 respecting the record, ~~and the~~ manner of its transmission and filing or return in appeals, and filing non-public material shall govern upon the issuance of the writ and the parties shall proceed as though the appeal had been commenced by the filing of a notice of appeal, unless otherwise provided by this rule, the court, or by statute. Each reference in Rules 110, ~~and 111,~~ and 112 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.

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Advisory Committee Comment—2025 Amendment

Rule 115.04, subd. 1, was amended in 2025 to include a cross reference to Rule 112.

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Rule 116. Supreme Court Review of Decisions of the Workers' Compensation Court of Appeals, Decisions of the Tax Court, and Other Decisions Reviewable by Certiorari

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116.04. The Record on Review by Certiorari; Transmission of the Record; Non-Public Material

To the extent possible, the provisions of Rules 110, ~~and 111,~~ and 112 respecting the record, ~~and the~~ time and manner of its transmission and filing or return in appeals, and filing non-public material shall govern upon the issuance of the writ, and the parties shall proceed as though the appeal had been commenced by the filing of a notice of appeal, unless otherwise provided by the court or by statute. Each reference in those rules to the trial court, the trial

court administrator, and the notice of appeal shall be read, where appropriate, as a reference to the body whose decision is to be reviewed, to the administrator, clerk or secretary thereof, and to the writ of certiorari respectively.

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Advisory Committee Comment—2025 Amendment

Rule 116.04 was amended in 2025 to include a cross reference to Rule 112.

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Rule 129. Brief of an Amicus Curiae

129.01. Request for Leave to Participate

(a) Leave Required. Upon prior notice to the parties, a brief of an amicus curiae may be filed with leave of the appellate court. An amicus curiae brief may be filed only by an attorney admitted to practice before the appellate court as provided by Rule 143.05.

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Advisory Committee Comment—2025 Amendment

Rule 129.01(a), is amended in 2025 to clarify that an amicus curiae brief may be filed only by an attorney admitted to practice before the appellate courts as provided by Rule 143.05.

**AMENDMENTS TO THE MINNESOTA RULES OF
PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH**

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

RULE 8. INSPECTION, COPYING, BULK DISTRIBUTION AND REMOTE ACCESS.

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Subd. 2. Remote Access to Electronic Records.

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(h) *Remote Access to Appellate Court Records.* The Clerk of the Appellate Courts will provide remote access to publicly accessible appellate court records filed on or after ~~July 1, 2015~~ April 1, 2025, except:

- (1) The record on appeal as defined in Minn. R. Civ. App. P. 110.01;
- (2) Materials filed on appeal that are known or believed to include non-public information in violation of a statute, rule, or court order; and
- (3) Addenda to briefs on appeal.
- ~~(2) Data fields in the appellate court case management system (currently known as “PMACS”) containing elements listed in clause (b)(1) (5) of this rule.~~
- ~~(3) Appellate briefs, provided that the State Law Library may, to the extent that it has the resources and technical capacity to do so, provide remote access to appellate court briefs provided that the following are redacted: appendices or addenda to briefs, data listed in clause (b)(1) (5) of this rule, and other records that are not accessible to the public.~~

~~To the extent that the Clerk of the Appellate Courts has the resources and technical capacity to do so, the Clerk of the Appellate Courts may provide remote access to appellate records filed between January 1, 2013 and June 30, 2015, and shall, along with the State Law Library, provide remote access to an archive of current and historical appellate opinions dating back as far as resources and technology permit. Public appellate records for which remote access is not available may be accessible at public terminals in the State Law Library or at any district courthouse.~~

The State Law Library may, to the extent that it has the resources and technical capacity to do so, provide remote access to appellate court briefs filed before April 1, 2025, provided that the following are redacted: appendices or addenda to briefs, data listed in clause (b)(1)-(5) of this rule, and other records that are not accessible to the public.