

Rule 104. Time for Filing and Service of Notice of Appeal and Notice of Related Appeal**104.01 Time for Filing and Service**

Subdivision 1. Time for Appeal. Unless a different time is provided by statute, an appeal may be taken from a judgment within 60 days after its entry, and from an appealable order within 60 days after service by any party of written notice of its filing.

An appeal may be taken from a judgment entered pursuant to Minn. R. Civ. P. 54.02, within 60 days of the entry of the judgment only if the trial court makes an express determination that there is no just reason for delay and expressly directs the entry of a final judgment. The time to appeal from any other judgment entered pursuant to Rule 54.02 shall not begin to run until the entry of a judgment which adjudicates all the claims and rights and liabilities of the remaining parties.

Subd. 2. Effect of Post-Decision Motions. Unless otherwise provided by law, if any party serves and files a proper and timely motion of a type specified immediately below, 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. This provision applies to a proper and timely motion:

- (a) for judgment as a matter of law under Minn. R. Civ. P. 50.02;
- (b) to amend or make findings of fact under Minn. R. Civ. P. 52.02, whether or not granting the motion would alter the judgment;
- (c) to alter or amend the judgment under Minn. R. Civ. P. 52.02;
- (d) for a new trial under Minn. R. Civ. P. 59;
- (e) for relief under Minn. R. Civ. P. 60 if the motion is filed within the time for a motion for new trial; or
- (f) in proceedings not governed by the Rules of Civil Procedure, a proper and timely motion that seeks the same or equivalent relief as those motions listed in (a)-(e).

Subd. 3. Premature Appeal. A notice of appeal filed before the disposition of any of the above motions is premature and of no effect, and does not divest the trial court of jurisdiction to dispose of the motion. A new notice of appeal must be filed within the time prescribed to appeal the underlying order or judgment, measured from the service of notice of filing of the order disposing of the outstanding motion. If a party has already paid a filing fee in connection with a premature appeal, no additional fee shall be required from that party for the filing of a new notice of appeal or notice of related appeal pursuant to Rule 103.02, subd. 2.

Subd. 4. Multiple Appeals. After one party timely files a notice of appeal, any other party may serve and file a notice of related appeal within 14 days after service of the first notice of appeal, or within the time otherwise prescribed by subdivisions 1 and 2 of this rule, whichever period ends later.

(Amended effective January 1, 1999; amended effective January 1, 2006; amended effective January 1, 2010.)

Comment - 1983

The time for taking an appeal from a final judgment or an order remains unchanged.

The clerk of the appellate courts is authorized to reject the filing of a notice of appeal from a judgment after the expiration of the 90-day period.

The second paragraph follows federal practice with respect to judgments ordered pursuant to Minn. R. Civil P. 54.02. An early right of appeal is provided as to those summary judgments that dispose of less than all claims against all parties if, but only if, the trial court expressly determines that there is no just reason for delay and expressly directs the entry of judgment. If an appeal is not taken within 90 days after entry of such a judgment, it becomes final and is not subject to later review. A judgment disposing of less than all claims against all parties entered pursuant to an order which does not contain the express determination and directions prescribed by Rule 54.02 is not appealable until entry of the final judgment disposing of all remaining claims of all parties.

This limited right of appeal recognizes that the trial court's use of the language prescribed by Rule 54.02 is likely to be confined to two situations: (1) where early review of the applicability of a rule of law may obviate a retrial, or (2) where the party obtaining judgment should not be required to await the conclusion of the case as to other parties and issues before the time for appeal begins to run.

Advisory Committee Comment - 1998 Amendments

The 1998 amendments to this rule will significantly affect appellate practice. The rule is intended to simplify practice by establishing a 60-day period to effect appeals from both final judgments and appealable orders. This 60-day period will not necessarily result in an identical period to appeal from both an order and judgment, as the event that begins the running of the respective 60-day appeal periods usually will differ. However, the amendment will result in less confusion regarding the time period for appeal.

Subdivision 2 is new and enumerates the post-trial motions that will toll the running of the time to appeal. The rule serves two equally important purposes: to make it clear that an appeal is not necessary until the proper motion is decided, and to avoid a party's erroneous assumption that an improper or unauthorized motion would prevent the running of an appeal deadline. The list is intended to be exhaustive for civil actions in the district courts. Rule 104.01, subd. 2(f), provides that the procedural counterparts of these motions will also prevent the running of the time to appeal until the motion is decided. The motions enumerated in this subdivision exclude "motions for reconsideration" because these motions are never required by the rules and are considered only if the trial court permits the motion to be filed. See Minn. Gen. R. Prac. 115.11, amended in 1997, effective January 1, 1998.

*Counsel must carefully determine whether post-trial motions are authorized in certain proceedings. See *Schiltz v. City of Duluth*, 449 N.W.2d 439 (Minn. 1990) (in special proceedings there must be statutory authority for new trial motions, and in the absence of such provision, a "new trial" motion, even if considered by the trial court on the merits and denied, may not result in an appealable order) and *Steeves v. Campbell*, 508 N.W.2d 817 (Minn. App. 1993) (new trial motion in order for protection proceedings not authorized, and order denying such motion is not appealable). Subdivision 2 of Rule 104.01 replaces Rule 104.04 concerning post-trial and modification motions in marital dissolutions. Modification motions no longer extend the time in which to appeal. The affect of post-trial motions is clarified in subdivisions 2 and 3.*

Advisory Committee Comment - 2006 Amendments

Rule 104.01, subd. 2(a) is amended to reflect the new name for a motion challenging the legal sufficiency of a verdict under Minn. R. Civ. P. 50.02. As a result of the amendment to Minn. R. Civ. P. 50.02, the former "motion for directed verdict" and "motion for judgment notwithstanding the verdict" are both now referred to as motions for "judgment as a matter of law." Rule 104.01, subd. 2(a) is amended to reflect this nomenclature. During the short transition period during which timely appeals might be taken from cases where either motions for judgment notwithstanding the verdict

or motions for judgment as a matter of law may have been filed after the trial court decision, the court should consider the two motions fungible in determining whether an appeal is timely.

Advisory Committee Comment - 2008 Amendments

The absence of motions for reconsideration or rehearing in the list of motions given tolling effect in Rule 104.01, subd. 2, is intentional. Neither requesting leave to file such a motion (as contemplated by Minn. Gen. R. Prac. 115.11), the granting of that request so the motion can be filed, nor the actual filing of the motion will toll or extend the time to appeal. A party seeking to proceed with a motion for reconsideration should pay attention to the appellate calendar and must perfect the appeal regardless of what progress has occurred with the reconsideration motion.

Failure to file a timely appeal may be fatal to later review. If a timely appeal is filed notwithstanding the pendency of a request for reconsideration in the trial court, the Court of Appeals can accept the appeal as timely, but stay it to permit consideration of the reconsideration motion. See Marzitelli v. City of Little Canada, 582 N.W.2d 904, 907 (Minn. 1998), where the court stated:

We note that requiring parties to file a timely appeal while a post-trial motion is pending does not deny the parties the opportunity to have the district court decide their motions. Rather, the parties may apply to the appellate court for a stay on the appeal to give the district court time to decide the pending post-trial motion. This procedure not only preserves the time limitation on appeals, but also helps to ensure that the district court hears and rules on the motion in an expedient manner. This is particularly important when the case involves a special proceeding. In such cases, the time for appeal is abbreviated to ensure a "speedy and summary determination of matters passed upon by the court[.]"

(Footnotes omitted.)

Advisory Committee Comment - 2009 Amendments

Subdivision 4 of Rule 104.01 is a new provision. It is modeled on Fed. R. App. P. 4(a)(3) and, for respondents, replaces the notice of review under former Rule 106 of these rules. The amended rule explicitly recognizes that a party may elect to appeal an issue only after learning that another party has appealed. Where a prior appeal has been filed and remains pending, a subsequent notice of appeal should be denominated "Notice of Related Appeal" and will suffice to raise any issue arising from the same trial court action. See Appendix for form of Notice of Related Appeal (Form 103C). The rule permits a party to serve and file a subsequent notice of related appeal within 14 days of the service of the first notice of appeal by another party, even if that occurs on the last day to appeal; it does not shorten the normal appeal period even if a party serves and files an appeal on the first possible day.

104.02 Effect of Entry of Judgment and Insertion of Costs into the Judgment

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 pursuant to this section shall not be extended by the subsequent insertion therein of costs and disbursements.

(Amended effective January 1, 1999.)

104.03 and 104.04 (Deleted effective January 1, 1999.)