

*Orig*

STATE OF MINNESOTA

IN SUPREME COURT

A-1

ORDER PROMULGATING AMENDMENTS TO THE  
RULES OF CIVIL APPELLATE PROCEDURE

WHEREAS, the Supreme Court Advisory Committee on the Rules of Civil Appellate Procedure has recommended certain amendments to the Rules of Civil Appellate Procedure, and

WHEREAS, the Supreme Court held a hearing on the recommended amendments on June 7, 1983, and is fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED, that the annexed amended Rules of Civil Appellate Procedure and the appendix of forms be, and the same are prescribed and promulgated for the regulation of practice and procedure in civil matters in the appellate courts of the State of Minnesota. The comments are those of the Advisory Committee and this Court does not pass on their accuracy or reliability.

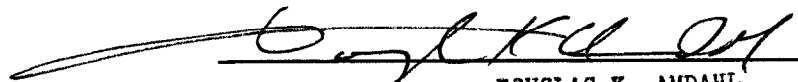
IT IS FURTHER ORDERED that these amended rules shall govern all appeals taken on or after August 1, 1983. Appeals and other proceedings pending in the Supreme Court on July 31, 1983, will be governed by the former Rules of Civil Appellate Procedure.

IT IS FURTHER ORDERED that, during the transition period from the effective date of these rules, August 1, 1983, to the actual operational establishment of the Court of Appeals, November 1, 1983, the implementation of the following rules will be delayed until November 1, 1983: Rules 105, 120, 121, 127 and 131.02. Those rules, in their present form, will remain effective until that date and the current practices and procedures of the Supreme Court will remain in effect during the period of delayed implementation.

IT IS FURTHER ORDERED that the Advisory Committee continue to serve to monitor said rules and amendments and to hear and accept comments for further changes, to be submitted to the Supreme Court when appropriate.

Dated: *June 17, 1983*

BY THE COURT:

  
DOUGLAS K. AMDAHL

MEMORANDUM

In recognition of the fact that the establishment of the Court of Appeals, the attendant change in the jurisdictional structure of the Supreme Court and the delayed implementation of certain of the Rules of Civil Appellate Procedure may result in some confusion on the part of practitioners as to the procedures for perfecting an appeal or obtaining extraordinary relief, it is suggested that counsel direct all procedural and substantive inquiries to Cynthia M. Johnson, Commissioner of the Minnesota Supreme Court, 322 State Capitol, St. Paul, MN 55155; (612) 296-6125.

The court expresses its appreciation to the following members of the Advisory Committee:

Justice M. Jeanne Coyne, Chairman

Richard B. Allyn, St. Paul

Roderick D. Blanchard, Minneapolis

G. Alan Cunningham, Minneapolis

J. Peter Dosland, Moorhead

Samuel L. Hanson, Minneapolis

Charles Hvass, Jr., Minneapolis

Maclay R. Hyde, Minneapolis

Commissioner Cynthia M. Johnson, St. Paul

Judge William A. Johnson, Faribault

C. Paul Jones, Minneapolis

John J. Killen, Jr., Duluth

David W. Larson, St. Paul

Judge David E. Marsden, St. Paul

Joan S. Morrow, Minneapolis

Roger A. Peterson, Minneapolis

Wayne O. Tschimperle, St. Paul

Richard V. Wicka, St. Paul

Staff

Laurence C. Harmon, St. Paul

Michael Johnson, St. Paul

**SUPREME COURT  
FILED**

**JUN 17 1983**

**WAYNE TSCHIMPERLE  
CLERK**

# MINNESOTA RULES OF CIVIL APPELLATE PROCEDURE

## TITLE 1. APPLICABILITY OF RULES

### Rule 101. Scope of Rules; Definitions

#### 101.01 Scope

These rules govern procedure in the Supreme Court and the Court of Appeals of Minnesota in civil appeals; in criminal appeals insofar as the rules are not inconsistent with the Rules of Criminal Procedure; 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, the Court of Appeals or a justice or judge thereof is competent to give.

#### 101.02 Definitions

**Subdivision 1.** When used in these rules, the words listed below have the meanings given them.

**Subd. 2.** "Appellate court" means the Supreme Court pursuant to Minnesota Statutes, Chapter 480, or the Court of Appeals pursuant to Minnesota Statutes, Chapter 480A.

**Subd. 3.** "Judge" means a justice of the Supreme Court or a judge of the Court of Appeals.

**Subd. 4.** "Trial court" means the court or agency whose decision is sought to be reviewed.

**Subd. 5.** "Clerk of the appellate courts" means the clerk of the Supreme Court and the Court of Appeals.

**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 or the Court of Appeals, except as otherwise provided in Rule 126.02, may suspend the requirements 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 - How Taken**

**103.01 Manner of Making Appeal**

**Subdivision 1. Notice of Appeal.** An appeal shall be made by filing a notice of appeal with the clerk of the appellate courts. The notice shall contain:

- (a) proof of service on the adverse party or parties;
- (b) proof of service on the clerk of the trial court in which the judgment or order appealed from is entered or filed;
- (c) a statement specifying and describing the judgment or order from which the appeal is taken;
- (d) the names, addresses, and telephone numbers of opposing counsel and the parties they represent.

The appellant shall file the following with the clerk of the appellate courts:

- (1) the notice of appeal,
- (2) a certified copy of the judgment or order from which the appeal is taken,

(3) a statement of the case required by Rule 133.03,  
and

(4) a filing fee of \$50,  
and shall file the following with the clerk of the trial court:

(5) a copy of the notice of appeal,

(6) the cost bond required by Rule 107, or written  
waiver of it,

(7) the supersedeas bond, if any, required by Rule 108,  
and

(8) a filing fee of \$10.

**Subd. 2. Relief.** When a party in good faith files and serves a 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 appellate court may grant relief on such terms as may be just.

**Subd. 3. When Filing Fee Not Required.** The filing fees set out in Rule 103.01, subdivision 1, shall not be required when:

(a) the appellant has previously been determined to be indigent by the trial court, and the attorney for the appellant certifies to the clerk of the appellate courts that the appellant remains indigent; or

(b) the appellant is represented by a public defender's office or a legal aid society; or

(c) the appellant is a party to a proceeding pursuant to Minnesota Statutes, Chapter 253B; or

(d) the trial judge finds that the appellant is indigent and that in the interest of that party's right to appeal, no filing fee will be required; or

(e) the appellant is the state or governmental subdivision of the state or an officer, employee or agency thereof; or

(f) the appeal has been remanded to the trial court or agency for further proceedings and, upon completion of those proceedings, the appeal is renewed; or

(g) the appellant is a party to a public assistance appeal pursuant to Minnesota Statutes, Chapter 256.

#### Comment

**FILING THE NOTICE OF APPEAL WITH THE CLERK OF THE APPELLATE COURTS, IN ADDITION TO SERVICE ON THE ADVERSE PARTY, IS REQUIRED TO INITIATE AN APPEAL.**

A substantial change has been made in Rule 103.01. Under the new rule service alone no longer initiates an appeal. The notice of appeal **SERVED** on both the adverse party and the clerk of the trial court and **FILED** with the clerk of the appellate courts in order to vest jurisdiction in the Court of Appeals.

Proof of service, a certified copy of the judgment or order from which the appeal is taken, and the statement of the case (described at Rule 133.03) must accompany the notice of appeal when it is filed. For purposes of these rules, **FILING** is **TIMELY** if the notice of appeal is deposited in the mail **WITHIN** the time fixed for filing. See Rule 125.01.

A change has been made in the amount of the filing fee and to which courts it is paid.

Since prehearing conferences will be held only if the court so directs, within 10 days after filing the notice of appeal the appellant must send to the clerk of the appellate courts a written order for the transcript or a notice of intent to proceed on a statement of the proceedings. See Rule. 110.02.

See **Appendix** for form of notice of appeal (**Forms 103A and 103B**) and statement of the case (**Form 133**).

#### **103.02 Joint Appeals**

**Subdivision 1. Joint Appeals.** If two or more parties are entitled to appeal from a judgment or order or to petition for certiorari in the same action and their interests are such as to make joinder practicable, they may file a joint notice of appeal or petition, or may join in the appeal after filing separate timely notices of appeal or petitions for certiorari, and they may then proceed on appeal as a single appellant.

**Subd. 2. Consolidated Appeals.** Appeals in separate actions may be consolidated by order of the appellate court on its own motion or upon motion of a party.

**103.03 Appealable Judgments and Orders**

An appeal may be taken to the Court of Appeals:

- (a) from a 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 denying 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;
- (e) from an order which, in effect, determines the action and prevents a judgment from which an appeal might be taken;
- (f) from a final order or judgment made or rendered in proceedings supplementary to execution;
- (g) except as otherwise provided by statute, from a final order, decision or judgment affecting a substantial right made in an administrative or other special proceeding, provided that the appeal must be taken within the time limited for appeal from an order; and
- (h) 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.

**Comment**

**AN ORDER FOR JUDGMENT IS NOT AN APPEALABLE ORDER. THERE IS A RIGHT OF APPEAL ONLY FROM A JUDGMENT OR AN ORDER ENUMERATED IN RULE 103.03. AN APPEAL FROM ANY ORDER NOT SPECIFICALLY**



**INCLUDED IN RULE 103.03 IS DISCRETIONARY, AND PERMISSION MUST BE SOUGHT BY PETITION AS PROVIDED IN RULE 105.**

Two substantial changes have been made in Rule 103.03. The deletion from clause (a) of "order for judgment" marks a return to former practice: a judgment is appealable; an order for judgment is **NOT** appealable. Because of the uncertainties resulting from its broad, unspecific language, former clause (d) "From an order involving the merits of the action or some part thereof" has also been deleted. Review of any order not specifically enumerated in Rule 103.03 is discretionary only, and permission to appeal must be sought pursuant to Rule 105.

**103.04 Scope of Review**

The appellate courts may reverse, affirm or modify the judgment or order appealed from or take any other action as the interest of justice may require.

On appeal from or review of an order the appellate courts 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. They may review any other matter as the interest of justice may require.

**Rule 104. Time for Filing and Service of Notice of Appeal**

**104.01 Time for Filing and Service**

An appeal may be taken from a judgment within 90 days after its entry, and from an order within 30 days after service by the adverse party of written notice of filing unless a different time is provided by law.

An appeal may be taken from a judgment entered pursuant to Rule 54.02, Minnesota Rules of Civil Procedure, within 90 days of the entry of the judgment only if the trial court makes an express determination that there is no just reason for delay and expressly directs the entry of a final judgment. The time to appeal from any other judgment entered pursuant to Rule 54.02 shall not begin to run until the entry of a judgment which adjudicates all the claims and rights and liabilities of the remaining parties.

## Comment

### **THE TIME FOR TAKING AN APPEAL FROM A FINAL JUDGMENT OR AN ORDER REMAINS UNCHANGED.**

The second paragraph, however, follows federal practice with respect to judgments ordered pursuant to Rule 54.02, Minnesota Rules of Civil Procedure. An early right of appeal is provided as to those summary judgments that dispose of less than all claims against all parties if, but only if, the trial court expressly determines that there is no just reason for delay and expressly directs the entry of judgment. If an appeal is not taken within 90 days after entry of such a judgment, it becomes final and is not subject to later review. A judgment disposing of less than all claims against all parties entered pursuant to an order which does not contain the express determination and directions prescribed by Rule 54.02 is not appealable until entry of the final judgment disposing of all remaining claims of all parties.

This limited right of appeal recognizes that the trial court's use of the language prescribed by Rule 54.02 is likely to be confined to two situations: (1) where early review of the applicability of a rule of law may obviate a retrial, or (2) where the party obtaining judgment should not be required to await the conclusion of the case as to other parties and issues before the time for appeal begins to run.

#### **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 pursuant to 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 an administrative or other special proceeding must be taken within the time limited for appeal from an order.

### **Rule 105. Discretionary Review**

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

Upon the petition of a party, the Court of Appeals, in the interest of justice, may allow an appeal from an order not otherwise appealable pursuant to Rule 103.03 except an order made during trial. The petition shall be served on the adverse party and

filed within 30 days of the filing of the order. The trial court should be notified that the petition has been filed and provided with a copy of the petition and any response. Four copies of the petition shall be filed with the clerk of the appellate courts, but the court may direct that additional copies be provided.

#### **Comment**

#### **PETITION FOR DISCRETIONARY REVIEW MUST BE FILED WITH THE CLERK OF THE APPELLATE COURTS WITHIN 30 DAYS AFTER FILING OF THE ORDER.**

Because a request for discretionary review of an interlocutory or other nonappealable order is usually prompted by some exigency and because it is not customary to give notice of making and filing of nonappealable orders, a petition for review must be served and filed with the clerk of the appellate courts within 30 days after the order was filed with the clerk of the trial court.

See **Appendix** for form of petition for discretionary review (**Form 105**).

#### **105.02 Content of Petition; Response**

The petition shall be entitled as in the trial court, shall not exceed five typewritten pages, and shall contain:

- (a) a statement of facts necessary to an understanding of the questions of law or fact determined by the order of the trial court;
- (b) a statement of the issues; and
- (c) a statement why an immediate appeal is necessary and desirable.

A copy of the order from which the appeal is sought and any findings of fact, conclusions of law, and memorandum of law relating to it shall be attached to the petition. Any adverse party may, within 7 days after service of the petition, serve and file with the clerk of the appellate courts four copies of a response to 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 appellate courts shall notify the clerk of the trial court and the appellant shall pay the filing fee, file the bond as required by these rules, and then proceed as though the appeal had been noticed by filing 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.

### **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 filing a notice of review with the clerk of the appellate courts. The notice of review shall specify the judgment or order to be reviewed, shall be served and filed within 15 days after service of the notice of appeal, and shall contain proof of service.

#### **Comment**

**A RESPONDENT MUST FILE A NOTICE OF REVIEW WITH THE CLERK OF THE APPELLATE COURTS WITHIN 15 DAYS AFTER SERVICE ON THE RESPONDENT OF THE NOTICE OF APPEAL**

See Appendix for form of notice of review (Form 106).

### **Rule 107. Bond or Deposit for Costs**

**Subdivision 1. When Bond Required.** Unless the appellant is exempt by law, 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 the appellant on the appeal, not exceeding the penalty of the bond which shall be \$500. In lieu of the bond, the appellant may deposit \$500 with the clerk of the trial court as security for the payment.

Prior to filing the notice of appeal, the appellant may move the trial court for an order waiving the bond or setting a lesser amount or deposit. Upon the appellant's filing of the required cost bond or deposit, the respondent may move the trial court for an order requiring a supplemental bond or deposit.

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.

**Subd. 2. When Bond Not Required.** No cost bond is required:

- (a) in a criminal case; or
- (b) in a case arising in juvenile court; or
- (c) in a proceeding pursuant to Minnesota Statutes, Chapter 253B; or
- (d) when the trial judge finds:
  - (i) that the party is indigent, and
  - (ii) that in the interest of that party's right to appeal, no cost bond

shall be required; or

(e) when the appellant is the state or a governmental subdivision of the state or an officer, employee or agency thereof; or

(f) the appeal has been remanded to the trial court or agency for further proceedings and, upon completion of those proceedings, the appeal is renewed; or

(g) the appellant is a party to a public assistance appeal pursuant to Minnesota Statutes, Chapter 256.

#### **Comment**

A cost bond in the amount of \$500 or a stipulation waiving the bond must be filed with the notice of appeal. See Rule 103.01, subdivision 1(d)(6). Rule 107 provides a mechanism for securing, prior to appeal, an order from the trial court waiving the bond or setting a bond in a lesser amount. It also affords the respondent a mechanism for securing a supplemental bond or deposit. Finally, it enumerates the categories of appeals in which a cost bond is not required.

#### **Rule 108. Supersedeas Bond; Stays**

##### **108.01 Supersedeas Bond**

**Subdivision 1.** An appeal from an order or judgment shall stay proceedings in the trial court and save all rights affected by it 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.

**Subd. 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 to and satisfaction of the order or judgment which the appellate court may give if the order or any part of it is affirmed or if the appeal is dismissed.

**Subd. 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 of it is affirmed or if the appeal is dismissed.

**Subd. 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 to the order or judgment of the appellate court. No bond pursuant to this subdivision is required if the appellant places the document or personal property in the custody of the officer or receiver whom the trial court may appoint.

**Subd. 5.** If the appeal is from a judgment directing the sale or delivery of 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 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 the appellant's possession during the pendency of the appeal.

**Subd. 6.** In cases not specified in subdivisions 2 to 5, filing the bond specified in Rule 107 shall stay proceedings in the trial court.

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

**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 is executed and deposited with the clerk of the trial court to abide the judgment of the appellate court.

**108.03 Extent of Stay**

When a bond is filed 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 in it; but the trial court may proceed upon any other matter included in the action and not affected by the judgment or order from which the appeal is taken.

**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 filing the bond 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. The bond shall be executed by, or on behalf of, the respondent and shall be conditioned that, if the judgment is reversed or modified, the respondent will make any restitution the appellate court directs.

**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 deposited or invested to abide the judgment of the appellate court.

**108.07 Effect of Proceedings in Supreme Court**

Where a petition to the Supreme Court for review of a decision of the Court of Appeals is filed or a case is transferred to the Supreme Court pursuant to these rules, and a supersedeas bond has previously been filed to stay the trial court proceedings, the bond shall remain in full force and effect during the pendency of the review unless otherwise ordered by the Supreme Court. The Supreme Court may make any other order appropriate to preserve the status quo or to promote the effectiveness of any judgment which may subsequently be entered.

**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 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**

**Subdivision 1. Duty to Order Transcript.** Within 10 days after filing the notice of appeal, the appellant shall:

(a) pursuant to subdivision 2 of this rule, order from the reporter a transcript of those parts of the proceedings not already part of the record which he deems necessary for inclusion in the record; or

(b) file a notice of intent to proceed pursuant to Rule 110.03 or Rule 110.04;  
or

(c) notify the respondent in writing that no transcript or statement will be ordered or prepared.



If the entire transcript is not to be included, the appellant, within the 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 a 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 order, within 10 days of service of the description or notification of no transcript, those other parts from the reporter, pursuant to subdivision 2 of this rule, or serve and file a motion in the trial court for an order requiring the appellant to do so.

**Subd. 2. Transcript Certificate.** If any part of the proceedings are to be transcribed by a court reporter, a certificate as to transcript signed by the designating counsel and by the court reporter shall be filed with the clerk of the appellate courts, with a copy to the trial court and all counsel of record. The certificate shall contain the date on which the transcript was requested; the estimated number of pages; the estimated completion date not to exceed 60 days; and a statement that satisfactory financial arrangements have been made for the transcription. Upon delivery of the transcript to the appellant, the reporter shall file with the clerk of the appellate courts a certificate evidencing the date of delivery.

**Subd. 3. Overdue Transcripts.** 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 appellate court pursuant to Rule 127, showing good cause therefor. A justice, judge or a person designated by the appellate court shall act as a referee in hearing the motion and shall file with the appellate court appropriate findings and recommendations for a dispositional order. A failure to comply with the order of the appellate court fixing a time within which the transcript must be delivered may be punished as a contempt of court. The appellate court may declare a reporter ineligible to act as an official court reporter in any court proceeding and prohibit the reporter from performing any private reporting work until the overdue transcript is filed.

**Subd. 4. Transcript Requirements.** The transcript shall be typewritten on 8 1/2 by 11 inch or 8 1/2 by 10 1/2 inch 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 transmitted promptly 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.

#### **Comment**

#### **THE TRANSCRIPT MUST BE ORDERED WITHIN 10 DAYS AFTER THE NOTICE OF APPEAL IS FILED.**

Since a prehearing conference will be held only if the court so directs, within 10 days after filing the notice of appeal the appellant must order the transcript or file a notice of intent to proceed on a statement of the proceedings pursuant to Rule 110.03 or Rule 110.04 or notify the respondent that no transcript or statement will be ordered or prepared.

Rule 110.02, subdivision 2, introduces the certificate as to transcript, which includes a statement that financial arrangements satisfactory to the reporter and counsel have been made (see appendix for form). Rule 110.02, subdivision 3, provides sanctions in addition to contempt in the event of the reporter's failure to make timely delivery of the transcript.

The typewritten transcript requirement of Rule 110.02, subdivision 4 is intended to authorize the use of legible computerized or mechanically produced transcripts.

See **Appendix** for form of certificate as to transcript (**Form 110**).

#### **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 within 15 days after service. The statement

and any objections or proposed amendments then shall be submitted to the trial court, and the statement as approved by the trial court shall be included in the record. The trial court's approval of the statement shall be filed with the clerk of the appellate courts within 60 days of the filing of the notice of appeal.

**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 record showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only the facts averred and proved or sought to be proved which are essential to a decision of the issues presented. The agreed statement shall be approved by the trial court with any additions the trial court may consider necessary to present the issues raised by the appeal and shall be the record on appeal. The trial court's approval of the statement shall be filed with the clerk of the appellate courts within 60 days of the filing of the notice of appeal.

**Comment**

Within 10 days after filing the notice of appeal the appellant must file notice of intent to proceed under either Rule 110.03 or Rule 110.04. The trial court's approval of the statement must be filed with the clerk of the appellate courts within 60 days after filing of the notice of appeal. The time for filing the appellant's brief and appendix begins to run with the filing of the trial court's approval. See Rule 131.01.

**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. If anything material to either party is omitted from the record by error or accident or is misstated in it, the parties by stipulation, or the trial court, either before or after the record is transmitted to the appellate court, or the appellate 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 appellate court.

## **Rule 111. Transmission of the Record**

### **111.01 Transmission of Record; Time**

Within 10 days after the due date for the filing of the respondent's brief, the clerk of the trial court shall transmit the record to the clerk of the appellate courts, together with an itemized list in triplicate of all documents and exhibits contained in the record, identifying each with reasonable definiteness. The clerk of the trial court shall send a copy of this list to all parties. A party having possession of exhibits shall transmit them with an itemized list in triplicate to the clerk of the appellate courts within 10 days after the due date for the filing of the respondent's brief. A party shall make advance arrangements with the clerk for the delivery of bulky or weighty exhibits and for the cost of transporting them to and from the appellate courts. Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the appellate courts.

### **111.02 Exhibits and Models**

The title of the case and the appellate court docket number shall be endorsed upon all exhibits sent to the clerk of the appellate courts. Exhibits and models will be returned to the clerk of the trial court with the remittitur when a new trial or further proceedings are ordered, but if the judgment of the appellate court is final and neither a new trial nor further proceedings are ordered, the clerk of the appellate courts may destroy all exhibits and models unless called for by the parties within 30 days after entry of the judgment of the appellate court.

**111.03 Record for Preliminary Hearing in the Appellate Courts**

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 appellate court those parts of the original record which the party designates.

**111.04 Disposition of Record after Appeal**

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

**Rule 112 - 114.**

**(Reserved for future use.)**

**TITLE III. DECISIONS REVIEWABLE BY CERTIORARI TO THE COURT OF APPEALS OR THE SUPREME COURT**

**Rule 115. Court of Appeals Review of Decisions of the Commissioner of Economic Security and Other Decisions Reviewable by Certiorari and Review of Decisions Appealable Pursuant to the Administrative Procedure Act**

**115.01 How Obtained; Time for Securing Writ**

Review by the Court of Appeals of decisions of the Commissioner of Economic Security and other decisions reviewable by certiorari and review of decisions appealable pursuant to the Administrative Procedure Act may be had by securing issuance of a writ of certiorari within 30 days after the date of mailing notice of the decision to the party applying for the writ, unless an applicable statute prescribes a different period of time.

**115.02 Petition for Writ; How Secured**

The petition and a proposed writ of certiorari shall be presented to the clerk of the appellate courts. The writ issued shall be in the name of the court.

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

**Subdivision 1. Contents and Form of Petition and Writ.** The petition shall definitely and briefly state the decision, judgment, order or proceeding which is sought to be reviewed and the errors which the petitioner claims. A copy of the decision shall be attached to the petition. The title and form of the petition and writ should be as shown in the appendix to these rules.

**Subd. 2. Bond or Security.** The petitioner shall file the bond or other security required by statute or by the Court of Appeals.

**Subd. 3. Filing; Fees.** The clerk of the appellate courts shall file the original petition and issue the original writ. The petitioner shall pay \$50 to the clerk of the appellate courts and \$10 to the clerk of the court or body to whom the writ is directed, unless a different filing fee is required by statute or is not required pursuant to Rule 103.01, subdivision 3.

**Subd. 4. Service; Time.** The petitioner shall serve copies of the petition and writ upon the court or body to whom it is directed and upon any party within 30 days after the date of mailing notice of the decision to the petitioner, unless an applicable statute prescribes a different period of time. Proof of service shall be filed with the clerk of the appellate courts within 5 days of service. A copy of the petition and writ shall be provided to the Attorney General at the time of service, unless the state is neither a party nor the body to whom the writ is directed.

**115.04 The Record on Review by Certiorari; Transmission of the Record**

To the extent possible, 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 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 clerk of the trial court, and the notice of appeal shall be read, where appropriate, as a reference to the body whose decision is to be reviewed, to the clerk or secretary thereof, and to the 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. If a writ appears to have been brought for the purpose of delay or vexation, the Court of Appeals may award double costs to the prevailing party.

**115.06 Dismissal Costs**

If any writ of certiorari is issued improperly or is not served as required by these rules, the party against whom it is issued may have it discharged on motion and affidavit showing the facts and shall be entitled to allowable costs.

**Comment**

Rule 115 sets out the procedure for securing review by the **COURT OF APPEALS** of decisions of the Commissioner of Economic Security, decisions appealable pursuant to the Administrative Procedure Act, and other decisions reviewable by certiorari to the Court of Appeals. The procedures are similar to those provided by former Rule 115 except that the time limitations set out in the rule have been shortened to conform with the time limitations presently provided in the statute governing review of unemployment compensation decisions. The rule cautions that statutes governing review of the various types of decisions reviewable by certiorari may establish different time limitations.

Proof of service of the petition and the writ must be filed with the clerk of the appellate courts within 5 days after service. A copy of the petition and the writ must be provided to the attorney general whenever the state or a department or agency of the state is a party or the body to whom the writ is directed.

See **Appendix** for form of the petition for a writ of certiorari (**Form 115A**) and of the writ of certiorari (**Form 115B**).

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

**116.01 How Obtained; Time for Securing Writ**

Supreme Court review of decisions of the Workers' Compensation Court of Appeals, decisions of the Tax Court, and of other decisions reviewable by certiorari may be had by securing issuance of a writ of certiorari within 30 days after the date the party

applying for the writ was served with written notice of the decision sought to be reviewed, unless an applicable statute prescribes a different period of time.

**116.02 Petition for Writ; How Secured**

The petition and a proposed writ of certiorari shall be presented to the clerk of the appellate courts. The writ issued shall be in the name of the court.

**116.03 Contents of the Petition and Writ; Filing and Service**

**Subdivision 1. Contents and Form of Petition and Writ.** The petition shall definitely and briefly state the decision, judgment, order or proceeding which is sought to be reviewed and the errors which the petitioner claims. A copy of the decision shall be attached to the petition. The title and form of the petition and writ should be as shown in the appendix to these rules.

**Subd. 2. Bond or Security.** The petitioner shall file the bond or other security required by statute or by the Supreme Court.

**Subd. 3. Filing; Fees.** The clerk of the appellate courts shall file the original petition and issue the original writ. The petitioner shall pay \$50 to the clerk of the appellate courts and \$10 to the clerk of the court or body to whom the writ is directed, unless a different filing fee is required by statute or is not required pursuant to Rule 103.01, subdivision 3.

**Subd. 4. Service; Time.** The petitioner shall serve copies of the petition and writ upon the court or body to whom it is directed and upon any party within 30 days after the petitioner was served with written notice of the decision to be reviewed, unless an applicable statute prescribes a different period of time. Proof of service shall be filed with the clerk of the appellate courts within 5 days of service. A copy of the petition and writ shall be provided to the Attorney General at the time of service.



#### **116.04 The Record on Review by Certiorari; Transmission of the Record**

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

#### **116.05 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. If a writ appears to have been brought for the purpose of delay or vexation, the Supreme Court may award double costs to the prevailing party.

#### **116.06 Dismissal Costs**

If any writ of certiorari is issued improperly or is not served as required by these rules, the party against whom it is issued may have it discharged on motion and affidavit showing the facts and shall be entitled to allowable costs.

#### **Comment**

Rule 116 sets out the procedures for securing review by the **SUPREME COURT** of decisions of the Workers' Compensation Court of Appeals, decisions of the Tax Court, and other decisions reviewable by certiorari to the Supreme Court. The procedures are similar to those provided by former Rule 115 except that the time limitations set out in the rule have been shortened to conform with the time limitations presently provided in the statute governing review of workers' compensation decisions. The rule cautions that statutes governing review of the various types of decisions reviewable by certiorari may establish different time limitations.

Proof of service of the petition and writ must be filed with the clerk of the appellate courts within 5 days after service. A copy of the petition and the writ must also be provided to the attorney general.

See **Appendix** for form of the petition for a writ of certiorari (**Form 116A**) and of the writ of certiorari (**Form 116B**).

**Rule 117. Petition for Review of Decisions of the Court of Appeals**

**Subdivision 1. Filing of Petition.** Any party may petition the Supreme Court for review of a decision of the Court of Appeals. The petition with proof of service shall be filed with the clerk of the appellate courts within 30 days of the filing of the Court of Appeals' decision. A filing fee of \$50 shall be paid to the clerk of the appellate courts.

**Subd. 2. Discretionary Review.** Review of any decision of the Court of Appeals is discretionary with the Supreme Court. The following criteria may be considered:

(a) the question presented is an important one upon which the Supreme Court should rule; or

(b) the Court of Appeals has ruled on the constitutionality of a statute; or

(c) the lower courts have so far departed from the accepted and usual course of justice as to call for an exercise of the Supreme Court's supervisory powers; or

(d) a decision by the Supreme Court will help develop, clarify, or harmonize the law; and

(1) the case calls for the application of a new principle or policy; or

(2) the resolution of the question presented has possible statewide impact; or

(3) the question is likely to recur unless resolved by the Supreme Court.

**Subd. 3. Petition Requirements.** The petition for review shall not exceed five typewritten pages, exclusive of appendix, and shall contain:

(a) a statement of the legal issues, and the disposition of those issues by the Court of Appeals;

(b) a statement of the criteria relied upon to support the petition, or other substantial and compelling reasons for review;

(c) a statement of the case, including disposition in the trial court or administrative agency and the Court of Appeals, and of those facts not addressed by the Court of Appeals relevant to the issues presented for review, with appropriate references to the record; and

(d) a brief argument in support of the petition.

The appendix shall contain the decision and opinion of the Court of Appeals, the judgments, orders, findings of fact, conclusions of law, and memorandum decisions of the trial court or administrative agency, pertinent trial briefs, and any portion of the record necessary for an understanding of the petition.

Nine copies of the petition and appendix shall be filed with the clerk of the appellate court.

**Subd. 4. Response.** An opposing party may file with the clerk of the appellate courts a response to the petition within 20 days of service. The response shall comply with the requirements set forth for the petition and shall contain proof of service.

#### **Comment**

This entirely new rule establishes the procedure for obtaining Supreme Court review of a decision of the Court of Appeals. Review is discretionary with the Supreme Court. While the rule enumerates criteria which may be considered by the court in exercising its discretion, they are intended to be instructive and are neither mandatory nor exclusive. The petition should be accompanied by any documents pertinent to the Supreme Court's review.

See **Appendix** for form of petition for review (**Form 117**).

#### **Rule 118. Accelerated Review by the Supreme Court Prior to a Decision by the Court of Appeals**

**Subdivision 1. Filing Requirements.** Any party may petition the Supreme Court for accelerated review of any case pending in the Court of Appeals upon a petition which shows, in addition to the criteria of Rule 117, subdivision 2, that the case is of such imperative public importance as to justify deviation from the normal appellate procedure and to require immediate determination in the Supreme Court. The petition for accelerated review with proof of service shall be filed with the clerk of the appellate

courts but no filing fee shall be required. The filing of a petition for accelerated review shall not stay proceedings or extend the time requirements in the Court of Appeals.

**Subd. 2. Petition Requirements.** The petition for accelerated review shall not exceed ten typewritten pages, exclusive of appendix, and shall contain:

- (a) a statement of the issues;
- (b) a statement of the case, including all relevant facts, and disposition in the trial court or administrative agency; and
- (c) a brief argument in support of the petition.

The appendix shall contain the judgments, orders, findings of fact, conclusions of law, and memorandum decisions of the trial court or administrative agency, pertinent trial briefs, and any portion of the record necessary for an understanding of the petition.

Four copies of the petition and appendix shall be filed with the clerk.

**Subd. 3. Notice.** If the Supreme Court orders accelerated review, whether on the petition of a party, on certification by the Court of Appeals pursuant to Minnesota Statutes, Section 480A.10, or on its own motion, notice of accelerated review shall be given by the clerk of the appellate courts to all parties.

#### **Comment**

This rule authorizes a party to request by-pass of the Court of Appeals in favor of immediate review by the Supreme Court. The decision to permit accelerated review is discretionary with the Supreme Court, and the rule contemplates that leave will be granted only in extraordinary cases.

There is statutory authority for certification of a case by the Court of Appeals and for transfer of a case by order of the Supreme Court.

See **Appendix** for form of petition for accelerated review (**Form 118**).

**Rule 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 in the Supreme Court directed to the Court of Appeals or in the Court of Appeals directed to a lower court shall be made by petition. The petition shall specify the lower court and the name of the 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 lower 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 the appellate courts, captioned in the court in which the application is made, in the manner specified in Rule 120.04. The lower court should be notified of the filing of the petition and provided with a copy of the petition and any response. 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. If a respondent does not desire to respond, the clerk of the appellate courts and all parties shall be advised by letter within the 5-day period, but the petition shall not thereby be taken as admitted.

#### **120.03 Procedure Following Submission**

If the reviewing 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.

There shall be no oral argument unless the reviewing court otherwise directs.

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

Upon receipt of a \$50 filing fee, the clerk of the appellate courts shall file the petition. All papers and briefs may be typewritten and in the form specified in Rule 132.02. Four copies with proof of service shall be filed with the clerk of the appellate courts, but the reviewing 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 lower court.

### **Rule 121. Mandamus and Prohibition - Emergency Situations**

#### **121.01 Communication to the Court**

If an emergency situation exists and the provisions of Rule 120 are impractical, the attorney for a party seeking a writ of mandamus or of prohibition directed to a lower court may orally petition the reviewing court for such relief by telephoning or by personally contacting the Supreme Court Commissioner, if application is made in the Supreme Court, or the Chief Staff Attorney, if application is made in the Court of Appeals, who will communicate with the reviewing court relative to an early or immediate consideration of the petition. If the Commissioner or Chief Staff Attorney is unavailable, the oral petition may be made to a justice or judge of the reviewing court.

#### **121.02 Procedure**

Except as provided in Rule 121.03, no written petition or other document need be filed unless the reviewing court so directs. If the reviewing 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 interest of justice requires.

**121.03 Filing Fee**

The attorney orally petitioning for a writ shall immediately transmit to the clerk of the appellate courts a \$50 filing fee with a letter specifying:

- (a) the name of the case,
- (b) the lower court and the name of the judge, and
- (c) the type of writ sought.

**Comment to Rules 120 and 121**

These two rules have been amended to reflect the judicial restructuring accomplished by the creation of the Court of Appeals. Jurisdiction to issue extraordinary writs directed to trial courts or other lower tribunals, previously existing in the Supreme Court, is vested by these rules in the Court of Appeals. Once the Court of Appeals has acted on an application for an extraordinary writ, review by the Supreme Court is discretionary under Rule 117. **Extraordinary relief in the Supreme Court pursuant to these rules relates solely to actions taken by the Court of Appeals in matters other than those arising under Rules 120 and 121.**

The basic procedures and requirements remain the same in both courts as they were under the prior rules with the exception that the filing fee has been increased. The filing of a petition for extraordinary relief does not automatically stay the proceedings in the lower court.

See **Appendix** for form of petition for a writ of prohibition (**Form 120A**), the order for the writ (**Form 120B**), and the writ of prohibition (**Form 120C**).

**Rules 122 - 124.**

**(Reserved for future use.)**

**TITLE VII. GENERAL PROVISIONS**

**Rule 125. Filing and Service**

**125.01 Filing**

Papers required or authorized by these rules shall be filed with the clerk of the appellate courts within the time limitations contained in the applicable rule. Filing may

be accomplished by mail addressed to the clerk of the appellate courts, but filing shall not be timely unless the papers are deposited in the mail within the time fixed for filing. If a motion or petition requests relief which may be granted by a single judge, the judge may permit the motion or petition to be filed with him, in which event he shall note the date of filing on it and shall thereafter transmit it to the clerk. All papers filed shall include the attorney registration license number of counsel filing the paper and, if filed subsequent to the notice of appeal, shall specify the appellate court docket number.

**125.02 Service and Filing of All Papers Required**

Copies of all papers filed by any party shall be served by that party, at or before the time of filing, on all other parties to the appeal or review. Papers shall be filed with the clerk of the appellate courts at the time of service or immediately thereafter. Service on a party represented by counsel shall be made on the attorney.

**125.03 Manner of Service**

Service may be personal or by mail. Personal service includes delivery of a copy of the document to the attorney or other responsible person in the office of the attorney, or to the party, if not represented by counsel, in any manner provided by Rule 4, Minnesota Rules of Civil Procedure. Service by mail is complete on mailing; however, whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, 3 days shall be added to the prescribed period.

**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 of the appellate courts may permit papers to be filed without proof of service, but shall require proof of service to be filed promptly after filing the papers.



## Comment

### **THE FILING OF ALL PAPERS MUST BE MADE WITHIN THE TIME DESIGNATED IN THE APPLICABLE RULE.**

Filing by mail addressed to the clerk of the appellate courts is authorized but must be accomplished by deposit in the mail, first class postage prepaid, within the designated time period. To the extent practical, all papers shall include the appellate court docket number and attorney registration license numbers.

Proof of service must be filed with the clerk of the appellate courts at the time the notice, petition or motion is filed or immediately 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, Minnesota Rules of Civil Procedure, shall be used.

#### **126.02 Extension or Limitation of Time**

The appellate court for good cause shown may by order extend or limit 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 that time if the failure to act was excusable under the circumstances. The appellate court may not extend or limit the time for filing the notice of appeal or the time prescribed by law for securing review of a decision or an order of a court or an administrative agency, board, commission or officer, except as specifically authorized by law.

## Comment

This rule specifically incorporates the method of computation specified in Rules 6.01 and 6.03, Minnesota Rules of Civil Procedure.

Rule 126.02 requires the showing of good cause for an extension or limitation of time prescribed by the rules. To obtain relief from a failure to act within the time prescribed, it is necessary to establish that the failure was excusable under the circumstances. The appellate court may not extend or limit the time for filing the notice of appeal or for petitioning for review.

## **Rule 127. Motions**

Unless another form is prescribed by these rules, an application for an order or other relief shall be made by serving and filing a written motion for the order or relief. The motion shall state with particularity the grounds and set forth the order or relief sought. If the motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response within 5 days after service of the motion. Any reply shall be served within 2 days, at which time the motion shall be deemed submitted. The motion and all relative papers may be typewritten. Four copies of all papers shall be filed with proof of service. Oral argument will not be permitted except by order of the appellate court.

## **Rule 128. Briefs**

### **128.01 Informal Brief**

Informal briefs authorized by a prehearing conference judge 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.

### **128.02 Formal Brief**

**Subdivision 1. Brief of Appellant.** The formal brief of the appellant shall contain under appropriate headings and in the order here indicated:

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

(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 of the trial court's ruling.

(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. 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 128.03.

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

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

(f) The appendix required by Rule 130.01.

**Subd. 2. Brief of Respondent.** The formal brief of the respondent shall conform to the requirements of Rule 128.02, subdivision 1, 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 the appellant. If a notice of review is filed pursuant to Rule 106, the respondent's brief shall present the issues specified in the notice of review. A respondent who fails to file a brief either when originally due or upon expiration of an extension of time shall not be entitled to oral argument without leave of the appellate court.

**Subd. 3. 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.

**Subd. 4. Additional Briefs.** No further briefs may be filed except with leave of the appellate court.

### **128.03 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 of it, e.g., Motion for Summary Judgment, p. 1; Transcript, p. 135; Plaintiff's Exhibit D, p. 3. Intelligible abbreviations may be used.

### **128.04 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 of them, they shall be reproduced in the brief or in an addendum, or they may be supplied to the court in pamphlet form.

#### **Comment**

See **Appendix** for form of formal brief (Form 128).

### **Rule 129. Brief of an Amicus Curiae**

Upon prior notice to the parties, a brief of an amicus curiae may be filed with leave of the appellate 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 and filed with the clerk of the appellate courts with proof of service. An amicus curiae shall not participate in oral argument except with leave of the appellate court.

**Rule 130. The Appendix to the Briefs; Supplemental Record**

**130.01 Record Not to be Printed; Appellant to File Appendix**

**Subdivision 1. Record; Portions.** 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) the relevant written motions and orders;
- (c) the verdict or the findings of fact, conclusions of law and order for judgment;
- (d) the relevant post trial motions and orders;
- (e) any memorandum opinions;
- (f) if the trial court's instructions are challenged on appeal, the instructions, any portion of the transcript containing a discussion of the instructions and any relevant requests for instructions;
- (g) any judgments;
- (h) the notice of appeal; and
- (i) the index to the documents contained in the appendix.

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

**Subd. 2. Statement.** 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.

**Comment**

This rule no longer requires the inclusion of the trial court's instructions in the appendix unless they are challenged on appeal. In addition, it is now mandatory to provide an **INDEX** to the documents contained 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 pagination 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 30 days after delivery of the transcript by the reporter or after the filing of the trial court's approval of the statement pursuant to Rules 110.03 and 110.04. 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 with the clerk of the appellate courts within 30 days after the filing of the notice of appeal or order granting review. The respondent shall serve and file his brief and appendix, if any, within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 10 days after service of the respondent's brief. If a party prepares a supplemental record, the supplemental record shall be served and filed with his first brief.

## Comment

### **TIMES FOR FILING ALL BRIEFS HAVE BEEN SHORTENED.**

This rule reduces the time for the filing of the appellant's brief from 60 to 30 days. The commencement of the briefing will depend upon a number of variables. If a transcript is ordered, the 30-day period begins with its delivery. If a transcript has been prepared prior to the appeal or the granting of a petition for review, or if no transcript is contemplated or necessary, the time runs from the date the notice of appeal was filed or the petition was granted. If a statement pursuant to either Rule 110.03 or 110.04 is submitted in lieu of a transcript, the time begins to run upon filing of the trial court's approval.

The time for filing the respondent's brief has been shortened from 45 to 30 days. All parties now have equal time for the preparation of their briefs.

### **131.02 Application for Extension of Time**

No extension of the time fixed by Rule 131.01 for the filing of the appellant's brief and appendix and the respondent's brief will be granted except upon a motion pursuant to Rule 127 made within the time specified for the filing of the brief. The motion shall be heard and considered by a justice, judge or a person designated by the appellate courts, acting as a referee, and shall be granted only for good cause shown. Only an original of the motion shall be filed.

## Comment

This rule has been clarified to make explicit that a request for an extension of time to file a brief must be made **WITHIN** the time specified by rule or court order for the filing.

### **131.03 Number of Copies to be Filed and Served**

**Subdivision 1. Number of Copies.** Unless otherwise specified in a prehearing conference order, the following number of copies of each brief, appendix, and supplemental record, if any, shall be filed with the clerk of the appellate courts:

- (a) In an appeal to the Supreme Court, 14 copies. Two copies of the 14 shall be unbound.
- (b) In an appeal to the Court of Appeals, nine copies. Two copies of the nine shall be unbound.

**Subd. 2. Service.** Two copies of each brief, appendix, and supplemental record, if any, shall be served on the attorney for each party to the appeal separately represented and on each party appearing pro se. 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.

#### **Comment**

**FOURTEEN** copies of all briefs, appendices, and supplemental records must now be filed in the Supreme Court and **NINE** copies in the Court of Appeals. Two unbound copies must be supplied to either court.

### **Rule 132. Form of Briefs, Appendices, Supplemental Records, Motions and Other Papers**

#### **132.01 Form of Briefs, Appendices, and Supplemental Records**

**Subdivision 1. Form Requirements.** Any process capable of producing a clear black image on white paper may be used. All material other than footnotes must appear in at least 11 point type, or its equivalent, on unglazed opaque paper. Briefs and accompanying appendices shall be bound together by any binding method which satisfies the published criteria of the appellate courts. Pages shall be 8 1/2 by 11 inches in size with typewritten matter 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 shall not be submitted.

**Subd. 2. Front Cover.** The front cover of the brief and appendix shall contain:

- (a) the name of the court and the appellate court docket number, which number shall be printed or lettered in bold-face print or prominent lettering 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, and attorney registration license numbers of the preparers of the brief.

The front cover shall not be protected by a clear plastic or mylar sheet.

If briefs are produced by commercial printing or duplicating firms, the cover of the brief of the appellant should be blue; that of the respondent, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. The cover of an amendment or supplement should be the same color as the document which it amends or supplements. In the event the Supreme Court grants a petition for review of a decision of the Court of Appeals, the covers of the briefs shall be the same color as those filed by the party in the Court of Appeals.

**Subd. 3. Page Limit.** Except for good cause shown and with permission of the appellate court, principal briefs, whether printed or typewritten, shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents; tables of citations; any addendum containing statutes, rules, regulations, etc.; and any appendix. Application for filing an enlarged brief shall be filed at least 10 days prior to the date the brief is due. All briefs of amicus curiae shall be limited to 20 pages.

**Subd. 4. Supplemental Records.** Supplemental records shall be bound in separate volumes and shall, in all other respects, comply with this rule.

#### Comment

#### **THERE ARE PAGE LIMITATIONS ON ALL BRIEFS.**

The form of briefs, appendices, and supplemental records to be submitted has been changed. Commercial typographical printing is no longer required; instead any process capable of producing a clear black image on white paper is acceptable. Spiral spine binding is also no longer required. The appellate courts will publish criteria for permitted binding methods.

The color coding system introduced is only applicable if commercially produced briefs are submitted.

The appellant and the respondent's briefs are limited to 50 pages exclusive of tables of contents and authorities, addenda, and appendices. Reply briefs shall not exceed 25 pages and briefs of amicus curiae are restricted to 20 pages. Any request to file an enlarged brief must be filed at least 10 days before the brief is due.

#### **132.02 Form of Motions and Other Papers**

**Subdivision 1. Form Requirements.** Papers not required to be produced in the manner prescribed by Rule 132.01 shall be 8 1/2 by 11 inches in size with typewritten matter not exceeding 6 1/2 by 9 1/2 inches. Any process capable of producing a clear black image on white paper may be used. All material must appear in at least 11 point type, or equivalent, on unglazed opaque paper. Pages shall be bound or stapled at the top margin and numbered at the center of the bottom margin. Typewritten matter shall be double spaced. Carbon copies shall not be submitted.

**Subd. 2. Caption.** Each paper shall contain a caption setting forth the name of the court, the title of the case, the appellate court docket number, and a brief descriptive title of the paper; and shall be subscribed by the attorney preparing the paper together with the preparer's address, telephone number, and attorney registration license number.

#### **Rule 133. Prehearing Conference; Calendar**

##### **133.01 Prehearing Conference**

The appellate courts may direct the parties, or their attorneys, to appear before a justice, judge or person designated by the appellate courts, either in person or by telephone, for a prehearing conference to consider settlement, simplification of the issues, and other matters which may aid in the disposition of the proceedings by the court. The justice, judge or person designated by the appellate courts shall make an order which recites the agreement made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admission or agreement of counsel.

### Comment

Prehearing conferences are still authorized by this rule, but it is anticipated that they will be held in very few cases and will be governed by internal operating procedures established by each of the appellate courts.

#### 133.02 Calendar

No case shall be placed on the calendar for argument, except by special order of the appellate court, until there has been filed in the appellate court the appellant's brief and appendix and the respondent's brief. If either the appellant or the respondent fails to file the required brief within the time provided, or an extension of that time, the case shall be disposed of in accordance with Rule 142.

No changes may be made on the calendar except by order of the court on its own motion or in response to a motion filed by counsel. No case scheduled for argument shall be withdrawn after being placed upon the calendar except upon a showing of extreme emergency.

### Comment

This rule indicates that no case will be scheduled for argument until all briefing is completed. The significant amendment is that once placed on the calendar, a case may not be rescheduled except upon motion or by the court and only upon a showing of extreme emergency.

#### 133.03 Statement of the Case

A statement of the case in the form prescribed by the appellate court shall be filed with the notice of appeal pursuant to Rule 103.01. The appellant shall serve the attorney for each party separately represented and each party appearing pro se and shall file proof of service with the clerk of the appellate courts.

Within 10 days after receiving the appellant's statement, the respondent may serve on all parties and file with proof of service a statement clarifying or supplementing the appellant's statement. If the respondent agrees with the particulars set forth in the appellant's statement, no additional statement need be filed. If a party desires oral

argument, a request must be included in the statement of the case. If a party desires oral argument at a location other than that provided by Rule 134.09, subdivision 2(a) to (e), the location requested shall be included in the statement of the case.

#### **Comment**

#### **ANY REQUEST FOR ORAL ARGUMENT MUST BE MADE IN THE STATEMENT OF THE CASE.**

The former prehearing conference statement has now been replaced by a form entitled "Statement of the Case" as found in the appendix. The appellant must file it with the notice of appeal and the respondent's statement, if any, must be filed within 10 days of service. Any request for oral argument at a location other than that specified in Rule 134.09 must be included in the statement.

See **Appendix** for form of the statement of the case (**Form 133**).

#### **Rule 134. Oral Argument**

##### **134.01 Allowance of Oral Argument**

Oral argument will be allowed unless:

(a) no request for oral argument has been made by either party in the statement of the case required by Rule 133.03; or

(b) a party has failed to file a timely brief as required by Rule 128.02; or

(c) the parties have agreed to waive oral argument pursuant to Rule 134.06;

or

(d) the appellate court, in the exercise of its discretion, determines that oral argument is unnecessary because:

(1) the dispositive issue or set of issues has been authoritatively settled;

or

(2) the facts and legal arguments could be adequately presented by the briefs and record and the decisional process would not be significantly aided by oral argument.

The clerk of the appellate courts shall notify the parties when it has been determined that a request for oral argument has been denied. A party aggrieved by the decision may, within 5 days after the receipt of the notification and pursuant to Rule 127, request the court to reconsider its decision.

**134.02 Notice of Hearing; Postponement**

The clerk of the appellate courts shall notify all parties of the time and place of oral argument. A request for postponement of the hearing must be made by motion filed immediately upon receipt of the notice of the date of hearing.

**134.03 Time Allowed for Argument**

**Subdivision 1. Time Allowed.** In the Court of Appeals, the appellant shall be granted time not to exceed 30 minutes and the respondent 20 minutes for oral argument. The appellant may reserve a portion of that time for rebuttal. In the Supreme Court, the appellant shall be granted time not to exceed 35 minutes and the respondent 25 minutes for oral argument. The appellant may reserve a portion of that time for rebuttal. If multiple parties to the appeal all wish to participate in oral argument, they shall mutually agree to divide the allotted time among themselves.

**Subd. 2. Additional Time.** If counsel is of the opinion that additional time is necessary for the adequate presentation of argument, additional time may be requested at the prehearing conference, if one is held, or by a motion filed in advance of the date fixed for hearing.

**Subd. 3. Argument Limit.** The appellate court may increase or reduce the time for argument on its own motion.

**134.04 Order and Content of Argument**

The appellant is entitled to open and conclude the argument. It is the duty of counsel for the 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.

**134.05 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 appears for any party, the case will be decided on the briefs unless the court shall otherwise order.

**134.06 Submission on Briefs**

**Subdivision 1. Waiver by Agreement.** Oral argument once allowed may be waived by agreement of the parties and consent of the court, and the matter shall be deemed submitted on the briefs 10 days after the completion of the briefing or on the date the appellate court consents to the waiver of oral argument, whichever is later.

**Subd. 2. Case Submitted.** When no oral argument has been requested, the case shall be considered submitted 10 days after the completion of the briefing.

**Subd. 3. Oral Argument Disallowed.** If, pursuant to Rule 134.01(d), oral argument is not allowed, the case shall be deemed submitted to the court at the time of notification of the denial of oral argument.

**134.07 Exhibits; Plats**

**Subdivision 1. Exhibits.** 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 are in court for the oral argument.

**Subd. 2. Plats.** In cases where a plat or diagram will facilitate an understanding of the facts or of the issues involved, counsel 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.

**134.08 Submission When Member of Appellate Court Not Present**

Except in exigent circumstances, the oral argument shall be heard in the Court of Appeals before the full panel to which the case has been assigned or in the Supreme Court before the court sitting en banc. Whenever any member of the appellate court is not present at the oral argument of a case, the case shall be deemed submitted to that member of the court on the record and briefs. 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.

**134.09 Oral Argument - Place of Argument**

**Subdivision 1. Supreme Court.** Argument to the Supreme Court shall take place at the State Capitol in St. Paul or at any other place designated by the Supreme Court.

**Subd. 2. Court of Appeals.** Argument to the Court of Appeals shall take place as provided in this rule.

(a) Argument in appeals from trial courts shall be heard:

(1) in appeals from trial courts in Hennepin and Ramsey Counties, at a session of the Court of Appeals in Hennepin or Ramsey County;

(2) in appeals from trial courts in other counties, at a session of the Court of Appeals in the judicial district in which the county is located at a location convenient to the place of trial or counsel.

(b) Arguments on writs of certiorari to review decisions of the Commissioner of Economic Security shall be heard as follows:

(1) if the claimant for benefits is a real party in interest in the proceedings and resides in Hennepin or Ramsey County, in one of those counties;

(2) if the claimant for benefits is a real party in interest in the proceedings and resides elsewhere in the state, in the judicial district of the claimant's residence;

(3) otherwise, at a place designated by the court.

(c) Arguments on petitions to review the validity of administrative rules, pursuant to Minnesota Statutes, Section 14.44, shall be in Hennepin or Ramsey County.

(d) Arguments on petitions to review decisions of administrative agencies in contested cases, pursuant to Minnesota Statutes, Sections 14.63 to 14.68, shall be heard:

(1) if the petitioner resides outside of Hennepin and Ramsey Counties, but within Minnesota, either at the session of the Court of Appeals in Hennepin or Ramsey County or at a session of the Court of Appeals in the judicial district in which the petitioner resides, as designated by the petitioner in the petition for review;

(2) if the petitioner resides in Hennepin or Ramsey County, or outside of Minnesota, at a session of the Court of Appeals in Hennepin or Ramsey County.

(e) In all other cases, any oral argument shall be heard at a session of the court in Hennepin or Ramsey County.

(f) Upon the joint request of the parties and with the approval of the court, an argument may be heard at a location other than that provided in this rule. The request pursuant to this subsection shall be included in the statement of the case.

#### **Comment**

This rule designates the place of oral argument in the Supreme Court and the Court of Appeals. In cases arising in counties other than Hennepin or Ramsey, the Court of Appeals will hear argument within the judicial district in which the county is located, to the extent practical, at a site convenient to either the place of trial or counsel.

#### **Rule 135. En Banc and Nonoral Consideration by the Supreme Court**

Cases scheduled for oral argument in the Supreme Court shall be heard and decided by the court en banc. Cases submitted on briefs may be considered by a nonoral panel of three or more members of the court assigned by the Chief Justice. The



disposition proposed by the panel shall thereafter be circulated to the full court for review.

**Rule 136. Notice of Decision; Judgment; Remittitur**

**136.01 Decision**

**Subdivision 1. Written Decision.**

(a) Each Court of Appeals disposition shall be in the form of a statement of the decision, accompanied by an opinion containing a summary of the case and the reasons for the decision; however if the appeal is dismissed for failure to comply with these rules or if the court determines that the contents of the statement of the decision sufficiently explain the disposition made, no written opinion need be prepared.

(b) A statement of the decision without a written opinion shall not be officially published and shall not be cited as precedent, except as law of the case, res judicata or collateral estoppel.

**Subd. 2. Notice of Decision.** Upon the filing of a decision or order which determines the matter, the clerk of the appellate courts shall mail a copy to the attorneys for the parties and to the trial court. The mailing shall constitute notice of filing.

**136.02 Entry of Judgment; Stay**

Unless the parties stipulate to an immediate entry of judgment, the clerk of the appellate courts shall enter judgment pursuant to the decision or order not less than 30 days after the filing of the decision or order. The service and filing of a petition for review to, or rehearing in, the Supreme Court shall stay the entry of the judgment. Judgment shall be entered immediately upon the denial of a petition for review or rehearing.

## Comment

Judgment will not be entered for **30 days** after the filing of a decision or order to allow the filing of a petition for review to, or rehearing in the Supreme Court. In the event either petition is made and denied, judgment will be entered immediately.

### **136.03 Remittitur**

**Subdivision 1. From the Court of Appeals.** The clerk of the appellate courts shall transmit the judgment to the clerk of the trial court when judgment is entered. If the Supreme Court grants a petition for review, the clerk shall transmit the entire record on appeal, one copy of each brief on file, and the decision of the Court of Appeals to the Supreme Court unless the order granting review directs otherwise.

**Subd. 2. From the Supreme Court.** When judgment is entered, the clerk of the appellate courts shall either transmit the judgment to the clerk of the trial court or notify the Court of Appeals if the matter is remanded to the Court of Appeals with special instructions.

### **Rule 137. Execution**

An execution to enforce any judgment of the appellate court may issue to the sheriff of any county in which a transcript of the judgment is filed and docketed. The execution shall be returnable within 60 days from its receipt by the officer. On the return of an execution satisfied in due form of law, the clerk of the trial court shall enter the satisfaction in the record.

### **Rule 138. Damages for Delay**

If an appeal delays proceedings on a judgment of the trial court and appears to have been taken merely for delay, the appellate 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 appellate 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 appellate 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 informal briefs.

### **139.03 Taxation of Costs and Disbursements; Time**

Costs and disbursements shall be taxed by the clerk of the appellate courts upon 5 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 of taxation.

### **139.04 Objections**

Written objections to the taxation of costs and disbursements shall be served and filed with the clerk of the appellate courts within 5 days after service of the notice of taxation. Failure to serve and file timely written objections shall constitute a waiver. If no objections are filed, the clerk may tax costs in accordance with these rules. If objections are filed, a person designated by the appellate courts, after conferring with the appropriate appellate court, shall determine the amount of costs and disbursements to be taxed. There shall be no appeal from the taxation of costs.

**Comment**

**NO APPEAL MAY BE TAKEN FROM THE TAXATION OF COSTS.**

**139.05 Disallowance of Costs and Disbursements**

The appellate court 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 in Supreme Court**

**140.01 Petition for Rehearing**

No petition for rehearing shall be allowed in the Court of Appeals.

A petition for rehearing in the Supreme Court 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:

- (a) any controlling statute, decision or principle of law; or
- (b) any material fact; or
- (c) any material question in the case which, in the opinion of the petitioner,

the Supreme Court has overlooked, failed to consider, misapplied or misconceived.

**Comment**

**NO PETITION FOR REHEARING IS ALLOWED IN THE COURT OF APPEALS.**

**140.02 Service; Filing**

The petition shall be served upon the opposing party who may answer within 5 days after service. Oral argument in support of the petition will not be permitted.

Fourteen copies of the petition, produced and sized as required by Rule 132.01, shall be filed with the clerk. A filing fee of \$50 shall accompany the petition for rehearing.

**140.03 Stay of Judgment**

The filing of a petition for rehearing shall stay the entry of judgment until disposition of the petition. It does not stay the taxation of costs. If the petition is denied, the party responding to the petition may be awarded attorney fees to be allowed by the court in the amount not to exceed \$500.

**Rule 141.**

**(Reserved for future use.)**

**Rule 142. Dismissal; Default**

**142.01 Voluntary Dismissal**

If the parties to an appeal or other proceeding execute and file with the clerk of the appellate courts a stipulation that the proceedings be dismissed, the matter may be dismissed upon the approval of the appellate court.

**142.02 Default of Appellant**

The respondent may serve and file a motion for judgment of affirmance or dismissal if the appellant fails or neglects to serve and file his brief and appendix as required by these rules. If the appellant is in default for 30 days and the respondent has not made a motion under this rule, the appellate court shall order the appeal dismissed without notice, subject to a motion to reinstate the appeal. In support of the motion, the 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 the respondent's rights.

**142.03 Default of Respondent**

If the respondent fails or neglects 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 affirmance of the judgment or order specified in the notice of review or for a dismissal of the respondent's review proceedings.

**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 dies while an appeal is pending in the appellate court, the surviving party or the legal representative or successor in interest of the deceased party, shall file with the clerk of the appellate courts an affidavit showing the death and the name and address of the 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 inform the clerk of the appellate courts of the death and proceedings shall then be had as the appellate court may direct. If a party against whom an appeal may be taken dies after the entry of a judgment or an order in the trial court but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. If a party entitled to appeal dies 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 appellate court in accordance with this rule.

**143.03 Substitution for Other Causes**

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

**143.04 Public Officers**

If a public officer dies, resigns or otherwise ceases to hold office during the pendency of an appeal or other appellate proceeding to which he is a party in his official capacity, 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 questioned in any appellate proceeding to which the state or an officer, agency or employee of the state is not a party, the party asserting the unconstitutionality of the act shall notify the attorney general within time to afford him an opportunity to intervene.

**Rule 145. Appendix of Forms**

The sample forms contained in the appendix to these rules satisfy the requirements of the rules.

**Comment**

The appendix of forms is intended to guide counsel in the preparation of any application for relief in either of the appellate courts. For consistency of illustration the defending party has been designated as the appellant or petitioner in all forms. Accordingly, appropriate adjustment must be made when the plaintiff or claimant is the party seeking relief in an appellate court. The attorney registration number of the attorney-preparer of each form is required to permit the computerized tracking of all

cases in the appellate courts. While there is no other requirement for strict adherence to the forms, an inclusion of the information contained in them is viewed as a prerequisite to obtaining an informal decision from the appellate court.

**Rule 146. Title**

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

**Rule 147. Effective Date**

These rules are effective on August 1, 1983 and govern all civil appeals and proceedings brought after that date.

**Comment**

The revised rules are effective on August 1, 1983, the effective date of Minnesota Statutes, Section 480A.06, which establishes the jurisdiction of the Court of Appeals, and will govern all civil appeals and proceedings initiated in either the Supreme Court or the Court of Appeals after that date. Appeals and other proceedings pending in the Supreme Court on July 31, 1983, will be governed by the former rules.



**APPENDIX OF FORMS**

**FORM 103A — NOTICE OF APPEAL (Court of Appeals)**

STATE OF MINNESOTA

\_\_\_\_\_ DISTRICT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ COUNTY COURT

\_\_\_\_\_ JUDICIAL DISTRICT

CASE TITLE:

Plaintiff,

NOTICE OF APPEAL  
TO  
COURT OF APPEALS

vs.

Defendant.

TRIAL COURT CASE NUMBER:

DATE OF ORDER:  
OR

DATE JUDGMENT ENTERED:

TO: Clerk of the Appellate Courts  
230 State Capitol, St. Paul, MN 55155

Please take notice that the above-named defendant appeals to the Court of Appeals of the State of Minnesota from an order (judgment) of the court filed (entered) on the date shown, denying defendant's motion for a new trial.

DATED:

NAME, ADDRESS, ZIP CODE, TELEPHONE  
NUMBER OF ATTORNEY(S) FOR PLAINTIFF

NAME, ADDRESS, ZIP CODE,  
TELEPHONE NUMBER, AND  
ATTORNEY REGISTRATION NUMBER  
OF ATTORNEY(S) FOR DEFENDANT:

\_\_\_\_\_  
SIGNATURE

(The trial court caption is used on the notice of appeal. Subsequent documents shall bear the appropriate appellate court caption. RCAP 103.01, subd. 1 specifies the contents of the notice of appeal and filings required to perfect an appeal, including filing fees. RCAP 103.03 sets forth judgments and orders which are appealable to the Court of Appeals. RCAP 104.01 specifies time limits for filing and service of the notice of appeal. RCAP 107 provides for bond or deposit for costs. RCAP 108.01 provides for a supersedeas bond. This document must be accompanied by a completed statement of the case. RCAP 133.03.)

FORM 103B — NOTICE OF APPEAL (Supreme Court)

STATE OF MINNESOTA

\_\_\_\_\_ DISTRICT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

CASE TITLE:

Plaintiff,

NOTICE OF APPEAL  
TO  
SUPREME COURT

vs.

TRIAL COURT CASE NUMBER:

Defendant.

DATE OF FINAL JUDGMENT  
OF CONVICTION/ORDER:

TO: Clerk of the Appellate Courts  
230 State Capitol, St. Paul, MN 55155

Please take notice that the above-named defendant appeals to the Supreme Court of the State of Minnesota from defendant's final judgment of conviction, date noted above, for the crime of murder in the first degree.

DATED:

NAME, ADDRESS, ZIP CODE, TELEPHONE  
NUMBER OF ATTORNEY(S) FOR PLAINTIFF

NAME, ADDRESS, ZIP CODE,  
TELEPHONE NUMBER, AND  
ATTORNEY REGISTRATION NUMBER  
OF ATTORNEY(S) FOR DEFENDANT:

\_\_\_\_\_  
SIGNATURE

(The trial court caption is used on the notice of appeal. Subsequent documents shall bear the appropriate appellate court caption. Minnesota Statutes, Section 632.14 provides that appeals from a final judgment of conviction of the crime of murder in the first degree are taken directly to the Supreme Court. Rule 29, subdivision 1 of the Rules of Criminal Procedure specifies the procedure for service and filing of the notice of appeal; subdivision 2 itemizes the contents of the notice of appeal; subdivision 3 defines the time for taking an appeal; and subdivision 4 cites other relevant procedures in first-degree murder appeals.)

FORM 105 - PETITION FOR DISCRETIONARY REVIEW

STATE OF MINNESOTA  
IN COURT OF APPEALS

CASE TITLE:

Petitioner,

PETITION FOR  
DISCRETIONARY REVIEW

vs.

TRIAL COURT CASE NUMBER:

DATE OF FILING ORDER:

Respondent.

TO: The Court of Appeals of the State of Minnesota:

The petitioner (name) requests discretionary review of the (date) order of the  
\_\_\_\_\_ Court.

1. Statement of facts necessary to an understanding of the issues presented.
2. Statement of the issues.
3. Statement why immediate review of interlocutory or otherwise nonappealable order necessary.

WHEREFORE, the petitioner requests an order of the court granting the petition for discretionary review.

DATED:

NAME, ADDRESS, ZIP CODE,  
TELEPHONE NUMBER, AND ATTORNEY  
REGISTRATION NUMBER OF  
ATTORNEY(S) FOR PETITIONER

\_\_\_\_\_  
SIGNATURE

(The content requirements of the petition for discretionary review are found in RCAP 105. A memorandum of law and pertinent lower court documents should be attached to the petition. The submission and the requirements for filing, form and the number of copies are contained in RCAP 105.02.)

**FORM 106 - RESPONDENT'S NOTICE OF REVIEW**

STATE OF MINNESOTA

IN COURT OF APPEALS

CASE TITLE:

Plaintiff-Respondent,

RESPONDENT'S  
NOTICE OF REVIEW

vs.

TRIAL COURT CASE NUMBER:

COURT OF APPEALS NUMBER:

Defendant-Appellant.

DATE OF ORDER:

DATE JUDGMENT ENTERED:

TO: Clerk of the Appellate Courts  
230 State Capitol, St. Paul, MN 55155

Please take notice that the respondent will seek review of the order (judgment) of the \_\_\_\_\_ court, which was filed (entered) on the date noted above, denying respondent's motion for a new trial on the issue of damages.

DATED:

NAME, ADDRESS, ZIP CODE,  
TELEPHONE NUMBER, AND ATTORNEY  
REGISTRATION NUMBER OF  
ATTORNEY(S) FOR RESPONDENT

\_\_\_\_\_  
SIGNATURE

(RCAP 106 describes the procedures by which respondent obtains review in the Court of Appeals of judgments or orders which are the subject of the appeal and which may adversely affect the respondent. The rule addresses contents of the notice of review, and filing and service requirements.)

FORM 110 - CERTIFICATE AS TO TRANSCRIPT

STATE OF MINNESOTA  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_ DISTRICT COURT  
\_\_\_\_\_ COUNTY COURT  
\_\_\_\_\_ JUDICIAL DISTRICT

CASE TITLE:

Plaintiff,

CERTIFICATE AS  
TO TRANSCRIPT

vs.

\_\_\_\_\_ Supreme Court  
\_\_\_\_\_ Court of Appeals

Defendant.

APPELLATE COURT  
CASE NUMBER:

TRIAL COURT CASE NUMBER:

TO: Clerk of the Appellate Courts  
230 State Capitol, St. Paul, MN 55155

A transcript of the proceedings in the above-entitled action was requested by counsel for the defendant on (date) in accordance with Rule 110.02, subdivision 2 of the Rules of Civil Appellate Procedure. The estimated number of pages is (number) and the estimated date of completion is \_\_\_\_\_, a date not to exceed 60 days from the date of request.

Satisfactory financial arrangements have been made between counsel and the court reporter for the transcription.

DATED:

\_\_\_\_\_  
SIGNATURE OF ATTORNEY

\_\_\_\_\_  
SIGNATURE OF COURT REPORTER  
ADDRESS AND TELEPHONE NUMBER

cc: Trial Court of Record  
All Counsel of Record

(RCAP 110.02, subdivision 2, requires a certificate as to transcript if any part of the proceedings are to be transcribed by a court reporter. The original copy of the certificate shall be filed with the clerk of the appellate courts, with a copy to the trial court and all counsel of record.)

**FORM 115A - PETITION FOR WRIT OF CERTIORARI**

STATE OF MINNESOTA  
IN COURT OF APPEALS

CASE TITLE:

Employee-Relator,

PETITION FOR WRIT  
OF CERTIORARI

vs.

COURT OF APPEALS NUMBER:

Employer-Respondent,

DEPARTMENT OF ECONOMIC  
SECURITY NUMBER:

Commissioner of Economic Security,

DATE OF MAILING NOTICE  
OF DECISION:

Respondent.

TO: The Court of Appeals of the State of Minnesota:

The above-named relator hereby petitions the Court of Appeals for a Writ of Certiorari to review a decision of the Commissioner of Economic Security filed and mailed on the date noted above, upon the grounds that it is not in conformity with the provisions of Minnesota Statutes, Chapter 268, and is unwarranted by the evidence.

DATED:

NAME, ADDRESS, ZIP CODE, AND  
TELEPHONE NUMBER OF RELATOR:  
(ATTORNEY REGISTRATION NUMBER  
IF REPRESENTED BY COUNSEL)

\_\_\_\_\_  
SIGNATURE

(The procedure for obtaining a writ of certiorari from the Court of Appeals is set forth in Rule 115, Rules of Civil Appellate Procedure. The rule prescribes the subject matter of writs in the Court of Appeals, the manner of securing a writ, time limitations, contents of the petition, bond or security, filing and fees, and requirements for service.)



**FORM 115B - WRIT OF CERTIORARI**

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

**CASE TITLE:**

**Relator,**

**WRIT OF CERTIORARI**

**vs.**

**COURT OF APPEALS NUMBER:**

**Respondent,**

**DEPARTMENT OF ECONOMIC  
SECURITY NUMBER:**

**Commissioner of Economic Security,**

**DATE OF MAILING NOTICE  
OF DECISION:**

**Respondent.**

**TO: Minnesota Department of Economic Security:**

You are hereby ordered to return to the Court of Appeals within 30 days from this date the record, exhibits and proceedings in the above-entitled matter so that this court may review the decision of the Commissioner of Economic Security filed and mailed on the date noted above.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the Commissioner of Economic Security and upon the Employer-Respondent or its attorney at:

\_\_\_\_\_  
\_\_\_\_\_  
(address)

Proof of service shall be filed with the clerk of the appellate courts.

**DATED:**

**WAYNE O. TSCHIMPERLE  
Clerk of Appellate Courts**

(Clerk's File Stamp)

By: \_\_\_\_\_  
Assistant Clerk

**FORM 116B - WRIT OF CERTIORARI**

STATE OF MINNESOTA  
IN SUPREME COURT

CASE TITLE:

Employee-Relator,

WRIT OF CERTIORARI

vs.

SUPREME COURT NUMBER:

Employer-Respondent,

WORKERS' COMPENSATION  
COURT OF APPEALS NUMBER:

Insurer-Respondent.

DATE OF SERVICE OF WRITTEN  
NOTICE OF DECISION:

TO: The Workers' Compensation Court of Appeals:

You are hereby ordered to return to the Supreme Court within 30 days from this date the record, exhibits and proceedings in the above-entitled matter so that this court may review the decision of the Workers' Compensation Court of Appeals.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the Secretary of the Workers' Compensation Court of Appeals and upon the Employer-Respondent(s) above-named or their attorney(s) at:

\_\_\_\_\_  
\_\_\_\_\_  
(address)

Proof of service shall be filed with the clerk of the appellate courts.

DATED:

WAYNE O. TSCHIMPERLE  
Clerk of Appellate Courts

(Clerk's File Stamp)

By: \_\_\_\_\_  
Assistant Clerk

**FORM 117 - PETITION FOR REVIEW OF DECISION OF COURT OF APPEALS**

STATE OF MINNESOTA

IN SUPREME COURT

CASE TITLE:

Petitioner,

PETITION FOR REVIEW OF  
DECISION OF COURT OF  
APPEALS

vs.

APPELLATE COURT  
CASE NUMBER:

Respondent.

DATE OF FILING OF COURT  
OF APPEALS DECISION:

TO: The Supreme Court of the State of Minnesota:

The petitioner (name) requests Supreme Court review of the above-entitled decision of the Court of Appeals upon the following grounds:

1. Statement of facts and procedural history.

(The statement should be a concise summary because the decisions of the lower courts must be attached.)

2. Statement of legal issues and their resolution by the Court of Appeals.
3. Arguments.

(The petitioner shall address the applicable criteria of RCAP 117, subd. 2; identify and address the critical portion of the Court of Appeals decision; and discuss the likelihood of success on the merits.)

For these reasons, the petitioner seeks an order granting review of the decision of the Court of Appeals.

DATED:

NAME, ADDRESS, ZIP CODE,  
TELEPHONE NUMBER, AND ATTORNEY  
REGISTRATION NUMBER OF  
ATTORNEY(S) FOR PETITIONER

\_\_\_\_\_  
SIGNATURE

## Appendix

(The content requirements of the petition are found in RCAP 117. The rule emphasizes that Supreme Court review is discretionary. The decisions of the Court of Appeals and trial court or agency must be attached as an appendix. The petition should not exceed 5 typewritten pages, exclusive of appendix.)

**FORM 118 - PETITION FOR ACCELERATED REVIEW**

STATE OF MINNESOTA

IN SUPREME COURT

CASE TITLE:

Petitioner,

PETITION FOR  
ACCELERATED REVIEW

vs.

APPELLATE COURT  
CASE NUMBER:

Respondent.

TO: The Supreme Court of the State of Minnesota:

The petitioner (name) requests accelerated review by the Supreme Court of the above-entitled matter upon the following grounds:

1. Status of appeal.

(The petitioner should identify the status of the case—including the stage of the proceedings on the date of this petition—and the date of filing of the notice of appeal.)

2. Statement of facts.

(This should be a concise statement of the facts necessary to the Supreme Court's decision to accelerate the appeal.)

3. Statement of legal issues to be raised.

4. Arguments.

(The petitioner should discuss the applicable criteria of RCAP 117, subd. 2; and the question of why immediate review by the Supreme Court is necessary.)

For these reasons, the petitioner requests an order granting accelerated review of this appeal now pending in the Court of Appeals.

DATED:

NAME, ADDRESS, ZIP CODE,  
TELEPHONE NUMBER, AND ATTORNEY  
REGISTRATION NUMBER OF  
ATTORNEY(S) FOR PETITIONER

\_\_\_\_\_  
SIGNATURE

**Appendix**

**(This petition shall not exceed 10 typewritten pages, exclusive of appendix, and shall comply with the requirements of RCAP 118, subd. 2.)**

FORM 120A - PETITION FOR WRIT OF PROHIBITION

STATE OF MINNESOTA  
IN COURT OF APPEALS

CASE TITLE:

PETITION FOR WRIT OF PROHIBITION

Petitioner,

TRIAL COURT CASE NUMBER:

vs.

APPELLATE COURT CASE NUMBER:

Respondent.

TO: The Court of Appeals of the State of Minnesota:

The petitioner (name) requests a writ of prohibition restraining the  
\_\_\_\_\_ County District Court from enforcing its order of (date).

- presented.
1. Statement of facts necessary to an understanding of the issues
  2. Statement of the issues.
  3. Argument and statement of the reasons extraordinary relief necessary.

WHEREFORE, the petitioner requests an order granting the petition for a writ of prohibition and the issuance of the writ.

DATED:

NAME, ADDRESS, ZIP CODE,  
TELEPHONE NUMBER, AND ATTORNEY  
REGISTRATION NUMBER OF  
ATTORNEY(S) FOR PETITIONER

\_\_\_\_\_  
SIGNATURE

Appendix

(The content requirements of the petition for extraordinary relief are found in RCAP 120 and 121. A memorandum of law and pertinent lower court documents should be attached to the petition. The submission of the petition and time to respond are detailed in RCAP 120.02 and the requirements for filing, form and the number of copies are contained in RCAP 120.04.)

FORM 120B — ORDER FOR WRIT OF PROHIBITION

STATE OF MINNESOTA  
IN COURT OF APPEALS

CASE TITLE:

Petitioner,

vs.

APPELLATE COURT CASE NUMBER:

Respondent.

O R D E R

Upon the petition of (name) for a writ of prohibition, IT IS HEREBY ORDERED:

1. That the writ be, and the same is, issued and that the \_\_\_\_\_ Court, \_\_\_\_\_ Division, County of \_\_\_\_\_, \_\_\_\_\_ Judicial District, upon receipt of the writ of prohibition, grant the relief requested in the petition.

2. The petitioner shall forthwith serve copies of this order on \_\_\_\_\_, attorney for respondent, and on \_\_\_\_\_, Judge of said \_\_\_\_\_ Court.

DATED:

BY THE COURT:

\_\_\_\_\_  
Judge or Justice



FORM 120C - WRIT OF PROHIBITION

STATE OF MINNESOTA  
IN COURT OF APPEALS

CASE TITLE:

Petitioner,

vs.

APPELLATE COURT CASE NUMBER:

Respondent.

WRIT OF PROHIBITION

The State of Minnesota to the Honorable \_\_\_\_\_, Judge of \_\_\_\_\_  
Court, \_\_\_\_\_ Division, County of \_\_\_\_\_, \_\_\_\_\_ Judicial District:

WHEREAS, upon consideration of the petition of (name) and the answer of  
respondent (name) this Court has determined that petitioner is entitled to the relief  
requested in said petition,

NOW, THEREFORE, We do command and direct that you immediately upon  
receipt of a copy of this writ vacate and set aside your order of (date), and that you grant  
to said petitioner the relief requested in his petition of (date). Copies of this writ shall be  
served forthwith by mail by petitioner upon you and proof of service filed herein.

Witness the Honorable \_\_\_\_\_, Chief Judge of the Court of  
Appeals of the State of Minnesota, and the seal of this Court, this \_\_\_ day of  
\_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Clerk of Appellate Courts

**FORM 128 - APPELLANT'S FORMAL BRIEF AND APPENDIX**

(Cover)

APPELLATE COURT CASE NUMBER

STATE OF MINNESOTA

IN COURT OF APPEALS

CASE TITLE:

Respondent,

vs.

Appellant.

APPELLANT'S BRIEF AND APPENDIX

JOHN BROWN  
Attorney for Respondent  
(address, zip code, and telephone number)

SMITH & JONES  
By John Jones  
Attorney for Appellant  
(address, zip code, telephone number,  
and attorney registration number)

\* \* \* \* \*

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TABLE OF AUTHORITIES

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Jones v. Olson, __ N.W.2d __ (Minn. 1982)	9
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\* \* \* \* \*

LEGAL ISSUES

- I. (Precise statement of each legal issue)  
    Trial court held: \_\_\_\_\_
- II.

\* \* \* \* \*

STATEMENT OF FACTS

(The facts should be stated in compliance with RCAP 128.02, subd. 1(c), accompanied by appropriate citations to the appendix and the transcript.)

\* \* \* \* \*

ARGUMENT

- I. (Each legal issue should be argued separately. RCAP 128.02, subd. 1(d).)

\* \* \* \* \*

**CONCLUSION**

(The conclusion shall contain a statement of the precise relief sought.)

Respectfully submitted,  
SMITH & JONES  
By John Jones  
Attorney for Appellant  
(address, zip code, telephone number,  
and attorney registration number)

\* \* \* \* \*

**APPENDIX AND INDEX**

(The index should precede the appendix and the pages of the appendix should be separately numbered. RCAP 130.)

**FORM 133 - STATEMENT OF THE CASE**

STATE OF MINNESOTA

IN SUPREME COURT  
OR  
IN COURT OF APPEALS

CASE TITLE:

STATEMENT OF THE CASE OF  
(APPELLANT) (RESPONDENT)

Appellant,

vs.

TRIAL COURT CASE NUMBER:

Respondent.

APPELLATE COURT CASE NUMBER:

1. Court or agency of case origination and name of judge or hearing officer who presided.
2. Jurisdictional statement.

(State whether appeal is from a judgment or order, including date of entry of judgment or filing of order. If appeal is from order, state date of notice of making and filing thereof and which clause of RCAP 103.03 or which statute authorizes the appeal.)

3. State type of litigation and designate any statutes at issue.

(Example: marital dissolution - property distribution, Minn. Stat. § 518.58 (1982); spousal maintenance, Minn. Stat. § 518.552 (1982).)

4. Brief description of claims, defenses, issues litigated and result below.
5. Issues proposed to be raised on appeal.
6. Is transcript required?  If so, full or partial transcript? \_\_\_\_\_
7. Is oral argument requested?  If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? (Where)

8. Are briefs necessary?

(Are trial memoranda, supplemented by a short letter argument, sufficient?)

9. Names, addresses, zip codes and telephone numbers of attorney for appellant and respondent.

DATED:

NAME, ADDRESS, ZIP CODE,  
TELEPHONE NUMBER, AND ATTORNEY  
REGISTRATION NUMBER OF  
ATTORNEY(S) FOR (APPELLANT)  
(RESPONDENT)

\_\_\_\_\_  
SIGNATURE