

Rule 303. Motions; Emergency Relief; Orders to Show Cause**Rule 303.01 Scheduling of Motions**

(a) Notice of Obtaining Hearing Date. Except in cases in which the parties reside in the same residence and there is a possibility of abuse, a party who obtains a date and time for hearing a motion shall promptly give written notice of the hearing date and time, name of the judicial officer, if known, and the primary issue(s) to be addressed at the hearing to all parties in the action. If the parties reside in the same residence and there is a possibility of abuse, notice shall be given in accordance with the Minnesota Rules of Civil Procedure.

(b) Notice of Motion. All motions shall be accompanied by either an order to show cause in accordance with Minn. Gen. R. Prac. 303.05 or by a notice of motion which shall state, with particularity, the date, time, and place of the hearing and the name of the judicial officer if known, as assigned by the local assignment clerk.

(c) Notice of Time to Respond. All motions and orders to show cause shall contain the following statement:

The Rules establish deadlines for responding to motions. All responsive pleadings shall be served and filed with the court administrator no later than 7 days before the scheduled hearing. The court may, in its discretion, disregard any responsive pleadings served or filed with the court administrator less than 7 days before such hearing in ruling on the motion or matter in question.

(Amended effective May 1, 2012; amended effective July 1, 2015; amended effective January 1, 2020.)

Family Court Rules Advisory Committee Commentary*

The scheduling of cases and the assignment of judges, judicial officers or referees is often a situation in which local calendaring practices prevail. Effective disposition of litigation requires immediate notice of the hearing officer's identity to preclude last minute filing of notices to remove or affidavits of prejudice.

**Original Advisory Committee Comment-Not kept current.*

Task Force Comment - 1991 Adoption

Subdivision (a)(1) of this rule is derived from existing Rule 2.01 of the Rules of Family Court Procedure.

Subdivision (a)(2) is from the new Minn. Gen. R. Prac. 115.02. It is intended primarily to prevent a party from obtaining a hearing date and time weeks in advance of a hearing but then delaying giving notice until shortly before the hearing. This practice appears to give an unnecessary tactical advantage to one side. Additionally, by requiring that more than the minimum notice be given in many cases, it will be possible for the responding parties to set on for hearing any additional motions they may have. This may result in the more efficient hearing of multiple motions on a single hearing date.

Subdivision (b) of this rule is derived from Second Judicial District Rule 2.011.

Advisory Committee Comment - 2012 Amendment

Rule 303.01 imposes a simple burden on any party, whether or not represented by counsel: to promptly advise the other parties when a hearing date is obtained from the court. The rule codifies

common courtesy, but also serves specific purposes of reducing the need to reschedule motion hearings and permitting the other side to submit motions at the same hearing, if appropriate. "Promptly" is intentionally not rigidly defined, but notice should be sent the same day the hearing date is obtained. Notice of the assignment of a judicial officer also starts the time to remove an assigned judicial officer under Minn. R. Civ. P. 63.03 and Minnesota Statutes, section 542.16.

The Rule exempts a party from giving prior notice if there is a "possibility of abuse" and where the two parties share the same residence. This admittedly subjective standard is retained in the rule for the protection of victims of domestic violence. The trial court retains the authority to impose sanctions for the improper use of this exception.

Rule 303.02 Form of Motion

(a) Specificity and Supporting Documents. Motions shall set out with particularity the relief requested in individually numbered paragraphs. All motions must be supported by affidavits that contain facts relevant to the issues before the court.

(b) Temporary Relief. When temporary financial relief such as child support, maintenance, payment of debt and attorney's fees is requested, the Parenting/Financial Disclosure Statement form developed by the state court administrator shall be served and filed by the moving and responding parties, along with their motions and affidavits. Sanctions for failure to comply include, but are not limited to, the striking of pleadings or hearing.

(Amended effective January 1, 2008; amended effective May 1, 2012; amended effective July 1, 2015.)

Task Force Comment - 1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 2.02 of Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from Second Judicial District Rule 2.021.

The local rule from which subdivision (b) is derived included a requirement that information be filed on forms, and that typewritten or word-processed documents would not be accepted for filing. The Task Force considered the desirability of requiring information to be submitted on pre-printed forms, and determined that such requirements should not be retained. Many modern law offices cannot readily prepare such documents as word processing machines have displaced the typewriters for which the forms are designed. The Task Force also believes that these requirements only increase the cost of litigation and limit access to the courts.

Rule 303.03 Motion Practice

(a) Requirements for Motions.

(1) *Moving Party, Supporting Documents, Time Limits.* No motion shall be heard unless the moving party pays any required motion filing fee, properly serves a copy of the following documents on all parties and files them with the court administrator at least 21 days before the hearing:

(i) Notice of motion and motion in the form required by Minn. Gen. R. Prac. 303.01 and 303.02;

(ii) Relevant affidavits and exhibits; and

(iii) Any memorandum of law the party intends to submit.

(2) *Motion Raising New Issues.* A responding party raising new issues other than those raised in the initial motion shall pay any required motion filing fee, properly serve a copy of the following documents on all parties and file them with the court administrator at least 14 days before the hearing:

- (i) Notice of motion and motion in the form required by Minn. Gen. R. Prac. 303.01 and 303.02;
- (ii) Relevant affidavits and exhibits; and
- (iii) Any memorandum of law the party intends to submit.

(3) *Responding Party, Supporting Documents, Time Limits.* The party responding to issues raised in the initial motion, or the party responding to a motion that raises new issues, shall pay any required motion filing fee, properly serve a copy of the following documents on all parties, and file them with the court administrator at least 7 days before the hearing:

- (i) Any memorandum of law the party intends to submit; and
- (ii) Relevant affidavits and exhibits.

(4) **Computation of Time for Service.** Whenever this rule requires documents to be served and filed with the court administrator within a prescribed period of time before a specific event, service and filing must be accomplished as required by Minn. R. Civ. P. 5 and 6.

(5) **Post-Trial Motions.** The timing provisions of Section 303.03(a) do not apply to post-trial motions.

(b) Failure to Comply. In the event a moving party fails to timely serve and file documents required in this rule, the hearing may be canceled by the court. If responsive documents are not properly served and filed, the court may deem the initial motion unopposed and may issue an order without hearing. The court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, may consider the matter unopposed, may allow reasonable attorney's fees, or may take other appropriate action.

(c) Settlement Efforts. Except in parentage cases when there has been no court determination of the existence of the parent and child relationship, and except in situations where a court has ordered that no contact occur between the parties, the moving party shall, within 7 days of filing a motion, initiate a settlement conference either in person, or by telephone, or in writing in an attempt to resolve the issues raised. Unless ADR is not required under Rule 310, this conference shall include consideration of an appropriate ADR process under Rule 114. The moving party shall certify to the court compliance with this rule or any reasons for not complying. The moving party shall file a Certificate of Settlement Efforts in the form developed by the state court administrator not later than 24 hours before the hearing. Unless excused by the Court for good cause, no motion shall be heard unless the parties have complied with this rule. Whenever any pending motion is settled, the moving party shall promptly advise the court.

(d) Request for Oral Testimony.

(1) *General Rule.* Motions shall be submitted on affidavits, exhibits, documents subpoenaed to the hearing, memoranda, and arguments of counsel except for contempt proceedings or as otherwise provided for in these rules.

(2) *Request for Leave for Oral Testimony.* Requests for the taking of oral testimony must be made by motion served and filed not later than the filing of that party's initial motion documents.

The motion shall include names of witnesses, nature and length of testimony, including cross-examination, and types of exhibits, if any.

(3) *Request for Hearing Longer Than One-Half Hour.* Requests for hearing time in excess of one-half hour must be submitted by separate written motion specifically setting forth the necessity and reason that evidence cannot be submitted by affidavit.

(4) *Conversion to Prehearing Conference.* If the matter cannot be heard adequately in the scheduled time, the hearing shall be used as a prehearing conference.

(5) *Court Discretion to Solicit Oral Testimony.* If the request required by clause (2) of this rule has not been made, the court shall not take oral testimony at the scheduled hearing unless the court in its discretion solicits additional evidence from the parties by oral testimony.

(6) *Order.* In the event the court permits oral testimony, it may issue an order limiting the number of witnesses each party may call, the scope of their testimony, and the total time for each party to present evidence. Each party shall be afforded an opportunity to suggest appropriate limits.

(7) *Interviews of Minor Children.* Any motion relating to custody or visitation shall additionally state whether either party desires the court to interview minor children. No child under the age of fourteen years will be allowed to testify without prior written notice to the other party and court approval.

(Amended effective January 1, 1994; amended effective July 1, 1997; amended effective January 1, 2004; amended effective May 1, 2012; amended effective July 1, 2015; amended effective January 1, 2020.)

Family Court Rules Advisory Committee Commentary *

Minnesota Statutes, section 518.131, subdivision 8, grants a party the right to present oral testimony upon the filing of a demand either in the initial application for temporary relief or in the response thereto.

The party demanding oral testimony should provide a list of the proposed witnesses, the scope of their testimony and an estimate of the required time.

**Original Advisory Committee Comment-Not kept current.*

Advisory Committee Comment - 1996 Amendment

Subdivisions (a)-(d) of this rule are new. They are derived from parallel provisions in new Minn. Gen. R. Prac. 115, and are intended to make motion practice in family court matters as similar to that in other civil actions as is possible and practical given the particular needs in family court matters.

Subdivision (d) of this rule is derived from Rule 2.04 of Rules of Family Court Procedure and from Second Judicial District Rules 2.041 and 2.042.

The requirement in subsection (c) of an attempt to resolve motion disputes requires that the efforts to resolve the matter be made before the hearing, not before bringing the motion. It is permissible under the rule to bring a motion and then attempt to resolve the motion. If the motion is resolved, subsection (c) requires the parties to advise the court immediately.

Rule 303.03(a)(5) is added by amendment to be effective January 1, 1994, in order to make it clear that the stringent timing requirements of the rule need not be followed on post-trial motions. This change is made to continue the uniformity in motion practice between family court matters

and general civil cases, and is patterned on the change to Minn. Gen. R. Prac. 115.01(c) made effective January 1, 1993.

Subdivision (c) of this rule is amended in 1996 to require consideration of ADR in post-decree matters. The rule specifies how ADR proceedings are commenced in post-decree matters; the procedures for court-annexed ADR in these matters is generally the same under Rule 114 as for other cases.

Advisory Committee Comment - 2003 Amendment

The rule is amended in 2003 to include a reference to the requirement for paying a motion filing fee. A new statute in 2003 imposes a fee for "filing a motion or response to a motion in civil, family, excluding child support, and guardianship case." See Minnesota Laws 2003, First Special Session chapter 2, article 2, section 2, to be codified at Minnesota Statutes, section 357.021, subdivision 2, clause (4).

Advisory Committee Comment - 2012 Amendment

Motion practice in family law matters is intended to mirror, where appropriate to the needs of family law issues, the procedures followed generally in civil cases in Minnesota courts. The prevailing practice in Minnesota courts is for the submission of evidence relating to motions by written submissions, with sworn testimony provided by affidavit, deposition, or other written submissions. Rule 303.03(d)(1) restates that rule. The balance of Rule 303.03(d) addresses the process to request leave to present oral testimony in the limited circumstances where it may be appropriate. Minnesota Statutes, section 518.131, subdivision 8, provides for allowing oral testimony upon demand of a party in requests for a temporary order or restraining order.

Rule 303.03(a)(5) makes it clear that the stringent timing requirements of the rule need not be followed on post-trial motions, such as a motion for a new trial or for amended findings made shortly after the conclusion of trial. See Minn. R. Civ. P. 52 and 59. This change is made to continue the uniformity in motion practice between family court matters and general civil cases, and is patterned on Minn. Gen. R. Prac. 115.01(c). Support, spousal maintenance, and custody modification motions, often brought months or years later, are subject to the general timing rules for motions.

The requirement in subsection (c) of an attempt to resolve motion disputes requires that the efforts to resolve the matter be made before the hearing, not before bringing the motion. The rule requires the moving party to initiate settlement efforts. If the motion is resolved, subsection (c) requires the parties to advise the court immediately. Although mandated settlement efforts may create additional challenges for pro se parties, Rule 1.04 requires compliance with the rules by all parties, including pro se parties, subject to relief granted by the court to prevent a manifest injustice under Rule 1.02.

The rule explicitly addresses the requirement for paying a motion filing fee. Since 2003, Minnesota law requires a fee for "filing a motion or response to a motion in civil, family, excluding child support, and guardianship cases." See Minnesota Statutes, section 357.021, subdivision 2, clause (4).

Rule 303.04 Ex Parte and Emergency Relief

(a) Governing Rules. The court may grant emergency relief if the requirements in this Rule 303.04 are met. If emergency relief is sought ex parte, the party seeking the relief must demonstrate compliance with Rule 3 of these rules.

(b) Order to Show Cause. An order to show cause shall not be used except in those cases where permitted pursuant to Minn. Gen. R. Prac. 303.05.

(c) Requirement of Motion; Form. The party seeking emergency relief must state with specificity in a motion and affidavit:

- (i) Why emergency relief is required;
- (ii) The relief requested;
- (iii) Disclosure of any other attempts to obtain the same or similar relief and the result;
- (iv) If there was a prior attempt to obtain emergency relief, the name of the judicial officer to whom the request was made;
- (v) if a prior request was denied for the same or similar relief, explain what new facts are presented to support the current motion.

(d) Proposed Order. The party seeking emergency relief must present a proposed order for the court's consideration.

(e) Notice. The party seeking emergency relief must serve the motion and affidavit, including notice of the time when and the place where the motion will be heard, on the other party or counsel, unless:

- (i) the party seeking emergency relief provides a written statement that the party has made a good faith effort to contact the other party or counsel and has been unsuccessful; or
- (ii) the supporting documents show good cause why notice to the other party should not be required and the court waives the notice requirement.

(f) Hearing. An order granting emergency relief without notice shall include a return hearing date before the judicial officer hearing the matter. If the relief obtained affects custody or parenting time, the court shall set the matter for hearing within 14 days of the date the emergency relief is granted.

(Amended effective May 1, 2012.)

Family Court Rules Advisory Committee Commentary *

Minn. R. Civ. P. 65.01 states the notice requirements for ex parte relief. Minnesota Statutes, section 518.131, controls ex parte temporary restraining orders.

**Original Advisory Committee Comment-Not kept current.*

Task Force Comment - 1991 Adoption

Subdivisions (a), (b) and (c) of this rule are derived from existing Rule 2.05 of the Rules of Family Court Procedure.

Subdivision (d) of this rule is derived from Second District Local Rule 2.051.

Parties should be aware that Minn. Gen. R. Prac. 3 applies to all ex parte orders, including those relating to family court proceedings. Minn. R. Civ. P. 65.01 also applies in family court temporary restraining order practice.

Advisory Committee Comment - 2012 Amendment

Rule 303.04 is amended to make clearer the circumstances that justify seeking either emergency or ex parte relief. "Emergency" and "ex parte" are not synonymous, though sometimes both might be justified in a particular situation. Emergency relief may be appropriate where there is urgency,

not cause by lack of diligence on the part of the moving party, that makes the normal deadlines in the rules unworkable. Even where exigent circumstances justify shortening the deadlines, they do not generally excuse the giving of notice - or the attempt thereof - to the other side. Rare situations may, however, permit or even demand that notice not be given to the other side before seeking relief from the court. Where destruction of property or evidence is threatened, assets appear to be concealed or are threatened to be concealed, or the abduction of children has occurred or is threatened, or other situations exist where the giving of notice is likely to make any relief impossible to obtain, the court may consider the matter ex parte (without notice to the other side). Rule 3 of these rules provides clear guidelines on seeking ex parte relief. The standards of Rule 65.01 of the Minnesota Rules of Civil Procedure also provide guidance for relief in family law manners. See Minn. R. Civ. P. 65.01 (permitting relief without notice if "immediate and irreparable injury, loss, or damage will result").

As is true for temporary restraining orders, any order granted without notice to all parties should be of extremely short duration and the court should hold a hearing upon notice to all parties before continuing or extending the relief. The availability of temporary relief, and the limits on that relief, are set forth in Minnesota Statutes, section 518.131.

Rule 303.05 Orders to Show Cause

Orders to show cause shall be obtained in the same manner specified for ex parte relief in Rule 3 of these rules. Such orders may require production of limited financial information. An order to show cause shall be issued only where the motion seeks a finding of contempt under Rule 309 or the supporting affidavit makes an affirmative showing of:

- (a) a need to require the party to appear in person at the hearing, or
- (b) a need for interim support is warranted, or
- (c) the production of limited financial information is deemed necessary by the court, or
- (d) a need for the issuance of an order to show cause, subject to the discretion of the judge.

All orders to show cause must be appropriately signed out for service. A conformed file copy of such order shall be retained by the court administrator in the file.

Family Court Rules Advisory Committee Commentary *

The use of orders to show cause can be abused by requiring a personal appearance where none is necessary. A timely notice of motion informing a party of the time to appear, if he or she wishes, is adequate in most proceedings.

**Original Advisory Committee Comment-Not kept current.*

Task Force Comment - 1991 Adoption

This rule is derived from existing Rule 2.06 of the Rules of Family Court Procedure. The Family Law Section of the Minnesota State Bar Association recommended additional specific language limiting use of orders to show cause and the Task Force agrees that this clarification should be useful. Orders to show cause are specifically authorized, in limited circumstances, by statute. See, e.g., Minnesota Statutes 1990, sections 256.87, subdivision 1a, and 393.07, subdivision 9.

Advisory Committee Comment - 2012 Amendment

Orders to show cause should be issued only when it is necessary that a party appear at a hearing. In most situations, the provision of notice of a hearing, and allowing parties to appear if they choose

to contest entry of the relief sought, is sufficient. Orders to show cause are specifically authorized, in limited circumstances, by statute. See, e.g., Minnesota Statutes, sections 256.87, subdivision 1a; 393.07, subdivision 9; 518A.73; and 543.20. It is often preferable to use a notice of motion, and if attendance is required, to issue a subpoena to a non-party. See, e.g., Stevens County Social Service Dept. ex rel. Banken v. Banken, 403 N.W.2d 693 (Minn. Ct. App. 1987). Orders to show cause are a recognized part of contempt proceedings. See, e.g., Minnesota Statutes, section 588.04.

Parties should be aware that improper use of an order to show cause can result in the imposition of sanctions. See, e.g., Nelson v. Quade, 413 N.W.2d 824 (Minn. Ct. App. 1987).

Former Rule 303.06 setting forth notices to be included in a final decree have largely been obviated by statutorily required notices. Notices required under statute are discussed in Rule 308.02 and its accompanying advisory committee comment.

Task Force Comment - 1991 Adoption

This rule is derived from Rule 7.01 of the Rules of Family Court Procedure and Second District Rule 2.09.