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## Minnesota Rules of Civil Appellate Procedure

Effective August 1, 1983

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### TEXT OF RULES

#### **Rule 133. Prehearing Conference; Calendar**

##### **133.01 Prehearing Conference**

The appellate courts may direct the parties, or their attorneys, to appear before a justice, judge or person designated by the appellate courts, either in person or by telephone, for a prehearing conference to consider settlement, simplification of the issues, and other matters which may aid in the disposition of the proceedings by the court. The justice, judge or person designated by the appellate courts shall make an order which recites the agreement made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admission or agreement of counsel.

Unless exempted by the court for good cause shown, appeals in family law cases are subject to mandatory mediation. The court of appeals is authorized to issue special rules of practice governing the family law appellate mediation process. These special rules apply to appeals arising from marital dissolution actions; parentage actions; post-decree modification and enforcement proceedings, including civil contempt actions; child-support actions; and third-party custody and visitation actions.

(Amended effective January 1, 2011.)

*[For text of Comment - 1983, see M.S. 2010, Volume 15]*

##### ***Advisory Committee Comment - 2010 Amendment***

*This rule is amended to add a second paragraph to provide expressly for the family law mediation pilot program initiated by the court of appeals in September of 2008 and made permanent in 2010. The primary purpose of this rule is to provide notice to litigants that certain family law appeals are subject to mandatory mediation in the court of appeals.*

*Following a successful pilot project in which family law appeals were referred to mediation (over 50 percent of the appeals that were mediated in the pilot project were settled, resulting in substantial benefits to the litigants and the court), the court of appeals has recommended that the mediation requirement be made permanent. As part of the implementation of mediation as a standing requirement, the Special Rules of Practice for the Minnesota Court of Appeals Governing Family Law Appellate Mediation will include detailed guidance on the procedures involved in the mediation program. The program will be operated in accordance with the special rules of practice, which should be consulted by parties to family law appeals. The rules will be published as an adjunct to the Minnesota Rules of Civil Appellate Procedure and are accessible on the Minnesota Judicial Branch Web site: [www.mncourts.gov](http://www.mncourts.gov).*

*When those rules are adopted, this amendment to Rule 133.01 is appropriate to provide guidance to litigants of the existence of this program and the fact that it is generally mandatory. The rule includes reference to the possibility that good cause may exist for exemption from the mediation requirement. Exemption from mandatory mediation is governed by the Special Rules, and the Minnesota Court of Appeals Family Law Appellate Mediation*

*Policies and Procedures provide explicitly for exemption in cases involving allegations of domestic violence. Other grounds for exemption from mandatory mediation may include making a convincing demonstration that post-trial ADR has been employed without success, geographical unavailability of a trained appellate mediator, persuasive arguments that appeal presents an unsettled legal issue upon which the court of appeals should rule, and other reasons.*

*[For text of 133.02 and 133.03, see M.S. 2010, Volume 15]*

#### **Rule 134. Oral Argument**

*[For text of 134.01 to 134.09, see M.S. 2010, Volume 15]*

##### **134.10 Audio and Video Coverage of Appellate Court Proceedings**

**Subdivision 1.** Unless notice is waived by the Chief Justice of the Supreme Court or the Chief Judge of the Court of Appeals, notice of intent to cover appellate court proceedings by either audio or video means shall be given by the media to the Clerk of the Appellate Courts at least 24 hours prior to the time of the intended coverage.

**Subd. 2.** Camera operators, technicians, and photographers covering a proceeding must:

- (a) avoid activity which might distract participants or impair the dignity of the proceedings;
- (b) remain seated within the restricted areas designated by the Court;
- (c) observe the customs of the Court;
- (d) conduct themselves in keeping with courtroom decorum; and
- (e) not dress in a manner that sets them apart unduly from the participants in the proceeding.

**Subd. 3.** All broadcast and photographic coverage shall be on a pool basis, the arrangements for which must be made by the pooling parties in advance of the hearing. Not more than one (1) electronic news gathering camera producing the single video pool-feed shall be permitted in the courtroom. Not more than two (2) still-photographic cameras shall be permitted in the courtroom at any one time. Motor-driven still cameras may not be used.

**Subd. 4.** Exact locations for all camera and audio equipment within the courtroom shall be determined by the Court. All equipment must be in place and tested 15 minutes in advance of the time the Court is called to order and must be unobtrusive. All wiring, until made permanent, must be safely and securely taped to the floor along the walls.

**Subd. 5.** Only existing courtroom lighting may be used.

(Added effective July 1, 2011.)

*[For text of Comment - 1983 and Comment - 1998, see M.S. 2010, Volume 15]*

#### **Rule 136. Notice of Decision; Judgment; Remittitur**

##### **136.01 Decision**

###### **Subdivision 1. Written Decision.**

(a) Each Court of Appeals disposition shall be written in the form of a published opinion, unpublished opinion, or an order opinion.

(b) Unpublished opinions and order opinions are not precedential except as law of the case, res judicata or collateral estoppel, and may be cited only as provided in Minnesota Statutes 1996, section 480A.08, subdivision 3.

**Subd. 2. Notice of Decision.** Upon the filing of a decision or order which determines the matter, the clerk of the appellate courts shall transmit a copy to the attorneys for the

parties, to self-represented parties, and to the trial court. The transmittal shall constitute notice of filing.

(Amended effective January 1, 1999; amended effective June 22, 2011.)

*[For text of Comment - 1998, see M.S. 2010, Volume 15]*

*[For text of 136.02 and 136.03, see M.S. 2010, Volume 15]*

## **Case Dispositional Procedures of the Minnesota Supreme Court**

Adopted October 19, 1988

Revised January 2011

### **Table of Procedures**

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### **Introduction**

This document has been prepared to assist the public and practicing bar in understanding the processes by which the Supreme Court performs its judicial business. The Court continually reviews and refines its internal operating procedures to accomplish its goal of effective and efficient processing of judicial and administrative responsibilities. As a result, this document is informational only and does not bind the Court; the processes described may be changed at any time without prior notice.

### **Court Schedule**

The Court schedules its work based on an annual term that runs from September through August. The projected schedule of argument and special term dates for the full term is published on the judicial branch website, usually several months before the beginning of the term. While it generally adheres to the established schedule, the Court may supplement or otherwise modify the calendar as its workload requires.

The Court hears regularly-scheduled arguments each month, September through June. A typical monthly schedule for those months is as follows:

- a. First week of the month: Oral arguments heard Monday through Thursday.
- b. Second week: Oral arguments heard Monday through Wednesday; court meeting (administrative matters) on Thursday, unless conflict with Judicial Council meeting.
- c. Third week: Special term conference on Tuesday; court meeting on Wednesday, if conflict with Judicial Council in the second week.
- d. Fourth week: Special term conference on Wednesday.

Oral argument is typically not heard in July and August, with the exception of cases in which expedited consideration is warranted. One special term conference is scheduled on a Tuesday in mid-July and two special term conferences are scheduled in August. Court meetings are scheduled in July and August as needed.

## Jurisdiction

The Minnesota Constitution, in Article VI, section 2, confers on the Supreme Court appellate jurisdiction in all cases, original jurisdiction in remedial cases as prescribed by law, and supervisory jurisdiction over all courts of the state. The Court's supervisory jurisdiction includes the authority to regulate procedural and evidentiary matters. The Court has authority to consider all petitions and motions relating to the exercise of its jurisdiction.

The Supreme Court has direct appellate jurisdiction over several categories of cases, as specified by law. Appeals may be taken directly to the Court from decisions of the Minnesota Tax Court and the Minnesota Workers' Compensation Court of Appeals. In addition, convictions of first-degree murder and decisions in postconviction proceedings involving convictions of first-degree murder are directly appealable to the Supreme Court, as are decisions in election contests involving a statewide or legislative office.

Most appeals, however, are taken initially to the Court of Appeals, and the Supreme Court has discretionary jurisdiction to review decisions of the Court of Appeals. That is, the Supreme Court may choose whether to grant review of a decision of the Court of Appeals. See "Obtaining Discretionary Review" below.

The Supreme Court has original jurisdiction in several categories of cases. These include petitions for writs of mandamus or prohibition, but only to the extent the relief sought is directed to the Court of Appeals, the Tax Court, or the Workers' Compensation Court of Appeals. The Supreme Court also has original jurisdiction over certain pre-election ballot challenges involving statewide or legislative office and over matters of attorney and judge discipline.

## Obtaining Discretionary Review

A party may seek Supreme Court review of an adverse decision of the Court of Appeals by serving and filing a petition for review. The purpose of the petition is to persuade the Supreme Court that the case satisfies the criteria for review set out in the applicable appellate rule. (Minn. R. Civ. App. P. 117 subd 2 for civil cases and Minn. R. Crim. P. 29.04 subd 4 for criminal cases.) As the criteria for review reflect, the Supreme Court's primary role in reviewing Court of Appeals decisions is to set precedent that develops and clarifies the law on important issues of broad impact. The Supreme Court rarely grants review just to correct an erroneous decision that will affect only the parties to that case. As a result, the Court grants review in a small percentage of cases.

A petition for review must be served and filed within 30 days of the filing of the Court of Appeals' decision for which review is sought. Minn. R. Civ. App. P. 117 subd 1; Minn. R. Crim. P. 29.04 subd 2. The respondent has 20 days after service of the petition to file and serve a response.<sup>1</sup> Minn. R. Civ. App. P. 117 subd 4; Minn. R. Crim. P. 29.04 subd 5. A respondent may request conditional cross-review in its response (civil), Minn. R. Civ. App. P. 117 subd 4, or file a cross-petition (criminal), Minn. R. Crim. P. 29.04 subd 6 to raise additional issues not included in the petition for review.

The Clerk of Appellate Courts forwards all petitions for review and responses to the Supreme Court Commissioner's Office for analysis prior to the Court's consideration. The Commissioner's Office prepares a memorandum for the Court on every case in which a petition is filed. In the memorandum, the Commissioner's Office summarizes the facts and procedural history of the case, describes the legal issues on which the petitioner seeks review, discusses whether the case satisfies the criteria for review, and makes a recommendation whether review should be granted.

The Court considers petitions for review at its special term conferences. Petitions are generally considered within 60 days of filing, with only rare exceptions. The Commissioner's Office memorandum and the Court of Appeals' decision are distributed to the justices a week in advance of the special term conference at which the petition will be considered.

At the special term conference, the Court considers each case individually, discussing whether to grant or deny the petition and, if review is granted, whether to specify the issues on which review is granted, whether to allow oral argument, and whether to grant any related pending motions. A petition for review is granted if three or more justices vote for review.

After special term, the Commissioner's Office prepares an order for each case decided. If the petition is granted, the order specifies which party will proceed as the appellant (normally the petitioner), any limitation of issues on which review has been granted, and the briefing schedule, typically by reference to the applicable rule of appellate procedure. The orders are signed by a single member of the Court, usually the Chief Justice, on behalf of the Court and filed with the Clerk of Appellate Courts. The clerk sends copies of the orders to the parties. No petition for reconsideration or rehearing of a denial of a petition for review is allowed. Minn. R. Civ. App. P. 140.01.

An alternative procedure to request discretionary review by the Supreme Court is a petition for accelerated review. After an appeal has been filed in the Court of Appeals, a party may petition for "accelerated" review, which means Supreme Court review of the case before the Court of Appeals has ruled. A petition for accelerated review must demonstrate not only that the case satisfies the criteria for Supreme Court review stated in Minn. R. Civ. App. P. 117 subd 2 but also 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." Minn. R. Civ. App. P. 118 subd 1. The procedures described above for consideration of a petition for review are also used for consideration of a petition for accelerated review. Although Rule 118 does not expressly provide for a response to a petition for accelerated review, the Court will allow a response if it is served and filed within the time allowed for a response to a petition for review under Minn. R. Civ. App. P. 117 subd 4.

## Direct Review

Decisions of the Tax Court and the Workers' Compensation Court of Appeals are subject to direct review by the Supreme Court. The proceeding is initiated by presenting a petition for writ of certiorari, with a statement of the case and two copies of the decision to be reviewed attached, and proposed writ to the Clerk of Appellate Courts. Minn. R. Civ. App. P. 116.02 and 116.03 subd 1. The Clerk's Office issues the writ of certiorari, Minn. R. Civ. App. P. 116.03 subd 3 which then must be served by the petitioner on opposing parties and the court whose decision is to be reviewed, *id.*, subd 4.

The Commissioner's Office reviews the petition, the statement of the case, and the decision to be reviewed and recommends to the Supreme Court whether the matter should be considered on the en banc oral calendar. The criteria employed in that recommendation include whether the appeal is based on legal or factual issues and whether oral argument will significantly enhance the decisional process. The Commissioner's Office notifies the parties whether the Court will hear oral argument on the case or consider it without oral argument. Appeals from the Tax Court are scheduled on the Supreme Court's en banc monthly calendar, whether for oral or nonoral consideration. Appeals from the Workers' Compensation Court of Appeals that are considered without oral argument are conferenced and decided by the Supreme Court at special term, based on a bench memorandum and recommendation from the Commissioner's Office.

## Motions and Extraordinary Writs

A party may petition the Supreme Court for an extraordinary writ, that is, mandamus or prohibition, to review the action or decision of the Court of Appeals, the Tax Court, or the Workers' Compensation Court of Appeals. Minn. R. Civ. App. P. 120.01. Petitions for extraordinary writs are considered by the Supreme Court at special term.

Routine motions, such as motions for an extension of time or for leave to file an amicus curiae brief, are considered and decided on behalf of the Court by the Chief Justice, or

the most senior associate justice available, based on the recommendation of the Commissioner's Office. Motions that are not routine are considered and decided by the entire Court at special term or based on circulated written materials. Decisions on some motions, such as motions to strike a portion of a brief or material in a party's appendix, may be deferred until the Court's consideration of the case on the merits.

In the event a motion or petition is filed with the Supreme Court seeking emergency relief, the Chief Justice calls a meeting of the available members of the Court for prompt consideration of the request. The Court will consider a request for emergency relief made orally only in the most extreme circumstances. The Court will require a written submission, by electronic means if necessary, and an opportunity for the opposing party to respond, unless the action complained of is imminent.

### **Calendaring and Assignment of Cases**

Each month from August through May, the Commissioner's Office prepares the en banc calendar of cases to be considered by the Court the following month. A case is considered ready to be placed on the monthly calendar when the respondent's brief is filed. Cases are placed on the calendar roughly in the order of the filing of the respondents' briefs, although some categories of cases, such as juvenile protection and pretrial criminal appeals, are given priority. The calendar sets the date for oral argument or nonoral consideration. Generally, a case is designated for oral argument, rather than nonoral consideration, unless it appears from the briefs that argument would not sufficiently enhance the decisional process or a party is appearing pro se.

The Commissioner's Office tries to accommodate known scheduling conflicts of counsel, but it is difficult and disruptive for the Court to reschedule a case once it has been placed on the formal calendar. Counsel are therefore advised to anticipate that their case may be calendared starting with the first available calendar after the respondent's brief is filed and to notify the Commissioner's Office in advance, by letter filed with the Clerk of Appellate Courts, as soon as potential scheduling conflicts are known.

The monthly calendar is distributed to the Court at least 30 days before the first day set for argument on the calendar. At the same time, the Clerk of Appellate Courts sends a copy of the calendar to counsel for the parties in the scheduled cases, and the calendar is posted on the judicial branch website. Summaries of the issues presented by each case on the calendar are posted on the website approximately two weeks before the calendar begins.

The Commissioner's Office assigns the cases on the monthly calendar to members of the Court on a more-or-less rotational basis, modified based on an effort to equalize the workload and distribution of cases over the course of the annual term. After the calendar is distributed to the Court with these assignments, a law clerk prepares a bench memorandum on the assigned case that thoroughly analyzes the factual and legal issues in the case and recommends a disposition. The bench memo is distributed to all members of the Court a week before the case is scheduled for argument.

### **Oral Argument**

Generally speaking, oral arguments during the first week of the month's calendar are held in the State Capitol Courtroom, and arguments during the second week are held in Courtroom 300 in the Minnesota Judicial Center. As part of its outreach and public education efforts, the Court schedules two cases each term for oral argument at a high school in the metropolitan area or greater Minnesota. In addition, the Court hears arguments at the Minnesota law schools.

Usually two cases are heard each day of the calendar, with arguments beginning at 9:00 a.m. unless otherwise noted on the calendar. All counsel in all cases scheduled for the day must check in with the Court marshal in the courtroom by 8:40 a.m. and are to be present and prepared to argue at 9:00 a.m., in case the order in which the cases are argued must be

changed. Counsel for the first case should be seated at the counsel tables before the Court enters the courtroom.

The appellant is allowed 35 minutes and the respondent 25 minutes, or such other time periods as the Court may specify. The appellant may reserve time for rebuttal, which should be communicated to the marshal when checking in. Counsel should be prepared to answer questions from the justices. Visual aids may be used at oral argument only with prior notice to the Court through the marshal. Use of such aids is not encouraged, however, because it is seldom effective and may be distracting in this setting.

Oral arguments are recorded and are available for viewing on the judicial branch website, usually by the next day. Other than the official video recording equipment, cameras and microphones are only permitted in the courtroom with prior Court approval, and use of such equipment is subject to the condition that it must not disrupt the proceedings or the formality of the courtroom.

### **Post-Argument Conference**

After each day's oral arguments, the Court meets in conference to discuss the cases just argued, as well as any case scheduled for nonoral consideration on that day. The Chief Justice presides at the conference and directs the Court's discussion. The justice to whom the case was assigned first reports the case, providing his or her analysis of the issues and recommendation for disposition. Discussion follows, with the comments and votes of the other members of the Court, in descending order of seniority, although the Chief Justice speaks last unless the Chief Justice reported on the case. Although the Court reaches a tentative decision in each case based on the conference discussion, the vote is preliminary and a final decision awaits the circulation and approval of a formal opinion or opinions. Any member of the Court may request an additional conference for further discussion of a case.

### **Opinion**

If the justice to whom the case was assigned is in the majority at conference, he or she will prepare a draft opinion for the Court's consideration. Circulation of the draft majority opinion among the other members of the Court generally begins within 60 days after the case conference. If any member of the Court indicated at conference an intention to write a dissenting opinion, the draft of the majority opinion is circulated first to that justice, whose draft dissenting opinion is provided to the majority author for possible revision of the majority draft, which is then returned to the dissenting justice for potential revision of the dissent. A similar process occurs if any member of the Court is writing a concurring opinion. The majority draft and any dissenting or concurring drafts are then circulated together to each of the remaining justices. Each reviewing justice writes whatever comments or suggestions he or she has on the draft(s) and indicates on an accompanying cover sheet whether he or she will join the majority or some other opinion. After circulation is complete and the authoring justices have made any final revisions to their opinions based on the comments of their colleagues, the opinions are carefully cite-checked by a law clerk.

### **Opinion Release**

Opinions of the Supreme Court are formally filed with the Clerk of Appellate Courts and released to the parties and the public by posting on the judicial branch website on Wednesdays at 10 a.m. A notice is sent to the parties on Monday that the opinion in their case will be filed and posted the following Wednesday. Any concurring or dissenting opinions are filed and released with the majority opinion. The Clerk of Appellate Courts provides copies of the opinions to the parties and to publishers after the official release time.

### **Rehearing**

A party may petition the Court for rehearing within 10 days of the filing of the Court's opinion. Minn. R. Civ. App. P. 140.01. An affirmative vote of a majority of the justices

is necessary to grant rehearing. The grounds for rehearing are extremely narrow and, as a result, rehearing is seldom granted.

### **Costs and Disbursements**

The prevailing party may seek an award of costs and disbursements. *See* Minn. R. Civ. App. P. 139. The claim must be served and filed within 15 days of the filing of the Court's decision. Minn. R. Civ. App. P. 139.03. An adverse party may file objections to taxation of the requested costs and disbursements within 5 days. Minn. R. Civ. App. P. 139.04. If no objections are filed, the Clerk of Appellate Courts taxes costs and allowable disbursements. If objections are filed, the request for taxation and the objections are submitted to the chambers of the justice who authored the majority opinion, usually with a recommendation from the Commissioner's Office. The majority author will decide the issues, if routine, or circulate a proposed resolution to the Court, if not.

### **Entry of Judgment and Remittitur**

Unless the parties stipulate to immediate entry, the Clerk of Appellate Courts enters judgment not less than 30 days after filing of the Supreme Court's decision, except that judgment may be entered immediately on denial of a petition for review or rehearing. Minn. R. Civ. App. P. 136.02. When judgment has been entered, the Clerk of Appellate Courts transmits the judgment to the appropriate district court administrator or notifies the Court of Appeals if the case is remanded to that court. Minn. R. Civ. App. P. 136.03.

<sup>1</sup> In juvenile protection matters, the deadline for serving and filing a petition for review is 15 days, and the deadline to respond is 10 days. Minn. R. Juv. Prot. P. 47.07.

## **Rules of Practice Before the Minnesota Supreme Court For Former Justices and Employees of the Court**

Effective April 1, 2011

### **Rule 1. Justices**

A former member of the Minnesota Supreme Court shall not participate in any professional capacity in any case that was pending in the Supreme Court during the member's tenure on the court, or appear before the court as counsel for a client, in person or in writing, in any case or matter for a period of three years after leaving the court.

### **Rule 2. Employees**

A former employee of the Minnesota Supreme Court shall not participate in any professional capacity in any case that was pending in the Supreme Court during the employee's tenure at the court, or appear before the court as counsel for a client, in person or in writing, in any case or matter for a period of one year after leaving the employment with the court, except that a former employee of the court in the commissioner's office may not appear for a period of two years after leaving employment with the court.

(Added effective April 1, 2011.)

## Special Rules of Practice for the Minnesota Court of Appeals

Effective October 25, 1991

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### TEXT OF RULES

*[For text of Introduction, see M.S. 2010, Volume 15]*

#### Rule 1. Scheduling Cases

Placement on the calendar is in order of filing, except that cases involving child custody or juvenile protection will be given priority. Other cases may be expedited by rule, by statute, or by motion, based on a showing of good cause. Cases may be scheduled as soon as one responsive brief is filed.

If a case pending in the Supreme Court will be dispositive of a case pending before the Court of Appeals, the Chief Judge may order that scheduling be deferred until the Supreme Court has acted. Counsel should inform the court if they believe a case may be controlled by a case pending in the Supreme Court.

Counsel must advise the clerk, in writing before the case is scheduled, of any conflicts which will limit their availability for argument, and counsel must continue to file updated notices until the case has been scheduled. The Clerk of the Appellate Courts will notify counsel approximately one month in advance of the conference or hearing date, specifying the location of oral argument, if any, and the identity of the panel members assigned to the case.

(Adopted effective October 25, 1991; amended effective October 7, 2010.)

#### Rule 2. Oral Argument

Members of the Minnesota Bar and attorneys admitted pro hac vice by the Court of Appeals may argue before the court. If any litigant is without counsel, the case will be submitted on the briefs and record, without oral arguments by any party. Minn. R. Civ. App. P. 134.01 sets out circumstances in which oral argument will not be allowed. Waiver of argument is governed by Minn. R. Civ. App. P. 134.05 and 134.06.

Appellants are allowed 15 minutes to present their principal arguments, respondents are allowed 15 minutes (to be divided, in cases involving multiple respondents), and appellants are allowed 5 minutes for rebuttal. Arguments are held in the Judicial Center in St. Paul and at appropriate locations in other judicial districts, as provided in Minnesota Statutes, section 480A.09, subdivision 1 and Minn. R. Civ. App. P. 134.09, subd. 2.

A motion to reset or postpone oral argument must be made in writing, with a copy to opposing counsel, in accordance with Minn. R. Civ. App. P. 134.02. Reasons for the request must be stated. The court will reset a case only upon a showing of extreme emergency and no more than once. However, the court may reschedule cases on its own motion.

Counsel may use exhibits and graphic aids during oral argument. Counsel must make arrangements prior to hearing with the court's receptionist or with the local court administrator for the use of easels or other equipment. It is the responsibility of counsel to ensure that any trial exhibit to be used is obtained prior to argument.

Arguments are recorded by the court for internal use only. Recordings are retained only until the opinion is released. Prior approval of the Chief Judge or presiding judge is required to take photographs or to record or videotape oral argument. The media may cover proceedings in accordance with rules adopted by the Supreme Court.

(Adopted effective October 25, 1991; amended effective October 7, 2010.)

*[For text of Rules 3 and 4, see M.S. 2010, Volume 15]*

#### **Rule 5. Circulation of Opinions**

When a draft opinion has been prepared, the authoring judge will circulate it to other members of the court for their information and comments.

(Adopted effective October 25, 1991; amended effective October 7, 2010.)

#### **Rule 6. Opinion Issuance**

Except in extraordinary circumstances, opinions will be filed on Tuesday of each week. Counsel of record and unrepresented parties will receive notice if an opinion is to be filed in their case on Tuesday, so they can check the appellate courts' website at the designated time.

The official publications of the Court of Appeals, for the purpose of notice to the public and the legal profession, are Finance and Commerce and the St. Paul Legal Ledger. Notices may be published elsewhere at the discretion of the Chief Judge.

After release, the panel may make clerical changes in an opinion at any time *ex parte*.

(Adopted effective October 25, 1991; amended effective October 7, 2010.)

*[For text of Rule 7, see M.S. 2010, Volume 15]*

#### **Rule 8. Motion Procedure**

The form, content, and time periods for motions are prescribed in Minn. R. Civ. App. P. 127.

Motions and requests for extraordinary remedies are disposed of by the Chief Judge or by a special term panel designated by the Chief Judge. Routine motions, including those seeking voluntary dismissal, postponements, or extensions of time to file briefs, are disposed of by the Chief Judge. Motions made after submission of a case will be referred to the panel to which the case is assigned.

(Adopted effective October 25, 1991; amended effective October 7, 2010.)

*[For text of Rules 9 to 12, see M.S. 2010, Volume 15]*

#### **Rule 13. Full Court Conference**

The Chief Judge, subject to the authority of the Chief Justice, exercises general administrative authority over the court. All matters passed on by the bench shall be considered policy matters to be carried out and implemented by the Chief Judge.

The judges of the Court of Appeals meet on the first Monday of each month. If a holiday or other conflict occurs on that day, the conference may be rescheduled. Conferences are also held at the call of the Chief Judge or a majority of the judges.

(Adopted effective October 25, 1991; renumbered effective October 1, 1999; amended effective October 7, 2010.)

*[For text of Rule 14, see M.S. 2010, Volume 15]*

## Special Rules of Practice for the Minnesota Court of Appeals Governing Family Law Appellate Mediation

Effective January 1, 2011

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### TEXT OF RULES

#### **Rule 1. General**

(a) **Authority.** These special rules of practice are made in accordance with the appellate court's authority under Minn. R. Civ. App. P. 133.01 to direct the parties, or their attorneys, to appear before a judge or person delegated by the appellate courts, for a prehearing conference to consider settlement.

(b) **Scope.** These special rules apply to appeals arising from marital dissolution actions, parentage actions, post decree modification and enforcement proceedings, including civil contempt actions, child support actions, including IV-D cases, and third-party custody and visitation actions.

(c) **Suspension of Processing Deadlines.** In the interests of judicial economy and to facilitate the mediation process, there is good cause under Minn. R. Civ. App. P. 102 to suspend the requirements of certain appellate processing rules, as specified in these special rules.

(d) **Applicability of the Rules of Civil Appellate Procedure.** The Minnesota Rules of Civil Appellate Procedure apply unless these special rules direct otherwise.

(e) **Time Periods to File a Direct Appeal or Notice of Related Appeal.** These special rules do not extend or otherwise affect the time periods to file a direct appeal or notice of related appeal under Minn. R. Civ. App. P. 104.01.

(Effective January 1, 2011.)

#### **Rule 2. Transcripts**

(a) The time periods to file a transcript certificate and for preparation of the transcript under Minn. R. Civ. App. P. 110.02 are stayed in appeals that are referred to appellate family law mediation.

(b) If a transcript has already been ordered before the appeal is referred to mediation, upon receipt of the order referring the case to mediation, the party, if unrepresented, or the attorney for the party ordering the transcript, shall immediately notify the court reporter that transcript preparation is stayed pending mediation.

(c) If a party chooses to have transcript preparation continue during mediation, the party, if unrepresented, or the attorney for the party, shall file with the Clerk of Appellate Courts a written notification to that effect, with proof of service on the court reporter and the other parties. A party who chooses to have transcript preparation continue during mediation is responsible for payment of transcript expenses, even if the case fully settles.

(Effective January 1, 2011.)

### **Rule 3. Briefing**

The time periods for filing briefs under Minn. R. Civ. App. P. 131.01 are stayed pending mediation.

(Effective January 1, 2011.)

### **Rule 4. Other Processing Deadlines**

In addition to the time periods for filing a direct appeal or notice of related appeal, the following processing requirements are not stayed in appeals subject to mediation: the filing of a certified copy of the order and judgment appealed from and proof of service for the appeal papers under Minn. R. Civ. App. P. 103.01 subd 1, and the filing of a statement of the case under Minn. R. Civ. App. P. 133.03.

(Effective January 1, 2011.)

### **Rule 5. Untimely Appeals**

Untimely appeals are not subject to mediation. A party may file a motion to dismiss a direct appeal or notice of related appeal that is not filed and service within the time periods specified in Minn. R. Civ. App. P. 104.01.

(Effective January 1, 2011.)

### **Rule 6. Screening Process**

(a) The Family Law Appellate Mediation Office screens new family law appeals to determine their suitability for mediation.

(b) If the initial screening shows mediation suitability, the Court of Appeals shall issue an order staying processing of the appeal and directing the parties to file a confidential mediator selection form and confidential information form.

(c) A party may request an exemption from mediation by including in the confidential information form, the request and the reason(s) for the request. This request may be granted at the discretion of the Family Law Appellate Mediation Office. If the request is granted, the parties shall be notified in writing no later than ten (10) days after the Family Law Appellate Mediation Office receives the confidential information form from all parties. When the public agency responsible for child support enforcement is a party or is providing services to a party with respect to the action, the public agency may opt out of the mediation and will thereafter be bound by any mediated decision and order.

(d) When multiple appeals involving the same parties are filed, all pending issues on appeal shall be consolidated into a single mediation process.

(Effective January 1, 2011.)

### **Rule 7. Confidentiality**

(a) All information obtained for and through the mediation process shall remain confidential and shall not become part of the appellate record.

(b) To the extent applicable, Minn. R. Gen. Pract. 114.08, 114.10(c), and 114.10(d), which govern confidentiality in civil cases subject to Alternative Dispute Resolution processes, are incorporated into these special rules by reference.

(Effective January 1, 2011.)

#### **Rule 8. Appellate Mediator Roster**

(a) **Appointment to the Appellate Mediator Roster.** The court shall maintain a roster of approved appellate mediators and shall recruit mediators as needed throughout the state.

(b) **Removal from the Appellate Mediator Roster.** An appellate mediator may be removed from the appellate mediator roster if the mediator violates the Rule 114 Code of Ethics, fails to maintain good standing with the licensing board for the profession in which the person practices, fails to comply with the rules and policies of this program, or for other good cause shown.

(Effective January 1, 2011.)

#### **Rule 9. Mediation Process-Timelines**

(a) Within ten (10) days of the Court of Appeals order staying the process of the appeal and referring the case for family law appellate mediation, the parties shall file with the Family Law Appellate Mediation Office a confidential mediator selection form and confidential information form.

(b) After receiving from both parties the confidential mediator selection form and confidential information form, the Family Law Appellate Mediation Office shall issue a letter appointing the mediator and the Family Law Appellate Mediation Office shall contact attorneys and pro se parties to schedule a premediation conference call.

(c) Parties shall begin mediation as soon as practicable after the premediation conference call and shall complete mediation no later than seventy (70) days after the premediation conference call, unless the Family Law Appellate Mediation Office receives a request for and grants an extension.

(Effective January 1, 2011.)

#### **Rule 10. Assignment of Mediator**

(a) The Family Law Appellate Mediation Office shall assign a mediator from the appellate mediator roster to each case to be mediated.

(b) Before the mediation process begins, the parties shall sign a written agreement to mediate.

(Effective January 1, 2011.)

#### **Rule 11. Appellate Mediation Fees**

The Family Law Appellate Mediation Office shall establish a schedule of fees to be paid by the parties to the appellate mediator.

(Effective January 1, 2011.)

#### **Rule 12. Liability of Appellate Mediator**

Mediators appointed by the court serve in a quasi-judicial role and in the absence of willful and wanton misconduct are immune to claims as provided by law.

(Effective January 1, 2011.)

#### **Rule 13. Finalization Settlement Agreement**

(a) **Mediation Settlement Agreement.** In the event that the parties reach an agreement resolving all or any issues involved in the appeal, the parties, and counsel, if any, shall sign a Mediated Settlement Agreement setting out the essential terms of all agreements reached in mediation and, if applicable, designating the individual responsible for drafting and filing any additional documents needed to implement the agreement in the district court

and the time for completion of that drafting and filing in the district court. The purpose of the Mediated Settlement Agreement is to memorialize the essence of the agreement for the parties, counsel, and the mediator, each of whom shall be given a copy of the signed agreement. Because of the purpose of this agreement, it shall not be filed with the Court of Appeals or the Family Law Appellate Mediation Office.

(b) **Mediator Case Closing Notice.** When the parties reach agreement resolving all issues on appeal and have signed a Mediation Settlement Agreement, or when the mediator has declared mediation concluded without agreement resolving all issues, the mediator shall mail to the parties, or counsel if represented, and file with the Family Law Appellate Mediation Office a completed Mediator Case Closing Notice informing the parties that:

(1) In the event agreement is reached on all issues involved in the appeal, the appeal shall be dismissed when appellant (and respondent if a related appeal is involved) file a Voluntary Dismissal with the Court of Appeals. If appellant (and respondent if a related appeal is involved) fails to voluntarily dismiss the appeal (and any related appeal) within forty-five (45) days of the date of this notice, the Court of Appeals shall issue an order vacating the stay of the appeal, setting a deadline for a completed initial transcript certificate to be filed, and providing that briefing shall proceed under Rule 131.01.

(2) In the event mediation is concluded without a full resolution of all issues, the Court of Appeals shall immediately issue an order vacating the stay of the appeal, setting a deadline for a completed initial transcript certificate to be filed, and providing that briefing shall proceed under Rule 131.01.

(Effective January 1, 2011.)

#### **Rule 14. Reinstatement of the Appeal**

In the event that the district court does not approve a Mediated Settlement Agreement of all issues on which an appeal was taken, the mediation shall be treated as a failure to reach a settlement, and the appeal shall be reinstated following motion to the Court of Appeals by the appellant. A reinstatement motion shall contain a certified copy of the district court's order and shall be filed within ten days of that order with no new filing fee.

(Effective January 1, 2011.)

#### **Rule 15. Sanctions**

(a) The Court of Appeals may sanction a party for the failure to comply with the requirements of the appellate mediation program. Neither the Family Law Appellate Mediation Office nor the mediator is authorized to impose sanctions.

(b) The Family Law Appellate Mediation Office may file a deficiency notice with the Court of Appeals if a party fails to comply with the requirements of the program. The Court of Appeals may issue an order compelling the party to comply and may also impose sanctions.

(c) The Court of Appeals may impose sanctions against a party who refuses to attend a mediation session or sessions, unreasonably delays the scheduling of mediation, or otherwise unreasonably impedes the procedures required for the mediation program.

(d) The Court of Appeals may impose sanctions on its own motion or on the motion of a party made in compliance with Minn. R. Civ. App. P. 127. A party's motion for sanctions may not be filed until mediation has been closed. A motion for sanctions may be filed but no later than within the time for taxation of costs under Minn. R. Civ. App. P. 139.03.

(e) Sanctions may include, but are not limited to, assessment of reasonable expenses caused by the failure of mediation, including an amount equivalent to mediator and/or attorney fees, assessment of all or a portion of appellate costs, or dismissal of an appeal or a notice of related appeal.

(Effective January 1, 2011.)