



MINNESOTA COURT OF APPEALS

INTERNAL RULES

Effective November 1, 1983

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## 1. INTRODUCTION

The judicial process and decision-making is significantly affected by procedure. The Court of Appeals procedures originate from the Constitution, statutes, Rules of Appellate Procedure and rules of this Court. Many less formal practices or procedures arise from experience in other state courts and from studies made by legal scholars. Many practices grow by trial and error and custom as a court does its work.

The Court of Appeals is an intermediate appellate court. It is primarily decisional and error correcting rather than a legislative or doctrinal court. Its primary function is the correction of error by application of legal principles. Its task is to find the law, to state it and to apply it to the facts. Only when there are no statutory or judicial precedents to follow will the Court of Appeals make new law.

The procedures and practices outlined in these rules are designed to perform those functions as accurately, expeditiously and fairly as possible.

The purpose of these rules is informational. They are complementary to the appellate rules. Every lawyer should be familiar with those new rules. These rules may be subject to change with experience and without prior notice. The internal rules enable lawyers to understand the mechanics of the Court's procedure; provide a basis for evaluation and improvement of the administration of the court; and promote public understanding of the judicial deliberative process.

## 2. ORAL ARGUMENT

### 2.1 Availability of Oral Argument:

Rule 134.01 of the Rules of Civil Appellate Procedure delineates circumstances in which oral argument will be disallowed. Wherever possible, however, and consistent with the rule, the Court will provide oral argument in all cases. Panels will meet continuously throughout the year, with allowances for vacations and sick leave.

### 2.2 Setting Cases:

Placement on the calendar is generally in order of filing. However, certain cases may be prioritized, such as those involving child custody (including termination of parental rights), criminal matters and unemployment compensation. Cases involving similar subject matter or the same attorney may be grouped. The oral argument calendar is arranged by the calendar clerk in coordination with the Commissioner/Chief Attorney and reviewed by the Chief Judge. The Clerk of the Appellate Courts will notify counsel, approximately one month in advance of the hearing date. This notification will specify the location of oral argument, if allowed, but will not identify the judges who are tentatively assigned to hear the case.

### 2.3 Postponement:

A motion to reset or postpone argument must be made in writing, with a copy to opposing counsel, in accordance with Rule 134.02 of the Rules of Civil Appellate Procedure. Reasons for the request must be stated. The Court is reluc-

tant to reset a case and will do so no more than once, and then only upon a showing of extreme emergency. The Court may reschedule cases on its own motion.

2.4 Presiding Judge:

The Chief Judge will assign a presiding judge for each panel. All briefs submitted will be read in advance of oral arguments by the participating judges. The opinion judge will be named at the time of post-argument conference.

2.5 Time:

Arguments will commence promptly at 9:00 A.M. each day of argument. Cases will be scheduled on the assumption that only exceptional cases will require the time allowed by Rule 134.03, subdivision 1 of the Rules of Civil Appellate Procedure.

2.6 Place:

Arguments will be held in courtrooms in St. Paul, Minneapolis and at appropriate locations in each of the other eight judicial districts, as provided in Rule 134.09, subdivision 2 of the Rules of Civil Appellate Procedure.

2.7 Visitors:

Visitors are welcome during oral arguments. When large groups desire to be in attendance, seating will be governed by the available accommodations. Taking of photographs and videotaping of proceedings will be with prior approval of the Chief Judge.

2.8 Waiver of Argument:

Nonappearance at oral argument constitutes waiver of

argument. If counsel for one party does not appear, opposing counsel may argue and the case shall be submitted on briefs as to the attorney not appearing. Oral argument may also be waived in accordance with Rule 134.01 of the Rules of Civil Appellate Procedure.

2.9 Eligibility to Argue:

Members of the Minnesota Bar and specially admitted out-of-state attorneys may argue before the Court. If a litigant is without counsel, the case shall be submitted on briefs without oral arguments by any party, unless the Court orders otherwise.

2.10 Record of Argument:

Arguments are tape-recorded. Tapes are retained until the appeal period has expired and will be available to counsel or the general public only upon permission of the Court or if a petition for appeal is granted by the Minnesota Supreme Court or the United States Supreme Court.

2.11 Exhibits and Graphic Aids:

Counsel may use exhibits and graphic aids during oral argument. Arrangements must be made for use of blackboards or easels with the Court's receptionist when the hearing is in St. Paul. When hearings are held at other courtrooms, such arrangements shall be made with the clerk of court in the applicable courthouse. It is the responsibility of counsel to ensure that any exhibit or portion of the trial court file desired for argument or for examination during deliberation has been obtained from the clerk of the trial court and is available at the time of argument.

### 3. DECISIONAL PROCESS, OPINION ISSUANCE AND PUBLICATION

#### 3.1 Panels:

Oral and non-oral cases will be assigned to panels by the calendar clerk, as directed by the Commissioner/Chief Attorney and approved by the Chief Judge. Except in unusual circumstances, panels of the Court shall consist of at least three judges.

The judges who have heard the case will normally be involved in the decision-making process. When an assigned panel judge does not participate or discontinues participation at any stage, the Chief Judge will assign another judge to the panel. The Chief Judge may preside at argument when sitting with a panel.

The Chief Judge designates the presiding judge of each panel. The presiding judge will assign the case for opinion authorship during the conference of the panel.

#### 3.2 Post-Argument Conference:

Immediately following oral arguments, the panel will meet informally to review the cases just heard. Panels also meet regularly to decide non-oral cases. The judges discuss their first impressions and a tentative vote is taken to determine their inclinations. There is no commitment by virtue of the tentative vote and positions may change before the issuance of an opinion and after additional research. A judge who represents the apparent majority view at the conference will be assigned preparation of the opinion. The opinion writing judge proceeds to draft an opinion in accordance with



the decision of the panel unless, after research, the opinion writing judge may arrive at a different conclusion, whereupon another judge may be assigned to write the opinion previously expressed by the majority. The draft opinion will state the nature of the case, the principal questions involved, the decision of the panel and the reasons for that decision. The draft opinion shall be prepared for circulation within 45 days after the date of assignment.

### 3.3 Draft Circulation:

When the draft opinion has been prepared, the authoring judge shall transmit it to the members of the panel and to other members of the Court for their information.

If a judge intends to write a concurring or dissenting opinion, that opinion must be prepared within 15 days of initial distribution of the draft opinion, unless the time is extended by the Chief Judge. If the concurring or dissenting opinion is not received during such period, the majority opinion shall be filed. Concurring and dissenting opinions submitted by any member of the panel to the authoring judge shall be delivered to all other judges for their information.

If a draft opinion is not agreed to by a majority of the panel and if there are concurring or dissenting opinions, or if a member of a panel so desires, the presiding judge of the panel may, within 60 days after assignment to the authoring judge, call a meeting of the panel to discuss the matter in detail. If no member of the panel concurs in a draft opinion, the case may be assigned to another member of the panel to

write the opinion. If concurrence of a majority of the judges of the panel cannot be achieved, the case, together with all proposed opinions, will be submitted to full Court conference.

If a member of the panel is unable to attend a scheduled conference, the presiding judge is notified. The absent member may circulate a memorandum reflecting comments, concurrence or disagreement to other members of the panel on the day preceding the scheduled conference. Each judge shall be afforded an opportunity to express agreement or disagreement with each draft opinion and to suggest changes. The writer of an opinion may, but need not, change the draft in accordance with the comments received. If changes are substantial, a revised draft should be circulated and considered at a subsequent panel conference. A draft opinion may be passed to the next conference. The judge requesting that an opinion be passed is expected to give that opinion priority over other cases and to submit a memorandum or proposed opinion at the next scheduled meeting of the panel or be prepared to vote on the draft opinion. Concurrence of a majority of judges of a panel is required for a decision.

#### 3.4 Recall of an Opinion:

An opinion that has been issued may be recalled for reconsideration by the panel by the presiding judge, but only if the opinion has not been released to the public and to the parties.

#### 3.5 Memo Opinions:

When the panel agrees on the analysis and the result

that the law is clear and that an opinion would have no precedential value but that it would be desirable to identify the ground for decision, the judges may decide a case by memo opinion. That opinion may be a condensed, short statement of the facts, the question involved and decision and citation of the statute, case or other authority. Separate opinions may also be filed.

### 3.6 Full Opinion:

A full, signed opinion will be issued when, based upon the complexity and importance of the issues:

- 1) an opinion would have precedential value, because the decision involves an unstated or undecided issue of law; or
- 2) an opinion would have precedential value, because the decision requires an application of established principles of law to new, novel or exceptionally illustrative facts; or
- 3) a reversal or modification requires more than a summary statement of the reasons; or
- 4) issues of unusual public concern are presented.

When a case presents more than one assignment of error, not all of which merit explicit published analysis according to these criteria, issues which warrant an opinion will be discussed and the others will not.

### 3.7 Concurring Opinion:

A concurring opinion may be submitted by a judge who agrees with the result and reasoning of the Court's opinion but desires to propound additional reasons for the result. A special concurring opinion may be submitted by a judge if that

judge disagrees with the reasons for the Court's opinion but desires to concur in the result.

3.8 Dissenting Opinion:

A dissenting opinion may be submitted by a judge when a judge disagrees with the result announced in the opinion of the Court. A judge may dissent without opinion when he disagrees for reasons the judge chooses not to express.

3.9 Opinion Issuance:

The majority opinion and any accompanying concurring or dissenting opinions shall be submitted to the Clerk of the Appellate Courts for filing and distribution. The original of each opinion, including concurrences and dissents, shall bear the signature of the author. Except in extraordinary circumstances, opinions will be filed only as of Wednesday of each week, and shall be mailed to counsel on Monday of each week, and shall be available to the media on Tuesday of each week. Opinions may not be released by the media prior to 12:01 A.M. on the filing date. News personnel are prohibited from contacting counsel in, or parties to, an appeal prior to 8:30 A.M. on the filing date. In some cases, packets of opinions may contain orders and other documents filed previously. The date of filing is controlling. If the date has passed, news personnel may use the material at any time.

3.10 Transmission of Judgment; Return of Trial Court Record:

Following the decision and filing of the opinion and the passage of the 30 day period to petition for review, the Clerk of Appellate Courts shall transmit the judgment to the clerk

of the trial court and return the trial record. The Clerk of the Appellate Courts shall also tax costs and disbursements pursuant to Rule 139.03 of the Rules of Civil Appellate Procedure.

3.11 Remand from the Supreme Court:

When the Supreme Court remands a case to the Court of Appeals for further proceedings, the matter will be referred to staff attorneys to prepare a memorandum analyzing the decision and directions to the appropriate panel. The panel may request additional briefing and direct that oral arguments be heard, proceed to consider the Supreme Court opinion, or take other appropriate action.

3.12 Abeyance Awaiting Supreme Court Decision:

When it appears that a case pending in the Supreme Court will be dispositive of a case pending before the Court of Appeals, the Chief Judge may order deferral of consideration of that case until the Supreme Court has acted. Counsel will be informed of this decision and the reasons therefor. Counsel are encouraged to inform the Court if they believe that a case may be controlled by another case on review by the Supreme Court.

3.13 Publication:

West Publishing Company is authorized to publish opinions, but such publication is not to be regarded as containing the true and correct text of the Court's opinions. If a non-typographical change is made on West advance sheets or galleys, the change shall also be made on the official opinion

filed in the Office of the Clerk of the Appellate Courts. Any substantive departure from the official opinion shall be recirculated or otherwise brought to the attention of the panel. The official publications of the Court of Appeals for purpose of notice to the public and the legal profession shall be Finance and Commerce and the St. Paul Legal Ledger.

Notices may be published elsewhere in the discretion of the Chief Judge.

## 4. CONFERENCES

### 4.1 Panels of the Court:

Panels of the Court, except in unusual circumstances, shall consist of at least three judges. An en banc court shall consist of at least seven judges, convened by the Chief Judge, on those rare occasions when there are cases of exceptional importance or to hear reargument, or where argument before a panel has disclosed marked difference of opinion among the judges.

### 4.2 Presubmission:

Presubmission or settlement conferences may be held in the discretion of the Chief Judge. The Commissioner's office may recommend particular cases for settlement discussion.

### 4.3 Panel Conferences:

Panels meet regularly to decide cases not decided at post-argument conferences; to decide cases where oral arguments have been waived and the case is submitted on briefs; and for opinion drafting. It is a forum in which an opinion of the panel is formulated that represents the views of all of the judges of the panel or a majority opinion and separate opinions in final form. Decisions are issued by the panel after conference unless referred to the Chief Judge and to the entire Court.

### 4.4 En Banc Conference:

An en banc conference may be called in those rare instances where such conference would be helpful. It serves the same purpose as a panel conference.

#### 4.5 En Banc Consideration:

A case may be submitted for decision by the Court sitting en banc if requested by the Chief Judge or a vote of the majority of judges present at a full Court conference. If the matter is referred to an en banc panel, the case is assigned by the Chief Judge to a judge who is a member of the apparent majority, or it may be passed for preparation of separate opinions. A matter considered en banc shall be shown as such on the title page of the opinion when it is issued.

#### 4.6 Necessary Concurrence:

The concurrence of a majority of the participating en banc judges is required for a decision. If the Court is evenly divided on whether the judgment should be affirmed, reversed or modified, a decision is issued affirming the lower court result without an opinion by an equally divided Court. If the Court is unanimous in agreeing that the judgment should be reversed, but equally divided on the reasons for reversal, so the parties may not know how to proceed on remand, the Chief Judge will certify the case to the Supreme Court. A case submitted en banc may be subsequently withdrawn by a vote of the entire Court and returned to the original panel.

#### 4.7 Reargument:

A case submitted en banc is rarely reargued, but reargument may be ordered by the Chief Judge or on a request of a majority of the participating judges of the en banc panel. The tape recording of the original argument shall be available to all judges.



#### 4.8 Full Court Conference:

The entire Court of Appeals meets on the first Friday of each month throughout the entire year. If a holiday should occur on that day, the conference will be held on the first Thursday. Such conferences may also be held at the call of the Chief Judge. In addition to administrative and policy matters, the agenda will include: (1) opinions overruling prior decisions of the Court; (2) opinions referred by panels or the Chief Judge; and (3) opinions referred by any three judges who are not members of the panel issuing the opinion and who have notified the Chief Judge in writing following circulation of the opinion to all members of the Court. These subjects are listed on the agenda for the next conference held more than three Court days after the date of the referral. Prior to the full Court conference, the judge who caused the referral should circulate a written statement of reasons for the referral to all judges. If the statement is not forthcoming or if the judge who caused the referral notifies the Chief Judge that the referral is withdrawn, the decision will then be issued without full conference consideration.

#### 4.9 Full Court Consideration:

The purpose of consideration by the full Court is (1) to determine whether a majority of the entire Court agrees that a prior decision should be overruled; (2) to determine whether a majority of the full Court agrees with the result or reasoning of a proposed opinion; (3) to give all judges an opportunity to express their views, raise questions, and make critical

comments concerning a proposed opinion that may make new law or is of unusual interest; and (4) to coordinate the opinion with other cases when the proposed opinion deals with a question involved in a case pending before another panel.

4.10 Confidentiality:

Panel, en banc, and full Court conferences are confidential. Information and comments respecting the assignment of cases, the status and content of opinions, and the individual views of judges are not to be disclosed to any person other than members of the Court and the judges' staff.

This section does not prohibit the general discussion of the workings of the Court, provided that reference is not made to the assignment or status of specific pending cases.

## 5. MOTIONS

### 5.1 In General:

The form, content and time periods for motions are prescribed by Rule 127 of the Rules of Civil Appellate Procedure.

### 5.2 How Determined:

Motions may be disposed of by the Commissioner/Chief Attorney, the Chief Judge, by the Court or by a panel thereof, at the discretion of the Chief Judge, according to guidelines developed by the Court for this purpose. These guidelines may prescribe that the Commissioner/Chief Attorney prepare a memorandum to aid the Court in the disposition of certain motions.

### 5.3 After Submission:

A motion made after submission, but prior to decision, shall be referred to the panel to which the case was assigned. Motions after decisions are reviewed by the judge who wrote the opinion, by the full panel, or by the Chief Judge.

### 5.4 Availability of Oral Argument:

Oral argument may be, but is rarely allowed on a motion. The Chief Judge or the presiding judge of a panel may request informal oral argument on a motion, or submission of supplemental information or memoranda.

### 5.5 Disposition:

Notification of disposition of motions shall be filed and mailed by the Clerk of the Appellate Courts.

## 6. RECUSAL AND DISQUALIFICATION OF JUDGES

### 6.1 Specific Rules:

Court of Appeals judges are subject to the Code of Judicial Conduct adopted by the Supreme Court. Canons require disqualification where impartiality might be questioned. A judge is obligated to promote public confidence, judicial integrity and impartiality.

### 6.2 Responsibilities for Recusal:

Application of principles governing disqualification shall be the duty of each judge individually. The judge may simply decline a disqualification and not participate or discontinue participation thereafter.

### 6.3 Time for Recusal:

Recusal may occur whenever the disqualifying facts become apparent to the individual judge. Normally it is affected prior to argument. A judge may discontinue participation during argument or even after submission.

### 6.4 Counsel Requests:

Counsel should, after filing a notice of appeal, believing that a possible disqualification is known, direct a letter to the particular judge and to the Chief Judge, setting out the reasons. If a judge chooses to withdraw, the Chief Judge shall be notified for a replacement. It is each individual judge who finally determines recusal or disqualification. Parties may stipulate that a judge's relationship may be so immaterial or financial interest so insubstantial that a judge need not be disqualified.

6.5 Consequences of Disqualification:

Once a judge is recused, there will be no further participation by that judge in the case. The disqualified judge may become absent or, as a matter of convenience, remain present but not participate. A disqualified judge will receive all distributions of materials relating to a case. If disqualification occurs after submission of a case and the disqualified judge sat for oral argument, nonparticipation may be noted in the opinion. Any other judge to whom a case is not assigned for argument may also record nonparticipation, which shall be noted in the file by the clerk. If the Chief Judge disqualifies himself, he may designate a judge to act in his place.

6.6 Substitution of Judges:

If a judge declines assignment of a case, the Chief Judge may designate another judge to sit. As a matter of convenience, a judge who is participating may remain on the bench during argument and nonparticipation will be announced. If a judge is substituted, the substituted judge shall have available the tape recording of all arguments and the opinion will note the nonparticipation of the withdrawn judge and the participation of the substituted judge.

## 7. CRIMINAL APPEALS

### 7.1 Statement of the Case:

A statement of the case shall be filed as prescribed by Rule 133.03, Minnesota Rules of Civil Appellate Procedure, in all appeals taken under Rule 28, Minnesota Rules of Criminal Procedure.

### 7.2 Form:

Form 133A, found in the Appendix of the Minnesota Rules of Civil Appellate Procedure (1984 Desk Copy, West Publishing Company), shall be used in complying with Section 7.1 of these Internal Rules.

## 8. STAFF

### 8.1 Chief Judge:

The Chief Judge is responsible for the administration of the Court. The responsibilities include:

1. After each reapportionment, the Chief Judge shall designate a judge for each of the new congressional districts.

2. The Chief Judge, subject to the authority of the Chief Justice, shall exercise general administrative authority over the Court of Appeals.

3. The Chief Judge shall make assignments of judges to serve on the panels of the Court.

4. The Chief Judge shall designate the places at which the panels will hear arguments.

5. In assigning judges to panels, the Chief Judge shall rotate assignments so that as nearly as practicable each judge serves a proportionate amount of time with each of the other judges.

6. The Chief Judge shall also rotate assignments to various locations for hearings.

7. The Chief Judge may waive the 90 day limitation, which requires a decision to be made within that period, after oral argument or final submission, for any proceeding before the Court of Appeals for good cause shown.

### 8.2 Commissioner/Chief Attorney:

The duties shall be those assigned by the Chief Judge, which include communicating and implementing orders and directions of the Chief Judge. The Commissioner will effectively

cooperate with judges, the State Court Administrator, the Appellate Clerk and other staff attorneys to efficiently dispose of the Court's work.

### 8.3 Presiding Judge:

Each presiding judge is responsible for the management and case flow of appeals and proceedings for the panel over which the judge presides. The presiding judge is appointed by the Chief Judge; presides over panel hearings; and assists in processing decisions and opinions of cases assigned to the panel for disposition.

### 8.4 Clerk of the Appellate Courts:

The Clerk shall perform the duties of the office as prescribed by law and the Rules of Civil Procedure, and such additional duties as prescribed by the Chief Justice of the Supreme Court and the Chief Judge. The Clerk has custody of the records and papers of the Court and shall not permit any original record to be taken from the custody of employees of the Court of Appeals except as authorized by the Chief Judge or his designee. The Clerk shall file decisions and opinions of the Court, provide for their public issuance, file and issue all orders of the Court and perform such other duties as may be assigned.

### 8.5 Central Legal Staff:

The central legal staff attorneys shall serve the Court as a whole and shall not have any personal relationships with any judges, since their responsibilities are institutional. Their primary function is to provide professional assistance



as house counsel to the judges and efficiently and effectively process matters pending before the Court before, during and through the decision-making stages. The central legal staff shall be headed and supervised by the Commissioner/Chief Attorney. The central legal staff shall, prior to calendaring, determine whether the Court has jurisdiction. If in doubt about jurisdiction, a jurisdictional memorandum shall be immediately forwarded to the Chief Judge. If jurisdiction is in doubt, the parties shall be notified and granted seven days to file appropriate memoranda. Opinions of panels shall be circulated among staff attorneys for identification of conflicts or potential conflicts in panel decisions.

Doctrinal inconsistencies shall be immediately reported to the Chief Judge. The staff shall review petitions for writs and requests for temporary relief and other matters and prepare recommendations and a proposed order for the Chief Judge or the appropriate presiding judge of a panel.

#### 8.6 Law Clerk:

The law clerk serves as the personal, professional assistant to a particular judge and shall perform such tasks as are assigned by that judge. The work includes legal research, memorandum drafting, citation checking, editorial work, and review of appeal record.

#### 8.7 Legal Secretaries:

Each legal secretary shall serve as a professional assistant to a particular judge and perform such tasks as are assigned. Legal secretaries are also assigned to the central

staff and shall perform such tasks as assigned by the Commissioner/Chief Attorney or the particular staff attorney assigned.

8.8 State Court Administrator:

The State Court Administrator's office shall provide such services to the Court of Appeals as may be required. The Chief Justice of the Supreme Court and the Chief Judge of the Court of Appeals shall supervise the work of this office.