

STATE OF MINNESOTA
IN COURT OF APPEALS

**In re Promulgation of the
Special Rules of Practice
for the Minnesota Court
of Appeals.**

O R D E R

WHEREAS, the Minnesota Court of Appeals has adopted Special Rules of Practice to supersede the Minnesota Court of Appeals Internal Rules; and

WHEREAS, the rules are intended to complement the Rules of Civil Appellate Procedure and to provide information for parties and practitioners about the court's procedures;

IT IS HEREBY ORDERED that:

1. The attached Special Rules of Practice for the Minnesota Court of Appeals are adopted, prescribed and promulgated to be effective on October 25, 1991.
2. The Minnesota Court of Appeals Internal Rules, effective September 25, 1987, are repealed.

Dated: October 25, 1991

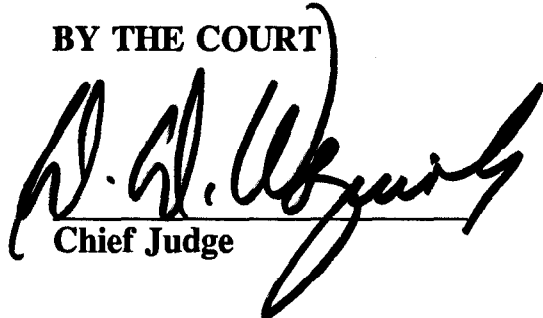
OFFICE OF
APPELLATE COURTS

OCT 25 1991

FILED

CLL:rmb

BY THE COURT



Chief Judge

SPECIAL RULES OF PRACTICE FOR THE MINNESOTA COURT OF APPEALS

INTRODUCTION

These rules are informational for the practitioner and directive for the court. They are complementary to the Rules of Civil Appellate Procedure. These rules are subject to change without prior notice.

The special 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.

RULE 1. SCHEDULING CASES

Placement on the calendar is in order of filing, except that cases involving child custody or the termination of parental rights will be given priority. Other cases may be expedited for good cause. Cases are scheduled as soon as one responsive brief is filed.

If a case pending in the Supreme Court will be dispositive of a case pending before the Court of Appeals, the Chief Judge may order that scheduling be deferred until the Supreme Court has acted. Counsel should inform the court if they believe a case may be controlled by a case pending in the Supreme Court.

Counsel must advise the clerk, in writing before the case is scheduled, of any conflicts which will limit their availability for argument. The Clerk of the Appellate Courts will notify counsel approximately one month in advance of the conference or hearing date, specifying the location of oral argument, if any, and the identity of the panel members assigned to the case.

RULE 2. ORAL ARGUMENT

Members of the Minnesota Bar and attorneys admitted pro hac vice by the Court of Appeals may argue before the court. If any litigant is without counsel, the case will be submitted on the briefs and record, without oral arguments by any party. Minn. R. Civ. App. 134.01. sets out circumstances in which oral argument will not be allowed. Waiver of argument is governed by Minn. R. Civ. App. 134.05 and 134.06.

Appellants are allowed 15 minutes to present their principal arguments, respondents are allowed 15 minutes (to be divided, in cases involving multiple respondents), and appellants are allowed 5 minutes for rebuttal. Arguments are held in the Judicial Center in St. Paul and at appropriate locations in other judicial districts, as provided in Minn. Stat. § 480A.09, subd. 1 and Minn. R. Civ. App. P. 134.09, subd. 2.

A motion to reset or postpone oral argument must be made in writing, with a copy to opposing counsel, in accordance with Minn. R. Civ. App. P. 134.02. Reasons for the request must be stated. The court will reset a case only upon a showing of extreme emergency and no more than once. However, the court may reschedule cases on its own motion.

Counsel may use exhibits and graphic aids during oral argument. Counsel must make arrangements prior to hearing with the court's receptionist or with the local court administrator for the use of blackboards or easels. It is the responsibility of counsel to ensure that any trial exhibit to be used is obtained prior to argument.

Arguments are tape-recorded by the court for internal use only. Tapes are retained only until the opinion is released. Prior approval of the Chief Judge or presiding judge is required to take photographs or to record or videotape oral argument. The media may cover proceedings in accordance with rules adopted by the Supreme Court.

RULE 3. PANELS

Oral and non-oral cases will be assigned to panels of at least three judges as set forth in Minn. Stat. § 480A.08. One of the judges will be named by the Chief Judge to preside. If a judge assigned to the panel does not participate, the Chief Judge will assign another judge to the panel. Panels decide cases immediately following oral arguments and hold scheduled conferences to decide non-oral cases. After a decision is made, the presiding judge assigns preparation of the opinion to a member of the panel.

RULE 4. OPINIONS

Opinions state the nature of the case and the reasons for the decision. The panel will decide at its conference whether to publish an opinion. The publication decision is guided by Minn. Stat. § 480A.08, subd. 3, which provides for publication of opinions which establish a new rule of law, overrule a previous Court of Appeals decision not reviewed by the Minnesota Supreme Court, provide important procedural guidelines in interpreting statutes or administrative rules, involve a significant legal issue, or significantly aid in the administration of justice. All other opinions are unpublished.

Unpublished opinions are not precedential and may not be cited unless copies are provided to other counsel at least 48 hours before their use at any pretrial conference, hearing, or trial. If an unpublished opinion is cited in a brief or memorandum, copies must be provided to all other counsel at the time the brief or memorandum is served.

Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(a), the panel may decide to issue an order opinion.

RULE 5. CIRCULATION OF OPINIONS

When a draft opinion has been prepared, the authoring judge will circulate it to all other members of the court for their information and comments. Comments must be returned within ten days.

RULE 6. OPINION ISSUANCE

Except in extraordinary circumstances, opinions will be filed on Tuesday of each week. Copies will be mailed to counsel on the Friday preceding filing, and will be available to the media on the Monday preceding filing. In exchange for access to opinions before the date of filing, news personnel agree that they will not release the decision prior to 12:01 A.M. on the filing date.¹ News personnel also agree not to contact the attorneys on an appeal before 3:00 p.m. on Monday, or to contact the parties prior to 8:30 A.M. on the filing date. The date of filing is controlling.

The official publications of the Court of Appeals, for the purpose of notice to the public and the legal profession, are Finance and Commerce and the St. Paul Legal Ledger. Notices may be published elsewhere at the discretion of the Chief Judge.

After release, the panel may make clerical changes in an opinion at any time ex parte.

¹ The supreme court's October 1, 1984 news embargo rule and subsequent amendments are on file with the Clerk of the Appellate Courts.

RULE 7. PROCEDURES AFTER DECISION

The Clerk of the Appellate Courts taxes costs and disbursements pursuant to Minn. R. Civ. App. P. 139.03. After expiration of the 30-day period to petition for review, the Clerk of Appellate Courts will transmit the judgment to the trial court administrator and return the trial record.

RULE 8. MOTION PROCEDURE

The form, content, and time periods for motions are prescribed in Minn. R. Civ. App. P. 127.

Motions and requests for extraordinary remedies are disposed of by the Chief Judge or by a special term panel designated by the Chief Judge. Routine motions, such as voluntary dismissals, case exceptions, postponements, and extensions of time to file briefs, are disposed of by the Chief Judge. Motions made after submission of a case will be referred to the panel to which the case is assigned.

RULE 9. CRIMINAL APPEALS

In all appeals taken under Minn. R. Crim P. 28, a statement of the case shall be filed as prescribed by Minn. R. Civ. App. P. 133.03.

RULE 10. REVIEW OF ADMINISTRATIVE RULES

How Obtained

Review by the Court of Appeals of the validity of administrative rules pursuant to Minn. Stat. § 14.44 is obtained by: (a) filing a petition for declaratory judgment with the Clerk of the Appellate Courts; (b) paying \$200 to the Clerk of the

Appellate Courts, unless no fee is required pursuant to Minn. R. Civ. App. P. 103.01, subd. 3; (c) serving the petition upon the attorney general and the agency or body whose rule is to be reviewed; (d) filing proof of service with the Clerk of the Appellate Courts; and (e) filing a cost bond or other security, unless waived by the agency pursuant to Minn. R. Civ. App. P. 107.

Contents of Petition

The petition shall describe briefly the rule to be reviewed and the errors claimed by petitioner. Two copies of a completed statement of the case prepared pursuant to Minn. R. Civ. App. P. 133.03 and a copy of the rule to be reviewed must be attached to the petition. The title and form of the petition should conform to that shown in the appendix to these rules.

The Record

(1) **Review of the Record.** Review of the validity of administrative rules is on the record made in the agency rulemaking process. To the extent possible, the description of the record contained in Minn. R. Civ. App. P. 110.01 and the provisions of Minn. R. Civ. App. P. 110.05 and 111 apply in declaratory judgment actions.

(2) **Transmission of Record.** If a record of the rulemaking proceedings is prepared before the petition for declaratory judgment is filed, the record must be forwarded by the clerk of the agency or body to the Clerk of the Appellate Courts with an itemized list as described in Minn. R. Civ. App. P. 111.01 within 30 days of the filing of the petition.

(3) **Record Not Available When Petition Filed.** If the record has not been prepared or is unavailable, the agency or body must notify the Court of Appeals of that fact, in writing, within ten days after service of the petition. The agency must describe the available record, estimate the date by which the record can be prepared, or propose an alternative means of providing a record to the Court of Appeals, such as preparation of an agreed statement pursuant to Minn. R. Civ. App. P. 110.04 or submission of affidavits. The notice must be served upon all parties, who may file their responses with the Court of Appeals within five days after service.

Briefing

If the record is prepared before the petition is filed, petitioner's brief and appendix must be served within 30 days after the filing of the petition for declaratory judgment. Remaining briefs must be filed in accordance with Minn. R. Civ. App. P. 131.01.

Participants

Persons who participated in the rulemaking process below, other than the petitioner, agency, and attorney general, may participate in the declaratory judgment action only with leave of the Court of Appeals. Permission is sought by filing a motion with the Court of Appeals and serving that motion upon all other parties. The motion must describe the nature of the movant's participation below, the interest that would be represented in the declaratory judgment action, and the manner in which the rule interferes with or impairs the rights or privileges of the moving party.

RULE 11. RECUSAL OF JUDGES

Court of Appeals judges are subject to the Code of Judicial Conduct adopted by the Supreme Court. Counsel may request that a member of the panel assigned to the case recuse, by writing to the particular judge and to the Chief Judge, setting out the reasons for the request, within ten days after receiving notice of the panel. Application of the principles governing recusal is ultimately the responsibility of the individual judge, in consultation with the Chief Judge. If a judge recuses, the Chief Judge names a replacement to the panel.

RULE 12. AMICUS BRIEFS

Where the same attorney or law firm represents a party and a proposed amicus curiae, leave to file an additional brief as amicus curiae is not granted unless the amicus brief will represent a position not already before the court or unless the interests of justice require.

RULE 13. REMAND FROM THE SUPREME COURT

When the Supreme Court remands a case to the Court of Appeals, the court may request additional briefing, direct that oral arguments be heard, or take other appropriate action.

RULE 14. FULL COURT CONFERENCE

The Chief Judge, subject to the authority of the Chief Justice, exercises general administrative authority over the court. All matters passed on by the bench shall be considered policy matters to be carried out and implemented by the Chief Judge.

The judges of the Court of Appeals meet on the first Friday of each month. If a holiday occurs on that day, the conference is held on the first Thursday. Conferences are also held at the call of the Chief Judge or a majority of the judges.