

STATE OF MINNESOTA

IN SUPREME COURT

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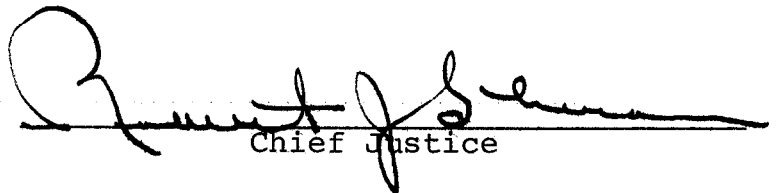
ORDER PROMULGATING AMENDMENTS TO
THE RULES OF CIVIL APPELLATE
PROCEDURE

WHEREAS, the Supreme Court has determined that amendments to the Rules of Civil Appellate Procedure are necessary and advisable.

IT IS HEREBY ORDERED that the annexed amendments to the Rules of Civil Appellate Procedure be, and the same hereby are prescribed and promulgated for the regulation of appellate practice and procedure, effective January 1, 1981.

DATED: December 4, 1980.

BY THE COURT


Chief Justice

**SUPREME COURT
FILED**

DEC 4 1980

JOHN McCARTHY,
CLERK

TITLE I. APPLICABILITY OF RULES

RULE 101. SCOPE OF RULES

These rules govern procedure in the Supreme Court of Minnesota in civil appeals; in criminal appeals insofar as the rules are not inconsistent with the Rules of Criminal Procedure or Minnesota Statutes; in proceedings for review of orders of administrative agencies, boards or commissions; and on applications for writs or other relief in civil proceedings which the Supreme Court or a justice thereof is competent to give. The term "trial court" as used in these rules shall refer to the court or agency whose decision is sought to be reviewed.

Amended Feb. 14, 1975.

RULE 102. SUSPENSION OF RULES

In the interest of expediting decision upon any matter before it, or for other good cause shown, the Supreme Court, except as otherwise provided in Rule 126.02, may suspend the requirement or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

TITLE II. APPEALS FROM JUDGMENTS AND ORDERS

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.

Amended Oct. 23, 1969; Feb. 14, 1975; April 9, 1979.

103.02 Joint Appeal

If two or more parties are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate notice of appeal, and they may thereafter proceed on appeal as a single appellant.

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.

Amended April 9, 1979.

103.04 Scope of Review

(1) The Supreme Court upon an appeal may reverse, affirm, or modify the judgment or order appealed from, or take any other action as the interests of justice may require.

(2) On appeal from an order the Supreme Court 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. It may review any other matter as the interests of justice may require.

RULE 104. TIME FOR SERVICE OF NOTICE OF APPEAL

Rule 104.01. Judgments and Orders

An appeal from a judgment may be taken within 90 days after the entry thereof, and from an order within 30 days after service of written notice of filing thereof by the adverse party. The time for taking an appeal from a partial judgment disposing of less than all multiple claims or affecting less than all of the multiple parties to an action shall begin to run on the date of the entry of the final judgment relating to all of the remaining multiple claims or multiple parties.

104.02 Effect of Entry of 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 under this section shall not be extended by the subsequent insertion therein of the costs and disbursements of the prevailing party.

104.03 Special Proceedings

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

RULE 105. DISCRETIONARY REVIEW

Rule 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 103.13 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. The trial court should, as a matter of courtesy, be notified that such a petition has been filed and provided with a copy of the petition and any response thereto. 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.

(Amended April 9, 1979.)

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.

Amended April 9, 1979.

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 by serving a notice of review on all parties to the action who may be affected by the judgment or order. The notice of review shall specify the judgment or order to be reviewed and shall be served upon the other parties within 15 days after service of the notice of appeal on that respondent and thereafter shall be filed with the clerk of the Supreme Court.

RULE 107. BOND OR DEPOSIT FOR COSTS

A bond shall be executed by, or on behalf of, the appellant. The bond shall be conditioned upon the payment of all costs and disbursements awarded against appellant on the appeal, not exceeding the penalty of the bond which shall be at least \$500. In lieu of said bond, the appellant may deposit \$500 with the clerk of the trial court as security for such payment. The bond may be filed or the deposit may be made without approval or order of the trial court. The bond or deposit may be waived by written consent of the respondent which consent shall be filed with the clerk of the trial court.

Amended Jan. 5, 1976.

RULE 108. SUPERSEDEAS BOND; STAYS

108.01 Supersedeas Bond

(1) An appeal from an order or judgment shall stay proceedings in the trial court and save all rights affected thereby, if the appellant provides a supersedeas bond in the amount and form

which the trial court shall order and approve, in the cases provided in this Rule.

(2) If the appeal is from an order, the condition of the bond shall be the payment of the costs of the appeal, the damages sustained by the respondent in consequence of the appeal, and the obedience and satisfaction of the order or judgment which the Supreme Court may give, if the order or any part thereof is affirmed or if the appeal is dismissed.

(3) If the appeal is from a judgment directing the payment of money, the condition of the bond shall be the payment of the judgment or that part of the judgment which is affirmed and all damages awarded against the appellant upon the appeal, if the judgment or any part thereof is affirmed, or if the appeal is dismissed.

(4) If the appeal is from a judgment directing the assignment or delivery of documents or personal property, the condition of the bond shall be the obedience of the order or judgment of the Supreme Court. The bond provided by this subdivision need not be given if the appellant places the document or personal property in the custody of the officer or receiver whom the trial court may appoint.

(5) If the appeal is from a judgment directing the sale or delivery or possession of real property, the condition of the bond shall be the payment of the value of the use and occupation of the property from the time of the appeal until the delivery of the possession of the property if the judgment is affirmed, and the undertaking that the appellant shall not commit or suffer the commission of any waste on the property while it remains in his possession during the pendency of the appeal.

(6) In cases not specified in subdivisions (2) to (5) hereof, the giving of the bond specified in Rule 107 shall stay proceedings in the trial court.

(7) Upon motion, the trial court may require the appellant to provide a supersedeas bond if it determines that the provisions of Rule 108 do not provide adequate security to the respondent.

Amended Oct. 29, 1968; Jan. 5, 1976.

108.02 Judgments Directing Conveyances

If the appeal is from a judgment directing the execution of a conveyance or other instrument, its execution shall not be stayed by an appeal until the instrument shall be executed and deposited with the clerk of the trial court to abide the judgment of the Supreme Court.

108.03 Extent of Stay

When a bond is given as provided by Rule 108.01, it shall stay all further proceedings in the trial court upon the judgment or order appealed from or the matter embraced therein; but the trial court may proceed upon any other matter included in the action, and not affected by the judgment or order appealed from.

108.04 Respondent's Bond to Enforce Judgment

Notwithstanding an appeal from a money judgment and security given for a stay of proceedings thereon, the trial court, on motion and notice to the adverse party, may grant leave to the respondent to enforce the judgment upon his giving bond to the appellant as herein provided, if it be made to appear to the satisfaction of the trial court that the appeal was taken for the purpose of delay. Such bond shall be executed by the respondent, or someone in his behalf, and shall be conditioned that if the judgment be reversed or modified the respondent will make such restitution as the Supreme Court shall direct.

108.05 Joinder of Bond Provisions; Service on Adverse Party

The bonds provided for in Rule 107 and Rule 108.01 may be in one instrument or several, at the option of the appellant, and shall be served on the adverse party.

108.06 Perishable Property

If the appeal is from a judgment directing the sale of perishable property, the trial court may order the property to be sold and the proceeds thereof deposited or invested to abide the judgment of the Supreme Court.

RULE 109

(Reserved for future use)

RULE 110. THE RECORD ON APPEAL

110.01 Composition of the Record on Appeal

The papers filed in the trial court, the offered exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.

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 exten-

sion 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 recommendations 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 8½ inches or 10½ x 8½ 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.

Amended Aug. 8, 1973; Feb. 14, 1975; April 9, 1979.

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 his recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 15 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the trial court and the statement as approved by the trial court shall be included in the record.

110.04 Agreed Statement as the Record

In lieu of the record as defined in Rule 110.01, the parties may prepare and sign a statement of the case showing how the issues

presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the trial court may consider necessary to present the issues raised by the appeal, shall be approved by the trial court and shall be the record on appeal.

110.05 Correction or Modification of the Record

If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and determined by the trial court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the Supreme Court, or the Supreme Court, on motion by a party or on its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be approved and transmitted. All other questions as to the form and content of the record shall be presented to the Supreme Court.

RULE 111. TRANSMISSION OF THE RECORD

*Order of the Supreme Court of February 14, 1975,
struck down Rule 111.01 and renumbered Rules 111.02,
111.03, 111.04 and 111.05 accordingly.*

111.01 Transmission of Record; Time

The record shall be transmitted to the clerk of the Supreme Court by the clerk of the trial court 60 days prior to the date set for oral argument or submission of the appeal unless the time is shortened by an order of the Supreme Court. The clerk shall transmit with the record a list, in duplicate, of the exhibits and the items comprising the record, identifying each with reasonable definiteness. Appellant's attorney has the duty to see that the clerk of the trial court complies with this rule. A party must make his own arrangements for the transportation of bulky or weighty exhibits to and from the clerk of the Supreme Court. Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the Supreme Court.

Renumbered from Rule 111.02 and amended Feb. 14, 1975.

111.02 Exhibits

All exhibits sent to the clerk of the Supreme Court shall have endorsed thereon the title of the case to which they belong. All exhibits will be returned to the clerk of the trial court with the remittitur. All models will be so returned when necessary on a new trial, but where the decision of the Supreme Court is final and no new trial is to be had, such models will be destroyed by the clerk of the Supreme Court unless called for by the parties within 30 days after final decision is rendered.

Renumbered from Rule 111.03 Feb. 14, 1975.

111.03 Record for Preliminary Hearing in the Supreme Court

If prior to the time the record is transmitted a party desires to make a motion for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the trial court at the request of any party shall transmit to the Supreme Court such parts of the original record as the party shall designate.

Renumbered from Rule 111.04 Feb. 14, 1975.

111.04 Disposition of Record After Appeal

Upon the termination of the appeal, the clerk of the Supreme Court shall transmit the original transcript to the State Law Library and the remainder of the record to the clerk of the trial court.

Renumbered from Rule 111.05 Feb. 14, 1975.

RULES 112 TO 114
(Reserved for future use)

TITLE III. REVIEW OF WORKERS' COMPENSATION
COMMISSION; COURT OF APPEALS; TAX COURT;
DEPARTMENT OF EMPLOYMENT-SERVICES; ECONOMIC
SECURITY; COMMERCE DEPARTMENT; AND OTHER
DECISIONS REVIEWABLE OF RIGHT BY CERTIORARI
TO SUPREME COURT

RULE 115. CERTIORARI AS A MATTER
OF RIGHT

Rule 115.01. How Obtained; Time for Security Writ

Review of a decision of Workers' Compensation Commission; Court of Appeals; Tax Court; Department of Employment-Services; Economic Security; Commerce Department; and other decisions reviewable of right by certiorari to the Supreme Court may be had by securing issuance of a writ of certiorari within sixty (60) days after the party applying for such writ shall have received written notice of the decision sought to be reviewed, unless an applicable statute prescribes a different period of time.

Amended October 23, 1969; Feb. 14, 1975.

115.02 Petition for Writ; How Secured

The petition and a proposed writ of certiorari shall be presented to the clerk of the Supreme Court who shall issue the writ in the name of the court.

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

(1) **Contents and Form of Petition and Writ.** The petition shall definitely and briefly state the judgment, order, or proceeding which is sought to be reviewed and the errors which the petitioner claims. The title and form of the petition and writ may be as shown in Forms 3 and 4 of the Appendix.

(2) **Bond or Security.** Petitioner shall file such bond or other security as may be required by statute or by the Supreme Court.

(3) **Filing; Fees.** The clerk shall file the original petition and issue the original writ. The petitioner shall pay the clerk of the administrative agency \$25, \$5 of which shall be retained by the agency and \$20 of which shall be forwarded to the clerk of the Supreme Court unless a different fee is required by statute.

(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.

Amended March 29, 1972; April 9, 1979.

115.04 The Record on Review by Certiorari; Transmissions of the Record

As near as may be, 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 in cases on writ of certiorari unless otherwise provided by statute or order of the court. Each reference in those rules to the trial court, the clerk of the trial court and notice of appeal shall be read as a reference to the body whose decision is to be reviewed, to the clerk or secretary thereof, and to writ of certiorari respectively.

115.05 Costs and Disbursements

Costs and disbursements may be taxed by the prevailing party but not for or against the body to whom the writ is directed. In case a writ shall appear to have been brought for the purpose of delay or vexation the court may award double costs to the prevailing party.

115.06 Dismissal Costs

If any writ of certiorari shall be issued contrary to statute, or shall not be served upon the adverse party as required by these rules, the party against which the same is so issued may have the same dismissed on motion and affidavit showing the facts and shall be entitled to his costs and disbursements.

RULES 116 TO 119

(Reserved for future use)

TITLE V. EXTRAORDINARY WRITS

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.

Amended April 9, 1979.

Rule 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. The trial court should be notified of the filing of the petition and provided with a copy of the petition and any response thereto. 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.
(As amended Feb. 14, 1975; April 9, 1979.)

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.

Amended April 9, 1979.

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.

Amended April 9, 1979.

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.

Added April 9, 1979.

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.

Added April 9, 1979.

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.

Added April 9, 1979.

RULES 122 TO 124

(Reserved for future use)

TITLE VII. GENERAL PROVISIONS

RULE 125. FILING AND SERVICE

125.01 Filing

Papers required or permitted to be filed must be received by the clerk of the Supreme Court within the time fixed for filing. If a motion or petition requests relief which may be granted by a single justice, the justice may permit the motion to be filed with him, in which event he shall note thereon the date of filing and shall thereafter transmit it to the clerk.

125.02 Service of All Papers Required

Copies of all papers filed by any party shall be served by him, at or before the time of filing, on all other parties to the appeal or review. Service on a party represented by an attorney shall be made on the attorney.

125.03 Manner of Service

Service may be personal or by mail. Personal service includes delivery of the copy to the attorney or other responsible person in the office of the attorney. Service by mail is complete on mailing.

125.04 Proof of Service

Papers presented for filing shall contain either a written admission of service or an affidavit of service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without proof of service, but shall require such proof to be filed promptly thereafter.

**RULE 126. COMPUTATION AND EXTENSION OR
LIMITATION OF TIME**

126.01 Computation

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the method of computation specified in Rules 6.01 and 6.05 of the Rules of Civil Procedure for the District Court shall be used.

126.02 Extension or Limitation of Time

The Supreme Court for good cause shown may by order extend or shorten the time prescribed by these rules or by its order for doing any act, and may permit an act to be done after the expiration of such time if the failure to act was excusable under the circumstances; but the Supreme Court may not extend or shorten the time for service of a notice of appeal or the time prescribed by law for securing a review of an order of an administrative agency, board, commission or officer, except as specifically authorized by law.

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 motion in writing for such order or relief. The motion shall specify the date of its submission, which date shall be not less than 8 days after service, and shall state with particularity the grounds therefor and set forth the order or relief sought. If the motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file an answer in opposition within 5 days after service of the motion. Any reply shall be served within 2 days thereafter. The motion and all papers relating thereto may be typewritten. An original and three copies of all papers shall be filed. Oral argument will not be permitted except by order of the Supreme Court.

RULE 128. BRIEFS

Rule 128.01. Brief of Appellant

(1) An informal brief of the appellant authorized by the pre-hearing conference justice shall be in the form designated in the prehearing conference order and shall contain a concise statement of the party's arguments on appeal, together with the appendix required by Rule 130.01.

(2) The formal brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) (a) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) (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 how the trial court decided it.

(3) (c) A statement of the case and the facts. A statement of the case shall first be presented identifying the trial court and the trial judge and indicating briefly the nature of the case and its disposition in the trial court. There shall follow a statement of facts relevant to the grounds urged for reversal, modification, or other relief. The facts must be stated fairly, with complete candor, and as concisely as possible. Where it is claimed that a verdict, finding of fact, or other determination is not sustained by the evidence, the evidence, if any, tending directly or by reasonable inference to sustain the verdict, findings or determination shall be summarized. Each statement of a material fact shall be accompanied by a reference to the record, as provided in Rule 128.04, where such fact appears.

(4) (d) An argument. The argument may be preceded by a summary introduction. The argument shall contain the contentions of the party with respect to the issues presented, the reasons therefor, and the citations to the authorities relied on. Each issue shall be separately presented. Needless repetition shall be avoided.

(5) (e) A short conclusion stating the precise relief sought.

(6) (f) The appendix required by Rule 130.01.

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.

Amended Feb. 14, 1975; April 9, 1979.

128.03 Reply Brief

The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of the Supreme Court.

128.04 References in Briefs to Record

Whenever a reference is made in the briefs to any part of the record which is reproduced in the appendix or in a supplemental record, the reference shall be made to the specific pages of the appendix or the supplemental record where the particular part of the record is reproduced. Whenever a reference is made to a part of the record which is not reproduced in the appendix or in a supplemental record, the reference shall be made to the particular part of the record, suitably designated, and to the specific pages thereof, e. g., Motion for Summary Judgment, p. 1; Transcript, p. 135; Plaintiff's Exhibit D, p. 3. Intelligible abbreviations may be used.

128.05 Reproduction of Statutes, Ordinances, Rules, Regulations, Etc.

If determination of the issues presented requires the study of statutes, ordinances, rules, regulations, etc., or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.

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.

Amended April 9, 1979.

RULE 130. THE APPENDIX TO THE BRIEFS; SUPPLEMENTAL RECORD

130.01 Record Not to be Printed; Appellant to File Appendix

(1) The record shall not be printed. The appellant shall prepare and file an appendix to his brief which shall contain the following portions of the record:

- (a) the relevant pleadings;
- (b) relevant written motions and orders;
- (c) the trial court's instructions and the verdict, or the findings of fact, conclusions of law and order for judgment;
- (d) relevant post trial motions and orders;
- (e) any memorandum opinions;
- (f) any portion of the transcript containing a discussion of the trial court's instructions and any relevant requests for instructions if the instructions are challenged on appeal;
- (g) any judgments; and
- (h) the notice of appeal.

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

(2) If the record includes a statement of the proceedings (made pursuant to Rule 110.03) or an agreed statement (made pursuant to Rule 110.04), the statement shall be included in the appendix.

130.02 Respondent May File Appendix

If the respondent determines that the appendix filed by the appellant omits any items specified in Rule 130.01, he may prepare and file an appendix to his brief containing the omitted items.

130.03 Party May File Supplemental Record; Not Taxable Cost

A party may prepare and file a supplemental record, suitably indexed, containing any relevant portion of the record not contained in the appendix. The original paging of each part of the transcript set out in the supplemental record shall be indicated by placing in brackets the number of the original page at the place where the page begins. If the transcript is abridged, the pages and parts of pages of the transcript omitted shall be clearly indicated following the index and at the place where the omission occurs. A question and its answer may be contained in a single paragraph. The cost of producing the supplemental record shall not be a taxable cost.

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

131.01 Time for Filing and Service

The appellant shall serve and file his brief and appendix within 60 days after delivery of the transcript by the reporter. 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 his brief and appendix within 60 days after service of the notice of appeal upon the adverse party. The respondent shall serve and file his brief and appendix, if any, within 45 days after service of the brief of appellant. The appellant may serve and file a reply brief within 15 days after service of respondent's brief. If a party prepares a supplemental record, the supplemental record shall be served and filed with his first brief.

Amended Oct. 29, 1968; June 6, 1972.

Rule 131.011. Application for Extension of Time

No extension of the time fixed in Rule 131.01 for the filing of appellant's brief and appendix and respondent's brief will be granted the parties except upon a motion pursuant to Rule 127. The motion shall be heard and considered by the ~~Court-Administrator~~ Court Commissioner acting as a referee and shall be granted only for good cause shown. Only an original of said motion shall be filed. (Added March 29, 1971; as amended Feb. 14, 1975.)

Rule 131.02. Number of Copies to be Filed and Served

Unless otherwise specified in the prehearing conference order, twenty copies of each brief, appendix, and supplemental record, if any, shall be filed with the clerk of the Supreme Court, and two copies shall be served on the attorney for each party to the appeal separately represented. The clerk shall not accept a brief, appendix, or supplemental record for filing unless it is accompanied by admission or proof of service as required by Rule 125.

(As amended Sept. 28, 1973.)

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

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

~~(1) -- Briefs and appendices shall be produced by standard typographical printing. -- Any other duplicating or copying process capable of producing a clear black image on white paper may be used with special permission of the Supreme Court. -- All material (other than footnotes) must appear in at least 11 point type, or the equivalent thereof, on unglazed opaque paper. -- Briefs and accompanying appendices shall be bound together in volumes having pages 11 by 8-1/2 inches. -- The right hand margins need not be justified. -- The pages of the appendix shall be separately numbered.~~

(1) The form of all briefs shall be determined at the time of the prehearing conference. Briefs and appendices shall be produced by standard commercial typographical printing. Any alternative process capable of producing a clear black image on white paper may be used if permission is obtained at the prehearing conference. All material (other than footnotes) must appear in at least 11 point type, or the equivalent thereof, on unglazed opaque paper. Briefs and accompanying appendices shall be bound together using a spiral spine in volumes having pages 8-1/2 by 11 inches and type matters not exceeding 6-1/2 by 9-1/2 inches. The pages of the appendix shall be separately numbered. Briefs and appendices submitted in typewritten form shall be double spaced. Carbon copies may not be submitted.

(2) The front cover of the brief and appendix shall contain:
(a) the name of the court and the number of the case which number shall be printed or lettered in bold-face print or prominent lettering, the equivalent of 18 point figures, 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.

(3) Supplemental records shall be bound in separate volumes and shall, in all other respects, comply with this rule.

Rule 132.02. Form of Motions and Other Papers

(1) Papers not required to be produced in the manner prescribed in Rule 132.01 may be typewritten or otherwise duplicated upon unglazed opaque paper, ~~11-by-8-1/2~~ 8-1/2 by 11 inches in size. Typewritten matter must be double-spaced. All copies must be legible.

(2) Each such paper shall contain a caption setting forth the name of the court, the title of the case, the file number, and a brief descriptive title of the paper; and shall be subscribed by the attorneys preparing the paper together with their addresses and telephone numbers.

RULE 133. SUMMARY ACTION; PREHEARING CONFERENCE; CALENDAR

133.01 Summary Action

(1) The Supreme Court, on its own motion or on motion of any party, may summarily affirm, may summarily reverse with appropriate directions, may remand or dismiss an appeal or other request for relief upon grounds proper for remand or dismissal, or may limit the issues to be considered on appeal.

(2) Motions for such relief may be made at any time but shall be filed promptly when the occasion appears and shall comply with the requirements of Rule 127.

Added March 29, 1972; amended Jan. 5, 1976; Jan. 10, 1979.

133.02 Prehearing Conference

The Supreme Court may direct the attorneys for the parties to appear before a justice thereof for a Prehearing Conference to consider the application or nonapplication of Rule 133.01, settlement, simplification of the issues, and such other matters as may aid in the disposition of the proceedings by the Supreme Court. The justice shall ascertain whether or not the appeal should be decided, remanded, or dismissed pursuant to Rule 133.01, shall so recommend to the Supreme Court, and may participate in the decisional process of the Court with respect thereto. The justice shall make an order which recites the recommendation made pursuant to Rule 133.01 and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel.

Added March 29, 1972; amended Jan. 5, 1976; Jan. 10, 1979.

Prehearing Conference Procedures

By order of the Supreme Court of the State of Minnesota dated January 10, 1979 the following procedures and Prehearing Conference Statement are specified:

IT IS ORDERED that, pursuant to Appellate Rule 133.02, the following Prehearing Conference Procedures in all non-criminal matters are hereby established to remain in effect until further order of the Court:

A. Prehearing Conference Statement. Simultaneously with the service of the notice of appeal pursuant to Appellate Rule 103.01(1), or with the filing of the writ pursuant to Appellate Rule 115.03(3), the appellant or relator shall serve on all other parties separately represented, and transmit (with proof of service) to the clerk of Supreme Court a completed Prehearing Conference Statement in the form prescribed by the Court. The statement will not be treated as confidential.

Within ten days after service of appellant's statement, the respondent shall serve on all other parties separately represented, and within three days thereafter file with the clerk of supreme court (with proof of service) a Prehearing Conference Statement supplementing that of appellant in the particulars respondent deems to be of assistance to the Court.

B. Notice of Prehearing Conference—Duties of Parties. Following receipt of appellant's statement, the Court shall schedule a Prehearing Conference pursuant to Appellate Rule 133.02 unless it notifies the parties to the contrary. The attorneys for the parties shall be notified of the time and place of the conference, which will be held promptly, before the record is transcribed and briefs prepared. Attendance at the conference by the attorneys shall be obligatory. They shall have full authority to reach settlements, limit issues, and deal with such other matters as may aid in the disposition of the appeal. Upon receipt of the notice of Prehearing Conference, the attorneys shall make arrangements for their clients or their clients' insurers or indemnitors to be available at the time of the conference by telephone communication to approve matters requiring client approval. The clients may in some instances be required to accompany their attorneys to the hearing.

C. Transcript. The appellant will not order a transcript until authorized by the Court to do so. Upon receipt of such authorization, the appellant shall, pursuant to Rule 110.02, notify the court reporter.

D. Prehearing Conference. The Prehearing Conference shall be conducted by a justice of the Court. Settlement discussions, if any, shall be confidential, otherwise the documents presented and discussions conducted will not be treated as confidential.

E. Prehearing Conference Order. The Prehearing Conference justice shall issue an order reciting the action taken at the Prehearing Conference and his recommendation, if any, pursuant to Rule 133. The justice may also recommend any

other procedures appropriate to Rule 133.02 and the assignment of the appeal to En Banc, division, or non-oral consideration.

F. Sanctions. Failure of a party or his attorney to obey the foregoing provisions of this Order shall result in such sanctions as the Court may deem appropriate.

G. Exceptions. The provisions of this Order are not applicable to extraordinary writs pursuant to Appellate Rule 120.

H. Form of Prehearing Conference Statement:

STATE OF MINNESOTA IN SUPREME COURT		
INFORMATION FURNISHED HEREIN WILL NOT BE TREATED AS CONFIDENTIAL	CIVIL APPEAL PREHEARING CONFERENCE STATEMENT OF APPELLANTS or RESPONDENTS (Strike one)	Please Complete and File Original with: John McCarthy, Clerk of Supreme Court, 230 State Capitol St. Paul, MN 55155

1. Title of Case: (Describe parties as appellant or respondent)
2. Names and Addresses and Telephone of Attorneys
For Appellants or Relators:
For Respondents:
For Other Parties:
3. A. Court or Agency from which appeal is taken:
B. Name of Judge or Hearing Officer who presided:
C. State whether appeal is from an order or judgment and the date of the order or judgment.
4. Type of Litigation (*e. g.*, automobile negligence, products liability, malpractice, real estate, zoning, taxation, UCC, domestic matters, insurance, etc.):
5. Brief Description of Claims, Defenses, Issues Litigated, and Result Below (Do not detail evidence):
6. Nature of Judgment or Order as to Which Review is Sought (Appellant: Attach copy of judgment or order, verdict, copy of any memorandum, findings of facts, or conclusions of law of the court or agency below, pleadings, trial briefs, and any documents which may be the subject of the litigation such as deeds, wills, contracts, or insurance policies). **DO NOT PREPARE OR SUBMIT AN APPELLATE BRIEF OR**

TRIAL TRANSCRIPT FOR THE PREHEARING CONFERENCE:

7. Issues Proposed to be Raised on Appeal:

8. Reasons why the appeal or other proceedings should or should not be decided pursuant to Rule 133.01:

One purpose of this Prehearing Conference is to encourage the parties to reach a voluntary settlement before incurring the expense of securing a transcript and preparing and printing briefs, or if that is not possible, to define the issues.

Signed

Date

TO BE EXECUTED BY THE ATTORNEY FOR
APPELLANT OR RESPONDENT WHO
IS HANDLING THE APPEAL

133.03 Calendar

No case shall be placed on the calendar for argument until after there has been filed in this court the appellant's brief and appendix and respondent's brief. If either appellants or respondents fail to file their brief within the time provided, or an extension thereof, the case shall be disposed of in accordance with Rule 142.

Added March 29, 1972; amended Jan. 5, 1976.

RULE 134. ORAL ARGUMENT

Rule 134.01. Notice of Hearing; Postponement

The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the hearing must be made by motion filed reasonably in advance of the date fixed for hearing.

Rule 134.02. Time allowed for Argument

Except as provided in Rule 134.07, the appellant(s) shall be entitled to a total of 45 ~~35~~ minutes ~~in-en-bane-hearings-and-to-a-total~~ ~~of-30-minutes-in-division-hearings~~, and the respondent(s) to 30 ~~25~~ minutes ~~in-en-bane-hearings-and-to-20-minutes-in-division-hearings~~, for oral argument. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary at the prehearing conference or by motion filed in advance of the date fixed for hearing.

134.03 Order and Content of Argument

The appellant is entitled to open and conclude the argument. It is the duty of counsel for appellant to state the case and facts fairly, with complete candor, and as fully as necessary for consideration of the issues to be presented. The appellant shall precede the statement of facts with a summary of the questions to be raised. Counsel should not read at length from the record, briefs or authorities.

134.04 Non-Appearance of Counsel

If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

134.05 Submission on Briefs

By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

134.06 Exhibits; Plats

(1) If any exhibits are to be used at the hearing, counsel shall arrange to have them placed in the courtroom before the Court

convenes on the date of the hearing. Counsel will also see that all photographic exhibits shall be in court for the oral argument.

(2) In cases where a plat or diagram will facilitate an understanding of the facts or of the issues involved, counsel for appellant shall have in court a plat or diagram of sufficient size and distinctness to be visible to the court. The plat or diagram may be drawn on the courtroom blackboard.

134.07. Oral Argument--When Allowed

(1) In the following actions no oral argument is allowed:

(a) Actions for the recovery of money only, or for specific personal property, where the amount or the value of the property involved in the appeal shall not exceed \$2,000.

(b) Appeals from orders involving only questions of practice, or forms or rules of pleading.

(c) Appeals from the clerk's taxation of costs.

(d) Appeals from municipal court.

(e) Cases classified by the court to be submitted on briefs.

(2) Application for leave to argue a case orally when a matter has been set for submission without oral argument shall be made by motion pursuant to Rule 127 setting forth the reason why the appeal should be submitted upon oral argument. Said motion will be considered timely filed if made within 15 days after receipt by counsel of the ~~calendar-which-sets-the-matter-on-the-non-oral-argument~~ calendar- prehearing conference order or the written notice which designates the manner of consideration.

(3) Whenever any member of the court is not present at the oral argument of a case, such case shall be deemed submitted to such member of the court on the record and briefs therein and when during the consideration of a case there is a change in the personnel of the court the case shall be deemed submitted to the new member or members on the record and briefs.

(As amended Oct. 19, 1972; Dec. 20, 1973; amended Oct. 12, 1976, effective Jan. 1, 1977.)

RULE 135. EN BANC AND DIVISIONS
HEARINGS NONORAL CONSIDERATION

(1) -- Cases set for oral argument or submitted on the briefs will be heard either en banc or by a division of the court. -- The Chief Justice will assign three or more members of the court to sit as a division of the court to hear and decide cases assigned to such division.

(2) -- A court commissioner is hereby designed as a referee of the court for the purpose of reviewing the record, transcript, and briefs in all cases and submitting to all justices of the court his recommendations for the classification of cases for assignment to the en banc or to a division calendar, according to the legal and judicial significance of the issues raised. -- Any one justice of the court may order a case to be placed on the en banc calendar rather than a division calendar. -- The Chief Justice, in his discretion and according to the requirements of composing the calendar, shall accept, reject, or review the recommended classification of cases. -- Thereafter, the clerk shall prepare the calendar.

(3) -- The decision of a case by a division of the court shall be by the concurrence of all members of the division. -- If all members of the division do not concur in the decision, the case may be re-set for an en banc hearing or considered and decided by the court en banc on the briefs. -- A copy of the tentative written opinion of a division in each case, prior to filing with the clerk, shall be circulated among the justices who did not sit on the case, and any two justices of the court, by questioning the decision, may signify their doubt as to the decision of the division, in which event the case, at a further conference of the court, may be re-set for an en banc hearing or considered and decided by the court en banc on the briefs. -- An en banc hearing under this paragraph shall be scheduled at the earliest practicable date, at which hearing the argument time allotted by Rule 134 shall not apply, but counsel for the parties will appear to answer legal or factual questions posed by the court. -- No additional briefs need be filed unless requested by the court.

(1) Cases scheduled for oral argument shall be heard and decided by the court en banc. Cases submitted on briefs shall be considered by a nonoral panel of the court, comprised of three or more members of the court assigned by the Chief Justice.

(2) The prehearing conference justice is authorized to classify all civil cases for assignment to the en banc or to a nonoral calendar according to the legal and judicial significance of the issues raised. The Court Commissioner is designated as a referee of the court for purposes of the classification of all criminal cases. The Chief Justice, in his discretion and according to the requirements of composing the calendar, shall accept, reject or revise the proposed classification of cases. Thereafter, the clerk shall prepare the calendar.

(3) All cases assigned to the nonoral calendar will be considered by a panel consisting of at least three members of the court other than the justice who presided at the prehearing conference. A proposed dispositional opinion or order is thereafter circulated to the full court, including the prehearing conference justice, for consideration and decision prior to its filing with the clerk. The court may, in its discretion, order further conferences, an en banc hearing or the filing of supplemental briefs by the parties.

(4) The Chief Justice may appoint a panel or panels of members of the court to review pending cases for disposition under the rules of this court.

(As amended Oct. 24, 1969; Nov. 20, 1970; March 29, 1972.)

**RULE 136. NOTICE OF DECISION; JUDGMENT;
REMITTITUR**

136.01 Notice of Decision; Summary Opinion

(1) **Notice of Decision.** Upon the filing of a decision or order which determines the matter, the clerk shall mail a copy thereof to the attorneys for the parties and to the trial court. The mailing of such copy shall constitute notice of the filing.

(2) **Summary Opinion.** In any case decided under Rule 133.01 or in any other case where the Supreme Court determines that a detailed opinion would have no precedential value, the Supreme Court in its discretion may enter the following summary opinion:

"Affirmed (or reversed or other appropriate direction for action), pursuant to Rule 136.01 (2)."

Amended Jan. 5, 1976.

136.02 Entry of Judgment; Stay

The clerk shall enter judgment pursuant to the decision or order not less than ten days after the filing thereof. The service and filing of a petition for rehearing shall stay the entry of the judgment.

136.03 Remittitur

The clerk of the Supreme Court shall transmit the remittitur to the clerk of the trial court when judgment is entered, unless the prevailing party files an objection to the remittitur pursuant to Rule 136.04. The remittitur shall contain a certified copy of the judgment of the Supreme Court signed by the clerk.

136.04 Objection to Remittitur

Unless otherwise ordered by the Supreme Court, the prevailing party's properly taxed costs and disbursements shall be paid by the losing party before he shall be entitled to a remittitur. If the prevailing party serves and files a written objection to remittitur on or before the day set for the taxation of costs and disbursements, the clerk shall not transmit the remittitur to the clerk of the trial court until the costs and disbursements are paid. If it shall appear to the satisfaction of the Supreme Court that the losing party is unable to pay the costs and disbursements, it may permit the remittitur.

RULE 137. JUDGMENT ROLL, EXECUTIONS

137.01 Judgment Roll

In all cases the clerk shall attach together the bond and notice of appeal certified and returned by the clerk of the trial court and a certified copy of the judgment of the Supreme Court, signed by him; and these papers shall constitute the judgment roll.

RULE 138. DAMAGES FOR DELAY

If an appeal delays proceedings on the judgment of the trial court and appears to have been taken merely for delay, the Supreme Court may award just damages and single or double costs to the respondent.

RULE 139. COSTS AND DISBURSEMENTS

139.01 Costs

Unless otherwise ordered by the Supreme Court, the prevailing party shall recover costs as follows: (1) Upon a judgment in his favor on the merits, \$25; (2) Upon a dismissal, \$10.

139.02 Disbursements

Unless otherwise ordered by the Supreme Court, the prevailing party shall be allowed his disbursements necessarily paid or incurred. The prevailing party will not be allowed to tax as a disbursement the cost of preparing facsimile briefs.

Amended Oct. 12, 1976, effective, Jan. 1, 1977.

139.03 Taxation of Costs and Disbursements; Time

Costs and disbursements shall be taxed by the clerk upon 2 days' written notice served and filed by the prevailing party. The costs and disbursements so taxed shall be inserted in the judgment. Failure to tax costs and disbursements within 15 days after the filing of the decision or order shall constitute a waiver thereof.

139.04 Objections; Appeal

Written objections to the taxation of costs and disbursements may be served and filed on or before the time set for the taxation thereof. A party may appeal to the Supreme Court from the clerk's taxation by serving and filing a notice of appeal within 6 days from the date of taxation by the clerk.

139.05 Disallowance of Costs and Disbursements

The clerk, in the first instance, and the Supreme Court upon appeal from the clerk's taxation, or upon its own motion, may disallow the prevailing party's costs or disbursements or both, in whole or in part, for a violation of these rules or for other good cause. The prevailing party will not be allowed to tax as a disbursement the cost of reproducing parts of the record in the appendix which are not relevant to the issues on appeal.

RULE 140. PETITION FOR REHEARING

A petition for rehearing may be filed within 10 days after the filing of the decision or order unless the time is enlarged by order of the Supreme Court within the 10-day period. The petition shall set forth with particularity any controlling statute, decision, or principle of law, any material fact, or any material question in the case which, in the opinion of the petitioner, the Supreme Court has overlooked, failed to consider, misapplied, or misconceived. The petition shall be served upon the opposing party who may answer within 5 days thereafter. Oral argument in support of the petition will not be permitted. Thirteen copies of the petition, produced and sized as required by Rule 132.01, shall be filed with the clerk, except that any duplicated copy, other than a carbon copy, of a typewritten original may also be filed. A filing fee of \$25 shall accompany the petition for rehearing. The filing of a petition for rehearing stays the entry of judgment until disposition of such petition. It does not stay the taxation of costs.

Amended Sept. 28, 1973.

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.

Amended April 9, 1979.

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.

Amended April 9, 1979.

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.

Amended April 9, 1979.

RULE 143. PARTIES; SUBSTITUTION

143.01 Parties

The party appealing shall be known as the appellant and the adverse party as the respondent. The title of the action shall not be changed in consequence of the appeal.

143.02 Death of a Party

If any party to the appeal shall die while an appeal is pending in the Supreme Court, the surviving party or the legal representative or successor in interest of the deceased party, shall file with the clerk of the Supreme Court an affidavit showing such death and the name and address of the legal representative or successor in interest. The clerk, after giving notice to the representative or successor in interest, shall substitute the name of such legal representative or successor in interest by or against whom the appeal shall thereafter proceed. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Supreme Court may direct. If a party against whom an appeal may be taken dies after entry of judgment or order in the trial court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this rule. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his personal representative, or, if he has no personal representative, by his attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this rule.

143.03 Substitution for Other Causes

If substitution of a party in the Supreme Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in Rule 143.02.

143.04 Public Officers

When a public officer is a party to an appeal or other proceeding in the Supreme Court in his official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded.

An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

**RULE 144. CASES INVOLVING CONSTITUTIONAL
QUESTIONS WHERE STATE IS NOT A PARTY**

When the constitutionality of an act of the legislature is drawn in question in any proceeding in the Supreme Court 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 notify the attorney general thereof.

RULE 145. APPENDIX OF FORMS

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

RULE 146. TITLE

These rules may be known and cited as Rules of Civil Appellate Procedure.

RULE 147. EFFECTIVE DATE; STATUTES SUPERSEDED

147.01 Effective Date and Application to Pending Proceedings

These rules will take effect on February 1, 1968. They govern all civil appeals and proceedings brought after they take effect, and also all further proceedings then pending, except to the extent that in the opinion of the Supreme Court their application in a particular proceeding pending when the rules take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the proceeding was brought applies.

147.02 Statutes Superseded

Upon the taking of effect of these rules the statutes listed in Appendix A are superseded with respect to practice and procedure in the Supreme Court.