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Can't Hardly Wait

Interlocutory Appeals

Minnesota Attorney General's Office CLE

July 25, 2022

Panelists

- Mike Goodwin, Assistant Attorney General
- The Hon. Diane Bratvold, Minnesota Court of Appeals
- Portia Hampton-Flowers, St. Paul City Attorney's Office
- Emily Polachek, United States Department of Justice

Can I appeal this NOW?

Common bases for interlocutory appeals

Federal Court

- Injunctions: 28 U.S.C. §1292(a)
- Certification: 28 U.S.C. §1292(b)
- Collateral orders
- Criminal pretrial appeals: 18 U.S.C. §3731, FRAP 9

Minnesota State Court

- Injunctions – Minn. R. Civ. App. P. 103.03(b)
- By statute or decision (e.g. immunity, jurisdiction) – Minn. R. Civ. App. P. 103.03(j)
- Certification as important and doubtful – Minn. R. Civ. App. P. 103.03(i)
- Discretionary review - Minn. R. Civ. App. P. 105
- Criminal pretrial appeals: Minn. R. Crim. P. 28



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APPEALS AS OF RIGHT

Criminal pre-trial appeals

- 18 U.S.C. §3731, FRAP 9
- Minn. R. Crim. P. 28
 - Defendant: Rule 28.02
 - Interlocutory appeals usually not allowed except as provided in Rule 28.02, subd. 2(2)
 - If the state files a pretrial appeal, the defendant can cross appeal “any adverse” rulings. Minn. R. Crim. P. 28.04, subd. 3.
 - Prosecutor: Rule 28.04
 - The alleged error must “have a critical impact on the outcome of the trial.” *State v. Lugo*, 887 N.W.2d 476, 481 (Minn. 2016) (quoting Minn. R.Crim. P. 28.04, subd. 2(2)(b))

Rule 103.03(j)

- “An appeal may be taken to the Court of Appeals [...] from such other orders or decisions as may be appealable by statute or under the decisions of the Minnesota appellate courts.”
- Includes denials of dispositive motions based on immunity and jurisdiction. Also appealable in federal court.
- Appeals from interlocutory orders and judgments are generally “permissive rather than mandatory.” *City of Waconia v. Dock*, 961 N.W.2d 220, 227 (Minn. 2021).

Injunctions

- “An appeal may be taken to the Court of Appeals [...] from an order which grants, refuses, dissolves or refuses to dissolve, an injunction.” Minn. R. Civ. App. P. 103.03(b).
- Federal courts of appeals have jurisdiction over orders “granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions.” 28 U.S.C. §1292(a)(1)



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APPEALS BY PERMISSION

Judgment on fewer than all claims

- The district court may direct entry of a final judgment as to one or more, but fewer than all, of the claims or parties if it determines that **there is no just reason for delay**. Fed. R. Civ. P. 54(b); Minn. R. Civ. P. 54.02
- Appellate court may review certification under Rule 54.02. *See Abuzeni v. Mutschler*, 926 N.W.2d 59, 62 (Minn. Ct. App. 2019)

Important and doubtful

- Available for orders denying motions to dismiss or motions for summary judgment.
- Must be both “important” and “doubtful.” Minn. R. Civ. App. P. 103.03(i).
- Must be certified by trial court. Decision to certify is subject to de novo review.
- Important consideration is whether answer to the question will end the litigation.
- Federal analog: 28 U.S.C. §1292(b); FRAP 5.

Petitions for discretionary review

- Rule 105 provides for review of orders not otherwise appealable except orders made during trial.
- Must file petition, and if review is granted case proceeds as normal appeal.

Year	Petitions filed	Petitions granted
2019	24	1
2020	26	3
2021	28	0
2022 (through June)	21	1 (3 still pending as of June)

Extraordinary writs

- Writs of mandamus and prohibition are governed by
 - Minn. R. Civ. App. P. 120, 121
 - Fed. R. Civ. P. 21
- Emergency writs or motions
 - Rule 121 – Contact Supreme Court Commissioner or Chief Staff Attorney for emergency writs.
 - “Emergencies are best handled by telephoning the clerk for instructions; a call should also be made to alert the clerk’s office when there are pressing deadlines for court action.” Eighth Circuit Internal Operating Procedures I.D.3.



Questions?

So You're Telling Me There's a Chance ...

Petitions for Review

Minnesota Attorney General's Office CLE

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Panelists

The Hon. Paul
Thissen, Minnesota
Supreme Court

Leah Huyser,
Fredrikson & Byron

Chang Lau, Office
of the Minnesota
Appellate Public
Defender

Pete Farrell,
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General

Rules Governing Timing

Petitions

- Must be served and filed within 30 days of the filing of the COA decision
- May be extended by 30 days for “good cause” in criminal cases
- Minn. R. Civ. App. P. 117, subd. 1; Minn. R. Crim. P. 29.04, subd. 2

Responses

- 21 days after service of PFR in civil cases
- 20 days after service of PFR in criminal cases
- Minn. R. Civ. App. P. 117, subd. 4; Minn. R. Crim. P. 29.04, subd. 5

Rules Governing Petition Content

Similar requirements in Rule 117 (civil) and Rule 29 (criminal)

- Legal issues
- Brief factual and procedural history
- Why the court should grant review

Length and Addendum

- 2,000 words for civil; may file addendum, and may include COA decision
- 4,000 words for criminal; must file addendum with COA decision and relevant district court documents

Rules

- Minn. R. Civ. App. P. 117, subd. 3
- Minn. R. Crim. P. 29.04, subd. 3

Rules Governing Criteria

- The question presented is an important one.
- The COA has ruled on the constitutionality of a statute.
- The lower courts have so far departed from the accepted and usual course of justice as to call for an exercise of the Court's supervisory powers.
- A decision by the Court will help develop, clarify, or harmonize the law and:
 - The case calls for the application of a new principle or policy;
 - The resolution of the question presented has possible statewide impact; or
 - The question is likely to recur unless resolved by the Court.
- Rule 29 (criminal) contains the same criteria, plus:
 - COA has decided question in direct conflict with applicable precedent of a Minnesota appellate court.

Rules Governing Responses

- Civil (Minn. R. Civ. App. P. 117, subd. 4)
 - “The response shall comply with the requirements set forth in the petition.”
 - 2,000 word limit
- Criminal (Minn. R. Crim. P. 29.04, subd. 5)
 - No content specifications, but default to Civil Appellate Rules (Minn. R. Crim. P. 29.01, subd. 2)
 - 4,000 word limit
- May conditionally seek review of additional issues (no response allowed, absent court permission)
- May choose not to respond

Zoom Zoom Zoom: Accelerated Review

- Minn. R. Civ. App. P. 118
- Must satisfy criteria of Rule 117 + show that the case is of such imperative public importance as to justify deviation from the normal appellate procedure and to require immediate determination in the Supreme Court.
- Election cases (*LaRose, NAACP*), pardon board (*Shefa*)

**What are my
chances?**



General Stats

<u>YEAR</u>	<u>PFRS FILED</u>	<u>GRANTED</u>	<u>% GRANTED</u>
2012	639	64	10%
2013	671	76	11%
2014	659	94	14%
2015	615	73	12%
2016	648	89	14%
2017	635	81	13%
2018	605	83	14%
2019	620	71	11%
2020	595	72	12%
2021	551	66	12%

More Stats (Jan. 2019-Dec. 2021)

Type of Opinion	Total Opinions	Affirmed	Affirmed in part/ Reversed in part	Reversed
TOTAL	169			
Non-Precedential	68 (40%)	30 (44%)	12 (18%)	26 (38%)
Precedential	97 (57%)	52 (54%)	14 (14%)	31 (32%)
Ct App Orders	4 (2%)	3 (75%)		1 (25%)

*Does not include seven cases that were dismissed or improvidently granted.

More Stats (Jan. 2019-Dec. 2021)

Category of Case	Total Opinions	Affirmed	Affirmed in Part/ Reversed in Part	Reversed
CRIMINAL TOTAL	69	46 (67%)	1 (1%)	22 (32%)
Defendant Appeal	54	36 (67%)	1 (1%)	17 (31%)
Pretrial Appeal	8	7 (88%)		1 (12%)
Sentencing	3	1 (33%)		2 (33%)
Post-Conviction	4	2 (50%)		2 (50%)
CIVIL TOTAL	85	33 (38%)	24 (29%)	28 (33%)
Civil General	76	29 (38%)	23 (31%)	24 (31%)
Family including Termination of Parental Rights and Paternity	6	4 (66%)		2 (33%)
Mental Commitment	1			1
Habeas	2		1	1
CERTIORARI	11	4 (36%)		7 (64%)

This excludes some cases that were dismissed or dismissed as improvidently granted.

Where to look for guidance

- The Rules!
 - Rule 117 of the Rules of Civil Appellate Procedure
 - Rule 29.04 of the Rules of Criminal Procedure
- Court Guidance
 - Case Dispositional Procedures of the Minnesota Supreme Court (available at [here](#))
- P-MACS