

Rule 106. Respondent's Right to Obtain Review

After an appeal has been filed, respondent may obtain review of a judgment or order entered in the same underlying action that may adversely affect respondent by filing a notice of related appeal in accordance with Rule 103.02, subdivision 2, and Rule 104.01, subdivision 4.

(Amended effective July 1, 1989; amended effective for appeals taken on or after January 1, 1992; amended effective September 15, 1994; amended effective January 1, 1999; amended effective January 1, 2010.)

Comment - 1983

A respondent must file a notice of review with the clerk of the appellate courts within 15 days after service on the respondent of the notice of appeal.

See Appendix for form of notice of review (Form 106).

Advisory Committee Comment - 1998 Amendments

This rule is amended to delete gender-specific language. This amendment is not intended to affect the interpretation and meaning of the rule.

Advisory Committee Comment - 2009 Amendments

Rule 106 is amended to abolish the former notice of review, replacing it with the notice of related appeal for all situations where a respondent seeks appellate review of a trial court decision. The amendment avoids the limitations of the former notice of review that could be fatal to an attempt by a respondent to seek review. See, e.g., Leaon v. Wash. County, 397 N.W.2d 867, 872 (Minn. 1986) (holding that a respondent seeking appellate relief against parties other than the appellant may obtain review only by separate notice of appeal, but nonetheless considering issue raised improperly). As a practical matter, the amended rule serves only to give notice to a respondent that the proper procedure is no longer contained in this rule but is now found in Rule 103.02, subdivision 2, as to procedure, and Rule 104.01, subdivision 4, as to timing.

The amended rule is intended to create a single procedure that will allow a respondent seeking review to file a notice of related appeal. Under the amended rule a notice of related appeal should suffice to permit a respondent to obtain appellate review of any issues arising in the same trial court case but does not foreclose the right of any party to proceed by separate notice of appeal.

The new procedure is not intended to change the scope of appellate review. This notice of related appeal procedure is not meant to expand what can be reviewed on appeal or to limit that review. For example, the defendant's filing of an appeal under Minn. R. Crim. P. 28.02 does not currently create a right to file a cross-appeal or notice of review; and this amendment should not affect that result. See State v. Schanus, 431 N.W.2d 151, 152 (Minn. App. 1988). The Court of Appeals has recognized that the former notice of review could be used to seek review of an otherwise non-appealable order. See Kostelnik v. Kostelnik, 367 N.W.2d 665, 669 (Minn. App. 1985); see also Arndt v. Am. Family Ins. Co., 394 N.W.2d 791, 793-94 (Minn. 1986) (citing Kostelnik with apparent approval). The committee intends that the notice of related appeal be treated similarly and that an independent basis for jurisdiction not be required.