

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8006
(formerly C4-84-2133)

OFFICE OF
APPELLATE COURTS

OCT 16 2009

FILED

Order Promulgating Amendments to
Rules of Civil Appellate Procedure

O R D E R

The Supreme Court Advisory Committee on Rules of Civil Appellate Procedure has recommended amendments to the Rules of Civil Appellate Procedure. By order filed May 27, 2009, the court solicited comments on the proposed amendments to be filed no later than July 21, 2009.

The court has reviewed the proposed amendments and the comments received and is fully advised in the premises.

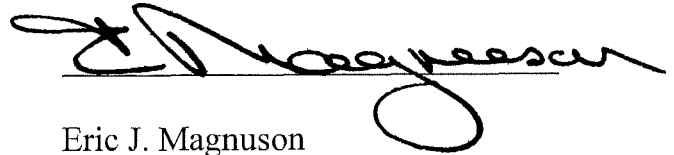
IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Rules of Civil Appellate Procedure be, and the same are, prescribed and promulgated to be effective on January 1, 2010.
2. These amendments shall apply to all actions or proceedings pending on or commenced on or after the effective date.

3. The inclusion of Advisory Committee comments is for convenience and does not reflect court approval of the statements made therein.

Dated: October 16, 2009

BY THE COURT:

A handwritten signature in black ink, appearing to read "Eric J. Magnuson", written over a horizontal line. The signature is stylized with a large initial "E" and a long, sweeping tail.

Eric J. Magnuson
Chief Justice

AMENDMENTS TO THE RULES OF CIVIL APPELLATE PROCEDURE

[Note: new material is indicated by underscoring, except committee comments and where otherwise noted, for material that is entirely new; deleted material is indicated by strikethrough.]

RULE 103. APPEAL—HOW TAKEN

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Rule 103.02. Joint Appeals; Related Appeals; Consolidated Appeals

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Subd. 2. Related Appeals. After one party timely files a notice of appeal, any other party may seek review of a judgment or order in the same action by serving and filing a notice of related appeal. The notice of related appeal shall specify the judgment or order to be reviewed. The notice of related appeal shall be accompanied by:

- (a) a filing fee of \$100,
- (b) a certified copy of the judgment or order from which the related appeal is taken if different than the judgment or order being challenged in the original appeal, and
- (c) two copies of a statement of the case.

A separate cost bond is not required unless ordered by the court.

Subd. 23. Consolidated Appeals. Related appeals from a single trial court action or Appeals in separate actions may be consolidated by order of the appellate court on its own motion or upon motion of a party.

Advisory Committee Comment—2009 Amendments

Rule 103.02 is amended to add a new subdivision 2 to establish a new procedure for filing of a cross-appeal or another related appeal after any party has filed a notice of appeal. This rule applies in civil cases, as the Minnesota Rules of Criminal Procedure address the right to file a cross-appeal in criminal cases. *See* MINN. R. CRIM. P. 28.04, subd. 3. The new notice is denominated a “Notice of Related Appeal.” *See* Appendix for form of Notice of Related Appeal (Form 103C). This procedure replaces the notice-of-review procedure formerly established by Rule 106. Existing subdivision 2 is renumbered as subdivision 3 and is amended to provide for consolidation of related appeals

from a single trial court proceeding. This consolidation may be ordered by the court based on information in the statement of the case or may be ordered upon motion of any party to any related appeal.

RULE 104. TIME FOR FILING AND SERVICE OF NOTICE OF APPEAL AND NOTICE OF RELATED APPEAL

Rule 104.01. Time for Filing and Service

* * *

Subd. 3. Premature Appeal. A notice of appeal filed before the disposition of any of the above motions is premature and of no effect, and does not divest the trial court of jurisdiction to dispose of the motion. A new notice of appeal must be filed within the time prescribed to appeal the underlying order or judgment, measured from the service of notice of filing of the order disposing of the outstanding motion. If a party has already paid a filing fee in connection with a premature appeal, no additional fee shall be required from that party for the filing of a new notice of appeal or notice of related appeal pursuant to Rule ~~106-103.02~~, subdivision 2.

Subd. 4. Multiple Appeals. After one party timely files a notice of appeal, any other party may serve and file a notice of related appeal within 14 days after service of the first notice of appeal, or within the time otherwise prescribed by subdivisions 1 and 2 of this rule, whichever period ends later.

Advisory Committee Comment—2009 Amendments

Subdivision 4 of Rule 104.01 is a new provision. It is modeled on Fed. R. App. P. 4(a)(3) and, for respondents, replaces the notice of review under former Rule 106 of these rules. The amended rule explicitly recognizes that a party may elect to appeal an issue only after learning that another party has appealed. Where a prior appeal has been filed and remains pending, a subsequent notice of appeal should be denominated “Notice of Related Appeal” and will suffice to raise any issue arising from the same trial court action. See Appendix for form of Notice of Related Appeal (Form 103C). The rule permits a party to serve and file a subsequent notice of related appeal within 14 days of the service of the first notice of appeal by another party, even if that occurs on the last day to appeal; it does not shorten the normal appeal period even if a party serves and files an appeal on the first possible day.

RULE 106. RESPONDENT'S RIGHT TO OBTAIN REVIEW

~~A After an appeal has been filed, respondent may obtain review of a judgment or order entered in the same underlying action ~~which that~~ that may adversely affect respondent by filing a separate notice of review related appeal in accordance with Rule 103.02, subdivision 2, and Rule 104.01, subdivision 4. ~~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. A filing fee of \$100 shall accompany the notice of review.~~~~

Advisory Committee Comment—2009 Amendments

Rule 106 is amended to abolish the former notice of review, replacing it with the notice of related appeal for all situations where a respondent seeks appellate review of a trial court decision. The amendment avoids the limitations of the former notice of review that could be fatal to an attempt by a respondent to seek review. *See, e.g., Leason v. Wash. County*, 397 N.W.2d 867, 872 (Minn. 1986) (holding that a respondent seeking appellate relief against parties other than the appellant may obtain review only by separate notice of appeal, but nonetheless considering issue raised improperly). As a practical matter, the amended rule serves only to give notice to a respondent that the proper procedure is no longer contained in this rule but is now found in Rule 103.02, subdivision 2, as to procedure, and Rule 104.01, subdivision 4, as to timing.

The amended rule is intended to create a single procedure that will allow a respondent seeking review to file a notice of related appeal. Under the amended rule a notice of related appeal should suffice to permit a respondent to obtain appellate review of any issues arising in the same trial court case but does not foreclose the right of any party to proceed by separate notice of appeal.

The new procedure is not intended to change the scope of appellate review. This notice of related appeal procedure is not meant to expand what can be reviewed on appeal or to limit that review. For example, the defendant's filing of an appeal under Minn. R. Crim. P. 28.02 does not currently create a right to file a cross-appeal or notice of review; and this amendment should not affect that result. *See State v. Schamus*, 431 N.W.2d 151, 152 (Minn. App. 1988). The court of appeals has recognized that the former notice of review could be used to seek review of an otherwise non-appealable order. *See Kostelnik v. Kostelnik*, 367 N.W.2d 665, 669 (Minn. App. 1985); *see also Arndt v. Am. Family Ins. Co.*, 394 N.W.2d 791, 793-94 (Minn. 1986) (citing *Kostelnik* with apparent approval). The committee intends that the notice of related appeal be treated similarly and that an independent basis for jurisdiction not be required.

RULE 108. SUPERSEDEAS BOND; STAYS PENDING APPEAL; SECURITY

~~Rule 108.01 Supersedeas Bond~~

~~**Subdivision 1. Effect of Appeal; Stay.** Except in appeals under Rule 103.03 (b), or as otherwise provided by law, the filing of a proper and timely appeal suspends the authority of the trial court to make any order necessarily affecting the order or judgment appealed from. The trial court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from, and to enforce its order or judgment.~~

~~Unless otherwise provided by law, a proper and timely appeal does not stay an order or judgment or enforcement proceedings in the trial court, but the appellant may obtain a stay by providing a supersedeas bond or other security in the amount and form which the trial court shall order and approve, in the cases provided in this rule, or as otherwise provided by rule or statute.~~

~~An application to approve a supersedeas bond, or for a stay on other terms, shall be made in the first instance to the trial court. Upon motion, the appellate court may review the trial court's determination as to whether a stay is appropriate and the terms of any stay.~~

~~A supersedeas bond, whether approved by the trial court or appellate court, shall be filed in the trial court.~~

~~**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 appeals brought pursuant to Rule 115, the trial court may upon motion grant a stay of the order, judgment or enforcement proceedings upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

~~Subd. 7.~~ In cases not specified in subdivisions 2 to 6, filing the bond specified in Rule 107 shall stay proceedings in the trial court.

~~Subd. 8.~~ 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.

~~Rule 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 trial court administrator to abide the judgment of the appellate court.~~

~~Rule 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.~~

~~Rule 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.~~

~~Rule 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.~~

~~Rule 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.~~

~~Rule 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.~~

[Note: The revised Rule 108 is entirely new; underscoring is omitted for readability.]

Rule 108.01. Effect of Appeal on Proceedings in Trial Court

Subdivision 1. Generally No Stay of Enforcement of Judgment or Order on Appeal. Except as otherwise provided by rule or statute, an appeal from a judgment or

order does not stay enforcement of the judgment or order in the trial court unless that court orders relief in accordance with Rule 108.02.

Subd. 2. Suspension of Trial Court’s Authority to Make Orders Affecting Judgment or Order on Appeal. Except in appeals under Rule 103.03(b), the filing of a timely and proper appeal suspends the trial court’s authority to make any order that affects the order or judgment appealed from, although the trial court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from.

Advisory Committee Comment—2009 Amendments

Rule 108.01 is a new rule, but it is not intended to create new law. Its provisions are drawn from existing Rule 108.01, subdivision 1, and codify long-standing common law. Neither the filing of an appeal nor the posting of a cost bond required by Rule 107 stays the order or judgment appealed from. *See, e.g., Anderson v. Anderson*, 288 Minn. 514, 517, 179 N.W.2d 718, 721 (Minn. 1970) (stay available only upon filing of supersedeas bond, not cost bond). An appeal divests the trial court of jurisdiction over the matters appealed but only over matters necessarily involved in the order or judgment appealed from. *See Spaeth v. City of Plymouth*, 344 N.W.2d 815, 824 (Minn. 1984); *State v. Barnes*, 249 Minn. 301, 302-03, 81 N.W.2d 864, 866 (1957). The trial court retains jurisdiction over matters collateral to or supplemental to the order or judgment. *See, e.g., Kellar v. Von Holtum*, 605 N.W.2d 696, 700 (Minn. 2000) (trial court retained jurisdiction over motions for attorney fees and costs after appeal was perfected); *Phillips-Klein Cos. v. Tiffany P’ship*, 474 N.W.2d 370, 372 (Minn. App. 1991).

Rule 108.02. Motion for Stay or Injunction in Trial Court; Security

Subdivision 1. Motion in Trial Court. A party seeking any of the following relief must move first in the trial court:

- (a) a stay of enforcement of the judgment or order of a trial court pending appeal;
- (b) approval of the form and amount of security, if any, to be provided in connection with such a stay; or
- (c) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending pursuant to Minn. R. Civ. P. 62.02.

Subd. 2. Security Required. Except as to cases in which a governmental body is the appellant or as otherwise provided by rule or statute, a trial court may grant the relief

described in subdivision 1 of this rule if the appellant provides security in a form and amount that the trial court approves. The security provided for in this rule may be in one instrument or several. The appellant must serve proof of the security in accordance with Rule 125.02.

Subd. 3. Form of Security. The form of the security may be a supersedeas bond, a letter of credit, a deposit of cash or property with the trial court administrator, or any other form of security that the trial court approves as adequate under the circumstances. The appellant bears the burden of demonstrating the adequacy of any security to be given. Unless the trial court orders otherwise, a stay of an order or judgment does not take effect until any security ordered is filed and notice of filing is provided to all parties.

Subd. 4. Amount of Security.

(a) In all cases, the amount of the security, if any, must be fixed at such amount as the trial court determines will preserve the value of the judgment or order to the respondent during the pendency of appeal.

(b) When the judgment or order is for the payment of money not otherwise secured, the amount of the security normally must be fixed at such sum as will cover the unpaid amount of the judgment or order, costs on appeal (to the extent security for costs has not already been given under Rule 107), interest during the pendency of the appeal, and any other damages that may be caused by depriving the respondent of the right to enforce the judgment or order during the pendency of the appeal.

(c) When the judgment or order determines the possession, ownership, or use of real or personal property (such as in actions for replevin, foreclosure, or conveyance of real property), the amount of the security normally must be fixed at such sum as will compensate the respondent for the loss of use of the property during the pendency of the appeal, costs on appeal (to the extent security for costs has not already been given under Rule 107), interest during the pendency of the appeal, and any other damages (including waste) that may be caused by depriving the respondent of the right to enforcement of the judgment or order during the pendency of the appeal.

(d) If a party seeks to stay enforcement of only part of the judgment or order on appeal, the security must be fixed at such sum as the trial court determines is sufficient to secure that portion of the judgment or order on appeal.

Subd. 5. Providers Submit to Jurisdiction of District Court. If security is provided in the form of a bond, letter of credit, or undertaking with one or more sureties, each provider (whether surety, issuer, or other person liable for the security) submits to the jurisdiction of the district court. A provider's liability may be enforced on motion in the district court, served on the provider or providers in accordance with the Minnesota Rules of Civil Procedure as if the provider or providers were a party or parties to the action, without the necessity of an independent action.

Subd. 6. Review by Court of Appeals. On a motion under Rule 127, the Court of Appeals may review the trial court's determinations as to whether a stay is appropriate, the terms of any stay, and the form and amount of security pending appeal. The motion for review must:

- (a) set forth the reasons for granting the relief requested and the facts relied on;
- (b) include originals or copies of affidavits or other sworn statements supporting the facts that are subject to dispute; and
- (c) include a copy of any submissions to the trial court, any order entered by the trial court relating to security pending appeal, and any other relevant parts of the record in the trial court.

If the Court of Appeals grants the motion, it may give relief on the same terms that a trial court may give relief under Rule 108.02, subds. 2, 3, and 4, and may require that any security that the appellant must provide be posted in the trial court.

Advisory Committee Comment—2009 Amendments

Rule 108.02, subdivision 1, requires that an application for stay of a judgment or order be brought in the trial court. Subdivision 6 of the rule provides for the trial court decision on the stay to be reviewed by the court of appeals and establishes the procedure for allowing the appellate court to conduct that review. Although the matter is raised by motion in the appellate court, the review is for abuse of fairly broad trial court discretion in these matters. *See Axford v. W. Syndicate Inv. Co.*, 141 Minn. 412, 414, 168 N.W. 97, 97 (1918).

Subdivision 3 recognizes that security may be provided in any of several forms. The former rule's apparent limitation to a surety bond as security is expressly removed in favor of a wider array of potential security arrangements. In many cases, a deposit into court or posting of a letter of credit may be preferable and less expensive. Deposit into court is also allowed by statute as a means not only to stay enforcement of a judgment but to remove a docketed judgment's lien against real property. *See* MINN. STAT. § 548.12 (2008).

Subdivision 4 is intended to provide guidance to litigants and judges on the appropriate standards for the setting of required security for a stay. The rule addresses the amount of security required and establishes a guiding principle in subdivision 4(a) of an amount sufficient to preserve the value of the judgment or order during the appeal. For money judgments, the unpaid amount of the judgment, costs on appeal (less \$500 if secured by a cost bond), and interest during the appeal will be the usual amount. This calculation is consistent with the amount of security specified in statutes relating to supersedeas bonds. *See* MINN. STAT. § 550.36 (2008) (allowing stay upon posting of bond in the amount of judgment and interest or a lesser amount allowed by a court); MINN. STAT. § 548.12 (2008) (allowing a party to deposit money into court in amount of judgment, plus interest and costs). The determination of the amount of a bond ultimately lies in the discretion of the courts and can even be waived in its entirety, although the Minnesota Supreme Court has recognized that this discretion must be exercised sparingly. *See No Power Line, Inc. v. Minn. Envtl. Quality Council*, 262 N.W.2d 312, 330-31 (Minn. 1977).

Although not constrained by the rule, trial court discretion to determine the amount of required security may be limited by statute or common law. There are cases in which no stay may be available, regardless of the amount of security. Child custody orders take effect as directed by the trial court, notwithstanding an appealing party's willingness to post a bond for the purpose of obtaining a stay. *See Petersen v. Petersen*, 296 Minn. 147, 149, 206 N.W.2d 658, 659-60 (Minn. 1973) (stating, for the purpose of "future guidance of the bench and bar, . . . that orders changing the custody of children are not affected by supersedeas or cost bonds[,] but are to take effect at whatever date the trial court specifies"). For discussion of the factors to be weighed in deciding whether or not to change custody while an appeal is pending, see *Clark v. Clark*, 543 N.W.2d 685, 687 (Minn. App. 1996) (holding that trial court abused its discretion in denying a stay of custody modification order, in light of drastic changes to living arrangements that would result from modification and lack of endangerment or other exigency requiring immediate change). The court of appeals has addressed the criteria governing whether to grant a stay in the nature of an injunction pending a certiorari appeal in *DRJ, Inc. v. City of St. Paul*, 741 N.W.2d 141, 144 (Minn. App. 2007) (citing MINN. R. CIV. P. 62.02 as to injunctive relief pending appeal; two juvenile rules, one of which establishes a presumption that there will be no stay pending appeal and the other of which explicitly stays further proceedings; and a criminal rule that identifies criteria governing whether to grant release pending appeal). MINN. STAT. § 525.714 (2008) provides that the filing of an appeal stays a probate order, although an "additional bond" may be required to secure payment of any damages that may be awarded as a consequence of the appeal. *But see In re Estate of Goyette*, 376 N.W.2d 438, 441 (Minn. App. 1985) (holding that failure to post bond ordered by probate court precluded automatic stay of probate proceedings pending appeal).

Rule 108.03. 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 in accordance with these rules, and security has previously been given to stay proceedings in the trial court, the security shall remain in full force and effect during the pendency of review in the Supreme Court unless otherwise ordered by the Supreme Court. The Supreme Court may make any order appropriate to preserve the status quo or require security or additional security to any person who may suffer damage due to the continued stay of proceedings in the trial court during the pendency of review in the Supreme Court.

Advisory Committee Comment—2009 Amendments

Rule 108 is replaced by an entirely new rule. The changes are intended to provide greater guidance to parties, attorneys, and the courts on how stays of trial court orders and judgments can be obtained.

[Note: Rule 112 is entirely new; underscoring is omitted for readability.]

RULE 112. CONFIDENTIAL INFORMATION; SEALING OF PORTIONS OF RECORD

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Rule 112.01 Status of Confidential Record Material on Appeal

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

Subd. 2. Sealing of Materials on Appeal. In extraordinary situations where material in the record is confidential or trade-secret information that was not protected by a confidentiality order in the trial court, a party may move to have it filed under seal on appeal. The motion must demonstrate the need for sealing the information and must set

forth the efforts made to maintain the confidentiality of the information before the motion was brought.

Advisory Committee Comment—2009 Amendments

Rule 112 is a new rule intended to codify existing practices relating to handling confidential information on appeal. The rule applies to information that is filed under seal pursuant to a court order for sealing, as well as to other information that is not available to the public by operation of law.

The general policy of the Minnesota courts is that court records are accessible to any member of the public. *See* Rule 2, Minnesota Rules of Public Access to Records of the Judicial Branch, *reprinted in* MINNESOTA RULES OF COURT: STATE 1083 (West 2009 ed.). This general policy is carried forward by Rule 4 governing accessibility of case records. Rule 4, subdivision 2, specifies that restricting access to case records is governed by court rules. Many statutes limit access to particular case types. *See* Rule 4, Minnesota Rules of Public Access to Records of the Judicial Branch, Advisory Committee Comment—2005, *reprinted in* MINNESOTA RULES OF COURT: STATE 1085-86 (West 2009 ed.) (collecting citations to statutes). In addition, Minn. Gen. R. Prac. 11 requires filing of personal identifying information in a separate document filed under seal.

The majority of orders restricting access to court records in civil cases are entered pursuant to Minn. R. Civ. P. 26.03(e) (limiting persons present during discovery), (f) (allowing court to order sealing of depositions), and (h) (allowing court to order parties to file other documents under seal). *See generally Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197 (Minn. 1986). Criminal case protective orders are governed by Minn. R. Crim. P. 25. *See generally Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983); *Nw. Publ'ns, Inc. v. Anderson*, 259 N.W.2d 254 (Minn. 1977).

The most common situation relating to sealed materials on appeal relates to the continued protection of materials filed under seal in the trial court. Subdivision 1 of Rule 112.01 restates the general rule that documents that are sealed in the trial court will remain sealed on appeal.

Rule 112.02. Handling of Confidential Portions of the Appellate Record

Any materials that are filed under seal or in another manner that makes the materials unavailable to the public that need to be included in an addendum or appendix on appeal shall be prepared in a separately bound Confidential Addendum or Confidential Appendix and filed in a sealed envelope designated as “Filed under Seal pursuant to Order of the _____ Court dated _____” or in substantially similar form that describes the basis for the assertion of confidentiality.

Advisory Committee Comment—2009 Amendments

Rule 112.02 creates the required process for handling sealed records on appeal. The rule is intended to permit the ready handling of confidential

documents by the court and to ensure that sealed information remains inaccessible to the public. Despite the additional expense that may be incurred, the duty to maintain confidentiality may require a more cumbersome process to permit the parties to advance their appellate arguments without compromising confidentiality rights that are recognized under law.

Rule 112.03. Duty to Maintain Confidentiality

Every party to an appeal must take reasonable steps to prevent the disclosure of confidential information, both in oral argument and written submissions filed with the court, except in the manner prescribed in Rule 112.02.

Advisory Committee Comment—2009 Amendments

Rule 112.03 imposes an affirmative duty on all parties to maintain the confidentiality of information that is protected by statute, rule, or court order.

If the inability to discuss confidential information in motion papers or briefs would cause substantial hardship or prevent the fair presentation of a party's argument, a party may seek leave to file separate "public" and sealed versions of the motion or brief, with confidential information redacted in the public version and stated as necessary in the sealed version. Each separately represented party would have to be served with both the "public" and sealed versions of any documents filed with the court and served on all parties. Other means to minimize the disclosure of confidential information include referring to parties by their initials or description rather than by name, or by describing this information in terms of its specific location in the confidential part of the record without disclosing the information itself.

Rule 112.04. Oral Argument

Appellate arguments are public hearings.

Advisory Committee Comment—2009 Amendments

Even in cases where portions of the record are confidential and filed under seal, the oral argument hearing will be in open court, open to the public, and possibly televised. The rule does not forbid closing a hearing to the public. Neither the Minnesota Supreme Court nor the Minnesota Court of Appeals has closed a hearing in the past.

**RULE 114. COURT OF APPEALS REVIEW OF
ADMINISTRATIVE RULES**

* * *

**Rule 114.03. Record on Review of Petition for Declaratory Judgment;
Transmission of Record**

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

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

Rule 114.04. Briefing

~~Petitioner's brief and appendix shall be served and filed~~ serve and file a brief and appendix within 30 days after transmission of the record by the agency or body, in accordance with Rule 131.01 and briefing shall proceed in accordance with ~~that rule~~ Rule 131.01.

Advisory Committee Comment—2009 Amendments

Rule 114 is amended to alter the timing rules for briefing. The change is made to delay the first deadline for filing a brief to 30 days after the record is transmitted to the appellate courts and the itemized list is provided to all parties.

**RULE 115. COURT OF APPEALS REVIEW OF DECISIONS OF THE
COMMISSIONER OF JOBS AND TRAINING ECONOMIC
SECURITY DEPARTMENT OF EMPLOYMENT AND ECONOMIC
DEVELOPMENT AND OTHER DECISIONS REVIEWABLE BY
CERTIORARI AND REVIEW OF DECISIONS APPEALABLE
PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT**

Rule 115.01. How Obtained; Time for Securing Writ

Review by the Court of Appeals of decisions of the ~~Commissioner of Economic Security~~ Department of Employment and Economic Development 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. The appeal period and the acts required to invoke appellate jurisdiction are governed by the applicable statute.

Advisory Committee Comment—2009 Amendments

Rule 115.01 is amended to change the reference, in both the title and body of the rule, to the Department of Employment and Economic Development, the current name of this agency. *See* MINN. STAT. § 15.01 (2008).

* * *

Rule 115.03. Contents of the Petition and Writ; Filing and Service

Subdivision 1. Contents and Form of Petition, Writ and Response. 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 and an original and one copy of a completed statement of the case pursuant to Rule 133.03 shall be attached to the petition. The title and form of the petition and writ ~~should~~ shall be as shown in the appendix to these rules. The respondent's statement of the case, if any, shall be filed and served ~~within 10~~ not later than 14 days after service of the petitioner's statement.

* * *

Advisory Committee Comment—2009 Amendments

Rule 115.03, subdivision 1, is amended to change the timing for filing a statement of the case by a respondent to 14, rather than 10, days after service of

the petitioner's statement of the case. This change makes the respondent's statement of the case due on the same day a notice of related appeal would be due. See Rule 104.01, subdivision 4, as amended.

Rule 115.04. The Record on Review by Certiorari; Transmission of the Record; Timing of Briefing

Subdivision 1. General Application of Rules 110 and 111. 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 this rule, the court, or by statute. Each reference in Rules 110 and 111 to the trial court, the trial court administrator, and the notice of appeal shall be read, where appropriate, as a reference to the body whose decision is to be reviewed, to the administrator, clerk or secretary thereof, and to the writ of certiorari respectively.

Subd. 2. Transcript of Audiotaped Proceedings. If a proceeding has been audiotaped and a record of the proceeding is necessary for the appeal, the relator shall order the transcript from the agency or body within ten days after the writ of certiorari is filed. The relator shall make appropriate financial arrangements with the agency or body for the transcription. The agency or body shall designate a court reporter or other qualified person to transcribe the audiotape. The agency or body shall serve and file a transcript certificate pursuant to Rule 110.02, subdivision 2(a) within ten days after the transcript is ordered. The reporter shall file the original and first copy of the transcript with the agency or body, deliver a copy to the attorney for each party to the appeal separately represented, and file a certificate of filing and delivery pursuant to Rule 110.02, subdivision 2(b).

Subd. 3. ~~Transmission of Record~~ Notice of Contents of Record. ~~Within ten days after the due date for the filing of relator's brief, the agency or body shall transmit the entire record of the proceeding under review to the clerk of the appellate courts, pursuant to Rule 111.01. Unless the time is extended by order of the court on a showing~~

of good cause, the itemized list of the contents of the record as described in Rule 111.01 shall be served on all parties and filed with the clerk of the appellate courts by the agency or body within 30 days after service of the petition or 14 days after delivery of the transcript in accordance with subdivision 2 of this rule, whichever date is later. Service and filing shall be accomplished by notice of service and filing, as in Form 115C in the appendix to these rules, which shall constitute proof of service.

Subd. 4. Timing of Briefing. Relator shall serve and file a brief and appendix within 30 days after the service of the itemized list of contents of the record by the agency or body, and briefing shall proceed in accordance with Rule 131.01.

Subd. 5. Transmission of Record. The record shall be retained by the agency or body until the clerk of the appellate courts requests that it be transmitted to the court. The record shall thereupon be transmitted promptly to the clerk of the appellate courts with a copy of the itemized list of the contents, in quadruplicate.

Advisory Committee Comment—2009 Amendments

Rule 115.04 is amended to change the timing rules for certiorari proceedings. Subdivision 3 establishes a new Form 115C to ensure that the itemized list is provided to all parties and to determine the date and means of service and filing. One of the purposes of this amendment is to defer briefing until the contents of the record are known to the parties. Subdivision 4 establishes the timing requirements for briefing.

Subdivision 5 clarifies that the record itself is then to be retained by the agency or body until needed by the appellate court. This provision does not directly affect the litigants—it is primarily a matter of administration of the appellate court clerk's office. The rule requires that the record be accompanied by the itemized list of the contents in quadruplicate because that form is used to document receipt by the appellate courts and again to document receipt when the record is returned to the agency or body.

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

Rule 116.03. Contents of the Petition and Writ; Filing and Service

Subdivision 1. Contents and Form of Petition, Writ and Response. 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 and two copies of a completed statement of the case pursuant to Rule 133.03 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. The respondent's statement of the case, if any, shall be filed and served within ~~10~~ 14 days after ~~receiving~~ service of the petitioner's statement.

* * *

Advisory Committee Comment—2009 Amendments

Rule 116.03, subdivision 1, is amended to change the timing for filing a statement of the case by a respondent to 14, rather than 10, days after service of the petitioner's statement of the case. This change makes the respondent's statement of the case due on the same day a notice of related appeal would be due. *See* Rule 104.01, subdivision 4, as amended.

RULE 128. BRIEFS

* * *

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:

(1) a description of how the issue was raised in the trial court, including citations to the record;

(2) a concise statement of the trial court's ruling;

(3) a description of how the issue was subsequently preserved for appeal, including citations to the record; and

(4) a list of the most apposite cases, not to exceed four, and the most apposite constitutional and statutory provisions.

(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 briefly indicating 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, but it must include the contentions of the party with respect to the issues presented, the applicable standard of appellate review for each issue, 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-related appeal is filed pursuant to Rule 106 ~~103.02~~, subdivision 2, the respondent's brief shall present the issues specified in the notice of review related appeal. 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.

Advisory Committee Comment—2009 Amendments

Rule 128.02, subdivision 1(b), is amended to require specification of how each issue was raised in the record and preserved for appeal in the trial court, including citations to the record. These are matters that are important to many appeals and adding this requirement is intended to make it easier for the court to determine that each issue was properly raised, decided, and preserved for appeal. This requirement has been implemented by other courts, *see, e.g.*, Iowa R. App. P. 6.14, and the committee believes this requirement will improve the quality of briefing in Minnesota appeals. For example, subparagraph 1 requires specification of where an evidentiary objection or offer of evidence was made, including a transcript citation, and subparagraph 3 where it was raised in a motion for new trial to preserve it for appeal. The rule does not expand what is required to raise or preserve an issue for appeal; it only requires that specific information be provided in the statement of issues in the appellant's brief about how these steps were taken.

Rule 128.02, subdivision 1(d), is amended to require that a brief address the applicable standard of appellate review. The standard of review is crucial to the analysis of every issue by the appellate court. A useful compendium of the standards of review for particular issues is Minnesota Court of Appeals, Standards of Review (Aug. 2008), available for review or download at <http://www.lawlibrary.state.mn.us/casofrev.html>. The rule does not dictate how the standard of review be set forth—whether in a separate section or at the beginning of the argument for an issue—although in most cases it is best handled at the beginning of the argument for each issue. The applicable standard of review must be addressed for each issue in an argument.

Subdivision 2 is amended to reflect the amendment of Rule 106 to abolish the notice of review and adoption of Rule 103.02, subdivision 2, to adopt the notice of related appeal.

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

Rule 131.01. Time for Filing and Service

* * *

Subd. 5. Briefing Schedule for Cross-Appeals; Form of Briefs in Cross-Appeals.

(a) Cross-Appeal Defined. A cross-appeal, for the purpose of this rule, exists when a notice of appeal and at least one notice of related appeal or separate notice of appeal are filed by parties adverse to each other on appeal. Multiple notices of appeal or related appeal filed by parties who are not adverse to each other do not create cross-appeals.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for the purposes of this rule. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) Schedule for Filing. In a case involving a cross-appeal, the appellant's principal brief shall be filed in accordance with Rule 131.01, subdivision 1, and the respondent/cross-appellant's principal brief shall be filed as one brief within 30 days after service of appellant's brief. Appellant/cross-respondent's response and reply brief shall be filed as one brief within 30 days after service of cross-appellant's brief. Respondent/cross-appellant's reply brief may be filed within 10 days after service of appellant/cross-respondent's response and reply brief.

(d) Form of Briefs in Cross-Appeals. In a case involving a cross-appeal:

(1) Appellant's Principal Brief. The appellant must file a principal brief in the appeal. That brief must comply with Rule 128.01 or Rule 128.02, subdivision 1.

(2) Respondent/Cross-Appellant's Principal and Response Brief. The respondent/cross-appellant must file a principal brief on the cross-appeal and may, in the same brief, respond to the appellant's principal brief. The respondent/cross-appellant's brief must comply with Rule 128.01 or 128.02, subdivision 1, as to the cross-appeal and Rule 128.02, subdivision 2, as to the appeal, except the brief need not include a statement of the case or a statement of the facts unless the respondent/cross-appellant is dissatisfied with the appellant's statement.

(3) Appellant/Cross-Respondent's Response and Reply Brief. The appellant/cross-respondent may file a brief that responds to the principal brief of the respondent/cross-appellant in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 128.02, subdivision 2, as to the response to the cross-appeal and Rule 128.02, subdivision 4, as to the reply on the original appeal.

(4) Respondent/Cross-Appellant's Reply Brief. The respondent/cross-appellant may file a brief in reply to the response in the cross-appeal. The brief must comply with Rule 128.02, subdivision 4, and must be limited to the issues presented by the cross-appeal.

(5) No Further Briefs. Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(6) Cover. If briefs are formally bound, the cover of the appellant's principal brief must be blue; the respondent/cross-appellant's principal and response brief, red; the appellant/cross-respondent's response and reply brief, yellow; the respondent/cross-appellant's reply brief, gray; and an intervenor's or amicus curiae's brief, green.

(7) Length limit.

- (A) The appellant's principal brief is acceptable if it complies with the length limits of Rule 132.01, subdivision 3(a).
- (B) The respondent/cross-appellant's principal and response brief is acceptable if:
 - (i) it contains no more than 16,500 words; or
 - (ii) it uses a monospaced font and contains no more than 1,500 lines of text.
- (C) The appellant/cross-respondent's response and reply brief is acceptable if:
 - (i) it contains no more than 10,000 words; or

- (ii) it uses a monospaced font and contains no more than 750 lines of text.
- (D) The respondent/cross-appellant's reply brief is acceptable if it complies with the length limits of Rule 132.01, subdivision 3(b).

Advisory Committee Comment—2009 Amendments

Rule 131.01, subdivision 5, is a new rule to establish alternative rules for briefing in cases where a cross-appeal is filed. The provisions are drawn from Fed. R. App. P. 28.1. The amended Minnesota rule operates as a default timing and brief-length rule; in any case the parties may seek alternate limits by motion, and the court may impose them on its own initiative.

The briefing process for cross-appeals under the amended rule is summarized as follows:

Brief (in order of filing)	Cover Color	Length limit (word count method)
1 Appellant's principal brief	Blue	14,000 words (unchanged)
2 Respondent/cross-appellant's principal and response brief	Red	16,500 words
3 Appellant/cross-respondent's response and reply brief	Yellow	10,000 words
4 Respondent/cross-appellant's reply brief	Gray	7,000 words (unchanged)

Subdivision 5(a) makes it clear that only multiple appeals by adverse parties create cross-appeals. If several parties on the same side of a case file separate appeals that are not adverse to each other, the normal three-brief schedule of Rule 131.01 applies.

**RULE 133. PREHEARING CONFERENCE; CALENDAR;
STATEMENT OF THE CASE**

* * *

Rule 133.03. Statement of the Case

Two copies of a statement of the case in the form prescribed by the appellate court shall be filed with the any of the following:

- (a) a notice of appeal pursuant to Rule 103.01;
 (b) a notice of related appeal pursuant to 103.02, subdivision 2;
 (c) a petition for declaratory relief pursuant to Rule 114.02; or with

(d) ~~the~~ petition for the writ of certiorari ~~or notice of appeal~~ pursuant to Rules 115 ~~and~~ 116.

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 ~~ten~~ 14 days after ~~receiving~~ service of the appellant's statement, the respondent may serve on all parties and file with proof of service two copies of its 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.

Advisory Committee Comment—2009 Amendments

Rule 133.03 is amended to change the timing for filing a statement of the case by a respondent or cross-appellant to 14, rather than 10, days after service of the notice of appeal. This change is intended to create a single response date upon which any notice of related appeal and respondent's statement of the case are due. The rule is also amended to make it clear that the 14-day period is measured from the date of service, not the date of receipt of the notice of appeal.

The rule is also amended to include reference to declaratory relief proceedings, which also require a statement of the case. Because certiorari proceedings under Rules 115 and 116 are commenced by petition, a reference to notices of appeal under those rules is deleted.

RULE 142. DISMISSAL; DEFAULT

* * *

Rule 142.03. Default of Respondent

If the respondent fails or neglects to serve and file its brief, the case shall be determined on the merits. If a defaulting respondent has filed a notice of ~~review~~ related appeal pursuant to Rule ~~106~~ 103.02, subdivision 2, the ~~appellant~~ party opposing the related appeal may serve and file a motion for affirmance of the judgment or order specified in the notice of ~~related appeal~~ review or for a dismissal of the respondent's

related appeal~~review~~ proceedings, subject to a motion to reinstate the related
appeal~~review~~ proceedings in accordance with the criteria specified in Rule 142.02.

If the appellant fails or neglects to serve and file its brief in response to a
respondent/cross-appellant's brief in support of a cross-appeal, the case shall be
determined on the merits as to those issues raised by the cross-appeal.

[Note: Form 103C is entirely new; underlining is omitted for readability.]

FORM 103C. NOTICE OF RELATED APPEAL (COURT OF APPEALS)

STATE OF MINNESOTA
COUNTY OF _____

_____ DISTRICT COURT
_____ JUDICIAL DISTRICT

CASE TITLE:

Plaintiff,

NOTICE OF RELATED APPEAL
TO COURT OF APPEALS

vs.

TRIAL COURT CASE NUMBER:

Defendant.

DATE OF ORDER OR JUDGMENT
BEING CHALLENGED:

APPELLATE COURT
FILE NUMBER: _____

TO: Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Please take notice that the above-named [plaintiff/defendant] (state full name) appeals to the Minnesota Court of Appeals and seeks review of the (specify order or judgment by title) of the _____ court, which was [filed/entered] on the date noted above and [granting/denying (describe nature of ruling, such as plaintiff's motion for a new trial on liability)].

DATED:

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

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

SIGNATURE

(The trial court caption is used on the notice of appeal and any notice of related appeal. Subsequent documents shall bear the appropriate appellate court caption. RCAP 103.02, subd. 1, specifies the contents of the notice of related appeal and filings required to perfect an appeal, including filing fees. RCAP 104.01, subd. 4, specifies time limits for filing and service of the notice of related appeal. This document must be accompanied by 2 copies of a completed statement of the case. RCAP 133.03.)

Advisory Committee Comment—2009 Amendments

This Form 103C is new as part of the amendments deleting Rule 106 and abolishing the notice of review and substituting the notice of related appeal. The caption provides information about the earlier appeal to which the later appeal related, including identification of the date of the order or judgment to be reviewed and the appellate court file number of that action, if known.

FORM 115B. WRIT OF CERTIORARI

STATE OF MINNESOTA
IN COURT OF APPEALS

CASE TITLE:

WRIT OF CERTIORARI

Relator,

vs.

COURT OF APPEALS NUMBER:

Respondent,

(AGENCY OR BODY) NUMBER:

(Agency or Body),
Respondent.

DATE OF DECISION:

TO: (Agency or Body)

You are hereby ordered to return to the Court of Appeals and serve on all parties in accordance with Rule 115.04, subdivision 3, within 30 days after service of the petition or 14 days after delivery of a transcript, whichever is later, 10 days after the date relator's brief is due an itemized statement of the record, exhibits and proceedings in the above-entitled matter so that this court may review the decision of the (agency or body) issued on the date noted above.

You are further directed to retain the actual record, exhibits, and transcript of proceedings (if any) until requested by the clerk of the appellate courts to deliver them in accordance with Rule 115.04, subdivision 5.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the respondent (agency or body) and upon the respondent or its attorney at:

(address)

Proof of service of the writ and of the itemized list shall be filed with the clerk of the appellate courts.

DATED:

Clerk of Appellate Courts

(Clerk's File Stamp)

By: _____
Assistant Clerk

[Note: Form 115C is entirely new; underlining is omitted for readability.]

**FORM 115C. CERTIFICATE OF SERVICE AND FILING
OF ITEMIZED LIST**

STATE OF MINNESOTA
IN COURT OF APPEALS

CASE TITLE:

Relator,

CERTIFICATE OF SERVICE AND
FILING OF ITEMIZED LIST

vs.

Court of Appeals

Respondent,

APPELLATE COURT CASE NUMBER:

(Agency or Body),

(AGENCY OR BODY) NUMBER:

Respondent.

TO: Clerk of the Appellate Courts
Minnesota Judicial Center
St. Paul, MN 55155

A copy of the itemized list of the contents of the record is attached to this certificate, was served on each separately-represented party to this proceeding, and is transmitted to the clerk of appellate courts in accordance with Rules 115.04, subdivision 3, and 111.01. Service was made as follows:

<u>Party Name</u>	<u>Address</u>	<u>Date Served</u>	<u>Method of Service</u>
Clerk of Appellate Courts	Minnesota Judicial Center St. Paul, MN 55155		

etc.

DATED:

SIGNATURE

ADDRESS AND TELEPHONE NUMBER

cc: All Counsel of Record

(Rule 115.04, subd. 3, requires the service and filing of the itemized list of the contents of the record as specified in Rule 111.01 to take place within 30 days after service of the petition for writ of certiorari or 14 days after delivery of a transcript, whichever is later. This notice requires service and filing of the itemized list of the record; the actual record is to be retained until the clerk of appellate courts requests that it be transmitted to the court. See Rule 115.04, subd. 5.)

FORM 106. RESPONDENT'S NOTICE OF REVIEW

STATE OF MINNESOTA
IN COURT OF APPEALS

CASE TITLE: _____ RESPONDENT'S NOTICE OF REVIEW

Plaintiff Respondent,

_____ TRIAL COURT CASE NUMBER:

vs.

_____ COURT OF APPEALS NUMBER:

Defendant Appellant.

_____ DATE OF ORDER:

_____ (OR DATE JUDGMENT ENTERED:)

TO: _____ Clerk of the Appellate Courts
_____ Minnesota Judicial Center
_____ 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 LICENSE 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.)