

Filing a Postconviction Appeal

This packet will help parties without an attorney appeal a district court order denying a postconviction petition. You should carefully review this information and complete every step.

NOTE: This packet only covers postconviction appeals to the Minnesota Court of Appeals. If you were convicted of first-degree murder and are appealing an order denying postconviction relief from that conviction, you must file an appeal with the Minnesota Supreme Court. For any other type of criminal appeal, consult the Minnesota Rules of Criminal Procedure and the online materials for criminal appeals.

Time to Appeal

In general, you have 60 days to appeal to the court of Appeals after the district court files an order denying a petition for postconviction relief. See Minn. R. Crim. P. 28.02, subd. 4(3)(c). Appeals to the court of appeals in other types of criminal cases, including direct appeals of felony or misdemeanor convictions, have very different filing deadlines. You must read rule 28.02, subdivision 4(3) of the **Minnesota Rules of Criminal Procedure** (abbreviated "Minn. R. Crim. P.") to confirm the deadline that applies to your appeal.

Your appeal time begins to run on the date that the district court administrator files the order; not when you receive a copy of the order. See Minn. R. Crim. P. 33.03. The court of appeals can extend the appeal deadline for up to 30 additional days, but you must make a motion for an extension, and you must show "good cause" to get an extension. See Minn. R. Crim. P. 28.02, subd. 4(3)(g).

To figure out the deadline for filing and serving documents, apply these rules:

- Do not count the day of the event that starts the time period (for example, the date that the district court administrator files the order). Instead, start counting the next day.
- Continue counting calendar days. Do not skip weekends or legal holidays.
- If the last day of the period falls on a Saturday, Sunday, or legal holiday, then the deadline is the next business day. For the purpose of calculating deadlines, legal holidays for the appellate courts are:
 - New Year's Day (January 1);
 - Martin Luther King, Jr.'s birthday (the third Monday in January);
 - Presidents' Day (the third Monday in February);
 - Memorial Day (the last Monday in May);
 - Independence Day (July 4);
 - Labor Day (the first Monday in September);
 - Columbus Day (the second Monday in October), even though the appellate courts are open on Columbus Day;
 - Veterans' Day (November 11);
 - Thanksgiving Day (the fourth Thursday in November);
 - The Friday after Thanksgiving; and
 - Christmas Day (December 25).

Eligibility for Public Defender

If you had a previous appeal involving the same conviction, and you were represented by an attorney from the Office of the Minnesota Appellate Public Defender in that appeal, you may not be entitled to an appointed attorney for postconviction proceedings. See Minn. Stat. § 611.25, subd. 1(a)(2). If this is your first appeal on this conviction, and you meet certain financial eligibility requirements, you may be entitled to a public defender on appeal. You must apply to:

Office of the Minnesota Appellate Public Defender
540 Fairview Avenue North, Suite 300
St. Paul, MN 55104
(651) 201-6700

The Parties

You, as the appealing party, are called the appellant. The other party in a postconviction appeal is the State of Minnesota and is called the respondent. The State of Minnesota is represented by the county attorney and the Minnesota Attorney General. The title of a postconviction appeal is as follows: "(Your name), petitioner, Appellant, vs. State of Minnesota, Respondent."

Appeal Documents

The Notice of Appeal must show: (1) who is filing the appeal; (2) the names, addresses, and phone numbers of all attorneys who have appeared in the case; (3) the date of the postconviction order you are appealing; and (4) the court where your appeal is being filed (Minnesota Court of Appeals). A form notice of appeal is attached to this packet.

The Statement of the Case provides general information about your case and is used by the court of appeals to process and schedule your case. You must follow Minn. R. Civ. App. P. 133.03 and answer questions about: (1) the date of the order you are appealing; (2) the rule or statute that you believe authorizes you to appeal, see Minn. R. Crim. P. 28.02; (3) the issue you intend to raise on appeal (only a general discussion is necessary, because you will have the chance to present your arguments in more detail later); and (4) whether a transcript is required for your appeal. The statement of the case asks whether you are requesting oral argument, but oral argument will not be allowed if any party does not have an attorney. A form statement of the case is attached to this packet.

No filing fees are required to file a postconviction appeal under Minn. Stat. § 590.06.

Filing

"Filing" means giving documents to the Office of the Clerk of the Appellate Courts. Parties without an attorney may file documents by any of the following methods:

- By hand-delivering them to the Clerk of the Appellate Courts during business hours (8:00 a.m. to 4:30

- p.m. weekdays),
- By mailing the documents to the Clerk of the Appellate Courts, addressed to:

Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155 (651) 296-2581

- By submitting them electronically through the appellate courts' e-filing system, E-MACS. Parties who do not have an attorney are not required to use E-MACS, but they are allowed to do so (All attorneys are required to use E-MACS and cannot file documents by mail or by hand-delivery to the Clerk of the Appellate Courts).

For filing by postal mail, a document will be considered timely if it is deposited in the U.S. Mail by the deadline with correct postage and the correct address, even though the Clerk's Office will not receive the document on the day you deposit it in the mail.

For information about electronic filing and to submit documents electronically, go to the **Clerk of Appellate Courts' webpage** (www.mncourts.gov/Clerk-of-Appellate-Courts.aspx#tab05AppellateFiling).

Filing by facsimile (fax) or other electronic means currently is not allowed.

Important: You must also file a copy of your notice of appeal with the district court administrator of the county in which the order you are appealing was filed.

Service

Any time you submit a document to the Clerk of Appellate Courts for filing, a copy must also be provided to all other parties at or before the time of filing. This is called "service."

If a party has an attorney, you *must* serve the *attorney* rather than the party. If a party does not have an attorney, you may serve that party directly.

If you choose to file electronically, you can serve the respondents electronically as well, if the respondents are registered in the appellate courts' e-filing system, E-MACS. Information about electronic service can be found on the **Clerk of Appellate Courts' webpage** (www.mncourts.gov/Clerk-of-Appellate-Courts.aspx#tab05AppellateFiling).

If you, as a party without an attorney, choose to file documents by postal mail or delivery in person, you can also accomplish service by postal mail, in person, by e-mail (with the consent of the recipient) or by fax (with the consent of the recipient). If your document is being served in person, you cannot be the one to serve it. It must be served by someone who is 18 years or older and not a party to the appeal. Service by mail is accomplished by depositing the documents, correctly addressed, in the U.S. Mail, with adequate first-class postage.

No matter what method of service you use, you must also submit proof of service to the Clerk's Office.

Proof of Service

Every document submitted to the Clerk of Appellate Courts for filing must be accompanied by a form stating that the document was served on the other parties to the appeal. This is called "proof of service." If you use E-MACS to serve papers on the other parties or attorneys to the appeal, no separate proof of service is required, because the Clerk of Appellate Courts will receive information about service along with the e-filing. If you serve papers personally, by postal mail, or by another delivery method (with the consent of the recipient), separate proof of service is required. Usually, proof of service is (1) a notarized Affidavit of Service or (2) a Certificate of Service. A less frequently used third option for proof of service is a written admission by the person who was served that the document was received. See Minn. R. Civ. App. P. 125.04.

The person who served the document in person or by mail must complete the Affidavit of Service or Certificate of Service, which must include a description of the documents that were served, the date and time of service, the method of service (by mail, in person, or other method with consent), the name of the person who was served, and the address to which any documents served by mail were sent. The affidavit or certificate of service must be signed by the person who served the documents.

Affidavit of Service. An affidavit of service must be signed in front of a notary by the person who served the document(s). The notary must also sign and date the affidavit. Notary services are available at many financial institutions for a small fee. The Office of the Clerk of the Appellate Courts will notarize an affidavit of service at no charge.

Certificate of Service. A certificate of service does not need to be notarized. A certificate of service must contain a statement by the person who signs the certificate that the person declares under penalty of perjury that everything stated in the document is true and correct. The certificate must show the date of signing and the county and state where the certificate was signed. A form certificate of service is attached to this packet.

You may file one affidavit of service or certificate of service listing multiple documents if you serve those documents on the same date and on the same parties. However, you will probably need to file and serve documents on different dates over the course of your case.

The Record

The court of appeals will obtain the district court file, which includes motion papers and documents filed with the district court. If you requested and received an evidentiary hearing before the district court on your petition for postconviction relief (Minn. Stat. § 590.04), any testimony, arguments, or evidence that was submitted at that hearing will be part of the record on appeal. A transcript is a typed record of what the parties, attorneys, and district court judge said at the hearing. The parties must order a transcript for the appeal if they want to make arguments about what was said at the hearing. See Minn. R. Crim. P. 28.02, subd. 8; Minn. R. Civ. App. P. 110.01.

The court of appeals cannot consider new evidence on appeal, and the arguments in your brief must be based on the evidence you presented in the district court.

Briefs

The brief is your written argument on appeal. You must file five copies of your brief with the Clerk of the Appellate Courts (four bound and one unbound) and serve two copies on the attorneys for each respondent. See Minn. R. Civ. App. P. 131.03.

You must also file proof of service for the brief with the Clerk of the Appellate Courts. (See "service" and "proof of service" above.)

If you received an evidentiary hearing in the district court on your postconviction petition and ordered a transcript of that hearing, you must serve and file your appellant's brief within 63 days after the date that the court reporter mailed the transcript to you. See Minn. R. Crim. P. 28.02, subd. 10; Minn. R. Crim. P. 34.4. If you did not have an evidentiary hearing in the district court and no transcript will be prepared for appeal, then you must serve and file your brief within 60 days of filing the notice of appeal. See Minn. R. Crim. P. 28.02, subd. 10. The court will not remind you of this deadline.

The appellant must file a brief explaining why the district court's decision should be reversed, or the appeal will be dismissed. See Minn. R. Civ. App. P. 142.02.

There are three types of briefs:

- a formal brief, which must be bound and include a table of contents, a statement of the legal issues, a statement of the case and the facts, an argument, a conclusion, and an addendum (see Minn. R. Civ. App. P. 128.02, Minn. R. Civ. App. P. 130.02);
- an informal brief, which may be stapled, and includes a written argument and addendum (see Minn. R. Civ. App. P. 128.01, subd. 1); or
- a short letter argument that supplements written arguments submitted to the district court. This type of brief can be used only when written arguments were filed in the district court in support of the postconviction petition. When it is used, it may be stapled (not formally bound by a printer), and it must include an addendum (see Minn. R. Civ. App. P. 128.01, subd. 2).

Many pro se postconviction appellants file an informal brief. Every appellant's brief, no matter what form used, must include an addendum. The addendum must include, at the least, a copy of the district court order being appealed. See Minn. R. Civ. App. P. 130.02.

Time Extensions or Other Requests (Motions)

If you cannot serve and file your brief by the deadline, or if you want some other type of relief from the court of appeals, you must serve and file a written motion. Any motion for an extension should be served and filed before the deadline that you are seeking to extend.

The requirements for a motion are found in Minn. R. Civ. App. P. 127 and 131.02 (briefing extensions). The motion must state the relief requested, the reasons for wanting relief, and the authority (cases, statutes, or rules) for the request. You must serve the motion on the attorneys for respondent. You must also file proof of service for the motion and one signed motion with the Clerk of the Appellate Courts.

How Your Case Will be Decided

After the parties have filed their briefs, the appeal will be scheduled for consideration by a panel of three judges. If you are not represented by an attorney, the court will not allow oral arguments. See Minn. App. Spec. R. Pract. 2.

The Clerk of the Appellate Courts will send out a notice when the appeal has been assigned to a panel, with the names of the judges and the date that the judges will consider the case. The court of appeals will generally file a written decision on a postconviction appeal within 90 days of the nonoral conference or oral arguments.

Any party can request further review from the Minnesota Supreme Court within 30 days after the filing of the court of appeals decision. See Minn. R. Crim. P. 29.04, subd. 2.

Questions?

Clerk of the Appellate Courts

305 Minnesota Judicial Center

25 Rev. Dr. Martin Luther King Jr. Boulevard

St. Paul, MN 55155

(651) 296-2581

8 a.m. - 4:30 p.m., Monday – Friday

NOTE: The Clerk's Office can answer questions about the court's procedures and rules, but cannot fill out the forms for you or give you any legal advice about your case.

Postconviction Appeal Checklist

These are the steps that you must follow to bring your postconviction appeal. Please follow the directions exactly. If you do not do so, you may miss an important step and you could lose your opportunity to appeal.

1. **Complete** the following forms, filling in all of the blanks. If you do not fill in all of the blanks, the Clerk of the Appellate Courts may have to send the forms back to you and it might then be too late for you to appeal. This packet includes one copy of each form. Once you complete the forms, you should make at least four copies of each form. One of the copies is for you to keep for your records.

___ Notice of Appeal (Form 103A)

(This is the form that tells the court of appeals that you want to appeal.)

___ Statement of the Case (Form 133)

(This is an outline of your case that summarizes the reasons why you think the decision of the district court was wrong. You can make detailed arguments in the brief that you will file later with the court of appeals. It is not necessary to attach any other documents to this form, but a copy of the district court's order denying your petition for postconviction relief may be helpful to the court.)

2. **File** with the Clerk of the Appellate Courts one signed copy of the completed form **within 60 days** after entry of the district court's order denying your petition for postconviction relief.

___ One signed copy of the Notice of Appeal (Form 103A)

___ One signed copy of the Statement of the Case (Form 133)

A person who is bringing a postconviction appeal without a lawyer must mail or hand-deliver these documents to the Clerk of the Appellate Courts. Any documents mailed to the Clerk of the Appellate Courts must be correctly addressed and have sufficient postage.

Clerk of the Appellate Courts

305 Minnesota Judicial Center

25 Rev. Dr. Martin Luther King Jr. Blvd.

St. Paul, MN 55155

Instead of filing by mail or hand delivery, parties without an attorney may choose to use the appellate courts' e-filing system, E-MACS, to file their documents. (Note that all attorneys are required to do so.)

3. **Serve** each of the parties with one copy of your notice of appeal and statement of the case. "Serving" means that you must mail these papers or have them given in person to the respondent, or you can e-mail or fax them to the respondent if the respondent agrees. If you decide to have the documents delivered in person, you must have the sheriff or a person 18 years or older serve them. If you choose to use the appellate courts' e-filing and e-service system, E-MACS, to file your documents, you can also use E-MACS to serve documents on parties registered with E-MACS. (Note that all attorneys are required to do so.)

In a postconviction appeal under Minn. R. Crim. P. 28.02, subd. 4(1), the following parties must be served:

___ The prosecuting attorney

___ The Minnesota Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101

___ The district court administrator in the county in which the order you are appealing was filed

4. **File** a notarized affidavit of service or a certificate of service with the Clerk of the Appellate Courts to prove that you have served the parties listed in step 3.
5. **Review** the notice of case filing and appellate court file number that you receive from the Clerk of the Appellate Courts. After you file your appeal documents with the Clerk of the Appellate Courts, the clerk will assign your appeal an appellate court file number and will send you a notice of case filing. The notice of case filing will alert you to any problems or deficiencies with your appeal and give you ten days to correct those problems. If you do not correct the problems, the court of appeals may dismiss your appeal.
6. **Determine** whether you need to order transcripts. If an evidentiary hearing was held in the district court on your petition for postconviction relief, you need to order transcripts. If no hearing was held and if you have already had a direct appeal of your conviction, transcripts likely were prepared for your direct appeal. Those transcripts are already part of the record and will be sent to the Clerk of the Appellate Courts by the district court administrator.
7. **Prepare** your brief and file it by the deadline (usually, 60 days after the appeal is filed or 63 days after the court reporter mails you a copy of the postconviction hearing transcript, if there is one). A brief is a written argument explaining why you believe the district court's decision is wrong. It must include legal authorities (case citations, statutes, rules) and references to the transcript or record to support all statements of fact and arguments contained in the brief. When your brief is ready, you must make copies, file, and serve it as follows. But make sure that you keep a copy of your brief for your own records.

___ File five copies (four bound and one unbound) of your brief with the Clerk of the Appellate Courts.

___ Serve two copies of your brief on the attorneys for respondent, the State of Minnesota.

8. **Wait** for the respondent to file its brief and for your appeal to be scheduled. The respondent has 45 days to serve you with a brief and to file its brief with the Clerk of the Appellate Courts. If the respondent files a brief that raises new issues that are not addressed in your initial brief, you may serve and file a reply brief within 15 days of the date you are served with the respondent's brief. But you do not have to file a reply brief if you do not want to do so.

Once all the briefs are filed, your case is placed on a list of cases ready to be scheduled with the court of appeals and it will be scheduled when an opening appears on the court's calendar. You will receive a notice of the date that your case is scheduled to be considered at a nonoral conference by a panel of three judges from the court of appeals. On the day of the conference, your case is deemed submitted and the court of appeals generally will issue a written decision within 90 days. If the court of appeals does not rule in your favor, you have 30 days after the filing of the decision to file a petition requesting further review by the Minnesota Supreme Court.

FORM 103A. NOTICE OF APPEAL (COURT OF APPEALS)

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
JUDICIAL DISTRICT _____

CASE TITLE:

Plaintiff,

NOTICE OF APPEAL TO COURT
OF APPEALS

vs.

DISTRICT COURT CASE NUMBER:

Defendant.

DATE OF ORDER:

[OR]

DATE JUDGMENT ENTERED:

TO: Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155

Please take notice that the above-named [plaintiff/defendant] appeals to the Court of Appeals of the State of Minnesota from an order [judgment] of the court filed [entered] on the date shown [describe nature of ruling, e.g., denying defendant's motion for a new trial].

DATED:

NAME [OF PARTY APPEALING] AND ATTORNEY (IF APPLICABLE), ADDRESS (INCLUDING ZIP CODE), TELEPHONE NUMBER, EMAIL ADDRESS (IF AVAILABLE), AND ATTORNEY REGISTRATION LICENSE NUMBER (IF APPLICABLE).

SIGNATURE [OF APPELLANT, OR ATTORNEY IF REPRESENTED]

(The district court caption is used on the notice of appeal. Subsequent documents shall bear the appropriate appellate court caption. RCAP 103.01, subd. 1 specifies the contents of the notice of appeal and filings required to perfect an appeal, including filing fees. RCAP 103.03 sets forth judgments and orders which are appealable to the Court of Appeals. RCAP 104.01 specifies time limits for filing and service of the notice of appeal. RCAP 108.01 provides for a supersedeas bond. This document must be accompanied by a completed statement of the case. RCAP 133.03.)

FORM 133. STATEMENT OF THE CASE

STATE OF MINNESOTA
(IN SUPREME COURT
OR
IN COURT OF APPEALS)

CASE TITLE:

Appellant,

STATEMENT OF THE CASE OF
(APPELLANT) (RESPONDENT)

vs.

DISTRICT COURT CASE NUMBER:

Respondent.

APPELLATE COURT CASE NUMBER:

1. Court or agency of case origination and name of presiding judge or hearing officer.
2. Jurisdictional Statement

(A) Appeal from district court.

Statute, rule or other authority authorizing appeal:

Date of entry of judgment or date of service of notice of filing of order from which appeal is taken:

Authority fixing time limit for filing notice of appeal (specify applicable rule or statute):

Date of filing any motion that tolls appeal time:

Date of filing of order deciding tolling motion and date of service of notice of filing:

(B) Certiorari appeal.

Statute, rule or other authority authorizing certiorari appeal:

Authority fixing time limit for obtaining certiorari review (cite statutory section and date of event triggering appeal time, e.g., mailing of decision, receipt of decision, or receipt of other notice):

(C) Other appellate proceedings.

Statute, rule or other authority authorizing appellate proceeding:

Authority fixing time limit for appellate review (cite statutory section and date of event triggering appeal time, e.g., mailing of decision, receipt of decision, or receipt of other notice):

(D) Finality of order or judgment.

Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees? Yes () No ()

If no:

Did the district court order entry of a final partial judgment for immediate appeal pursuant to MINN. R. CIV. APP. P. 104.01? Yes () No () or

If yes, provide date of order:

If no, is the order or judgment appealed from reviewable under any exception to the finality rule? Yes () No ()

If yes, cite rule, statute, or other authority authorizing appeal:

(E) Criminal only:

Has a sentence been imposed or imposition of sentence stayed? Yes () No ()

If no, cite statute or rule authorizing interlocutory appeal:

3. State type of litigation and designate any statutes at issue.
4. Brief description of claims, defenses, issues litigated, and result below. For criminal cases, specify whether conviction was for a misdemeanor, gross misdemeanor, or felony offense.
5. List specific issues proposed to be raised on appeal.
6. Related appeals.

List all prior or pending appeals arising from the same action as this appeal. If none, so state.

List any known pending appeals in separate actions raising similar issues to this appeal. If none are known, so state.

7. Contents of record.

Is a transcript necessary to review the issues on appeal? Yes () No ()

If yes, full () or partial () transcript?

Has the transcript already been delivered to the parties and filed with the district court administrator? Yes () No ()

If not, has it been ordered from the court reporter? Yes () No ()

If a transcript is unavailable, is a statement of the proceedings under Rule 110.03 necessary? Yes () No ()

In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04? Yes () No ()

8. Is oral argument requested? Yes () No ()

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? Yes () No ()

If yes, state where argument is requested:

9. Identify the type of brief to be filed.

Formal brief under Rule 128.02. ()

Informal brief under Rule 128.01, subd. 1 (must be accompanied by motion to accept unless submitted by claimant for reemployment benefits). ()

Trial memoranda, supplemented by a short letter argument, under Rule 128.01, subd. 2. ()

10. Names, addresses, and telephone numbers of attorney for appellant and respondent.

NAME [OF PARTY SUBMITTING] AND ATTORNEY [IF REPRESENTED],
ADDRESS (INCLUDING ZIP CODE), TELEPHONE NUMBER, EMAIL ADDRESS (IF
AVAILABLE), REGISTRATION LICENSE NUMBER OF ATTORNEY(S) [IF
APPLICABLE]

SIGNATURE

DATED:

(The Statement of Case is not a jurisdictional document, but it is important to the proper and efficient processing of the appeal by the appellate courts. The "jurisdictional statement" section is intended to provide sufficient information for the appellate court to easily determine whether the order or judgment is appealable and if the appeal is timely. The nature of the proceedings below and the notice of appeal determine the jurisdiction of the appellate court. The sections requesting information about the issues litigated in the lower court or tribunal, and the issues proposed to be raised on appeal are for the court's information, and do not expand or limit the issues that might be addressed on appeal. Likewise, the section asking counsel to identify and prior or pending appeals from the same case, and any separate appeals that raise similar issues is intended to provide more information about the procedural history of the case and to ensure that the court has early notice of other pending related matters in case consolidation is appropriate.)

**STATE OF MINNESOTA
IN THE COURT OF APPEALS**

CASE TITLE:

_____,
Appellant

COURT OF APPEALS CASE #

vs.

_____,
Respondent

**CERTIFICATE OF SERVICE
BY PERSONAL DELIVERY**

STATE OF MINNESOTA
COUNTY OF _____

I, _____ (Name), certify that on _____ (Date), I served the attached _____ (Documents served), in the above entitled case, by personally handing to and leaving with the following person(s):

1. _____ (Must include name or title of person who received documents and their address)

2. _____

3. _____

I declare under the penalty of perjury that everything I have stated in this document is true and correct.

(Signature)

(County where certificate was signed)

(Date of signature)

(State where certificate was signed)

**STATE OF MINNESOTA
IN THE COURT OF APPEALS**

CASE TITLE:

_____,
Appellant

COURT OF APPEALS CASE #

vs.

_____,
Respondent

**CERTIFICATE OF SERVICE
BY MAIL**

STATE OF MINNESOTA
COUNTY OF _____

I, _____ (Name), certify that on _____ (Date), I served the attached _____ (Documents mailed), on the following parties by mailing to each of them a copy thereof, enclosed in an envelope, postage pre-paid, and by depositing the same in the United States Mail, directed to said party as follows:

1. _____

2. _____

3. _____

I declare under the penalty of perjury that everything I have stated in this document is true and correct.

(Signature)

(County where certificate was signed)

(Date of Signature)

(State where certificate was signed)