Rule 125. Filing and Service

125.01 Filing

(a) Documents required or authorized to be filed by these rules shall be filed with the clerk of the appellate courts within the time limitations contained in the applicable rule. Filing with the clerk of the appellate courts may be accomplished by one of the following means:

(1) By use of the appellate courts' electronic filing system if required by an order of the Minnesota Supreme Court.

(2) If electronic filing is not required by an order of the Minnesota Supreme Court,

A. By U.S. mail addressed to the clerk of the appellate courts;

B. By use of the appellate courts' electronic filing system if permitted by an order of the Minnesota Supreme Court; or

C. By hand delivery to the clerk of the appellate courts or use of a commercial courier service.

(b) Filing by facsimile or electronic means other than as authorized or required by an order of the Minnesota Supreme Court is not allowed in the appellate courts, except with express leave of the court.

(c) Filing shall occur at the time and date of:

(1) electronic filing for any document electronically submitted for filing by 11:59 p.m. at the court's local time, so long as it is accepted by the clerk upon review;

(2) mailing by U.S. mail addressed to the clerk of the appellate courts; or

(3) receipt by the clerk of the appellate courts during normal office hours for documents filed by hand delivery or by use of a commercial courier service.

(d) For any document that is required or permitted under these rules to be filed with the trial court at the time of commencement of an appeal, the filer may file or serve the document using the trial court's electronic service system or, except as otherwise excluded by Rule 125.03, any other means authorized by the trial court rules. Separate proof of such service must be filed with the clerk of the appellate courts. Any party to the trial court proceedings registered for use of the trial court's electronic service system shall be deemed to have consented to receive service in this manner.

Except as expressly provided by rule, after an appeal is filed with the appellate courts, filings shall be made with the appellate court using that court's electronic filing system.

(e) If a motion or petition requests relief that may be granted by a single judge, the judge may accept the document for filing, in which event the date of filing shall be noted on it and it shall be thereafter transmitted to the clerk of the appellate courts.

(f) All documents filed shall include the attorney registration license number of counsel filing the document and shall specify the appellate court docket number, if one has been assigned.

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 2009; amended effective July 1, 2014; amended effective July 1, 2016; amended effective September 1, 2019.)

Advisory Committee Comment - 2016 Amendments

Rule 125.01 is amended to include a cross-reference to Rule 125.03, which prohibits use of facsimile transmission for service of appellate pleadings except with the consent of the party to be served. That prohibition continues to apply even for the initial appellate documents (typically the notice of appeal or a petition), which are the only appellate documents that the rules required the parties to file in the district court. See Minn. R. Civ. App. P. 103.01, subd. 1(d).

Advisory Committee Comment - 2019 Amendments

Rule 125.01, subd. 1(d) is amended to make it clear that the only appellate documents that may properly be filed or served using the district court's e-filing and e-service system are those few appellate documents required to be filed with the district court. Rule 103.01, subd. 1, for example, requires that the notice of appeal be filed with the clerk of the appellate courts, but also requires the simultaneous filing of the notice of appeal with the trial court administrator. Because the appellate courts and district courts have different filing systems, proof of filing or service of an appellate document with the district court system, where permitted, is required by separate proof filed in the appellate court. Rule 109.02 requires that an in forma pauperis motion filed in the district court must be filed with the notice of appeal or petition initiating an appeal. These district court filings must be accomplished using the district court's system, or by any other means allowed by the rules of civil procedure.

Other requirements for filing in the appellate rules must be met by filing with the clerk of the appellate courts. Where the rules either require or permit further actions in the district court, the district court system can be used, but any such filing steps must be taken in the trial court, and they are not considered "filed" with the clerk of the appellate courts. For example, Rule 108.02, subd. 1, requires any motion seeking a stay, approval of the form or amount of security, or suspension or other modification of an injunction to be brought in the district court. Such a motion is properly served and filed in the district court, and is not filed with the clerk of the appellate courts. Rule 108.02, subd. 6, therefore requires that any request for the court of appeals to review the district court decision on the motion include copies of the motion and other submissions to the district court.

125.02 Service and Filing of All Documents Required

Copies of all documents filed by any party shall be served by that party, at or before the time of filing, on all other parties to the appeal or review. Documents shall be filed with the clerk of the appellate courts at the time of service or immediately thereafter. Service on a party represented by counsel shall be made on the attorney.

(Amended effective July 1, 2014.)

125.03 Manner of Service

Unless otherwise required by Rule 114.01, service may be electronic by use of the appellate courts' electronic filing system if required or permitted by court order, personal, or by U.S. mail. Personal service includes delivery of a copy of the document to the attorney or other responsible person in the office of the attorney, or to the party, if not represented by counsel, in any manner provided by Minn. R. Civ. P. 4.

Electronic service is complete upon confirmation from the appellate courts' electronic filing system that it has been accomplished. Service by U.S. mail is complete on mailing.

Whenever a party is required or permitted to do an act within a prescribed period after service and the party is served with the documents only by U.S. mail, 3 days shall be added to the prescribed

period. If a document is served electronically or personally after 5:00 p.m. at the court's local time, 1 day shall be added to the prescribed period.

As permitted by Rule 6.01(a)(2) of the Rules of Civil Procedure, the time periods in this rule do not include intermediate Saturdays, Sundays, or legal holidays.

Personal service may be effected by use of a commercial courier service, and shall be effective upon receipt.

Service by facsimile or other electronic means other than as authorized or required by an order of the Minnesota Supreme Court is allowed only with the consent of the party to be served, and is effective upon receipt.

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 2009; amended effective July 1, 2014; amended effective January 1, 2020.)

Advisory Committee Comment - 2008 Amendment

Rules 125.01 and 125.03 are amended to make clear the intent of the existing rule: that service and filing "by mail" under the rules requires use of the U.S. mail. This clarification parallels a similar set of amendments to the Minnesota Rules of Civil Procedure. Compare Minn. R. Civ. P. 6.05 (amended in 2007 to specify U.S. mail) with Minn. R. Civ. P. 4.05 (historically requiring use of first-class mail). The rule also makes it clear that it is permissible to use Federal Express, UPS, or other commercial courier for both filing and service, but delivery by that means is treated as any other hand delivery, and effective only upon receipt. Additional time for response to service by these services is thus neither required nor provided for, because the response period begins to run at the time of receipt.

These rules are also amended to make it clear that neither service nor filing by facsimile are ordinarily allowed in the appellate courts. In exigent circumstances the courts may request that courtesy copies of papers be provided by facsimile, but originals must be filed as provided in Rule 125.01. Service by facsimile is not generally permitted by rule, but if a party agrees to be served by facsimile it is permissible under the amended rule and is effective upon receipt. This provision recognizes that service by facsimile may be cost-effective and convenient for motions, notices, and other papers; it is unlikely to be used for briefs and appendices. The scope of any agreement to consent to service by facsimile should be carefully defined; it will be the unusual appeal where the parties really want their agreement to extend to the briefs and any appendices. The extension of this provision to service "by other electronic means" is intended to permit service by electronic mail, again only where the party to be served has agreed to it for the type of document involved.

125.04 Proof of Service

Every document required by these rules to be served on other parties must be filed with proof of service contained on or affixed to the document. Service may be proven by any of the following means:

(a) Confirmation of service by authorized use of the appellate courts' electronic filing system, in which event separate proof of service need not be filed,

(b) Written admission of service, or

(c) An affidavit or certificate of service.

An affidavit or certificate of service is required for any document served with the district court's electronic filing system.

The clerk of the appellate courts may permit documents to be filed without proof of service, but shall require proof of service to be filed promptly after filing the documents.

(Amended effective July 1, 2014; amended effective September 1, 2019.)

Comment - 1983

The filing of all papers must be made within the time designated in the applicable rule.

Filing by mail addressed to the clerk of the appellate courts is authorized but must be accomplished by deposit in the mail, first class postage prepaid, within the designated time period. To the extent practical, all papers shall include the appellate court docket number and attorney registration license numbers.

The clerk of the appellate courts is not authorized to file any papers unless and until the appropriate fee has been paid (Minnesota Statutes 1983, section 357.08) or the documents are accompanied by a written statement of the reason no fee is required.

Proof of service must be filed with the clerk of the appellate courts at the time the notice, petition or motion is filed or immediately thereafter.

Advisory Committee Comment - 2014 Amendments

Rule 125 is amended to provide explicitly for filing and service of documents electronically.

While filing by facsimile or other electronic means is not permitted without an order from the court authorizing it, the parties may consent to service by facsimile or e-mail (the primary "other electronic means" that might be elected). Service by any means other than electronic service using the appellate courts' e-service system requires that proof of service be filed with the clerk of the appellate courts. The rule now authorizes the use of a certificate of service, which may be filed to verify based on facts stated that service has been effected using the specified means, but does not have to be made in the form of an affidavit on personal knowledge of the person serving the documents.

Rule 125.01(d) is a new provision that defines the interaction of the trial court rules for service with these rules. It permits documents that are to be filed in the trial court to be filed and served by any means authorized by the trial court rules. This rule is intended to permit parties to use the trial court's electronic filing and electronic service system for these documents. Because that filing 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. This proof might be provided, for example, by certificate of service that recites the fact of service and the fact of confirmation received from the district court system, attaching a copy of the confirmation message.

Rule 125 is also amended to change several references to "papers" to "documents." This change is not intended to change the interpretation of the rule, other than to recognize that not all appellate court filings are in paper format.

Advisory Committee Comment - 2019 Amendments

Rule 125.04 is amended to make it clear that proof of service must be filed for documents served using the district court's electronic filing system. This amendment is intended to remove confusion over proof of service for the small number of appellate documents that are served and filed in the district court. These include the notice of appeal or petition initiating the appeal (see Rule 125.01(d)) and the motion for leave to proceed in forma pauperis (see Rule 109.02).