

FILED

December 29, 2015

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8006

**ORDER ESTABLISHING COMMENT PERIOD ON
PROPOSED AMENDMENTS TO
THE RULES OF CIVIL APPELLATE PROCEDURE**

The Advisory Committee on the Rules of Civil Appellate Procedure has filed a report that recommends amendments to the Rules of Civil Appellate Procedure and provides the committee's input on a proposed appellate recusal rule for the supreme court and the court of appeals. The Committee favored adoption of a similar recusal procedure for both appellate courts, and after receiving input from the court of appeals, forwarded a proposed rule that provides a process for considering motions for recusal of an appellate judge or justice. The Committee recommended additional amendments to the rules to facilitate the appellate courts' move toward mandatory electronic filing and service. The Committee's report and the proposed amendments to the Rules of the Civil Appellate Procedure are attached to this order. The court will consider the proposed amendments after soliciting and reviewing comments on the proposed amendments.

IT IS HEREBY ORDERED that any person or organization wishing to provide written comments in support of or opposition to any of the proposed amendments shall file one copy of those comments with AnnMarie O'Neill, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King, Jr. Blvd., Saint Paul, Minnesota 55155. The written

comments shall be filed so as to be received by the Clerk of Appellate Courts no later than February 29, 2016.

Dated: December 29, 2015

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lorie S. Gildea". The signature is written in a cursive style with a large initial "L".

Lorie S. Gildea
Chief Justice

FILED

November 24, 2015

**OFFICE OF
APPELLATE COURTS**

No. ADM09-8009

**STATE OF MINNESOTA
IN SUPREME COURT**

In re:

**Supreme Court Advisory Committee on
the Rules of Civil Appellate Procedure**

**Recommendations of Minnesota Supreme Court
Advisory Committee on the
Rules of Civil Appellate Procedure**

**Final Report
November 24 2015**

**Hon. Jill Flaskamp Halbrooks, Chair
Hon. David Stras, Liaison Justice**

**Rita Coyle DeMeules, Supreme Court Commissioner
Cynthia L. Lehr, Chief Attorney, Minnesota Court of Appeals
*Ex Officio***

**Paul A. Banker, Minneapolis
Hon. Louise Dovre Bjorkman, Saint Paul
Rachel F. Bond, Minneapolis
Mark R. Bradford, Minneapolis
Hon. Diane B. Bratvold, Minneapolis
Stephen F. Buterin, Minneapolis
William L. Davidson, Minneapolis
Timothy J. Droske, Minneapolis
Stephen C. Fiebiger, Burnsville
Jill I. Frieders, Rochester
Theodora Gaïtas, Minneapolis
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Amy Lawler, Saint Paul
Katherine A. McBride, Minneapolis
David B. Olsen, Minneapolis
Richard E. Prebich, Hibbing
Richard D. Snyder, Minneapolis
Terry W. Viesselman, Fairmont
Charles F. Webber, Minneapolis**

Sarah Novak, Staff

**David F. Herr, Minneapolis
Reporter**

Advisory Committee on Rules of Civil Appellate Procedure

EXECUTIVE SUMMARY

Advisory Committee Process Summary

The Court's Advisory Committee on the Rules of Civil Appellate Procedure met once during 2015 to review the amendments promulgated in 2014 to accommodate electronic filing and electronic service in the appellate courts and consider whether further or clarifying amendments are needed as electronic filing and electronic service continue to expand in Minnesota's courts, including the appellate courts. The committee also reviewed the Supreme Court's proposed appellate recusal motion procedure and obtained helpful input from the Minnesota Court of Appeals on how this subject could best be addressed by that court, given its composition and process for assigning appeals to three-judge panels rather than en banc hearings. This report represents the strong consensus of the committee on further rule amendments that will assist practitioners, parties, and the appellate courts as electronic filing and electronic service move toward mandatory implementation for some or all case types. The report also provides the input of the committee on the Supreme Court's proposed appellate recusal procedure.

Summary of Advisory Committee Recommendations

Recommended Rule Amendments

1. Adopt a new Rule 141 that will establish an explicit procedure for seeking the recusal of appellate justices and judges.
2. Amend Rule 143 to place the requirements relating to who is allowed (and required) to sign appellate filings in a single rule with a title that suggests that subject.
3. Amend Rule 128.03 to provide for reference to documents in the appellate record by Document Index Numbers from the Register of Actions, and amend Rule 130.02 to require a table of contents for any addendum to include these reference numbers.

4. Amend the rules that impose a page limit on petitions to impose word-count limits, as is used in Rule 131 for briefs. This proposed amendment affects the following rules:

- Rule 105 (petition for discretionary review);
- Rule 117 (petition for further review);
- Rule 118 (petition for accelerated review); and
- Minn. R. Crim. P. 29.04 (procedure for petitions for review to Supreme Court from Court of Appeals in criminal case types).

Additionally, Form 132 would be amended to provide for certification of document length using the word-count measure.

5. Several amendments can fairly be viewed as follow-up to the extensive amendments in 2014 addressing implementation of electronic filing and electronic service in the appellate courts:

- With recent upgrades to the electronic information captured on the district courts' Register of Actions, an amendment to Rule 128.03 is proposed to provide guidance to appellate practitioners on citing to the electronic district court record in an efficient and unambiguous way. [Recommendation 3]
- Rule 111.02 should be amended to simplify the required labeling of exhibits in the trial court record and to establish a uniform practice for returning them to the trial court at the conclusion of the appeal. [Recommendation 5]
- Rule 107 should be clarified to note that although cost bonds are not generally required for appeals, they continue to be required by statute for certiorari proceedings to review decisions of the Workers' Compensation Court of Appeals. [Recommendation 6]
- Rule 125.01(d), as amended in 2014, should be further amended to clarify that service by facsimile transmission is not approved for appeal-initiating documents, even where that form of service is allowed in the district court. [Recommendation 7]

Effective Date

The committee does not make a specific recommendation regarding effective date, although it does not expect these recommendations to be controversial. Assuming a public comment period is established by the Court, a July 1, 2016 effective date should provide adequate time for lawyers and parties to learn of and comply with the amended rules.

Style of Report

The specific recommendations are presented in traditional legislative format, with new wording underscored and deleted words ~~struck through~~. Because the advisory committee comments are entirely new, no underlining is included.

Further Amendments

The committee essentially completed its review of known issues relating to the appellate rules. It is not aware of any “open” issues requiring immediate further attention, though it is likely those issues will arise as further developments occur and both the trial and appellate courts see greater use of electronic filing and service.

Respectfully submitted,

MINNESOTA SUPREME COURT
ADVISORY COMMITTEE ON THE
RULES OF CIVIL APPELLATE
PROCEDURE

Recommendation 1: The Court Should Adopt a Published Procedure to Provide the Process for Considering Motions for Recusal of Appellate Justices and Judges.

Introduction

The rules do not currently establish any particular procedure for the making of requests for an appellate jurist to recuse himself or herself from participating in a case, although motion procedures are generally provided for, in Rule 127; and the court of appeals permits a party to write directly to an assigned panel member to request the member's recusal. Rule 10, Special Rules of Practice for the Minnesota Court of Appeals. The committee is not aware of any particular issue regarding recusal motions in Minnesota's appellate courts but is aware of the Resolution Urging Adoption of Procedures for Deciding Judicial Disqualification/Recusal Motions: Ensuring a Fair and Impartial Process, adopted by the Conference of Chief Justices adopted January 29, 2014, available at <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/01292014-Urging-Adoption-Procedures-Deciding-Judicial-Disqualification-Recusal-Motions.ashx>. The consensus of the committee after discussion is that adoption of a specific motion procedure will provide guidance on the appropriate means for a litigant to raise an issue of disqualification or recusal and also provide public transparency on these occasionally important questions. It is certainly advantageous to adopt a procedure at a time when there are no significant issues regarding recusal before the courts.

The committee favored the adoption of a generally similar procedure for both appellate courts, recognizing the significant differences in the courts, and how recusal issues affect both courts. The committee recommends adoption of the proposed rule as one that will provide a workable means for addressing disqualification or recusal questions that may arise in either court. The committee's comments underscore that the rule should not be viewed as in any

way establishing a basis for disqualification or recusal nor should it affect the substantive law applied to these motions.

Specific Recommendation

The Minnesota Rules of Appellate Procedure should be amended to adopt a new rule 141 as set forth below. (Because the entire rule is new, underlining is omitted for this rule only.)

RULE 141. RECUSAL

141.01 Recusal in Supreme Court.

(a) Motion. A motion seeking the recusal of a justice from a case pending before the court must be made in writing and must be filed and served as directed in Rule 125, Minnesota Rules of Civil Appellate Procedure. The motion, and any response, must comply with Rule 127, Minnesota Rules of Civil Appellate Procedure.

(b) Timing. Absent good cause demonstrating that the facts upon which the motion is based could not reasonably have been discovered sooner, the motion must be filed no later than 14 days after the filing of a notice of appeal or petition that initiates a case in the Supreme Court. In a case in which discretionary review is sought and the court grants review, if no motion for recusal has previously been filed, the motion must be filed within 14 days of the date of the order of the court granting review. No hearing or oral argument shall be permitted on the motion.

Motions for recusal shall be decided promptly, but in any event within 3 days after the due date of any response, by the justice who is the subject of the motion and shall be resolved by written order that, if denied, states the grounds upon which the motion is denied. The decision shall be filed with the clerk of the appellate courts.

20 **(c) Review of Recusal Decision.** If the motion is denied by the justice
21 whose recusal is sought, the moving party may request review of that discretionary
22 decision within 5 days of the filing of the order, by filing and serving a motion for
23 review as directed in Minn. R. Civ. App. P. 125. A response, if any, must be filed
24 and served within 3 days after service of the notice of review. The motion for
25 review and response shall each be limited to 2,000 words, exclusive of the caption
26 and signature. No further arguments or briefing shall be permitted with the motion
27 for review.

28 Review shall be conducted by a 3-member panel randomly selected from a
29 list maintained by the clerk of the appellate courts of individuals designated as
30 eligible to serve as acting justices solely for purposes of this rule. The panel shall
31 issue a binding written decision within 14 days after a notice of review is filed. No
32 further review or reconsideration of the panel's decision will be permitted.

33 **141.02 Recusal in Court of Appeals.**

34 **(a) Motion.** A motion seeking the recusal of a member of a panel assigned
35 to a particular case must be made in writing and must be filed and served as
36 directed in Rule 125, Minnesota Rules of Civil Appellate Procedure. The motion,
37 and any response, must comply with Rule 127, Minnesota Rules of Civil Appellate
38 Procedure.

39 **(b) Timing.** Absent good cause demonstrating that the facts upon which the
40 motion is based could not reasonably have been discovered sooner, the motion
41 must be filed no later than 7 days after the notice of oral argument or nonoral
42 conference or, as to newly named members of a panel, the subsequent notice of
43 substitution or other change in the composition of the panel is issued. No hearing
44 or oral argument shall be permitted on the motion.

45 A motion for recusal shall be decided promptly, but in any event within 3
46 days after the due date of any response, by the judge who is the subject of the
47 motion. If the judge decides to recuse, a notice of substitution shall be issued. If

48 the judge decides not to recuse, a written order stating the grounds upon which the
49 motion is denied shall be filed.

50 (c) **Review of Recusal Decision.** If the motion is denied by the judge
51 whose recusal is sought, the moving party may request review of that discretionary
52 decision within 5 days of the filing of the order, by filing and serving a motion for
53 review as directed in Minn. R. Civ. App. P. 125. A response, if any, must be filed
54 and served within 3 days after service of the notice of review. The motion for
55 review and any response shall each be limited to 2,000 words, exclusive of the
56 caption and signature. No hearing or oral argument shall be permitted. The review
57 shall be conducted by the Chief Judge or, if the Chief Judge is unavailable or is the
58 subject of the recusal motion, the most senior active judge who is not a member of
59 the assigned panel. The Chief Judge or reviewing judge shall promptly issue a
60 binding written decision.

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62 **Advisory Committee Comment—2015 Amendments**

63 Rule 141 is a new rule intended to establish a uniform and public
64 process for considering motions for recusal or disqualification of an
65 appellate justice or judge from participation in a pending appeal. This
66 rule is only a rule of procedure—it is not intended to address, establish,
67 or modify any grounds for recusal, as those issues are well outside the
68 scope of any rule of procedure. All appellate judges are subject to the
69 Minnesota Code of Judicial Conduct, which is a primary source of
70 standards that may permit or require recusal.

71 The rule creates different procedures for recusal in the supreme
72 court and court of appeals because of the fundamental differences in
73 how the courts hear cases—the supreme court sits en banc, so recusal
74 generally results in argument to a court of fewer members. In the court
75 of appeals, recusal results more readily in assignment of a replacement
76 judge to hear the case. The rule also recognizes that it would be
77 wasteful to require a motion to recuse to be brought in the court of
78 appeals before it is known what judges are assigned to hear an appeal.
79 Because this assignment occurs relatively late in the process, the
80 recusal motion requirement is not triggered until the notice of
81 assignment is made.

82 The rule requires that a recusal request be decided promptly by the
83 justice or judge receiving it, but sets an outer limit of three days after a
84 response, if any, would be due under Rule 125. In many instances a
85 decision on recusal could be properly rendered without any response
86 being required, but in some cases the court might be helped by the
87 views of the other parties.

Recommendation 2: The Rules Should Be Amended to State Explicitly the Requirements for Signing Documents.

Introduction

The committee recommends that the rules be clarified and amended to state explicitly what documents must be signed before filing and who is authorized to sign them.

Specific Recommendations

Rule 143.05, subd. 1, should be amended to remove the signing requirement from that rule addressing “captions,” and a new Rule 143.06 should be adopted to state the signing requirement in a rule that explicitly identifies that subject and applies broadly to all appellate filings.

**RULE 143. PARTIES; SUBSTITUTION, ATTORNEYS;
SIGNING OF APPELLATE PLEADINGS**

143.05 Attorneys

Subdivision 1. Admission Required; Admission Pro Hac Vice. ~~All briefs, motions, notices, and petitions filed with the appellate courts must be signed by an attorney licensed to practice in this State, or admitted pro hac vice to practice before the appellate courts.~~ No attorney may sign appellate pleadings or present argument to the appellate courts unless licensed to practice in this State or admitted pro hac vice to appear before the appellate court as provided for by this rule.

An attorney licensed to practice law in Minnesota may move for the admission pro hac vice of an attorney admitted to practice law in another state or territory. The motion shall be accompanied by an affidavit of the attorney seeking

101 pro hac vice admission attesting that he or she is a member in good standing of the
102 bar of another state or territory.

103 **Subd. 2. Withdrawal of attorneys.** (a) After a lawyer has appeared for a
104 party in the appellate courts, withdrawal will be effective only if written notice of
105 withdrawal is served on the client and all parties who have appeared, or their
106 lawyers if represented by counsel, and is filed with the clerk of appellate courts.
107 The notice of withdrawal shall state the address at which the ~~client~~ party can be
108 served and the address and phone number at which the ~~client~~ party can be notified
109 of matters relating to the appeal and shall be accompanied by proof of service.

110 (b) Withdrawal of an attorney does not create any right to extend briefing
111 deadlines or postpone argument.

112 **Subd. 3. Certified students.** A law student who is certified pursuant to the
113 Minnesota Student Practice Rules may present oral argument only with leave of
114 the appellate court. A motion for leave to present oral argument must be filed no
115 later than ~~ten~~ 10 days before the date of the scheduled oral argument. The student
116 may participate in oral argument only in the presence of the attorney of record.

117 **143.06 Signature**

118 All briefs, motions, notices, and petitions filed with the appellate courts
119 must be signed by every self-represented litigant or by:

- 120 1. an attorney licensed to practice in this State; or
- 121 2. an attorney admitted pro hac vice to practice before the appellate courts.

122 **Advisory Committee Comment—2015 Amendments**

123 Rule 143 is amended in two ways. Language relating to signing of
124 appellate filings is removed from Rule 143.05 and replaced by a new
125 Rule 143.06 that clarifies what documents must be signed and who may
126 properly sign them. Including the signing requirements in a rule
127 devoted to the caption of pleadings does not make it likely that the
128 reader of the rules will locate the signing requirements. “Signed” is
129 defined in Rule 101.02, subd. 7.

130 This amendment clarifies that pro hac vice admission is not
131 required for an attorney to appear on a brief as one of several attorneys,
132 but every attorney-signed appellate pleading must be signed by at least
133 one attorney who is a member of the Minnesota bar or who has been
134 admitted pro hac vice. Oral argument may only be presented by an
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attorney who is a member of the Minnesota bar or who is admitted pro hac vice.

Because self-represented litigants may sign only for themselves, all self-represented litigants must sign briefs, motions, notices, and petitions filed on their behalf. The requirement of signing is met by the signing of one of the attorneys by any one of the counsel of record for a party.

The rule underscores the fact that pro hac vice admission in the trial courts does not carry over into the appellate courts. Rule 143.05 provides for admission pro hac vice in the appellate courts and is not amended as to that process. Similarly, separate motions for admission pro hac vice are required in the Minnesota Court of Appeals and the Minnesota Supreme Court if a case proceeds to that court.

Recommendation 3: Rules 128.03 and 130 Should Be Amended to Provide Clearer Guidance on How to Cite to the Record.

Introduction

The committee recommends that the rules be clarified and amended to provide clearer guidance on how to cite to the record in briefs and other appellate filings. The existing rule provides only limited guidance on abbreviation of record citations; the amended rule and advisory committee comment provide more examples. The committee believes that the recommended rule will be much more helpful to litigants and will make briefs and similar pleadings both more concise and more useful.

Specific Recommendations

1. Rule 128.03 should be amended as follows:

RULE 128. BRIEFS

* * *

128.03 References in Briefs to Record

(a) Portions of Record Contained in Any Party's Addendum. Whenever a reference is made in the briefs to any part of the record that is reproduced in the addendum of any party, the reference shall be made to the specific pages of the addendum where the particular part of the record is reproduced.

(b) Portions of Record Not Contained in Any Party's Addendum. Whenever a reference is made to a part of the record that is not reproduced in the addendum of any party, the reference shall be made to the particular part of the record, suitably designated, and to the specific pages of it.

160 (c) Document Index Number. Whenever a reference is made to a part of
161 the record, either in a brief or in the table of contents of an addendum, the
162 reference should be made to the particular part of the record using the Document
163 Index Number from the trial court Register of Actions and to the specific pages of
164 it. Abbreviations that clearly direct the court to particular portions of the record,
165 whether or not the Document Index Number is used, are acceptable.

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168 **Advisory Committee Comment—2015 Amendments**

169 Several developments in appellate practice in Minnesota militate in
170 favor of modification of Rule 128 both to clarify it and make it more
171 useful to litigants. The adoption of system-wide electronic filing makes
172 the use of a uniform means of referencing electronically filed
173 documents both more desirable and more readily accomplished. The
174 abolition of the appendix in the 2014 amendments to these rules has
175 resulted in increased need to refer to specific parts of the record without
176 the convenience of citing to an appendix page, and word-count size
177 limits for briefs may encourage opaque record citations. The
178 establishment of a more uniform form of Register of Actions within the
179 court system has made this index a useful way to identify documents
180 filed with the district courts, and it is appropriate for the appellate
181 courts to require its use.

182 The Register of Actions is maintained in all actions to identify
183 documents filed with the court. An example of a Register of Actions
184 entry, including the ROA number is:

185
186 1/14/2014 Motion for Summary Judgment Index # 50

187
188 Citation to page 3 of the motion might be simply “ROA 50 at 3.” If the
189 motion were included in any party’s addendum, citation to “Add.38”
190 would suffice.

191 If a duplicate Document Index Number exists, which may
192 occasionally occur, a party should identify the particular part of the
193 record by both Document Index Number and a specific document title,
194 and the specific pages of the document.

195 The rule is intended to provide guidance on how parties may
196 concisely, but unambiguously, cite to the record. Where the transcript is
197 consecutively paginated, no more than “Tr.x” is need to refer to page x
198 of that transcript, and more is only distracting. Where it is necessary to
199 cite to portions of the record not contained in any party’s addendum, a
200 similarly concise citation of “ROA 11 at 21” would steer the reader to
201 page 21 of document 11 in the Register of Actions. Examples of
202 acceptable abbreviations include:

203 ROA 11 at 21 (should be used if available)
204 Transcript at 135, or Tr.135
205 Motion for Summary Judgment, filed 10/3/13, at 1
206 Exhibit 21 at 3, or Ex.21 at 3
207 Add.41 or Add. 41
208 Resp. Add. 22 or R.Add.22
209 Oct. 1, 2013 Order at 17

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Resp. Br. at 34
Similar abbreviations that clearly direct the court to particular portions
of the record may be used.

2. Rule 130 should be amended as follows:

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**RULE 130. ADDENDUM REQUIRED;
APPENDIX NOT PERMITTED**

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* * *

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130.02 Addendum

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(a) **Contents.** Appellant must prepare an addendum and file it with the
opening brief or petition. The addendum must include:

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(1) a table of contents identifying each document included in the
Addendum, including the Document Index Number from the Register of Actions,
if available;

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(2) a copy of any order, judgment, findings, or trial court memorandum in
the action directly relating to or affecting the issues on appeal;

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(3) any agreed statement of the record; and

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(4) if the constitutionality of a statute is challenged, proof of compliance
with Rule 144.

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Unpublished decisions, if cited, shall not be included in the addendum, unless
those opinions are not generally available in online databases or from Minnesota
law libraries, but may be, if required or desired, provided to other parties by
alternate means.

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(b) **Length.** The addendum must not exceed 50 pages excluding:

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1. the orders and judgments or other materials required by section (a) of this
rule; or

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2. documents included pursuant to Rule 128.04; and

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3. unpublished decisions if permitted under section (a) of this rule.

236 The addendum must be incorporated into the back of the brief or petition, unless it
237 includes a long trial court decision, in which event it may be bound separately.

238 * * *

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240 **Advisory Committee Comment—2015 Amendments**

241 Rule 130.02 is amended to include a requirement that the addendum
242 include a table of contents. The amended rule also requires use of the
243 Document Index Number for documents filed with the district court, if
244 it is available. Including the Document Index Number in the table of
245 contents allows the court and other parties to locate the document and
246 permits the abbreviated citation to the document by addendum page
247 number.

248 The committee acknowledges that current statutory authority
249 requires parties to provide each other with copies of unpublished
250 opinions that are cited in the briefs. Unpublished opinions that are
251 available to the appellate courts in online databases, or from Minnesota
252 law libraries, are not to be included in an addendum and are not helpful
253 to the court. Minn. Stat. § 480A.08, subdivision 1, only requires that
254 copies be provided to other parties, not to the court. For unpublished
255 opinions that are not excluded by this rule, they may be included as part
256 of the “required” portion of the addendum and need not be counted to
257 the 50-page limit contained in Rule 130.02 (b) and (c). Parties should
258 be aware that the appellate courts have access to online databases
259 through Westlaw, and therefore should include the appropriate citation
260 for unpublished decisions available on that service.

261 The rule does not affect the obligation under Minn. Stat. § 480A.08,
262 subdivision 3, to provide copies of unpublished opinions to opposing
263 parties or attorneys, but specifies that they should not be filed as part of
264 the addendum. The statute does not require that they be filed with the
265 court, and the court does not have use for copies given their ready
266 availability online or from law libraries.

Recommendation 4: Rules 105, 117, and 118 of the Appellate Rules and Rule 29 of the Rules of Criminal Procedure Should Be Amended to Define the Length Limit for Petitions in Terms of Number of Words Rather Than Number of Pages.

Introduction

The committee recommends that the length limits be redefined to word-count limits for the following pleadings: (1) petitions for discretionary review, under Rule 105; (2) petitions in the Supreme Court for review of court of appeals decisions in both civil and criminal cases (Rule 117, subd. 3; Minn. R. Crim. P. 29.04, subd. 3); and (3) petitions for accelerated review (Rule 118, subd. 2). In addition, Rule 132.02, subd. 4, should be amended to require that all documents filed with the appellate courts be submitted uniformly in 13-point type and that the limits on their length be changed from page limits to word limits.

Specific Recommendations

1. Rule 117 should be amended as follows:

**RULE 117. PETITION IN SUPREME COURT FOR REVIEW OF
DECISIONS OF THE COURT OF APPEALS.**

* * *

Subd. 3. Petition Requirements.

The petition for review shall not exceed ~~5 typewritten pages~~ 2,000 words, exclusive of the caption, signature block, and addendum, and shall contain:

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

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

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

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

282 The addendum, if filed, ~~shall~~ may contain the decision of the Court of
283 Appeals, and shall otherwise be prepared as prescribed by Rule 130.02.

284 The petition and addendum shall be filed with the clerk of the appellate
285 courts and shall be accompanied by a Certificate of Document Length.

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288 **Advisory Committee Comment—2015 Amendments**

289 Rule 117 is amended primarily to re-define the length limit to 2,000
290 words rather than the current five pages. This change, coupled with the
291 requirement that a 13-point font be used, will have a practical effect of
292 permitting petitions that are slightly longer, but will be more easily
293 read, both in paper format and on computer screens.

294 The addendum for Rule 117 petitions need not include the decision
295 of the court of appeals, as every such decision is readily available in
296 electronic format to the court for consideration with a petition. It is
297 particularly useful to make inclusion of the appellate court decision
298 optional to allow it to be omitted where it would be the only item in the
299 addendum. Trial court decisions, however, if germane to the issues
300 raised in a petition, may be helpful to the court in the addendum to
301 petition. The rule does not bar the filing of a court of appeals decisions;
302 it simply removes any requirement or it.

303 If the court grants further review, the addendum that accompanies
304 the brief should include both the court of appeals and relevant district
305 court orders and judgments pursuant to Rule 130.02

2. Rule 118 should be amended as follows:

306 **RULE 118. ACCELERATED REVIEW BY THE SUPREME COURT**
307 **PRIOR TO A DECISION BY THE COURT OF APPEALS**

308 * * *

309 **Subd. 2. Petition Requirements.**

310 The petition for accelerated review shall not exceed ~~10 typewritten pages~~
311 4,000 words, exclusive of the caption, signature block, and addendum, and shall
312 contain:

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

317 The addendum shall contain the judgments, orders, findings of fact, and
318 conclusions of law, for which review is sought, and shall otherwise be prepared as
319 prescribed by Rule 130.02.

320 The petition and addendum shall be filed with the clerk of the appellate
321 courts and shall be accompanied by a Certificate of Document Length.

322 * * *

3. Rule 105.02 should be amended as follows:

323 **105.02 Content of Petition; Response**

324 The petition shall be entitled as in the trial court, shall not exceed ~~10~~
325 typewritten pages 4,000 words, exclusive of the caption, signature block, and
326 addendum, and shall contain:

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

331 A copy of the order from which the appeal is sought and any findings of
332 fact, conclusions of law, or memorandum of law relating to it shall be included in
333 an addendum, which shall be prepared as prescribed in Rule 130.02.

334 Any adverse party may, within 5 days after service of the petition, serve
335 and file with the clerk of the appellate courts a response to the petition, which shall
336 not exceed 4,000 words, exclusive of caption, signature block, and addendum ~~10~~
337 ~~pages~~. Any reply shall be served within 3 days after service of the response and
338 shall not exceed ~~5 pages~~ 2,000 words. All documents may be typewritten in the
339 form prescribed in Rule 132.02. No additional memoranda may be filed without
340 leave of the appellate court.

341 A copy of the response and any reply shall also be filed with the trial court
342 administrator, and proof of that filing shall be filed with the clerk of the appellate
343 courts.

344 The petition and any response shall be accompanied by a Certificate of
345 Document Length.

346 The petition and any response shall be submitted without oral argument
347 unless otherwise ordered.

348 **Advisory Committee Comment—2015 Amendments**
349 Rule 105 is amended to re-define the length limit to 4,000 words
350 rather than the current five pages for petitions and responses and 2,000
351 words rather than 5 pages for replies. This change, coupled with the
352 requirement that a 13-point font be used, will have a practical effect of
353 permitting petitions that are slightly longer, but will be more easily
354 read, both in paper format and on computer screens.
355

4. Rule 29.04 of the Minnesota Rules of Criminal Procedure should be
amended as follows:

356 **MINNESOTA RULES OF CRIMINAL PROCEDURE**

357 **RULE 29. APPEALS TO SUPREME COURT**

358 **29.04 Procedure for Appeals from Court of Appeals**

359 **Subd. 1. Service and Filing.** A party petitioning for review to the Supreme
360 Court from the Court of Appeals must file a petition for review with the clerk of the
361 appellate courts, with proof of service on opposing counsel and the Minnesota
362 Attorney General. A defendant does not have to file a bond to petition for review.

363 A party's failure to take any step other than timely filing the petition for review
364 does not affect the validity of the appeal, but permits action the Supreme Court deems
365 appropriate, including dismissal of the appeal. The petition and any response shall be
366 accompanied by a Certificate of Document Length.

367 * * *

368 **Subd. 3. Contents of Petition for Review.** The petition for review must
369 not exceed ~~ten pages~~ 4,000 words, exclusive of the caption, signature block, and
370 addendum, and must identify the petitioner, state that petitioner is seeking
371 permission to appeal to the Supreme Court from the Court of Appeals, and contain
372 in order the following information:

373 (1) the names, addresses, and telephone numbers of the attorneys for all
374 parties;

375 (2) the date the Court of Appeals filed its decision, and a designation of the
376 judgment or order from which petitioner had appealed to the Court of Appeals;

377 (3) a concise statement of the legal issue or issues presented for review,
378 indicating how the district court and the Court of Appeals decided each issue;

379 (4) a procedural history of the case from commencement of prosecution
380 through filing of the decision in the Court of Appeals, including a designation of
381 the district court and district court judge, and the disposition of the case in the
382 district court and in the Court of Appeals;

383 (5) a concise statement of facts indicating briefly the nature of the case, and
384 including only the facts relevant to the issue(s) sought to be reviewed;

385 (6) a concise statement of the reasons why the Supreme Court should
386 exercise its discretion to review the case; and

387 (7) an addendum that includes a copy of any district court recitation of the
388 essential facts of the case, conclusions of law, and memoranda.

389 * * *

390 **Subd. 5. Response to Petition.** When a petition for review has been filed,
391 the respondent must file with the clerk of the appellate courts within 20 days after

392 service of the petition on respondent any response, not to exceed ~~ten pages~~ 4,000
393 words exclusive of the caption, signature block, and addendum, and proof of
394 service on appellant. Failing to respond to the petition will not be considered
395 agreement with it.

396 * * *

397 **Advisory Committee Comment—2015 Amendments**

398 Rule 29.04 is amended to re-define the length limit for petitions and
399 responses to 4,000 words rather than the current ten pages. This
400 change, coupled with the requirement that a 13-point font be used, will
401 have a practical effect of permitting petitions that are slightly longer,
402 but will be more easily read, both in paper format and on computer
403 screens.
404
405

5. Rule 132.02 should be amended as follows:

406 **RULE 132. FORM OF BRIEFS, ADDENDA, MOTIONS**
407 **AND OTHER DOCUMENTS**

408 * * *

409 **132.02 Form of Motions and Other Documents**

410 **Subdivision 1. Form Requirements.** Documents not required to be
411 produced in the manner prescribed by Rule 132.01 shall be 8-1/2 by 11 inches in
412 size with typewritten matter not exceeding 6-1/2 by 9-1/2 inches. Any process
413 capable of producing a clear black image on white paper may be used. All material
414 must appear in at least ~~11-point~~ 13-point type, or its equivalent of not more than
415 ~~16~~ 14 characters per inch, on unglazed opaque paper. Pages shall be bound or
416 stapled at the top margin and numbered at the center of the bottom margin. Typed
417 material shall be double spaced. Carbon copies shall not be submitted.**Subd. 2.**
418 **Caption.** Each document shall contain a caption setting forth the name of the
419 court, the title of the case, the appellate court docket number, and a brief
420 descriptive title of the document, ~~; and shall be subscribed by the attorney~~

421 preparing the document together with the preparer's address, telephone number,
422 and attorney registration license number.

423 * * *

424 132.04 Signature. All briefs, motions, notices, and petitions filed with the
425 appellate courts shall be signed by an individual authorized under Rule 143.06 and
426 shall include the signer's name, address, telephone number, email address, and
427 attorney registration license number.

428 * * *

429
430 **Advisory Committee Comment—2015 Amendments**
431 Rule 128 is amended both to clarify it and make it more accessible.
432 Rule 132 is amended in two ways to make it clearer. Provisions for
433 signing documents are removed from Rule 132.02, subd. 2, which deals
434 with the caption of appellate pleadings, not signing. Rule 132.04 is a
435 new rule that explicitly sets forth what is necessary for signing
436 appellate documents and extends those requirements to all appellate
437 pleadings.

6. Form 132 should be amended to make it applicable to documents
other than briefs, as would be required for petitions under the foregoing
amendments, as follows:

438 **FORM 132—CERTIFICATION OF ~~BRIEF~~ LENGTH OF DOCUMENT**

439

440 STATE OF MINNESOTA
441 (IN SUPREME COURT
442 OR
443 IN COURT OF APPEALS)

444 CASE TITLE:
445 Appellant, CERTIFICATION OF ~~BRIEF~~ LENGTH OF DOCUMENT
446 vs.
447 Respondent. APPELLATE COURT CASE NUMBER:
448

449
450 I hereby certify that this brief document conforms to the requirements of ~~Minn. R.~~
451 Civ. App. P. 132.01, subs. 1 and 3, the applicable rules for a brief, is produced with a

452 [monospaced] [proportional] font. ~~The~~, and the length of this ~~brief~~ document is [lines]
453 [words]. This brief was prepared using [name and version of word processing software].

454

455 DATED:

456 NAME, ADDRESS, ZIP CODE, TELEPHONE NUMBER, EMAIL ADDRESS
457 AND ATTORNEY REGISTRATION LICENSE NUMBER OF ATTORNEY(S)
458 FOR PETITIONER

459

460

461

462

463

464

SIGNATURE

Recommendation 5: Rule 111.02 Should Be Amended to Conform the Rule to Practice in the Electronic Filing Environment.

Introduction

Rule 111.02 currently specifies that exhibits sent to the appellate courts must bear both the appellate court docket number and the title of the case. This requirement is cumbersome, and not helpful to the clerk's office. The correct appellate docket number is all that is required. Additionally, the entire case title is difficult to include. The existing rule also authorizes the clerk of the appellate courts to destroy exhibits and models if a new trial or other remand is not ordered; in practice, a uniform practice of returning these materials to the district court in all cases for disposition by the district court clerk is the procedure followed by the clerk of the appellate courts; the rule should be simplified to adopt this procedure.

Specific Recommendation

Rule 111.02 should be amended as follows:

RULE 111.02 EXHIBITS AND MODELS

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

Advisory Committee Comment—2015 Amendments

474
475 Rule 111.02 is amended to conform it to the current practice
476 involving transmission of exhibits to the appellate courts and the
477 ultimate disposition of them. Under the amended rule, exhibits and
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models are returned to the trial court administrator at the conclusion of the appeal, without regard to whether the appeal results in a new trial or other further proceedings on remand. Rule 128 of the Minnesota General Rules of Practice defines the procedure for retrieval of exhibits by attorneys or the ultimate disposition of them.

Recommendation 6: Rules 107 and 109 Should Be Amended to Clarify That a Cost Bond Continues to Be Required by Rule 116 and by Statute and That a Cost Bond May Be Required Under Rule 107.

Introduction

Rule 107 was amended in 2014 to remove the general requirement for a cost bond on appeals unless ordered by the trial court. Certiorari proceedings under Rule 116 for review of decisions of the Workers' Compensation Court of Appeals require a cost bond by statute, and Rule 116 so provides. *See* Minn. Stat. § 176.471, subd. 3; Minn. R. Civ. P. 116.03, subd. 3. Rules 107.01 and 109 should be amended to cross-reference this exception to the “no-bond” rule. Rule 109 should also be amended to make it clear that cost bonds are required under Rule 116 and may be required under Rule 107.

Specific Recommendations

1. Rule 107.01 should be amended as follows:

RULE 107. BOND OR DEPOSIT FOR COSTS

107.01 No Cost Bond Required

Except as required by Rule 116 of these rules with respect to a certiorari appeal from the Workers' Compensation Court of Appeals, nNo cost bond is required for any appeal, unless ordered by the trial court on motion and for good cause shown.

Advisory Committee Comment—2015 Amendments

Rule 107.01 is amended to cross-reference the exception to the general rule that no cost bond is required for appeals unless ordered by the trial court. By statute, review of decisions of the Workers' Compensation Court of Appeals by certiorari requires a cost bond. *See* Minn. Stat. § 176.471, subd. 3. Rule 116.03, subd. 3, recognizes this requirement, and Rule 107 is not intended to modify it.

2. Rule 109 should be amended as follows:

497 **RULE 109. LEAVE TO PROCEED IN FORMA PAUPERIS**

498 **109.01 Authorized Relief**

499 A party who is unable to pay the expenses of appeal may apply for leave to
500 proceed in forma pauperis, which may include waiver of the filing fee and any
501 cost bond required under Rule 107 or Rule 116, and payment of costs for the
502 transcript and reproducing briefs.

503
504 **109.02 Motion for Leave to Proceed In Forma Pauperis in the Court of**
505 **Appeals**

506 A party who desires to proceed *in forma pauperis* in the Court of Appeals
507 shall file in the trial court a motion for leave so to proceed, together with an
508 affidavit showing the party's inability to pay fees and costs and a copy of the
509 party's statement of the case as prescribed by Rule 133.03, showing the proposed
510 issues on appeal. Any such motion by a party initiating an appeal shall be filed on
511 or before the date the appeal is commenced. The trial court shall rule on the
512 motion within 15 days after it is filed, unless the Court of Appeals grants
513 additional time. The party shall file a copy of the motion with the clerk of the
514 appellate courts simultaneously with the notice of appeal or the petition that
515 initiates the appeal.

516 The trial court shall grant the motion if the court finds that the party is
517 indigent and that the appeal is not frivolous. If the motion is denied, the trial court
518 shall state in writing the reasons for the denial. The party shall promptly file a
519 copy of the trial court's order on the motion with the clerk of the appellate courts.

520 If the trial court grants the motion, the party may proceed *in forma*
521 *pauperis* without further application to the Court of Appeals. If a transcript is to be
522 prepared for appeal, the party shall file the certificate as to transcript required by
523 Rule 110.02, subd. 2(a), within ten days from the date of the trial court
524 administrator's filing of the order granting leave to proceed *in forma pauperis* or
525 within ten days after filing the notice of appeal, whichever is later.

526 If the trial court denies the motion, the party shall, within ten days from the
527 date of the trial court administrator's filing of the order, either:

528 (a) pay the filing fee, post ~~the~~ any required cost bond, and file a completed
529 transcript certificate, if a transcript is required; or

530 (b) serve and file a motion in the Court of Appeals for review of the trial
531 court's order denying *in forma pauperis* status. The record on the motion shall be
532 limited to the record presented to the trial court.

533

534 * * *

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536 **109.05 Suspension of Time Periods**

537 The time periods for a party to pay the filing fee, post a cost bond if
538 required under Rule 107 or 116, and file a transcript certificate are suspended
539 during the pendency of that party's timely motion to proceed in forma pauperis.

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Advisory Committee Comment—2015 Amendments

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Rule 109 is amended to clarify that, although the rules do not require the posting of a cost bond for most appeals, a bond may be required by the trial court upon motion and is required by statute and Rule 116 for appeal proceedings seeking review of decisions of the Workers' Compensation Court of Appeals. In these circumstances where a bond may be required, the granting of an in forma pauperis motion would exempt the party from having to pay for the required bond.

Recommendation 7: Rule 125 Should Be Amended to Clarify the Rule That Facsimile Transmission Is Not Available for Service of Appellate Pleadings.

Introduction

Rule 125 was amended in 2014 as part of the extensive amendments to implement electronic filing and service in the appellate courts. Rule 125.01(d) was adopted to authorize a party to serve initial appellate pleadings using the trial court's e-filing and e-service system (if electronic filings were authorized in the trial court). This exception was intended to facilitate service and filing using the methods that had been used in the trial court. The committee recommends that the rule be clarified to permit service by use of the district court electronic filing system, but that the prohibition on service by facsimile service contained in Rule 125.03 continue. An appropriate limitation is added to Rule 125.01 to make the rules consistent.

Specific Recommendations

Rule 125.01(d) should be amended as follows:

RULE 125. FILING AND SERVICE

125.01 Filing

* * *

(d) For any document that is required or permitted under these rules to be filed with the trial court, the filer may file or serve the document using the trial court's electronic service system, or, except as otherwise excluded by Rule 125.03, any other means authorized by the trial court rules. Separate proof of such service must be filed with the clerk of the appellate courts. Any party to the trial court proceedings registered for use of the trial court's electronic service system shall be deemed to have consented to receive service in this manner.

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Advisory Committee Comment—2015 Amendments

Rule 125.01 is amended to include a cross-reference to Rule 125.03, which prohibits use of facsimile transmission for service of appellate pleadings except with consent of the party to be served. That prohibition continues to apply even for the initial appellate documents (typically the notice of appeal or a petition), which are the only appellate documents which the rules require the parties to file in the district court. *See* Minn. R. Civ. App. P. 103.01, subd. 1(d).