

FILED

June 20, 2019

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8006

**ORDER PROMULGATING AMENDMENTS TO THE
RULES OF CIVIL APPELLATE PROCEDURE**

The Minnesota State Bar Association asked the court to adopt the system used in the Federal Rules of Civil Procedure to calculate rule-imposed deadlines. The Advisory Committee for the Minnesota Rules of Civil Procedure agreed with this proposal, subject to input from the Advisory Committee for the Rules of Civil Appellate Procedure. In an order filed on March 13, 2018, we referred the recommendation of the Advisory Committee for the Rules of Civil Procedure to adjust time deadlines in Minnesota’s rules of court—in general, to 7, 14, 21, and 28 days—to the Advisory Committee for the Rules of Civil Appellate Procedure for review and recommendations regarding those rules. *See Order Promulgating Amendments to the Rules of Civil Proc.*, No. ADM04-8001, at 2 (Minn. filed Mar. 13, 2018).

The Advisory Committee for the Rules of Civil Appellate Procedure filed a report on October 1, 2018, recommending that certain rules be amended to redefine the time limits and the calculation of deadlines in the rules, with exceptions for some existing deadlines that promote the efficient processing of cases on appeal. We opened a public comment period. After public comments identified needed clarification in some of the proposed rule amendments, the advisory committee filed a second report, on April 1, 2019, modifying time deadlines further in a limited number of rules.

We have reviewed the written comments, the proposed amendments, and the committee's supplemental report. Based on our review of the work by the advisory committees for the Rules of Civil Appellate Procedure and the Rules of Civil Procedure, we adopt the recommended amendments to the Rules of Civil Appellate Procedure. We also agree with the committee's recommendation that the changes that will result from new time deadlines and the calculation of those deadlines favors an extended effective date for these amended rules.

Based on all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Rules of Civil Appellate Procedure are prescribed and promulgated to be effective as of January 1, 2020, and shall apply to all appeals filed on or after the effective date.
2. The Advisory Committee comments are included for convenience and do not reflect court approval of the comments.

Dated: June 20, 2019

BY THE COURT:



Lorie S. Gildea
Chief Justice

AMENDMENTS TO THE RULES OF CIVIL APPELLATE PROCEDURE

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

MINNESOTA RULES OF CIVIL APPELLATE PROCEDURE

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Rule 105. Discretionary Review

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105.02. Content of Petition; Response

The petition shall be entitled as in the trial court, shall not exceed 4,000 words, exclusive of the caption, signature block, and addendum, and shall contain:

- (a) a statement of facts necessary to an understanding of the questions of law or fact determined by the order of the trial court;
- (b) a statement of the issues; and
- (c) a statement why an immediate appeal is necessary and desirable.

A copy of the order from which the appeal is sought and any findings of fact, conclusions of law, or memorandum of law relating to it shall be included in an addendum, which shall be prepared as prescribed in Rule 130.02.

Any adverse party may, within ~~5-7~~ days after service of the petition, serve and file with the clerk of the appellate courts a response to the petition, which shall not exceed 4,000 words, exclusive of the caption, signature block, and addendum. Any reply shall be served within 3 days after service of the response and shall not exceed 2,000 words. As permitted by Rule 6.01(a)(2) of the Rules of Civil Procedure, the time period for filing a reply in support of the petition does not include intermediate Saturdays, Sundays, or legal holidays. All documents may be typewritten in the form prescribed in Rule 132.02. No additional memoranda may be filed without leave of the appellate court.

A copy of the response and any reply shall also be filed with the trial court administrator, and proof of that filing shall be filed with the clerk of the appellate courts.

The petition and any response or reply shall be accompanied by a Certificate of Document Length.

The petition and any response shall be submitted without oral argument unless otherwise ordered.

105.03. Grant of Permission—Procedure

If permission to appeal is granted, the clerk of the appellate courts shall notify the trial court administrator and then proceed as though the appeal had been noticed by filing an appeal.

The statement of the case shall be filed within ~~5~~7 days of the order granting the petition. The time fixed by these rules for filing and serving the briefs shall run from the date of the entry of the order granting permission to appeal.

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Rule 107. Bond or Deposit for Costs

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107.02. Request to Trial Court to Require a Cost Bond

The trial court may, upon motion of any respondent and a showing that extraordinary circumstances warrant the requirement of a cost bond, order that a bond be provided as follows:

(a) The bond shall be issued by a surety licensed to issue such bonds in the State of Minnesota and shall be conditioned upon the payment of all costs and disbursements awarded against the appellant on the appeal, not exceeding the amount of the bond, which shall not exceed \$1,000;

(b) In lieu of a required bond, the appellant may deposit the required amount with the trial court administrator as security for payment; and

(c) The court may require the bond to be filed when the notice of appeal is filed, or within ~~10~~14 days of the order requiring a bond, whichever date is later.

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Rule 109. Leave to Proceed *In Forma Pauperis*

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109.02 Motion for Leave to Proceed *In Forma Pauperis* in the Court of Appeals

A party who desires to proceed *in forma pauperis* in the Court of Appeals shall file in the trial court a motion for leave so to proceed, together with an affidavit showing the party's inability to pay fees and costs and a copy of the party's statement of the case as prescribed by Rule 133.03, showing the proposed issues on appeal. Any such motion by a party initiating an appeal shall be filed on or before the date the appeal is commenced. The trial court shall rule on the motion within ~~15~~14 days after it is filed, unless the Court of Appeals grants additional time. The party shall file a copy of the motion with the clerk of the appellate courts simultaneously with the notice of appeal or the petition that initiates the appeal.

The trial court shall grant the motion if the court finds that the party is indigent and that the appeal is not frivolous. If the motion is denied, the trial court shall state in writing the reasons for the denial. The party shall promptly file a copy of the trial court's order on the motion with the clerk of the appellate courts.

If the trial court grants the motion, the party may proceed *in forma pauperis* without further application to the Court of Appeals. If a transcript is to be prepared for appeal, the party shall file the certificate as to transcript required by Rule 110.02, subdivision 2(a), within ~~10~~14 days from the date of the trial court administrator's filing of the order granting leave to proceed *in forma pauperis* or within ~~10~~14 days after filing the notice of appeal, whichever is later.

If the trial court denies the motion, the party shall, within ~~10~~14 days from the date of the trial court administrator's filing of the order, either:

(a) pay the filing fee, post any required cost bond, and file a completed transcript certificate, if a transcript is required; or

(b) serve and file a motion in the Court of Appeals for review of the trial court's order denying *in forma pauperis* status. The record on the motion shall be limited to the record presented to the trial court.

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Rule 110. The Record on Appeal

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110.02. The Transcript of Proceedings; Duty of Appellant to Order; Notice to Respondent if Partial Transcript is Ordered; Duty of Reporter; Form of Transcript

Subdivision 1. Duty to Order Transcript. Within ~~10~~14 days after filing the notice of appeal, the appellant shall:

(a) pursuant to subdivision 2 of this rule, order from the reporter a transcript of those parts of the proceedings not already part of the record which are deemed necessary for inclusion in the record; or

(b) file a notice of intent to proceed pursuant to Rule 110.03 or Rule 110.04; or

(c) notify the respondent in writing that no transcript or statement will be ordered or prepared.

If the entire transcript is not to be included, the appellant, within the ~~10~~14 days, shall file and serve on the respondent a description of the parts of the transcript which appellant intends to include in the record and a statement of the issues intended to be presented on appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary, respondent shall order, within ~~10~~14 days of service of the description or notification of no transcript, those other parts from the reporter, pursuant to subdivision 2 of this rule, or serve and file a motion in the trial court for an order requiring the appellant to do so. A copy of any order of the trial court affecting the transcript shall be filed by the appellant with the clerk of the appellate courts.

Subd. 2. Transcript Certificates. (a) If any part of the proceedings is to be transcribed by a court reporter, a certificate as to transcript signed by the designating counsel and by the court

reporter shall be filed with the clerk of the appellate courts, with a copy to the trial court and all counsel of record within ~~10~~14 days of the date the transcript was ordered. The certificate shall contain the date on which the transcript was requested; the estimated number of pages; the estimated completion date not to exceed 60 days; a statement that satisfactory financial arrangements have been made for the transcription; and the court reporter's address and telephone number.

(b) If, within ~~10~~7 days after the filing of a transcript certificate required by subdivision 2(a) of this rule, any party makes a written request to the designating counsel that a paper transcript be provided to that party in lieu of an electronic transcript, the appellant or designating attorney or party shall file with the clerk of the appellate courts an amended transcript certificate confirming that satisfactory financial arrangements have been made for the preparation of the transcript and any timely requested paper copy or copies. The amended transcript certificate shall not extend the estimated completion date.

(c) Upon filing of the transcript with the trial court administrator and delivery to counsel of record, the reporter shall file with the clerk of the appellate courts a certificate of filing and delivery. The certificate shall identify the transcript(s) delivered; specify the dates of filing of the transcript with the trial court administrator and delivery to counsel; and shall indicate the method of delivery. The certificate shall also contain the court reporter's address and telephone number.

(d) The reporter's certificates required by sections (a) and (c) of this subdivision shall be filed electronically with the clerk of appellate courts using the appellate courts' e-filing and e-service system and shall be served on all attorneys and unrepresented parties. The reporter may, but need not, use that system to serve copies of these certificates on attorneys registered for use of the system, and need not provide separate proof of service for certificates served electronically.

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110.03. Statement of the Proceedings When No Report Was Made or When the Transcript is Unavailable

If no report of all or any part of the proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the proceedings from the best available means, including recollection. The statement is not intended to be a complete re-creation of testimony or arguments.

Appellant shall file the original proposed statement with the trial court administrator and the clerk of the appellate courts, and serve a copy on respondent, within ~~15~~14 days after filing the notice of appeal. Within ~~15~~14 days after service of appellant's statement, respondent may file with the trial court administrator and the clerk of the appellate courts objections or proposed amendments, and serve a copy on appellant.

The trial court may approve the statement submitted by appellant, or modify the statement based on respondent's submissions or the court's own recollection of the proceedings. The statement as approved by the trial court shall be included in the record. Within 60 days of the filing of the notice of appeal, the original trial court approval of the statement shall be filed with

the trial court administrator and copies of the approval shall be served on counsel for the parties and filed with the clerk of the appellate court.

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Rule 111. Transmission of the Record

111.01. Transmission of Record; Time

Within ~~10~~7 days after the due date for the filing of the appellant's brief, the trial court administrator shall prepare the record and transmit it or make it electronically available to the clerk of the appellate courts, together with a numbered itemized list of all documents and exhibits contained in the record, identifying each with reasonable definiteness; each document and exhibit shall be endorsed with the corresponding number from the itemized list. The trial court administrator shall send a copy of this list to all parties. A party having possession of exhibits shall transmit them with an itemized list to the clerk of the appellate courts within ~~10~~14 days after the due date for the filing of the respondent's brief. A party shall make advance arrangements with the clerk for the delivery of bulky or weighty exhibits and for the cost of transporting them to and from the appellate courts.

TITLE III. DECISIONS REVIEWABLE BY CERTIORARI TO THE COURT OF APPEALS OR THE SUPREME COURT

Rule 115. Court of Appeals Review of Decisions of the Department of Employment and Economic Development and Other Decisions Reviewable by Certiorari and Review of Decisions Appealable Pursuant to the Administrative Procedure Act

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115.03. Contents of the Petition and Writ; Filing and Service

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Subd. 4. Service. The petitioner shall serve a copy of the petition and the writ, if issued, upon the agency or body to which it is directed and upon every party. Proof of service shall be filed with the clerk of the appellate courts within ~~5~~7 days of service. A copy of the petition and writ shall be provided to the Attorney General, unless the state is neither a party nor the body to which the writ is directed.

115.04. The Record on Review by Certiorari; Transmission of the Record

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Subd. 2. Transcript of Audiotaped Proceedings. If a proceeding has been audiotaped and a record of the proceeding is necessary for the appeal, the relator shall order the transcript from

the agency or body within ~~ten~~14 days after the writ of certiorari is filed. The relator shall make appropriate financial arrangements with the agency or body for the transcription. The agency or body shall designate a court reporter or other qualified person to transcribe the audiotape. The agency or body shall serve and file a transcript certificate pursuant to Rule 110.02, subdivision 2(a) within ~~ten~~14 days after the transcript is ordered. The reporter shall file the original and first copy of the transcript with the agency or body, deliver a copy to the attorney for each party to the appeal separately represented, and file a certificate of filing and delivery pursuant to Rule 110.02, subdivision 2(b).

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Rule 116. Supreme Court Review of Decisions of the Workers' Compensation Court of Appeals, Decisions of the Tax Court, and Other Decisions Reviewable by Certiorari

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116.03. Contents of the Petition and Writ; Filing and Service

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Subd. 4. Service; Time. The petitioner shall serve copies of the petition and writ upon the court or body to whom it is directed and upon any party within 30 days after the petitioner was served with written notice of the decision to be reviewed, unless an applicable statute prescribes a different period of time. Proof of service shall be filed with the clerk of the appellate courts within ~~5~~7 days of service. A copy of the petition and writ shall be served on the Attorney General at the time of service.

Rule 117. Petition in Supreme Court for Review of Decisions of the Court of Appeals

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Subd. 4. Response and Request for Cross-Review. An opposing party may file with the clerk of the appellate courts a response to the petition within ~~20~~21 days of service. The response shall comply with the requirements set forth for the petition and shall contain proof of service. Any responding party may, in its response, also conditionally seek review of additional designated issues not raised by the petition. In the event of such conditional request, the party filing the initial petition for review shall not be entitled to file a response unless the court requests one on its own initiative.

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TITLE V. EXTRAORDINARY WRITS

Rule 120. Writs of Mandamus and Prohibition Directed to a Judge or Judges and Other Writs

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120.02. Submission of Petition; Response to the Petition

The petition shall be served on all parties and filed with the clerk of the appellate courts. In criminal cases, the State Public Defender and the Attorney General for the State of Minnesota shall also be served. If the lower court is a party, it shall be served; in all other cases, it should be notified of the filing of the petition and provided with a copy of the petition and any response. All parties other than the petitioner shall be deemed respondents and may answer jointly or separately within ~~five~~7 days after the service of the petition. If a respondent does not desire to respond, the clerk of the appellate courts and all parties shall be advised by letter within the ~~five~~7-day period, but the petition shall not thereby be taken as admitted.

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Rule 125. Filing and Service

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125.03. Manner of Service

Unless otherwise required by Rule 114.01, service may be electronic by use of the appellate courts' electronic filing system if required or permitted by court order, personal, or by United States Mail. Personal service includes delivery of a copy of the document to the attorney or other responsible person in the office of the attorney, or to the party, if not represented by counsel, in any manner provided by Rule 4, Minnesota Rules of Civil Procedure.

Electronic service is complete upon confirmation from the appellate courts' electronic filing system that it has been accomplished. Service by United States Mail is complete on mailing.

Whenever a party is required or permitted to do an act within a prescribed period after service and the ~~document~~party is served with the documents only by United States Mail, 3 days shall be added to the prescribed period. If a document is served electronically or personally after 5:00 p.m. at the court's local time, 1 day shall be added to the prescribed period.

As permitted by Rule 6.01(a)(2) of the Rules of Civil Procedure, the time periods in this rule do not include intermediate Saturdays, Sundays, or legal holidays.

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Rule 126. Computation and Extension or Limitation of Time

126.01. Computation

In computing any period of time prescribed or allowed by these rules, by order of court or by any applicable statute, the method of computation specified in Rules 6.01-~~and 6.05~~, Minnesota Rules of Civil Procedure, shall be used.

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Rule 127. Motions

Unless another form is prescribed by these rules, an application for an order or other relief shall be made by serving and filing a written motion for the order or relief. The filing of a motion shall not stay any time period or action specified in these rules unless ordered by the appellate court. The motion shall state with particularity the grounds and set forth the order or relief sought. If the motion is supported by briefs, affidavits or other documents, they shall be served and filed with the motion. Any party may file a response within 5 days after service of the motion. Any reply shall be served within 3 days, at which time the motion shall be deemed submitted. The motion and all related documents may be typewritten. Each document shall be filed with proof of service. Oral argument will not be permitted except by order of the appellate court.

As permitted by Rule 6.01(a)(2) of the Rules of Civil Procedure, the time periods in this rule do not include intermediate Saturdays, Sundays, or legal holidays.

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Rule 131. Filing and Service of Briefs and Addenda

131.01. Time for Filing and Service

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Subd. 3. Reply Brief. The appellant may serve and file a reply brief within ~~ten~~14 days after the later of the following:

- (a) service of the respondent's brief or the last respondent's brief if there are multiple respondents; or
- (b) service of the brief of an amicus curiae granted leave to participate under Rule 129.

Subd. 4. Briefing Schedule for Cross-Appeals; Form of Briefs in Cross-Appeals.

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(c) **Schedule for Filing.** In a case involving a cross-appeal, the appellant's principal brief shall be filed in accordance with Rule 131.01, subdivision 1, and the respondent/cross-appellant's principal brief shall be filed as one brief within 30 days after service of appellant's brief.

Appellant/cross-respondent's response and reply brief shall be filed as one brief within 30 days after service of cross-appellant's brief. Respondent/cross-appellant's reply brief may be filed within ~~10-14~~ days after service of appellant/cross-respondent's response and reply brief.

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Rule 132. Form of Briefs, Addenda, Supplemental Records, Motions, and Other Documents

132.01. Form of Briefs and Addenda

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Subd. 3. Length Limit. Except for good cause shown and with permission of the appellate court, briefs, whether printed or typewritten, exclusive of pages containing the table of contents, tables of citations, and any addendum, shall not exceed 45 pages for principal briefs, 20 pages for reply briefs, and 20 pages for amicus briefs, unless the brief complies with one of these alternative measures:

- (a) A principal brief is acceptable if:
 - (1) it contains no more than 14,000 words; or
 - (2) it uses a monospaced font and contains no more than 1,300 lines of text.
- (b) A reply brief is acceptable if:
 - (1) it contains no more than 7,000 words; or
 - (2) it uses a monospaced font and contains no more than 650 lines of text.
- (c) An amicus brief is acceptable if:
 - (1) it contains no more than 7,000 words; or
 - (2) it uses a monospaced font and contains no more than 650 lines of text.

A brief submitted under Rule 132.01, subdivision 3(a), (b), or (c) must include a certificate that the brief complies with the word count or line count limitation. The person preparing the certificate may rely on the word or line count of the word-processing software used to prepare the brief. The certificate must state the name and version of the word processing software used to prepare the brief, state that the brief complies with the typeface requirements of this rule, and state either:

- (1) the number of words in the brief; or
- (2) the number of lines of monospaced font in the brief.

A motion Application for filing an enlarged brief shall be filed at least ~~10-14~~ days prior to the date the brief is due.

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Advisory Committee Comment—2019 Amendments

Rule 132.01, subdivision 3, sets a deadline for filing a motion for leave to file an over-length brief. The rule also is amended to make it clear that

this request is made by motion. Pursuant to Rule 127 any other party may file a response, but this is the type of motion that the court might either grant or deny upon receipt of the motion.

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Rule 134. Oral Argument

134.01. Allowance of Oral Argument

Oral argument will be allowed unless:

- (a) no request for oral argument has been made by either party in the statement of the case required by Rule 133.03; or
- (b) a party has failed to file a timely brief as required by Rule 128.02; or
- (c) the parties have agreed to waive oral argument pursuant to Rule 134.06; or
- (d) the appellate court, in the exercise of its discretion, determines that oral argument is unnecessary because:
 - (1) the dispositive issue or set of issues has been authoritatively settled; or
 - (2) the facts and legal arguments could be adequately presented by the briefs and record and the decisional process would not be significantly aided by oral argument.

The appellate court shall notify the parties when it has been determined that a request for oral argument has been denied. A party aggrieved by the decision may, within ~~5~~7 days after the receipt of the notification and pursuant to Rule 127, request the court to reconsider its decision.

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Rule 140. Petition for Rehearing in Supreme Court

140.01. Petition for Rehearing

No petition for rehearing shall be allowed in the Court of Appeals.

A petition for rehearing in the Supreme Court may be filed within ~~10~~14 days after the filing of the decision or order unless the time is enlarged by order of the Supreme Court within the ~~10~~14-day period. The petition shall set forth with particularity:

- (a) any controlling statute, decision or principle of law; or
- (b) any material fact; or
- (c) any material question in the case which, in the opinion of the petitioner, the Supreme Court has overlooked, failed to consider, misapplied or misconceived.

No petition for reconsideration or rehearing of a denial of a petition for review provided by Rule 117, or of a petition for accelerated review provided by Rule 118, shall be allowed in the Supreme Court.

140.02. Service; Filing

The petition shall be served upon the opposing party who may answer within ~~five~~7 days after service. Oral argument in support of the petition will not be permitted. The petition, in the format required by Rule 132.01, shall be filed with the clerk. A filing fee of \$100 shall accompany the petition for rehearing.

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Rule 141. Recusal

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Rule 141.03. Timing

As permitted by Rule 6.01(a)(2) of the Rules of Civil Procedure, the time periods shorter than 7 days in this rule do not include intermediate Saturdays, Sundays, or legal holidays.

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Rule 143. Parties; Substitution; Attorneys; Signing of Appellate Pleadings

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143.05 Attorneys

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Subd. 3. Certified students. A law student who is certified pursuant to the Minnesota Student Practice Rules may present oral argument only with leave of the appellate court. A motion for leave to present oral argument must be filed no later than ~~10~~14 days before the date of the scheduled oral argument. The student may participate in oral argument only in the presence of the attorney of record.