STATE OF MINNESOTA

IN SUPREME COURT

ORDER PRESCRIBING AND PROMULGATING
NEW RULES OF CIVIL APPELLATE
PROCEDURE IN THE SUPREME COURT

WHEREAS, an Advisory Committee appointed by the Supreme Court has recommended to the court the adoption of certain Rules of Civil Appellate Procedure in lieu of the present Rules of Practice of the Supreme Court; and

WHEREAS, the recommended Rules of Civil Appellate Procedure were published and distributed to members of the Bar prior to the submission of briefs and the oral arguments which were heard on June 1, 1967, and whereas the court has considered said recommendations;

NOW, THEREFORE, IT IS HEREBY ORDERED that the hereto annexed Rules, including the appendices thereto, be, and the same hereby are, adopted, prescribed, and promulgated to be effective on February 1, 1968 for the regulation of the practice and procedure in the Supreme Court of the State of Minnesota. The inclusion of the Advisory Committee Notes is made for convenience and does not necessarily reflect court approval of the comments made in said Notes. On the said effective date of these Rules, the present Rules of Practice in this court shall be terminated except as provided in Rule 147.

Dated December 7, 1967

BY THE COURT:

Chief Justice

December 7, 1967

The attached order prescribing and promulgating new Rules of Civil Appellate Procedure in the Supreme Court is approved.

Chief Justice

Associate Justice

Associate Justice

Associate Justice

Associate Justice

Associate Justice

Associate Justice

Associate Justice, Retired

MINNESOTA RULES

OF

CIVIL APPELLATE PROCEDURE

Prepared by the Supreme Court Advisory Committee

To the Honorable The Chief Justice and the Associate Justices of

The Supreme Court of the State of Minnesota:

Sirs:

The Advisory Committee appointed pursuant to the provisions of Laws, 1947, Chapter 498, has prepared, and recommends to the Court for adoption, the draft of rules governing civil appellate procedure which is transmitted herewith.

Respectfully,

O. C. Adamson, II
William J. Baudler
Irving R. Brand
G. Alan Cunningham
Cyrus A. Field
Conrad M. Fredin
Henry Halladay, Chairman
B. Warren Hart
James L. Hetland, Jr., Secretary
Leonard J. Keyes
Richard E. Kyle
Gerald E. Magnuson
E. R. Selnes
John E. Simonett
Bruce C. Stone

MINNESOTA RULES

OF

CIVIL APPELLATE PROCEDURE

Preliminary Comment

In the federal system, the basic rules which govern appeals to the Court of Appeals are Fed. R. Civ. P., Rules 73-76. In addition, each of the Circuits has adopted extensive codes of rules (e.g., Eighth Circuit Rules, 27A M.S.A. 553-594). The resulting lack of uniformity led to the appointment of an Advisory Committee on Appellate Rules by the Chief Justice of the United States. The Advisory Committee drafted and submitted a draft of Proposed Federal Rules of Appellate Procedure (printed in 34 F.R.D. 263-324 (1964) and cited herein as P. Fed. R. App. P.), which is designed to supersede Fed. R. Civ. P., Rules 73-76, and the codes of rules of the several Circuits; and to include "in a single document a uniform set of rules designed to regulate the procedure in all proceedings which may be brought in a court of appeals from the inception of the proceedings by notice of appeal or petition until its termination by final judgment of the court" (34 F.R.D. 265). To date, the proposed federal appellate rules have not been adopted by the United States Supreme Court, although some of the recommendations of the Advisory Committee were incorporated in the amendments, effective July 1, 1966, to Fed. R. Civ. P., Rules 73, 74 and 75. The adoption of the remainder of the Advisory Committee's recommendations must await approval by the Congress of legislation authorizing the United States Supreme Court to promulgate rules governing appellate procedure.

The provisions which govern appeals to the Supreme Court of Minnesota are contained in several statutes, principally M.S.A. c. 605, and in the Rules of Practice of the Supreme Court, 27A M.S.A. 1-44 (cited herein as Minn. Sup. Ct. R.).

The general plan of the Minnesota Rules of Civil Appellate Procedure is patterned upon the Proposed Federal Rules of Appellate Procedure. The object of the Minnesota Supreme Court Advisory Committee has been to follow the proposed federal rules in order that procedure in the Minnesota Supreme Court may come as near to that proposed for the U. S. Court of Appeals as is feasible. Departures from the proposed federal rules consist in the main of preserving practices which are established by statute or which are deemed worthy of retention, and of certain deletions and additions required by the differences in the structure of the judicial systems of the two governments. In addition, the Minnesota Rules of Civil Appellate Procedure contain none of the provisions applicable to criminal and habeas corpus proceedings which are found in the proposed federal rules. The aim of the Advisory Committee is, so far as possible, to combine in a single code all of the rules designed to regulate civil appeals to the Minnesota Supreme Court.

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TITLE I. APPLICABILITY OF RULES

Rule 101. Scope of Rules

These rules govern procedure in civil appeals to the Supreme Court of Minnesota; in proceedings in the Supreme Court for review of orders of administrative agencies, boards or commissions; and on applications for writs or other relief in civil proceedings which the Supreme Court or a justice thereof is competent to give. The term "trial court" as used in these rules shall refer to the court or agency whose decision is sought to be reviewed.

NOTES TO RULE 101

This rule is substantially the same as P. Fed. R. App. P. 1 (a), and is primarily introductory. There is no similar Minnesota Supreme Court Rule. All criminal proceedings are excluded from the scope of the rules. The term "trial court" is used to describe the district court, municipal court, or any other court or agency from which appeals to or review by the Supreme Court are or may be authorized.

While the rules do not directly apply to criminal proceedings, it is anticipated that the rules will be followed in respect to appeals of criminal matters insofar as the rules are not inconsistent with the several statutes (e.g., M. S. A. c. 632, c. 611) which govern criminal procedure.

Rule 102. Suspension of Rules

In the interest of expediting decision upon any matter before it, or for other good cause shown, the Supreme Court, except as otherwise provided in Rule 126.02, may suspend the requirement or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

NOTES TO RULE 102

This rule is substantially the same as P. Fed. R. App. P. 2, and is similar to Minn. Sup. Ct. R. XXI. The primary purpose of this rule is to make clear the power of the Supreme Court to expedite the determination of cases of pressing concern to the public or to the litigants. Thus, it would permit the Supreme Court to decide an appeal where a party could have appealed from an appealable order but, through inadvertance, perfected a timely appeal from a non-appealable order. See Locke v. Henry, 141 N.W. 2d 736 (Minn. 1966). The rule also contains a procedure to relieve litigants of the consequences of default where manifest injustice would otherwise result. Rule 126.02 prohibits the Supreme Court from extending the time for taking appeal or seeking review.

TITLE II. APPEALS FROM JUDGMENTS AND ORDERS

Rule 103. Appeal as of Right - How Taken

103.01 Manner of Making Appeal.

(1) An appeal shall be made by the service of a written notice of

appeal on the adverse party. The notice shall specify the judgment or order from which the appeal is taken. Not more than five days after expiration of the time to appeal, the appellant shall fild the notice of appeal and the cost bond required by Rule 107 with the clerk of the court in which the judgment or order was entered, together with a deposit of $15. The bond may be waived by stipulation of the parties.

(2) When a party in good faith serves notice of appeal from a judgment or an order, and omits, through inadvertance or mistake, to proceed further with the appeal, or to stay proceedings, the Supreme Court may grant relief on such terms as may be just.

(3) Upon compliance with subdivision (1) of this rule, the clerk of the trial court shall immediately transmit to the clerk of the Supreme Court $10 out of the prescribed fee together with a certified copy of the notice of appeal and bond or stipulation waiving such bond.

103.02 Joint Appeals.

If two or more parties are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate notice of appeal, and they may thereafter proceed on appeal as a single appellant.

103.03 Appealable Judgments and Orders.

An appeal may be taken to the Supreme Court:

(a) From a judgment entered in the trial court;

(b) From an order which grants, refuses, dissolves, or refuses to dissolve, an injunction;

(c) From an order vacating or sustaining an attachment;

(d) From an order involving the merits of the action or some part thereof;

(e) From an order refusing a new trial, or from an order granting a new trial if the trial court expressly states therein, or in a memorandum attached thereto, that the order is based exclusively upon errors of law occurring at the trial, and upon no other ground; and the trial court shall

specify such errors in its order or memorandum, but upon appeal, such order granting a new trial may be sustained for errors of law prejudicial to respondent other than those specified by the trial court;

(f) From an order which, in effect, determines the action, and prevents a judgment from which an appeal might be taken;

(g) From a final order or judgment made or rendered in proceedings supplementary to execution;

(h) Except as otherwise provided by statute, from the final order or judgment affecting a substantial right made in a special proceeding, provided that the appeal must be taken within the time limited for appeal from an order;

(i) If the trial court certifies that the question presented is important and doubtful, from an order which denies a motion to dismiss for failure to state a claim upon which relief can be granted or from an order which denies a motion for summary judgment.

103.04 Scope of Review.

(1) The Supreme Court upon an appeal may reverse, affirm, or modify the judgment or order appealed from, or take any other action as the interests of justice may require.

(2) On appeal from an order the Supreme Court may review any order affecting the order from which the appeal is taken and on appeal from a judgment may review any order involving the merits or affecting the judgment. It may review any other matter as the interests of justice may require.

NOTES TO RULE 103

Rule 103.01. This rule is substantially identical to M.S.A. § 605.03 and § 605.045. P. Fed. R. App. P. 3(a), (c) and (d) and Fed. R. Civ. P. 73(a) and (b) (as amended, July 1, 1966) contain a substantially dissimilar procedure. In Minnesota, the timely service of the written notice of appeal by the appellant on the respondent invokes the jurisdiction of the Supreme Court. All other required acts of the parties are not jurisdictional.

Rule 103.02. This rule adopts P. Fed. R. App. P. 3(b) and Fed. R. Civ. P. 74 (as amended, July 1, 1966). It reflects the Minnesota Supreme Court's declaration that the common law rule against duplicity is not effective where there is no interference with orderly appellate procedure and the rights of the respondent are not prejudiced or adversely

affected. See Common Sch. Dist. No. 1317 v. Board of County Com'rs, 267 Minn. 372, 127 N.W. 2d 528, 533 (1964).

Rule 103.03. This rule is substantially identical to M.S.A. § 605.09 (1965). There is no comparable proposed federal rule.

Rule 103.04. This rule is identical to M.S.A. §605.05 (1963). There is no comparable proposed federal rule.

Rule 104. Time for Service of Notice of Appeal

104.01 Judgments and Orders.

An appeal from a judgment may be taken within 90 days after the entry thereof, and from an order within 30 days after service of written notice of filing thereof by the adverse party.

104.02 Effect of Entry of Judgment.

No order made prior to the entry of judgment shall be appealable after the expiration of time to appeal from the judgment. Time to appeal from the judgment under this section shall not be extended by the subsequent insertion therein of the costs and disbursements of the prevailing party.

104.03 Special Proceedings.

Except as otherwise provided by statute, an appeal from the final order or judgment affecting a substantial right made in a special proceeding must be taken within the time limited for appeal from an order.

NOTES TO RULE 104

Rule 104.01. This rule is identical to M.S.A. §605.08(1) (1963). P. Fed. R. App. P. 4 and Fed. R. Civ. P. 75(a) (as amended, July 1, 1966), contain a substantially dissimilar procedure. Neither the Supreme Court nor the trial court nor the parties may extend time to appeal. Tombs v. Ashworth, 255 Minn. 55, 95 N.W. 2d 423 (1959); Eisenberg v. State Farm Mutual Automobile Ins. Co., 270 Minn. 487, 134 N.W. 2d 144 (1965).

Rule 104.02. This rule is identical to M.S.A. §605.08(2) (1963). There is no comparable proposed federal rule. As to the appealability of post-judgment orders, see Honeymead Products Co. v. Aetna Casualty & Sur. Co., 270 Minn. 147, 132 N.W. 2d 741 (1965).

Rule 104.03. This rule is the same as M.S.A. §605.09(h) (1965) except that the language has been rearranged. Since §605.09(h) contains a clause limiting time to appeal, it is set forth here as well as in Rule 103.03.

Rule 105. Discretionary Review

105.01 Petition for Permission to Appeal; Time.

The Supreme Court, in the interest of justice and upon the petition of a party, may allow an appeal from an order not otherwise appealable under Rule 103.03 except an order made during trial. The petition shall be served on the adverse party within the time limited for appeal from an appealable order. Four copies of the petition, including the original, shall be filed with the clerk of the Supreme Court, but the Supreme Court may direct that additional copies be provided.

105.02 Content of Petition; Response.

The petition shall be entitled as in the trial court and shall contain a statement of facts necessary to an understanding of the questions of law or fact determined by the order of the trial court; a statement of the question itself; and a statement why an immediate appeal is necessary and desirable. The petition shall include or have annexed thereto a copy of the order from which appeal is sought and any findings of fact, conclusions of law and memorandum relating thereto. Within seven days after service of the petition, any adverse party may serve and file a response thereto, with copies in the number required for the petition. All papers may be typewritten.

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

105.03 Grant of Permission - Procedure.

If permission to appeal is granted, the clerk of the Supreme Court shall notify the clerk of the trial court and the appellant shall pay the appeal fee and file the bond as required by these rules and shall thereafter proceed as though the appeal had been noticed by service of a written notice of an appeal. The time fixed by these rules for transmitting the record and for filing the briefs and appendix shall run from the date of the entry of the order granting permission to appeal.

NOTES TO RULE 105

This rule is similar to P. Fed. R. App. P. 5. It follows the recommendation of the Judicial Council of Minnesota and permits the Supreme Court, in its discretion, to hear appeals from certain non-appealable orders. The writ procedure contained in Rule 120 provides an alternative method to obtain review of such orders.

Generally, either method may be used. However, the Supreme Court may permit a party to proceed pursuant to Rule 105 in cases where a writ may be inappropriate.

Rule 106. Respondent's Right to Obtain Review

A respondent may obtain review of a judgment or order entered in the same action which may adversely affect him by serving a notice of review on all parties to the action who may be affected by the judgment or order. The notice of review shall specify the judgment or order to be reviewed and shall be served upon the other parties within 15 days after service of the notice of appeal on that respondent and thereafter shall be filed with the clerk of the Supreme Court.

NOTES TO RULE 106

This rule is identical to M.S.A. §605.065 (1963). There is no comparable proposed federal rule.

Rule 107. Bond or Deposit for Costs

A bond shall be executed by the appellant, conditioned that the appellant shall pay all costs and charges which may be awarded against him on the appeal, not exceeding the penalty of the bond, which shall be at least $250; or that sum shall be deposited with the clerk with whom the judgment or order was entered, to abide the judgment of the Supreme Court. Such bond or deposit may be waived by the written consent of the respondent.

NOTES TO RULE 107

This rule is identical to M.S.A. §605.10 (1963). P. Fed. R. App. P. 7 and Fed. R. Civ. P. 73(c) (as amended, July 1, 1966) contain a similar procedure. The bond may be waived by stipulation of the parties.

Rule 108. Supersedeas Bond; Stays

108.01 Supersedeas Bond.

(1) An appeal from an order or judgment shall stay proceedings in the trial court and save all rights affected thereby, if the appellant executes a supersedeas bond in the amount and form which the trial court shall order and approve, in the cases provided in this Rule.

(2) If the appeal is from an order, the condition of the bond shall be the payment of the costs of the appeal, the damages sustained by the respondent

in consequence of the appeal, and the obedience and satisfaction of the order or judgment which the Supreme Court may give, if the order or any part thereof is affirmed or if the appeal is dismissed.

(3) If the appeal is from a judgment directing the payment of money, the condition of the bond shall be the payment of the judgment or that part of the judgment which is affirmed and all damages awarded against the appellant upon the appeal, if the judgment of any part thereof is affirmed, or if the appeal is dismissed.

(4) If the appeal is from a judgment directing the assignment or delivery of documents or personal property, the condition of the bond shall be the obedience of the order or judgment of the Supreme Court. The bond provided by this subdivision need not be given if the appellant places the document or personal property in the custody of the officer or receiver whom the trial court may appoint.

(5) If the appeal is from a judgment directing the sale or delivery or possession of real property, the condition of the bond shall be the payment of the value of the use and occupation of the property from the time of the appeal until the delivery of the possession of the property if the judgment is affirmed, and the undertaking that the appellant shall not commit or suffer the commission of any waste on the property while it remains in his possession during the pendency of the appeal.

(6) In cases not specified in subdivisions (2) to (5) hereof, the giving of the bond specified in Rule 107 shall stay proceedings in the trial court.

108.02 Judgments Directing Conveyances.

If the appeal is from a judgment directing the execution of a conveyance or other instrument, its execution shall not be stayed by an appeal until the instrument shall be executed and deposited with the clerk of the trial court to abide the judgment of the Supreme Court.

108.03 Extent of Stay.

When a bond is given as provided by Rule 108.01, it shall stay all

further proceedings in the trial court upon the judgment or order appealed from or the matter embraced therein; but the trial court may proceed upon any other matter included in the action, and not affected by the judgment or order appealed from.

108.04 Respondent's Bond to Enforce Judgment.

Notwithstanding an appeal from a money judgment and security given for a stay of proceedings thereon, the trial court, on motion and notice to the adverse party, may grant leave to the respondent to enforce the judgment upon his giving bond to the appellant as herein provided, if it be made to appear to the satisfaction of the trial court that the appeal was taken for the purpose of delay. Such bond shall be executed by the respondent, or someone in his behalf, and shall be conditioned that if the judgment be reversed or modified the respondent will make such restitution as the Supreme Court shall direct.

108.05 Joinder of Bond Provisions; Service on Adverse Party.

The bonds provided for in Rule 107 and Rule 108.01 may be in one instrument or several, at the option of the appellant, and shall be served on the adverse party.

108.06 Perishable Property.

If the appeal is from a judgment directing the sale of perishable property, the trial court may order the property to be sold and the proceeds thereof deposited or invested to abide the judgment of the Supreme Court.

NOTES TO RULE 108

This rule is substantially identical to M.S.A. §§605.115, .14, .16, .17, .18 and .20. P. Fed. R. App. P. 8 and Fed. R. Civ. P. 73(d) (as amended, July 1, 1966) contain a dissimilar procedure.

General provisions concerning bonds and undertakings are contained in M.S.A. c.574. The bond may be waived by stipulation of the parties.

Rule 109

(reserved for future use)

Rule 110. The Record on Appeal

110.01 Composition of the Record on Appeal.

The papers filed in the trial court, the offered exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.

110.02 The Transcript of Proceedings; Duty of Appellant to Order; Notice to Respondent if Partial Transcript is Ordered; Duty of Reporter; Form of Transcript.

(1) Within 10 days after service of the notice of appeal appellant shall order from the reporter a transcript of such parts of the proceedings not already part of the record as he deems necessary for inclusion in the record. Unless the entire transcript is to be included, the appellant, within said 10 days, shall file and serve on the respondent a description of the parts of the transcript which he intends to include in the record and the statement of the issues he intends to present on appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary he shall within 10 days of service of such description order such parts from the reporter or serve and file a motion in the trial court for an order requiring the appellant to do so.

(2) At the time of ordering, a party must make satisfactory arrangements with the reporter for the payment of the cost of the transcript and all necessary copies. The reporter shall promptly acknowledge receipt of said order and his acceptance of it, in writing, with copies to the Clerk of the Supreme Court and all counsel of record and in so doing shall state the date, not to exceed a period of sixty days, by which the transcript will be furnished. Upon delivery of the transcript to the appellant, the reporter shall file with the Clerk of the Supreme Court a certificate evidencing the date of delivery of the transcript.

(3) If any party deems the period of time set by the reporter to be excessive or insufficient, or if the reporter needs an extension of time for

completion of the transcript, the party or reporter may request a different period of time within which the transcript must be delivered by written motion to the Supreme Court under Rule 127, showing good cause why said period of time is excessive or insufficient. The Administrative Assistant to the Supreme Court shall act as a referee in hearing said motion and shall file with the Court appropriate findings and recommendations for an order of the Court in said matter. A failure to comply with the order of the Court fixing a time within which the transcript must be delivered may be punished as a contempt of Court.

(4) The transcript shall be typewritten on 10 1/2 x 8 1/2 inches unglazed opaque paper with double-spacing between each line of text, shall be bound at the left-hand margin, and shall contain a table of contents. The name of each witness shall appear at the top of each page containing his testimony. A question and its answer may be contained in a single paragraph. The original and first copy of the transcript shall be filed with the clerk of the trial court, and a copy shall be promptly transmitted to the attorney for each party to the appeal separately represented. All copies must be legible. The reporter shall certify the correctness of the transcript.

110.03 Statement of the Proceedings When No Report Was Made or When the Transcript is Unavailable.

If no report of all or any part of the proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 15 days after service of the notice of appeal, prepare a statement of the proceedings from the best available means, including his recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 15 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the trial court and the statement as approved by the trial court shall be included in the record.

110.04 Agreed Statement as the Record.

In lieu of the record as defined in Rule 110.01, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the trial court may consider necessary to present the issues raised by the appeal, shall be approved by the trial court and shall be the record on appeal.

110.05 Correction or Modification of the Record.

If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and determined by the trial court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the Supreme Court, or the Supreme Court, on motion by a party or on its own initiative, may direct that the omission or misstatement be corrected, and if necessary that

a supplemental record be approved and transmitted. All other questions as to the form and content of the record shall be presented to the Supreme Court.

NOTES TO RULE 110

Rule 110.01. This rule is substantially the same as P. Fed. R. App. P. 10(a) and is similar to Fed. R. Civ. P. 75(a) (as amended, July 1, 1966) and to Minn. Sup. Ct. R. V. The original trial court record is the official and only record on appeal. Wherever the unqualified word "record" is used in these rules, it refers to this record. The printed Record, which was required by the former Minnesota practice, is abolished by Rule 130.

Rule 110.02(1). This rule is substantially the same as P. Fed. R. App. P. 10(b) and Fed. R. Civ. P. 75(b). It abolishes the old settled case procedure formerly set forth in Minn. R. Civ. P. 59.07. No formal approval of the transcript by the trial court or the parties is necessary. Errors may be corrected by either party by motion under Rule 110.05.

In those cases where only part of the proceedings is transcribed, the requirement that appellant serve a statement of the issues he intends to present on appeal is made solely for the purpose of affording respondent an opportunity to determine whether the partial transcript will be adequate for the determination of the issues presented by the appeal. Such a statement is not equivalent to an assignment of errors, which is no longer required in these rules, and the statement does not limit the issues on appeal. The precise statement of the issues presented by the appeal is to be made in the brief. See Rule 128.01(2). A respondent, who can show that he was misled by the statement required by this rule and in consequence failed to designate for transcription material parts of the reported proceedings, may seek relief under Rule 110.05.

Rule 110.02(2) requires acknowledgment by the reporter of the order and acceptance of the order for a transcript. The reporter in his written acknowledgment must state the date when the transcript will be furnished which time shall not exceed 60 days. When the transcript is delivered, the reporter must file a certificate of such fact with the Clerk of the Supreme Court. The date of delivery establishes the beginning of the 60 day period for the filing of appellant's brief and appendix. See Rule 131.01.

Rule 110.02(3) provides a procedure for the parties to extend or reduce the time of delivery of the transcript.

Rule 110.02(4) specifies the physical appearance and number of copies of the transcript, and requires the reporter's certification of correctness.

Rule 110.03. This rule is substantially the same as P. Fed. R. App. P. 10(c) and Fed. R. Civ. P. 75(c) (as amended, July 1, 1966), and permits the use of a court approved statement in cases where no report, in whole or in part, was made or where a report was made but cannot be transcribed.

Rule 110.04. This rule is substantially the same as P. Fed. R. App. P. 10(d) and permits the parties to substitute a court approved statement of the case in lieu of a record. It is similar to the procedure authorized by M.S.A. §548.24 which permits parties to submit cases to the trial court upon an agreed statement.

Rule 110.05. This rule is substantially the same as P. Fed. R. App. P. 10(e) and Fed. R. Civ. P. 75(d), and replaces the cumbersome procedure formerly required by Minn. R. Civ. P. 59.07 to secure a settled case.

Rule 111. Transmission of the Record

111.01 Transmission of Transcript; Time.

The original and copy of the transcript, if any, shall be transmitted by the appellant to the clerk of the Supreme Court at the time of filing the appellant's brief and appendix.

111.02 Transmission of Remainder of Record; Time.

The remainder of the record shall be transmitted to the clerk of the Supreme Court by the clerk of the trial court 30 days prior to the date set for oral argument or submission of the appeal unless the time is shortened or extended by an order of the Supreme Court. The clerk shall transmit with the record a list, in duplicate, of the exhibits and the items comprising the record, identifying each with reasonable definiteness. Appellant's attorney has the duty to see that the clerk of the trial court complies with this rule. A party must make his own arrangements for the transportation of bulky or weighty exhibits to and from the clerk of the Supreme Court. Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the Supreme Court.

111.03 Exhibits.

All exhibits sent to the clerk of the Supreme Court shall have endorsed thereon the title of the case to which they belong. All exhibits will be returned to the clerk of the trial court with the remittitur. All models will be so returned when necessary on a new trial, but where the decision of the Supreme Court is final and no new trial is to be had, such models will be destroyed by the clerk of the Supreme Court unless called for by the parties within 30 days after final decision is rendered.

111.04 Record for Preliminary Hearing in the Supreme Court.

If prior to the time the record is transmitted a party desires to make a motion for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any

intermediate order, the clerk of the trial court at the request of any party shall transmit to the Supreme Court such parts of the original record as the party shall designate.

111.05 Disposition of Record after Appeal.

Upon the termination of the appeal, the clerk of the Supreme Court shall transmit the ~~original~~ transcript to the State Law Library and the remainder of the record to the clerk of the trial court.

NOTES TO RULE 111

Rules 111.01 and 111.02. These rules are similar to P. Fed. R. App. P. 11(a) and (b), and Fed. R. Civ. P. 75(e) (as amended, July 1, 1966). They modify substantially the procedure specified by Minn. Sup. Ct. R. V., 1st paragraph. The appellant has the duty of filing the transcript with his brief and appendix. The duty of transmission of the remainder of the original record to the Supreme Court is imposed on the clerk of the trial court. The clerk of the trial court also must prepare an adequate index of the record in the same manner as was specified in Minn. Sup. Ct. R. V., 6th paragraph. The appellant has the obligation of notifying the clerk of the trial court of the argument or submission date so that the clerk may transmit the record to the clerk of Supreme Court at the proper time. Normally, such notice should be given to the clerk of the trial court a week before the 30-day period.

If the record contains bulky or weighty exhibits, the party must make special arrangements for the transportation of such exhibits to the Supreme Court.

Rule 111.03. This rule is identical to Minn. Sup. Ct. R. V., 5th paragraph. There is no similar proposed federal rule.

Rule 111.04. This rule is substantially the same as P. Fed. R. App. P. 11(f) and Fed. R. Civ. P. 75(g). There is no comparable Minnesota Supreme Court rule. The rule permits a party to secure the transmittal of the record to the Supreme Court where necessary to the submission of a motion.

Rule 111.05. There is no similar proposed federal rule. After the appellate proceeding has been completed, the original transcript will become part of a permanent file of all appeal transcripts which will be maintained in the State Law Library in the Capitol. The copy of the transcript and the remainder of the record will be returned to the clerk of the trial court.

Rules 112-114

(reserved for future use)

Workmen's Compensation

TITLE III. REVIEW OF ~~INDUSTRIAL~~ COMMISSION; TAX COURT; DEPARTMENT OF EMPLOYMENT SECURITY; COMMERCE DEPARTMENT; AND OTHER DECISIONS REVIEWABLE OF RIGHT BY CERTIORARI TO SUPREME COURT

Rule 115. Certiorari as a Matter of Right

Rule 115.01 How Obtained; Time for Securing Writ.

Review of a decision of ~~Industrial~~ Workmen's Compensation Commission; Tax Court; Department of Employment Security; Commerce Department; and other decisions reviewable of right by certiorari to the Supreme Court may be had by securing issuance of a writ of certiorari within sixty (60) days after the party applying for such writ shall have received written notice of the decision sought to be reviewed, unless an applicable statute prescribes a different period of time.

115.02 Petition for Writ; How Secured.

The petition and a proposed writ of certiorari shall be presented to the clerk of the Supreme Court who shall issue the writ in the name of the court.

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

(1) Contents and Form of Petition and Writ. The petition shall definitely and briefly state the judgment, order, or proceeding which is sought to be reviewed and the errors which the petitioner claims. The title and form of the petition and writ may be as shown in Forms 3 and 4 of the Appendix.

(2) Bond or Security. Petitioner shall file such bond or other security as may be required by statute or by the Supreme Court.

(3) Filing; Fees. The clerk shall file the original petition and the original writ upon receipt from petitioner of a $10 filing fee unless a different fee is required by statute.

(4) Service; Time. The petitioner shall serve copies of the petition and writ upon the body to which it is directed and upon the adverse party in interest within 60 days after petitioner shall have received written notice of the decision to be reviewed unless a different time is prescribed by statute.

115.04 The Record on Review by Certiorari; Transmissions of the Record.

As near as may be, the provisions of Rules 110 and 111 respecting the record and the time and manner of its transmission and filing or return in appeals shall govern in cases on writ of certiorari unless otherwise provided by statute or order of the court. Each reference in those rules to the trial court, the clerk of the trial court and notice of appeal shall be read as a reference to the body whose decision is to be reviewed, to the clerk or secretary thereof, and to writ of certiorari respectively.

115.05 Costs and Disbursements.

Costs and disbursements may be taxed by the prevailing party but not for or against the body to whom the writ is directed. In case a writ shall appear to have been brought for the purpose of delay or vexation the court may award double costs to the prevailing party.

115.06 Dismissal Costs.

If any writ of certiorari shall be issued contrary to statute, or shall not be served upon the adverse party as required by these rules, the party against which the same is so issued may have the same dismissed on motion and affidavit showing the facts and shall be entitled to his costs and disbursements.

NOTES TO RULE 115

This rule is designed to correspond in coverage to the appellate procedures covered in P. Fed. R. App. P. 15 through 19 and formerly covered in Sup. Ct. R. III, which relate to the limited area of direct review of administrative determination by the Supreme Court. Direct review of administrative determinations is available as a matter of right only in those cases where it is now or may hereafter be specifically directed by statute. In all other cases the writ is discretionary in the Supreme Court and normally is granted only in cases where a general public interest requires an immediate determination and where all other requirements for an extraordinary writ are met such as the requirement that there be no other adequate appellate remedy available. Since writs of certiorari in the district court and the Minnesota Administrative Procedure Act, M.S.A. §§15.042 - .0426, provide a broad scope of appellate relief for initial review of administrative determinations in the district court with appeal rights to further review the district court action, it will rarely occur that the Supreme Court will find it necessary to grant a discretionary

writ of certiorari for review of administrative determinations. Thus, this rule does not specify a procedure for the issuance of a discretionary writ of certiorari. In those cases where a discretionary writ is sought, the procedures for securing the writ should conform to Rules 115.03, 115.04, 120.01 and 120.02.

Because certiorari in the Supreme Court exists as a matter of right only where provided by statute, no fixed rule can be made to govern the exact procedure in all cases and reference must be made in each case to the applicable statute which grants this right of review with respect to the determinations of the particular administrative agency involved. The various existing statutes provide different time limitations, different fees, different bond or security requirements, and may provide other individual variances from the general procedure outlined in this rule. Thus, the procedure specified in this rule governs except in cases of direct conflict with applicable statutory provisions.

Rule 115.01. This rule specifies a general 60-day period within which a writ may be obtained unless a different time period is specified by statute.

Rules 115.02, 115.03 and 115.06. Since the petitioner is, by statute, entitled to a writ as a matter of right, these rules eliminate the necessity of submitting the petition to the Supreme Court and receiving from it an order directing the clerk to issue the writ. The clerk, upon submission of a proper petition, fee and bond, shall issue and file the original writ. Timely service of copies of the petition and writ on the administrative body and the adverse party subjects them to the jurisdiction of the Supreme Court. If a writ is improperly obtained, it may be dismissed pursuant to Rule 115.06.

Rule 115.04. This rule, in effect, incorporates by reference the provisions of Rules 110 and 111 in respect to the record on appeal.

Rule 115.05. Costs and disbursements may be obtained by the prevailing party from the adverse party. See also Rule 139.

Rules 116-119

(reserved for future use)

TITLE V. EXTRAORDINARY WRITS

Rule 120. Writs of Mandamus and Prohibition Directed to a Judge or Judges and Other Writs

120.01 Petition for Writ.

Application for a writ of mandamus or of prohibition or for any other extraordinary writ directed to a judge or judges shall be made

by petition. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and of the relief sought; and a statement of the reasons why the extraordinary writ should issue.

120.02 Submission of Petition; Preliminary Conference.

The attorney for the petitioner shall submit the petition to the Supreme Court or any justice after having given all other parties to the action reasonable oral or written notice of the date and time of the submission and the conference thereon, but the Supreme Court or any justice may waive the requirement of such notice.

120.03 Procedure Following Submission.

If the Supreme Court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it may (a) issue a peremptory writ or (b) grant temporary relief and order that an answer be served and filed by the respondent with the time fixed by the order or (c) issue an order to show cause why the writ should not be granted. The petition, if not previously served, and the order shall be served by the petitioner on all the other parties to the action in the trial court and on the trial judge. All parties other than the petitioner shall be deemed respondents. Respondents may answer jointly. If a respondent does not desire to respond, he may so advise the clerk of the Supreme Court and all parties by letter, but the petition shall not thereby be taken as admitted. If briefs are required, the clerk of the Supreme Court shall advise the parties of the dates on which they are to be filed. There shall be no oral argument unless the Supreme Court shall so direct.

120.04 Filing; Form of Papers; Number of Copies.

Upon receipt of a $10 filing fee, the clerk shall file the petition. All papers and briefs may be typewritten. Four copies, including an original, shall be filed with the clerk, but the Supreme Court may direct that additional copies be provided. Service of all papers and briefs may be made by mail.

NOTES TO RULE 120

This rule governs the issuance of extraordinary writs by the Supreme Court to judges of lower courts. The issuance of writs of certiorari to administrative bodies is governed by Rule 115.

Today, writs of mandamus and prohibition are the only inter-court writs commonly used. The rule does not specify the grounds for the issuance of an extraordinary writ. The issuance of a writ lies within the sound discretion of the Supreme Court. No party is entitled to a writ as a matter of right. Generally, the Supreme Court will not issue a writ to review the broad discretionary powers vested in the lower courts, nor will a writ be issued where a right to appeal exists and may be properly exercised. Specifically, writs of mandamus are issued "to compel the performance of an act which the law specifically enjoins as a duty" or to compel a lower court "to exercise its judgment or proceed to the discharge of any of its functions." M.S.A. §586.01. Writs of prohibition are issued to restrain action by the lower court "where it appears that the court is about to exceed its jurisdiction or where it appears the action of the court relates to a matter that is decisive of the case; where the court has ordered the production of information clearly not discoverable and there is no adequate remedy at law; or in rare instances where it will settle a rule of practice affecting all litigants." Thermorama, Inc. v. Shiller, 135 N.W. 2d 43 (Minn. 1965). E.g., Jallen v. Agre, 265 Minn. 578, 122 N.W. 2d 207 (1963) (mandamus to compel trial court to comply with mandate of Supreme Court); State v. Moriarity, 203 Minn. 23, 279 N.W. 835 (1938) (mandamus to compel trial court to state grounds upon which new trial was granted); Planck v. Minneapolis, St. P. & S.S.M. Ry. Co., Minn. Sup. Ct. (June 17, 1966) (mandamus to compel trial court to dismiss action on the ground of forum non conveniens); Jeppesen v. Swanson, 243 Minn. 547, 68 N.W. 2d 649 (1955) (prohibition to prevent enforcement of discovery order); Bellows v. Erickson, 233 Minn. 320, 46 N.W. 2d 654 (1951) (prohibition to prevent enforcement of order granting temporary injunction); Shacter v. Richter, 135 N.W. 2d 66 (Minn. 1965) (prohibition to prevent enforcement of order consolidating actions). In addition, it is customary to use mandamus to review orders refusing to change venue even though the order is discretionary. Castle v. Village of Baudette, 267 Minn. 140, 125 N.W. 2d 416 (1963).

Rule 120.01. This rule is similar to P. Fed. R. App. P. 20(a). The proceeding is initiated by a written petition requesting the issuance of the writ. The petition shall contain a brief statement of the pertinent facts, the legal issue, and the reasons why a writ should be issued. In addition, the petition should be accompanied by a copy of the trial court's order or other parts of the record (if readily available) which will be of aid to an understanding of the matters set forth in the petition, and may be accompanied by a brief resume of the authorities upon which the petitioner relies.

Rule 120.02. This rule governs the manner of submission of the petition to the court and is flexible to suit the various situations with which the petitioner may be faced.

If an emergency situation exists, the attorney for the petitioner will submit the petition personally after notifying the attorneys of the other parties of his intention to do so. No formal notice is necessary nor is there any time limitation. All that is necessary is that the notice be reasonable under the circumstances. Thus, an informal, oral notice will usually be sufficient. If an extreme emergency exists and there is insufficient time to locate or notify the other attorneys, the court may waive the notice requirement.

Even though no emergency exists, if the petition involves a controversial or novel matter, the rule nevertheless contemplates the personal appearance of the attorneys of the parties at the time of the submission of the petition. In this situation, the notice may be either oral or written and shall give the other parties a reasonable opportunity to attend.

The personal appearance of the attorneys at the time of submission of the petition will permit the justice or justices present to engage in an informal discussion concerning the basis of the petition, the facts, and the problems facing the parties, and will enable the court to exercise its discretion with an understanding of both sides of the case. For this reason, the attendance of opposing counsel, while not compulsory, is desirable and expected.

If the petition involves a non-controversial routine matter concerning which the above described informal preliminary conference will be of no real value, personal appearance of counsel is not required and the petition may be submitted by mail. An example of this type of situation is a petition for mandamus to review a venue matter.

Rule 120.03. This rule is similar to P. Fed. R. App. P. 20(b). Following submission of the petition, the court may do the following:

(1) If the court believes the petition to be without merit or if it decides not to exercise its discretionary powers, it may simply deny the petition.
(2) If the court is of the opinion that the petitioner is entitled to the requested relief, it may order the issuance of a peremptory writ without further proceedings.
(3) If the court believes that the petition may have merit and decides to exercise its discretion, it may order further proceedings to determine whether a peremptory writ should be issued.

In the last mentioned situation, the customary practice was the issuance of an order for an alternative writ. The order often granted temporary relief by restraining further proceedings below. Pursuant to the order, the clerk issued a formal alternative writ which was, in effect, an order directed to the lower court to show cause why the alternative writ should not be made absolute.

While the rule is broad enough to encompass the old alternative writ procedure, it is designed to permit the court to proceed without the issuance of an alternative writ. The court may simply issue an order directing the adverse parties to respond,

and staying proceedings below until further order of the court. In addition, the order may direct the filing of formal briefs, or it may specify a simple answer to the petition. Further, the often fictional response of the trial court judge is no longer required although he may participate if he so desires. After the parties have complied with the order, the court will again consider the matter and either deny the petition or order the issuance of a peremptory writ granting, in whole or in part, the relief requested.

120.04. All papers including the writ may be served by mail. Personal service of the original of a writ is no longer required.

Rules 121-124

(reserved for future use)

TITLE VII. GENERAL PROVISIONS

Rule 125. Filing and Service

125.01 Filing.

Papers required or permitted to be filed must be received by the clerk of the Supreme Court within the time fixed for filing. If a motion or petition requests relief which may be granted by a single justice, the justice may permit the motion to be filed with him, in which event he shall note thereon the date of filing and shall thereafter transmit it to the clerk.

125.02 Service of All Papers Required.

Copies of all papers filed by any party shall be served by him, at or before the time of filing, on all other parties to the appeal or review. Service on a party represented by an attorney shall be made on the attorney.

125.03 Manner of Service.

Service may be personal or by mail. Personal service includes delivery of the copy to the attorney or other responsible person in the office of the attorney. Service by mail is complete on mailing.

125.04 Proof of Service.

Papers presented for filing shall contain either a written admission of service or an affidavit of service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without proof of service, but shall require such proof to be filed promptly thereafter.

NOTES TO RULE 125

This rule is substantially the same as P. Fed. R. App. P. 25. There is no similar Minnesota Supreme Court rule. Briefs and other papers must be received by the clerk of the Supreme Court on or before the due-date prescribed by these rules. Service on other parties must be accomplished before filing. The rules governing service are basically the same as those prescribed by Minn. R. Civ. P. 5.02.

Rule 126. Computation and Extension or Limitation of Time

126.01 Computation.

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the method of computation specified in Rules 6.01 and 6.05 of the Rules of Civil Procedure for the District Court shall be used.

126.02 Extension or Limitation of Time.

The Supreme Court for good cause shown may by order extend or shorten the time prescribed by these rules or by its order for doing any act, and may permit an act to be done after the expiration of such time if the failure to act was excusable under the circumstances; but the Supreme Court may not extend or shorten the time for service of a notice of appeal or the time prescribed by law for securing a review of an order of an administrative agency, board, commission or officer, except as specifically authorized by law.

NOTES TO RULE 126

Rule 126.01. This rule incorporates by reference the method of computing time specified in Minn. R. Civ. P., Rules 6.01 and 6.05.

Rule 126.02. This rule is similar to P. Fed. R. App. P. 26(b), and permits the Supreme Court to vary the time limitations contained in the rules other than the limitations prescribed by law for service of the notice of appeal or for initiating a review of an administrative ruling. See Rules 102 and 104.

Rule 127. Motions

Unless another form is prescribed by these rules, an application for an order or other relief shall be made by serving and filing a motion in writing for such order or relief. The motion shall specify the date of its submission, which date shall be not less than 8 days after service, and shall state with particularity the grounds therefor and set forth the order or relief sought. If the motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file an answer in opposition within 5 days after service of the motion. Any reply shall be served within 2 days thereafter. The motion and all papers relating thereto may be typewritten. An original and three copies of all papers shall be filed. Oral argument will not be permitted except by order of the Supreme Court.

NOTES TO RULE 127

This rule is similar to P. Fed. R. App. P. 27 and Minn. Sup. Ct. R. IV. All supporting documents must be served and filed with the motion. No notice of motion is necessary. The written motion is deemed submitted on the date specified therein. There is no oral argument except by order of the Supreme Court. Orders to show cause are not permitted. However, a party may apply ex parte for an order pursuant to Rule 102 shortening the time periods specified for the submission of a motion if an emergency situation exists.

Rule 128. Briefs

128.01 Brief of Appellant.

The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A concise statement of the legal issue or issues involved, omitting unnecessary detail. Each issue shall be stated as an appellate court would state the broad issue presented. Each issue shall be followed by a concise statement how the trial court decided it.

(3) A statement of the case and the facts. A statement of the case shall first be presented identifying the trial court and the trial judge and indicating briefly the nature of the case and its disposition in the trial court. There shall follow a statement of facts relevant to the grounds urged for reversal, modification, or other relief. The facts must be stated fairly, with complete candor, and as concisely as possible. Where it is claimed that a verdict, finding of fact, or other determination is not sustained by the evidence, the evidence, if any, tending directly or by reasonable inference to sustain the verdict, findings or determination shall be summarized. Each statement of a material fact shall be accompanied by a reference to the record, as provided in Rule 128.04, where such fact appears.

(4) An argument. The argument may be preceded by a summary introduction. The argument shall contain the contentions of the party with respect to the issues presented, the reasons therefor, and the citations to the authorities relied on. Each issue shall be separately presented. Needless repetition shall be avoided.

(5) A short conclusion stating the precise relief sought.

(6) The appendix required by Rule 130.01.

128.02 Brief of Respondent.

The brief of the respondent shall conform to the requirements of Rule 128.01, except that a statement of the issues or of the case or facts need not be made unless the respondent is dissatisfied with the statement of appellant. If a notice of review is filed pursuant to Rule 106, the respondent's brief shall contain the issues specified in the notice of review and the argument thereon as well as the answer to the brief of appellant.

128.03 Reply Brief.

The appellant may file a brief in reply to the brief of the

respondent. The reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of the Supreme Court.

128.04 References in Briefs to Record.

Whenever a reference is made in the briefs to any part of the record which is reproduced in the appendix or in a supplemental record, the reference shall be made to the specific pages of the appendix or the supplemental record where the particular part of the record is reproduced. Whenever a reference is made to a part of the record which is not reproduced in the appendix or in a supplemental record, the reference shall be made to the particular part of the record, suitably designated, and to the specific pages thereof, e.g., Motion for Summary Judgment, p. 1; Transcript, p. 135; Plaintiff's Exhibit D, p. 3. Intelligible abbreviations may be used.

128.05 Reproduction of Statutes, Ordinances, Rules, Regulations, Etc.

If determination of the issues presented requires the study of statutes, ordinances, rules, regulations, etc., or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.

NOTES TO RULE 128

Rule 128.01. This rule is substantially the same as P. Fed. R. App. P. 28(a) and is very similar in content to Minn. Sup. Ct. R. VIII (3) and (4) with two important exceptions. The formal procedural history and the assignment of errors required by Minn. Sup. Ct. R. VIII (3)(b) and (e) are abolished. The skeleton outline of a brief set forth in Form 8 in the Appendix will be of aid in following the rule.

Since assignments of errors are abolished, the correct statement of the legal issues is doubly important. Each legal issue should be stated as an abstract question of law with sufficient exactitude so that the court, after reading the legal issue, may understand the precise issue presented. The following are <u>not</u> proper statements of legal issues: "Is the verdict supported by the evidence?"; "Did the trial court correctly direct a verdict?"; "Did the trial court err in denying a new trial?" Examples of correct statements of legal issues may be found in Form 8 of the Appendix. Each legal issue must be separately briefed and argued.

This rule contains no limitation on the length of briefs as is found in P. Fed. R. App. P. 28(g). However, the court may deny costs and disbursements if unnecessarily long briefs are submitted. It may also deny costs and disbursements if the brief does not contain a fair and proper statement of the facts as required by Rule 128.01(3).

Rule 128.02. This rule is similar to P. Fed. R. App. P. 28(b) and Minn. Sup. Ct. R. VIII (4). The respondent's brief may contain a restatement of the legal issues or of the facts if the respondent so desires. In all other respects, the respondent's brief should comply with Rule 128.01. Respondents who have common interests may file a joint brief.

Rule 128.03. This rule is similar to P. Fed. R. App. P. 28(c). The reply brief should be confined to strict rebuttal and should not contain a re-argument of matters discussed in the appellant's brief.

Rule 128.04. Because of the abolition of the printed Record, references in the briefs to the record will ordinarily fall into these categories:

(a) If reference is made to a part of the record which is reproduced in the appendix required by Rule 130.01, a simple citation such as "A.3" or "A.11", indicating matters which appear at pages 3 or 11 of the appendix, will be sufficient. If the respondent files an appendix, (Rule 130.02), a citation such as "RA. 7" will be sufficient. Folio numbers are not required and are unnecessary.

(b) If reference is made to testimony or other matters contained in the transcript, a simple citation such as "T. 21" or "T. 104", indicating matters which appear at pages 21 or 104 of the transcript will be sufficient. It is not necessary to specify the line or lines of a page of the transcript.

(c) If reference is made to a pleading, exhibit or other document contained in the record, an intelligible abbreviation identifying such document and the page thereof is sufficient.

(d) If a party elects to print a supplemental record pursuant to Rule 130.04, the references to matters contained in the supplemental record should be "SR. 33" or "SR. 52", etc.

Rule 128.05. This rule is substantially the same as P. Fed. R. App. P. 28(f). Statutes, ordinances, rules, etc. must be reproduced verbatim if they are material to a determination of the issues.

Rule 129. Brief of an Amicus Curiae

Upon prior notice to the parties, a brief of amicus curiae may be filed by leave of the Supreme Court. A request for leave shall identify the interest of the applicant and shall state the reason why a brief of an

amicus curiae is desirable. Copies of an amicus curiae brief shall be served on the parties. An amicus curiae will not participate in oral argument.

NOTES TO RULE 129

This rule is similar to P. Fed. R. App. P. 29. Prior notice to the parties is required to afford them an opportunity to object if they have reason to believe that a request for leave to file an amicus curiae brief is improper and should not be granted. The proper function of an amicus curiae brief is to advise the Court on doubtful matters of law or to remind the Court of legal matters which might escape its notice. State v. Finley, 242 Minn. 288, 64 N.W. 2d 769 (1954).

Rule 130. The Appendix to the Briefs; Supplemental Record

130.01 Record Not to be Printed; Appellant to File Appendix.

(1) The record shall not be printed. The appellant shall prepare and file an appendix to his brief which shall contain the following portions of the record:

(a) the relevant pleadings;

(b) relevant written motions and orders;

(c) the trial court's instructions and the verdict, or the findings of fact, conclusions of law and order for judgment;

(d) relevant post trial motions and orders;

(e) any memorandum opinions;

(f) any portion of the transcript containing a discussion of the trial court's instructions and any relevant requests for instructions if the instructions are challenged on appeal;

(g) any judgments; and

(h) the notice of appeal.

The parties shall have regard for the fact that the entire record is always available to the Supreme Court for reference or examination and shall not engage in unnecessary reproduction.

(2) If the record includes a statement of the proceedings (made pursuant to Rule 110.03) or an agreed statement (made pursuant to Rule 110.04), the statement shall be included in the appendix.

130.02 Respondent May File Appendix.

If the respondent determines that the appendix filed by the appellant omits any items specified in Rule 130.01, he may prepare and file an appendix to his brief containing the omitted items.

130.03 Party May File Supplemental Record; Not Taxable Cost.

A party may prepare and file a supplemental record, suitably indexed, containing any relevant portion of the record not contained in the appendix. The original paging of each part of the transcript set out in the supplemental record shall be indicated by placing in brackets the number of the original page at the place where the page begins. If the transcript is abridged, the pages and parts of pages of the transcript omitted shall be clearly indicated following the index and at the place where the omission occurs. A question and its answer may be contained in a single paragraph. The cost of producing the supplemental record shall not be a taxable cost.

NOTES TO RULE 130

This rule is substantially dissimilar to P. Fed. R. App. P. 30 and abolishes the printed record on appeal required by Minn. Sup. Ct. R. VIII (2) and X.

Rule 130.01. The record, for appeal purposes, is defined in Rule 110. The appellant is required to reproduce only a small part of such record. Items (b), (d) and (f) should not be included in the appendix unless they are pertinent to an understanding of the issues. The appendix should not contain any items which are not specified in this rule.

Rule 130.02. If the appellant fails to comply with Rule 130.01, the respondent may file an appendix containing the omitted items.

Rule 130.03. If a party wishes to reproduce any part of the record not specified in Rule 130.01, he may do so in a separate volume entitled "Supplemental Record." The Supplemental Record is strictly optional and its cost may not be taxed as a disbursement. The privilege of filing a Supplemental Record should be used sparingly and only when a party sincerely believes that it will be of significant aid to the court in important cases.

Rule 131. Filing and Service of Briefs, the Appendix, and the Supplemental Record

131.01 Time for Filing and Service.

The appellant shall serve and file his brief and appendix within 60 days after delivery of the transcript by the reporter. The respondent shall serve and file his brief and appendix, if any, within 30 days after service of the brief of appellant. The appellant may serve and file a reply brief within 15 days after service of respondent's brief. If a party prepares a supplemental record, the supplemental record shall be served and filed with his first brief.

131.02 Number of Copies to be Filed and Served.

Seventeen copies of each brief, appendix, and supplemental record, if any, shall be filed with the clerk of the Supreme Court, and two copies shall be served on the attorney for each party to the appeal separately represented. The clerk shall not accept a brief, appendix, or supplemental record for filing unless it is accompanied by admission or proof of service as required by Rule 125.

NOTES TO RULE 131

This rule is dissimilar to Minn. Sup. Ct. R. VIII (2) and to P. Fed. R. App. P. 31. The date of delivery of the transcript determines the subsequent time periods. Rule 110.02(2) requires the reporter to file a certificate of the time of delivery with the Clerk of the Supreme Court. The appellant has 60 days to file his brief, and the respondent has 30 days thereafter. The time period for the reply brief is extended from 10 to 15 days. The number of copies for the court is increased from 15 to 17.

Rule 132. Form of Briefs, Appendices, Supplemental Records, and Motions and Other Papers

132.01 Form of Briefs, Appendices, and Supplemental Records.

(1) Briefs and appendices shall be produced by standard typographical printing. Any other duplicating or copying process capable of producing a clear black image on white paper may be used with special permission of the Supreme Court. All material (other than footnotes) must appear in at least 11 point type, or the equivalent thereof, on unglazed opaque paper. Briefs and accompanying appendices shall be bound together in volumes having pages 9 by 7 inches, and type

matter 7 by 4-1/6 inches. The right-hand margins need not be justified. The pages of the appendix shall be separately numbered.

(2) The front cover of the brief and appendix shall contain: (a) the name of the court and the number of the case which number shall be printed or lettered in bold-face print or prominent lettering, the equivalent of 18 point figures, and shall be located one-half inch from the top center of the cover; (b) the title of the case; (c) the title of the document, e.g., Appellant's Brief and Appendix; and (d) the names, addresses, and telephone numbers of the attorneys representing each party to the appeal.

(3) Supplemental records shall be bound in separate volumes and shall, in all other respects, comply with this rule.

132.02 Form of Motions and Other Papers.

(1) Papers not required to be produced in the manner prescribed in Rule 132.01 may be typewritten or otherwise duplicated upon unglazed opaque paper, 13 by 8 1/2 inches in size. Typewritten matter must be double-spaced. All copies must be legible.

(2) Each such paper shall contain a caption setting forth the name of the court, the title of the case, the file number, and a brief descriptive title of the paper; and shall be subscribed by the attorneys preparing the paper together with their addresses and telephone numbers.

NOTES TO RULE 132

This rule is patterned on P. Fed. R. App. P. 32 and is similar to Minn. Sup. Ct. R. X. The traditional page, margin and type size requirements for briefs are retained. However, other forms of reproduction which comply with this rule may be used if the Supreme Court so permits. If other methods of reproduction are used, the right hand margin of each page need not be of uniform width so long as the minimum margin is preserved. The brief and appendix are bound together. However, the pages of the appendix are separately numbered. Supplemental records, if any, are bound separately. The names of all of the attorneys, properly identified, appear on the covers of all briefs, etc.

Other documents, such as motions, may be typewritten on regular legal-sized paper.

Rule 133

(reserved for future use)

Rule 134. Oral Argument

134.01 Notice of Hearing; Postponement.

The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the hearing must be made by motion filed reasonably in advance of the date fixed for hearing.

134.02 Time Allowed for Argument.

Except as provided in Rule 134.07, the appellant shall be entitled to a total of 45 minutes, and the respondent to 30 minutes, for oral argument. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary by motion filed in advance of the date fixed for hearing.

134.03 Order and Content of Argument.

The appellant is entitled to open and conclude the argument. It is the duty of counsel for appellant to state the case and facts fairly, with complete candor, and as fully as necessary for consideration of the issues to be presented. The appellant shall precede the statement of facts with a summary of the questions to be raised. Counsel should not read at length from the record, briefs or authorities.

134.04 Non-Appearance of Counsel.

If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

134.05 Submission on Briefs.

By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

134.06 Exhibits; Plats.

(1) If any exhibits are to be used at the hearing, counsel shall arrange to have them placed in the courtroom before the Court convenes on the date of the hearing. Counsel will also see that all photographic exhibits shall be in court for the oral argument.

(2) In cases where a plat or diagram will facilitate an understanding of the facts or of the issues involved, counsel for appellant shall have in court a plat or diagram of sufficient size and distinctness to be visible to the court. The plat or diagram may be drawn on the courtroom blackboard.

134.07 Oral Argument - When Allowed.

(1) In the following actions no oral argument is allowed:

(a) Actions for the recovery of money only, or for specific personal property, where the amount or the value of the property involved in the appeal shall not exceed $2,000.

(b) Appeals from orders involving only questions of practice, or forms or rules of pleading.

(c) Appeals from the clerk's taxation of costs.

(d) Appeals from municipal court.

(2) In the following actions appellant shall be entitled to 25 minutes in all and respondent to 15 minutes:

(a) Actions for the recovery of money only, or for specific personal property, where the amount or value of the property involved in the appeal is more than $2,000 but does not exceed $5,000.

(b) Cases involving decisions of administrative bodies other than the Tax Court.

(c) Cases to determine settlement for poor purposes.

(d) Divorce cases where only alimony or custody, or both, are involved.

(e) Appeals from a post-conviction remedy, habeas corpus, or similar proceeding involving a post-appeal review of a conviction in a criminal case.

(3) Application for leave to argue a case orally when oral argument is not otherwise permitted shall be made by letter at the time of filing of appellant's brief.

(4) Whenever any member of the court is not present at the oral argument of a case, such case shall be deemed submitted to such member of the court on the record and briefs therein and when during the consideration of a case there is a change in the personnel of the court the case shall be deemed submitted to the new member or members on the record and briefs.

NOTES TO RULE 134

Rule 134.01. This rule is the same as P. Fed. R. App. P. 34(a) and similar to Minn. Sup. Ct. R. IX. No change in practice is made.

Rule 134.02. This rule is similar to P. Fed. R. App. P. 34(b) and Minn. Sup. Ct. R. XIII. The present Minnesota practice of giving the appellant 15 minutes more than the respondent is retained. Counsel need not use their full allotted time. The rule does not provide for the situation where there are multiple parties with divergent interests. In this situation, the parties should promptly notify the court to obtain additional time if necessary. Ordinarily additional time will not be granted to co-parties who have the same interests.

Rule 134.03. This rule is similar to P. Fed. R. App. P. 34(c) and Minn. Sup. Ct. R. VIII (4) and XIII. The appellant is required to state the issues and the facts prior to an argument of the issues. The closing argument of the appellant must be confined to rebuttal matters. If counsel intends to argue an authority not mentioned in the briefs, such as a case decided after the briefs are submitted, courtesy dictates that he give the other parties reasonable notice of his intent.

Rules 134.04 and 134.05. These rules are the same as P. Fed. R. App. P. 34(e) and (f) and similar to Minn. Sup. Ct. R. XIII. Failure to appear does not constitute a default. However, if counsel does not intend to appear, courtesy dictates that he should so inform the Court and the other parties. If the parties decide to waive oral argument, they should promptly inform the clerk.

Rule 134.06(1). This rule is similar to P. Fed. R. App. P. 34(g) and Minn. Sup. Ct. R. V. Oral argument is not to be interrupted or delayed to obtain exhibits from the clerk's office.

Rule 134.06(2). This rule is similar to Minn. Sup. Ct. R. V. There is no comparable proposed federal rule. The rule is generally pertinent to land boundary disputes and intersectional automobile cases, but it may apply in a wide variety of situations. Failure to provide a necessary plat or diagram may result in a disallowance of costs and disbursements. The rule is applicable

even though no such plat or diagram was used in the trial court. There is no prohibition in the rules against the use of any type of demonstrative aids (such as models, charts, enlarged photographs, etc.) provided that they correctly illustrate the facts and are legitimately helpful.

Rule 134.07. This rule is substantially the same as Minn. Sup. Ct. R. XIII. There is no comparable federal rule. The monetary limitations formerly contained in Rule XIII of $500 and $1,000 are raised to $2,000 and $5,000 respectively.

Rule 135. En Banc and Divisions Hearings

(1) Cases set for oral argument or submitted on the briefs will be heard either en banc or by a division of the court. The Chief Justice will sit with each division and will assign 4 associate justices, including any retired justice serving pursuant to Minnesota Statutes, Section 2.724, Subd. 2, to sit as a division of the court to hear and decide cases assigned to such division. The assignment of associate justices will be made on a rotating basis and may be changed as may be required by disqualification or illness of a justice.

(2) The administrative assistant to the court is hereby designated as a referee of the court for the purpose of reviewing the record, transcript, and briefs in all cases and submitting to all justices of the court his recommendations for the classification of cases for assignment to the en banc or to a division calendar, according to the legal and judicial significance of the issues raised. Any one justice of the court may order a case to be placed on the en banc calendar rather than a division calendar. The Chief Justice, in his discretion and according to the requirements of composing the calendar, shall accept, reject, or revise the recommended classification of cases. Thereafter, the clerk shall prepare the calendar.

(3) The decision of a case by a division of the court shall be by the concurrence of four justices. If four justices do not concur in the decision, the case shall be re-set for an en banc hearing. A copy of the tentative written opinion of a division in each case, prior to filing with the clerk, shall be circulated among the justices who did not sit on the case, and any two

justices of the court, by questioning the decision, may signify their doubt as to the decision of the division, in which event the case, at a further conference of the court, may be re-set for an en banc hearing. An en banc hearing under this paragraph shall be scheduled at the earliest practiceable date, at which hearing the argument time allotted by Rule 134 shall not apply, but counsel for the parties will appear to answer legal or factual questions posed by the court. No additional briefs need be filed unless requested by the court.

NOTES TO RULE 135

This is the same as Minn. Sup. Ct. R. XXII which was adopted October 3, 1967. The Administrative Assistant to the Court will review the briefs and records in each case and will make a preliminary recommended classification of the case according to its legal or judicial significance. If any one justice feels that a case has been erroneously classified as a divisions case, he has the right to place the case on the en banc calendar of the Court. The Chief Justice will make the ultimate decision of whether a particular case will be heard en banc or by a division. When a case is heard by a division, five justices will hear the oral arguments or have the matter submitted to them on the briefs and the records. They may decide the matter by either a unanimous vote or by a 4 - 1 decision. In the rare instance in which a divisions case on the calendar must be continued, it will be re-set for argument before the same members of the division which would have heard it on the scheduled date.

Rule 136. Notice of Decision; Judgment; Remittitur

136.01 Notice of Decision.

Upon the filing of a decision or order which determines the matter, the clerk shall mail a copy thereof to the attorneys for the parties and to the trial court. The mailing of such copy shall constitute notice of the filing.

136.02 Entry of Judgment; Stay.

The clerk shall enter judgment pursuant to the decision or order not less than ten days after the filing thereof. The service and filing of a petition for rehearing shall stay the entry of the judgment.

136.03 Remittitur.

The clerk of the Supreme Court shall transmit the remittitur to the clerk of the trial court when judgment is entered, unless the prevailing party files an objection to the remittitur pursuant to Rule 136.04. The remittitur shall contain a certified copy of the judgment of the Supreme Court signed by the clerk.

136.04 Objection to Remittitur.

Unless otherwise ordered by the Supreme Court, the prevailing party's properly taxed costs and disbursements shall be paid by the losing party before he shall be entitled to a remittitur. If the prevailing party serves and files a written objection to remittitur on or before the day set for the taxation of costs and disbursements, the clerk shall not transmit the remittitur to the clerk of the trial court until the costs and disbursements are paid. If it shall appear to the satisfaction of the Supreme Court that the losing party is unable to pay the costs and disbursements, it may permit the remittitur.

NOTES TO RULE 136

Rules 136.01, 136.02 and 136.03. These rules are based on Minn. Sup. Ct. R. XIV and are dissimilar to P. Fed. R. App. P. 36. No change in the present Minnesota practice is made. The clerk usually enters judgment 10 to 15 days following the filing of the decision unless a petition for rehearing is pending. Remittitur is made following the entry of judgment unless an objection to remittitur is made. Once made, the Court will not ordinarily recall a remittitur unless the remittitur was irregularly issued or contains clerical error. Kasal v. Kasal, 228 Minn. 570, 37 N.W. 2d 711 (1949).

Rule 136.04. This rule is the same as M. S. A. § 607.02. The prevailing party may prevent remittitur until his costs and disbursements are paid. If the losing party is unable to pay the costs and disbursements, the Court may order remittitur.

Rule 137. Judgment Roll, Executions

137.01 Judgment Roll.

In all cases the clerk shall attach together the bond and notice of appeal certified and returned by the clerk of the trial court and a certified copy of the judgment of the Supreme Court, signed by him; and these papers shall constitute the judgment roll.

137.02. Execution; Issuance and Satisfaction.

Executions to enforce any judgment of the Supreme Court may issue to the sheriff of any county in which a transcript of the judgment is filed and docketed. Such executions shall be returnable within 60 days from the receipt thereof by the officer. On the return of an execution satisfied in due form of law the clerk shall make an entry thereof upon the record.

NOTES TO RULE 137

This rule is the same as Minn. Sup. Ct. R. XVII and XVIII. No change in practice is made.

Rule 138. Damages for Delay

If an appeal delays proceedings on the judgment of the trial court and appears to have been taken merely for delay, the Supreme Court may award just damages and single or double costs to the respondent.

NOTES TO RULE 138

This rule is the same as P. Fed. R. App. P. 38. M.S.A. § 607.02 permits the allowance of not more than 3% of the judgment as damages for delay and is restricted to cases involving the recovery of money. This rule gives the Supreme Court a much wider area of discretion to award just damages in respect to the patently non-meritorious appeal.

Rule 139. Costs and Disbursements

139.01 Costs.

Unless otherwise ordered by the Supreme Court, the prevailing party shall recover costs as follows: (1) Upon a judgment in his favor on the merits, $25; (2) Upon a dismissal, $10.

139.02 Disbursements.

Unless otherwise ordered by the Supreme Court, the prevailing party shall be allowed his disbursements necessarily paid or incurred.

139.03 Taxation of Costs and Disbursements; Time.

Costs and disbursements shall be taxed by the clerk upon 2 days' written notice served and filed by the prevailing party. The costs and dis-

bursements so taxed shall be inserted in the judgment. Failure to tax costs and disbursements within 15 days after the filing of the decision or order shall constitute a waiver thereof.

139.04 Objections; Appeal.

Written objections to the taxation of costs and disbursements may be served and filed on or before the time set for the taxation thereof. A party may appeal to the Supreme Court from the clerk's taxation by serving and filing a notice of appeal within 6 days from the date of taxation by the clerk.

139.05 Disallowance of Costs and Disbursements.

The clerk, in the first instance, and the Supreme Court upon appeal from the clerk's taxation, or upon its own motion, may disallow the prevailing party's costs or disbursements or both, in whole or in part, for a violation of these rules or for other good cause. The prevailing party will not be allowed to tax as a disbursement the cost of reproducing parts of the record in the appendix which are not relevant to the issues on appeal.

NOTES TO RULE 139

This rule is basically the same as M.S.A. §§ 607.01 and 607.02 and Minn. Sup. Ct. R. XV. It is dissimilar to P. Fed. R. App. P. 39. A prevailing party is one who procures a reversal or modification of the judgment or order from which the appeal is taken. State v. Robinson, 266 Minn. 166, 123 N.W. 2d 812 (1963). Costs and disbursements must be taxed within 15 days after the filing of the decision. The other party may object to the taxation and may appeal to the court from the clerk's denial of the objection. The court, on its own motion, may deny costs and disbursements either for violation of these rules or for any other sufficient reason.

Rule 140. Petition for Rehearing

A petition for rehearing may be filed within 10 days after the filing of the decision or order unless the time is enlarged by order of the Supreme Court within the 10-day period. The petition shall set forth with particularity any controlling statute, decision, or principle of law, any

material fact, or any material question in the case which, in the opinion of the petitioner, the Supreme Court has overlooked, failed to consider, misapplied, or misconceived. The petition shall be served upon the opposing party who may answer within 5 days thereafter. Oral argument in support of the petition will not be permitted. Eleven copies of the petition, produced and sized as required by Rule 132.01, shall be filed with the clerk, except that any duplicated copy, other than a carbon copy, of a typewritten original may also be filed. A filing fee of $25 shall accompany the petition for rehearing. The filing of a petition for rehearing stays the entry of judgment until disposition of such petition. It does not stay the taxation of costs.

NOTES TO RULE 140

This rule is similar to Minn. Sup. Ct. R. XX and dissimilar to P. Fed. R. App. P. 40. The rule codifies the acceptable bases for a rehearing contained in Derby v. Gallup, 5 Minn. 119 (85) (1860).

Rule 141

(reserved for future use)

Rule 142. Dismissal; Default

142.01 Voluntary Dismissal.

If the parties to an appeal or other proceeding shall sign and file with the clerk a stipulation that the proceedings be dismissed, the clerk shall enter an order of dismissal accordingly.

142.02 Default of Appellant.

The respondent may serve and file a motion for judgment of affirmance or dismissal if the appellant shall fail or neglect to serve and file his brief and appendix as required by these rules. If the appellant is in default for 30 days and respondent has not made a motion under this rule, the Supreme Court shall order the appeal dismissed without notice, subject to reinstatement upon motion to the Supreme Court for good cause shown.

142.03 Default of Respondent.

If the respondent shall fail or neglect to serve and file his brief, the case shall be determined on the merits. If a defaulting respondent has filed a notice of review pursuant to Rule 106, the appellant may serve and file a motion for judgment of affirmance of the judgment or order specified in the notice of review, or for a dismissal of respondent's review proceedings.

NOTES TO RULE 142

Rule 142.01. This rule is similar to P. Fed. R. App. P. 42 and codifies the current Minnesota practice concerning bilateral voluntary dismissals.

Rule 142.02. This rule is based on Minn. Sup. Ct. R. XI. If the appellant is in default for more than 30 days, the appeal is subject to summary dismissal by the court.

Rule 142.03. This rule is based on Minn. Sup. Ct. R. XI. The default of the respondent does not result in a reversal. The matter must be determined on the merits. If the respondent has sought review of an issue pursuant to Rule 106, his default may result in a dismissal of that phase of the appeal.

Rule 143. Parties; Substitution

143.01 Parties.

The party appealing shall be known as the appellant and the adverse party as the respondent. The title of the action shall not be changed in consequence of the appeal.

143.02 Death of a Party.

If any party to the appeal shall die while an appeal is pending in the Supreme Court, the surviving party or the legal representative or successor in interest of the deceased party, shall file with the clerk of the Supreme Court an affidavit showing such death and the name and address of the legal representative or successor in interest. The clerk, after giving notice to the representative or successor in interest, shall substitute the name of such legal representative or successor in interest by or against whom the appeal shall thereafter proceed. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Supreme Court may direct. If a party against whom an appeal may be taken dies after entry of judgment or order in the trial court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this rule. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his personal representative, or, if he has no personal representative, by his attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this rule.

143.03 Substitution for Other Causes.

If substitution of a party in the Supreme Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in Rule 143.02.

143.04 Public Officers.

When a public officer is a party to an appeal or other proceeding in the Supreme Court in his official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

NOTES TO RULE 143

Rule 143.01. This rule is the same as M.S.A. §605.02. The federal practice is different and undesirable.

Rule 143.02. The first half of this rule is the same as M.S.A. §605.225 (1963); the last half is similar to P. Fed. R. App. P. 43(a). The rules specify the procedure to be followed upon the death of a party.

Rule 143.03. This rule is similar to P. Fed. R. App. P. 43(b) and governs the substitution of private parties for reasons other than death.

Rule 143.04. This rule is similar to P. Fed. R. App. P. 43(c) and specifies the procedure to be following upon vacation of office of a public party.

Rule 144. Cases Involving Constitutional Questions Where State is Not a Party

When the constitutionality of an act of the legislature is drawn in question in any proceeding in the Supreme Court to which the state or an officer, agency, or employee of the state is not a party, the party asserting the unconstitutionality of the act shall notify the attorney general thereof.

NOTES TO RULE 144

This rule is similar to P. Fed. R. App. P. 44. The notice required by this rule must be given upon appeal

even though the party has previously notified the attorney general pursuant to Minn. R. Civ. P. 24.04 while the matter was in the trial court. If the proper notice was not given to the attorney general pursuant to Rule 24.04, the Supreme Court will refuse to review the constitutional question on appeal unless the constitutional question pertains to the lack of jurisdiction of the court. Campbell v. Glenwood Hills Hospitals, 142 N.W. 2d 255 (Minn. 1966); Oak Center Creamery Co. v. Grobe, 264 Minn. 435, 119 N.W. 2d 729 (1963). In original proceedings in the Supreme Court, notice pursuant to this rule is sufficient.

Rule 145. Appendix of Forms

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

Rule 146. Title

These rules may be known and cited as Rules of Civil Appellate Procedure.

Rule 147. Effective Date; Statutes Superseded

147.01 Effective Date and Application to Pending Proceedings.

These rules will take effect on February 1, 1968. They govern all civil appeals and proceedings brought after they take effect, and also all further proceedings then pending, except to the extent that in the opinion of the Supreme Court their application in a particular proceeding pending when the rules take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the proceeding was brought applies.

147.02 Statutes Superseded.

Upon the taking of effect of these rules the statutes listed in Appendix A are superseded with respect to practice and procedure in the Supreme Court.

NOTES TO RULES 145-147

These rules are substantially the same as Minn. R. Civ. P., Rules 84, 85 and 86, relative to citation, effective date, and appendices of forms and superseded statutes.

* * * * * * * *

The proposed federal rules, P. Fed. R. App. P. 45, and the Minnesota rules, Minn. Sup. Ct. R. I, both contain a rule detailing a few of the duties of the clerk of the appellate court; this code omits such a rule. The clerk of the Supreme Court of Minnesota, is appointed by the Court and is subject to the direct and immediate control of the Court. It is felt that no useful purpose is served by encumbering a code of rules of procedure with a partial list of the duties of the clerk.

APPENDIX A

List of Statutes Superseded by Rules*

Minnesota Statutes 1965	Rules
§357.021 ~~(40)~~ Rule 2 (9)	103.01
§357.08 (2)	103.01, 115.03, 120.04
c.586	120
c.587	120
§605.001	101
§605.01	101
§605.02	143.01
§605.03	103.01
§605.045	103.01
§605.05	103.04
§605.065	106
§605.07	142.01
§605.08	104
§605.09	103.03
§605.10	107
§605.115	108.01
§605.14	108.02
§605.16	108.03
§605.17	108.04
§605.18	108.05
§605.19	108.01
§605.20	108.06
§605.21	101
§605.225	143.02
c.606	120
§607.01	139.01, .02
§607.02	136.04, 138

*Note. The listed statutes are superseded only insofar as they pertain to appellate practice and procedure. See Rule 147.02.

APPENDIX B

FORMS

Form 1. Notice of Appeal

State of Minnesota — District Court

County of_____ — _____ Judicial District

A. B.,)
Plaintiff,)
v.)
C. D.,)
Defendant.)

NOTICE OF APPEAL

No. _____

To: John Brown, Attorney for Plaintiff A. B.:

Please take notice, that the defendant C. D. appeals to the Supreme Court of the State of Minnesota from the order of the District Court entered on August 10, 1966, denying defendant's motion for a new trial.

Dated: August 30, 1966

SMITH & JONES

By_____
John Jones
Attorneys for Defendant C. D.
(address and telephone number)

(The trial court caption is used in the notice of appeal and the cost or supersedeas bond or the stipulation waiving bond; and the original and duplicate original is filed with the clerk of the trial court. All subsequent documents bear the Supreme Court caption and are filed with the clerk of the Supreme Court.)

Form 2. Notice of Review

No. ____

State of Minnesota

In Supreme Court

A. B.,	)	
Plaintiff- Respondent,	)	
v.	)	NOTICE OF REVIEW
C. D.,	)	
Defendant-Appellant.	)	

To: Smith & Jones, Attorneys for Appellant C. D.:

Please take notice, that the Respondent A. B. will seek review of the order of the District Court entered on August 10, 1966, denying plaintiff's motion for new trial on the issue of damages.

Dated: September 8, 1966

JOHN BROWN

By_____
John Brown
Attorney for Respondent A. B.
(address and telephone number)

Form 3. Petition for Writ of Certiorari

No. ____

State of Minnesota

In Supreme Court

A. B.,	)	
Respondent,	)	
v.	)	PETITION FOR WRIT OF CERTIORARI
X. Y. Z. Co., et al,	)	
Relators.	)	

To: The Supreme Court of the State of Minnesota:

The relators above named hereby petition the Supreme Court for a Writ of Certiorari to review a decision of the ~~Industrial~~ Workmen's Compensation Commission filed on October 1, 1966, upon the grounds that it is not in conformity with the terms of the Workmen's Compensation Act and is unwarranted by the evidence.

Dated: October 15, 1966

SMITH & JONES

By_____
John Jones
Attorneys for Relators
(address and telephone number)

Form 4. Writ of Certiorari

(Title as in Form 3)

WRIT OF CERTIORARI

To: The ~~Industrial~~ Workmen's Compensation Commission of Minnesota:

You are hereby ordered to return to this court within 30 days from date hereof the record, exhibits and proceedings in the above entitled matter to the end that the decision of the ~~Industrial~~ Workmen's Compensation Commission filed on October 1, 1966, may be reviewed by this court.

Copies of this writ and the petition herein shall be served forthwith personally or by mail by relator upon the Secretary of the ~~Industrial~~ Workmen's Compensation Commission and upon _____, attorneys for respondent and proof of service filed herein.

Witness the Honorable Oscar R. Knutson, Chief Justice of the Supreme Court of Minnesota, and the seal of this Court, this 17th day of October, 1966.

(SEAL)

_____
Mae Sherman
Clerk of Supreme Court

Form 5. Petition for Writ of Prohibition

No. _____

State of Minnesota

In Supreme Court

A. B.,	)	
Plaintiff-Petitioner,	)	
v.	)	PETITION FOR WRIT OF PROHIBITION
C. D.,	)	
Defendant-Respondent.	)	

To: The Supreme Court of the State of Minnesota:

The Petitioner, A. B., requests a writ of prohibition on the following grounds:

1. On January 2, 1966, A. B., as plaintiff, commenced an action against C. D., as defendant, in the District Court, County of _____, _____ Judicial District, to recover damages for personal injuries sustained in an automobile accident and caused by the negligence of Defendant C. D.

2. On February 1, 1966, Defendant C. D. noticed the deposition of Mrs. A. B., the wife of petitioner, a copy of which is attached.

3. On February 3, 1966, Plaintiff A. B. moved said District Court for a protective order restraining C. D. from taking the deposition of Mrs. A. B., a copy of which is attached.

4. On February 14, 1966, the Honorable _____, Judge of said District Court, made and filed an order denying said motion and directing that the deposition of Mrs. A. B. be held on March 1, 1966, a copy of which order is attached.

5. A. B. has asserted and continues to assert the marital privilege afforded to him by M.S.A. §595.02(1). The issue presented by these proceedings is whether that privilege is applicable to discovery depositions.

6. The order of February 14, 1966, is in violation of said statute and contrary to law in that the District Court lacks power or authority to compel the testimony of Mrs. A. B. in the instant case. If the deposition is taken, irreparable harm will result to petitioner who has no adequate remedy at law.

WHEREFORE, the petitioner prays for a writ of prohibition restraining the District Court from enforcing the order of February 14, 1966.

Dated: February 16, 1966

JOHN BROWN

By_____
John Brown
Attorney for Petitioner
(address and telephone number)

Form 6. Order

(Title as in Form 5)

ORDER

Upon the petition of A. B. for a writ of prohibition, IT IS ORDERED:

1. All further proceedings in the District Court, County of _____, _____ Judicial District, in respect to the order of said court of February 14, 1966, denying A. B.'s motion to restrain C. D. from taking the deposition of Mrs. A. B., are stayed until further order of this court.

2. The petitioner shall forthwith serve copies of this order on _____, attorneys for Respondent C. D. and on _____, Judge of said District Court.

3. The petitioner shall serve and file a written brief on or before March 15, 1966. Respondent C. D. shall serve and file an answer to the petition and a written brief on or before April 10, 1966.

Dated: February 17, 1966

Chief Justice

Form 7. Writ of Prohibition

(Title as in Form 5)

WRIT OF PROHIBITION

The State of Minnesota to the Honorable _____, Judge of District Court, County of _____, _____ Judicial District:

Whereas, upon consideration of the petition and brief of A. B. and the answer and brief of Respondent C. D., this Court has determined that A. B. is entitled to the relief requested in said petition,

NOW, THEREFORE, We do command and direct that you immediately upon receipt of a copy of this writ vacate and set aside your order of February 14, 1966, and that you grant to said A. B. the relief requested in his motion of February 3, 1966. Copies of this writ shall be served forthwith by mail by A. B. upon you and upon respondent and proof of service filed herein.

Witness the Honorable Oscar R. Knutson, Chief Justice of the Supreme Court of the State of Minnesota, and the seal of this Court, this 1st day of May, 1966.

(SEAL)

Mae Sherman
Clerk of Supreme Court

Form 8. Appellant's Brief and Appendix

(cover)

No.___

State of Minnesota

In Supreme Court

A. B.,)

Plaintiff-Respondent,)

v.)

C. D.,)

Defendant-Appellant.)

APPELLANT'S BRIEF AND APPENDIX

JOHN BROWN
Attorney for Respondent
(address and telephone number)

SMITH & JONES
John Jones
Attorneys for Appellant
(address and telephone number)

* * * * * * * * *

TABLE OF CONTENTS

* * * * * * * * *

TABLE OF AUTHORITIES

* * * * * * * * *

LEGAL ISSUES

I. Does one who, without negligence, participates in the creation of a dangerous condition in a public highway, have a duty to exercise reasonable care to remove the condition or warn others of its presence?

Trial court held: In the affirmative.

II. Does the driver of a vehicle on an arterial highway have an obligation to reduce his otherwise legal speed until such time as he reasonably should have seen that the driver of an automobile on an intersecting street was not going to stop?

Trial court held: In the affirmative.

III. May a physician, who is called as an expert witness, give an opinion concerning the physical condition of a party which opinion is based, in part, on the opinions of other physicians who did not testify?

Trial court held: In the affirmative.

* * * * * * * * *

STATEMENT OF FACTS

This is an action to recover damages sustained by plaintiff as a result of an automobile accident which occurred on May 5, 1965, at an intersection of North Street and West Avenue in Saint Paul, Minnesota (A. 1, 2). The matter was tried in the District Court, _____ County, _____ Judicial District, Judge _____ presiding. The jury returned a verdict for plaintiff in the amount of $17,000 (A. 7). The defendant appealed from an order denying his motion for a new trial (A. 11, 12).

The accident occurred at 11:30 p.m. (T. 4). It was raining heavily at the time (T. 11, 15). The defendant C. D. was driving his Jaguar automobile in an easterly direction on West Avenue (T. 24). Plaintiff was ...

(The remainder of the facts should be stated in compliance with Rule 128.01(3) accompanied by appropriate citations to the appendix and transcript.)

* * * * * * * * *

ARGUMENT

I. One who, without negligence, participates in the creation of a dangerous condition in a public highway does not have a duty to exercise reasonable care to remove the condition or warn others of its presence.

(Each legal issue should be argued separately. See Rule 128.01(4).)

II. The driver of a vehicle on an arterial highway does not have an obligation to reduce his otherwise legal speed until such time as he reasonably should have seen that the driver of an automobile on an intersecting street was not going to stop.

(Argument)

III. A physician, who is called as an expert witness, may not give an opinion concerning the physical condition of a party which opinion is based, in part, on the opinions of other physicians who did not testify.

(Argument)

Conclusion

(The conclusion shall contain a statement of the precise relief sought)

Respectfully submitted,

SMITH & JONES
John Jones
Attorneys for Appellant
(address and telephone number)

* * * * * * * * *

Appendix

(The pages of the appendix shall be separately numbered. See Rule 132.01(1))