

STATE OF MINNESOTA
IN SUPREME COURT
ADM09-8006

FILED

May 30, 2019

**OFFICE OF
APPELLATE COURTS**

**ORDER PROMULGATING AMENDMENTS TO THE
RULES OF CIVIL APPELLATE PROCEDURE**

The Advisory Committee for the Rules of Civil Appellate Procedure met in 2018 to consider suggested changes to the rules for consistency in practice and to clarify procedures. In a report filed on October 1, 2018, the committee recommended several amendments to the rules.¹ We opened a public comment period, which drew two written comments. The advisory committee considered the input provided in the written comments, and in a report filed on April 1, 2019, recommended additional amendments to the Rules of Civil Appellate Procedure.

We have reviewed the proposed amendments and the committee's explanations of those amendments. We agree with the committee that the recommended amendments will clarify the procedures for appeals governed by these rules. In addition, we have made a clarifying amendment to Rule 134.02, which governs notices of hearings in the appellate courts and requests to postpone scheduled hearings. Currently, in addition to the procedures set out in Rule 134 of the Rules of Civil Appellate Procedure, the appellate courts have provided further direction in the Case Dispositional Procedures for the supreme court and in the Special Rules of Practice for the court of appeals. For consistency, the

¹ The committee also recommended amendments to the rules to adopt changes in the rules that establish or calculate deadlines, as recommended by the Advisory Committee for the Rules of Civil Procedure. These proposed amendments, limited to changes to time deadlines in the rules, will be addressed in a separate order.

requirements to provide notice of conflicts with potential argument dates, to update those notices as soon as the information is reasonably available, and to identify the specific circumstances supporting a request to postpone a scheduled argument are now reflected in Rule 134.02.

Based on all the files, records, and proceedings herein,

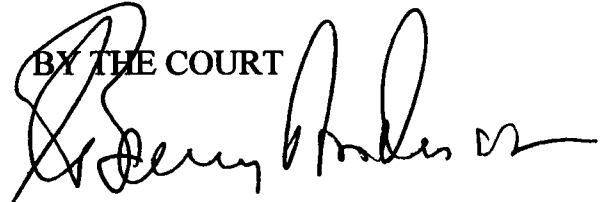
IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Rules of Civil Appellate Procedure are prescribed and promulgated to be effective as of September 1, 2019, and shall apply to all appeals filed on or after the effective date.

2. The Advisory Committee comments are included for convenience and do not reflect court approval of the statements made therein.

Dated: May 30, 2019

BY THE COURT

A handwritten signature in black ink, appearing to read "G. Barry Anderson", with a stylized flourish at the end.

G. Barry Anderson
Associate Justice

AMENDMENTS TO THE RULES OF CIVIL APPELLATE PROCEDURE

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

MINNESOTA RULES OF CIVIL APPELLATE PROCEDURE

TITLE II. APPEALS FROM JUDGMENTS AND ORDERS

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Rule 112. Confidential Or Sealed Information; Sealing of Portions of Record

112.01 Status of Confidential or Sealed Record Material on Appeal

112.02 Handling of Confidential or Sealed Portions of the Appellate Record

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TITLE VII. GENERAL PROVISIONS

Rule 129. Brief of an Amicus Curiae

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129.02 Time for Filing and Service of Brief

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Rule 139. Costs and Disbursements

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~~139.04~~ Objections

139.054 Disallowance of Costs and Disbursements

139.065 Attorneys' Fees on Appeal - Procedure

* * *

Rule 112. Confidential Or Sealed Information; Sealing of Portions of Record

Rule 112.01. Status of Confidential or Sealed Record Material on Appeal

Subdivision 1. Materials Not Available to the Public. Materials that are filed in the trial court as "confidential" or "sealed" as defined in Rule 14 of the General Rules of Practice ~~under seal~~ or in another manner that makes the materials unavailable to the public pursuant to statute, court rule, or trial court order, as well as any documents containing restricted identifiers as defined in Rule 11 of the General Rules of Practice, will remain ~~under seal or not available to the public~~ restricted access on appeal unless either the trial court or appellate court orders otherwise.

Subd. 2. ~~Sealing of~~ Restriction of Access to Materials on Appeal. In situations where material in the record is confidential or trade-secret information that was not protected by a confidentiality order in the trial court, a party may move to have it filed under seal or otherwise restrict access to it on appeal. The motion must demonstrate the need for sealing-restricting access to the information and must set forth the efforts made to maintain the confidentiality of the information before the motion was brought.

Rule 112.02. Handling of Confidential or Sealed Portions of the Appellate Record

Any materials that are filed under seal or in another manner that makes the materials unavailable to the public and that need to be included in an addendum ~~shall be filed in a sealed envelope designated as "Filed under Seal pursuant to Order of the _____ Court dated _____"~~ or in substantially similar form that describes the basis for the assertion of confidentiality. Documents filed electronically must be similarly segregated and designated shall be segregated and designated as such, with a description of the basis for asserting the sealed or non-public status.

* * *

Rule 115. Court of Appeals Review of Decisions of the Department of Employment and Economic Development and Other Decisions Reviewable by Certiorari and Review of Decisions Appealable Pursuant to the Administrative Procedure Act

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

Subdivision 1. Contents and Form of Petition, Writ and Response. The petition shall definitely and briefly state the decision, judgment, order or proceeding that is sought to be reviewed and the errors that the petitioner claims. A copy of the decision and the statement of the case pursuant to Rule 133.03 shall be ~~included in an addendum prepared as prescribed by Rule 130.02~~ filed with the petition. The title and form of the petition and writ shall be as shown in the appendix to these rules. The respondent's statement of the case, if any, shall be filed and served not later than 14 days after service of the petitioner's statement.

* * *

Advisory Committee Comment—2019 Amendments

Rule 115.03, subd. 1 is amended to make clear that the statement of the case must be filed as a separate document from the copy of the decision being appealed, and that an addendum is not required at this early stage in the case. The issues before the court at the time the statement of the case and decision being appealed are filed are (1) whether there is a final agency decision and (2) whether the appeal is timely. This amendment makes Rule 115.03, subd. 1 consistent with the corresponding provisions in Rules 103.01, 114.02, and 116.03.

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

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Subd. 5. Transmission of Record. The record shall be retained by the agency or body until the clerk of the appellate courts requests that it be transmitted to the court. The record shall thereupon be transmitted promptly to the clerk of the appellate courts with a copy of the itemized list of the contents, ~~in quadruplicate.~~

* * *

Rule 117. Petition in Supreme Court for Review of Decisions of the Court of Appeals

Subdivision 1. Filing of Petition.

(a) Timing and service. Any party seeking review of a decision of the Court of Appeals shall separately petition the Supreme Court. The petition with proof of service shall be filed with the clerk of the appellate courts within 30 days of the filing of the Court of Appeals' decision. A filing fee of \$550 shall be paid to the clerk of the appellate courts.

(b) Failure to take other steps. A party's failure to take any step other than timely filing the petition does not require dismissal of the appeal, but permits any action the Supreme Court deems appropriate, including dismissal of the appeal.

* * *

Subd. 5. Amicus Curiae. A request for leave to participate in the appeal as amicus curiae is governed by Rule 129. An applicant who requests leave to participate as amicus if review is granted, and wants to include an argument on the question of granting review, shall file its request to participate as amicus not later than 14 days after the petition is filed.

Advisory Committee Comment—2019 Amendments

Rule 117, subd. 1 is amended to remove any implication in the rule that failing to take any step other than filing the petition for further review requires dismissal of the petition. This rule is derived from Minn. R. Crim. P. 29.04, which governs petitions for further review in criminal cases. The rule does not excuse non-compliance with the Court's rules, but confirms that the Court has the inherent authority to excuse non-compliance in the exercise of its discretion. *Cf. In re J.R.*, 655 N.W.2d 1 (Minn. 2003) (mere 'oversight' or negligence in failing to follow the rules does not excuse non-compliance).

Rule 117, subd 5, is amended to make the same change made in Rule 129.01 to require that any request to participate on appeal as an amicus must be filed either within 14 days of the filing of the petition for further review (PFR) or after the petition has been decided. This change allows the parties an opportunity to respond to the request to participate while the PFR is pending if the request is filed while the PFR is pending.

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Rule 125. Filing and Service

125.01. Filing

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

Except as expressly provided by rule, after an appeal is filed with the appellate courts, filings shall be made with the appellate court using that court's electronic filing system.

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Advisory Committee Comment—2019 Amendments

Rule 125.01, subd. 1(d) is amended to make it clear that the only appellate documents that may properly be filed or served using the district court's e-filing and e-service system are those few appellate documents required to be filed with the district court. Rule 103.01, subd. 1, for example, requires that the notice of appeal be filed with the clerk of the appellate courts, but also requires the simultaneous filing of the notice of appeal with the trial court administrator. Because the appellate courts and district courts have different filing systems, proof of filing or service of an appellate document with the district court system, where permitted, is required by separate proof filed in the appellate court. Rule 109.02 requires that an in forma pauperis motion filed in the district court must be filed with the notice of appeal or petition initiating an appeal. These district court filings must be accomplished using the district court's system, or by any other means allowed by the rules of civil procedure.

Other requirements for filing in the appellate rules must be met by filing with the clerk of the appellate courts. Where the rules either require or permit further actions in the district court, the district court system can be used, but any such filing steps must be taken in the trial court, and they are not considered "filed" with the clerk of the appellate courts. For example, Rule 108.02, subd. 1, requires any motion seeking a stay, approval of the form or amount of security, or suspension or other modification of an injunction to be brought in the district court. Such a motion is properly served and filed in the district court, and is not filed with the clerk of the appellate courts. Rule 108.02, subd. 6, therefore requires that any request for the court of appeals to review the district court decision on the motion include copies of the motion and other submissions to the district court.

* * *

Rule 125.04. Proof of Service

Every document required by these rules to be served on other parties must be filed with proof of service contained on or affixed to the document. Service may be proven by any of the following means:

- (a) Confirmation of service by authorized use of the appellate courts' electronic filing system, in which event separate proof of service need not be filed,
- (b) Written admission of service, or
- (c) An affidavit or certificate of service.

An affidavit or certificate of service is required for any document served with the district court's electronic filing system.

The clerk of the appellate courts may permit documents to be filed without proof of service, but shall require proof of service to be filed promptly after filing the documents.

Advisory Committee Comment—2019 Amendments

Rule 125.04 is amended to make it clear that proof of service must be filed for documents served using the district court's electronic filing system. This amendment is intended to remove confusion over proof of service for the small number of appellate documents that are served and filed in the district court. These include the notice of appeal or petition initiating the appeal (*see* Rule 125.01(d)) and the motion for leave to proceed in forma pauperis (*see* Rule 109.02).

* * *

Rule 129. Brief of an Amicus Curiae

129.01. Request for Leave to Participate

(a) Leave Required. Upon prior notice to the parties, a brief of an amicus curiae may be filed with leave of the appellate court.

(b) Timing of Request. The applicant shall serve and file a request for leave no later than ~~15~~ 14 days after the filing of the notice of appeal, the petition which initiates the appeal, the appellate petition for declaratory judgment, or the appellate court order granting review. Any request for leave to participate filed before a pending petition for review is granted under Rule 117 of these rules shall be served and filed not later than 14 days after the filing of any party's petition for review. This 14-day limitation does not apply to a request for leave to participate limited solely to an issue raised in a conditional cross-petition.

(c) Content of Request. A request for leave shall identify whether the applicant's interest is public or private in nature, identify the party supported or indicate whether the amicus brief will suggest affirmance or reversal, and shall state the reason why a brief of an amicus curiae is desirable.

The request shall not exceed 1,500 words, exclusive of the caption, signature block, and any addendum, and shall be accompanied by a certificate of document length.

129.02. Time for Filing and Service of Brief

Copies of an amicus curiae brief shall be served on all parties and filed with the clerk of the appellate courts with proof of service no later than ~~seven~~ 7 days after the time allowed for filing the brief of the party supported, or if in support of neither party, no later than the time allowed for filing the petitioner's or appellant's brief.

* * *

Advisory Committee Comment—2019 Amendments

Rule 129.01 is amended to make two important changes in amicus practice before the appellate courts. First, all requests for leave to participate as an amicus are limited to 1,500 words, exclusive of the caption, signature block, and any addendum. This limitation is intended to prevent the inclusion of argument not germane to the question of whether the request should be allowed.

The second change establishes a new deadline for filing requests for leave to file an amicus brief—14 days (rather than 15) after the appeal is commenced. The new limitation is designed to level the playing field where any potential amicus asks to participate before the Supreme Court has decided whether to grant a pending Rule 117 petition for further review (PFR). Any request to appear as amicus while a PFR is pending must be filed within 14 days of any party's filing of a PFR. If that deadline is missed, an amicus request cannot properly be filed until the court decides the PFR. This allows the parties to the appeal to express their views on the request for leave in the PFR briefing if appropriate. A companion change is made in Rule 117, subd. 5.

Rule 130. Addendum Required, Appendix Not Permitted

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130.02. Addendum

(a) Contents. Appellant must prepare an addendum and file it with the opening brief or petition, and if filed electronically, the addendum must be submitted as a separate document from the brief or petition. The addendum must include:

- (1) a table of contents identifying each document included in the Addendum, including the Document Index Number from the Register of Actions, if available;
- (2) a copy of any order, judgment, findings, or trial court memorandum in the action directly relating to or affecting the issues on appeal;
- (3) any agreed statement of the record; and
- (4) if the constitutionality of a statute is challenged, proof of compliance with Rule 144.

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

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

- (1) the orders and judgments or other materials required by section (a) of this rule;
- (2) documents included pursuant to Rule 128.04; and
- (3) unpublished decisions if permitted under section (a) of this rule.

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

(c) Respondent's Addendum. The respondent's brief or response to a petition may include an addendum not to exceed 50 pages, which must be ~~incorporated into the back of~~ filed with the brief, and if filed electronically, the addendum must be submitted as a separate document from

the brief or petition. If the addendum filed by appellant omits any material required by section (a) of this rule or pursuant to Rule 128.04, the respondent may include it in the respondent's addendum in addition to the 50 pages otherwise allowed.

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Rule 131. Filing and Service of Briefs and Addenda

131.01. Time for Filing and Service

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Subd. 2. Respondent's Brief. The respondent shall serve and file a brief and addendum, if any, within 30 days after service of the brief of the appellant or the last appellant's brief, if there are multiple appellants, or within 30 days after delivery of a transcript ordered by respondent pursuant to Rule 110.02, subdivision 1, whichever is later. Where the brief of any appellant is served electronically, the additional service of paper copies shall not result in extension of the due date under this rule.

Subd. 3. Reply Brief. The appellant may serve and file a reply brief within ~~ten~~ 10 days after the later of the following:

(a) service of the respondent's brief or the last respondent's brief if there are multiple respondents; or

(b) service of the brief of an amicus curiae granted leave to participate under Rule 129.

Where the foregoing briefs are served electronically, the additional service of paper copies shall not result in extension of the due date under this rule.

Subd. 4. Briefing Schedule for Cross-Appeals; Form of Briefs in Cross-Appeals.

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(c) **Schedule for Filing.** In a case involving a cross-appeal, the appellant's principal brief shall be filed in accordance with Rule 131.01, subdivision 1, and the respondent/cross-appellant's principal brief shall be filed as one brief within 30 days after service of appellant's brief. Appellant/cross-respondent's response and reply brief shall be filed as one brief within 30 days after service of cross-appellant's brief. Respondent/cross-appellant's reply brief may be filed within 10 days after service of appellant/cross-respondent's response and reply brief. Where any of the foregoing briefs is served electronically, the additional service of paper copies shall not result in extension of the due date under this rule.

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(d) **Form of Briefs in Cross-Appeals.** In a case involving a cross-appeal:

* * *

(6) **Cover.** If briefs are formally bound, the cover of the appellant's principal brief must be blue; the respondent/cross-appellant's principal and response brief, red; the appellant/cross-respondent's response and reply brief, yellow; the respondent/cross-appellant's reply brief, gray;

and an intervenor's or amicus curiae's brief, green. These cover color requirements apply only to paper copies of briefs.

Advisory Committee Comment—2019 Amendments

Rule 131.01 is amended to clarify its operation. The rule is amended in three places to make it clear that the time to respond to any brief that is served electronically is governed by the date of that service. Later service of paper copies of the brief as required by Rule 131.03, subd. 1, and orders entered by both appellate courts pursuant to that rule does not extend the response period.

Rule 131.01, subd. 4(d)(6) is amended to make it clear that the cover color requirements in the rules apply only to paper briefs. Electronic copies should not be filed with notation of what color the cover might have been for a paper brief, or have the background of the first page set to a different color. The covers of briefs contain important information, and a colored background makes the cover more difficult to read in electronic format.

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Rule 132. Form of Briefs, Addenda, Supplemental Records, Motions, and Other Documents

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132.03. Form of Documents Filed Electronically

Any documents filed or served electronically shall be in searchable Portable Document Format (PDF), Word, or WordPerfect format. Addendum materials that cannot readily be rendered in searchable form may be in non-searchable PDF format. The brief cover color requirements of these rules do not apply to the version of any brief or addendum that is served or filed electronically.

Advisory Committee Comment—2019 Amendments

Rule 132.03 is amended to make it clear that the cover color requirements in the rules apply only to paper briefs. Electronic copies should not be filed with notation of what color the cover might have been for a paper brief, or have the background of the first page set to a different color. The covers of briefs contain important information, and a colored background makes the cover more difficult to read in electronic format.

* * *

Rule 134. Oral Argument

134.01. Allowance of Oral Argument

Oral argument will be allowed unless:

- (a) no request for oral argument has been made by either party in the statement of the case required by Rule 133.03; or
- (b) a party has failed to file a timely brief as required by Rule 128.02; or

(c) the parties have agreed to waive oral argument pursuant to Rule 134.06; or
(d) any party involved in the appeal is not represented by counsel; or
(e) the appellate court, in the exercise of its discretion, determines that oral argument is unnecessary because:

(1) the dispositive issue or set of issues has been authoritatively settled; or
(2) the facts and legal arguments could be adequately presented by the briefs and record and the decisional process would not be significantly aided by oral argument.

The appellate court shall notify the parties when it has been determined that a request for oral argument has been denied. A party aggrieved by the decision may, within 5 days after the receipt of the notification and pursuant to Rule 127, request the court to reconsider its decision.

134.02. Notice of Hearing; Postponement

When filing the party's initial brief, counsel must provide written notice of any conflicts which limit counsel's availability for argument. Counsel are required to file written notice of updated conflict information as soon as that information is reasonably available to counsel and until the case is scheduled for argument. The clerk of the appellate courts shall notify all parties of the time and place of oral argument. A request for postponement of the hearing must be made by motion filed immediately upon receipt of the notice of the date of hearing, with the motion identifying the specific circumstances that support the requested postponement.

134.03. Time Allowed for Argument

Subdivision 1. Time Allowed. In the Court of Appeals, ~~the appellants shall be granted time not to exceed 30~~ are allowed 20 minutes for oral argument, with 15 minutes for principal arguments and 5 minutes for rebuttal, and the respondents are allowed 15 20-minutes for oral argument. The appellant may reserve a portion of that time for rebuttal. In the Supreme Court, ~~the appellants are allowed~~ shall be granted time not to exceed 35 minutes, and the respondents are allowed time not to exceed 25 minutes, for oral argument. The appellant Appellants in the Supreme Court may reserve a portion of that the allotted time for rebuttal. If multiple parties to the appeal all wish to participate in oral argument, they shall mutually agree to divide the allotted time among themselves.

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134.06. Submission on Briefs

An appeal will be placed on a nonoral calendar and deemed submitted on the briefs on that calendar date in the following circumstances:

- (a) When oral argument has not been requested;
- (b) When oral argument once allowed has been waived by agreement of the parties and consent of the court;
- (c) When any party involved in the appeal is not represented by counsel; or
- (ed) If, pursuant to Rule 134.01(d), oral argument is not allowed.

* * *

Advisory Committee Comment—2019 Amendments

Rules 134.01 and 134.06 are amended to reflect the practice of the appellate courts not to allow oral argument in cases where a party actively involved in an appeal is not represented by counsel authorized to practice before the court, either by admission to the Minnesota bar or admission pro hac vice. See Rule 143.05.

Rule 134.03 is amended to more clearly state the Court of Appeals' policy for allotting time for oral arguments, which is currently in Rule 2 of the Special Rules of Practice for the Minnesota Court of Appeals.

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Rule 136. Notice of Decision; Judgment; Remittitur

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Rule 136.02. Entry of Judgment; Stay

Unless the parties stipulate to an immediate entry of judgment, the clerk of the appellate courts shall enter judgment pursuant to the decision or order not less than 30 days after the filing of the decision or order. The service and filing of a petition for review to, or rehearing in, the Supreme Court shall stay the entry of the judgment. Judgment shall be entered immediately upon the denial of a petition for review or rehearing.

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Rule 139. Costs And Disbursements

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Rule 139.03. Taxation of Costs and Disbursements; Time

~~Costs and disbursements shall be taxed by the clerk of the appellate courts upon five days' written notice served and filed by the prevailing party. The costs and disbursements so taxed shall be inserted in the judgment. Failure to file and serve a notice of taxation of costs and disbursements within 15 days after the filing of the decision or order shall constitute a waiver of taxation, provided that upon reversal in the Supreme Court, a prevailing party in that Court who did not prevail in the Court of Appeals may file and serve a notice for costs and disbursements incurred in both appellate courts within 15 days after the filing of the decision of the Supreme Court, separately identifying costs and disbursements incurred in each court.~~

Subdivision 1. Time for Seeking Costs. A prevailing party seeking taxation of costs and disbursements shall file and serve a notice of taxation of costs and disbursements within 14 days of the filing of the court's order or decision.

Subd. 2. Costs in Supreme Court. Upon reversal in the Supreme Court, a party prevailing in that court who did not prevail in the Court of Appeals may file and serve separate notices for costs and disbursements in each appellate court within 14 days after the filing of the decision of the Supreme Court, separately identifying costs and disbursements incurred in each court.

Subd. 3. Objections. Written objections to any taxation of costs and disbursements shall be filed and served with the clerk of the appellate courts within 7 days after service of the notice of taxation. Failure to file and serve timely written objections shall constitute a waiver.

Subd. 4. Decision on Costs. If no objections are filed, the clerk may tax costs and disbursements in accordance with these rules. If objections are filed, the appropriate appellate court shall determine the amount of costs and disbursements to be taxed. There shall be no appeal from the taxation of costs and disbursements.

Rule 139.04. Objections

~~Written objections to the taxation of costs and disbursements shall be served and filed with the clerk of the appellate courts within 5 days after service of the notice of taxation. Failure to serve and file timely written objections shall constitute a waiver. If no objections are filed, the clerk may tax costs and disbursements in accordance with these rules. If objections are filed, a person designated by the appellate courts, after conferring with the appropriate appellate court, shall determine the amount of costs and disbursements to be taxed. There shall be no appeal from the taxation of costs and disbursements.~~

Rule 139.054. Disallowance of Costs and Disbursements

The appellate court upon its own initiative or the motion of any party 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 which are not relevant to the issues on appeal.

Rule 139.065. Attorneys' Fees on Appeal—Procedure

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Subd. 2. Response. Any response to a motion for fees shall state the grounds for the objections with specificity and shall be filed within ~~ten~~ 14 days of the date the motion is served, unless the appellate court allows a longer time. On the court's own motion or the request of a party, a request for attorneys' fees may be remanded to the district court for appropriate hearing and determination.

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Advisory Committee Comment—2019 Amendments

Rule 139 is amended to clarify its operation. The changes include reorganization of Rules 139.03 and 139.04, replacing them with a new Rule 139.03, with four subdivisions. This rule is intended to describe the procedure used for taxation of costs with greater precision and to remove lack of clarity in the current rule.

Where a party prevails in the Supreme Court after not prevailing in the Court of Appeals, Rule 139.03, subd. 2, specifies that the party file separate notices of costs and disbursements that separately identify the costs incurred in each court. This permits the Supreme Court to review the costs incurred in that court and then to allow the Court of Appeals to determine the costs allowed in that court.