

Appeals, Reviews; Civil Actions

CHAPTER 605

CIVIL APPEAL CODE

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605.001 CITATION. Minnesota Statutes, Chapter 605 may be cited as the civil appeal code.

[1963 c 806 s 17]

NOTE: See Rules of Civil Appellate Procedure, Rule 101.

605.01 REVIEW BY APPEAL. A judgment or order of the district court in a civil action may be reviewed by the supreme court by appeal of a party as provided in this chapter.

[R L s 4357; 1963 c 806 s 1] (9490)

NOTE: See Rules of Civil Appellate Procedure, Rule 101.

605.02 DESIGNATION OF PARTIES; TITLE. The party appealing shall be known as the appellant and the adverse party as the respondent. The title of the action shall not be changed in consequence of the appeal.

[R L s 4358; 1963 c 806 s 2] (9491)

NOTE: See Rules of Civil Appellate Procedure, Rule 143.01.

605.03 MANNER OF MAKING APPEAL. Subdivision 1. An appeal shall be made by the service of a written notice of appeal on the adverse party. The notice shall specify the judgment or order from which the appeal is taken. Not more than five days after expiration of the time to appeal, the appellant shall file the notice of appeal and the cost bond required by this chapter with the clerk of the court in which the judgment or order was entered, together with a fee of \$25. The bond may be waived by stipulation of the parties.

Subd. 2. When a party in good faith serves 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 supreme court may grant relief on such terms as may be just.

[R L s 4359; 1917 c 66 s 2; 1959 c 250 s 6; 1963 c 806 s 3; 1969 c 1148 s 16; 1971 c 686 s 4] (9492)

NOTE: See Rules of Civil Appellate Procedure, Rule 103.01.

605.04 [Repealed, 1963 c 806 s 18]

605.045 TRANSMITTAL OF FEE. Upon compliance with section 605.03, subdivision 1, the clerk of the court from which the appeal is taken shall immediately transmit to the clerk of the supreme court \$20 out of the fee prescribed by section 605.03, subdivision 1, together with a certified copy of the notice of appeal, bond or stipulation waiving such bond.

[1963 c 806 s 4; 1969 c 1148 s 17]

NOTE: See Rules of Civil Appellate Procedure, Rule 103.01.

605.05 POWERS OF APPELLATE COURT. Subdivision 1. The supreme court upon an appeal may reverse, affirm, or modify the judgment or order appealed from, or take any other action as the interests of justice may require.

Subd. 2. On appeal from an order the supreme court 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. It may review any other matter as the interests of justice may require.

[R L s 4361; 1963 c 806 s 5] (9494)

NOTE: See Rules of Civil Appellate Procedure, Rule 103.04.

605.06 [Repealed, 1963 c 806 s 18]

605.065 RESPONDENT'S RIGHT TO OBTAIN REVIEW. A respondent may obtain review of a judgment or order entered in the same action which may adversely affect him by serving a notice of review on all parties to the action who may be affected by the judgment or order. The notice of review shall specify the judgment or order to be reviewed and shall be served upon the other parties within 15 days after service of the notice of appeal on that respondent and thereafter shall be filed with the clerk of the supreme court.

[1963 c 806 s 6]

NOTE: See Rules of Civil Appellate Procedure, Rule 106.

605.07 DISMISSAL OF APPEAL IN VACATION. Any justice of the supreme court, during vacation, shall have the same power as the court in term to dismiss any appeal and remand the cause to the court below, upon the stipulation of the parties, consenting thereto, filed with the clerk of court.

[R. L. s. 4363] (9496)

NOTE: See Rules of Civil Appellate Procedure, Rule 142.01.

605.08 TIME. Subdivision 1. An appeal from a judgment may be taken within 90 days after the entry thereof, and from an order within 30 days after service of written notice of the filing thereof by the adverse party.

Subd. 2. No order made prior to the entry of judgment shall be appealable after the expiration of time to appeal from the judgment. Time to appeal from the judgment under this section shall not be extended by the subsequent insertion therein of the costs and disbursements of the prevailing party.

[R L s 4364; 1963 c 806 s 7] (9497)

NOTE: See Rules of Civil Appellate Procedure, Rule 104.

605.09 APPEALABLE JUDGMENTS AND ORDERS. An appeal may be taken to the supreme court:

- (a) From a judgment entered in the district court;
- (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 involving the merits of the action or some part thereof;
- (e) From an order refusing a new trial, or from an order granting a new trial if the 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 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;
- (f) From an order which, in effect, determines the action, and prevents a judgment from which an appeal might be taken;
- (g) From a final order or judgment made or rendered in proceedings supplementary to execution;
- (h) Except as otherwise provided by statute, from the final order or judgment affecting a substantial right made in a special proceeding, provided that the appeal must be taken within the time limited for appeal from an order;
- (i) If the district 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.

[R L s 4365; 1913 c 474 s 1; 1931 c 252; 1945 c 463 s 1; 1963 c 806 s 8; 1965 c 607 s 1] (9498)

NOTE: See Rules of Civil Appellate Procedure, Rule 103.03.

605.10 BOND OR DEPOSIT FOR COSTS. A bond shall be executed by the appellant, conditioned that the appellant shall pay all costs and charges which may be awarded against him on the appeal, not exceeding the penalty of the bond, which shall be at least \$250; or that sum shall be deposited with the clerk with whom the judgment or order was entered, to abide the judgment of the supreme court. Such bond or deposit may be waived by the written consent of the respondent.

[R L s 4366; 1963 c 806 s 9] (9499)

NOTE: See Rules of Civil Appellate Procedure, Rule 107.

605.11 [Repealed, 1963 c 806 s 18]

605.115 SUPERSEDEAS BOND. Subdivision 1. An appeal from an order or judgment shall stay proceedings in the court below and save all rights affected

thereby, if the appellant executes a supersedeas bond in the amount and form which the court below shall order and approve, in the cases provided in this section.

Subd. 2. If the appeal is from an order, the condition of the bond shall be the payment of the costs of the appeal, the damages sustained by the respondent in consequence of the appeal, and the obedience and satisfaction of the order or judgment which the supreme court may give, if the order or any part thereof is affirmed or if the appeal is dismissed.

Subd. 3. If the appeal is from a judgment directing the payment of money, the condition of the bond shall be the payment of the judgment or that part of the judgment which is affirmed and all damages awarded against appellant upon the appeal, if the judgment or any part thereof is affirmed, or if the appeal is dismissed.

Subd. 4. If the appeal is from a judgment directing the assignment or delivery of documents or personal property, the condition of the bond shall be the obedience of the order or judgment of the supreme court. The bond provided by this subdivision need not be given if the appellant places the document or personal property in the custody of the officer or receiver whom the court below may appoint.

Subd. 5. If the appeal is from a judgment directing the sale or delivery of possession of real property, the condition of the bond shall be the payment of the value of the use and occupation of the property from the time of the appeal until the delivery of the possession of the property if the judgment is affirmed, and the undertaking that the appellant shall not commit or suffer the commission of any waste on the property while it remains in his possession during the pendency of the appeal.

Subd. 6. In cases not specified in subdivisions 2 to 5, the giving of the bond specified in section 605.10 shall stay proceedings in the court below.

[1963 c 806 s 10]

NOTE: See Rules of Civil Appellate Procedure, Rule 108.01.

605.12 [Repealed, 1963 c 806 s 18]

605.13 [Repealed, 1963 c 806 s 18]

605.14 JUDGMENTS DIRECTING CONVEYANCES; STAY. If the appeal is from a judgment directing the execution of a conveyance or other instrument, its execution shall not be stayed by an appeal until the instrument shall be executed and deposited with the clerk of the court below to abide the judgment of the supreme court.

[R L s 4370; 1963 c 806 s 11] (9503)

NOTE: See Rules of Civil Appellate Procedure, Rule 108.02.

605.15 [Repealed, 1963 c 806 s 18]

605.16 EXTENT OF STAY. When a bond is given as provided by section 605.115, it shall stay all further proceedings in the court below upon the judgment or order appealed from or the matter embraced therein; but the lower court may proceed upon any other matter included in the action, and not affected by the judgment or order appealed from.

[R L s 4372; 1963 c 806 s 12] (9505)

NOTE: See Rules of Civil Appellate Procedure, Rule 108.03.

605.17 RESPONDENTS BOND TO ENFORCE JUDGMENT. Notwithstanding an appeal from a money judgment and security given for a stay of proceedings thereon, the court below, on motion and notice to the adverse party, may grant leave to the respondent to enforce the judgment upon his giving bond to the appellant as herein provided, if it be made to appear to the satisfaction of the court that the appeal was taken for the purpose of delay. Such bond shall be executed by the respondent, or some one in his behalf, and shall be conditioned that if the judgment be reversed or modified the respondent will make such restitution as the supreme court shall direct.

[R L s 4373; 1963 c 806 s 13] (9506)

NOTE: See Rules of Civil Appellate Procedure, Rule 108.04.

605.18 JOINDER OF BOND PROVISIONS; SERVICE ON ADVERSE PARTY. The bonds provided for in sections 605.10 and 605.115 may be in one instrument or several, at the option of the appellant, and shall be served on the adverse party.

[R L s 4374; 1963 c 806 s 14] (9507)

NOTE: See Rules of Civil Appellate Procedure, Rule 108.05.

605.19 JUSTIFICATION OF SURETIES. A bond upon an appeal is of no effect unless it is accompanied by the affidavit of the sureties that each is worth double the amount specified therein; the adverse party may except to the sufficiency of the sureties within ten days after notice of the appeal; and unless they or other sureties shall justify before a judge of the court below, as prescribed by law in other cases, within ten days thereafter, the appeal shall be regarded as if no bond had been given; the justification shall be upon not less than five days' notice.

[R. L. s. 4375] (9508)

NOTE: See Rules of Civil Appellate Procedure, Rule 108.01.

605.20 PERISHABLE PROPERTY. If the appeal is from a judgment directing the sale of perishable property, the court may order the property to be sold and the proceeds thereof deposited or invested to abide the judgment of the supreme court.

[R L s 4376; 1963 c 806 s 15] (9509)

NOTE: See Rules of Civil Appellate Procedure, Rule 108.06.

605.21 DISMISSAL NOT TO PRECLUDE ANOTHER APPEAL. No discontinuance or dismissal of an appeal in the supreme court shall preclude the party from taking another appeal in the same cause, within the time limited by law.

[R. L. s. 4377] (9510)

NOTE: See Rules of Civil Appellate Procedure, Rule 101.

605.22 [Repealed, 1963 c 806 s 18]

605.225 DEATH OF A PARTY. If any party to the appeal shall die while an appeal is pending in the supreme court, the surviving party or the legal representative or successor in interest of the deceased party, shall file with the clerk of the supreme court an affidavit showing such death and the name and address of the legal representative or successor in interest. The clerk, after giving notice to the representative or successor in interest, shall substitute the name of such legal representative or successor in interest by or against whom the appeal shall thereafter proceed.

[1963 c 806 s 16]

NOTE: See Rules of Civil Appellate Procedure, Rule 143.02.

605.23 [Repealed, 1963 c 806 s 18]