

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.)

Comment - 1983

Prehearing conferences are still authorized by this rule, but it is anticipated that they will be held in very few cases and will be governed by internal operating procedures established by each of the appellate courts.

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.

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.

133.02 Calendar

No case shall be placed on the calendar for argument, except by special order of the appellate court, until there has been filed in the appellate court the appellant's brief and addendum and the respondent's brief. If either the appellant or the respondent fails to file the required brief within the time provided, or an extension of that time, the case shall be disposed of in accordance with Rule 142.

No changes may be made on the calendar except by order of the court on its own motion or in response to a motion filed by counsel. No case scheduled for argument shall be withdrawn after being placed upon the calendar except upon a showing of extreme emergency.

(Amended effective July 1, 2014.)

Comment - 1983

This rule indicates that no case will be scheduled for argument until all briefing is completed. The significant amendment is that once placed on the calendar, a case may not be rescheduled except upon motion or by the court and only upon a showing of extreme emergency.

Advisory Committee Comment - 2014 Amendments

Rule 133.02 is amended to change a reference to the appendix to refer to the addendum. The use of an appendix as it formerly existed is no longer either required or permitted in any appellate proceedings.

Rule 133.03 Statement of the Case

A statement of the case in the form prescribed by the appellate court shall be filed with any of the following:

- (a) a notice of appeal pursuant to Rule 103.01;
- (b) a notice of related appeal pursuant to Rule 103.02, subdivision 2;
- (c) a petition for declaratory relief pursuant to Rule 114.02; or
- (d) a petition for the writ of certiorari pursuant to Rule 115 or 116.

The appellant shall serve the attorney for each party separately represented and each party appearing pro se and shall file proof of service with the clerk of the appellate courts.

Within 14 days after service of the appellant's statement, the respondent may serve on all parties and file with proof of service its statement clarifying or supplementing the appellant's statement. If the respondent agrees with the particulars set forth in the appellant's statement, no additional statement need be filed. If a party desires oral argument, a request must be included in the statement of the case. If a party desires oral argument at a location other than that provided by Rule 134.09, subdivision 2(a) to (e), the location requested shall be included in the statement of the case.

See **Appendix** for form of the statement of the case (**Form 133**).

(Amended effective January 1, 2010; amended effective July 1, 2014.)

Comment - 1983

Any request for oral argument must be made in the statement of the case.

The former prehearing conference statement has now been replaced by a form entitled "Statement of the Case" as found in the appendix. The appellant must file two copies of it with the notice of appeal and two copies of the respondent's statement, if any, must be filed within ten days of service. Any request for oral argument at a location other than that specified in Rule 134.09 must be included in the statement.

See Appendix for form of the statement of the case (Form 133).

Advisory Committee Comment - 2009 Amendment

Rule 133.03 is amended to change the timing for filing a statement of the case by a respondent or cross-appellant to 14, rather than ten, days after service of the notice of appeal. This change is intended to create a single response date upon which any notice of related appeal and respondent's statement of the case are due. The rule is also amended to make it clear that the 14-day period is measured from the date of service, not the date of receipt of the notice of appeal.

The rule is also amended to include reference to declaratory relief proceedings, which also require a statement of the case. Because certiorari proceedings under Rules 115 and 116 are commenced by petition, a reference to notices of appeal under those rules is deleted.