

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

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

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

The notice shall be accompanied by:

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

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

- (1) a copy of the judgment or order from which the appeal is taken,
- (2) the statement of the case required by Rule 133.03, and
- (3) a filing fee of \$550.

The appellant shall at the same time also file a copy of the notice of appeal with the trial court administrator.

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

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

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

(g) the appeal is taken by an applicant for unemployment insurance benefits pursuant to Minnesota Statutes, chapter 268.

(Amended effective July 1, 1989; amended effective for appeals taken on or after January 1, 1992; amended effective July 1, 1993; amended effective January 1, 1999; amended effective March 1, 2001; amended effective July 1, 2003; amended effective July 1, 2009; amended effective July 1, 2014.)

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

Comment - 1983

Filing the notice of appeal with the clerk of the appellate courts, in addition to service on the adverse party, is required to initiate an appeal.

A substantial change has been made in Rule 103.01. Under the new rule service alone no longer initiates an appeal. The notice of appeal served on both the adverse party and the clerk of the trial court and filed with the clerk of the appellate courts is required in order to vest jurisdiction in the Court of Appeals.

Proof of service, a certified copy of the judgment or order from which the appeal is taken, and the statement of the case (described at Rule 133.03) must accompany the notice of appeal when it is filed. For purposes of these rules, filing is timely if the notice of appeal is deposited in the mail within the time fixed for filing. See Rule 125.01.

A change has been made in the amount of the filing fee and to which courts it is paid.

Since prehearing conferences will be held only if the court so directs, within 10 days after filing the notice of appeal the appellant must send to the clerk of the appellate courts a written order for the transcript or a notice of intent to proceed on a statement of the proceedings. See Rule 110.02.

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

Advisory Committee Comment - 1998 Amendments

The additional language in the first paragraph of the rule is intended to clarify the steps that must be taken to invoke appellate jurisdiction. Timely filing the notice of appeal with the clerk of the appellate courts and timely service on the adverse party are the jurisdictional steps required to initiate an appeal. Failure of an appellant to take any step other than the timely filing and service of the notice of appeal does not affect appellate jurisdiction, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal. The reference to supersedeas bonds previously contained in the rule has been deleted, in light of the concurrent revisions made to Rule 108, which clarify the timing and procedure regarding filing supersedeas bonds.

Advisory Committee Comment - 2014 Amendments

Rule 103.01 is amended in several important ways. Together these changes will streamline the appellate process and make it easier to perfect appeals. First, the requirement for filing a certified copy of the trial court order or judgment from which the appeal is taken is modified to remove the certification requirement. The appellant must still provide a copy of the as-filed order or judgment, as the case may be, but it is no longer necessary that either be certified as authentic by the court administrator. The filing of these uncertified documents, however, does carry the implied

representation of the filing party or counsel that they are indeed true and correct copies of the documents on file with the tribunal issuing them.

The second change is the removal of the requirement that a cost bond be provided. This change is a part of the amendment of Rule 107.

Only a single copy of any statement of the case need be filed.

A copy of the notice of appeal must be filed with the trial court administrator to alert the trial court to the pendency of an appeal. For this filing, the trial court's filing rules should be followed. Because this copy of the notice of appeal is filed with the district court, it is permissible under Rule 125.01(d), as adopted at the time of these amendments, to effect service of it on other parties by any means authorized by the trial court rules. This rule permits service by the trial court e-filing system, which should be useful for documents that may be filed with the trial court using the same system. Because that service would not result in proof of service being transmitted to the appellate courts' electronic filing system, separate proof of service must be filed with the clerk of the appellate courts.

Rule 103.01, subdivision 3, is amended to conform the terminology in the rule to that of the statutes governing the listed proceedings. This change is not intended to change the procedure under the rule.

103.02 Joint Appeals; Related Appeals; Consolidated Appeals

Subdivision 1. Joint Appeals. If two or more parties are entitled to appeal from a judgment or order or to petition for certiorari in the same action and their interests are such as to make joinder practicable, they may file a joint notice of appeal or petition, or may join in the appeal after filing separate timely notices of appeal or petitions for certiorari, and they may then proceed on appeal as a single appellant.

Subd. 2. Related Appeals. After one party timely files a notice of appeal, any other party may seek review of a judgment or order in the same action by serving and filing a notice of related appeal. The notice of related appeal shall specify the judgment or order to be reviewed. The notice of related appeal shall be accompanied by:

- (a) a filing fee of \$100,
- (b) a copy of the judgment or order from which the related appeal is taken if different than the judgment or order being challenged in the original appeal, and
- (c) a statement of the case.

A cost bond is not required unless ordered by the court.

Subd. 3. Consolidated Appeals. Related appeals from a single trial court action or appeals in separate actions may be consolidated by order of the appellate court on its own motion or upon motion of a party.

(Amended effective January 1, 2010; amended effective July 1, 2014.)

Advisory Committee Comment - 2009 Amendments

Rule 103.02 is amended to add a new subdivision 2 to establish a new procedure for filing of a cross-appeal or another related appeal after any party has filed a notice of appeal. This rule applies in civil cases, as the Minnesota Rules of Criminal Procedure address the right to file a cross-appeal in criminal cases. See Minn. R. Crim. P. 28.04, subd 3. The new notice is denominated

a "Notice of Related Appeal." See Appendix for form of Notice of Related Appeal (Form 103C). This procedure replaces the notice-of-review procedure formerly established by Rule 106. Existing subdivision 2 is renumbered as subdivision 3 and is amended to provide for consolidation of related appeals from a single trial court proceeding. This consolidation may be ordered by the court based on information in the statement of the case or may be ordered upon motion of any party to any related appeal.

Advisory Committee Comment - 2014 Amendments

The change to Rule 103.02, subdivision 2, is simply to remove the requirement for certified copies of the orders or judgment appealed from, and is a companion change to the amendment to Rule 103.01, subdivision 1. The amended rule continues to require providing copies of the judgments or orders; it is no longer necessary that they be certified by the trial court administrator.

Similarly, only a single copy of the statement of the case is required under this rule, and a cost bond is not normally required. These changes conform the procedure for a party filing a notice of related appeal to that for the appellant.

103.03 Appealable Judgments and Orders

An appeal may be taken to the Court of Appeals:

(a) from a final judgment, or from a partial judgment entered pursuant to Minn. R. Civ. P. 54.02;

(b) from an order which grants, refuses, dissolves or refuses to dissolve, an injunction;

(c) from an order vacating or sustaining an attachment;

(d) from an order denying a new trial, or from an order granting a new trial if the trial court expressly states therein, or in a memorandum attached thereto, that the order is based exclusively upon errors of law occurring at the trial, and upon no other ground; and the trial court shall specify such errors in its order or memorandum, but upon appeal, such order granting a new trial may be sustained for errors of law prejudicial to respondent other than those specified by the trial court;

(e) from an order which, in effect, determines the action and prevents a judgment from which an appeal might be taken;

(f) from a final order or judgment made or rendered in proceedings supplementary to execution;

(g) except as otherwise provided by statute, from a final order, decision or judgment affecting a substantial right made in an administrative or other special proceeding;

(h) from an order that grants or denies modification of custody, visitation, maintenance, or child support provisions in an existing judgment or decree;

(i) if the trial court certifies that the question presented is important and doubtful, from an order which denies a motion to dismiss for failure to state a claim upon which relief can be granted or from an order which denies a motion for summary judgment; and

(j) from such other orders or decisions as may be appealable by statute or under the decisions of the Minnesota appellate courts.

(Amended effective January 1, 1999; amended effective March 1, 2001.)

Comment - 1983

An order for judgment is not an appealable order. There is a right of appeal only from a judgment or an order enumerated in Rule 103.03. An appeal from any order not specifically included in Rule 103.03 is discretionary, and permission must be sought by petition as provided in Rule 105.

Two substantial changes have been made in Rule 103.03. The deletion from clause (a) of "order for judgment" marks a return to former practice: a judgment is appealable; an order for judgment is not appealable. Because of the uncertainties resulting from its broad, unspecific language, former clause (d) "From an order involving the merits of the action or some part thereof" has also been deleted. Review of any order not specifically enumerated in Rule 103.03 is discretionary only, and permission to appeal must be sought pursuant to Rule 105.

Advisory Committee Comment - 1998 Amendments

*While Rule 103.03 contains a nearly exhaustive list of appealable orders and judgments, it is not the exclusive basis for appellate jurisdiction. See *In re State & Regents Bldg. Asbestos Cases*, 435 N.W.2d 521 (Minn. 1989); *Anderson v. City of Hopkins*, 393 N.W.2d 363 (Minn. 1986). In these and other cases, the Minnesota Supreme Court has recognized that there are certain instances in which an appeal may be allowed as a matter of right even though the ground for that appeal is not found expressly in the provisions of Rule 103.03. Such instances include:*

*Orders granting or denying motions to dismiss or for summary judgment when the motions are based on the trial court's alleged lack of personal or subject matter jurisdiction, regardless of whether the motion seeks dismissal of the entire action. See *McGowan v. Our Savior's Lutheran Church*, 527 N.W.2d 830, 833 (Minn. 1995) (order denying summary judgment is appealable when motion is based on district court's lack of subject matter jurisdiction); *Hunt v. Nevada State Bank*, 285 Minn. 77, 88-89, 172 N.W.2d 292, 298 (1996) (order denying motion to dismiss for lack of personal jurisdiction immediately appealable of right).*

*Orders denying motions to dismiss or for summary judgment based on governmental immunity from suit, provided that the denial is not based on the existence of a question of fact. See *Anderson*, 393 N.W.2d at 364 (order denying defendant's motion for summary judgment is appealable when motion is based on governmental immunity from suit); *Carter v. Cole*, 526 N.W.2d 209 (Minn App. 1995), *aff'd*, 539 N.W.2d 241 (Minn. 1995) (affirming dismissal of appeal from order denying government official's motion for summary judgment based solely on the finding that there is a genuine issue of material fact whether the official committed the acts alleged; reserving question of appealability of an order denying summary judgment where the genuine issues of material fact identified by the trial court are related to the issue of immunity, and not to the merits of the claim); see also *Johnson v. Jones*, 515 U.S. 304, 115 S.Ct. 2151, 132 L.Ed.2d 238 (1995) (order denying summary judgment on immunity grounds not appealable where motion is denied because of genuine issue of material fact).*

*Orders vacating final orders or judgments, when the orders are issued after the time to appeal the underlying orders or judgments has expired, or from orders refusing to vacate default judgments. See *State & Regents*, 435 N.W.2d at 522 (order vacating final judgment is appealable); *Spicer v. Carefree Vacations, Inc.*, 370 N.W.2d 424 (Minn. 1985) (denial of a Rule 60 motion is appealable if the judgment is rendered *ex parte* against a party who has made no appearance). But see *Carlson v. Panuska*, 555 N.W.2d 745 (Minn. 1996) (Spicer exception applies only to true default judgments and not to "default" judgments entered after contested hearings for failure to comply with discovery orders).*

In addition, certain statutes provide for appeals as a matter of right, even though Rule 103.03 does not expressly provide. See, e.g., Minnesota Statutes, section 572.26, subdivision 1 (listing

appealable orders in arbitration proceedings, which are not "special" proceedings under Rule 103.03), Pulju v. Metropolitan Property & Cas., 535 N.W.2d 608 (Minn. 1995).

These examples are not intended to be exhaustive, but rather to emphasize that there are limited grounds for appeal other than those set forth in Rule 103.03. See generally Scott W. Johnson, Common Law Appellate Jurisdiction, BENCH & BAR OF MINN., Sept. 1997, at 31.

Advisory Committee Comment - 2000 Amendments

*Rule 103.03 is amended to add a new subdivision (h) and renumber existing paragraphs (h) and (i) to become (i) and (j). The purpose of this amendment is to clarify that orders that grant or deny modification of custody, visitation, maintenance, and support provisions are appealable in accordance with *Angelos v. Angelos*, 367 N.W.2d 518 (Minn. 1985). These orders are appealable under paragraph (g) (final order in a special proceeding), but because of the volume of such orders, as well as the frequent involvement of pro se litigants, the Committee believes an explicit provision will minimize confusion. This change is not intended to expand appealability of otherwise unappealable orders, but rather, is meant to have the rule correctly identify these orders as appealable.*

103.04 Scope of Review

The appellate courts may reverse, affirm or modify the judgment or order appealed from or take any other action as the interest of justice may require.

On appeal from or review of an order the appellate courts may review any order affecting the order from which the appeal is taken and on appeal from a judgment may review any order involving the merits or affecting the judgment. They may review any other matter as the interest of justice may require. The scope of review afforded may be affected by whether proper steps have been taken to preserve issues for review on appeal, including the existence of timely and proper post-trial motions.

(Amended effective January 1, 1999.)

Advisory Committee Comment - 1998 Amendments

*The rule has been changed to make clear that the scope of review can and often does depend upon the scope of the trial proceedings. As a general proposition, appellate review is limited to review of the facts and legal arguments that are contained in the trial record. The conduct of the trial proceedings will affect the scope of review on appeal. See *Sauter v. Wasemiller*, 389 N.W.2d 200 (Minn. 1986); *Northwestern State Bank v. Foss*, 287 Minn. 508, 511, 177 N.W.2d 292, 294 (1970). This is true notwithstanding the broad statement of the appellate courts' scope of review contained in Rule 103.04. See Minnesota Constitution, article 6, section 2.*

Litigants often fail to recognize the importance of post-trial motions, and the sometimes dramatic failure to bring them. Though commentators have alerted lawyers to this issue, see 3 ERIC J. MAGNUSON & DAVID F. HERR, MINNESOTA PRACTICE: APPELLATE RULES ANNOTATED, section 103.17 (3d ed. 1996), problems associated with failure to file appropriate post-trial motions continues to be a significant, recurring problem. This rule amendment is intended to ameliorate the problem.