Rule 117. Petition in Supreme Court for Review of Decisions of the Court of Appeals

Subdivision 1. Filing of Petition. (a) Timing and service. Any party seeking review of a decision of the Court of Appeals shall separately petition the Supreme Court. The petition with proof of service shall be filed with the clerk of the appellate courts within 30 days of the filing of the Court of Appeals' decision. A filing fee of $550 shall be paid to the clerk of the appellate courts.

(b) Failure to take other steps. A party's failure to take any step other than timely filing the petition does not require dismissal of the appeal, but permits any action the Supreme Court deems appropriate, including dismissal of the appeal.

Subd. 2. Discretionary Review. Review of any decision of the Court of Appeals is discretionary with the Supreme Court. The following criteria may be considered:

(a) the question presented is an important one upon which the Supreme Court should rule; or

(b) the Court of Appeals has ruled on the constitutionality of a statute; or

(c) the lower courts have so far departed from the accepted and usual course of justice as to call for an exercise of the Supreme Court's supervisory powers; or

(d) a decision by the Supreme Court will help develop, clarify, or harmonize the law; and

(1) the case calls for the application of a new principle or policy; or

(2) the resolution of the question presented has possible statewide impact; or

(3) the question is likely to recur unless resolved by the Supreme Court.

Subd. 3. Petition Requirements. The petition for review shall not exceed 2,000 words, exclusive of the caption, signature block, and addendum, and shall contain:

(a) a statement of the legal issues sought to be reviewed, and the disposition of those issues by the Court of Appeals;

(b) a statement of the criteria relied upon to support the petition, or other substantial and compelling reasons for review;

(c) a statement of the case, including disposition in the trial court or administrative agency and the Court of Appeals, and of those facts not addressed by the Court of Appeals relevant to the issues presented for review, with appropriate references to the record; and

(d) a brief argument in support of the petition.

The addendum, if filed, may contain the decision and opinion of the Court of Appeals, and shall otherwise be prepared as prescribed by Rule 130.02.

The petition and addendum shall be filed with the clerk of the appellate courts and shall be accompanied by a Certificate of Document Length.

Subd. 4. Response and Request for Cross-Review. An opposing party may file with the clerk of the appellate courts a response to the petition within 21 days of service. The response shall comply with the requirements set forth for the petition and shall contain proof of service. Any responding party may, in its response, also conditionally seek review of additional designated issues not raised by the petition. In the event of such conditional request, the party filing the initial petition for review shall not be entitled to file a response unless the court requests one on its own initiative.

Subd. 5. Amicus Curiae. A request for leave to participate in the appeal as amicus curiae is governed by Rule 129. An applicant who requests leave to participate as amicus if review is granted, and wants to include an argument on the question of granting review, shall file its request to participate as amicus not later than 14 days after the petition is filed.

(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 July 1, 2003; amended effective December 1, 2003; amended effective July 1, 2009; amended effective July 1, 2014; amended effective July 1, 2016; amended effective September 1, 2019; amended effective January 1, 2020.)

See **Appendix** for form of petition or review (**Form 117**).

Comment - 1983

This entirely new rule establishes the procedure for obtaining Supreme Court review of a decision of the Court of Appeals. Review is discretionary with the Supreme Court. While the rule enumerates criteria which may be considered by the court in exercising its discretion, they are intended to the instructive and are neither mandatory nor exclusive. The petition should be accompanied by any documents pertinent to the Supreme Court's review.

See Appendix for form of petition for review (Form 117).

Advisory Committee Comment - 1998 Amendments

The 1998 revisions to Rule 117 eliminate the provision for "conditional" petitions for review. In its stead, the revised rule allows parties to include in their responses a conditional request to the court to review additional issues only if the petition is granted. This procedure mirrors the procedure used in criminal appeals. See Minn. R. Crim. P. 29.04, subd 6 (appeals to Court of Appeals). The revised rule does not provide for any expansion of the five-page limit for the response in order to accommodate the conditional request for review of additional issues. By the same token, the amended rule does not allow a reply by the party initially seeking review, since that party has already indicated to the court that the case satisfies some of the criteria of Rule 117.

A party who wishes to have issues reviewed by the Supreme Court regardless of the court's actions on a previously filed petition should file a petition within the 30-day time limit from decision, since the court is unlikely to deny an initial petition but grant review of issues raised only conditionally in a response. Likewise, a party who would feel constrained by the page limit of a response which includes a conditional request for review of additional issues should file a separate petition for review within the time provided by Rule 117 for an initial petition, 30 days from the date of filing the Court of Appeals' decision.

Advisory Committee Comment - 2014 Amendments

Proof of service as required by Rule 117, subdivision 1, has traditionally been accomplished by an affidavit of service. For documents served using the appellate courts' electronic filing and service system, proof of service is generated by the system and electronically accompanies the service document; no separate proof of service is required.

Only a single copy of the petition and addendum need be filed.

Advisory Committee Comment - 2016 Amendments

Rule 117 is amended primarily to re-define the length limit to 2,000 words rather than the current five pages. This change, coupled with the requirement that a 13-point font be used, will

have a practical effect of permitting petitions that are slightly longer, but will be more easily read, both in paper format and on computer screens.

The addendum for Rule 117 petitions need not include the decision of the court of appeals, as every such decision is readily available in electronic form to the court for consideration with a petition. It is particularly useful to make inclusion of the appellate court decision optional to allow it to be omitted where it would be the only item in the addendum. Trial court decisions, however, if germane to the issues raised in a petition, may be helpful to the court in the addendum to the petition. The rule does not bar the filling of a court of appeals decision; it simply removes any requirement for it.

If the court grants further review, the addendum that accompanies the brief should include both the court of appeals and relevant district court orders and judgments pursuant to Rule 130.02.

Advisory Committee Comment - 2019 Amendments

Rule 117, subd. 1 is amended to remove any implication in the rule that failing to take any step other than filing the petition for further review requires dismissal of the petition. This rule is derived from Minn. R. Crim. P. 29.04, which governs petitions for further review in criminal cases. The rule does not excuse non-compliance with the Court's rules, but confirms that the Court has the inherent authority to excuse non-compliance in the exercise of its discretion. Cf. In re J.R., 655 N.W.2d 1 (Minn. 2003) (mere 'oversight' or negligence in failing to follow the rules does not excuse non-compliance).

Rule 117, subd 5, is amended to make the same change made in Rule 129.01 to require that any request to participate on appeal as an amicus must be filed either within 14 days of the filing of the petition for further review (PFR) or after the petition has been decided. This change allows the parties an opportunity to respond to the request to participate while the PFR is pending if the request is filed while the PFR is pending.