

Writ of Certiorari Appeals

Minnesota Administrative Law & Practice

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Appellate Advocacy & Guidance Group



Minnesota Continuing Legal Education

Minnesota Administrative Law & Practice

A new seminar for Minnesota Administrative Law Practitioners

HIGHLIGHTS INCLUDE:

- Legislative Update and Preview
- Rulemaking: A Case Study
- Tips for Success in Mediation
- Case Law Update
- Post Hearing Best Practices and Analysis
- Process and Procedure of Appealing an Administrative Decision to the Court of Appeals
- Special Judges Panel Luncheon Address
- *And much, much more!*

Featuring a special reception honoring retired Judge George A. Beck and recognition of the William Mitchell College of Law for technical and resource contributions to the "Minnesota Administrative Procedures" Treatise (MAP).

Thursday, September 10, 2015
Minnesota CLE Conference Center
600 Nicollet Mall, Suite 370
Third Floor City Center; Minneapolis

A Roadmap for Certiorari Appeal

1. What is appealable and when
2. Is it worthwhile
3. Have the steps down
4. Perfect the appeal
5. Argue the appeal
6. Win the appeal



Key Resources

- Minnesota Rules for Civil Appellate Procedure
 - Rule 115 (Rule 116 relates to Supreme Court review of Workers' Compensation and Tax Court by Writ of Certiorari)

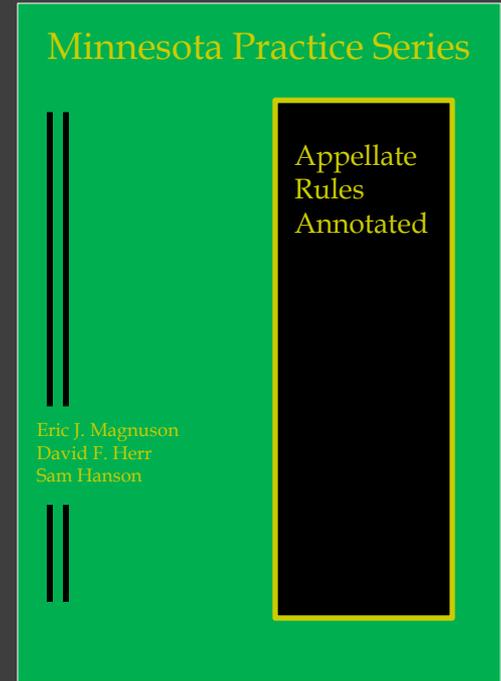


MINNESOTA COURT RULES

APPELLATE PROCEDURE
Minnesota Rules of Civil Appellate Procedure

Key Resources

- Eric J. Magnuson, David F. Herr and Sam Hanson, *Minnesota Practice: Appellate Rules Annotated*, (Thompson Reuters, 2015 ed.)
 - Particularly the chapters on Rules of Civil Appellate Procedure 115 and 116



Online Resources

- Minnesota Court of Appeals Special Term Opinion Subject Matter Index
- Minnesota Court of Appeals FAQs





Step One

What is Appealable?

- R. Civ. App. P. 103.3(g)
- R. Civ. App. P. 115.1
- Minnesota Administrative Procedures Act (“MAPA”)
- MN Statutes Chapter 14
- MN Statutes Chapter 606





Step Two

Is it Worthwhile?

“About half the practice of a decent lawyer consists of telling would-be clients that they are damned fools and should stop.” – Elihu Root



Is it Worthwhile?

- Between 70-80% of decisions are affirmed and dismissed
- Rate of affirmance even higher in administrative appeals



Costs

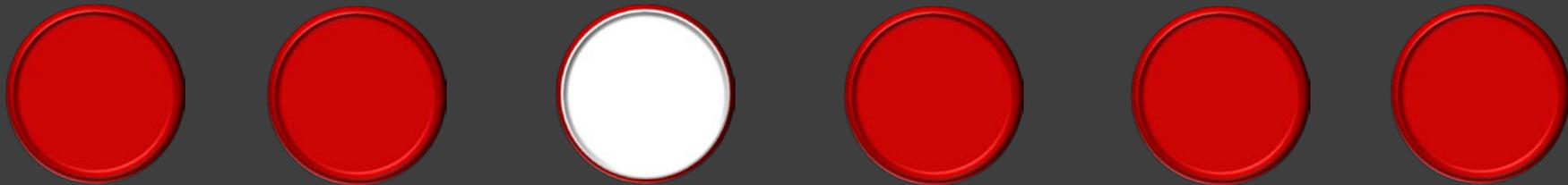
- Fees
- Costs
- Delay
- Precedent



Benefits

- Reversal
 - Can your client live with less than the whole loaf?
- Relief
 - May not be real relief
 - A remedy you did not want





Step Three

Know the Procedures

- READ THE RULES, read the rules, read the rules
- Timely filing and service
 - The Court of Appeals cannot grant an extension or exception to perfecting an appeal



Timing can be Tricky

- MAPA time to appeal: 30 days
- Chapter 606 time to appeal: 60 days



Timing can be Tricky

“The appeal period and the acts required to invoke appellate jurisdiction are governed by the applicable statute.”

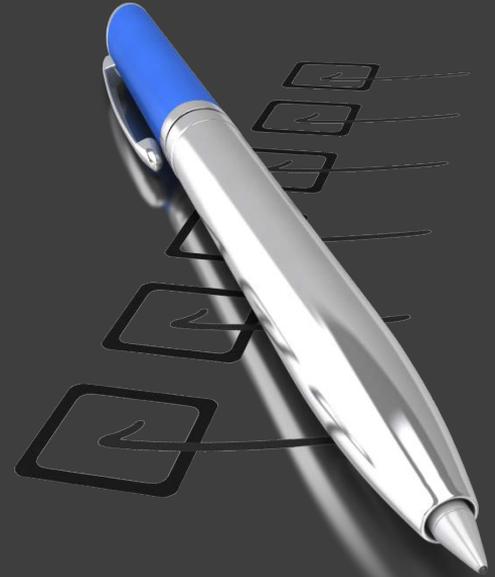
R. Civ. App. P. 115.01



Step Four

Filing Checklist

- Petition
- Addendum
- Proposed Writ of Certiorari
- \$550 Filing Fee Filing Letter
- Affidavit of Service



File Early

- You can fix mistakes if you give yourself enough time
 - Filing issues
 - Service issues
 - Wrong address for opposing counsel
 - Missing information



Filing and Service

- File documents in person (e-filing for certiorari appeals is not yet available)
- Obtain a signed copy of the proposed writ of certiorari



Filing and Service

- Serve the documents upon the agency, all to the agency proceeding and the AG's office
 - The agency gets the original proposed writ
 - State agencies may be represented by both a County Attorney and the AG

Filing and Service

- Service is part of the jurisdictional act required to perfect an appeal





Step Five

Argue the Appeal

Resources on Brief Writing and Oral Argument

- Art of Advocacy Appeals (Matthew Bender)
- American Academy of Appellate Lawyers, Bibliography of Appellate Practice
- The Honorable Myron H. Bright, *“The Power of the Spoken Word: In Defense of Oral Argument”*

Appellate Brief Writing Tips

- Impactful Standard of Review
- Compelling Statement of Facts
- Concise and Precise Arguments
- Conclusion



Oral Argument Tips

- Know what you want
- Have a one-minute introduction
- Welcome questions
- Have a conversation with the court





Step Six

Win the Appeal

- You Win!
 - Tax Costs (Rule 139, Form 139)
 - Release Bond(s)(or funds in lieu)



Review the Appeal

- You Don't Win . . .
 - Petition for Review by the MN Supreme Court?
 - Cost and Benefits
 - Statistics
 - If you proceed, refer to R. Civ. App. P. 117
 - The Court needs to understand why this case matters



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REWRITING THE ODDS



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