

STATE OF MINNESOTA  
IN SUPREME COURT  
ADM09-8006



**IN RE PROPOSED AMENDMENTS TO THE  
MINNESOTA RULES OF CIVIL APPELLATE PROCEDURE**

O R D E R

The Minnesota Supreme Court seeks 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. In doing so, the court also seeks to clarify parties' responsibilities regarding confidential or sealed information on appeal. Consistent with these goals, the court has 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. This court will benefit from consideration of the proposed amendments by the Advisory Committee for the Rules of Civil Appellate Procedure.

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

IT IS HEREBY ORDERED THAT:

1. Consideration of the proposed amendments are referred to the Minnesota Supreme Court Advisory Committee for the Rules of Civil Appellate Procedure.
2. The committee shall file its report and recommendation on the proposed amendments on or before May 31, 2024.

Dated: January 29, 2024

BY THE COURT:

A handwritten signature in black ink, appearing to read "M. Chutich".

Margaret H. Chutich  
Associate Justice

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

**Rule 112. Confidential or Sealed Information; Sealing of Portions of the Appellate Court Record**

**Rule 112.01. Status of Confidential or Sealed Record Material ~~on Appeal~~ Made Part of Appellate Court Record**

**Subdivision 1. ~~Materials Not Available to the Public~~ Designation in Trial Court Retained on Appeal.** 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~~ Segregation of Materials Submitted to Appellate Court.** ~~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. Any materials that are filed under seal or in another manner that makes the materials unavailable to the public, if submitted by a party in support of a brief, petition, motion, or other filing on appeal, shall be segregated in a separately designated addendum, with a short description of the basis for asserting that the addendum is sealed or not accessible to the public.~~

**Rule 112.02. ~~Handling of Confidential or Sealed Portions of the Appellate Record~~ Addressing Confidential Information or Sealed Materials on Appeal**

~~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.~~

**Subd. 1. Presumption of Public Access and Permitted References.** Appellate case records are presumed to be public, in the absence of a specific statute, court rule, or order of the appellate court.

Subd. 2. Maintaining Confidentiality. Every party to an appeal must take reasonable steps to prevent the disclosure, both in oral argument and in written submissions on appeal, of confidential information found only in materials filed in the trial court as “confidential” or “sealed” or specifically made nonpublic on appeal by statute, court rule, or order of the appellate court.

Generally, however, a rule or law designating an entire document as “confidential,” “sealed,” or otherwise nonpublic—except for records sealed by order in individual cases, unless otherwise directed by the court issuing such an order—does not preclude parties from mentioning the contents of the documents in their public submissions, when the information is relevant to the particular legal issues or legal arguments being addressed in the proceeding. If the issues and facts discussed in appellate court documents have also been discussed in publicly accessible pleadings, affidavits, motions, etc., at the trial court, the discussion itself is not “confidential” information within the scope of this rule.

Home street addresses, personal email addresses, and personal phone numbers shall not be included in the body of submissions to the appellate courts unless necessary to the legal issue being addressed, and then shall be partially redacted, except as required by Rule 132.04 and by court-issued forms requiring their inclusion to identify the preparer and parties. If Social Security, employer identification, or financial account numbers are included because strictly necessary, they must be partially redacted (no more than last four digits, institution name, and type of account). Jurors, witnesses (except expert witnesses), minors, and victims of a criminal or delinquent act shall be referred to by a descriptive term (neighbor, grandparent, supervisor) or by initials.

Subd. 3. Failure to Comply. Any party may bring a violation of this rule to the attention of the preparer of the filing on appeal. If the violation is not promptly corrected, the violation shall 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 court, on its own initiative or on motion, may impose sanctions for the failure to comply with Rule 112, including the imposition of the costs of preparing substitute submissions for filing. A non-party to the appeal who is adversely affected by failure to comply with Rule 112 may also seek relief by motion.

**Rule 112.03. Duty to Maintain Confidentiality Restricting Public Access to Materials Filed on Appeal**

~~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.~~

Subd. 1. Motion Required. In the absence of a specific statute, court rule, or order authorizing the submission of materials to the appellate court under seal, any party seeking to restrict public access to materials filed on appeal must make a motion, which shall identify the specific rule or other authority for restricting public access to the proposed filing. The motion must be accompanied by the proposed materials to be filed, as a separate document and filing. No motion or order is required to submit materials previously designated in the trial court as “confidential” or “sealed,” but such materials shall be segregated as provided in Rule 112.01.

Subd. 2. Restricting Public Access to Addenda, Attachments, or Exhibits Filed on Appeal. Any party seeking to restrict public access to an addendum, attachments, or exhibits in support of a brief, petition, or other filing on appeal, where the appellate court record is otherwise accessible to the public and the proposed submission is not limited to materials previously filed in the trial court as “confidential” or “sealed” must segregate the proposed addendum, attachment, or exhibit from the motion to restrict public access and must identify the specific rule or other authority that would support the proposed restriction.

Subd. 3. Redacted and Unredacted Versions of Materials Filed on Appeal. If the inability to discuss in detail confidential information that is found only in materials filed under seal or otherwise not accessible to the public would preclude a party from fair presentation of the party’s argument, a party may move to accept a proposed redacted version for public access and a proposed unredacted version for court use. In addition to complying with Rule 112.03, subdivision 1, any such motion must demonstrate that the proposed redactions are strictly limited to confidential information not found in public filings, including the decisions being challenged on appeal.

### **Rule 112.04 Oral Argument**

Appellate arguments are public hearings. Means to minimize the disclosure of confidential information at oral argument include referring to parties by their initials or description rather than by name, or by describing confidential information in terms of its specific location in the confidential part of the record without disclosing the information itself.

**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.

**Subd. 2. Transmission of Record.** Unless the time is extended by order of the court on a showing of good cause, the record shall be forwarded by the agency or body to the clerk of the appellate courts with an itemized list as described in Rule 111.01 within 30 days after service of the petition. A copy of the itemized list shall be served on all parties.

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

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

**Subdivision 1. Access to Original Records.** Upon request to a custodian, a person shall be allowed to inspect or to obtain copies of original versions of records that are accessible to the public in the place where such records are normally kept, during regular working hours. However, copies, edited copies, reasonable facsimiles or other appropriate formats may be produced for inspection if access to the original records would: result in disclosure of information to which access is not permitted; provide remote or bulk access that is not permitted under this rule; jeopardize the security of the records; or prove otherwise impractical. Unless expressly allowed by the custodian, records shall not be removed from the area where they are normally kept.

**Subd. 2. Remote Access to Electronic Records.**

(a) *Definitions.*

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(6) “Appellate court record” means the case records of the Minnesota Court of Appeals and the Minnesota Supreme Court, including without limitation opinions, orders, judgments, notices, motions, and briefs.

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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 [DATE], 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 [DATE], 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.