

OCT 12 2010

FILED

STATE OF MINNESOTA  
IN COURT OF APPEALS

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Minnesota Court of Appeals Special Rules  
of Practice.

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**ORDER**

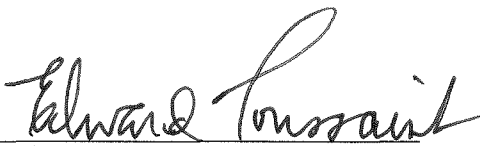
#ADM10-8010

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE**  
minor amendments to the Special Rules of Practice for the Minnesota Court of Appeals  
have been approved and adopted by the court.

**IT IS HEREBY ORDERED** amendments to the Special Rules of Practice for the  
Minnesota Court of Appeals are promulgated, effective October 7, 2010.

**Dated:** October 7, 2010

**BY THE COURT**

  
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Chief Judge

# **SPECIAL RULES OF PRACTICE FOR THE MINNESOTA COURT OF APPEALS**

Effective Oct. 25, 1991

Including Amendments Through  
October 7, 2010

## **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.

*Adopted Oct. 25, 1991, eff. Oct. 25, 1991*

### **Rule 1. Scheduling Cases**

Placement on the calendar is in order of filing, except that cases involving child custody or juvenile protection will be given priority. Other cases may be expedited by rule, by statute, or by motion, based on a showing of good cause. Cases may be 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, and counsel must continue to file updated notices until the case has been scheduled. 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.

*Adopted Oct. 25, 1991, eff. Oct. 25, 1991; amended eff. Oct. 7, 2010*

## **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. P. 134.01 sets out circumstances in which oral argument will not be allowed. Waiver of argument is governed by Minn. R. Civ. App. P. 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 easels or other equipment. It is the responsibility of counsel to ensure that any trial exhibit to be used is obtained prior to argument.

Arguments are recorded by the court for internal use only. Recordings 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.

*Adopted Oct. 25, 1991, eff. Oct. 25, 1991; amended eff. Oct. 7, 2010*

## **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.

*Adopted Oct. 25, 1991, eff. Oct. 25, 1991*

#### **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.

*Adopted Oct. 25, 1991, eff. Oct. 25, 1991*

#### **Rule 5. Circulation of Opinions**

When a draft opinion has been prepared, the authoring judge will circulate it to other members of the court for their information and comments.

*Adopted Oct. 25, 1991, eff. Oct. 25, 1991; amended eff. Oct. 7, 2010*

#### **Rule 6. Opinion Issuance**

Except in extraordinary circumstances, opinions will be filed on Tuesday of each week. Counsel of record and unrepresented parties will receive notice if an opinion is to be filed in their case on Tuesday, so they can check the appellate courts' website at the designated time.

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*.

*Adopted Oct. 25, 1991, eff. Oct. 25, 1991; amended eff. Oct. 7, 2010*

## **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.

*Adopted Oct. 25, 1991, eff. Oct. 25, 1991*

## **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, including those seeking voluntary dismissal, postponements, or 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.

*Adopted Oct. 25, 1991, eff. Oct. 25, 1991; amended eff. Oct. 7, 2010*

## **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.

*Adopted Oct. 25, 1991, eff. Oct. 25, 1991*

## **Rule 10. 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, setting out the reasons for the request. Application of the principles governing recusal is ultimately the responsibility of the individual judge. If a judge recuses, the Chief Judge names a replacement to the panel.

*Adopted Oct. 25, 1991, eff. Oct. 25, 1991; renumbered Oct. 1, 1999, eff. Oct. 1, 1999*

## **Rule 11. 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.

*Adopted Oct. 25, 1991, eff. Oct. 25, 1991; renumbered Oct. 1, 1999, eff. Oct 1, 1999*

### **Rule 12. 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.

*Adopted Oct. 25, 1991, eff. Oct. 25, 1991; renumbered Oct. 1, 1999, eff. Oct. 1, 1999*

### **Rule 13. 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 Monday of each month. If a holiday or other conflict occurs on that day, the conference may be rescheduled. Conferences are also held at the call of the Chief Judge or a majority of the judges.

*Adopted Oct. 25, 1991, eff. Oct. 25, 1991; renumbered Oct. 1, 1999, eff. Oct. 1, 1991; amended eff. Oct. 7, 2010*

### **Rule 14. [Renumbered Rule 13 Oct. 1, 1999, eff. Oct. 1, 1999]**

## **➡APPENDIX**

### **FORM PETITION FOR DECLARATORY JUDGMENT**

**[Deleted Oct. 1, 1999, eff. Oct. 1, 1999.]**