

**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) any party involved in the appeal is not represented by counsel; or

(e) 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 7 days after the receipt of the notification and pursuant to Rule 127, request the court to reconsider its decision.

(Amended effective for appeals taken on or after January 1, 1992; amended effective September 1, 2019; amended effective January 1, 2020.)

**134.02 Notice of Hearing; Postponement**

When filing the party's initial brief, counsel must provide written notice of any conflicts which limit counsel's availability for argument. Counsel are required to file written notice of updated conflict information as soon as that information is reasonably available to counsel and until the case is scheduled for argument. The clerk of the appellate courts shall notify all parties of the time and place of oral argument. A request for postponement of the hearing must be made by motion filed immediately upon receipt of the notice of the date of hearing, with the motion identifying the specific circumstances that support the requested postponement.

(Amended effective September 1, 2019.)

**134.03 Time Allowed for Argument**

**Subdivision 1. Time Allowed.** In the Court of Appeals, appellants are allowed 20 minutes for oral argument, with 15 minutes for principal arguments and 5 minutes for rebuttal, and respondents are allowed 15 minutes for oral argument. In the Supreme Court, appellants are allowed time not to exceed 35 minutes, and respondents are allowed time not to exceed 25 minutes, for oral argument. Appellants in the Supreme Court may reserve a portion of the allotted time for rebuttal. If multiple parties to the appeal all wish to participate in oral argument, they shall mutually agree to divide the allotted time among themselves.

**Subd. 2. Additional Time.** If counsel is of the opinion that additional time is necessary for the adequate presentation of argument, additional time may be requested at the prehearing conference, if one is held, or by a motion filed in advance of the date fixed for hearing.

**Subd. 3. Argument Limit.** The appellate court may increase or reduce the time for argument on its own motion.

(Amended effective September 1, 2019.)

#### **134.04 Order and Content of Argument**

The appellant is entitled to open and conclude the argument. It is the duty of counsel for the appellant to state the case and facts fairly, with complete candor, and as fully as necessary for consideration of the issues to be presented. The appellant shall precede the statement of facts with a summary of the questions to be raised. Counsel should not read at length from the record, briefs or authorities.

#### **134.05 Nonappearance of Counsel**

If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appears for any party, the case will be decided on the briefs unless the court shall otherwise order.

#### **134.06 Submission on Briefs**

An appeal will be placed on a nonoral calendar and deemed submitted on the briefs on that calendar date in the following circumstances:

- (a) When oral argument has not been requested;
- (b) When oral argument once allowed has been waived by agreement of the parties and consent of the court;
- (c) When any party involved in the appeal is not represented by counsel; or
- (d) If, pursuant to Rule 134.01(d), oral argument is not allowed.

(Amended effective January 1, 2009; amended effective September 1, 2019.)

#### ***Advisory Committee Comment - 2008 Amendments***

*Rule 134.06 is amended to conform the rule to the uniform practice of both the Court of Appeals and Supreme Court for cases to be submitted without argument. In all cases it is the practice of the courts to place these cases on an argument calendar for a specific date, noting that nonoral cases will be submitted without argument. The rule is simply amended to conform to this practice.*

#### ***Advisory Committee Comment - 2019 Amendments***

*Rules 134.01 and 134.06 are amended to reflect the practice of the appellate courts not to allow oral argument in cases where a party actively involved in an appeal is not represented by counsel authorized to practice before the court, either by admission to the Minnesota bar or admission pro hac vice. See Rule 143.05.*

*Rule 134.03 is amended to more clearly state the Court of Appeals' policy for allotting time for oral arguments, which is currently in Rule 2 of the Special Rules of Practice for the Minnesota Court of Appeals.*

**134.07 Trial Court Exhibits; Diagrams and Demonstrative Aids**

**Subdivision 1. Trial Court Exhibits.** Counsel planning to use any trial court exhibits during oral argument must arrange before the day of argument with the clerk of the appellate courts to have them placed in the courtroom before the court convenes on the date of the hearing.

**Subd. 2. Diagrams and Demonstrative Aids.** In cases where a plat, diagram, or demonstrative aid will facilitate an understanding of the facts or of the issues involved, counsel shall either:

- (a) Provide a copy in the addendum to the brief;
- (b) Provide individual copies to opposing counsel and the court before the argument;
- (c) If necessary, have in court a plat, diagram, or demonstrative aid of sufficient size and distinctness to be visible to the court and opposing counsel; or
- (d) In advance of oral argument make arrangements with the court for the set-up and removal of any video projection or audio playback equipment needed for presentation of trial electronic exhibits or demonstrative aids.

(Amended effective January 1, 2009; amended effective July 1, 2014.)

***Advisory Committee Comment - 2008 Amendments***

*Rule 134.07 is amended to broaden the rule and also to conform it to current court practices. Prior to amendment, Rule 134.07 spoke generally of "exhibits," referring either to trial court exhibits or possibly to demonstrative aids. As amended, subdivision 1 addresses trial court exhibits, and states the requirement that counsel seeking to use them in some way in argument must make arrangements for them to be in the courtroom. This is rarely necessary, as exhibits are available to the court and important exhibits are usually reproduced in a party's addendum or appendix. Subdivision 2 is revamped more extensively, to reflect the wider array of materials that might have a role at oral argument. Most importantly, the revised rule provides for what is probably the best way to provide demonstrative exhibits to the court: include them in the addendum or appendix, which makes them available to all judges both before and at argument or, if they are not included in the addendum or appendix, provide copies to the marshal for distribution to the judges or justices and to opposing counsel before the beginning of oral argument. "Blow-ups" of documents are notoriously ineffective at argument, as most typed documents - even if enlarged many times - are still difficult or impossible to read across a courtroom. The rule also makes it clear that in order to present video images or audio recordings at argument, whether for parts of the record or for demonstrative aids, counsel must arrange for the presence and operation of playback equipment. The inclusion of this provision is not to encourage the use of audio or video equipment at argument - it is often more distracting than useful - but there are circumstances where its use may be appropriate. The revised rule makes it clear how it may be used. The court will likely require that any equipment be set up before the first argument of the day or during a break, and removed at the end of the day or during a formal break.*

***Advisory Committee Comment - 2014 Amendments***

*Rule 134.07 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.*

**134.08 Submission When Member of Appellate Court Not Present**

Except in exigent circumstances, the oral argument shall be heard in the Court of Appeals before the full panel to which the case has been assigned or in the Supreme Court before the court sitting

en banc. Whenever any member of the appellate court is not present at the oral argument of a case, the case shall be deemed submitted to that member of the court on the record and briefs. When, during the consideration of a case, there is a change in the personnel of the court, the case shall be deemed submitted to the new member or members on the record and briefs.

### **134.09 Oral Argument - Place of Argument**

**Subdivision 1. Supreme Court.** Argument to the Supreme Court shall take place at the State Capitol or Minnesota Judicial Center in St. Paul or at any other place designated by the Supreme Court.

**Subd. 2. Court of Appeals.** Argument to the Court of Appeals shall take place in the Minnesota Judicial Center in St. Paul or as specifically provided in this rule.

(a) Argument in appeals from trial courts shall be heard:

(1) in appeals from trial courts in Hennepin and Ramsey Counties, at a session of the Court of Appeals in Hennepin or Ramsey County;

(2) in appeals from trial courts in other counties, at a session of the Court of Appeals in the judicial district in which the county is located at a location convenient to the place of trial or counsel.

(b) Arguments on writs of certiorari to review decisions of the Commissioner of Economic Security shall be heard as follows:

(1) if the claimant for benefits is a real party in interest in the proceedings and resides in Hennepin or Ramsey County, in one of those counties;

(2) if the claimant for benefits is a real party in interest in the proceedings and resides elsewhere in the state, in the judicial district of the claimant's residence;

(3) otherwise, at a place designated by the court.

(c) Arguments on petitions to review the validity of administrative rules, pursuant to Minnesota Statutes, section 14.44, shall be in Hennepin or Ramsey County.

(d) Arguments on petitions to review decisions of administrative agencies in contested cases, pursuant to Minnesota Statutes, sections 14.63 to 14.68, shall be heard:

(1) if the petitioner resides outside of Hennepin and Ramsey Counties, but within Minnesota, either at the session of the Court of Appeals in Hennepin or Ramsey County or at a session of the Court of Appeals in the judicial district in which the petitioner resides, as designated by the petitioner in the petition for review;

(2) if the petitioner resides in Hennepin or Ramsey County, or outside of Minnesota, at a session of the Court of Appeals in Hennepin or Ramsey County.

(e) In all other cases, any oral argument shall be heard at a session of the court in Hennepin or Ramsey County.

(f) Upon the joint request of the parties and with the approval of the court, an argument may be heard at a location other than that provided in this rule. The request pursuant to this subsection shall be included in the statement of the case.

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999; amended effective July 1, 2014.)

**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 Court Information Office 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; amended effective July 1, 2014.)

***Comment - 1983***

*This rule designates the place of oral argument in the Supreme Court and the Court of Appeals. In cases arising in counties other than Hennepin or Ramsey, the Court of Appeals will hear argument within the judicial district in which the county is located, to the extent practical, at a site convenient to either the place of trial or counsel.*

***Advisory Committee Comment - 1998 Amendments***

*The rule has been amended to use the correct title of the Commissioner of Economic Security. The change is not intended to affect the meaning or interpretation of the rule.*