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FILED

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8006
(formerly C4-84-2133)

Order Promulgating Amendment to
Rules of Civil Appellate Procedure

O R D E R

The Supreme Court Advisory Committee on Rules of Civil Appellate Procedure recommended amendment of Rule 133.01 of the Rules of Civil Appellate Procedure to authorize implementation of the existing Court of Appeals Family Law Appellate Mediation Pilot Project on a permanent basis. By order filed September 23, 2010, we solicited comments on the proposed amendment to be filed no later than November 5, 2010.

The court has reviewed the proposed amendments and the comments received and is fully advised in the premises.

IT IS HEREBY ORDERED THAT:

1. The attached amendment to the Rules of Civil Appellate Procedure be, and the same is, prescribed and promulgated to be effective on January 1, 2011.
2. This amendment shall apply to appellate proceedings commenced on or after the effective date.

3. The inclusion of Advisory Committee comments is for convenience and does not reflect court approval of the statements made therein.

4. A copy of the Special Rules of Practice for the Minnesota Court of Appeals Governing Family Law Mediation authorized by the amendment to Rule 133.01 and adopted by the Court of Appeals is attached to this order.

Dated: December 17, 2010

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Lorie S. Gildea".

Lorie S. Gildea
Chief Justice

AMENDMENT TO THE RULES OF CIVIL APPELLATE PROCEDURE

(New material is indicated by underlining.)

RULE 133. PREHEARING CONFERENCE; CALENDAR: STATEMENT OF THE CASE

Rule 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.

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% 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.

**SPECIAL RULES OF PRACTICE
FOR THE
MINNESOTA COURT OF APPEALS
GOVERNING FAMILY LAW APPELLATE MEDIATION**

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.

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.

Rule 3. Briefing

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

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.

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 served within the time periods specified in Minn. R. Civ. App. P. 104.01.

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.

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. Prac. 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.

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.

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.

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.

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.

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.

Rule 13. Finalization of Mediation Process

(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.

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.

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.