

APPELLATE PROCEDURE

Minnesota Rules of Civil Appellate Procedure

Effective August 1, 1983
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TEXT OF RULES

[For text of Title I., see M.S. 2002, Volume 15]

TITLE II. APPEALS FROM JUDGMENTS AND ORDERS

Rule 103. Appeal - How Taken**103.01 Manner of Making Appeal**

Subdivision 1. Notice of Appeal and Filings. An appeal shall be made by filing a notice of appeal with the clerk of the appellate courts and serving the notice on the adverse party or parties within the appeal period. The notice shall contain:

- (a) a statement specifying the judgment or order from which the appeal is taken; and
- (b) the names, addresses, and telephone numbers of opposing counsel, indicating the parties they represent.

The notice shall be accompanied by:

- (c) proof of service on the adverse party or parties; and
- (d) proof of filing with the administrator of the trial court in which the judgment or order appealed from is entered or filed.

The appellant shall simultaneously file the following with the clerk of the appellate courts:

- (1) two copies of the notice of appeal,
- (2) a certified copy of the judgment or order from which the appeal is taken,
- (3) two copies of the statement of the case required by Rule 133.03, and
- (4) a filing fee of \$500.

The appellant shall file the following simultaneously with the trial court administrator:

- (1) a copy of the notice of appeal, and
- (2) the cost bond required by Rule 107, or written waiver of it.

Subd. 2. Relief. When a party in good faith files and serves a notice of appeal from a judgment or an order, and omits, through inadvertence or mistake, to proceed further with the appeal, or to stay proceedings, the appellate court may grant relief on such terms as may be just.

Subd. 3. When Filing Fee Not Required. The filing fees set out in Rule 103.01, subdivision 1, shall not be required when:

- (a) the appellant has been authorized to proceed without payment of the filing fee pursuant to Rule 109; or
- (b) the appellant is represented by a public defender's office or a legal aid society; or
- (c) the appellant is a party to a proceeding pursuant to Minnesota Statutes, chapter 253B; or
- (d) the appellant is the state or a governmental subdivision of the state or an officer, employee or agency thereof; or
- (e) the appeal has been remanded to the trial court or agency for further proceedings and, upon completion of those proceedings, the appeal is renewed; or
- (f) the appellant is a party to a public assistance appeal pursuant to Minnesota Statutes, chapter 256; or
- (g) the appeal is taken by a claimant for unemployment compensation benefits pursuant to Minnesota Statutes, chapter 268.

(Amended effective July 1, 1989; amended effective for appeals taken on or after January 1, 1992; amended effective July 1, 1993; amended effective January 1, 1999; amended effective March 1, 2001; amended effective July 1, 2003, for all filings on or after that date.)

See **Appendix** for form of notice of appeal (**Forms 103A and 103B**) and statement of the case (**Form 133**).

[For text of 103.02 to Rule 104., see M.S. 2002, Volume 15]

Rule 105. Discretionary Review

105.01 Petition for Permission to Appeal; Time

Upon the petition of a party, in the interests of justice the Court of Appeals may allow an appeal from an order not otherwise appealable pursuant to Rule 103.03 except an order made during trial, and the Supreme Court may allow an appeal from an order of the Tax Court or the Workers' Compensation Court of Appeals not otherwise appealable pursuant to Rule 116 or governing statute except an order made during trial. The petition shall be served on the adverse party and filed within 30 days of the filing of the order. The trial court should be notified that the petition has been filed and provided with a copy of the petition and any response. Four copies of the petition shall be filed with the clerk of the appellate courts, but the court may direct that additional copies be provided. A filing fee of \$500 paid to the clerk of the appellate courts shall accompany the petition for permission to appeal.

(Amended effective July 1, 1989; amended effective July 1, 1993; amended effective March 1, 2001; amended effective July 1, 2003, for all filings on or after that date.)

See **Appendix** for form of petition for discretionary review (**Form 105**).

[For text of 105.02 to Rule 111., see M.S. 2002, Volume 15]

Rule 114. Court of Appeals Review of Administrative Rules

114.01 How Obtained

Review by the Court of Appeals of the validity of administrative rules pursuant to Minnesota Statutes, section 14.44 may be obtained by:

- (a) filing a petition for declaratory judgment with the clerk of the appellate courts;
- (b) paying the filing fee of \$500 to the clerk of the appellate courts, unless no fee is required pursuant to Rule 103.01, subdivision 3;
- (c) serving the petition upon the attorney general and the agency or body whose rule is to be reviewed;
- (d) filing proof of service with the clerk of the appellate courts; and
- (e) filing a cost bond or other security with the agency or body, unless no bond is required pursuant to Rule 107, subdivision 2, or the agency or board waives the bond.

(Added effective January 1, 1999; amended effective July 1, 2003, for all filings on or after that date.)

[For text of 114.02 to 114.05, see M.S. 2002, Volume 15]

TITLE III. DECISIONS REVIEWABLE BY CERTIORARI TO THE COURT OF APPEALS OR THE SUPREME COURT

Rule 115. Court of Appeals Review of Decisions of the Commissioner of Jobs and Training Economic Security and Other Decisions Reviewable by Certiorari and Review of Decisions Appealable Pursuant to the Administrative Procedure Act

[For text of 115.01 and 115.02, see M.S. 2002, Volume 15]

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 which is

sought to be reviewed and the errors which the petitioner claims. A copy of the decision and an original and one copy of a completed statement of the case pursuant to Rule 133.03 shall be attached to the petition. The title and form of the petition and writ should be as shown in the appendix to these rules. The respondent's statement of the case, if any, shall be filed and served within 10 days after service of the petitioner's statement.

Subd. 2. Bond or Security. (a) The petitioner shall file with the agency or body the cost bond pursuant to Rule 107, unless no bond is required under Rule 107, subd. 2, or by statute, or the bond is waived under Rule 107, subd. 1.

(b) The agency or body may stay enforcement of the decision in accordance with Rule 108. Application for a supersedeas bond or a stay on other terms must be made in the first instance to the agency or body. Upon motion, the Court of Appeals may review the agency's or body's decision on a stay and the terms of any stay.

Subd. 3. Filing; Fees. The clerk of the appellate courts shall file the original petition and issue the original writ. The petitioner shall pay \$500 to the clerk of the appellate courts, unless no fee is required under Rule 103.01, subdivision 3, or by statute.

Subd. 4. Service. The petitioner shall serve copies of the petition and the writ, if issued, upon the agency or body to which it is directed and upon every party. Proof of service shall be filed with the clerk of the appellate courts within five days of service. A copy of the petition and writ shall be provided to the Attorney General, unless the state is neither a party nor the body to which the writ is directed.

(Amended effective July 1, 1989; amended effective for appeals taken on or after January 1, 1992; amended effective July 1, 1993; amended effective January 1, 1999; amended effective July 1, 2003, for all filings on or after that date.)

[For text of 115.04 to 115.06, see M.S. 2002, Volume 15]

Rule 116. Supreme Court Review of Decisions of the Workers' Compensation Court of Appeals, Decisions of the Tax Court, and of Other Decisions Reviewable by Certiorari

[For text of 116.01 and 116.02, see M.S. 2002, Volume 15]

116.03 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 which is sought to be reviewed and the errors which the petitioner claims. A copy of the decision and two copies of a completed statement of the case pursuant to Rule 133.03 shall be attached to the petition. The title and form of the petition and writ should be as shown in the appendix to these rules. The respondent's statement of the case, if any, shall be filed and served within 10 days after receiving the petitioner's statement.

Subd. 2. Bond or Security. The petitioner shall file the bond or other security required by statute or by the Supreme Court.

Subd. 3. Filing; Fees. The clerk of the appellate courts shall file the original petition and issue the original writ. The petitioner shall pay \$500 to the clerk of the appellate courts, unless a different filing fee is required by statute.

Subd. 4. Service; Time. The petitioner shall serve copies of the petition and writ upon the court or body to whom it is directed and upon any party within 30 days after the petitioner was served with written notice of the decision to be reviewed, unless an applicable statute prescribes a different period of time. Proof of service shall be filed with the clerk of the appellate courts within 5 days of service. A copy of the petition and writ shall be provided to the Attorney General at the time of service.

(Amended effective July 1, 1989; amended effective for appeals taken on or after January 1, 1992; amended effective July 1, 1993; amended effective July 1, 2003, for all filings on or after that date.)

[For text of 116.04 to 116.06, see M.S. 2002, Volume 15]

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

Subdivision 1. Filing of Petition. 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 \$500 shall be paid to the clerk of the appellate courts.

Subd. 2. Discretionary Review. Review of any decision of the Court of Appeals is discretionary with the Supreme Court. The following criteria may be considered:

(a) the question presented is an important one upon which the Supreme Court should rule; or

(b) the Court of Appeals has ruled on the constitutionality of a statute; or

(c) the lower courts have so far departed from the accepted and usual course of justice as to call for an exercise of the Supreme Court's supervisory powers; or

(d) a decision by the Supreme Court will help develop, clarify, or harmonize the law; and

(1) the case calls for the application of a new principle or policy; or

(2) the resolution of the question presented has possible statewide impact; or

(3) the question is likely to recur unless resolved by the Supreme Court.

Subd. 3. Petition Requirements. The petition for review shall not exceed five typewritten pages, exclusive of appendix, and shall contain:

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

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

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

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

The appendix shall contain the decision and opinion of the Court of Appeals, the judgments, orders, findings of fact, conclusions of law, and memorandum decisions of the trial court or administrative agency, pertinent trial briefs, and any portion of the record necessary for an understanding of the petition.

Nine copies of the petition and appendix shall be filed with the clerk of the appellate court.

Subd. 4. Response and Request for Cross-Review. An opposing party may file with the clerk of the appellate courts a response to the petition within 20 days of service. The response shall comply with the requirements set forth for the petition and shall contain proof of service. Any responding party may, in its response, also conditionally seek review of additional designated issues not raised by the petition. In the event of such conditional request, the party filing the initial petition for review shall not be entitled to file a response unless the court requests one on its own initiative.

Subd. 5. Amicus Curiae. A request for leave to participate in the appeal as amicus curiae is governed by Rule 129.

(Amended effective July 1, 1989; amended effective for appeals taken on or after January 1, 1992; amended effective July 1, 1993; amended effective January 1, 1999; amended effective July 1, 2003, for all filings on or after that date.)

See **Appendix** for form of petition or review (**Form 117**).

[For text of Rule 118., see M.S. 2002, Volume 15]

TITLE V. EXTRAORDINARY WRITS

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

[For text of 120.01 to 120.03, see M.S. 2002, Volume 15]

120.04 Filing; Form of Papers; Number of Copies

Upon receipt of a \$500 filing fee, the clerk of the appellate courts shall file the petition. All papers and briefs may be typewritten and in the form specified in Rule 132.02. Four copies with proof of service shall be filed with the clerk of the appellate courts, but the reviewing court may direct that additional copies be provided. Service of all papers and briefs may be made by mail.

(Amended effective July 1, 1989; amended effective July 1, 1993; amended effective January 1, 1999; amended effective July 1, 2003, for all filings on or after that date.)

[For text of 120.05, see M.S. 2002, Volume 15]

Rule 121. Mandamus and Prohibition - Emergency Situations

[For text of 121.01 to and 121.02, see M.S. 2002, Volume 15]

121.03 Filing Fee

In the event the oral petition is granted, the attorney orally petitioning for a writ shall thereafter immediately transmit to the clerk of the appellate courts a \$500 filing fee with a letter specifying:

- (a) the name of the case,
- (b) the lower court and the name of the judge,
- (c) the type of writ sought, and
- (d) the name, address, telephone number and attorney registration license number of each attorney.

No filing fee or transmission of documents shall be required in the event the oral petition is denied.

(Amended effective July 1, 1989; amended effective for appeals taken on or after January 1, 1992; amended effective July 1, 1993; amended effective July 1, 2003, for all filings on or after that date.)

See **Appendix** for form of petition for a writ of prohibition (**Form 120A**), the order for the writ (**Form 120B**), and the writ of prohibition (**Form 120C**).

[For text of Title VII. and Appendix of Forms, see M.S. 2002, Volume 15]