

**MINNESOTA COURT OF APPEALS**  
**Special Term Opinion Subject Matter Index**

**August 18, 2014\***

Prepared by the Central Staff of the Court of Appeals  
Under the Direction of Chief Judge Edward J. Cleary

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\* To provide the bar with assistance on appellate procedure, this index lists Minnesota Court of Appeals special term opinions supplemented with some relevant rules and Minnesota Supreme Court opinions. It was initially prepared on July 3, 1989, by the Central Staff under the direction of Chief Judge D.D. Wozniak. It was later updated March 5, 1991, and March 24, 1992, revised on July 31, 1995, and updated on August 20, 1998, November 19, 2002, August 15, 2007, August 18, 2010, August 20, 2012, and August 18, 2014.

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## I. CIVIL APPELLATE PROCEDURE

### A. Perfecting an Appeal

#### 1. Timeliness\*

##### a. Generally

*In re Adoption Petition of M.O.*, 838 N.W.2d 577 (Minn. App. 2013) (in an adoption proceeding, any appeal must be taken within 30 days, as provided by rule 48.02, subdivision 2, of the Minnesota Rules of Adoption Procedure), *review denied* (Minn. Oct. 23, 2013).

*In re Welfare of Child of T.L.M.*, 804 N.W.2d 374 (Minn. App. 2011) (rules of court displace inconsistent statutes with respect to matters of court procedure, including the time to appeal).

*Clifford v. Bundy*, 747 N.W.2d 363 (Minn. App. 2008) (a proper postdecision motion must be both timely served and filed to extend the appeal period under Minn. R. Civ. App. P. 104.01, subd. 2), *review denied* (Minn. June 18, 2008).

*Commandeur LLC v. Hartry*, 724 N.W.2d 508 (Minn. 2006) (Columbus Day is a legal holiday under Minn. R. Civ. P. 6.01 and thus is not included in computing the last day of an appeal period).

*Rubey v. Vannett*, 714 N.W.2d 417 (Minn. 2006) (because the requirement under Minn. R. Civ. P. 59.03 that a motion for a new trial be heard within 60 days after the notice of filing of the decision or order is a procedural tool and not a jurisdictional requirement, a motion for new trial/amended findings need not be timely heard to toll the time for appeal under Minn. R. Civ. App. P. 104.01, subd. 2).

*Cepek v. Cepek*, 684 N.W.2d 521 (Minn. App. 2004) (because a custody evaluator cannot be an adverse party, failure to timely serve the notice of appeal on the custody evaluator is not a jurisdictional defect requiring dismissal of the appeal).

*Mingen v. Mingan*, 662 N.W.2d 926 (Minn. App. 2003) (to extend the appeal time under Minn. R. Civ. App. P. 104.01, subd. 2, a proper postdecision

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\* See also the “certiorari” and “statutory authority” sections below.

motion must be made before the time to appeal the underlying judgment expires), *aff'd*, 679 N.W.2d 724 (Minn. 2004).

*Limongelli v. GAN Nat'l Ins. Co.*, 590 N.W.2d 167 (Minn. App. 1999) (district court lacked authority to vacate judgment for purpose of preserving appellant's right to appeal).

*Singer v. City of Minneapolis*, 586 N.W.2d 804 (Minn. App. 1998) (under Minn. R. Civ. App. P. 104.02, expiration of the time to appeal judgment precludes appeal of underlying order for judgment, even if appeal from order otherwise would have been timely).

*Sorrels v. Hoffman*, 578 N.W.2d 22 (Minn. App. 1998) (under 1983 amendments to rules of civil appellate procedure, timely service of notice of appeal on trial court administrator is required to vest jurisdiction in the court of appeals), *review denied* (Minn. June 17, 1998). Note: Minn. R. Civ. App. P. 103.01, subd. 1(a) (under 1999 amendment, requirement of filing copy with trial court is nonjurisdictional).

*Matsch v. Prairie Island Indian Cmty.*, 559 N.W.2d 128 (Minn. App. 1997) (time to seek appellate review is tolled by removal of case to federal court).

*Duluth Ready-Mix Concrete v. City of Duluth*, 520 N.W.2d 775 (Minn. App. 1994) ((1) when the district court consolidates proceedings with different appeal times, the longer appeal period applies to the appeal of the final judgment; (2) despite the district court's direction for entry of judgment nunc pro tunc, the date of the judgment for appeal purposes is the actual date of entry).

*Township of Honner v. Redwood County*, 518 N.W.2d 639 (Minn. App. 1994) (court of appeals lacks authority to extend the time to file a notice of appeal or to obtain review of an agency decision), *review denied* (Minn. Sept. 16, 1994).

*Estate of Spiess v. Schumm*, 442 N.W.2d 179 (Minn. App. 1989) ((1) appeals involving multi-party bank accounts are governed by the Rules of Civil Appellate Procedure; (2) an appeal from a judgment not taken within 90 days after entry of judgment will be dismissed). Note: Minn. R. Civ. App. P. 104.01, subd. 1 (under 1999 amendment, appeal from a judgment may be taken within 60 days of entry).

*Wise v. Bix*, 434 N.W.2d 502 (Minn. App. 1989) (notice of appeal mailed to incorrect address in urban area was not timely served and the portion of appeal concerning that respondent must be dismissed).

*Hansing v. McGroarty*, 433 N.W.2d 441 (Minn. App. 1988) (a party's failure to timely serve a notice of appeal on the adverse party is jurisdictional and requires dismissal of the portion of the appeal concerning that party), *review denied* (Minn. Jan. 25, 1989).

*State v. Certified Servs.*, 432 N.W.2d 494 (Minn. App. 1988) (errors of district court administrator involving notice of entry and docketing of judgment do not affect time to appeal).

*Iverson v. Iverson*, 432 N.W.2d 492 (Minn. App. 1988) (an appeal from a post-judgment order denying a new trial is not barred simply because the time to appeal the judgment has expired), *review denied* (Minn. July 27, 1989). *But see Madson v. Minn. Mining & Mfg. Co.*, 612 N.W.2d 168 (Minn. 2000) (timely postdecision motion which is explicitly enumerated in Minn. R. Civ. App. P. 104.01, subd. 2, and is filed in compliance with the procedural rules is a proper motion and tolls the time for appeal for all parties until any party serves notice of filing of the order disposing of the outstanding motion).

#### **b. Notice of Filing**

*In re Adoption Petition of M.O.*, 838 N.W.2d 577 (Minn. App. 2013) (the requirement in Rule 10.04 of the Minnesota Rules of Adoption Procedure that the district court administrator shall use a notice of filing form developed by the state court administrator is directory rather than mandatory and therefore the court administrator's use of a notice of filing form other than the form developed by the state court administrator may be effective to limit the time in which a party may appeal), *review denied* (Minn. Oct. 23, 2013).

*Garcia v. Comm'r of Pub. Safety*, 572 N.W.2d 311 (Minn. App. 1997) (a cover letter accompanied by a copy of the order does not constitute an effective notice of filing, where the letter is not captioned as notice of filing and does not give the filing date or otherwise describe the order).

*Matsch v. Prairie Island Indian Cmty.*, 559 N.W.2d 128 (Minn. App. 1997) (a motion to dismiss based on an assertion that an appeal was taken more than 30 days after the movant served notice of filing of the order appealed from will be denied absent specific information from which this court can determine the adequacy of notice of filing).

*Duluth Ready-Mix Concrete v. City of Duluth*, 520 N.W.2d 775 (Minn. App. 1994) (service of a copy of the order or judgment only, without an accompanying notice of filing, is not effective to limit the time to appeal).

*In re Establishment of County Ditch No. 11*, 511 N.W.2d 54 (Minn. App. 1994) (notice of filing consisting of letter and attachments, construed as a whole, was effective to limit the time for appeal), *review denied* (Minn. Mar. 31, 1994).

*Hofseth v. Hofseth*, 456 N.W.2d 99 (Minn. App. 1990) (service of notice of filing by a party who has not taken a position adverse to appellant in the trial court does not limit the time for appeal). Note: Minn. R. Civ. App. P. 104.01, subd. 1 (under 1999 amendment, service by “any” party of written notice of filing starts 60-day appeal period).

*Probst v. Holland*, 441 N.W.2d 836 (Minn. App. 1989) (receipt of notice of filing is not a prerequisite to taking an appeal).

*In re Estate of Opsahl*, 440 N.W.2d 185 (Minn. App. 1989) (a purported notice of filing that is not appropriately captioned, does not mention that the order has been filed or the date of filing, and does not indicate it is being served to limit the time for appeal, is not effective to limit the time for appeal).

*Levine v. Hauser*, 431 N.W.2d 269 (Minn. App. 1988) (letter that made no reference to filing of order, did not give date of filing, did not indicate notice was being served to limit the time for appeal, and was not captioned as a notice of filing or prepared specifically for that purpose, did not limit time to appeal from order).

### **c. Special Proceedings**

*Hous. & Redevelopment Auth. in and for City of Fridley v. Mainstreet Fridley Properties, LLC*, 755 N.W.2d 789 (Minn. App. 2008) (the time to appeal a court order approving the public use or public purpose, necessity, and authority for the taking in a condemnation proceeding under Minn. Stat. § 117.075, subd. 1(c) (2006) is not tolled by a postdecision motion under Minn. R. Civ. App. P. 104.01, subd. 2).

*Singer v. City of Minneapolis*, 586 N.W.2d 804 (Minn. App. 1998) (judgment in a special assessment appeal was a judgment in a special proceeding and time to appeal under now-repealed rule 104.03 expired 30 days after its entry). *But see* Minn. R. Civ. App. P. 104.01, subd. 1 (time to appeal order is now 60 days).



*Steeves v. Campbell*, 508 N.W.2d 817 (Minn. App. 1993) (motion for a new trial or amended findings does not extend the time to appeal a final order granting or denying a domestic abuse petition). *But see* Minn. R. Civ. App. P. 104.01 (under 1999 amendment, if any party serves and files a proper and timely motion of a type specified in the rules, the time for appeal of the order or judgment that is the subject of such motion runs for all parties from the service by any party of notice of filing of the order disposing of the last such motion outstanding).

*Hofseth v. Hofseth*, 456 N.W.2d 99 (Minn. App. 1990) (under now-repealed rule 104.03, an appeal from a final judgment in a special proceeding must be taken within the time permitted for appeal from an order). *But see* Minn. R. Civ. App. P. 104.01, subd. 1 (under 1999 amendment, unless otherwise provided by statute, appeal from judgment is within 60 days of entry).

*Schiltz v. City of Duluth*, 435 N.W.2d 625 (Minn. App. 1989) ((1) in special proceedings (such as mandamus actions) the proper appeal is from the original order granting or denying the requested relief; (2) a motion for a new trial is unnecessary to preserve issues for appeal and does not extend the time to file an appeal, and an order denying such a motion is not independently appealable), *rev'd*, 449 N.W.2d 439 (Minn. 1990) (the supreme court, in reversing, emphasized that Minn. Stat. § 586.08 (1988) provided *statutory* authority for a motion for a new trial). Note: Minn. R. Civ. App. P. 104.01, subd. 2 (under 1999 amendment, unless otherwise provided by law, service by any party of notice of filing of the order disposing of an outstanding proper and timely motion starts running of appeal time).

#### **d. Family Law Matters**

*Banal-Shepherd v. Shepherd*, 829 N.W.2d 426 (Minn. App. 2013) (in a custody proceeding, appellant must timely serve a notice of appeal on all adverse parties, and a guardian ad litem is an adverse party to such an appeal if the guardian was a party in the district court and if the guardian's position with respect to the issues in the case might be prejudiced by reversal or modification of the district court's order), *review denied* (Minn. May 21, 2013).

*Culver v. Culver*, 771 N.W.2d 547 (Minn. App. 2009) (Minn. Stat. § 484.65, subd. 9 (2008) precludes district court review of a fourth judicial district family court division referee's ruling that has been confirmed by a district court).

*In re Custody of A.V.A.*, 683 N.W.2d 325 (Minn. App. 2004) (to have standing to petition for custody of a child as an "interested third party," as

defined in Minn. Stat. §§ 257C.01, subd. 3, .03, subd. 7 (2002), the petitioner must have a substantial relationship with the child that exists at the time the petition for custody is filed), *review denied* (Minn. Sept. 29, 2004).

*Bouton v. Bouton*, 541 N.W.2d 22 (Minn. App. 1995) ((1) the extended appeal period under now-repealed Minn. R. Civ. App. P. 104.04 expires 30 days after an adverse party serves written notice of filing of an order disposing of a timely motion of the type listed in Minn. R. Civ. App. P. 104.04, subd. 2, regardless of whether the underlying decision from which appeal is taken is an original judgment and decree, an amended judgment, or an order; (2) in marital dissolution proceedings, a timely motion of the type specified in Minn. R. Civ. App. P. 104.04, subd. 2, extends the time to appeal), *modified*, *Huntsman v. Huntsman*, 633 N.W.2d 852 (Minn. 2001) (applying the general timing rule after 1999 amendments deleted rule 104.04).

*Bougie v. Bougie*, 494 N.W.2d 485 (Minn. App. 1993) ((1) order denying a motion for amended findings in a marital dissolution action is not independently appealable, but a timely motion for amended findings extends the time to seek review of an appealable order or judgment; (2) appeal in a marital dissolution action is premature when one or more of the motions specified in now-repealed rule 104.04 is pending in the trial court); *see* Minn. R. Civ. App. P. 104.01, subd. 2 (specifying motions that now extend time for all appeals).

## **2. Appeal Documents**

*Aon Corp. v. Haskins*, 817 N.W.2d 737 (Minn. 2012) (in a civil appeal in which immediate appellate review of a nonfinal order is properly based on the collateral-order doctrine, a party to a district court action that is neither an appellant nor a respondent on appeal but is aligned with an appellant may not obtain immediate appellate review of an otherwise nonappealable order by filing a notice of related appeal pursuant to Minn. R. Civ. App. P. 103.02, subd. 2, unless the nonappealable order presents issues that are inextricably intertwined with issues properly presented by an appellant's appeal).

*Andren v. White-Rodgers Co.*, 462 N.W.2d 860 (Minn. App. 1990) (defendant/third-party plaintiff need not file an appeal or notice of review to preserve a potential third-party claim which is contingent on plaintiff prevailing on appeal from an adverse summary judgment in favor of defendant/third-party plaintiff).

*Probst v. Holland*, 441 N.W.2d 836 (Minn. App. 1989) (affidavit of service should describe documents served).

*Karnes v. Milo Beauty & Barber Supply*, 434 N.W.2d 288 (Minn. App. 1989) (dismissal is appropriate where appeal was improperly taken from an order for judgment, multiple errors were made in the filing of the appeal, and sufficient time remains for perfection of a proper appeal from the judgment). *But cf. Kelly v. Kelly*, 371 N.W.2d 193 (Minn. 1985) (notice of appeal should be liberally construed in favor of its sufficiency).

*Lehman v. Terry*, 424 N.W.2d 584 (Minn. App. 1988) (rules of civil appellate procedure do not authorize amendments to notices of appeal).

## **B. Trial Court Jurisdiction and Stays Pending Appeal**

*Little v. Arrowhead Regional Corrections*, 773 N.W.2d 344 (Minn. App. 2009) (an agency loses jurisdiction over a petition for reconsideration if, before the agency has issued a written decision on the petition, a timely certiorari appeal is taken, but the court of appeals' remand of a matter on which a petition for reconsideration is pending reestablishes the agency's jurisdiction over the petition for reconsideration).

*DRJ, Inc. v. City of St. Paul*, 741 N.W.2d 141 (Minn. App. 2007) (a city council's refusal to stay a license revocation pending appeal does not constitute an abuse of discretion when it is supported by findings that reflect the relator's past failure to comply with conditions imposed on the license and a balancing of the potential harm to the relator against the potential harm to the public).

*In re Winona County Mun. Solid Waste Incinerator*, 439 N.W.2d 56 (Minn. App. 1989) (city is exempt from bond provisions of Minn. Stat. § 562.02 (1988)).

*Amatuzio v. Amatuzio*, 431 N.W.2d 588 (Minn. App. 1988) ((1) generally, upon the filing of an appeal, the trial court loses jurisdiction to amend or modify matters at issue on appeal or necessarily involved in the appeal; (2) pendency of respondent's motion for amended findings is insufficient basis for involuntary dismissal and remand of adverse party's appeal from judgment). *But see* Minn. R. Civ. App. P. 104.01, subd. 3 (filing of notice of appeal before disposition of a proper and timely motion is premature and of no effect).

*In re Welfare of R.L.A.*, 431 N.W.2d 152 (Minn. App. 1988) ((1) on appeal from adjudication order, stay of potential disposition order is inappropriate and premature; (2) requests to stay juvenile court orders should be made in the first instance to the trial court); *see* Minn. R. Juv. P. 21.03, subd. 3(A) (motion for stay pending appeal initially shall be presented to the trial court).

*David N. Volkmann Constr. v. Isaacs*, 428 N.W.2d 875 (Minn. App. 1988) ((1) upon filing of an appeal, the trial court is required to resolve questions involving supersedeas

bonds and stays pending appeal; (2) respondent's motion for establishment of a supersedeas bond is referred to the trial court); *see* Minn. R. Civ. App. P. 108.01, 115.03, subd. 2(b) (application for supersedeas bonds and stay must be made in the first instance to the trial court, agency, or body, but appellate court may review propriety and terms of stay).

*Career Res., Inc. v. Pearson Candy Co.*, 428 N.W.2d 606 (Minn. App. 1988) (appellant who posts a supersedeas bond in the amount and form approved by the trial court is entitled to a stay of enforcement of the judgment appealed from and to the return of amounts previously seized, minus any fees paid to the clerk, sheriff, and bank in connection with the execution).

*State by Cooper v. Mower County Soc. Servs.*, 428 N.W.2d 491 (Minn. App. 1988) ((1) stay of agency decision pending appeal is granted pursuant to Minn. Stat. § 14.65 (1986); (2) under Minn. R. Civ. P. 62.04, the posting of a supersedeas bond is unnecessary to stay a money judgment when the appeal is taken by the state or a governmental subdivision).

*All Lease Co. v. Peters*, 424 N.W.2d 320 (Minn. App. 1988) (trial court erred in requiring posting of a supersedeas bond as condition of appeal).

### **C. Motion Practice**

*In re Welfare of D.B.*, 463 N.W.2d 301 (Minn. App. 1990) ((1) responses to motions served by mail are due within eight days, but moving parties must establish substantial prejudice to obtain an order striking an untimely response; (2) all requests to proceed in forma pauperis must be presented first to the trial court). *But see State v. Hugger*, 640 N.W.2d 619 (Minn. 2002) (prescribing that five-day period be calculated by excluding weekends and holidays, and that three calendar days be added thereafter, and holding that pretrial prosecution appeal governed by similar rule, which was filed on twelfth day, rather than eighth day, was timely).

*In re Estate of Magnus*, 436 N.W.2d 821 (Minn. App. 1989) (the rules of civil appellate procedure do not authorize a motion for summary reversal prior to briefing on the merits of the appeal).

*Swicker v. Ryan*, 346 N.W.2d 367 (Minn. App. 1984) (unfamiliarity with the appellate rules, heavy workload, or overwork is not good cause for counsel's failure to follow the rules or to timely make appropriate motions), *review denied* (Minn. June 12, 1984). *But cf. Boom v. Boom*, 361 N.W.2d 34 (Minn. 1985) (dismissal of an appeal for noncompliance with the rules of civil appellate procedure is an inappropriate sanction when the failure to follow the rules does not affect the jurisdiction of the appellate court and neither prejudices the other party nor delays the appeal).

## **D. Record on Appeal**

*In re Estate of Magnus*, 436 N.W.2d 821 (Minn. App. 1989) (appellants must preserve objections and provide an adequate record to afford appellate review); *see also Thiele v. Stich*, 425 N.W.2d 580 (Minn. 1988) (appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below).

*State v. Heithecker*, 395 N.W.2d 382 (Minn. App. 1986) (appellate court cannot address evidentiary or sufficiency of evidence issues when appellant fails to provide a trial transcript).

## **E. Appeal of Right**

### **1. Judgments**

#### **a. When Appeal From Judgment is Required**

*T. A. Schifsky & Sons, Inc. v. Bahr Constr., LLC*, 773 N.W.2d 783 (Minn. 2009) (there is no appeal from an order awarding attorney fees and the proper appeal lies from the judgment or amended judgment entered on the order).

*Pulju v. Metro. Prop. & Cas.*, 532 N.W.2d 592 (Minn. App. 1995) (when an otherwise appealable order in a special proceeding directs entry of judgment, the proper appeal is from the resulting judgment), *rev'd on other grounds*, 535 N.W.2d 608 (Minn. 1995). *Contra Marzitelli v. City of Little Canada*, 582 N.W.2d 904 (Minn. 1998) (appealable order is not rendered nonappealable by language directing entry of judgment).

*Sheeran v. Sheeran*, 481 N.W.2d 578 (Minn. App. 1992) (an order for the recovery of money, including an order awarding attorney fees, is not appealable, and the proper appeal is from the resulting judgment).

*Hofseth v. Hofseth*, 456 N.W.2d 99 (Minn. App. 1990) (appeal is proper from judgment modifying child custody and visitation, rather than underlying order, where order directed entry of judgment). *Contra Marzitelli v. City of Little Canada*, 582 N.W.2d 904 (Minn. 1998) (appealable order is not rendered nonappealable by language directing entry of judgment).

*Saric v. Stover*, 451 N.W.2d 65 (Minn. App. 1990) (where otherwise appealable order directs entry of judgment, proper appeal is from judgment), *overruled by Marzitelli v. City of Little Canada*, 582 N.W.2d 904 (Minn. 1998)

(an order that is appealable under Minn. R. Civ. App. P. 103.03 remains so, despite language directing the entry of judgment).

*Berney v. United Hosp.*, 442 N.W.2d 857 (Minn. App. 1989) (order for judgment notwithstanding the verdict is not appealable; appeal may be taken from resulting judgment).

*Swenson v. City of Fifty Lakes*, 439 N.W.2d 758 (Minn. App. 1989) (order for judgment not appealable and proper appeal is from resulting judgment).

*Geckler v. Samuelson*, 438 N.W.2d 740 (Minn. App. 1989) (order for amended judgment is not appealable; proper appeal is from amended judgment).

*Dahlgren v. Caring & Sharing, Inc.*, 429 N.W.2d 706 (Minn. App. 1988) (order dismissing an action for failure to state a claim is not appealable and the proper appeal is from a judgment of dismissal entered pursuant to the order).

*Makela v. Peters*, 425 N.W.2d 605 (Minn. App. 1988) (order for writ of restitution is not appealable and the proper appeal is from a judgment of restitution).

*Graupmann v. Rental Equip. & Sales Co.*, 425 N.W.2d 861 (Minn. App. 1988) ((1) order for summary judgment is a nonappealable order; (2) district court administrator must enter judgment on all orders of dismissal, except dismissals for lack of jurisdiction); *see also Schaust v. Town Bd.*, 295 Minn. 571, 572, 204 N.W.2d 646, 648 (1973) (appeal from judgment prior to entry is premature and must be dismissed).

#### **b. Partial Judgments**

*Weiss v. Private Capital, LLC*, 839 N.W.2d 106 (Minn. App. 2013) (a request for attorney fees that is based on a contract is a separate claim, so that a judgment entered while such a request is pending is not a final and appealable judgment).

*Sterling State Bank v. Maas Commercial Props., LLC*, 837 N.W.2d 733 (Minn. App. 2013) (the district court erred by directing entry of final partial judgment pursuant to Minn. R. Civ. P. 54.02 because the benefits of interlocutory appellate review do not outweigh the general policy against piecemeal appellate review and because neither party will be prejudiced by the absence of interlocutory appellate review), *review denied* (Minn. Nov. 12, 2013).

*T & R Flooring, LLC v. O'Byrne*, 826 N.W.2d 833 (Minn. App. 2013) (the district court erred by directing entry of final partial judgment on fewer than all claims pursuant to Minn. R. Civ. P. 54.02 because the benefits of interlocutory appellate review do not outweigh the general policy against piecemeal appellate review).

*Phillips v. LaPlante*, 823 N.W.2d 903 (Minn. App. 2012) (appellant's request for need-based attorney fees under Minn. Stat. § 518.14, subd. 1, was separate from her underlying motion to enforce respondent's spousal-maintenance obligation, and therefore the district court's order ruling on the underlying spousal-maintenance motion was not final and appealable until the district court determined all aspects of appellant's request for attorney fees).

*D.Y.N. Kiev, LLC v. Jackson*, 802 N.W.2d 821 (Minn. App. 2011) (because an award of attorney fees pursuant to Minn. Stat. § 322B.38 or Minn. Stat. § 322B.833, subd. 7, is collateral to the merits, a judgment on the merits of a claim alleging a violation of chapter 322B is an appealable final judgment even if the issue of attorney fees has been reserved).

*T. A. Schifsky & Sons, Inc. v. Bahr Constr., LLC*, 773 N.W.2d 783 (Minn. 2009) (judgment determining the validity and amount of a mechanic's lien but reserving a determination of attorney fees is appealable as a final judgment under Minn. R. Civ. App. P. 104.01, subd. 1).

*Krmpotich v. City of Duluth*, 449 N.W.2d 507 (Minn. App. 1989) ((1) a judgment which does not adjudicate all claims of all parties and which is not entered pursuant to an order which states that there is no just reason for delay and directs entry of final judgment is not appealable; (2) decision whether to make the express determination of Minn. R. Civ. P. 54.02 to allow immediate review of a partial judgment falls within the discretion of the trial court; (3) appeals should not be brought or considered piecemeal; (4) where actions are consolidated by order of the trial court, a judgment which does not finally determine the entire consolidated action and which is not entered pursuant to an order which states that there is no just reason for delay and directs entry of final judgment is not appealable); *see also Engvall v. Soo Line R.R.*, 605 N.W.2d 738 (Minn. 2000) (interlocutory judgment dismissing a party for lack of subject-matter jurisdiction is not immediately appealable absent district court's express determination that there is no just reason for delay and, even if circumstances made it immediately appealable, the appeal would be permissive).

*First Nat'l Bank v. Rosenkranz*, 430 N.W.2d 267 (Minn. App. 1988) (trial court's decision whether to make the express determination to allow immediate appeal of a partial judgment falls within its discretion).

*Itasca County Soc. Servs. v. Milatovich*, 427 N.W.2d 727 (Minn. App. 1988) (paternity judgment that fails to adjudicate all claims in the action, including child support and visitation, is not appealable until entry of final judgment adjudicating all remaining claims, unless the trial court has made an express determination there is no just reason for delay and has directed entry of a final judgment of paternity pursuant to Minn. R. Civ. App. P. 104.01).

*Olmscheid v. Paterson*, 425 N.W.2d 312 (Minn. App. 1988) (when the only remaining claim of the parties has been settled by stipulation, that claim is still outstanding for purposes of applying Minn. R. Civ. App. P. 104.01 until the trial court enters an order or judgment of dismissal pursuant to the stipulation).

*Lehman v. Terry*, 424 N.W.2d 584 (Minn. App. 1988) (partial judgment which fails to dismiss a third-party action is not immediately appealable unless the trial court has made the express determination specified in Minn. R. Civ. App. P. 104.01 and Minn. R. Civ. P. 54.02).

*Israelson & Assocs. v. Cardarelle & Assocs.*, 382 N.W.2d 554 (Minn. App. 1986) (determination in a bifurcated hearing of the validity and priority of a mechanics' lien, reserving the determination of the amount of the lien for later trial, is not a final judgment from which an appeal of right may be taken); *see also In re Commodore Hotel Fire & Explosion Case*, 318 N.W.2d 244 (Minn. 1982) (where trial court orders separate trials on the issues of liability and damages, a determination of liability is a partial adjudication, not a partial judgment, of one entire claim and cannot become a final judgment); *Sam v. Dairyland Ins. Co.*, 489 N.W.2d 823 (Minn. App. 1992) (declaratory judgment on the question of insurance coverage is nonappealable where damages remain for the trial court's determination in the declaratory judgment proceeding), *review denied* (Minn. Nov. 25, 1992).

### **c. Amended Judgments**

*Geckler v. Samuelson*, 438 N.W.2d 740 (Minn. App. 1989) (scope of review on appeal from amended judgment is limited to issues directly affected by the amended judgment, which were not otherwise reviewable on appeal from the original judgment). Note: Minn. R. Civ. App. P. 104.01, subd. 2 (under 1999 amendments, proper and timely motions to amend or make findings of fact or to alter or amend the judgment toll time to appeal).

*Burwell v. Burwell*, 433 N.W.2d 155 (Minn. App. 1988) (scope of review in an appeal from amended judgment is limited to issues modified in the



amended judgment which were otherwise not appealable from the original judgment).

*Beeson v. Beeson*, 432 N.W.2d 501 (Minn. App. 1988) (an issue decided in the original judgment and not amended later may not be raised on appeal from an amended judgment after the time to appeal the original judgment has expired).

## **2. Orders**

### **a. Granting or Refusing Injunction**

*Shakopee Mdewakanton Sioux (Dakota) Cmty. v. Minn. Campaign Fin. & Pub. Disclosure Bd.*, 586 N.W.2d 406 (Minn. App. 1998) (expedited review of district court's denial of motion to enjoin board from enforcing an advisory opinion required application of Dahlberg factors).

### **b. Vacating or Sustaining Attachment**

### **c. Denying New Trial or Granting New Trial on Errors of Law-- Generally**

*Hackett v. Dep't of Natural Res.*, 502 N.W.2d 425 (Minn. App. 1993) (trial court procedural issues assigned as error in a motion for a new trial are reviewable on a timely appeal from the judgment, even though the time to appeal the order denying the motion for a new trial has expired).

*Stockdale Bancorp. v. Kjellberg*, 479 N.W.2d 438 (Minn. App. 1992) (new trial motion must explicitly state the basis under Minn. R. Civ. P. 59.01 for a new trial and identify specific errors to preserve issues for appellate review).

*Muehlstedt v. City of Lino Lakes*, 466 N.W.2d 56 (Minn. App. 1991) (order denying a motion for a new trial is not appealable immediately if the order also grants a new trial on some issues, but the order is reviewable on appeal from a final judgment entered after the second trial).

*Waldner v. Peterson*, 447 N.W.2d 217 (Minn. App. 1989) (motion for a new trial that does not specifically allege any error does not preserve any issues for appeal).

*Iverson v. Iverson*, 432 N.W.2d 492 (Minn. App. 1988) (an appeal from a post-judgment order denying a new trial is not barred simply because the time to appeal the judgment has expired), *review denied* (Minn. July 27, 1989).

*Primus v. Johnson*, 426 N.W.2d 497 (Minn. App. 1988) (an order granting a mistrial for misconduct of counsel is not appealable).

*Parson v. Argue*, 344 N.W.2d 431 (Minn. App. 1984) (if there never was a trial, a motion for a "new trial" is an anomaly and an order denying such a motion is not appealable).

**d. Determining Action and Preventing Entry of Judgment**

*Fink v. Shutt*, 445 N.W.2d 869 (Minn. App. 1989) (order denying a motion for relief from a judgment entered pursuant to a confession of judgment is analogous to an order denying a motion to vacate a default judgment, and the order is appealable under Minn. R. Civ. App. P. 103.03(e)). *But see Carlson v. Panuska*, 555 N.W.2d 745 (Minn. 1996) (denial of motion to vacate default judgment is not appealable when party appealing the default appeared and participated in the underlying action).

*Johnson v. Johnson*, 439 N.W.2d 430 (Minn. App. 1989) (a contempt order which reserves for later determination the conditions for purging the contempt and the imposition of sanctions is not appealable; order finding a party in contempt and immediately imposing a sentence is appealable).

*Erickson v. Erickson*, 430 N.W.2d 499 (Minn. App. 1988) (final orders clarifying, interpreting, and enforcing dissolution decrees are generally appealable).

**e. Final Order, Decision, or Judgment in Administrative or Special Proceeding**

**(1) Definition of "Special Proceeding"**

*St. Croix Dev., LLC v. Gossman*, 735 N.W.2d 320 (Minn. 2007) (when the application to discharge the notice of lis pendens is not separate from the merits of the underlying action, an order denying discharge of the notice of lis pendens is not appealable under Minn. R. Civ. App. P. 103.03(g)).

*In re GlaxoSmithKline PLC*, 699 N.W.2d 749 (Minn. 2005) (when the district court issues an order finally determining the confidentiality status of documents produced pursuant to a civil investigative demand, the order may be appealed as of right under Minn. R. Civ. App. P. 103.03(g) as a final order affecting a substantial right in a special proceeding).

*Ullrich v. Newburg Township Bd.*, 648 N.W.2d 743 (Minn. App. 2002) (a mandamus action is a “special proceeding” and an order granting a party’s petition for a writ of mandamus is not an “irregular judgment” and proper practice is to enter a formal judgment which is appealable).

*In re Estate of Janecek*, 610 N.W.2d 628 (Minn. 2000) (disqualification of attorney for a conflict of interest in a probate proceeding is a final order in a special proceeding).

*Mely v. State Farm Ins.*, 530 N.W.2d 216 (Minn. App. 1995) (district court actions pertaining to arbitration under Minn. Stat. ch. 572 are “special proceedings,” and the time under now-repealed rule 104.03 to appeal a judgment confirming, modifying, or correcting an arbitration award expires 30 days after an adverse party serves written notice of entry). *Contra Pulju v. Metro. Prop. & Cas.*, 535 N.W.2d 608 (Minn. 1995) (arbitration proceedings are not special proceedings and an appeal taken within 90 days of entry of judgment is timely); *but see* Minn. R. Civ. App. P. 104.01 (under 1999 amendments, time to appeal a judgment is 60 days after entry).

*Duluth Ready-Mix Concrete v. City of Duluth*, 520 N.W.2d 775 (Minn. App. 1994) (claim for relocation benefits under Minn. Stat. §§ 117.50-.56 (1992) is a “special proceeding” within the meaning of Minn. R. Civ. App. P. 103.03(g)). *Contra Naegele Outdoor Adver., Inc. v. Minneapolis Cmty. Dev. Agency*, 551 N.W.2d 235 (Minn. App. 1996) (final administrative decision on claim for relocation benefits may only be reviewed by certiorari to the court of appeals).

*In re Establishment of County Ditch No. 11*, 511 N.W.2d 54 (Minn. App. 1994) (district court review of a reimbursement order in a drainage proceeding is a “special proceeding”), *review denied* (Minn. Mar. 31, 1994).

*Steeves v. Campbell*, 508 N.W.2d 817 (Minn. App. 1993) (domestic abuse proceedings brought pursuant to Minn. Stat. § 518B.01 (1992) are “special proceedings”).

*Cnty. of Stearns v. Schaaf*, 472 N.W.2d 191 (Minn. App. 1991) (paternity proceeding under Minn. Stat. § 257.57 is in the nature of an ordinary civil action and is not a “special proceeding” within the meaning of Minn. R. Civ. App. P. 103.03(g)).

*Hofseth v. Hofseth*, 456 N.W.2d 99 (Minn. App. 1990) (a variety of matters, including petitions for mandamus, postdissolution decree modification requests, commitment actions, unlawful detainer actions, and implied consent proceedings, are special proceedings).

## (2) New Trial Motions in Special Proceedings

*Steeves v. Campbell*, 508 N.W.2d 817 (Minn. App. 1993) (order denying a new trial motion in a domestic abuse proceeding is not appealable under Minn. R. Civ. App. P. 103.03(d)).

*Huso v. Huso*, 465 N.W.2d 719 (Minn. App. 1991) (motion for a new trial in postdissolution decree modification proceedings is not authorized and an order denying such a motion is not appealable under Minn. R. Civ. App. P. 103.03(d)); *see also Hughes v. Hughley*, 569 N.W.2d 534 (Minn. App. 1997) (party may move for amended findings after district court issues order addressing postdecree motion to modify judgment).

*In re Welfare of D.B.*, 463 N.W.2d 301 (Minn. App. 1990) (motion for new trial authorized in juvenile proceedings); *see also In re Welfare of D.N.*, 523 N.W.2d 11 (Minn. App. 1994) (failure to move for a new trial after a CHIPS hearing results in a waiver of the right to appeal evidentiary rulings, absent fundamental unfairness), *review denied* (Minn. Nov. 29, 1994).

*In re Jost*, 437 N.W.2d 89 (Minn. App. 1989) (order denying motion for new trial is not appealable under the commitment act), *rev'd*, 449 N.W.2d 719 (Minn. 1990) (postdecision motion for a new trial is authorized in commitment proceedings and a timely appeal may be taken from the commitment order or judgment or from the denial of a motion for a new trial); *see also In re Irwin*, 529 N.W.2d 366 (Minn. App. 1995) (special nature of commitment proceedings compels a broader scope of review encompassing review of evidentiary issues on appeal from the order or judgment on the merits), *review denied* (Minn. May 16, 1995).

*Park & Recreation Bd. v. Carl Bolander & Sons Prop.*, 436 N.W.2d 481 (Minn. App. 1989) (an order denying a motion for a new trial in condemnation proceedings is not independently appealable and an appeal may only be taken from an order determining the issue of public necessity or from the final judgment). *But cf. Pahlen v. Comm'r of Pub. Safety*, 482 N.W.2d 493 (Minn. App. 1992) (appeal may be taken from an order denying a new trial motion in an implied consent proceeding).

*Schiltz v. City of Duluth*, 435 N.W.2d 625 (Minn. App. 1989) (in special proceedings (such as mandamus actions), motion for a new trial is unnecessary to preserve issues for appeal and an order denying such a motion is not independently appealable), *rev'd*, 449 N.W.2d 439 (Minn. 1990) (since the legislature has indicated its intention that these matters are to proceed as other civil cases, a motion for a new trial in mandamus proceedings is authorized and appealable).

*Tonkaway Ltd. P'ship v. McLain*, 433 N.W.2d 443 (Minn. App. 1988) (order denying a motion for a new trial in unlawful detainer proceedings is not appealable).

**f. Certifying as Important and Doubtful**

*Judd v. State by Humphrey*, 488 N.W.2d 507 (Minn. App. 1992) (Minn. R. Civ. App. P. 103.03(h) authorizes the trial court to certify an important and doubtful question for immediate appeal only if the question arises in an order which denies a motion to dismiss for failure to state a claim upon which relief can be granted or a motion for summary judgment).

*King v. Watonwan Farm Serv.*, 430 N.W.2d 24 (Minn. App. 1988) (an appeal from an order denying a motion for summary judgment but certifying the matter as important and doubtful pursuant to Minn. R. Civ. App. P. 103.03(h) must be dismissed if the trial court does not specify the precise legal question upon which it seeks certification and has not made specific findings of fact explaining its ruling on that question); *see also Jostens, Inc. v. Federated Mut. Ins. Co.*, 612 N.W.2d 878 (Minn. 2000) (holding that potential to terminate proceedings is a primary but not dispositive factor and, when reversal will not terminate the proceedings, the district court in certifying the question must make specific findings as to how the interlocutory appeal will materially advance the ultimate termination of litigation and avoid protracted or expensive litigation).

**g. Orders Appealable by Statute or Under the Decisions of Minnesota Appellate Courts**

*Aon Corp. v. Haskins*, 817 N.W.2d 737 (Minn. App. 2012) (dismissing co-appellant's notice of related appeal on the ground that the district court's order denying co-appellant's motion to dismiss for failure to state a claim was not inextricably intertwined with the appealable order denying appellant's motion to dismiss for lack of personal jurisdiction).

*St. Croix Dev., LLC v. Gossman*, 735 N.W.2d 320 (Minn. 2007) (when the application to discharge the notice of lis pendens is not separate from the merits

of the underlying action, an order denying discharge of the notice of lis pendens is not appealable under the collateral order doctrine).

*Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759 (Minn. 2005) (district court's order effectively denied defendant's motion to dismiss for lack of jurisdiction and was thus immediately appealable).

*Harvey v. Dots, Inc.*, 561 N.W.2d 192 (Minn. App. 1997) (nongovernmental entities are not entitled to immediate appeal of an order denying an immunity-based motion for summary judgment), *overruled in part* by *Kastner v. Star Trails Ass'n*, 646 N.W.2d 235 (Minn. 2002) (formally adopting collateral order doctrine as framework to assess immediate appealability of order or judgment not specifically identified in the rules and overruling *Harvey's* governmental-nongovernmental distinction).

*El Nashaar v. El Nashaar*, 529 N.W.2d 13 (Minn. App. 1995) (ordinarily, prohibition is not available for review of child custody jurisdiction issues because an order dismissing or refusing to dismiss proceeding on the ground of lack of jurisdiction is appealable as of right).

*Erickson v. Erickson*, 506 N.W.2d 679 (Minn. App. 1993) (order vacating a judgment before the time to appeal the judgment has expired is not immediately appealable, but the order may be reviewed on appeal from a final judgment on the merits); *see also In re State & Regents Bldg. Asbestos Cases*, 435 N.W.2d 521 (Minn. 1989) (an order vacating an appealable final judgment is appealable itself).

*Judd v. State by Humphrey*, 488 N.W.2d 507 (Minn. App. 1992) (orders granting or denying pretrial motions to dismiss for lack of jurisdiction are appealable as of right independent of rule 103.03); *see also Engvall v. Soo Line R.R.*, 605 N.W.2d 738 (Minn. 2000) (interlocutory order granting summary judgment motion for lack of subject-matter jurisdiction not immediately appealable but, if it were, it would be permissive); *McGowan v. Our Savior's Lutheran Church*, 527 N.W.2d 830 (Minn. 1995) (order denying defendant's motion for summary judgment is immediately appealable when defendant's motion is based on the district court's lack of subject-matter jurisdiction).

*NFD, Inc. v. Stratford Leasing Co.*, 427 N.W.2d 757 (Minn. App. 1988) (although an order denying a motion to dismiss for lack of personal jurisdiction is no longer appealable under Minn. R. Civ. App. P. 103.03, it is this court's practice to extend discretionary review to orders denying motions to dismiss for lack of jurisdiction). *But see In re State & Regents Bldg. Asbestos Cases*, 435 N.W.2d 521 (Minn. 1989) (orders granting or denying motions to dismiss for

lack of jurisdiction are appealable as of right); *see also Anderson v. City of Hopkins*, 393 N.W.2d 363 (Minn. 1986) (order denying summary judgment is appealable if the motion is based on a claim of governmental immunity from suit). Note: Minn. R. Civ. App. P. 103.03(i) (under 1999 amendments, appeal may be taken “from such other orders or decisions as may be appealable by statute or under the decisions of the Minnesota appellate courts”).

#### **h. Other**

*McCallum v. W. Nat’l Mut. Ins. Co.*, 597 N.W.2d 307 (Minn. App. 1999) (when satisfaction of judgment after issuance of the writ of execution is involuntary, it does not operate as a waiver of the right to seek appellate review).

*In re Complaint Against Pappas Senate Comm.*, 478 N.W.2d 337 (Minn. App. 1991) (complainant before the Minnesota Ethical Practices Board has standing to appeal from a final decision of the board), *rev’d*, 488 N.W.2d 795 (Minn. 1992) (filing a complaint with the Minnesota Ethical Practices Board and appearing before it in executive session does not confer upon a complainant who suffers no injury in fact standing to seek judicial review of the board's decision).

*Hennepin County v. Griffin*, 429 N.W.2d 283 (Minn. App. 1988) ((1) an order denying a party temporary custody of a child pending establishment of paternity is not final appealable order; (2) temporary orders in paternity and dissolution actions are not appealable).

*Bondhus v. Bondhus*, 374 N.W.2d 804 (Minn. App. 1985) (a finding of fact which supports an undisputed order is not appealable in and of itself).

*McConnell v. Beseres*, 358 N.W.2d 113 (Minn. App. 1984) (an appeal may not be taken directly from conciliation court to the court of appeals).

### **3. Certiorari**

#### **a. Administrative Procedure Act**

*In re Chisago Lakes Sch. Dist. and J.D.*, 690 N.W.2d 407 (Minn. App. 2005) (appeals of the administrative hearing officer’s decision to the court of appeals under Minn. Stat. § 125A.091, subd. 24 (Supp. 2003), shall be by writ of certiorari under the procedure specified in Minn. Stat. §§ 14.63-.69 (2002), except that, as prescribed by section 125A.091, subdivision 24, the appeal period shall expire within 60 days after the hearing officer’s decision is received).

*In re License Applications of Polk Cnty. Ambulance Serv.*, 548 N.W.2d 300 (Minn. App. 1996) ((1) to vest jurisdiction in the court of appeals, a relator seeking certiorari review under Minn. Stat. §§ 14.63, .64 must serve and file a petition for certiorari within 30 days after receipt of a final agency decision; (2) failure of a party seeking certiorari review under Minn. Stat. §§ 14.63, .64 to serve copies of the issued writ of certiorari within 30 days after the date of mailing notice of the agency decision, pursuant to Minn. R. Civ. App. P. 115.03, subd. 4, does not deprive this court of jurisdiction; (3) service of a petition for certiorari by first class mail is sufficient under Minn. R. Civ. App. P. 125.03, if the petition is actually received at the office of opposing counsel, notwithstanding the language in Minn. Stat. § 14.64 directing that the petition and writ be served personally or by certified mail), *review denied* (Minn. Nov. 20, 1996). Note: Minn. R. Civ. App. P. 115.01 (under 1999 amendments, appeal period and acts required to invoke appellate jurisdiction are governed by the applicable statute).

*In re Application by City of Rochester for Adjustment of Serv. Area Boundaries with Peoples Coop. Power Ass'n*, 524 N.W.2d 540 (Minn. App. 1994) (an administrative law judge's order denying intervention is not directly appealable by certiorari).

*In re Application for Combined Air & Solid Waste Permit No. 2211-91-OT-1*, 483 N.W.2d 105 (Minn. App. 1992) (discovery in the court of appeals and transfer to the district court pursuant to Minn. Stat. § 14.68 (1990) are inappropriate where relators failed to establish that the information to be developed became known only after agency proceedings or that the agency specifically refused to entertain relators' challenges on these issues).

*Smith v. Powers*, 461 N.W.2d 53 (Minn. App. 1990) (certiorari appeal taken pursuant to Minn. Stat. § 420.13 (1988) and Administrative Procedure Act after Fire Civil Service Commission refused to review suspension imposed by Rochester Fire Chief, is improper route to seek appellate review of chief's three-month old suspension order or Commission's earlier rulemaking decision to delegate suspension authority).

*In re Minor Modification to Solid Waste Permit SW-61*, 448 N.W.2d 877 (Minn. App. 1989) (service upon assistant attorney general representing state agency satisfies requirement of Minn. Stat. § 14.63 (1988) that petition for certiorari be “served on the agency”).

*In re Annexation of Portion of Serv. Territory of Peoples Coop. Power Ass'n*, 430 N.W.2d 879 (Minn. App. 1988) ((1) a writ of certiorari seeking review of Public Utilities Commission decision need not be endorsed by a



surety, pursuant to Minn. Stat. § 606.03 (1986) since certiorari review of PUC decisions is obtained in accordance with Chapter 14 and the Rules of Civil Appellate Procedure only require bonds as specified by statute or this court; (2) order on interim service, pending acquisition of service area of displaced utility, is not a final decision subject to immediate appeal). *Cf. In re Volz*, 448 N.W.2d 70 (Minn. 1989) (writ of certiorari need not itself be endorsed; simultaneous filing of separate endorsement is sufficient).

*Zizak v. Despatch Indus., Inc.*, 427 N.W.2d 755 (Minn. App. 1988) (decision of three-member review panel affirming determination of the Minneapolis Commission on Civil Rights of no probable cause to proceed on discrimination claim is not a final appealable decision), *review denied* (Minn. Oct. 26, 1988).

*EPA Audio Visual, Inc. v. State*, 427 N.W.2d 271 (Minn. App. 1988) (Department of Administration denial of an application for the Small Business Procurement Program is final agency action and is appealable pursuant to Minn. Stat. § 480A.06, subd. 3 (1986), which authorizes this court to issue writs of certiorari to all agencies).

#### **b. Unemployment Benefits**

*In re Evjen*, 653 N.W.2d 212 (Minn. App. 2002) (certiorari review of the commissioner's decision is a proceeding in a court of law and a petition for writ of certiorari to review a decision of the commissioner signed by a nonlawyer is unauthorized and does not invoke the jurisdiction of the court of appeals).

*Kons v. Gaylord Cmty. Hosp.*, 428 N.W.2d 482 (Minn. App. 1988) (employer's appeal from commissioner's decision affirming award of unemployment benefits to employee is dismissed as moot because regardless of the outcome, the employee will continue to receive benefits as a result of the "double affirmation clause" under Minn. Stat. § 268.10, subd. 2(6) (Supp. 1987), and the employer must continue to reimburse the compensation fund for all benefits paid).

*Schneider v. J.D. Rogers Group*, 425 N.W.2d 863 (Minn. App. 1988) (writ of certiorari must be discharged where relator failed to timely serve the petition for writ of certiorari on respondent and failed to file a timely brief or respond to motion to dismiss); *see also Harms v. Oak Meadows*, 619 N.W.2d 201 (Minn. 2000) (for court of appeals to have jurisdiction over a reemployment benefits appeal, petitioner must serve commissioner and other parties with petition for writ of certiorari within 30 days of the mailing of the notice of the commissioner's decision).

*Fuller v. Norwest Infor. Servs.*, 396 N.W.2d 909 (Minn. App. 1986) (court of appeals will not review a decision by the commissioner which did not disqualify relator from receiving unemployment compensation benefits).

**c. Writ of Certiorari, Minn. Stat. Ch. 606**

*Hickman v. Comm'r of Human Servs.*, 682 N.W.2d 697 (Minn. App. 2004) (an individual who has been disqualified from holding positions involving direct contact with persons served by programs or entities identified in Minn. Stat. § 245C.03 (Supp. 2003) may request reconsideration, but a motion to reconsider the Commissioner of Human Services' decision refusing to set aside the disqualification is not authorized, and such a motion does not extend the time to appeal).

*City of Victoria v. Cnty. of Carver*, 567 N.W.2d 772 (Minn. App. 1997) (in a certiorari appeal from a decision granting a conditional use permit, the permit applicant is an adverse party on which the relator must serve the writ of certiorari and other appeal papers, and failure to serve the applicant timely compels dismissal of the appeal), *review denied* (Minn. Sept. 18, 1997).

*Minn. Chapter of Assoc'd Builders & Contractors, Inc. v. Bd. of Educ.*, 567 N.W.2d 761 (Minn. App. 1997) (a school board's decision to award contracts for a construction project is not a quasi-judicial decision reviewable by certiorari), *review denied* (Minn. Aug. 26, 1997).

*Heideman v. Metro. Airports Comm'n*, 555 N.W.2d 322 (Minn. App. 1996) (the court of appeals has exclusive jurisdiction over writs of certiorari).

*Twp. of Honner v. Redwood County*, 518 N.W.2d 639 (Minn. App. 1994) (absent express statutory language vesting judicial review of an agency action in the district court, the court of appeals has exclusive jurisdiction over writs of certiorari), *review denied* (Minn. Sept. 16, 1994).

*In re Ultraflex Enters. Appeal*, 494 N.W.2d 89 (Minn. App. 1992) ((1) certiorari appeal from a quasi-judicial decision issued by an administrative agency is appropriate pursuant to the provisions of Minn. Stat. §§ 606.01-.06 (1990) where contested case proceedings have not been conducted and the applicable statute does not provide for judicial review; (2) a party need not comply with the time limit in Minn. R. Civ. App. P. 115 for service of a petition for a writ of certiorari when review by certiorari is appropriate pursuant to Minn. Stat. §§ 606.01-.06 and the party timely obtains and serves the issued writ pursuant to Minn. Stat. §§ 606.01-.02).

*In re Brown*, 434 N.W.2d 277 (Minn. App. 1989) (failure to timely serve writ of certiorari on all individual commissioners in an appeal from a decision of the Minneapolis Civil Service Commission warrants dismissal pursuant to *State ex rel. Ryan v. Civil Serv. Comm'n*, 278 Minn. 296, 298, 154 N.W.2d 192, 194 (1967)), *review denied* (Minn. Feb. 28, 1989).

*In re Annexation of Portion of Serv. Territory of Peoples Coop. Power Ass'n*, 430 N.W.2d 879 (Minn. App. 1988) ((1) a writ of certiorari seeking review of Public Utilities Commission decision need not be endorsed by a surety, pursuant to Minn. Stat. § 606.03 (1986) since certiorari review of PUC decisions is obtained in accordance with chapter 14 and the rules of civil appellate procedure only require bonds as specified by statute or this court; (2) order on interim service, pending acquisition of service area of displaced utility, is not a final decision subject to immediate appeal); *see In re Volz*, 448 N.W.2d 70 (Minn. 1989) (simultaneous filing of separate endorsement with writ sufficient to satisfy Minn. Stat. § 606.03).

*In re Placement on Unrequested Leave of Absence of Pinkney*, 353 N.W.2d 676 (Minn. App. 1984) (writ of certiorari to review the placement of teachers on unrequested leave by a school board will issue if proper application is made within 60 days after the petitioner received notice of the proceeding to be reviewed. Minn. Stat. § 606.01 (1982)).

#### **4. Statutory Authority**

##### **a. Arbitration, Minn. Stat. § 572B.28**

*Minn. Teamsters Pub. & Law Enforcement Employees Union, Local No. 320 v. County of Carver*, 571 N.W.2d 598 (Minn. App. 1997) (in an arbitration proceeding, because a rehearing on all issues supersedes original hearing, the order vacating original award and directing a rehearing is not reviewable on appeal from a judgment confirming the second award).

*Kowler Assocs. v. Ross*, 544 N.W.2d 800 (Minn. App. 1996) (an order vacating an arbitration award and directing a rehearing is not appealable under Minn. Stat. § 572.26, subd. 1, even if the order also denies a motion to confirm the award).

*Pulju v. Metro. Prop. & Cas.*, 532 N.W.2d 592 (Minn. App. 1995) (the time to appeal a judgment in an arbitration proceeding under Minn. Stat. ch. 572 expires 30 days after an adverse party serves written notice of entry), *rev'd*, 535 N.W.2d 608 (Minn. 1995) (arbitration proceedings are not special proceedings

and an appeal taken within 90 days of entry of judgment is timely). *But see* Minn. R. Civ. App. P. 104.01, subd. 1 (now providing for 60 days to appeal from judgment).

*Mely v. State Farm Ins. Co.*, 530 N.W.2d 216 (Minn. App. 1995) (district court actions pertaining to arbitration under Minn. Stat. ch. 572 are “special proceedings” and the time to appeal a judgment confirming, modifying, or correcting an arbitration award expires 30 days after an adverse party serves written notice of entry); *contra Pulju v. Metro. Prop. & Cas.*, 535 N.W.2d 608 (Minn. 1995) (arbitration proceedings are not special proceedings and an appeal taken within 90 days of entry of judgment was timely under previous version of rule 104.01).

*AFSCME Council 14 v. St. Paul Ramsey Hosp.*, 425 N.W.2d 318 (Minn. App. 1988) (order compelling arbitration is not appealable and discretionary review is unnecessary where an action to determine preemption issue can still be brought in federal court or agency). *Cf. Stahl v. McGenty*, 486 N.W.2d 157 (Minn. App. 1992) (an order denying a motion to compel arbitration is not an order involving the merits of a dispute and, if not immediately appealed from, this order becomes final and is not reviewable following final judgment).

#### **b. Condemnation, Minn. Stat. Ch. 117**

*Hous. & Redevelopment Auth. in & for City of Fridley v. Mainstreet Fridley Props., LLC*, 755 N.W.2d 789 (Minn. App. 2008) (under Minn. Stat. § 117.075, subd. 1(c), an order approving the public use or public purpose, necessity, and authority for the taking becomes final unless an appeal is brought within 60 days after service of the order on the party).

*City of Eagan v. O'Neil*, 437 N.W.2d 736 (Minn. App. 1989) (landowners' failure to challenge the finding of public purpose at time of the initial taking in eminent domain proceedings, and to appeal from allowance of taking, precludes later objection to taking during compensation portion of proceedings), *review denied* (Minn. June 9, 1989). *Cf. City of Duluth v. Stephenson*, 481 N.W.2d 577 (Minn. App. 1992) (where the public necessity for a taking is not challenged, a court order granting a “quick take” condemnation petition is not a final order from which an appeal may be taken), *review denied* (Minn. May 15, 1992).

*Park & Recreation Bd. v. Carl Bolander & Sons Prop.*, 436 N.W.2d 481 (Minn. App. 1989) (an order denying a motion for a new trial in condemnation proceedings is not independently appealable and appeals are limited to orders determining the issue of public necessity and the final judgment). *But cf. Pahlen v. Comm'r of Pub. Safety*, 482 N.W.2d 493 (Minn. App. 1992) (appeal may be

taken from an order denying a new trial motion in an implied consent proceeding).

**c. Commitment, Minn. Stat. § 253B.23, subd. 7**

*In re Stubbe*, 443 N.W.2d 855 (Minn. App. 1989) (trial court properly determined hearing pursuant to Minn. Stat. § 253B.08, subd. 1 (1988) must be held within 44 days of filing of civil commitment petition). *But see In re May*, 477 N.W.2d 913 (Minn. App. 1991) (overruling *Stubbe* to extent it mandates hearing within 44 days despite waiver).

*In re Jost*, 437 N.W.2d 89 (Minn. App. 1989) (order denying motion for new trial is not appealable under the commitment act), *rev'd*, 449 N.W.2d 719 (Minn. 1990) (postdecisional motion for a new trial is authorized in commitment proceedings and a timely appeal may be taken from the commitment order or judgment or from the denial of a motion for a new trial); *see also In re Irwin*, 529 N.W.2d 366 (Minn. App. 1995) (special nature of commitment proceedings compels a broader scope of review encompassing review of evidentiary issues on appeal from the order or judgment on the merits), *review denied* (Minn. May 16, 1995).

*In re Schueller*, 426 N.W.2d 241 (Minn. App. 1988) (appeal from an order for commitment must be dismissed as untimely and is improper where a judgment of commitment was entered the same day as the order and the time to appeal the judgment expired before the appeal was filed); *see* Minn. Stat. § 253B.23, subd. 7 (1994) (any order or judgment under chapter 253B or related caselaw may be appealed within 60 days after the order or entry of judgment).

*In re Engel*, 399 N.W.2d 623 (Minn. App. 1987) (the patient's husband has no standing to appeal the discharge of the patient's commitment).

**d. Drainage Proceedings, Minn. Stat. § 103E.095, subd. 5**

*In re Establishment of County Ditch No. 11*, 511 N.W.2d 54 (Minn. App. 1994) (appeals of final district court orders and judgments in drainage proceedings issued pursuant to Minn. Stat. § 103E.091 (1992) are governed by Minn. Stat. § 103E.095, subd. 5 (1992), and must be made and perfected within 30 days after entry of judgment or the filing of the order), *review denied* (Minn. Mar. 31, 1994).

**e. Juvenile Delinquency, Minn. Stat. § 260B.415**

*In re Welfare of J.L.P.*, 701 N.W.2d 282 (Minn. App. 2005) (an appeal from an order revoking, or declining to revoke, probation in an extended jurisdiction juvenile proceeding is governed by Minn. R. Crim. P. 28.05, which allows a party 90 days to appeal).

*In re Welfare of S.H.R.*, 570 N.W.2d 704 (Minn. App. 1997) (prosecution has no right of appeal from a juvenile delinquency disposition in a non-EJJ case).

*In re Welfare of W.L.H.*, 552 N.W.2d 564 (Minn. App. 1996) (in calculating the state's time to file a pretrial appeal in a juvenile delinquency or extended juvenile jurisdiction proceeding, intermediate weekend days are not excluded from the calculation under Minn. R. Juv. P. 65.01).

*In re Welfare of G.(NMN)M.*, 533 N.W.2d 883 (Minn. App. 1995) (in cases governed by the 1994 amendments to the rules of juvenile procedure, an order adjudicating delinquency before the time of disposition is not immediately appealable, but it becomes appealable when a disposition order is issued).

*In re Welfare of M.D.S.*, 514 N.W.2d 308 (Minn. App. 1994) (an order finding that the allegations in a juvenile delinquency petition were proved is not immediately appealable where the court neither adjudicated a child delinquent nor finally withheld a delinquency adjudication); *see* Minn. R. Juv. P. 21.03, subd. 1 (district court shall not determine whether an offense will be adjudicated until the time of disposition).

*In re Welfare of R.L.A.*, 431 N.W.2d 152 (Minn. App. 1988) ((1) on appeal from adjudication order, stay of potential disposition order is inappropriate and premature; (2) requests to stay juvenile court orders should be made first to the trial court).

*In re Welfare of R.A.D.*, 356 N.W.2d 445 (Minn. App. 1984) (juvenile court order denying a motion for a trial de novo and granting time to move for review is not a final appealable order).

**f. Juvenile Protection, Minn. Stat. § 260C.415**

*In re Welfare of Child of T.L.M.*, 804 N.W.2d 374 (Minn. App. 2011) (an appeal in a juvenile protection proceeding must be served and filed within 20 days as provided by Minn. R. Juv. Prot. P. 47.02, subd. 2, which controls over the 30-day provision of Minn. Stat. § 260C.415, subd. 1).

*In re Welfare of J.B., Jr.*, 623 N.W.2d 640 (Minn. App. 2001) (if guardian ad litem and counsel for juvenile are not “adverse” to the appeal, failure to serve them on appeal of order terminating parental rights is not jurisdictional defect), *overruled in part by In re Welfare of J.R., Jr.*, 655 N.W.2d 1, 3 n.1 (Minn. 2003) (stating that rules of juvenile procedure should control over statute in protection matter).

*In re Welfare of D.B.*, 463 N.W.2d 301 (Minn. App. 1990) ((1) an appeal from an order terminating parental rights must be taken within 30 days after the order is filed; (2) motion for new trial authorized in juvenile proceedings); *see also In re D.N.*, 523 N.W.2d 11 (Minn. App. 1994) (failure to move for a new trial after a CHIPS hearing results in a waiver of the right to appeal evidentiary rulings, absent fundamental unfairness), *review denied* (Minn. Nov. 29, 1994).

*In re Welfare of J.L.U.*, 450 N.W.2d 642 (Minn. App. 1990) (trial court acting pursuant to chapter 518 exceeded its authority in making temporary award of custody to county and directing that child be placed in foster care, where allegations in petition and findings of trial court could be relevant in juvenile protection proceedings under chapter 260, but did not support an award of custody pursuant to Minn. Stat. § 518.156, subd. 1(b) (1988)).

*In re Welfare of R.M.*, 436 N.W.2d 807 (Minn. App. 1989) (an appeal from a juvenile court order must be dismissed as untimely where appellant failed to timely file and serve the notice of appeal within 30 days after filing of the order pursuant to Minn. Stat. § 260.291, subd. 1 (1988)), *review denied* (Minn. Apr. 24, 1989).

**g. Probate, Minn. Stat. § 525.71**

*Estate of Spiess v. Schumm*, 442 N.W.2d 179 (Minn. App. 1989) (appeals involving multi-party bank accounts are governed by the rules of civil appellate procedure).

*In re Estate of Opsahl*, 440 N.W.2d 185 (Minn. App. 1989) (appeals in probate matters are limited to orders and judgments enumerated in Minn. Stat. § 525.71 (1988)). *But see In re Estate of Janeczek*, 610 N.W.2d 638 (Minn. 2000) (Minn. Stat. § 525.71 does not provide an exclusive list of appealable orders from probate proceedings).

*In re Estate of Simpkins*, 435 N.W.2d 864 (Minn. App. 1989) (order addressing ambiguity of will not appealable under Minn. Stat. § 525.71).

#### **h. Eviction Actions, Minn. Stat. § 504B.371**

Note: Minnesota Statutes Chapters 504 and 566 were reorganized as chapter 504B by 1999 Minn. Laws ch. 199.

*Tonkaway Ltd. P'ship v. McLain*, 433 N.W.2d 443 (Minn. App. 1988) ((1) an appeal in unlawful detainer proceedings must be taken from judgment of restitution; (2) an order denying a motion for a new trial in unlawful detainer proceedings is not appealable).

*Makela v. Peters*, 425 N.W.2d 605 (Minn. App. 1988) ((1) an order for writ of restitution is not appealable and the proper appeal is from a *judgment* of restitution; (2) court administrators must enter judgments of restitution pursuant to Minn. Stat. § 566.09).

*Lanthier v. Michaelson*, 394 N.W.2d 245 (Minn. App. 1986) (on appeal from a judgment for restitution of premises, where no supersedeas bond is posted, rent is not paid into court, and tenant vacated the premises voluntarily prior to the execution of a writ of restitution, the case is moot), *review denied* (Minn. Nov. 26, 1986).

#### **F. Discretionary Review**

*Gordon v. Microsoft Corp.*, 645 N.W.2d 393 (Minn. 2002) (articulating three nonexclusive factors to consider in deciding whether to grant discretionary review of class certification).

*McKenzie v. N. States Power Co.*, 440 N.W.2d 183 (Minn. App. 1989) (trial court's denial of motion to amend complaint to add a claim for punitive damages pursuant to Minn. Stat. § 549.191 (1988), does not present compelling question justifying interlocutory discretionary review).

*Lund v. Corporate Air, Inc.*, 438 N.W.2d 458 (Minn. App. 1989) (petitioner failed to establish compelling reason for discretionary review of denial of summary judgment), *vacated* (Minn. June 21, 1989).

*Clark v. Monnens*, 436 N.W.2d 830 (Minn. App. 1989) (no compelling reason to grant discretionary review of discovery order for independent psychological examination).

*In re Rice Lake Auto, Inc.*, 430 N.W.2d 881 (Minn. App. 1988) (orders granting or denying civil investigative demands under Minn. Stat. § 8.31, subd. 2 (1986) are not appealable, but discretionary review granted).



*Dahlgren v. Caring & Sharing, Inc.*, 429 N.W.2d 706 (Minn. App. 1988) (discretionary review is unnecessary since an appeal may be taken from a judgment of dismissal).

*NFD, Inc. v. Stratford Leasing Co.*, 427 N.W.2d 757 (Minn. App. 1988) (although an order denying a motion to dismiss for lack of personal jurisdiction is no longer appealable under Minn. R. Civ. App. P. 103.03, it is this court's practice to extend discretionary review to orders denying motions to dismiss for lack of jurisdiction). *But see In re State & Regents Bldg. Asbestos Cases*, 435 N.W.2d 521 (Minn. 1989) (orders granting or denying motions to dismiss for lack of jurisdiction are appealable as of right).

*See also Emme v. C.O.M.B.*, 418 N.W.2d 176 (Minn. 1988) (thrust of appellate rules is that appeals should not be brought or considered piecemeal).

## **G. Extraordinary Writs**

### **1. Mandamus**

#### **a. Venue**

*Rouse Mech., Inc. v. Dahl*, 489 N.W.2d 272 (Minn. App. 1992) (trial court was not clearly required to change venue to county of defendant's residence, where defendant was alleged to have committed malpractice by failing to serve mechanics' lien statement upon property owner in Ramsey County, where suit was brought).

*Riddle v. Ringwelski*, 451 N.W.2d 372 (Minn. App. 1990) (mandamus will not lie to compel a trial court to retain venue when the plaintiff did not bring a timely motion to quash the demand for a change of venue).

*State by Drabik v. Martz*, 447 N.W.2d 475 (Minn. App. 1989) (mandamus will not lie to compel a change of venue from the county selected by plaintiff in a suit brought under the Minnesota Environmental Rights Act, where defendant was not found and did not reside in Minnesota when action was brought).

*N. States Power v. Minn. Power & Light Co.*, 433 N.W.2d 157 (Minn. App. 1989) (petition for writ of mandamus seeking change of venue denied where part of the cause of action involving interpretation of a contract arose in that county).

**b. Other**

*T.M.Y. v. D.F. ex rel. K.D.F.*, 828 N.W.2d 138 (Minn. App. 2013) (in a parentage proceeding, a court-appointed attorney's representation of a putative father is limited in scope to the issue of the establishment of parentage, as provided by Minn. Stat. § 257.69, subd. 1 (2012)).

*Gayle's Marina Corp. v. Minnehaha Creek Watershed Dist.*, 451 N.W.2d 907 (Minn. App. 1990) ((1) mandamus will lie to compel a trial court to assume jurisdiction; (2) watershed district's denial of permit application is appealable to district court under Minn. Stat. § 112.801, subd. 1 (1988), which does not limit appeal rights to decisions relating to "projects or improvements" funded by assessment upon benefited properties), *aff'd*, 461 N.W.2d 224 (Minn. 1990).

*Knudson v. Comm'r of Pub. Safety*, 438 N.W.2d 423 (Minn. App. 1989) ((1) mandamus will lie to compel a trial court to order impoundment of registration plates and certificates pursuant to Minn. Stat. § 168.041, subd. 3a (1988) when statutory conditions are met; (2) mandamus is the appropriate remedy for the Commissioner when a trial court fails to follow the statute governing impoundment).

*Green Tree Acceptance, Inc. v. Midwest Fed. Sav. & Loan Ass'n*, 433 N.W.2d 140 (Minn. App. 1988) (mandamus will not lie to control discretionary decision regarding stay of state court suit pending outcome of related federal suit).

*Durell v. Mayo Found.*, 429 N.W.2d 704 (Minn. App. 1988) (mandamus is inappropriate to obtain removal of trial judge, where decision on request for removal was within trial court's discretion and petitioner failed to establish judge was clearly required to honor request for removal), *review denied* (Minn. Nov. 16, 1988).

*Last v. Last*, 428 N.W.2d 483 (Minn. App. 1988) (petition for mandamus denied where order finding maintenance payments subject to garnishment by former attorney appealable pursuant to Minn. Stat. § 571.64, and proper remedy is direct appeal).

*Northwoods Env'tl. Inst. v. Minn. Pollution Control Agency*, 370 N.W.2d 449 (Minn. App. 1985) ((1) extraordinary remedy of mandamus will not be afforded to parties who chose not to attend or assert their rights before the agency whose action they seek to compel; (2) court of appeals will not grant extraordinary relief when the ordinary and adequate remedies at law are not followed).

## **2. Prohibition**

### **a. Discovery**

*Muller v. Rogers*, 534 N.W.2d 724 (Minn. App. 1995) ((1) defendant whose medical condition is not in controversy is entitled to assert physician-patient privilege to limit discovery into confidential medical records; (2) medical information disclosed by defendant to Department of Public Safety for purpose of obtaining license plates is not privileged if defendant fails to establish the information was provided in confidence, in context of physician-patient relationship, or for purpose of obtaining medical treatment).

*Blue Cross & Blue Shield of Minn. v. Larson*, 472 N.W.2d 885 (Minn. App. 1991) (psychiatrist is not entitled to a writ of prohibition for relief from a trial court order compelling disclosure of limited patient information to a plaintiff alleging submission of false claims for insurance reimbursement, where the trial court issued a protective order to restrict access and protect patient privacy), *review denied* (Minn. Sept. 17, 1991).

*Loveland v. Kremer*, 464 N.W.2d 306 (Minn. App. 1990) (writ of prohibition issued where the trial court, without showing of good cause, ordered second independent medical examination after petitioner had attended an independent medical examination pursuant to stipulation with respondent's liability insurer).

*Holt v. Minn. State Bd. of Med. Examiners*, 431 N.W.2d 905 (Minn. App. 1988) (prohibition is inappropriate where trial court did not compel disclosure of information which is clearly not discoverable and the issue is reviewable on appeal from a final decision on the merits), *review denied* (Minn. Jan. 13, 1989).

### **b. Removal of Trial Judge**

*In re Ihde*, 800 N.W.2d 808 (Minn. App. 2011) (a party may not compel the removal, pursuant to Minn. R. Civ. P. 63.03, of a district court judge assigned to a motion to modify child custody if the judge previously presided over the parties' dissolution action before the judgment and decree).

*Zweber v. Zweber*, 435 N.W.2d 593 (Minn. App. 1989) (notice of removal filed after matter was submitted to, and considered by, trial judge was untimely), *review denied* (Minn. Mar. 29, 1989).

*Omaha Fin. Life Ins. v. Cont'l Life Underwriters Ins.*, 427 N.W.2d 290 (Minn. App. 1988) (prohibition granted where notice to remove was timely pursuant to Minn. R. Civ. P. 63.03 in a new action brought after dismissal of a separate action involving same parties), *review denied* (Minn. Oct. 26, 1988).

**c. Domestic Abuse**

*El Nashaar v. El Nashaar*, 529 N.W.2d 13 (Minn. App. 1995) ((1) district court is not authorized to continue an ex parte temporary order for protection in effect for more than 14 days, even on the ground that the court needs additional time to conduct a full hearing and make findings; (2) ordinarily, prohibition is not available for review of child custody jurisdiction issues because an order dismissing or refusing to dismiss a proceeding on the ground of lack of jurisdiction is appealable as of right).

*Nohner v. Anderson*, 446 N.W.2d 202 (Minn. App. 1989) (an ex parte temporary order for protection may not be continued in effect for more than 14 days without a full hearing and appropriate findings on domestic abuse).

**d. Other**

*Clark v. Clark*, 543 N.W.2d 685 (Minn. App. 1996) (a stay of an order modifying child custody pending completion of district court proceedings and appeal should be liberally allowed when the modification would cause major changes in the child's living arrangements and there are no exigent circumstances requiring an immediate change in custody).

*In re Welfare of J.L.U.*, 450 N.W.2d 642 (Minn. App. 1990) (trial court acting pursuant to chapter 518 exceeded its authority in making temporary award of custody to county and directing that child be placed in foster care, where allegations in petition and findings of trial court could be relevant in juvenile protection proceedings under chapter 260, but did not support an award of custody pursuant to Minn. Stat. § 518.156, subd. 1(b) (1988)).

*In re Stubbe*, 443 N.W.2d 855 (Minn. App. 1988) (prohibition denied where trial court properly determined hearing pursuant to Minn. Stat. § 253B.08, subd. 1 (1988) must be held within 44 days after filing of civil commitment petition); *see In re May*, 477 N.W.2d 913 (Minn. App. 1991) (overruling *Stubbe* to extent it mandates hearing within 44 days despite waiver).

*All Lease Co. v. Peters*, 424 N.W.2d 320 (Minn. App. 1988) (writ of prohibition granted—finding trial court erred in requiring posting of a supersedeas bond as condition of appeal).

## H. Scope of Review

*Hackett v. State*, 502 N.W.2d 425 (Minn. App. 1993) (trial court procedural issues assigned as error in a motion for a new trial are reviewable on a timely appeal from the judgment, even though the time to appeal the order denying the motion for a new trial has expired); *see also Tyroll v. Private Label Chems., Inc.*, 505 N.W.2d 54 (Minn. 1993) (matters such as trial procedure, evidentiary rulings and jury instructions are subject to appellate review only if there has been a motion for a new trial in which such matters have been assigned as error). Note: Minn. R. Civ. App. P. 104.01, subd. 2 (under 1999 amendments, filing of proper and timely motions extends the appeal time); Minn. R. Civ. App. P. 103.04 (scope of review may be affected by steps taken to preserve issues for review on appeal).

*Stockdale Bancorp. v. Kjellberg*, 479 N.W.2d 438 (Minn. App. 1992) ((1) pretrial orders are reviewable only on appeal from a final judgment, and are not within the scope of review on appeal from an order denying a new trial; (2) a new trial motion must explicitly state the basis under Minn. R. Civ. P. 59.01 for a new trial and identify specific errors to preserve issues for appellate review).

*Waldner v. Peterson*, 447 N.W.2d 217 (Minn. App. 1989) ((1) a motion for a new trial that does not specifically allege any error does not preserve issues for appeal; (2) an appellate court's review is limited to issues that the record indicates were actually raised in, and decided by, the trial court; (3) a party's failure to notify the attorney general of a challenge to the constitutionality of a statute warrants refusal to consider the question).

*Estate of Spiess v. Schumm*, 442 N.W.2d 179 (Minn. App. 1989) (on appeal from an order denying a motion for a new trial, only those matters alleged in the motion as error may be reviewed).

*Geckler v. Samuelson*, 438 N.W.2d 740 (Minn. App. 1989) (scope of review on appeal from amended judgment is limited to issues directly affected by the amended judgment, which were not otherwise reviewable on appeal from the original judgment).

*In re Estate of Magnus*, 436 N.W.2d 821 (Minn. App. 1989) (appellants must preserve objections and provide an adequate record to afford appellate review).

*Burwell v. Burwell*, 433 N.W.2d 155 (Minn. App. 1988) (scope of review in an appeal from amended judgment is limited to issues modified in the amended judgment that were otherwise not appealable from the original judgment).

*Beeson v. Beeson*, 432 N.W.2d 501 (Minn. App. 1988) (an issue decided in the original judgment and not amended later may not be raised on appeal from an amended judgment after the time to appeal the original judgment has expired).

*Iverson v. Iverson*, 432 N.W.2d 492 (Minn. App. 1988) (scope of review on appeal from order denying motion for new trial is limited to matters specifically alleged as error in the motion), *review denied* (Minn. July 27, 1989).

## **I. Attorney Fees and Sanctions**

*Arden Props. v. Anderson*, 473 N.W.2d 924 (Minn. App. 1991) (counsel who certify to the appellate court that satisfactory financial arrangements have been made for the transcription are responsible for payment of transcript expenses).

*Swenson v. City of Fifty Lakes*, 439 N.W.2d 758 (Minn. App. 1989) (careless failure to comply with the rules of civil appellate procedure justifies imposition of sanctions).

*Lund v. Corporate Air, Inc.*, 438 N.W.2d 458 (Minn. App. 1989) (counsel's lack of candor and failure to disclose past procedural history relevant to court's determination warrants imposition of sanctions), *vacated* (Minn. June 21, 1989).

*Brown v. State*, 438 N.W.2d 456 (Minn. App. 1989) (respondent's frivolous opposition to demand for change of venue and petition for mandamus justified an award of attorney fees pursuant to Minn. Stat. § 549.21, subd. 2 (1988)).

## **J. Taxation of Costs and Disbursements**

*Murphy v. Milbank Mut. Ins.*, 344 N.W.2d 896 (Minn. App. 1984) ((1) only a prevailing party is entitled to tax costs and disbursements in an appeal; (2) generally, the appellant prevails if he secures a reversal or modification of the order or judgment from which the appeal is taken, and the respondent prevails if he secures affirmance without modification).

## **II. CRIMINAL APPELLATE PROCEDURE**

### **A. Defense Appeals**

#### **1. Appealability**

*State v. Henry*, 809 N.W.2d 251 (Minn. App. 2012) (in the absence of a motion or petition, a letter response by a sentencing judge to a prisoner's inquiry about fines imposed does not constitute an appealable order).

*State v. Allinder*, 746 N.W.2d 923 (Minn. App. 2008) (a stay of adjudication imposed for a felony offense is a sentence that the defendant may appeal as of right under Minn. R. Crim. P. 28.02, subd. 2(3)).

*State v. Pflapsen*, 590 N.W.2d 759 (Minn. 1999) (court of appeals has authority to suspend the technical requirements of the rules and to treat a notice of appeal of a sentencing order as a petition for a writ of prohibition).

*State v. Murphy*, 537 N.W.2d 492 (Minn. App. 1995) (a criminal defendant lacks a right to appeal a pretrial order denying a motion to dismiss a complaint or indictment on double jeopardy grounds).

*State v. Saliterman*, 431 N.W.2d 590 (Minn. App. 1988) (an order denying a motion to withdraw a guilty plea made after sentencing and after time to appeal the conviction is analogous to an order denying postconviction relief and is appealable as of right).

*Bonyng v. City of Minneapolis*, 430 N.W.2d 265 (Minn. App. 1988) (an order denying a motion for the suppression and return of evidence pursuant to Minn. Stat. § 626.21 is not appealable when a criminal action has been instituted).

*State v. Pendleton*, 427 N.W.2d 272 (Minn. App. 1988) (defendant may obtain expedited review of a pretrial suppression order by waiving a jury trial, stipulating to the facts and appealing from a finding of guilt pursuant to *State v. Lothenbach*, 296 N.W.2d 854, 857 (Minn. 1980), and discretionary review is inappropriate, absent showing this procedure is an inadequate remedy).

*State v. Jordan*, 426 N.W.2d 495 (Minn. App. 1988) (a defendant may not appeal an order precluding him from calling a recanting victim at the omnibus hearing and denying his motion to dismiss for lack of probable cause and there was no compelling reason for discretionary review or extraordinary relief).

*State v. Myhro*, 354 N.W.2d 571 (Minn. App. 1984) (in a criminal matter, an order denying a motion for judgment of acquittal and motion for a new trial is not directly appealable, but may be reviewed on appeal from the judgment); *see also State v. Herem*, 365 N.W.2d 771 (Minn. 1985) (notice of appeal should be liberally construed in favor of its sufficiency).

## **2. Timeliness**

*State v. Scott*, 529 N.W.2d 11 (Minn. App. 1995) ((1) an untimely appeal from an order denying a motion for modification of sentence cannot be rendered timely by being construed as an appeal from the judgment and conviction if also untimely as an

appeal of conviction; (2) other than construing the appeal as being from a judgment of conviction or from a postconviction order, there is no authority to extend the time to appeal a sentence), *review denied* (Minn. Mar. 14, 1995).

*State v. Tessema*, 515 N.W.2d 626 (Minn. App. 1994) (because a petty misdemeanor is treated as a misdemeanor for purposes of appeal, an appeal from a petty misdemeanor conviction is subject to the 10-day time limit for misdemeanor appeals under Minn. R. Crim. P. 28.02, subd. 4(3)).

### **3. Discretionary Review**

*State v. Smith*, 656 N.W.2d 420 (Minn. App. 2003) (the proper procedure for a criminal defendant seeking a discretionary “appeal” is to file a petition for discretionary review under Minn. R. Civ. App. P. 105, not a notice of appeal).

*State v. Erickson*, 589 N.W.2d 481 (Minn. 1999) (discretionary review will be granted when issue is of statewide importance to the administration of justice).

*State v. Murphy*, 537 N.W.2d 492 (Minn. App. 1995) (a defendant must show a compelling reason to obtain review of a pretrial double jeopardy ruling).

*State v. Russell*, 481 N.W.2d 148 (Minn. App. 1992) ((1) defendant seeking discretionary review of an order denying a motion to dismiss the indictment must present an adequate record of the evidence presented to the grand jury; (2) discretionary review of whether there is sufficient admissible evidence to support the indictment would be premature where no hearing on defendant's suppression motion has been held).

*State v. Montano*, 437 N.W.2d 772 (Minn. App. 1989) (a defendant seeking pretrial discretionary review due to potential collateral consequences of his conviction must establish the consequence could occur before an appeal from a conviction could be decided).

*State v. Masloski*, 430 N.W.2d 7 (Minn. App. 1988) (petitioner failed to show compelling reason for discretionary review, where the issue is not novel and the order does not preclude jury determination on the issue).

*State v. Pendleton*, 427 N.W.2d 272 (Minn. App. 1988) (defendant may obtain expedited review of a pretrial suppression order in a possession case by waiving a jury trial, stipulating to the facts and appealing from a finding of guilt pursuant to *State v. Lothenbach*, 296 N.W.2d 854, 857 (Minn. 1980), and discretionary review is inappropriate, absent showing that it is in the interests of justice not to require this procedure); *see also State v. Verschelde*, 595 N.W.2d 192 (Minn. 1999) (when



defendant agreed to stay of adjudication, defendant had no right of appeal even though stay of adjudication was imposed as part of attempted *Lothenbach* procedure to expedite appellate review of pretrial order).

*State v. Jordan*, 426 N.W.2d 495 (Minn. App. 1988) (a party seeking discretionary review or emergency relief must submit an adequate record for determination of the issues).

#### **4. Expedited Appeal of Pretrial Order**

*State v. McMains*, 634 N.W.2d 733 (Minn. App. 2001) (when the district court has determined that additional conditions of pretrial release are necessary, it must fix the amount of money bail without other conditions upon which the defendant may obtain release).

*State v. Brooks*, 604 N.W.2d 345 (Minn. 2000) (constitution guarantees to a defendant access to third parties to provide security; thus, “cash only” bail is unconstitutional).

*State v. Verschelde*, 585 N.W.2d 429 (Minn. App. 1998) (when a defendant agrees to a stay of adjudication in which no final judgment of conviction is entered, the stay of adjudication is a “pretrial order” appealable by the state but not appealable by the defendant), *aff’d*, 595 N.W.2d 192 (Minn. 1999).

#### **5. Briefing**

*In re Application of Olson for Payment of Servs.*, 648 N.W.2d 226 (Minn. 2002) (issue not addressed in argument portion of brief is deemed waived on appeal and need not be addressed by the reviewing court).

### **B. State Appeals**

#### **1. Appealability**

*State v. Thoma*, 569 N.W.2d 205 (Minn. App. 1997) (stay of adjudication is a “pretrial order” that the state may appeal even in nonfelony prosecutions), *aff’d*, 571 N.W.2d 773 (Minn. 1997).

*State v. Jones*, 518 N.W.2d 67 (Minn. App. 1994) ((1) in selected pretrial appeals where critical impact appears questionable, this court may require the state to make a preliminary showing of critical impact before briefing; (2) the state must make a showing of critical impact when appealing an order denying a motion to exclude evidence; (3) when this court requires a preliminary showing of critical impact, the

state should present a summary or brief record of its case against the defendant; the state must show that a district court's evidentiary ruling has critical impact; it may not rely on the impact of a hypothetical series of trial rulings that may follow from that pretrial ruling), *review denied* (Minn. July 27, 1994).

*State v. Ciurleo*, 471 N.W.2d 119 (Minn. App. 1991) ((1) a dismissal for lack of probable cause which is based on a legal determination, such as the interpretation of a statute, is appealable; (2) appellate jurisdiction over a prosecution pretrial appeal cannot be supported by reference to off-the-record discussions without the filing of a statement of the proceedings).

*City of W. St. Paul v. Banning*, 409 N.W.2d 530 (Minn. App. 1987) (order dismissing complaint with prejudice is not appealable under Minn. R. Crim. P. 28.04, subd. 1(1), because appellant has not shown it cannot recharge respondent).

## **2. Timeliness**

*State v. McKinney*, 840 N.W.2d 429 (Minn. App. 2013) (if the state files a sentencing appeal pursuant to Minn. R. Crim. P. 28.05, the state's failure to serve the notice of appeal on the state public defender's office in a timely manner requires dismissal of the appeal).

*State v. Dorcy*, 778 N.W.2d 374 (Minn. App. 2010) (a prosecution pretrial appeal must be dismissed if the prosecuting attorney has not served the state public defender's office within the time provided to file the appeal).

*State v. Palmer*, 749 N.W.2d 830 (Minn. App. 2008) (the state's five-day period to appeal a pretrial order is not triggered by the announcement of the district court's ruling from the bench if the court indicates that a written order will follow).

*State v. Tschida*, 646 N.W.2d 886 (Minn. App. 2002) (due date for state's brief on pretrial appeal when no transcript has been ordered is calculated from the filing of the notice of appeal and untimely brief may be accepted if there are "special circumstances").

*State v. Hugger*, 640 N.W.2d 619 (Minn. 2002) (clarifying that time for state's filing of notice of appeal is determined by calculating five-day prescribed period first, excluding intermediate Saturdays, Sundays, and legal holidays, and then by adding three calendar days for service by mail; if the final day is a Saturday, Sunday, or legal holiday, the appeal period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday).

### **C. Sentencing Appeals**

*State v. Rasinski*, 527 N.W.2d 593 (Minn. App. 1995) (statutory presumption of concurrent sentencing applies whenever the sentencing court fails to state on the record whether the sentence is to be served concurrently or consecutively even if the warrant of commitment later specifies consecutive sentencing).

*State v. Fritzke*, 521 N.W.2d 859 (Minn. App. 1994) ((1) sentencing rule that jail credit for time spent in custody should not turn on matters subject to manipulation by the prosecutor applies to credit for time served before the complaint is filed; (2) if the record establishes that probable cause existed to charge the defendant, the filing of a criminal complaint is an event "subject to manipulation" by the prosecutor; (3) defendant is entitled to jail credit for all time spent in custody following arrest, including time spent in custody on other charges, beginning on the date the prosecution acquires probable cause to charge defendant with the offense for which he or she was arrested).

*State ex rel. Holecek v. Ross*, 472 N.W.2d 185 (Minn. App. 1991) (statutory good conduct allowance for persons sentenced to county jails or workhouses applies to persons serving probationary jail terms).

*State v. Schanus*, 431 N.W.2d 151 (Minn. App. 1988) (state's notice of review challenging downward sentencing departure dismissed because Rules of Criminal Procedure do not authorize a cross appeal by the state).

### **D. Motion Practice - Procedure**

*Frisch v. State*, 840 N.W.2d 426 (Minn. App. 2013) (Minn. R. Crim. P. 28.02, subd. 4(4), which permits this court to stay an appeal and remand a case to the district court for postconviction proceedings, does not apply to an appeal from the denial of a postconviction petition).

*State v. Riendeau*, 603 N.W.2d 341 (Minn. App. 1999) (defense motion to stay or dismiss direct appeal to allow him to file postconviction petition must be supported by a showing of facts to be developed in a postconviction proceeding).

*State v. Pederson*, 600 N.W.2d 451 (Minn. 1999) (indigent appellant represented by private counsel was entitled to services of a public defender and a trial transcript at public expense).

*State v. Russell*, 481 N.W.2d 148 (Minn. App. 1992) (special term orders have no precedential value and should not be cited as authority).

*State v. Batzer Constr. Co.*, 445 N.W.2d 281 (Minn. App. 1989) ((1) defendant's failure to submit brief on the merits with notice of appeal in probation revocation appeal pursuant to Minn. R. Crim. P. 28.05, subd. 1(1) is not jurisdictional and does not require dismissal, absent prejudice to the state and detrimental effect on court's ability to review the merits of appeal; (2) defendant in probation revocation appeal should move for clarification of briefing schedule if necessary transcripts are not obtained before the appeal is filed).

*State v. Schubring*, 429 N.W.2d 323 (Minn. App. 1988) (absent special circumstances, a prosecutor's appeal of a pretrial order will be dismissed if state's brief is untimely).

#### **E. Release Pending Appeal**

*State v. Johnson*, 447 N.W.2d 605 (Minn. App. 1989) (motions for release pending appeal will be expedited but will not be considered on an emergency basis).

*State v. McKinley*, 424 N.W.2d 586 (Minn. App. 1988) (motion for release pending appeal must be presented to the trial court first and factors governing release must be addressed in some factual detail on appeal).

#### **F. Postconviction Appeals**

*Bolstad v. State*, 435 N.W.2d 547 (Minn. App. 1989) (in state's appeal from postconviction order, petitioner may file a notice of review pursuant to Minn. R. Civ. App. P. 106 since postconviction proceedings are civil in nature and appeals are governed by the rules of civil appellate procedure). *But see* Minn. R. Crim. P. 28.02, subd. 6 (effective January 1, 1990, appeal of postconviction orders are governed by rule 28.02); *Waynewood v. State*, 547 N.W.2d 453 (Minn. App. 1996), *aff'd*, 552 N.W.2d 718 (Minn. 1996).

*State v. Saliterman*, 431 N.W.2d 590 (Minn. App. 1988) (an order denying a motion to withdraw a guilty plea made after sentencing and after the time to appeal the conviction is analogous to an order denying postconviction relief and is appealable as of right).

#### **G. Habeas Corpus**

*Case v. Pung*, 454 N.W.2d 275 (Minn. App. 1990) (posttrial petition for habeas corpus cannot be used to challenge the sufficiency of a complaint), *review denied* (Minn. June 15, 1990).

## **H. Prohibition/Mandamus**

### **1. Discovery**

*State v. Davis*, 592 N.W.2d 457 (Minn. 1999) (writ of mandamus will not issue when district court exercises discretion provided in the rules to order additional discovery in a misdemeanor case).

*State v. Lee*, 461 N.W.2d 245 (Minn. App. 1990) (a criminal defendant is entitled to access to scene of the alleged offense, even if owned and occupied by private persons and not in exclusive police control, to inspect and photograph the scene for discovery purposes).

### **2. Removal of Trial Judge**

*In re Jacobs*, 791 N.W.2d 300 (Minn. App. 2010) (a judge is not disqualified for cause from presiding over a criminal prosecution solely because the judge's spouse works in the county attorney's office that is prosecuting the case), *aff'd*, 802 N.W.2d 748 (Minn. 2011).

*State v. Cheng*, 623 N.W.2d 252 (Minn. 2001) (writ of prohibition will not issue when indictment following dismissal of complaint against defendant did not initiate a new proceeding reviving the prosecutor's right to remove the judge without cause).

*State v. Pero*, 590 N.W.2d 319 (Minn. 1999) (writ of mandamus will not issue when court exercised discretion to determine there was not a sufficient basis to dismiss the indictment and writ of prohibition will not issue when court exercised discretion to determine plea agreement was not in the public interest).

*State v. Erickson*, 589 N.W.2d 481 (Minn. 1999) (prosecutor's abuse of rule allowing automatic removal by repeatedly removing judge from all criminal cases in response to an adverse ruling required exercise of supreme court's inherent power by reinstating judge and suspending prosecutor's use of removal rule).

*State v. Laughlin*, 508 N.W.2d 545 (Minn. App. 1993) ((1) motion to remove a judge for cause in a criminal proceeding requires a litigant to show that a judge's impartiality might reasonably be questioned, not that the judge is actually biased; (2) court should inquire into the circumstances surrounding the motion, not merely the statements made by the judge; however, a litigant's subjective doubts about a judge's impartiality do not warrant removal).

*State v. Poole*, 472 N.W.2d 195 (Minn. App. 1991) ((1) prohibition is the appropriate remedy for the denial of a motion to remove a trial judge for cause under

Minn. R. Crim. P. 26.03, subd. 13(3)-(6); (2) an omnibus hearing judge's prior role in approving a search warrant application does not by itself establish cause for his or her removal from hearing a motion to suppress evidence seized in execution of the warrant).

### 3. Other

*In re Petition of Stuart*, 646 N.W.2d 520 (Minn. 2002) (writ of mandamus will issue to require district court to exercise its discretion to determine whether assets of applicant for public defender services, including real estate holdings, are liquid and whether the defendant has met his burden to establish his financial eligibility for appointment of counsel).

*State v. Hoelzel*, 639 N.W.2d 605 (Minn. 2002) (improper appeal by state seeking an order to compel the district court to impose a sentence will be construed as a petition for a writ of mandamus).

*State v. Pflapsen*, 590 N.W.2d 759 (Minn. 1999) (court of appeals had authority to suspend technical requirements and to treat erroneous notice of appeal from sentencing order as petition for writ of prohibition).

*T.D. v. Smith*, 522 N.W.2d 359 (Minn. App. 1994) ((1) to assure the appearance of a juvenile who is a material witness in a first-degree murder prosecution, the district court has authority to require bail of more than \$50 where bail is posted by a person other than the juvenile; (2) bail of \$50,000 required of a material witness subpoenaed to provide Spreigl evidence in a first-degree murder trial was not excessive).

*Austin Daily Herald v. Mork*, 507 N.W.2d 854 (Minn. App. 1993) ((1) prohibition is the proper remedy to challenge an order restricting media access to criminal proceedings; (2) an order that excludes the public from a criminal trial during the testimony of juveniles, while admitting media representatives on condition that they not report the names of juveniles or information and testimony about previous confidential juvenile proceedings, is a permissible restriction on access), *review denied* (Minn. Dec. 14, 1993).

*In re Investigation of Death of VanSlooten*, 424 N.W.2d 576 (Minn. App. 1988) (the trial court did not exceed its jurisdiction or violate the separation of powers doctrine by ordering the return of materials seized pursuant to a search warrant before the filing of criminal charges), *review denied* (Minn. July 28, 1988).

## **I. Certification as Important and Doubtful**

*State v. Munnell*, 341 N.W.2d 570 (Minn. App. 1983) (party whose requested ruling, position or motion was denied by the certifying trial court is the appellant and must file the first brief); *see also State v. Brink*, 500 N.W.2d 799 (Minn. App. 1993) (before certifying a question under Minn. R. Crim. P. 28.03, a trial court must decide and specify the precise legal question certified for review).