

1 **Rule 33. Damages for delay or frivolous appeal; recovery of attorney's fees.**

2 (a) **Damages for delay or frivolous appeal.** Except in a first appeal of right in a criminal case, if  
3 the court determines that a motion made or appeal taken under these rules is either frivolous or  
4 for delay, it ~~shall~~will award just damages, which may include single or double costs, as defined  
5 in Rule 34, and/or reasonable attorney fees, to the prevailing party. The court may order that the  
6 damages be paid by the party or by the party's attorney.

7 (b) **Definitions.** For the purposes of these rules, a frivolous appeal, motion, brief, or other ~~paper~~  
8 document is one that is not grounded in fact, not warranted by existing law, or not based on a  
9 good faith argument to extend, modify, or reverse existing law. An appeal, motion, brief, or other  
10 ~~paper~~document interposed for the purpose of delay is one interposed for any improper purpose  
11 such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit  
12 only the party filing the appeal, motion, brief, or other ~~paper~~document.

13 (c) **Procedures.**

14 (1) The court may award damages ~~upon~~ any party's request ~~of any party~~ or ~~up~~on its own  
15 motion. A party may request damages under this rule only as part of the appellee's  
16 motion for summary disposition under Rule 10, as part of the appellee's brief, or as part  
17 of a party's response to a motion or other ~~paper~~document.

18 (2) If the award of damages is ~~upon~~ the court's motion ~~of the court~~, the court ~~shall~~will  
19 issue to the party, ~~or~~ the party's attorney, or both an order to show cause why such  
20 damages should not be awarded. The order to show cause ~~shall~~will set forth the  
21 allegations ~~which~~that form the basis of the damages and permit at least ten days in which  
22 to respond unless otherwise ordered for good cause shown. The order to show cause may  
23 be part of the notice of oral argument.

24 (3) The court will not award damages without affording the party against whom damages  
25 may be awarded an opportunity to file a written objection. If a request for damages is  
26 included in a filing to which a response or reply is permitted by applicable rules or by a  
27 court order, any written objection to the request must be included in that response or  
28 reply. When applicable rules or a court order do not provide for a response or reply, the  
29 court will issue a notice affording the opposing party an opportunity to submit a written

30 objection to the request for damages. ~~If requested by a party against whom damages may~~  
31 ~~be awarded, the court shall grant a hearing.~~ Any hearing will be at the court's discretion.

32 Effective November 1, 2020