

STATE OF MINNESOTA  
IN SUPREME COURT

ORDER AMENDING  
RULES OF CIVIL  
APPELLATE PROCEDURE

IT IS HEREBY ORDERED that the Rules of Civil Appellate Procedure are amended to read as follows:

RULE 103. APPEAL AS OF RIGHT--HOW TAKEN

103.01 Manner of Making Appeal

(1) An appeal shall be made by the service of a written notice of appeal on the adverse party. The case shall be entitled as in the trial court. The notice shall specify the judgment or order from which the appeal is taken and the names, addresses, and telephone numbers of opposing counsel and the parties they represent. Not more than 5 days after expiration of the time to appeal, the appellant shall file the notice of appeal and the cost bond required by Rule 107 with the clerk of the court in which the judgment or order was entered, together with a deposit of \$25. The bond may be waived by stipulation of the parties.

(2) When a party in good faith serves notice of appeal from a judgment or an order, and omits, through inadvertence or mistake, to proceed further with the appeal, or to stay proceedings, the Supreme Court may grant relief on such terms as may be just.

(3) Upon compliance with subdivision (1) of this rule, the clerk of the trial court shall immediately transmit to the clerk of the Supreme Court \$20 out of the prescribed fee together with a certified copy of the notice of appeal, the affidavit of service of notice of appeal, the order or judgment from which the appeal is taken, and the bond or stipulation waiving such bond.

As amended Oct. 23, 1969; Feb. 14, 1975.

103.03 Appealable Judgments and Orders

An appeal may be taken to the Supreme Court:

(a) From a judgment or order for judgment entered in the trial court;

- (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 involving the merits of the action or some part thereof;
- (e) From an order refusing 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;
- (f) From an order which, in effect, determines the action, and prevents a judgment from which an appeal might be taken;
- (g) From a final order or judgment made or rendered in proceedings supplementary to execution;
- (h) Except as otherwise provided by statute, from the final order or judgment affecting a substantial right made in a special proceeding, provided that the appeal must be taken within the time limited for appeal from an order;
- (i) 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.

#### RULE 105. DISCRETIONARY REVIEW

##### 105.01 Petition for Permission to Appeal; Time

The Supreme Court, in the interest of justice and upon the petition of a party, may allow an appeal from an order not otherwise appealable under Rule 103.03 except an order made during trial, or from a determination of the District Court pursuant to Minn. St. 487.39. The petition shall be served on the adverse party within the time limited for appeal from an appealable order. Four copies of the petition, including the original, shall be filed with the clerk of the Supreme Court, but the Supreme Court

may direct that additional copies be provided.

#### 105.02 Content of Petition; Response

The petition shall be entitled as in the trial court and shall contain a statement of facts necessary to an understanding of the questions of law or fact determined by the order of the trial court; a statement of the question itself; and a statement why an immediate appeal is necessary and desirable. The petition shall include or have annexed thereto a copy of the order from which appeal is sought and any findings of fact, conclusions of law and memorandum relating thereto. Within 7 days after service of the petition, any adverse party may serve and file a response thereto, with copies in the number required for the petition. All papers may be typewritten.

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

#### 105.03 Grant of Permission--Procedure

If permission to appeal is granted, the clerk of the Supreme Court shall notify the clerk of the trial court and the appellant shall pay the appeal fee and file the bond as required by these rules and shall thereafter proceed as though the appeal had been noticed by service of a written notice of an appeal. The time fixed by these rules for transmitting the record and for filing the briefs and appendix shall run from the date of the entry of the order granting permission to appeal.

#### Advisory Committee Note

This rule is similar to P. Fed. R. App. P. 5. It follows the recommendation of the Judicial Council of Minnesota and permits the Supreme Court, in its discretion, to hear appeals from certain non-appealable orders and determinations. The writ procedure contained in Rule 120 provides an alternative method to obtain review of such orders.

Generally, either method may be used. However, the Supreme Court may permit a party to proceed pursuant to Rule 105 in cases where a writ may be inappropriate. See, e.g. Minn. St. 487.39, Subd. 2.

RULE 110. THE RECORD ON APPEAL

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

(1) Within 10 days after receiving notice from the prehearing conference judge appellant shall in writing, with a copy to the clerk of the Supreme Court and all counsel of record, order from the reporter a transcript of such parts of the proceedings not already part of the record as he deems necessary for inclusion in the record. Unless the entire transcript is to be included, the appellant, within said 10 days, shall file and serve on the respondent a description of the parts of the transcript which he intends to include in the record and the statement of the issues he intends to present on appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary he shall within 10 days of service of such description order such parts from the reporter or serve and file a motion in the trial court for an order requiring the appellant to do so.

(2) At the time of ordering, a party must make satisfactory arrangements with the reporter for the payment of the cost of the transcript and all necessary copies. The reporter shall promptly acknowledge receipt of said order and his acceptance of it, in writing, with copies to the clerk of the Supreme Court and all counsel of record and in so doing shall state the date, not to exceed a period of 60 days, by which the transcript will be furnished. Upon delivery of the transcript to the appellant, the reporter shall file with the clerk of the Supreme Court, a certificate evidencing the date of delivery of the transcript.

(3) If any party deems the period of time set by the reporter to be excessive or insufficient, or if the reporter needs an extension of time for completion of the transcript, the party or reporter may request a different period of time within which the transcript must be delivered by written motion to the Supreme Court under Rule 127, showing good cause why said period of time is excessive or insufficient. The Court Commissioner of the Supreme Court shall act as a referee in hearing said motions and shall file with the Court appropriate findings and recommenda-

tions for an order of the Court in said matter. A failure to comply with the order of the Court fixing a time within which the transcript must be delivered may be punished as a contempt of Court.

(4) The transcript shall be typewritten on 11 x 8-1/2 inches or 10-1/2 x 8-1/2 inches 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. The name of each witness shall appear at the top of each page containing his testimony. A question and its answer may be contained in a single paragraph. The original and first copy of the transcript shall be filed with the clerk of the trial court, and a copy shall be promptly transmitted 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.

As amended Aug. 8, 1973; Feb. 14, 1975.

RULE 115. CERTIORARI AS A MATTER OF RIGHT

115.03 Contents of the Petition and Writ; Filing and Service Thereof

(4) Service; Time. The petitioner shall serve copies of the petition and writ upon the body to which it is directed and upon the adverse party in interest within 60 days after petitioner shall have received written notice of the decision to be reviewed unless a different time is prescribed by statute. Proof of service shall be promptly filed with the Supreme Court.

As amended March 29, 1972

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

120.01 Petition for Writ

Application for a writ of mandamus or of prohibition or for any other extraordinary writ directed to a judge or judges of an inferior court shall be made by petition. The petition shall specify the trial court and the name of the trial 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 relief

sought; and (c) a statement of the reasons why the extraordinary writ should issue. If necessary to an understanding of the issues, pertinent trial court documents shall be attached to the petition.

#### 120.02 Submission of Petition; Answer to the Petition

The petition and a proposed writ shall be served on all parties and filed with the clerk of Supreme Court in the manner specified in Rule 120.04. All parties other than the petitioner shall be deemed respondents and may answer jointly or separately within 5 days after the service of the petition on them. If a respondent does not desire to respond, the clerk of the Supreme Court and all parties shall be advised by letter within said 5-day period, but the petition shall not thereby be taken as admitted.

#### 120.03 Procedure Following Submission

If the Supreme Court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it may (a) issue a peremptory writ or (b) grant temporary relief and direct the filing of briefs within the time fixed by the order. There shall be no oral argument unless the Supreme Court shall direct.

#### 120.04 Filing; Form of Papers; Number of Copies

Upon receipt of a \$20 filing fee, the clerk shall file the petition. All papers and briefs may be typewritten and in the form specified in Rule 132.02. Four copies, including an original, shall be filed, together with proof of service, with the clerk, but the Supreme 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 trial court.

### RULE 121. MANDAMUS AND PROHIBITION--EMERGENCY SITUATIONS

#### 121.01 Communication to the Court

If an emergency situation exists as to which the provisions of Rule 120 are impractical, the attorney for a party seeking a writ of mandamus or prohibition directed to a judge or judges of inferior courts may orally petition the Supreme Court for such relief by telephoning or

by personally contacting the Supreme Court Commissioner who will communicate with the Supreme Court relative to an early or immediate consideration of the petition. If the Commissioner is unavailable, the oral petition may be made to a justice of the Supreme Court.

#### 121.02 Procedure

Except as provided in Rule 121.03, no written petition or other document need be filed unless the Supreme Court so directs. If the Supreme Court is of the opinion that no emergency exists, it shall deny the petition and direct the party to proceed under Rule 120. Otherwise, after affording all parties an opportunity to be heard, it may (a) issue a peremptory writ, or (b) grant such other relief as the interests of justice require.

#### 121.03 Filing Fee

The attorney orally petitioning for a writ shall immediately transmit to the clerk of Supreme Court a \$20 filing fee with a letter specifying (a) the name of the case, (b) the trial court and the name of the trial judge, and (c) the type of writ sought.

### RULE 128. BRIEFS

#### 128.02 Brief of Respondent

The brief of the respondent shall conform to the requirements of Rule 128.01, except that a statement of the issues or of the case or facts need not be made unless the respondent is dissatisfied with the statement of appellant. If a notice of review is filed pursuant to Rule 106, the respondent's brief shall contain the issues specified in the notice of review and the argument thereon as well as the answer to the brief of appellant. A respondent who fails to file a brief either when originally due or upon expiration of an extension of time therefor shall not be entitled to oral argument without leave of the Court.

As amended Feb. 14, 1975.

RULE 129. BRIEF OF AN AMICUS CURIAE

Upon prior notice to the parties, a brief of amicus curiae may be filed by leave of the Supreme Court. A request for leave shall identify whether the applicant's interest is public or private in nature and shall state the reason why a brief of an amicus curiae is desirable. Copies of an amicus curiae brief shall be served on all parties, with proof of service filed with the clerk of the Supreme Court. An amicus curiae shall not participate in oral argument except with leave of the court.

RULE 142. DISMISSAL; DEFAULT

142.01 Voluntary Dismissal

If the parties to an appeal or other proceeding shall sign and file with the clerk a stipulation that the proceedings be dismissed, the clerk shall enter an order of dismissal accordingly.

142.02 Default of Appellant

The respondent may serve and file a motion for judgment of affirmance or dismissal if the appellant shall fail or neglect to serve and file his brief and appendix as required by these rules. If the appellant is in default for 30 days and respondent has not made a motion under this rule, the Supreme Court shall order the appeal dismissed without notice, subject to a motion to reinstate the appeal. In support of the motion, appellant must show good cause for failure to comply with the Rules governing the service and filing of briefs, that the appeal is meritorious and that reinstatement would not substantially prejudice respondent's rights.

142.03 Default of Respondent

If the respondent shall fail or neglect to serve and file his brief, the case shall be determined on the merits. If a defaulting respondent has filed a notice of review pursuant to Rule 106, the appellant may serve and file a motion for judgment of affirmance of the judgment or order specified in the notice of review, or for a dismissal of respondent's review proceedings.



Advisory Committee Note

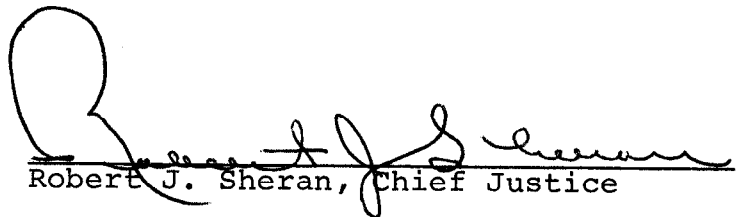
Rule 142.01. This rule is similar to P. Fed. R. App. P. 42 and codifies the current Minnesota practice concerning bilateral voluntary dismissals.

Rule 142.02. This rule is based on Minn. Sup. Ct. R. XI. If the appellant is in default for more than 30 days, the appeal is subject to summary dismissal by the court.

Rule 142.03. This rule is based on Minn. Sup. Ct. R. XI. The default of the respondent does not result in a reversal. The matter must be determined on the merits. If the respondent has sought review of an issue pursuant to Rule 106, his default may result in a dismissal of that phase of the appeal.

Dated this 9th day of April, 1979.

BY THE COURT

  
Robert J. Sheran, Chief Justice