PREFACE

It is perhaps no surprise that one of the first decisions of the Minnesota Supreme Court (then the Territorial Supreme Court) involved a question of appellate procedure. *Chouteau v. Rice*, 1 Minn. 24 (1851), was resolved on a motion to dismiss an appeal from an interlocutory order. The appeal was dismissed. In rendering its opinion, the Court struggled to resolve the conflict between its desire to provide prompt and effective appellate review, and its concern about the orderly progression of justice. The Court came down on the side of order in the appellate process, a concept that is inherent in the rule of unitary appeal. The Court's decision was, however, by the slimmest of margins. One of the three justices filed a dissent.

The Court articulated its reasoning as follows:

> To adopt a different rule, where there is no statutory prohibition, would be almost equivalent to closing the doors of justice. This rule has been sanctioned by experience, and is one which commends itself to every rational mind. Manifest wrong—manifest delay—manifest injustice, would most indubitably be the result of allowing appeals from every decree of a Court Chancery. We must establish some rule, and if not the one herein announced, where are we to stop? It is extremely dubious, if a contrary rule were adopted, whether there be a man amongst us, who would live to see the end of this, or any other cause, now pending in the Courts of Chancery of this Territory.

Chouteau v. Rice, 1 Minn. 24 at 28.

With this decision, the Minnesota Supreme Court began the ongoing process of defining the body of law that governs appeals from the trial courts to the appellate courts of this state. From the first set of territorial statutes (*e.g.,* 1851 Minn. Rev. Stat. ch. 81, § 11) through the Civil Appeal Code of 1963 (MINN. STAT. ANN. § 605.01-225) to the current Rules of Civil Appellate Procedure, the law of appellate practice and procedure has been a mixture of statutes and rules, glossed by the decisions of the appellate courts.

Procedural issues continue to arise with great frequency. As we reported in the Second Edition of this work, by the end of 1984 (its first full year of existence), the Minnesota Court of Appeals had decided 1,946 cases, 11 Wm Mitchell L. Rev. 627, 632, n.25; 224 of these cases involved questions of appellate procedure. *Id.,* at 629, n.4. Approximately 35% of all appeals filed with the court of Appeals during the same period of time were ultimately dismissed. *Id.*, at 633, n.32. Although many more cases have been decided now, despite over 140 years of development, the substantive rules of appellate practice continue to be a source of contention, and at times, uncertainty.

The Rules of Civil Appellate Procedure were first promulgated in 1967, superseding the Civil Appeal Code. The rules currently define appellate practice in large part, but not exclusively. In many instances, statutory provisions either prescribe appellate procedure, or impact an appeal in some substantive way. They continue to be the foundation for appellate practice, and should be the first source consulted to answer questions about appellate practice.

The basic structure of the appellate rules has remained intact since the earliest days of the state. Minn. R. Civ. App. P. 103.03 is derived in large part from the earlier territorial laws. For many issues arising under the rules, decisional authority stretches back to the very beginning of the Minnesota judicial systems. Other issues are without precedent.

Appellate procedure involves not only the rules, but decisional and statutory law as well. Courts, especially appellate courts, are dynamic and living entities. The way in which the courts interpret the rules, and, more important at times, how the courts fill in the inevitable gaps in the rules when confronted with situations that do not fit neatly within any of the already developed prescriptions, is the true essence of appellate law. This book is intended to provide the practitioner with a resource that will explain the purpose and construction of the rules against the background of case law and statutes pertinent to each rule. Practical observation are included, as are chronological and topical summaries, to aid the appellate attorney in processing his or her case through the appellate courts. Each section of the book ends with a collection of suggested general reading, for further background on selected topics.

Although the text that follows is as complete and thorough as it can be, new decisions continue to be filed each week, many addressing issues of appellate procedure, both settled and new. Ad-

ditionally, the appellate practitioner should always remember that for every rule there is an exception, and while the rules provide a general framework for appellate practice, it is not an inflexible one. The paramount purpose of the rules is to promote justice for all litigants. To that end, appellate courts may alter, suspend or totally ignore the established rules, to see that justice is served. The rules are perhaps best viewed as guides for fair and just appellate practice. They represent the current statement of the continuing process begun with *Chouteau v. Rice,* the balanced decisions of generations of judges and attorneys.

We continue to hope this book is valuable to Minnesota lawyers and litigants facing the appellate process. We welcome questions and suggestions for improvements of future editions. Contact us at:

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September 2025